

# Cemeteries and Crematoria Act 2013 No 105

[2013-105]



New South Wales

## Status Information

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# Cemeteries and Crematoria Act 2013 No 105



New South Wales

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# Cemeteries and Crematoria Act 2013 No 105



New South Wales

An Act to make provision for and with respect to the management and operation of cemeteries and crematoria; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Cemeteries and Crematoria Act 2013*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of Act

The objects of this Act are as follows—

- (a) to recognise the right of all individuals to a dignified interment and treatment of their remains with dignity and respect,
- (b) to ensure that the interment practices and beliefs of all religious and cultural groups are respected so that none is disadvantaged and adequate and proper provision is made for all,
- (c) to ensure that sufficient land is acquired and allocated so that current and future generations have equitable access to interment services,
- (d) to provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria,
- (e) to ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity,
- (f) to ensure that cemeteries and crematoria on Crown land are managed in accordance with the principles of Crown land management specified in section 1.4 of the *Crown Land Management Act 2016*,
- (g) to promote environmental sustainability of the interment industry, including provision

for natural and private burials,

- (h) to promote that cost structures for burials and cremations are transparent across all sectors of the interment industry,
- (i) to promote affordable and accessible interment practices, particularly for those of limited means.

#### 4 Interpretation

- (1) Expressions used in this Act that are defined in the Dictionary have the meanings set out in the Dictionary.
- (2) Unless the contrary intention is shown, a reference in this Act to—
  - (a) a **cemetery** includes a reference to—
    - (i) a crematorium, and
    - (ii) a part of a cemetery or crematorium, and
  - (b) a **cemetery operator** includes a reference to—
    - (i) a crematorium operator, and
    - (ii) an operator of part of a cemetery or crematorium.
- (3) An expression that is used in this Act and that is defined in the [Crown Land Management Act 2016](#) (not being an expression that is defined in this Act) has the same meaning in this Act in relation to a Crown cemetery or Crown cemetery operator as it has in that Act in relation to dedicated or reserved Crown land or a person responsible for the care, control and management of dedicated or reserved Crown land, respectively.

#### Note—

Expressions used in this Act (or in a particular provision of this Act) that are defined in the [Interpretation Act 1987](#) have the meanings set out in that Act.

See also section 3.1 (Responsibility for management of Crown land) of the [Crown Land Management Act 2016](#).

- (4) Notes included in this Act do not form part of this Act.

#### 5 Relationship of Act and [Crown Land Management Act 2016](#) and other legislation

- (1) Nothing in the [Crown Land Management Act 2016](#) or an instrument made under that Act (including any regulations or plan of management for dedicated or reserved Crown land) prevents or restricts the use of a reserve for anything that is authorised, permitted or required by or under this Act.
- (2) If provision is made both by or under the [Crown Land Management Act 2016](#) and this

Act in relation to the exercise of functions by, or in respect of, a Crown cemetery operator in the same or substantially the same circumstances the function is not exercisable under the [Crown Land Management Act 2016](#).

- (3) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of the [Crown Land Management Act 2016](#) or any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.
- (4) Except as expressly provided by this Act, this Act does not affect the operation of the following or any other Acts, or any regulations made under those Acts, to the extent that they apply to, or in respect of, the operation of cemeteries or crematoria—
  - (a) [Aboriginal Land Rights Act 1983](#),
  - (b) [Fair Trading Act 1987](#),
  - (c) [Funeral Funds Act 1979](#),
  - (d) [Heritage Act 1977](#),
  - (e) [National Parks and Wildlife Act 1974](#),
  - (f) [Public Health Act 2010](#),
  - (g) [Biodiversity Conservation Act 2016](#).

## **Part 2 Administration**

### **Division 1 Constitution and management of Cemeteries Agency**

#### **6 Constitution of Cemeteries and Crematoria NSW**

There is constituted by this Act a body corporate with the corporate name of Cemeteries and Crematoria NSW.

**Note—**

Section 50 of the [Interpretation Act 1987](#) provides for the powers of a statutory corporation.

#### **7 Status of Cemeteries Agency**

- (1) The Cemeteries Agency is a NSW Government agency.
- (2) (Repealed)

#### **8 Control and management of Cemeteries Agency**

- (1) All decisions relating to the functions of the Cemeteries Agency are to be made by or under the authority of the Board.

- (2) The Chief Executive Officer is responsible for the day-to-day management of the affairs of the Cemeteries Agency, subject to the policies and directions of the Board.

**Note—**

The Cemeteries Agency may delegate certain of its functions to the Chief Executive Officer (who is a member of the Board) and other persons. However under section 11 (3) it cannot delegate functions such as the power to issue a short term order.

- (3) Any act, matter or thing done in the name of, or on behalf of, the Cemeteries Agency by or under the authority of the Board or the Chief Executive Officer is taken to have been done by the Cemeteries Agency.

**9 Ministerial control of Cemeteries Agency**

- (1) The Cemeteries Agency is, in the exercise of its functions, subject to the control and direction of the Minister, except in relation to the following—
- (a) the contents of any advice, report or recommendation given to the Minister,
  - (b) decisions whether to grant, suspend or cancel a licence held by a particular person under an interment industry scheme,
  - (c) decisions whether to institute civil or criminal proceedings in a particular case.
- (2) The Minister must—
- (a) give the Cemeteries Agency reasonable notice before giving it any direction with respect to the exercise of its functions and provide it with an opportunity to comment on the proposed direction within a time specified by the Minister, and
  - (b) give the direction in writing.
- (3) The Cemeteries Agency is to publish a copy of the direction in the Gazette.

**10 Staff of Cemeteries Agency**

- (1) Persons may be employed in the Public Service to enable the Cemeteries Agency to exercise its functions.
- (2) The Cemeteries Agency may engage such consultants and independent contractors as it requires to exercise its functions.
- (3) The Cemeteries Agency may arrange for one or more police officers to be made available (by way of secondment or otherwise) to perform services for the Cemeteries Agency.

**Note—**

See section 95A of the [Police Act 1990](#).

## **11 Delegation of functions**

- (1) The Cemeteries Agency may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the Cemeteries Agency if the delegate is authorised in writing to do so by the Cemeteries Agency.
- (3) The following powers may not be delegated—
  - (a) the power under section 14 to acquire land in certain circumstances,
  - (b) the power under section 36 to make a short term order.
- (4) In this section, **authorised person** means—
  - (a) a member of the Board, or
  - (b) a member of staff of a Government agency, or
  - (c) a person, or person of a class, prescribed by the regulations.

## **Division 2 Functions of Cemeteries Agency**

### **Subdivision 1 Principal functions**

#### **12 Functions—generally**

- (1) The functions of the Cemeteries Agency include the following—
  - (a) to assess current and future interment needs and develop planning strategies for cemetery space to meet those needs,
  - (b) to provide advice or make recommendations to the Minister in relation to the sustainable use of cemetery and crematorium space and capacity,
  - (c) to promote environmentally sustainable practices in the interment industry,
  - (d) to develop, approve and promote codes of practice for cemeteries and crematoria and report on adoption of those codes by the interment industry,
  - (e) to provide advice or make recommendations to the Minister on the establishment, implementation or alteration of interment industry schemes,
  - (f) to regulate the provision of services in relation to interment matters that are subject to interment industry schemes,
  - (g) to keep under review the policies, operating procedures and activities of the interment industry, including cemeteries, crematoria, providers of funeral goods

and services, and operators of funeral funds,

(h) to collect information and carry out research as is necessary to exercise its functions.

- (2) The Cemeteries Agency must, within 12 months after it is constituted, prepare a strategic plan outlining its key objectives and time frames for implementation of those objectives.
- (3) The Cemeteries Agency must publish the strategic plan in the Gazette.
- (4) In exercising its functions, the Cemeteries Agency is to have regard to the objects of this Act.

### **13 Other functions**

- (1) The Cemeteries Agency has such other functions as are conferred or imposed on it by or under this or any other Act.
- (2) The Cemeteries Agency may do all such supplemental, incidental or consequential acts as may be necessary or expedient for the exercise of its functions.

## **Subdivision 2 Ancillary functions**

### **14 Reserve power to acquire land in the public interest**

- (1) The Cemeteries Agency may—
  - (a) with the consent of the Minister and subject to such conditions as the Minister thinks fit to impose do either or both of the following—
    - (i) acquire land by agreement (not compulsory process) for the purpose of providing land for cemetery purposes,
    - (ii) transfer the land to a Crown cemetery operator or other operator or prospective operator of a cemetery, or
  - (b) with the approval of the Minister administering the [Crown Land Management Act 2016](#) and subject to such conditions as the Minister thinks fit to impose, require a Crown cemetery operator to acquire land by agreement (not compulsory process) for the purposes of the Crown cemetery under its care, control and management.
- (2) The power under subsection (1) is to be exercised only if the Cemeteries Agency considers it necessary or desirable to acquire the land to ensure equitable access to interment services by one or more religious or cultural groups or the community generally.
- (3) The power under subsection (1) is to be exercised in relation to a Crown cemetery trust only if the Cemeteries Agency and the Minister concerned—

- (a) are satisfied that the Crown cemetery trust concerned has sufficient funds available for the acquisition, and
  - (b) has taken into consideration the impact of the land acquisition on the operator, including (without limitation) the long term financial implications for the care, control and management of the additional land.
- (4) For the purposes of the *Public Works and Procurement Act 1912*, any acquisition of land under subsection (1) (a) is taken to be an authorised work, and the Cemeteries Agency is, in relation to that authorised work, taken to be the Constructing Authority.
- (5) Sections 34, 35, 36 and 37 of the *Public Works and Procurement Act 1912* do not apply to or in respect of works constructed on land acquired under this section.

### **15 Arrangements with other persons and bodies**

The Cemeteries Agency may—

- (a) appoint agents, and act as an agent, for other persons and bodies, and
- (b) enter into arrangements with a government agency with respect to the exercise under this Act of the functions of authorised officers.

## **Division 3 The Board**

### **Subdivision 1 Constitution of Board**

#### **16 Board of the Cemeteries Agency**

- (1) There is to be a Board of the Cemeteries Agency.
- (2) The Board is to consist of the following members—
  - (a) a person appointed by the Minister by instrument in writing as the Chair of the Board,
  - (b) 3 persons appointed by the Minister by instrument in writing who, in the opinion of the Minister, have professional expertise, qualifications or experience that is relevant to the functions exercisable by the Board,
  - (c) the head of, or a person nominated by the head to represent each of the following—
    - (i) the Department of Planning and Infrastructure,
    - (ii) the Office of Environment and Heritage, Department of Premier and Cabinet,
    - (iii) NSW Fair Trading, Department of Finance and Services,
    - (iv) the Crown Lands Division, Department of Trade and Investment, Regional



Infrastructure and Services,

- (d) a person nominated by the Director General of the Ministry of Health to represent NSW Health,
  - (e) a person who—
    - (i) has knowledge and expertise relevant to local government matters, and
    - (ii) is appointed by the Minister after consultation with the head of, or a person nominated by the head to represent, the Division of Local Government, Department of Premier and Cabinet, Local Government NSW and Local Government Managers Australia, NSW,
  - (f) the Chief Executive Officer.
- (3) The persons appointed under subsection (2) (b) must include one person nominated by the Combined Pensioners and Superannuants Association of NSW who has knowledge and expertise relevant to consumer and customer advocacy.
- (4) A person is not eligible to be a voting member of the Board if the person is an interment industry participant.
- (5) A member referred to in subsection (2) (c), (d), (e) or (f) (a **non-voting member**) is not entitled to vote on any matter considered by the Board.
- (6) The Minister is, by an instrument of appointment or a subsequent instrument, to appoint one of the members referred to in subsection (2) (b) as the Deputy Chair of the Board.
- (7) In this section—
- interment industry participant** means a person who is—
- (a) a proprietor, partner, shareholder or unit holder of a partnership, company, unit trust scheme or other business or entity that is a cemetery operator, funeral contribution fund, funeral director or other participant in the interment industry, or
  - (b) a director, chief executive officer, manager, member of the management committee or other office holder, or is otherwise involved in the control or management, of such a participant, or
  - (c) is an employee of such a participant.
- (8) Schedule 1 contains provisions with respect to the members and procedure of the Board.

## Subdivision 2 Duties and liabilities of Board members

### 17 Interpretation

A person is ***involved in a contravention*** of a provision of this Division if, and only if, the person—

- (a) has aided, abetted, counselled or procured the contravention, or
- (b) has induced, whether by threats or promises, or otherwise, the contravention, or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention, or
- (d) has conspired with others to effect the contravention.

### 18 Care and diligence—civil obligation only

(1) **Care and diligence—voting members of Board** A voting member of the Board must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person—

- (a) were a member of the Board in the Cemeteries Agency's circumstances, and
- (b) occupied the office held by, and had the same responsibilities as, the member of the Board.

Maximum civil penalty: \$27,500.

(2) **Business judgment rule** A voting member of the Board who makes a business judgment is taken to meet the requirements of subsection (1), and the member's equivalent duties at common law and in equity in respect of the judgment, if the member—

- (a) makes the judgment in good faith for a proper purpose, and
- (b) does not have a material personal interest in the subject matter of the judgment, and
- (c) informs the member about the subject matter of the judgment to the extent that the member reasonably believes to be appropriate, and
- (d) rationally believes that the judgment is in the best interests of the Cemeteries Agency.

(3) The voting member's belief that the judgment is in the best interests of the Cemeteries Agency is a rational one unless the belief is one that no reasonable person in the member's position would hold.

#### Note—

This subsection only operates in relation to duties under this section and the equivalent duties at common

law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

(4) In this section—

***business judgment*** means any decision to take or not take action in respect of a matter relevant to the functions of the Cemeteries Agency.

## **19 Disclosure of material personal interest—civil obligations**

(1) If—

- (a) a member of the Board has a direct or indirect material personal interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

Maximum civil penalty: \$5,500.

(2) A disclosure by a member of the Board at a meeting of the Board that the member—

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this section.

(3) Particulars of any disclosure made under this section must be recorded by the Cemeteries Agency in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

(4) After a member of the Board has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines—

- (a) be present during any deliberation of the Board with respect to the matter, or
- (b) take part in any decision of the Board with respect to the matter.

Maximum civil penalty: \$5,500.

(5) For the purposes of the making of a determination by the Board under subsection (4),

a member of the Board who has a direct or indirect material personal interest in a matter to which the disclosure relates must not—

- (a) be present during any deliberation of the Board for the purpose of making the determination, or
- (b) take part in the making by the Board of the determination.

(6) A contravention of this section does not invalidate any decision of the Board.

## **20 Use of position—civil obligations**

(1) **Use of position—member of the Board** A member of the Board must not improperly use his or her position to—

- (a) gain an advantage for the member of the Board or someone else, or
- (b) cause detriment to the Cemeteries Agency.

Maximum civil penalty: \$27,500.

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Maximum civil penalty: \$27,500.

## **21 Use of information—civil obligations**

(1) **Use of information—former member of Board** A person who obtains information because they are, or have been, a member of the Board must not improperly use the information to—

- (a) gain an advantage for the member of the Board or someone else, or
- (b) cause detriment to the Cemeteries Agency.

Maximum civil penalty: \$27,500.

(2) The duty under subsection (1) continues after the person stops being a member of the Board.

(3) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Maximum civil penalty: \$27,500.

## **Division 4 Finance**

### **22 The Cemeteries Agency Fund**

(1) There is to be established in the Special Deposits Account a Cemeteries and

Crematoria NSW Fund (the **Cemeteries Agency Fund**) into which is to be paid the following—

- (a) all money advanced to the Cemeteries Agency by the Treasurer or appropriated by Parliament for the purposes of the Cemeteries Agency,
  - (b) all money directed or authorised to be paid into the Cemeteries Agency Fund by or under this or any other Act,
  - (c) levies or other payments made under section 24,
  - (d) payments directed to be paid to the Cemeteries Agency under section 40,
  - (e) the proceeds of the investment of money in the Cemeteries Agency Fund,
  - (f) all money received by the Cemeteries Agency from any other source.
- (2) Money may be paid from the Cemeteries Agency Fund for the following purposes—
- (a) enabling the Cemeteries Agency to exercise its functions,
  - (b) the acquisition of land under section 14.
- (3) All expenditure incurred by the Cemeteries Agency is to be paid from the Cemeteries Agency Fund.

### **23 Investment of money in Cemeteries Agency Fund**

The Cemeteries Agency may invest money in the Cemeteries Agency Fund—

- (a) if the Cemeteries Agency is a GSF agency for the purposes of Part 6 of the [Government Sector Finance Act 2018](#)—in any way that the Cemeteries Agency is permitted to invest money under that Part, or
- (b) if the Cemeteries Agency is not a GSF agency for the purposes of Part 6 of the [Government Sector Finance Act 2018](#)—in any way approved by the Minister with the concurrence of the Treasurer.

### **24 Interment service levies**

(1) The Cemeteries Agency may levy the following—

- (a) a contribution towards the cost of the administration of this Act to the extent that it relates to cemeteries (a **general levy**),
- (b) in special circumstances, a contribution towards the cost of acquiring particular land under section 14 (a **special levy**).

(2) A general levy or special levy—

- (a) may be imposed by reference to an interment service of a kind prescribed by the

regulations, and

- (b) may be imposed on any person who is an operator of a cemetery, or an operator of a class of cemetery, prescribed by the regulations, and
  - (c) is to be of an amount, or calculated in the manner, prescribed by the regulations, and
  - (d) is payable in respect of the period prescribed by the regulations, and
  - (e) is to be paid within the time and in the manner specified by the Cemeteries Agency by notice in writing to the person liable to pay the levy.
- (3) Without limiting subsection (2) (c), the regulations may provide for calculation of a general levy by providing for the determination by the Cemeteries Agency of adjustment of amounts in proportion to variations in the CPI.
- (4) A special levy under this section must not exceed an amount in total prescribed by the regulations.
- (5) The regulations may make provision for or with respect to the following—
- (a) the waiver, reduction, postponement or refund of any levy payable under this section,
  - (b) exempting (whether conditionally or unconditionally) persons or persons of a specified class from a requirement to pay a levy imposed under this section.
- (6) The Cemeteries Agency is to ensure, as far as is reasonably practicable, that money received from a general levy imposed under this section in relation to its functions with respect to cemeteries is not used to cross-subsidise the expenses of the Cemeteries Agency in carrying out any of its other functions.
- (7) Nothing in this section prevents a cost of a kind referred to in this section from being covered by a licence fee charged under an interment industry scheme.
- (8) In this section—
- CPI** means the index known as the Weighted Average of Eight Capital Cities: All Groups Consumer Price Index that is published quarterly by the Australian Statistician.

## **25 Payment of penalties and fines into the Cemeteries Agency Fund**

- (1) Any monetary penalty or fine imposed for an offence under this Act or the regulations or for the contravention of a civil penalty provision and recovered in proceedings instituted by the Cemeteries Agency is to be paid into the Cemeteries Agency Fund.
- (2) If the amount paid into the Cemeteries Agency Fund under this section in any financial year exceeds the maximum amount for the financial year, the amount of the excess is

to be paid into the Consolidated Fund.

- (3) The **maximum amount** for a financial year is \$250,000 or, if the regulations make provision for the determination of the maximum amount for the financial year, the maximum amount determined in accordance with those regulations.
- (4) The regulations may make provision for the determination of the maximum amount for a financial year by prescribing a maximum amount for a financial year or by providing for the manner in which the maximum amount for a financial year is to be determined.
- (5) Any such regulation may be made only with the approval of the Treasurer.
- (6) In this section, a reference to proceedings instituted by the Cemeteries Agency includes—
  - (a) a reference to proceedings instituted under the direction or on behalf, or for the benefit, of the Cemeteries Agency, and
  - (b) a reference to a penalty notice or civil infringement notice issued under Part 6 by or under the direction or on behalf of the Cemeteries Agency.
- (7) In this section—

**financial year** means the period of 12 months commencing on 1 July in any year.

**fine** does not include any costs (including expenses or disbursements) payable by a person under an order made by a court in proceedings for an offence under this Act or the regulations.

## Part 3 Regulation of interment industry

### Division 1 Preliminary

#### 26 Definitions

In this Act—

**interment industry** means the following—

- (a) cemetery operators,
- (b) funeral directors,
- (c) funeral funds within the meaning of the [Funeral Funds Act 1979](#),
- (d) any other persons, or persons of a class, prescribed by the regulations.

## 27 Cemeteries and Crematoria Register

- (1) The Cemeteries Agency must keep a register of cemeteries and crematoria (the **Cemeteries and Crematoria Register**).
- (2) The Cemeteries and Crematoria Register may be kept in the way the Cemeteries Agency decides.
- (3) A cemetery operator must notify the Cemeteries Agency of the following matters for inclusion on the Cemeteries and Crematoria Register—
  - (a) the name and location of the cemetery or crematorium,
  - (b) the name and address of the cemetery operator,
  - (c) the telephone number of the cemetery or the crematorium or the cemetery operator,
  - (d) any other information required by the regulations to be included in that register.
- (4) The regulations may make provision for or with respect to the notification by a cemetery operator of information contained in the Cemeteries and Crematoria Register and changes in relation to that information.
- (5) A cemetery operator must—
  - (a) provide the Cemeteries Agency with any information relating to the cemetery that is required by this section to be included in the Cemeteries and Crematoria Register, and
  - (b) notify the Cemeteries Agency of any material change in the information provided by the cemetery operator for recording in that register within 14 days (or such longer period as the Cemeteries Agency allows) after the change occurs.

Maximum civil penalty: \$2,200.

### Note—

A reference in this Part to a **cemetery operator** includes a reference to a crematorium operator—see section 4 (2).

- (6) The Cemeteries and Crematoria Register must be open for public inspection, without charge, during ordinary business hours.
- (7) The Cemeteries Agency must, at the request of the Director-General of the Ministry of Health, provide NSW Health with a copy of the Cemeteries and Crematoria Register.



## Division 2 Codes of practice

### 28 Codes of practice

- (1) Codes of practice may be developed and approved by the Cemeteries Agency on its own initiative or in collaboration with all or any participants in the interment industry, or one or more sectors of the interment industry, for the purpose of providing guidance on any interment matter or other matter encompassed by the objects of this Act.
- (2) Despite subsection (1), the Cemeteries Agency cannot develop and approve a code of practice to the extent it relates to any matter concerning the following—
  - (a) the disposal and handling of human remains (including the cremation of such remains) that is regulated by or under the *Public Health Act 2010*—without the concurrence of the Minister administering that Act,
  - (b) funeral funds that are regulated by or under the *Funeral Funds Act 1979*—without the concurrence of the Minister administering that Act,
  - (c) the supply of funeral goods and services that is regulated by or under the *Fair Trading Act 1987*—without the concurrence of the Minister administering that Act.
- (3) A code of practice may apply to any one or more of the following—
  - (a) any specified activity or class of activities,
  - (b) all participants in the interment industry or a specified sector of the industry.
- (4) In developing a code of practice on its own initiative, the Cemeteries Agency must consult with representatives of the participants in the interment industry or specified sector of the industry to whom the code of practice will apply and with any other relevant stakeholders (including, without limitation, the Combined Pensioners and Superannuants Association of NSW).
- (5) A code of practice may refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or from time to time.

### 29 Nature of codes of practice

- (1) Except as provided by this section, codes of practice are in the nature of guidelines and compliance is not mandatory.
- (2) The Cemeteries Agency must, before the end of the period of 5 years after the date of assent to this Act, develop and approve codes of practice under section 28 for the interment industry and compliance with which is intended to be mandatory (a **mandatory code of practice**).

- (3) A mandatory code of practice has no effect unless it is incorporated in an interment industry scheme under section 31 (2).
- (4) A person must comply with any requirement of a mandatory code of practice that applies to the person.

Maximum civil penalty: the amount specified in the interment industry scheme not exceeding \$27,500.

### **30 Approval of codes of practice**

- (1) The Cemeteries Agency may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.
- (2) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Cemeteries Agency must ensure that notice of the approval, variation or revocation is published in the Gazette.

#### **Editorial note—**

For orders published in the gazette under this subsection, see Gazettes No 328 of 20.11.2020, n2020-4559 and No 384 of 18.12.2020, n2020-4817. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

- (3) An approval of a code of practice, or variation or revocation of an approved code of practice, takes effect when notice of it is given under subsection (2).
- (4) The Cemeteries Agency must ensure that a copy of each document applied, adopted or incorporated (to any extent) by an approved code of practice is published in the Gazette or is otherwise made available to the public.

## **Division 3 Interment industry schemes**

### **31 Regulations relating to establishment of interment industry schemes**

- (1) The regulations may establish schemes for or with respect to the interment industry (***interment industry schemes***).
- (2) Without limiting subsection (1), the regulations establishing an interment industry scheme may make provision for or with respect to the following—
  - (a) requiring compliance with any or all provisions of a code of practice (a ***mandatory code of practice requirement***),
  - (b) requiring an operator of a cemetery to ensure adequate provision is made for perpetual care of interment sites and the cemetery,
  - (c) requiring the licensing of any activity, person, business, premises, vehicle or equipment in relation to the provision of interment services,

- (d) the imposition of conditions on licences,
  - (e) the suspension or cancellation of licences,
  - (f) appeals, or reviews, by courts, tribunals and other bodies or persons of decisions made under the regulations in relation to licences or applications for the granting of licences,
  - (g) setting fees and charges that are necessary for the funding of the scheme.
- (3) A person must comply with any requirement of an interment industry scheme that applies to the person.

Maximum civil penalty: the amount specified in the interment industry scheme not exceeding \$27,500.

- (4) A regulation may be made under subsection (1) only—
- (a) with the concurrence of the Minister administering the *Public Health Act 2010*—if it impacts on an aspect of the disposal and handling of human remains (including the cremation of such remains) regulated by or under that Act, and
  - (b) with the concurrence of the Minister administering the *Funeral Funds Act 1979*—if it impacts on an aspect of the operation of funeral funds regulated by or under that Act, and
  - (c) with the concurrence of the Minister administering the *Fair Trading Act 1987*—if it impacts on an aspect of the supply of funeral goods and services for the arrangement and conduct of a funeral regulated by or under that Act.

### **32 Consultation to be undertaken on regulations establishing interment industry schemes**

- (1) The Minister is to ensure that consultation with participants in the interment industry generally or a sector of the interment industry (and other relevant stakeholders including, without limitation, the Combined Pensioners and Superannuants Association of NSW) is undertaken before the making of any regulation that establishes an interment industry scheme.
- (2) The provisions of section 5 (Regulatory impact statements) of the *Subordinate Legislation Act 1989* apply to a regulation that establishes an interment industry scheme in the same way as they apply to a principal statutory rule (within the meaning of that Act).
- (3) Consultation is taken to have been undertaken on an interment industry scheme for the purposes of subsection (1) if—
  - (a) notice of the proposed regulation establishing the interment industry scheme has been published in accordance with section 5 (2) (a) of the *Subordinate Legislation*

*Act 1989*, and

- (b) consultation on the regulation has taken place in accordance with section 5 (2) (b) of that Act, and
- (c) comments and submissions received have been appropriately considered in accordance with section 5 (2) (c) of that Act.

## **Division 4 Improvement notices**

### **33 Issue of improvement notice by Cemeteries Agency**

- (1) The Cemeteries Agency may give the operator of a cemetery a notice under this subsection (a ***preliminary notice***) if—
  - (a) the Cemeteries Agency believes on reasonable grounds that this Act or the regulations or a provision of an interment industry scheme have been, or are being, contravened in relation to the cemetery, and
  - (b) the contravention is not an offence against this Act or the regulations.
- (2) The preliminary notice must—
  - (a) state the contravention and the reasons for the belief, and
  - (b) invite the operator to make written representations, within a stated period of not less than 14 days, why the operator should not be required to end the contravention or remedy the consequences of the contravention, or both.
- (3) If, after considering any written representations made by the operator within the stated period, the Cemeteries Agency is satisfied that the operator should be required to end the contravention or remedy the consequences of the contravention, or both, the Cemeteries Agency may give the operator a notice under this subsection (an ***improvement notice***).
- (4) The improvement notice—
  - (a) must require the operator to end the contravention or remedy the consequences of the contravention, or both, within a stated time, and
  - (b) may state the action the operator must take to comply with the notice, and
  - (c) if the notice requires the operator to end the contravention—must state that failure to end the contravention, without reasonable excuse, within the stated time, is a contravention of a civil penalty provision, and
  - (d) if the notice requires the operator to remedy the consequences of the contravention—must state that, if the operator fails to remedy the consequences within the stated time, the Cemeteries Agency may arrange for action to be taken

to remedy the consequences and that the operator will be liable for the cost of taking the action.

- (5) A cemetery operator who is given an improvement notice may appeal to the Tribunal for a review of the decision to give the notice.

**Note—**

An appeal under this subsection is an external appeal to the Tribunal for the purposes of the [Civil and Administrative Tribunal Act 2013](#).

### **34 Failure to end contravention—civil obligation**

The operator of a cemetery must not fail to end a contravention of this Act or the regulations or a provision of an interment industry scheme as required by an improvement notice given to the operator within the time stated in the notice.

Maximum civil penalty: \$27,500.

### **35 Cemeteries Agency may take action to remedy consequences of contravention**

- (1) If the operator of a cemetery fails to remedy the consequences of a contravention of this Act or the regulations or a provision of an interment industry scheme in accordance with an improvement notice or any additional time allowed by the Cemeteries Agency, the Cemeteries Agency may arrange for the action that it considers necessary or desirable to remedy the consequences to be taken by or on behalf of the State.
- (2) The reasonable cost of any action taken under this section is a debt due to the Cemeteries Agency payable by the operator.

## **Division 5 Short term orders**

### **36 Making of short term orders**

- (1) The Cemeteries Agency may, by order in writing given to a person who is an operator of a type or of a class of cemetery, or persons who belong to a class of such operators, require the person or persons to take such action or refrain from taking such action as is specified in the order (a **short term order**).
- (2) The Cemeteries Agency may make a short term order if it considers the making of the order to be reasonably necessary in the public interest to prevent or lessen a serious threat or risk to the achievement of an object of this Act in the State or any part of the State pending the making of a regulation under section 31 establishing an interment industry scheme that makes provision for a mandatory code of practice requirement.
- (3) As soon as practicable after making a short term order, the Cemeteries Agency must recommend to the Minister that the regulation referred to in subsection (2) be made as a matter of urgency.

- (4) A short term order may be made without the concurrence of the Ministers referred to in section 31 (4).

### **37 Duration of short term orders**

- (1) A short term order takes effect on the day on which the order is given to the person or persons concerned.
- (2) The Cemeteries Agency may review a short term order on its own initiative or on the application of a person to whom it relates.
- (3) On a review, the Cemeteries Agency may confirm, vary or revoke the order.
- (4) A short term order remains in force (unless sooner revoked by the Cemeteries Agency) for the period of 12 months after the day on which it takes effect or until the day the regulation referred to section 36 (2) is made, whichever occurs first.

### **38 Compliance with short terms orders—civil obligation**

A person to whom a short term order is given must comply with any requirement imposed on that person by that order.

Maximum civil penalty: \$27,500.

## **Division 6 Enforceable undertakings**

### **39 Undertakings relating to contraventions of Act, regulations and interment industry scheme**

- (1) This section applies if the Cemeteries Agency considers that an act, or omission, of a person constitutes a contravention of this Act, the regulations or a provision of an interment industry scheme.
- (2) The Cemeteries Agency may accept any of the following undertakings given by the person—
  - (a) a written undertaking that the person will take specified action, or refrain from taking specified action, in order to comply with the Act, the regulations or the provisions of the interment industry scheme,
  - (b) a written undertaking that the person will take specified action directed towards ensuring that the person does not commit a contravention of the Act, regulations or provision of the interment industry scheme, or is unlikely to commit such a contravention in the future,
  - (c) a written undertaking of a kind specified in the regulations.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Cemeteries Agency.

- (4) The Cemeteries Agency may, by written notice given to the person, cancel the undertaking.
- (5) The undertaking may be published in the Gazette.

#### **40 Enforcement of undertakings**

- (1) The Cemeteries Agency may apply to the Local Court (or such other court or tribunal as may be prescribed by the regulations) for an order under subsection (2) if—
  - (a) a person has given an undertaking under section 39 that has not been withdrawn or cancelled, and
  - (b) the Cemeteries Agency considers the person has breached the undertaking.
- (2) If the Local Court (or court or tribunal prescribed by the regulations) is satisfied that the person has breached the undertaking, it may make any or all of the following orders—
  - (a) an order directing the person to comply with the undertaking within a time (if any) specified in the order,
  - (b) an order directing the person to pay to the Cemeteries Agency an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any other order that it considers appropriate, including an order directing the person to compensate any other person who has suffered damage or loss as a result of the breach.

### **Division 7 Management of cemetery operators**

#### **41 Performance reporting by cemetery and crematorium operators—civil obligations**

- (1) The Cemeteries Agency may, by notice in writing to each cemetery operator concerned, require cemetery operators or cemetery operators of a class described in the notice to report to the Cemeteries Agency on the operators' performance in managing the cemeteries and on such other matters as the Cemeteries Agency considers appropriate.
- (2) Any such requirement may specify—
  - (a) the intervals at which operators must report to the Cemeteries Agency, and
  - (b) the performance management criteria against which the performance of operators is to be assessed by the Cemeteries Agency.
- (3) A cemetery operator must comply with any requirement imposed on the operator by a notice under this section.

Maximum civil penalty: \$9,900.

#### **42 Records—civil obligation**

A cemetery operator must keep such records (including accounting records) as may be prescribed by the regulations or as may be required by the Cemeteries Agency by notice in writing to the operator.

Maximum civil penalty: \$9,900.

#### **43 Reports by cemetery and crematorium operators—civil obligations**

(1) A cemetery operator must provide reports to the Cemeteries Agency in the form, at such times and concerning such matters or specifying such information, as may be required by the Cemeteries Agency by notice in writing to the operator.

Maximum civil penalty: \$9,900.

(2) A cemetery operator must, at the request of the Cemeteries Agency—

- (a) give the Cemeteries Agency such information as the Agency reasonably requires for the purpose of carrying out the Agency's functions under this Act, and
- (b) forward to the Cemeteries Agency specified records (including accounting records), or copies of or extracts from specified records, kept by the operator.

Maximum civil penalty: \$9,900.

## **Part 4 Interment rights**

### **Division 1 Preliminary**

#### **44 Definitions**

In this Part—

***appropriate fee***—

- (a) in relation to a cemetery operator that is a Crown cemetery operator—means the fee determined in relation to a matter by the operator under section 107, and
- (b) in relation to any other cemetery operator—means a fee determined in relation to a matter by the operator.

***cemetery operator's register*** means the register kept by a cemetery operator under section 63.

***holder*** of an interment right means the person recorded in the cemetery operator's register in relation to that cemetery as the holder of the interment right.



**interment** of human remains means—

- (a) the placement of human remains in a mausoleum, vault, columbarium or other structure designed for the placement of such remains, or
- (b) the burial in the earth of human remains (directly in the earth or in a container).

**interment right** means an interment right granted under this Part.

**interment site** means a place in a cemetery for the interment of human remains.

**statutory renewal period**—see section 48.

## Division 2 Interment rights

### Subdivision 1 Preliminary

#### 45 Application of Division

- (1) Except as provided by subsection (2), Subdivision 3 does not apply to or in respect of, or affect, the following—
  - (a) any burial licence granted under the [Crown Lands Act 1989](#) before the commencement of this section,
  - (b) any right, licence or other entitlement in the nature of an interment right given by contract or other agreement by the person responsible for the management of the affairs of a cemetery before the commencement of this section.
- (2) A burial licence or other entitlement referred to in subsection (1) is taken on the commencement of this section to be an interment right granted under this Division and if the interment right was granted or given—
  - (a) in perpetuity or without a fixed term—to have been granted or given (on the same terms as it was originally granted or given) as a perpetual interment right, or
  - (b) for a fixed term—to have been granted or given (on the same terms as it was originally granted or given) for the fixed term, the end of which is taken, for the purposes of this Division, to be the end of the statutory renewal period.
- (3) In the application of this Division to a portion of a cemetery, a reference to a cemetery is taken to include a reference to a portion of a cemetery.
- (4) This Division does not affect the operation of any regulations under the [Public Health Act 2010](#) relating to cemeteries.

## Subdivision 2 Interment rights generally

### 46 Nature of interment right

- (1) A cemetery operator must—
  - (a) permit the interment of the remains of the person to whom it relates at the site in a cemetery identified in, or in accordance with, the interment right, and
  - (b) permit the interment in accordance with the cultural or religious practice applicable to the part of the cemetery in which the interment site is located at the time the interment right is granted, and
  - (c) permit a memorial to the deceased person to be erected at the site with the approval of the cemetery operator, and
  - (d) leave the remains undisturbed in perpetuity (or, in the case of a renewable interment right, until such time as the remains may be disturbed or removed in accordance with this Act) unless disturbance or removal at an earlier time is requested or authorised by the holder of the interment right, and
  - (e) leave any memorial to the deceased person lawfully erected at that site, with the permission of the cemetery operator, undisturbed (provided the interment right remains in force and the memorial is kept in good repair) until such time as the memorial may be disturbed in accordance with this Act unless disturbance at an earlier time is requested or authorised by the holder of the interment right.
- (2) A cemetery operator must comply with the requirements of subsection (1) (d) and (e).  
Maximum civil penalty: \$27,500.
- (3) Subject to the regulations, a cemetery operator must ensure that any remains of a person that are disturbed or removed are dealt with in accordance with any cultural or religious practices applicable to the remains.

### 47 Types of interment right

The cemetery operator may grant an interment right entitling the person or persons to whom it is granted the exclusive right of interment in a specified interment site—

- (a) in perpetuity (a **perpetual interment right**), or
- (b) for the period an interment right granted under section 54 remains in force (a **renewable interment right**).

### 48 Duration of interment right

An interment right remains in force—

- (a) if it is a perpetual interment right—in perpetuity, and
- (b) if it is a renewable interment right—until the end of the period commencing on the day on which the interment right is granted and ending on the day the interment right expires under section 54 (the **statutory renewal period**).

#### **49 Interment rights may be bequeathed**

- (1) The holder of an interment right may (subject to section 51) bequeath the right as if it were the holder's personal estate.
- (2) A person to whom an interment right devolves as a result of a bequest does not become the holder of the right until the cemetery operator's register is amended to indicate that fact.
- (3) On application made by a person to whom an interment right has devolved as a result of a bequest, the cemetery operator must amend the cemetery operator's register so as to indicate that the person has become the holder of the interment right.
- (4) An application under this section must be in the form prescribed by the regulations or approved by the Cemeteries Agency and accompanied by the appropriate fee.
- (5) The executor or administrator (within the meaning of the *Probate and Administration Act 1898*) of the estate of the holder of an interment right who has bequeathed the interment right must give the relevant cemetery operator written notice of the death of the holder within the period prescribed by the regulations after the executor or administrator becomes aware of the death.

#### **50 Rules of intestacy to apply to interment rights not bequeathed**

- (1) If the holder of an interment right dies and has not bequeathed the interment right, the interment right is to be dealt with as if it were personal property forming part of the estate of an intestate.
- (2) A person to whom an interment right devolves as a result of intestacy does not become the holder of the interment right until the relevant cemetery operator's register is amended to indicate that fact.
- (3) On application made by a person to whom an interment right has devolved as a result of intestacy, the cemetery operator must amend the relevant cemetery operator's register so as to indicate that the person has become the holder of the interment right.
- (4) An application under this section must be in the form prescribed by the regulations or approved by the Cemeteries Agency and accompanied by the appropriate fee.

## **51 Interment right to pass to surviving joint holder**

On the death of a joint holder of an interment right, the remaining joint holder is, or joint holders are, entitled to the interment right.

## **52 Revocation of perpetual interment rights**

- (1) A cemetery operator may revoke a perpetual interment right that the cemetery operator, or any previous cemetery operator for the cemetery concerned, has granted if the right conferred by the perpetual interment right is not exercised within 50 years after it is granted.
- (2) Before revoking a perpetual interment right under this section, the cemetery operator must cause notice of its intention to do so to be sent, by registered post, to the person (if any) shown in the relevant cemetery operator's register as the holder of the perpetual interment right.
- (3) If no response to the notice under subsection (2) is received within 28 days after the date on which it is sent, the cemetery operator is to cause a further notice of the intention to be sent, by registered post, to each person shown in the relevant cemetery operator's register as a secondary contact with respect to the holder.
- (4) If no response to the notice under subsection (2) or (3) is received within 28 days after the date on which it is sent, a second notice of the cemetery operator's intention is to be given by means of an advertisement, identifying the interment site and the name of the holder—
  - (a) displayed in a prominent position at the crematorium, cemetery or portion of a cemetery concerned, and
  - (b) published in the Gazette and in—
    - (i) a newspaper circulating throughout the State, or
    - (ii) a manner approved in writing by the Minister having regard to the object of bringing notices of that kind to the attention of the holders of the relevant interment rights or (where holders have died) any persons entitled to the relevant interment rights as the result of bequests or intestacy or as surviving joint holders.
- (5) If no response to the second notice is received within 6 months after the date on which it is advertised, final notice of the cemetery operator's intention is to be sent, by registered post, to the person (if any) shown in the register as the holder of the perpetual interment right allowing the holder 28 days from the date of the final notice within which to enter into negotiations of the kind referred to in subsection (7).
- (6) If the cemetery operator has insufficient information to properly address the notice referred to in subsection (2) or (5), the operator is not required to send that notice but

may in that case begin the notification process by means of the notice referred to in subsection (4) and may take any other notification action the operator considers appropriate.

- (7) At any time before the expiry of the period for responding to the final notice referred to in subsection (5) (or, in the circumstances referred to in subsection (6), within 28 days after the last date on which an advertisement referred to in subsection (4) (b) is published) the holder of the perpetual interment right concerned may enter into negotiations with the cemetery operator for—
  - (a) the sale of the perpetual interment right, or
  - (b) the retention of the perpetual interment right.
- (8) Any notice required to be displayed or published under this section may relate to more than one interment site.

### **53 Compensation**

- (1) If a cemetery operator revokes the perpetual interment right for an interment site the former holder of that interment right is entitled to one or other of the following at the election of the cemetery operator (but no other compensation or entitlement with respect to the revocation)—
  - (a) to be granted a perpetual interment right for an alternative interment site in the same cemetery (and, if available, in the same general location) as the original interment site,
  - (b) to be paid by the cemetery operator, by way of compensation, an amount equal to half of the fee payable (as provided by the cemetery operator's current scale of fees) for the granting of a perpetual interment right for an alternative interment site in the same cemetery (and, if available, in the same general location) as the original interment site.
- (2) If there is no alternative interment site available, or if there is no applicable scale of fees, the amount of compensation referred to in subsection (1) (b) is to be half of the fee payable for the granting of an interment right under the most recent applicable scale of fees, varied in proportion to any variation in the Consumer Price Index (All Groups Index) for Sydney that has occurred between the date on which that scale was established and the date of revocation of the interment right.
- (3) A cemetery operator must ensure that any report on its accounts contains an estimate of its contingent liability with respect to any interment rights it has revoked.
- (4) (Repealed)
- (5) Despite section 58 (Transfer of interment right to a person other than cemetery operator), if the former holder of the revoked interment right is granted an interment

right for an alternative interment site, that interment right may not be transferred by the former holder within 5 years after the date on which it was granted.

- (6) An application for an entitlement under this section—
- (a) must be in the form approved by the Cemeteries Agency, and
  - (b) must be accompanied by the appropriate fee, and
  - (c) must be lodged with the cemetery operator within 6 years after the date on which the relevant interment right was revoked.

**Note—**

Pursuant to section 107 (8) the fee referred to in paragraph (b) if set by a Crown cemetery operator is subject to variation or disallowance by the Cemeteries Agency.

- (7) A former holder of a revoked interment right may apply to the Cemeteries Agency for a review of any election of the cemetery operator under this section.
- (8) The Cemeteries Agency's decision on such a review—
- (a) is final, and
  - (b) is taken to be the decision of the cemetery operator, and
  - (c) is to be given effect to accordingly.
- (9) In this section, **former holder** of a revoked interment right means the person who held that right immediately before it was revoked.

### **Subdivision 3 Renewable interment rights**

#### **54 Grant and renewal of renewable interment rights**

- (1) **Grant of right for initial term** A cemetery operator, on application and payment of the appropriate fee, may grant to one person (or to two or more persons as joint holders) a renewable interment right in relation to a specified interment site in the cemetery—
- (a) for the interment of human remains of the person or persons to whom the right relates after they have been cremated (**cremated remains**)—for an initial term of up to 99 years commencing on the day it is granted, and
  - (b) for the interment of human remains (other than cremated remains) of the person or persons to whom the right relates—for an initial term of 25 years commencing on the day it is granted.
- (2) A renewable interment right must not be granted in a portion of a cemetery consecrated for use by a religious or cultural group that requires perpetual interment.

- (3) **Renewal of right on application** The cemetery operator, on application and payment of the appropriate fee—
- (a) must renew an interment right that is due to expire within 12 months for a further consecutive term of at least 5 years that when aggregated with the initial term and any further terms of renewal does not exceed 99 years, and
  - (b) may, if the application is made on or after an interment of the human remains of a person to whom the right relates, renew that right for a further consecutive term of at least 5 years agreed with the holder of the right that when aggregated with the initial term and any further terms of renewal does not exceed 99 years,
  - (c) must, if the application is made within 6 months after the day on which an interment of the human remains of a person to whom the right relates occurs, renew that interment right for a further consecutive term of at least 5 years that when aggregated with the initial term and any further terms of renewal does not exceed 99 years.
- (4) **Notice requirements concerning fees** The grant or renewal of a renewable interment right has no effect unless the cemetery operator gives the applicant for the grant or renewal notice of the rights to renew the renewable interment right under subsection (3) (a) and (c) on payment of a fee and the manner in which the fee will be calculated.
- (5) A renewable interment right expires if it is not renewed before the end of a term for which it is granted or renewed under this section.
- (6) Subject to the regulations, a cemetery operator must, at least 12 months before a renewable interment right granted by the cemetery operator is due to expire, take reasonable steps to give the holder or holders of the renewable interment right and any person shown in the relevant cemetery operator's register as a secondary contact with respect to the holder written notice setting out the entitlement (if any) to apply to renew the right and the fee for doing so.
- (7) A person who is the holder of a renewable interment right that has expired, or to whom such a right relates, may apply for a new renewable interment right in relation to the interment site to which the expired renewable interment right relates no later than 2 years after the expiry.
- (8) The regulations may—
- (a) prescribe a different period of any term of a renewable interment right to a period specified in subsection (1) or (3), and
  - (b) prescribe the matters which a cemetery operator must disclose to an applicant for a renewable interment right, and
  - (c) make provision for or with respect to a cooling off period prescribed by the

regulations for the taking of effect of an interment right, and

- (d) without limiting paragraph (c), provide for the waiver of the cooling off period in circumstances prescribed by the regulations.

## **55 Re-use of interment sites and removal of memorials**

- (1) Subject to this section and the regulations, if a renewable interment right in respect of an interment site expires, the cemetery operator may at the end of the period of 2 years after it expires do the following—
- (a) re-use the interment site to which the renewable interment right related,
  - (b) remove any memorial to a deceased person erected on or at the site.
- (2) A cemetery operator must not re-use an interment site or remove any memorial to a deceased person on an interment site unless—
- (a) the cemetery operator has sought the advice (if any) required by section 69 (2) of the heritage advisory committee for the cemetery concerned, and
  - (b) the cemetery operator has given notice of its intention to re-use the interment site or remove the memorial in the Gazette and in—
    - (i) a newspaper circulating throughout the State, or
    - (ii) a manner approved in writing by the Minister having regard to the object of bringing notices of that kind to the attention of members of the public to whom the relevant proposals to re-use interment sites or remove memorials may be of interest, and
  - (c) the cemetery operator has taken reasonable steps to give notice of its intention to re-use the interment site or remove the memorial to the holder of the interment right and each person (if any) shown in the relevant cemetery operator's register as a secondary contact with respect to the holder listed in the cemetery operator's register, and
  - (d) in the case of the removal of a memorial—the cemetery operator has taken reasonable steps to give notice of the steps that the person can take to reclaim the memorial.
- (3) Subsection (1) does not apply to an interment site on or at which a memorial of the following kind is erected—
- (a) a memorial that is an item of local heritage significance or State heritage significance under the [Heritage Act 1977](#),
  - (b) a memorial relating to a grave listed by the Office of Australian War Graves,



- (c) a memorial in relation to a person who died from a prescribed infectious disease within the meaning of Division 3 of Part 8 of the *Public Health Regulation 2012*.
- (4) Subject to subsection (6), before an interment site is re-used after the expiration of a renewable interment right the cemetery operator must ensure—
  - (a) that any human remains of a deceased person (other than cremated remains) buried in the earth found at the site are placed in an ossuary box and re-interred at a greater depth or placed in an ossuary house or similar place, and
  - (b) that any cremated remains found at the site are returned to the holder of the renewable interment right or scattered in the cemetery, and
  - (c) any other requirements prescribed by the regulations with respect to human remains interred at the site are complied with.
- (5) The cemetery operator must ensure that the human remains of a deceased person are dealt with in accordance with any cultural or religious practice applicable in the part of the cemetery in which the interment site is located when the human remains were originally interred.
- (6) Despite subsection (1), an interment site may not be re-used by a cemetery operator unless—
  - (a) any human remains of a deceased person (other than cremated remains) that are interred in the site have been interred for at least 25 years, and
  - (b) the cemetery operator considers the body is in a sufficiently decomposed state to comply with subsection (4).

Maximum civil penalty (subsection (6) (a)): \$27,500.

- (7) The regulations may make provision for or with respect to—
  - (a) the re-use of interment sites and removal and disposition of memorials under this section, and
  - (b) the notices and authorisations required before any thing is done under subsection (1).

## **Subdivision 4 Grant and transfer of interment rights generally**

### **56 Grant of interment right**

- (1) A cemetery operator may grant an interment right in respect of an interment site in a cemetery.
- (2) An application for an interment right must be in the form approved by the Cemeteries Agency and be accompanied by the appropriate fee.

- (3) An interment right may be granted to one person or to 2 or more persons as joint holders.
- (4) A cemetery operator cannot, without the approval of the Cemeteries Agency, grant or transfer an interment right to a person if the granting or transfer of the interment right will result in the person holding (including jointly holding) interment rights in respect of more than 2 interment sites in the cemetery for which the interment right is sought or sought to be transferred.

#### **57 Content of interment right**

An interment right granted by a cemetery operator must—

- (a) identify the person or persons to whom the right is granted, and
- (b) identify the interment site to which the right relates, and
- (c) specify the number of persons whose remains may be interred pursuant to the right at that site, and
- (d) identify the person or persons or class of persons whose remains may be interred pursuant to the interment right or provide that a specified person or person of a specified class may, at a future time, nominate the person or persons whose remains may be interred pursuant to the interment right, and
- (e) identify whether the interment right is granted as a perpetual interment right or as a renewable interment right, and
- (f) specify that the interment right may (subject to section 56 (4)) be transferred, and
- (g) subject to any applicable mandatory code of practice requirement imposed under section 31, specify any other conditions on which the interment right is granted.

#### **58 Transfer of interment right to person other than a cemetery operator**

- (1) A cemetery operator may, on application, transfer an interment right from one person or 2 or more persons as joint holders to one person or 2 or more other persons as joint holders.
- (2) An application under subsection (1) may be made only by the holder of the interment right concerned or, if the interment right is held by joint holders, by all the joint holders.
- (3) An application for the transfer of an interment right must be in the form prescribed by the regulations or approved by the Cemeteries Agency and be accompanied by the appropriate fee.

### **59 Transfer of interment right to cemetery operator**

A cemetery operator may enter into arrangements with the holder of an interment right for the transfer of the interment right to the cemetery operator.

### **60 Grant or transfer of interment right may be refused**

A cemetery operator may refuse to grant or transfer an interment right if, in the operator's opinion, the grant or transfer would tend to create a monopoly or encourage dealing in interment rights.

### **61 Cemetery operator may determine holder of interment right**

- (1) This section applies if there is a dispute or other doubt about who holds an interment right for a particular interment site in a cemetery.
- (2) A person who believes he or she is the holder of the interment right may apply to the cemetery operator for the cemetery for a decision that the person holds the interment right.
- (3) As soon as practicable after receiving the application the cemetery operator must make a decision about whether the person holds or does not hold the interment right for the interment site.
- (4) However, the cemetery operator may make a decision that the person holds the interment right for the interment site only if—
  - (a) at least 28 days before making the decision, the cemetery operator—
    - (i) displays a notice about its intention to make the decision in a prominent position at the cemetery, and
    - (ii) publishes a notice about its intention to make the decision in the Gazette, and
    - (iia) publishes a notice about its intention to make the decision in a newspaper circulating throughout the State or in a manner approved in writing by the Minister having regard to the object of bringing notices of that kind to the attention of persons who may hold the relevant interment rights for interment sites, and
    - (iii) takes any other steps it considers reasonable in the circumstances to determine who holds the interment right for the interment site, or
  - (b) in the reasonable opinion of the cemetery operator it is not possible to follow the procedure in paragraph (a) because it is necessary to make an urgent decision due to the imminent interment of a person who was related by blood or marriage to, or who was in a domestic relationship with—
    - (i) the applicant, or

(ii) a person interred in the interment site.

(5) If the cemetery operator decides that the person holds the interment right for the interment site, the cemetery operator is taken to have revoked any other interment right for the interment site.

## **62 Interment right not required for scattering of cremated remains**

No interment right is required for the scattering of cremated remains in a cemetery.

## **Subdivision 5 Miscellaneous**

### **63 Register of interment rights, memorials, cremations and interments**

(1) A cemetery operator for a cemetery must cause a register to be kept of the following events—

(a) interment rights granted by the cemetery operator in respect of interment sites in the cemetery after the commencement of this paragraph,

(b) memorials erected in respect of interment sites in the cemetery after the commencement of this paragraph,

(c) each interment carried out in the cemetery after the commencement of this paragraph,

(d) each cremation carried out at the cemetery after the commencement of this paragraph,

(e) such other events (whether of the same or a different kind) as may be prescribed by the regulations.

Maximum civil penalty: \$2,200.

(2) A reference in this Act to the ***cemetery operator's register*** is a reference to the register kept under subsection (1).

(3) The cemetery operator's register may be wholly or partly in the form of a computer database, in documentary form, or in another form prescribed by the regulations and is to contain such particulars as are required by the regulations.

(4) Without limiting subsection (3), the cemetery operator's register is to—

(a) identify (as far as possible) each holder of an interment right, and

(b) include contact details for that holder, and

(c) include contact details for any next-of-kin or other persons nominated by the holder as secondary contacts with respect to the holder, and

(d) include the name, age and last address of the person whose remains have been interred, the date of the person's death and the date of the interment, and

(e) include the name, age and last address of the person whose remains have been cremated, the date of the person's death, the date of the cremation and details of the disposal of the cremated remains.

(5) The cemetery operator must make an entry relating to an interment or cremation immediately after the interment or cremation is carried out.

Maximum civil penalty: \$2,200.

(6) The cemetery operator must keep a copy of the cemetery operator's register at the cemetery and make it available for inspection on request by an authorised officer within the meaning of this Act or the *Public Health Act 2010*.

Maximum civil penalty: \$2,200.

(7) A cemetery operator must make the cemetery operator's register available for public inspection free of charge.

(8) An entry in the cemetery operator's register of the particulars referred to in subsection (4) is presumed (unless the contrary is proved) to be correct.

(9) The cemetery operator may amend the cemetery operator's register from time to time for any of the following purposes—

(a) to remove any inaccuracies contained in it,

(b) to record any changes to interment rights as a result of a transfer, revocation or death of the holder of an interment right.

(10) The cemetery operator must, on application made by any person, make available to the person a copy of any entry made in the cemetery operator's register in relation to an interment right or memorial.

(11) Such an application must be in the form prescribed by the regulations or approved by the Cemeteries Agency and accompanied by the appropriate fee.

(12) If a cemetery operator ceases to direct the operations of a cemetery, the cemetery operator must ensure the cemetery operator's register is sent to the Cemeteries Agency or otherwise disposed of as the Cemeteries Agency directs.

Maximum civil penalty: \$2,200.

#### **64 Keeping of register and documents**

(1) A cemetery operator must keep all applications, certificates, permits and other documents relating to any cremation carried out by it and mark them with a number

corresponding to the number allocated to the cremation in the cemetery operator's register.

Maximum civil penalty: \$2,200.

- (2) Those documents (other than the register or any part of it) may be destroyed by the cemetery operator after 15 years from the date of the cremation to which they relate.
- (3) When a crematorium is closed, the cemetery operator concerned must send all registers and documents relating to the cremations that have taken place at the crematorium to the Cemeteries Agency or otherwise dispose of them as the Cemeteries Agency may direct.

Maximum civil penalty: \$2,200.

## **65 Certificates for interment rights**

- (1) A cemetery operator who grants or renews an interment right, or transfers an interment right under section 58, must issue to the person to whom the right is granted, renewed or transferred a certificate—
  - (a) stating that the person holds an interment right that is in force in relation to an interment site described in the certificate and setting out the matters specified in section 57, and
  - (b) setting out the notice required to have been given by section 54 (4).
- (2) A statement in a certificate referred to in subsection (1) is presumed (unless the contrary is proved) to be correct.
- (3) If a certificate issued under this section is stolen, lost or destroyed, the cemetery operator may, on application and payment of the appropriate fee issue a replacement certificate.
- (4) A certificate under this section is to be in a form prescribed by the regulations or approved by the Cemeteries Agency.

## **66 Exhumations**

- (1) Exhumations are not to take place—
  - (a) except in accordance with the requirements of the regulations made under the [Public Health Act 2010](#), and

**Note—**

See Division 4 of Part 8 of the [Public Health Regulation 2012](#).

- (b) unless an order for exhumation has been issued by the cemetery operator.
- (2) Without limiting subsection (1), any exhumation is to be carried out in accordance

with any cultural or religious practice applicable to the dead person whose remains are to be exhumed.

(3) In this section—

**exhumation** means the removal of a dead person's remains (not being cremated remains) from a grave or vault, but does not include their removal from one vault for immediate transfer to another vault in the same cemetery or their temporary removal for the purposes of reburial in the same grave or vault or the re-interment of those remains in accordance with section 55 (4).

### **67 Order for interment**

- (1) An interment must not take place in a cemetery unless the cemetery operator has issued an order for interment.
- (2) A cemetery operator must not unreasonably delay or withhold from making an order for interment.
- (3) A cemetery operator may set down the procedure to be followed to obtain an order for interment.

### **68 Hours of burial**

Interments are not to take place except at such reasonable times as the cemetery operator may from time to time determine.

### **69 Heritage advisory committee**

- (1) The cemetery operator for a cemetery that offers renewable interment rights must establish a heritage advisory committee—
  - (a) if burial licences or other entitlements referred to in section 45 (2) (b) were offered by the cemetery before the commencement—as soon as practicable after the commencement, and
  - (b) in any other the case—at least 3 years before the first renewable interment right granted by the cemetery operator after the commencement of this section is due to expire.
- (2) Before removing any memorial that has not been reclaimed or moving any bodily remains from an interment site, a cemetery operator required to establish a heritage advisory committee by subsection (1) must seek the advice of the heritage advisory committee as to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the memorial and the appropriate action to take to preserve its value.
- (3) The Cemeteries Agency may, by order published in the Gazette, make guidelines for

or with respect to the constitution of a heritage advisory committee.

- (4) A heritage advisory committee consists of such persons as the cemetery operator considers (taking into account any guidelines made under subsection (3)) have qualifications, knowledge and skills in areas relevant to the functions of the committee.
- (5) A heritage advisory committee member holds office for such period as is specified in the instrument of appointment of the committee member, but any such appointment may be terminated by the cemetery operator at any time.
- (6) One of the advisory committee members, in and by the instrument by which the committee member is appointed or another instrument made by the cemetery operator, is to be appointed as chairperson of the committee.
- (7) Subject to the regulations, the procedure for the calling and holding of meetings of a heritage advisory committee is to be determined by the committee.

## **Division 3 Offence**

### **70 Offence relating to conduct in cemeteries**

A person must not, without lawful authority, in a cemetery—

- (a) disturb or interrupt any service, procession or cortege, or
- (b) inter any human remains (whether cremated or not).

Maximum penalty—25 penalty units.

## **Part 5 Operation of Crown cemeteries and crematoria**

### **Division 1 Preliminary**

#### **71 Interpretation**

In this Part and Schedule 2—

***Crown cemetery operator*** means—

- (a) the Crown land manager of a Crown cemetery, or
- (b) any other person responsible under the [Crown Land Management Act 2016](#) for the care, control and management of a Crown cemetery.

***Crown land manager***, in relation to a Crown cemetery, means the Crown land manager of the cemetery under the [Crown Land Management Act 2016](#).

***operator board*** means the board or other governing body of a Crown cemetery operator.



**operator member**, in relation to a Crown cemetery operator, means—

- (a) for an operator with an operator board—each member of the board, and
- (b) for an operator without an operator board—
  - (i) if the operator is under administration—the administrator, or
  - (ii) if the operator is not under administration—each person involved in the management of the affairs of the operator.

**statutory land manager** means a statutory land manager within the meaning of the [Crown Land Management Act 2016](#).

**Note—**

Section 5 provides that—

- (a) if provision is made both by or under the [Crown Land Management Act 2016](#) and this Act in relation to the exercise of functions by, or in respect of, a Crown cemetery operator in the same or substantially the same circumstances the function is not exercisable under the [Crown Land Management Act 2016](#), and
- (b) in the event of any inconsistency between the provisions of this Act or the regulations and a provision of the [Crown Land Management Act 2016](#), the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.

## **72 Exemption power—Cemeteries Agency**

- (1) The Cemeteries Agency may, by order in writing, exempt a Crown cemetery operator or class of Crown cemetery operators, or an operator member or class of operator members, from the operation of this Part or a specified provision of this Part if—
  - (a) it considers that they have duties or obligations under the provisions of another Act, or a regulation, that are commensurate with the duties or obligations under this Part or the provision concerned, or
  - (b) taking into account the scale and nature of operations of the cemetery concerned, it considers it appropriate to do so.
- (2) The exemption may be limited in duration or may be subject to such factors or circumstances as may be specified in the order.

## **Division 2 Crown cemetery operators**

### **Subdivision 1 Appointment of Crown cemetery operators**

#### **73 Cemeteries Agency may make recommendations about appointments of operators**

- (1) The Cemeteries Agency may make recommendations to the Minister administering the [Crown Land Management Act 2016](#) concerning the appointment of a Crown land manager as a Crown cemetery operator (including the members of its operator board)

for any Crown cemetery.

- (2) The Minister may (but need not) make appointments based on any such recommendations.

#### **74 Special provisions for Crown cemetery operators that are statutory land managers**

Schedule 2 contains provisions that apply to Crown cemetery operators that are statutory land managers with boards.

#### **75 Delegation of functions by Crown cemetery operators**

- (1) A Crown cemetery operator may, with the approval of the Cemeteries Agency, delegate any of its functions (other than this power of delegation) as an operator to any other person or body.
- (2) Without limiting section 49 of the *Interpretation Act 1987*, a delegation by an operator under subsection (1) may, with the approval of the Cemeteries Agency, be revoked by an operator at any time.
- (3) The regulations may make provision for or with respect to delegations under this section.
- (4) In particular, the regulations may require records to be kept of delegations of all or any particular functions or the revocation of such delegations.

#### **76-80 (Repealed)**

### **Subdivision 2 Conduct of operator members**

#### **80A Application of Subdivision**

- (1) The obligations imposed by this Subdivision are intended to apply in relation to all Crown cemetery operators and their operator boards and members and, in particular, to Crown cemetery operators that are statutory land managers and their operator boards and members.
- (2) This Subdivision applies only in relation to the exercise of a Crown cemetery operator's functions as an operator.
- (3) If a Crown cemetery operator is not a statutory land manager, this Subdivision applies subject to the following—
  - (a) any modifications to the provisions of this Subdivision prescribed by the regulations,
  - (b) the constitution of, and any other governance provisions applicable to, the operator under another Act (including a Commonwealth Act, but not the *Crown Land Management Act 2016*) that the operator and its board are required to

comply with.

(4) However, this Subdivision does not apply in relation to Crown cemetery operators that are councils within the meaning of the *Local Government Act 1993*.

(5) In this section—

**modification** includes addition, exception, omission or substitution.

## 81 Interpretation

A person is **involved in a contravention** of a provision of this Subdivision if, and only if, the person—

- (a) has aided, abetted, counselled or procured the contravention, or
- (b) has induced, whether by threats or promises, or otherwise, the contravention, or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention, or
- (d) has conspired with others to effect the contravention.

## 82 Care and diligence—civil obligation only

(1) **Care and diligence—operator members** An operator member must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if the person—

- (a) were an operator member in the Crown cemetery trust's circumstances, and
- (b) occupied the office held by, and had the same responsibilities as, the operator member.

Maximum civil penalty: \$27,500.

(2) **Business judgment rule** An operator member who makes a business judgment is taken to meet the requirements of subsection (1), and the member's equivalent duties at common law and in equity in respect of the judgment, if the member—

- (a) makes the judgment in good faith for a proper purpose, and
- (b) does not have a material personal interest in the subject matter of the judgment, and
- (c) informs themselves about the subject matter of the judgment to the extent that the member reasonably believes to be appropriate, and
- (d) rationally believes that the judgment is in the best interests of the Crown cemetery trust.

- (3) The operator member's belief that the judgment is in the best interests of the Crown cemetery trust is a rational one unless the belief is one that no reasonable person in the member's position would hold.

**Note—**

This subsection only operates in relation to duties under this section and the equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

- (4) In this section—

**business judgment** means any decision to take or not take action in respect of a matter relevant to the business operations of the Crown cemetery trust.

### **83 Use of position—civil obligations**

- (1) **Use of position—operator members** An operator member must not improperly use his or her position to—

- (a) gain an advantage for the operator member or someone else, or
- (b) cause detriment to the Crown cemetery trust.

Maximum civil penalty: \$27,500.

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Maximum civil penalty: \$27,500.

### **84 Use of information—civil obligations**

- (1) **Use of information—operator members** A person who obtains information because the person is, or has been, an operator member must not improperly use the information to—

- (a) gain an advantage for that operator member or someone else, or
- (b) cause detriment to the Crown cemetery trust.

Maximum civil penalty: \$27,500.

- (2) The duty under subsection (1) continues after the person stops being an operator member.

- (3) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Maximum civil penalty: \$27,500.

## 85 Notification of significant events

- (1) If a trust board decides to do any of the following things, the Crown cemetery operator concerned must immediately give the Cemeteries Agency written particulars of the decision—
  - (a) form a company or participate in the formation of a company,
  - (b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement,
  - (c) acquire or dispose of a significant share holding in a company,
  - (d) acquire or dispose of a significant business,
  - (e) commence or cease a significant business activity,
  - (f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.

### Note—

Part 3 of the [Crown Land Management Act 2016](#) also imposes other obligations on Crown cemetery operators (including those with operator boards).

- (2) The Cemeteries Agency may give written guidelines to the trust board that are to be used in deciding whether particulars are required to be given under subsection (1).

## 86 Codes of conduct

- (1) A Crown cemetery operator must prepare and adopt a code of conduct to be observed by operator members and persons employed by the operator within 3 months after becoming the operator.
  - (1A) A code of conduct in force under this section for a Crown cemetery trust for a Crown cemetery immediately before this section was amended by the [Crown Land Legislation Amendment Act 2017](#) continues in force for the purposes of this Act as if—
    - (a) the code had been adopted by the Crown cemetery operator for that cemetery on the date it was originally adopted, and
    - (b) the members of the board of the operator and its employees had been signatories to the code.
- (2) The cemetery operator is to review its code of conduct at least every 3 years (or within such other period as is prescribed by the regulations) and make such changes as it considers appropriate.
- (3) The code must include such matters as are prescribed by the regulations.

- (4) In particular, the code may contain provisions for or with respect to the following conduct—
  - (a) conduct that contravenes all or specified provisions of this Act or the regulations in all or specified circumstances,
  - (b) improper or unethical conduct,
  - (c) abuse of power and other misconduct,
  - (d) the disclosure of interests (whether pecuniary or otherwise) that could conflict with the proper performance of functions and avoidance of conflicts of interest,
  - (e) the disclosure of confidential documents and information.
- (5) The cemetery operator must provide a copy of its code of conduct as in force from time to time to each member of the trust board and employee and ask them to acknowledge their obligations under the code by signing it.
- (6) A member of a trust board or employee must not contravene a code to which he or she is a signatory.
- (7) Nothing in this section or such a code gives rise to, or can be taken into account in, any civil cause of action, and nothing in this section affects rights or liabilities arising apart from this section.

#### **87 Disclosure of material personal interest by members of trust board—civil obligations**

- (1) If—
  - (a) a member of a trust board has a direct or indirect material personal interest in a matter being considered or about to be considered at a meeting of the trust board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the trust board.

Maximum civil penalty: \$5,500.
- (2) A disclosure by a member of a trust board at a meeting of the trust board that the member—
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this section.

- (3) Particulars of any disclosure made under this section must be recorded by the trust board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.
- (4) After a member of a trust board has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the trust board otherwise determines—
- (a) be present during any deliberation of the trust board with respect to the matter, or
  - (b) take part in any decision of the trust board with respect to the matter.

Maximum civil penalty: \$5,500.

- (5) For the purposes of the making of a determination by the trust board under subsection (4), a member who has a direct or indirect material personal interest in a matter to which the disclosure relates must not—
- (a) be present during any deliberation of the trust board for the purpose of making the determination, or
  - (b) take part in the making by the trust board of the determination.
- (6) A contravention of this section does not invalidate any decision of the trust board.

## **88 Invitations for tenders**

- (1) If it is disclosed to the members of a trust board, or they have reason to believe, that a member of the board has or may have a direct or indirect material personal interest in a proposed contract with the trust—
- (a) the board must, by notice that complies with the requirements in subsection (2), invite tenders for the proposed contract, and
  - (b) must not enter into the proposed contract unless satisfied that, in all the circumstances of the case, none of the tenders submitted is more advantageous than the proposed contract.
- (2) The notice inviting tenders must—
- (a1) be published in the Gazette and in—
    - (i) a newspaper circulating throughout the State, or

- (ii) a manner approved in writing by the Minister having regard to the object of bringing notices of that kind to the attention of persons who may be interested in submitting tenders for the relevant contracts, and
  - (a) set out the nature of the work or services to be performed or the goods to be supplied under the contract, and
  - (b) invite persons willing to perform the work or services or supply the goods to submit tenders on or before a specified date (at least 21 days after publication of the notice) to the trust.
- (3) This section does not apply in the case of an emergency.
- (4) A contravention of this section does not invalidate any decision of the trust board.

### **89 Liability of operator board, members and other persons**

- (1) A matter or thing done or omitted to be done by—
- (a) an operator member in the course of managing the affairs of a Crown cemetery trust, or
  - (b) a person acting under the direction of an operator member (other than a director or officer of a corporation) in the course of managing the affairs of a Crown cemetery trust,

does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this or any other Act, subject the trust member or a person so acting personally to any action, liability, claim or demand.

- (2) (Repealed)

## **Subdivision 3 Strategic plans**

### **90 Strategic plans**

- (1) A strategic plan identifies the main priorities for the future of a Crown cemetery for the period to which the plan relates.
- (2) A Crown cemetery operator must—
- (a) prepare a draft strategic plan for the management of the operation of each Crown cemetery for which the operator is responsible in accordance with this section, and
  - (b) submit the strategic plan to the Cemeteries Agency for review.
- (3) A Crown cemetery operator who is responsible for more than one Crown cemetery may prepare a single draft strategic plan for all those cemeteries.



- (4) The Crown cemetery operator must prepare the first draft strategic plan for a Crown cemetery within 12 months after the operator becomes the operator.
- (5) A strategic plan in force under this section for a Crown cemetery trust immediately before this section was substituted by the *Crown Land Legislation Amendment Act 2017* continues in force for the purposes of this Act for each Crown cemetery for a Crown cemetery operator to which the plan applied.
- (6) Subsequent draft strategic plans must be prepared at such times as the Cemeteries Agency directs.
- (7) The strategic plan must be in the form and provide for such matters as may be required by the Cemeteries Agency and must be prepared in accordance with any guidelines made by the Cemeteries Agency under section 91.
- (8) The Cemeteries Agency may require an operator to amend and re-submit a draft strategic plan that is not prepared in accordance with the guidelines.
- (9) The Cemeteries Agency may—
  - (a) approve a strategic plan, or
  - (b) approve a strategic plan with amendments, or
  - (c) refuse to approve a strategic plan.
- (10) A Crown cemetery operator must advise the Cemeteries Agency if the operator wishes to exercise the operator's functions in a manner inconsistent with an approved strategic plan.
- (11) A Crown cemetery operator must ensure that an approved strategic plan is published in the Gazette and is made available to members of the public on request.

## **91 Guidelines for strategic plans**

- (1) The Cemeteries Agency may, by order published in the Gazette, make guidelines for or with respect to strategic plans, including but not limited to the content and duration of plans.
- (2) (Repealed)
- (3) The Cemeteries Agency may make any other arrangements that it considers necessary to ensure that strategic plans are readily accessible to the public.
- (4) The guidelines take effect on the date specified in the guidelines.
- (5) A failure to comply with subsection (2) does not affect the validity of any guidelines made under this section.

## **92 Amendment, replacement or revocation of strategic plan**

- (1) A strategic plan may be amended or replaced by a subsequent such plan prepared and approved in accordance with this Subdivision.
- (2) The Cemeteries Agency may revoke a strategic plan, wholly or in part.
- (3) The amendment or revocation of a strategic plan under this section takes effect—
  - (a) on the day notice of the amendment or revocation is published by the Cemeteries Agency in the Gazette, or
  - (b) on a later day specified in a notice under paragraph (a).

## **Subdivision 4 Plans of management**

### **93 Preparation of draft plan of management**

- (1) The Cemeteries Agency may direct a Crown cemetery operator to prepare a draft plan of management for a Crown cemetery the operator manages.
- (2) A Crown cemetery operator may, with the consent of the Cemeteries Agency, prepare such a draft plan on the operator's own initiative.
- (3) The Crown cemetery operator must forward a copy of the draft plan to the Cemeteries Agency.
- (4) If the Cemeteries Agency directs a Crown cemetery operator to prepare a draft plan of management, the operator must—
  - (a) prepare it within the time directed by the Cemeteries Agency, and
  - (b) forward a copy of it to the Cemeteries Agency.
- (5) The draft plan of management must be in the form, and provide for such matters, as may be required by the Cemeteries Agency and must be prepared in accordance with any guidelines made by the Cemeteries Agency under section 94.
- (6) A Crown cemetery operator who is responsible for more than one Crown cemetery may prepare a single draft plan of management for all of the cemeteries.

### **94 Guidelines for draft plans of management**

- (1) The Cemeteries Agency may, by order published in the Gazette, make guidelines for or with respect to draft plans of management, including but not limited to the content and duration of plans.
- (2) The Cemeteries Agency must—
  - (a) provide a copy of any guidelines made for or with respect to a Crown cemetery to

the Crown cemetery operator concerned, and

(b) publish the guidelines in the Gazette.

- (3) The Cemeteries Agency may make any other arrangements that it considers necessary to ensure that plans of management are readily accessible to the public.
- (4) The guidelines take effect on the date specified in the guidelines.
- (5) A failure to comply with subsection (2) does not affect the validity of any guidelines made under this section.

#### **95 Referral and exhibition of draft plans**

- (1) If a draft plan of management for a Crown cemetery is prepared, the Cemeteries Agency—
  - (a) may refer a copy of it to any other person for consideration, and
  - (b) must place a copy of it on public display for not less than 28 days or direct the Crown cemetery operator concerned to place a copy of it on public display for not less than 28 days.
- (2) Any person may make representations concerning the draft plan to the Cemeteries Agency within the time allowed by it.
- (3) The Cemeteries Agency must consider any such representations before adopting the draft plan.

#### **96 Adoption of plan of management**

- (1) The Cemeteries Agency may adopt a plan of management for a Crown cemetery without alteration or with such alterations as it thinks fit.
- (2) The Cemeteries Agency must not adopt a plan of management that provides for the Crown cemetery to be used for any purpose other than a cemetery.
- (3) If a plan of management is adopted—
  - (a) the Crown cemetery operator concerned must carry out and give effect to it, and
  - (b) no operations may be undertaken on or in relation to the cemetery unless they are in accordance with the plan.

#### **97 Alteration or cancellation of plan**

- (1) The Cemeteries Agency may from time to time alter a plan of management adopted under this Subdivision or may cancel the plan.
- (2) If a plan of management is cancelled, a new plan of management may be adopted, at

the same time or later, in accordance with this Subdivision.

- (3) The Cemeteries Agency must cause or direct a proposed alteration of a plan to be prepared and the alteration is to be prepared, referred and adopted as if it were a plan of management.
- (4) The plan as altered may not include use of the cemetery for an additional purpose.
- (5) The plan as altered becomes the plan adopted for the purposes of this Subdivision.

#### **98 Plan of management for submerged land**

- (1) If land usually submerged by water is wholly or partly the subject of a plan of management, the Cemeteries Agency must refer the plan to the Minister administering the *Fisheries Management Act 1994* before adopting it.
- (2) The plan may not be adopted, altered or cancelled, in so far as it relates to the submerged land, except with the concurrence in writing of the Minister administering that Act.

#### **98A Saving of certain plans of management**

A plan of management in force under this Subdivision for a Crown cemetery before this section was inserted by the *Crown Land Legislation Amendment Act 2017* continues in force for the purposes of this Subdivision for that Crown cemetery.

### **Subdivision 5 Financial management, audits and reports**

#### **99 Annual report**

- (1) A Crown cemetery operator must, within 4 months after the end of each financial year, submit an annual report of the operator's operations in connection with the Crown cemeteries the operator operates for the financial year to the Cemeteries Agency.
- (2) The annual report must include the following—
  - (a) an audited financial statement for the period to which the report relates,
  - (b) a report about the operations of the operator and the performance of the operator's functions under this Act during the period to which the annual report relates prepared in accordance with this Act and the regulations,
  - (c) such financial reports, opinions, budgets, reports and other matters as may be prescribed by the regulations.
- (3) The financial statement is to be prepared in accordance with Australian Accounting Standards.

- (4) The financial statement is to be audited by an independent auditor and a report is to be provided by the auditor.
- (5) A person is not qualified to be an auditor for the purposes of this section unless the person is a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (6) An auditor of a Crown cemetery operator is not an independent auditor—
  - (a) if (otherwise than as an auditor) the person is an officer or employee of the operator, or
  - (b) if the person is a partner, employer, employee, spouse, de facto spouse or immediate family member of a person who is (otherwise than as an auditor) an officer or employee of the operator.
- (7) The Cemeteries Agency may extend, or further extend, the period for submission of an annual report to it by a total period of up to 3 months.
- (8) In this section—

***Australian Accounting Standards*** means Accounting Standards issued by the Australian Accounting Standards Board.

#### **100 Nature of report of operations**

- (1) The report about the operations referred to in section 99 must include (whether in the following order or otherwise) particulars in relation to any strategic plan or plan of management in force for the cemetery managed by the Crown cemetery operator.
- (2) The report about the operations must, in addition to the matters referred to in subsection (1), include such particulars, if any, as may be prescribed by the regulations in relation to such matters.
- (3) The report of the operations is to be prepared in such manner, if any, and such form, if any, as may be prescribed by the regulations.

#### **101 Additional information—civil obligation**

- (1) The Cemeteries Agency may, at any time, by notice in writing direct a Crown cemetery operator to provide, within such time, if any, as is specified in the direction, as part of the annual report referred to in section 99 or by means of a separate report, such information relating to the financial report or operations, or both, of the Crown cemetery operator as is so specified.
- (2) The Crown cemetery operator must comply with a direction given to the operator under subsection (1).

Maximum civil penalty: \$19,800.

## **102 Inspection etc of Crown cemetery operator**

- (1) The Cemeteries Agency may appoint a person to inquire into, or carry out an audit of, any of the affairs of a Crown cemetery operator.
- (2) The person appointed may, for the purposes of the inquiry or audit—
  - (a) inspect and take copies of or extracts from any records (including accounting records) of the operator, or
  - (b) require any person concerned in the management of the operator to give information and answer questions relating to the affairs of the trust.
- (3) The power of the appointed person to inspect the records of a Crown cemetery operator includes the power to inspect any records of a lessee or licensee which the operator has power to inspect under the lease or licence.
- (4) A person must not—
  - (a) refuse or fail without lawful excuse to allow the appointed person access to records to which the person is entitled, or
  - (b) refuse or fail without lawful excuse to give information or answer questions, as required by the appointed person, or
  - (c) wilfully obstruct or delay the appointed person in the exercise of a function under this section.

Maximum penalty—100 penalty units.

## **Subdivision 6 Committees**

### **103 Establishment and functions of committees**

- (1) An operator board—
  - (a) must establish—
    - (i) a finance committee, and
    - (ii) an audit and risk committee, and
    - (iii) a community advisory committee to liaise with communities to which the operator board provides cemetery services, and
  - (b) may establish any other committee as it determines from time to time.
- (2) An operator board must establish the committees referred to in subsection (1) (a) within 12 months after the commencement of this section or the appointment of the operator board (whichever first occurs).

- (3) A finance committee or audit and risk committee—
  - (a) must consider any matters that are referred to it by the operator board, and
  - (b) may investigate and make inquiries about any matter referred to it by the operator board, and
  - (c) must report back to the operator board as required by the operator board, and
  - (d) must carry out any other function conferred on it by or under this or any other Act or by the operator board.
- (4) A community advisory committee—
  - (a) must consider any matters that are referred to it by the operator board, and
  - (b) must report back to the operator board as required by the operator board, and
  - (c) must raise with the operator board any issues of concern or matters of interest to the community regarding the cemetery services provided by the operator board, and
  - (d) must carry out any other function conferred on it by or under this Act or by the operator board.
- (5) An operator board must consider any matter that is the subject of a report, or that is raised by, a finance committee, audit and risk committee or community advisory committee under this section.

#### **104 Membership and procedure of committees**

- (1) A committee established under section 103 consists of the persons appointed by the operator board, in accordance with any applicable committee guidelines made under section 105.
- (2) It does not matter that any or all members of the committee are not members of the operator board.
- (3) The procedure of the committee is to be determined by the committee, subject to this Act and any applicable committee guidelines made under section 105 and except as otherwise determined by the operator board.

#### **105 Committee guidelines**

- (1) The Cemeteries Agency may, by order published in the Gazette, make guidelines for or with respect to any committee established under this Subdivision, including but not limited to the following—
  - (a) the appointment of members of the committee,

- (b) the composition, roles and functions of the committee,
  - (c) the procedure of the committee,
  - (d) any other matter relating to the operation of the committee.
- (2) The Cemeteries Agency must provide a copy of any guidelines made for or with respect to a committee under this section to the operator board that established the committee.
- (3) The guidelines take effect on the date specified in the guidelines.
- (4) A failure to comply with subsection (2) does not affect the validity of any guidelines made under this section.

## **Subdivision 7 Miscellaneous**

### **106 Planning, conduct and maintenance**

The Crown cemetery operator for a cemetery may make such provision as it considers necessary for the following—

- (a) the setting aside of parts of the cemetery for different types and classes of interments,
- (b) the establishment of standards of construction and design for monuments and structures,
- (c) the size, multiple use and location of interment sites,
- (d) interments in vaults,
- (e) the erection or installation of structures and the making of inscriptions,
- (f) the carrying out of work by monumental masons,
- (g) the qualifications required by, and the security deposits required to be lodged by, monumental masons,
- (h) the removal, replacement and maintenance of structures,
- (i) the placing of vases, statuettes, jars, bottles or other items of embellishment on or near graves, monuments, crypts or vaults,
- (j) the improvement and maintenance of the cemetery,
- (k) the making of arrangements for the care of interment sites on an annual (or longer term) or other basis,
- (l) the supply of goods and services incidental to the conduct of interments and other



matters relating to the cemetery,

- (m) the conduct of religious or other ceremonies of interment or commemoration,
- (n) the disposition and memorialisation of cremated human remains,
- (o) landscaping and setbacks from stormwater and drainage canals and similar watercourses and structures,
- (p) any other matter relating to the management of the cemetery so long as the provision made is consistent with any direction given by the Minister.

### **107 Fees and charges**

- (1) A Crown cemetery operator may from time to time set the fees or charges payable with respect to the following—
  - (a) grant of interment rights (including the renewal of renewable interment rights) with respect to interment sites in the cemetery under Part 4,
  - (b) use of the whole or any part of the cemetery and any building, structure or enclosure in the cemetery,
  - (c) parking or use of any vehicle or class of vehicles in the cemetery,
  - (d) use of electricity, gas and water,
  - (e) rubbish disposal and cleaning of the cemetery,
  - (f) removal of effluent.
- (2) The Crown cemetery operator may from time to time set the fees or charges payable for the services provided in respect of the cemetery.
- (3) In setting fees and charges, the Crown cemetery operator is to have regard to the following—
  - (a) any contractual arrangements entered into by the responsible operator in relation to the cemetery,
  - (b) the number of intended interments or cremations,
  - (c) the costs of developing the land to be used for interment sites,
  - (d) future maintenance,
  - (e) infrastructure costs.
- (4) Notice of the fees or charges payable under subsection (1) (b)-(f) and (2) is to be published in the Gazette or in another manner prescribed by the regulations, or both.

- (5) The Crown cemetery operator is to give the Cemeteries Agency notice of a fee or charge set by it within 3 months (or such other period as may be prescribed by the regulations) after the fee or charge is set.
- (6) The Crown cemetery operator may in any particular case waive payment of the whole or any part of any fee or charge set under this section.
- (7) Without limiting subsection (6), a Crown cemetery operator may waive payment of part of a fee or charge that is referable to the unexpired portion of a renewable interment right.
- (8) The Cemeteries Agency may serve notice on the Crown cemetery operator disallowing or varying any fee or charge as specified in the notice and the operator is to give effect to the Cemeteries Agency's notice.

## **Part 6 Legal proceedings and other matters**

### **Division 1 Proceedings for offences**

#### **108 Nature of proceedings for offences**

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

#### **109 Persons who may commence proceedings**

- (1) Proceedings for an offence against this Act or the regulations may be taken and prosecuted only by the Director-General or, in the name of the Director-General, by a person acting with the authority of the Director-General.
- (2) In proceedings for an offence against this Act or the regulations, an authority to prosecute purporting to have been signed by the Director-General is evidence of that authority without proof of the signature of the Director-General.

#### **110 Time for commencing proceedings**

- (1) Proceedings for an offence under this Act or the regulations may be commenced not later than 12 months after the offence was alleged to have been committed.
- (2) Proceedings for an offence against this Act or the regulations may also be commenced within but not later than 12 months after the Director-General became aware of the alleged offence.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice must contain particulars of the date on which evidence of the alleged offence first came to the attention of the Director-General and need not contain particulars of the date on which the offence was alleged to have been committed.

- (4) The date on which evidence first came to the attention of the Director-General is the date specified in the court attendance notice, unless the contrary is established.
- (5) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (6) In this section—  
**evidence** of an offence means evidence of any act or omission constituting the offence.

### 111 Penalty notices

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

## Division 2 Civil penalty provisions

### 112 Definitions

In this Part—

**maximum civil penalty**—see section 113 (2).

**pecuniary penalty order** means an order under section 114.

### 113 When a provision is a civil penalty provision

- (1) A subsection of this Act (or a section of this Act that is not divided into subsections) is a **civil penalty provision** if the words “maximum civil penalty” and one or more amounts by way of monetary penalty are set out at the foot of the subsection (or section).

- (2) A contravention of a civil penalty provision is punishable by a penalty not exceeding the maximum amount of monetary penalty set out at the foot of the subsection, section, subclause or clause (the **maximum civil penalty**).
- (3) Proceedings in relation to a civil penalty provision are to be dealt with in accordance with this Division.

#### **114 Proceedings for contravention of civil penalty provision**

- (1) Within 12 months of a person (the **wrongdoer**) contravening a civil penalty provision or the Cemeteries Agency becoming aware of the contravention, the Cemeteries Agency (or an authorised officer referred to in section 121) may apply to the Local Court for an order that the wrongdoer pay a pecuniary penalty.
- (2) If the Local Court is satisfied that the wrongdoer has contravened a civil penalty provision, the Local Court may order the wrongdoer to pay for each contravention the pecuniary penalty that the Local Court determines is appropriate (not exceeding the maximum civil penalty specified for contravention of that civil penalty provision).
- (3) In determining the pecuniary penalty, the Local Court must have regard to all relevant matters, including the following—
  - (a) the nature and extent of the contravention,
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention,
  - (c) the circumstances in which the contravention took place,
  - (d) whether the person has previously been found by a court or tribunal to have engaged in any similar conduct.
- (4) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

#### **115 Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

#### **116 Persons involved in contravening a civil penalty provision**

- (1) A person must not—
  - (a) aid, abet, counsel or procure a contravention of a civil penalty provision, or
  - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty

provision, or

(c) be in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of a civil penalty provision, or

(d) conspire to effect a contravention of a civil penalty provision.

(2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the civil penalty provision.

### **117 Civil proceedings after criminal proceedings**

The Local Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

### **118 Criminal proceedings during civil proceedings**

(1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if—

(a) criminal proceedings are started or have already been started against the person for an offence, and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

### **119 Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

### **120 Recovery of pecuniary penalty**

(1) A pecuniary penalty is a civil debt payable by the person to the Cemeteries Agency on behalf of the State.

(2) The Cemeteries Agency or the State may enforce the pecuniary penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person.

(3) The debt arising from the order is taken to be a judgment debt.

### **121 Proceedings may be brought by Cemeteries Agency or authorised officer**

Proceedings for a contravention of a civil penalty provision may only be brought by—

- (a) the Cemeteries Agency, or
- (b) an authorised officer with the written authorisation of the Cemeteries Agency (either generally or in a particular case).

### **122 Evidence given in proceedings for pecuniary penalty order not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if—
  - (a) the individual previously gave the information or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made), and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

## **Division 3 Civil infringement notices**

### **123 Object**

The object of this Division is to set up a system of infringement notices for contravention of civil penalty provisions as an alternative to the institution of proceedings before the Local Court under section 114.

### **124 When an infringement notice can be given**

- (1) An authorised officer may serve an infringement notice on a person if the authorised officer has reasonable grounds to believe that the person has contravened a civil penalty provision.
- (2) An infringement notice is a notice to the effect that, if the person served does not wish to have the matter determined by the Local Court, the person can pay, within the time and to the person specified in the notice, the amount of penalty specified in the notice.
- (3) The penalty to be specified in an infringement notice relating to an alleged contravention of a civil penalty provision must be a pecuniary penalty equal to one-fifth of the maximum civil penalty that the Local Court could impose on the person for

that contravention.

- (4) An infringement notice must be served within 12 months after the day on which the contravention is alleged to have occurred.
- (5) An infringement notice may be served personally or by post.
- (6) If the amount of penalty specified in a notice is paid under this section, no person is liable to any further proceedings under section 114 in respect of the alleged contravention.
- (7) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of alleged contraventions of civil penalty provisions.

(8) In this section—

***civil penalty provision*** means the following—

- (a) section 27 (5),
- (b) section 31 (3),
- (c) section 34,
- (d) section 38,
- (e) section 41 (3),
- (f) section 42,
- (g) section 43 (1) and (2),
- (h) section 46 (2),
- (i) section 55 (6) (a),
- (j) sections 63 (1), (5) and (6) and (12),
- (k) section 64 (1) and (3),
- (l) section 101 (2).

## **Part 7 Investigation and enforcement powers**

### **Division 1 Appointment of authorised officers**

#### **125 Authorised officers**

The Chair of the Board may appoint any of the following persons as an authorised officer for the purposes of this Act—

- (a) a police officer,
- (b) a Public Service employee,
- (c) a person of a class prescribed by the regulations.

### **126 Scope of authority**

- (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.
- (2) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (3) If such authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

### **127 Identification**

- (1) Every authorised officer (other than a police officer) is to be provided by the Chair of the Board with an identification card.
- (2) The identification card must—
  - (a) state that it is issued under this Act, and
  - (b) give the name of the person to whom it is issued, and bear a photograph of that person, and
  - (c) state any limitations on the authorised officer's functions, and
  - (d) state the date (if any) on which it expires, and
  - (e) bear the signature of the Chair of the Board.
- (3) A power conferred on an authorised officer by this Part to enter premises, or to search or take other action on premises, may not be exercised unless the authorised officer proposing to exercise the power is in possession of the identification card issued to the authorised officer and produces the identification card if required to do so by the occupier of the premises.
- (4) Subsection (3) does not apply to a police officer or to a power conferred by a search warrant.

## **Division 2 Powers of authorised officers**

### **128 Interpretation**

- (1) In this Division—



**premises** includes—

- (a) a building or structure, or
- (b) land or a place (whether built on or not).

**search** includes examine or inspect.

(2) For the purposes of this Division, a thing is **connected** with an offence under this Act or the regulations if it is—

- (a) a thing with respect to which the offence has been committed, or
- (b) a thing that will afford evidence of the commission of the offence, or
- (c) a thing that was used, or is intended to be used, for the purpose of committing the offence,

and a reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

(3) For the purposes of this Division, a thing is **connected** with a civil penalty provision under this Act or the regulations if it is—

- (a) a thing with respect to which the civil penalty provision has been contravened, or
- (b) a thing that will afford evidence of the contravention of the civil penalty provision, or
- (c) a thing that was used, or is intended to be used, for the purpose of contravening the civil penalty provision,

and a reference to any such civil penalty provision includes a reference to a civil penalty provision that there are reasonable grounds for believing has been contravened.

### **129 Purposes for which powers under Division may be exercised**

Powers may be exercised under this Division for the following purposes (referred to as **enforcement purposes**)—

- (a) for determining whether there has been compliance with or a contravention of this Act or the regulations or a provision of an interment industry scheme,
- (b) for obtaining information or records for purposes connected with the administration of this Act,
- (c) in connection with exercising the functions of an authorised officer under this Act.

### **130 Power to enter premises**

- (1) An authorised officer may enter any premises for enforcement purposes.
- (2) The authorised officer may enter the premises with such assistants (including police officers) as may reasonably be required.
- (3) The authorised officer must give the occupier of the premises notice of intention to enter the premises unless—
  - (a) the entry is made with the permission of the occupier, or
  - (b) the entry is made to a part of the premises open to the public, or
  - (c) the giving of notice would defeat the purpose for which the premises were entered or would unreasonably delay the authorised officer in a case of urgency.
- (4) Entry under the power conferred by this section may only be made at a reasonable time. This subsection does not apply to a power conferred by a search warrant.
- (5) The powers of entry conferred by this Division are not exercisable in relation to any part of premises used only for residential purposes except—
  - (a) with the permission of the occupier of the premises, or
  - (b) under the authority conferred by a search warrant.

### **131 Search warrants**

- (1) An authorised officer under this Act may apply to an issuing officer for a search warrant if the authorised officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in or about any premises.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant, and any other person named in the warrant—
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section—

**issuing officer** means an authorised officer within the meaning of the *Law*

*Enforcement (Powers and Responsibilities) Act 2002.*

**premises** includes a vehicle.

**132 Powers of authorised officers**

- (1) An authorised officer may, on any premises lawfully entered, do anything that, in the opinion of the officer, is necessary to be done for the purposes of this Division, including (but not limited to) the following—
  - (a) examine and inspect any part of the premises or any article or thing on the premises,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the officer considers necessary,
  - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine and inspect any records,
  - (g) copy any records,
  - (h) seize anything that the officer has reasonable grounds for believing is connected with an offence under this Act or the regulations or a contravention of a civil penalty provision,
  - (i) require a person to take reasonable steps to produce a document,
  - (j) do any other thing the officer is empowered to do under this Division.
- (2) An authorised officer may ask any person whom the authorised officer suspects on reasonable grounds to have knowledge of any matter in respect of which information is reasonably required for the purposes of the exercise of the authorised officer's functions under this Act to answer questions in relation to that matter to the best of the person's knowledge, information and belief.
- (3) An authorised officer may give directions reasonably required in connection with the exercise of a power conferred by this section or otherwise in connection with the administration, operation or enforcement of this Act.
- (4) Without limiting subsection (3), an authorised officer may, by order in writing, direct the owner or occupier of premises to provide such reasonable assistance or facilities to the authorised officer as may be requested by the authorised officer to exercise the authorised officer's functions.

- (5) If the authorised officer takes any document or thing under this section, he or she must—
  - (a) give notice of the taking of the document or thing to the person apparently in charge of it or to a manager of the premises, and
  - (b) return the document or thing to that person or the premises within 7 days after taking it.
- (6) (Repealed)

### **133 Power to detain and search vehicles**

- (1) An authorised officer who has reason to believe that there is in or on a vehicle anything connected with an offence under this Act or the regulations may—
  - (a) stop and detain the vehicle, and
  - (b) enter and search the vehicle, and
  - (c) break open and search any container in or on the vehicle that the officer has reason to believe contains any such thing, and
  - (d) seize anything that the officer has reasonable grounds for believing is connected with an offence under this Act or the regulations or a contravention of a civil penalty provision.
- (2) An authorised officer may require the person in charge of the vehicle to take the vehicle to a specified place for the purpose of searching the vehicle if it is not reasonably practicable to carry out the search where the vehicle is stopped.
- (3) An authorised officer may only exercise the power under this section of requiring a vehicle to stop if accompanied by a police officer.

### **134 Requirement to provide information and records**

- (1) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter arising under or in connection with this Act.
- (2) Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) A notice under this section may only require a person to furnish records that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The authorised officer to whom any record is furnished under this section may take copies of it.

- (5) If any record required to be furnished under this section is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.
- (6) This section applies whether or not a power of entry under this Division is being or has been exercised.

### **135 Requirement to state name and address**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have committed, or to be committing, an offence against this Act or the regulations to state his or her full name and residential address.
- (2) An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence to fail to comply with any such request.
- (3) A person does not commit an offence under section 137 in respect of a requirement made under this section if—
  - (a) the authorised officer does not, at the time when the officer makes the requirement, show the person the officer's identification card, or
  - (b) the authorised officer does not, at the time when the officer makes the requirement, warn the person that it would be an offence not to comply with the requirement.

### **136 Provisions relating to requirements to provide documents or information or answer questions**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Division to provide documents or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Division to provide documents or information or to answer a question on the ground that the document, information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information or answer not admissible if objection made** However, any information provided or answer given by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence against this Division or section 137 (1) (d)) or in proceedings with respect to a contravention of a civil penalty provision if—
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or

(b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.

(4) **Documents admissible** Any document provided by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.

(5) **Further information** Further information obtained as a result of a document or information provided or an answer given in compliance with a requirement under this Division is not inadmissible on the ground—

(a) that the document or information had to be provided or the answer had to be given, or

(b) that the document or information provided or answer given might incriminate the person.

### **Division 3 Offences in relation to authorised officers**

#### **137 Offence: obstructing authorised officer**

(1) A person who—

(a) prevents an authorised officer from exercising a function conferred or imposed by or under this Act, or

(b) hinders, obstructs, threatens or assaults an authorised officer in the exercise of such a function, or

(c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of an authorised officer asked in accordance with this Act or the regulations, or

(d) provides an authorised officer with a document or information knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty—100 penalty units.

(2) A person is not guilty of an offence under subsection (1) (c) unless it is established that, at the material time, the authorised officer—

(a) identified himself or herself as an authorised officer, and

(b) warned the person that a failure or refusal to comply with the requirement may constitute an offence.

### **138 Offence: impersonating authorised officer**

A person who impersonates or falsely represents that the person is an authorised officer is guilty of an offence.

Maximum penalty—100 penalty units.

## **Part 8 Miscellaneous**

### **139 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by—
  - (a) in the case of a natural person—
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate—
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

### **140 Exchange of information**

- (1) The Cemeteries Agency may enter into an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging any information that is held by the Cemeteries Agency or the agency.
- (2) The information to which an information sharing arrangement may relate is limited to provision of information that the Cemeteries Agency or the relevant agency considers is necessary to enable the Cemeteries Agency or the relevant agency to exercise its functions under this or any other Act.

(3) Under an information sharing arrangement, the Cemeteries Agency and the relevant agency are, despite any other Act or law of the State, authorised—

- (a) to request and receive information that is held by the other party to the arrangement, and
- (b) to disclose that information to the other party.

(4) Information may be provided in accordance with this section despite any prohibition in, or the need to comply with any requirement of, any Act or law (in particular, the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*).

(5) In this section—

**relevant agency** means any of the following—

- (a) NSW Health,
- (b) NSW Fair Trading, Department of Finance and Services,
- (c) Division of Local Government, Department of Premier and Cabinet,
- (d) the Department,
- (e) Office of Environment and Heritage, Department of Premier and Cabinet,
- (f) any other person or body (or person or body belonging to a class) prescribed by, or approved in accordance with, the regulations.

#### **141 Personal liability**

(1) A matter or thing done or omitted to be done by—

- (a) the Minister, or
- (b) the Cemeteries Agency, or
- (c) the Board or a member of the Board, or
- (d) the Chief Executive Officer, or
- (e) a person acting under the direction of the Minister, Cemeteries Agency, the Board or the Chief Executive Officer,

does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the Minister, member of the Board, the Chief Executive Officer or a person so acting personally to any action, liability, claim or demand.



- (2) A reference in subsection (1) to the execution of this Act includes a reference to the execution of the provisions of any other Act that confer or impose functions on the Cemeteries Agency.

#### **142 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) In particular, regulations may be made for or with respect to the following—
- (a) regulating the use and enjoyment of, and the conduct of persons in, cemeteries,
  - (b) regulating the use of vehicles in cemeteries,
  - (c) the fees and charges that may be imposed for the purposes of this Act,
  - (d) the care, control and management of cemeteries,
  - (e) the granting, transfer and revocation of exclusive rights of burial in relation to Crown cemeteries,
  - (f) the measures to be taken by way of compensation to former holders of exclusive rights of burial in Crown cemeteries in the event those rights are revoked.
- (3) The regulations may create an offence punishable by a penalty not exceeding 25 penalty units.
- (4) The regulations may adopt any document (including for example a code of practice) as in force from time to time.
- (5) The regulations may exempt, or provide for the exemption, from the operation of any of the provisions of this Act any specified cemetery or class of cemetery, any specified person or class of persons or any specified activities or class of activities in such circumstances, and subject to such conditions, as may be specified in the regulations.

#### **143 (Repealed)**

#### **144 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament

within 12 months after the end of the period of 5 years.

#### **145 Investigation and report by IPART**

- (1) The Independent Pricing and Regulatory Tribunal is to conduct an investigation of interment costs and the pricing of interment rights within the interment industry with regard to—
  - (a) the relativity of costs and pricing factors for perpetual and renewable interment rights, and
  - (b) full-cost pricing of perpetual interment rights, including provision for the perpetual care of interment sites and cemeteries.
- (2) The investigation is to include a review of competition, cost and pricing factors within the funeral industry.
- (3) A report on the outcome of the investigation is to be provided to the Minister within 3 years after the commencement of this section.
- (4) The Minister is to make the report publicly available free of charge by publishing it on a website maintained by the Department.
- (5) Except to the extent that the regulations otherwise provide, Division 7 of Part 3 of the [Independent Pricing and Regulatory Tribunal Act 1992](#) applies to and in respect of an investigation under this section.

### **Schedule 1 Members and procedure of Board**

(Section 16)

#### **Part 1 Preliminary**

##### **1 Definitions**

In this Schedule—

**appointed member** means the Chair of the Board, Deputy Chair of the Board or other member of the Board who is appointed by the Minister.

**member** means an appointed or ex officio member of the Board.

**voting member** means the Chair, Deputy Chair or person appointed as a member of the Board under section 16 (2) (b).

#### **Part 2 Members**

##### **2 Terms of office of appointed members**

- (1) Subject to this Schedule and the regulations, an appointed member holds office for

the period (not exceeding 4 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

- (2) Despite subclause (1), a person cannot be re-appointed for more than 3 successive terms of office.

### **3 Remuneration**

An appointed member (other than a person who is a public servant) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister, in consultation with the Secretary of the Premier's Department, may from time to time determine in respect of the member.

### **4 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member—
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) is found to have contravened a civil penalty provision set out in section 18 (1), 19 (1), 20 or 21, unless the Local Court otherwise orders.
- (2) The Minister may remove an appointed member from office at any time for any or no reason and without notice.

## **5 Suspension of members**

- (1) The Minister may, by order in writing, suspend a member from office during the investigation and determination of any matter involving an allegation of incompetence, misconduct or breach of duty by the member if the Minister is satisfied that it is appropriate in the public interest to do so.
- (2) A copy of an order under this clause must be served on the member.
- (3) The member, while suspended from office under this clause—
  - (a) is not entitled to exercise any functions of the office, and
  - (b) is not entitled to any fee or remuneration to which he or she would otherwise be entitled as the holder of the office.
- (4) The period of suspension under an order made under this clause commences on the date the order is served on the member or the date specified in the order for the commencement of the period of suspension, whichever is the later.

## **6 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **7 Part-time appointments**

Appointed members hold office as part-time members.

## **8 Effect of certain other Acts**

- (1) The statutory provisions relating to the employment of Public Service employees do not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made—
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **Part 3 Procedure**

### **9 General procedure**

- (1) The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.
- (2) The Chair (or, in the absence or at the request of the Chair, the Deputy Chair) may convene any meetings of the Board that are, in his or her opinion, necessary for the efficient performance of the functions of the Board.
- (3) The Chair (or Deputy Chair) must convene a meeting of the Board at the written request of two or more members of the Board.

### **10 Quorum**

The quorum for a meeting of the Board is 3 voting members of the Board.

### **11 Presiding member**

- (1) The Chair of the Board (or, in the absence or at the request of the Chair, the Deputy Chair) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**Note—**

A person appointed under section 16 (2) (c), (d), (e) or (f) is a non-voting member of the Board.

### **13 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
  - (a) the approval of a resolution under subclause (1), or

(b) a meeting held in accordance with subclause (2),

the Chair and each member have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **14 Subcommittees**

(1) The Board may establish subcommittees to assist it in connection with the exercise of any of its functions.

(2) A subcommittee has such functions as the Board may from time to time determine in respect of it.

(3) It does not matter that any or all of the members of a subcommittee are not members of the Board.

(4) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings is to be as determined by the Board or (subject to any determination of the Board) by the subcommittee.

#### **15 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

### **Schedule 2 Special provisions for Crown cemetery operators that are statutory land managers**

(Section 74)

#### **Part 1 Preliminary**

##### **1 Application of Schedule**

This Schedule applies in relation to a Crown cemetery operator (a **statutory operator**) if it is a statutory land manager with a board.

**Note—**

The provisions of this Schedule prevail to the extent of any inconsistency with the [Crown Land Management Act 2016](#). See section 5 of this Act.

##### **2 Definitions**

In this Schedule—

**board member** means a member of a statutory operator board.

**statutory operator**—see clause 1.

**statutory operator board** means the board of a statutory operator.

## Part 2 Members

### 3 Acknowledgment of duties and liabilities for effective appointment

The appointment of a person as a board member is ineffective unless the person has acknowledged the duties and liabilities imposed on the person as such a member by signing the instrument appointing the person as a board member.

### 4 Ex officio members

(1) **Application** This clause applies to a board member who is appointed as a board member by reference to an office the person holds (an **ex officio member**).

**Note—**

Board members are appointed under clause 4 of Schedule 5 to the [Crown Land Management Act 2016](#). Members can be appointed under that clause by reference to the offices they hold (that is, ex officio members) because of section 49 of the [Interpretation Act 1987](#).

(2) **Nominees may act for ex officio members** An ex officio member may, with the approval of the Minister, appoint a nominee.

(3) The nominee may attend a meeting of the members in the place of the ex officio member.

(4) For the purposes of the meeting the nominee is taken to be the ex officio member.

(5) **Vacation of office** Without limiting clause 13 of Schedule 5 to the [Crown Land Management Act 2016](#), a person who is an ex officio member vacates office as an ex officio member when the person ceases to hold the ex officio office concerned.

(6) However, if the person is an ex officio member because the person holds a local government office and the person ceases to hold the local government office, the person continues as a member until—

(a) one month has elapsed, or

(b) the local government office is filled,

whichever first occurs.

(7) Subclause (6) does not apply if the member ceased to hold office—

(a) in circumstances giving rise to a vacancy in civic office under section 234 of the [Local Government Act 1993](#), or

(b) because of a declaration under section 255 of that Act.

(8) **Definition** In this clause—

**local government office** means the office of a councillor (including a mayor) under the [Local Government Act 1993](#).

## **Part 3 Administration**

### **5 Officers and employees**

- (1) A statutory operator board may appoint and employ a chief executive officer, chief financial officer, rangers and such other officers and employees as may be necessary for the efficient operation of the statutory operator.
- (2) One person may be appointed to the positions of chief executive officer and chief financial officer of the statutory operator.
- (3) A board member may be appointed and employed under this clause but only with the approval of the Minister.

### **6 Duties of chief executive officer and chief financial officer**

- (1) The chief executive officer is—
  - (a) to keep and maintain minutes of each meeting of the statutory operator board, and
  - (b) to keep and maintain the book (disclosure of material personal interests of operator members) required by section 87 (3), and
  - (c) to perform other duties as directed by the statutory operator board.
- (2) The chief financial officer is—
  - (a) to be responsible to the statutory operator board for the keeping and maintaining of proper financial records, and
  - (b) to keep and maintain the records required to be kept by the statutory operator board for the purposes of section 3.13 of the [Crown Land Management Act 2016](#) and section 42 of this Act.

### **7 Receipts and disbursements**

- (1) All money received by the statutory operator board is to be deposited to the credit of an account established with any authorised deposit-taking institution in the name of the statutory operator.
- (2) Each item of expenditure by or on behalf of the statutory operator board is to be authorised or confirmed for payment, at a duly convened and constituted meeting of



the statutory operator board, by tabling and approval of a report by the chief financial officer relating to that item of expenditure.

## **Part 4 Miscellaneous**

### **8 Regulations**

The regulations may make further provision for or with respect to the functions of statutory operator boards, board members, chief executive officers, chief financial officers, rangers and other officers or employees in connection with the administration, management or operation of statutory operators or their operator boards.

## **Schedule 3 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Regulations under this clause may have effect despite any provision of Part 2.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Records**

Clause 33 (2) of, and Schedule 4 to, the [Crown Lands Regulation 2006](#), as in force immediately before the commencement of this clause, apply to and in respect of the records required to be kept by a cemetery operator under section 42 of this Act in the same way they apply to and in respect of records required to be kept by a reserve trust and trust managers under that Regulation until regulations are made under this Act with respect to those matters or unless the Minister determines otherwise by notice in writing.

### **3 Register of burials**

A register of burials kept by a cemetery authority in relation to burials carried out at a cemetery under clause 68 of the [Public Health Regulation 2012](#), as in force before its repeal by this Act, is taken on that repeal to form part of the cemetery operator's register required to be kept in respect of interments in that cemetery under section 63 of this Act.

### **4 Register of cremations**

A register of cremations kept by a cremation authority in relation to cremations carried out at a cemetery under clause 86 of the [Public Health Regulation 2012](#), as in force before its repeal by this Act, is taken on that repeal to form part of the register required to be kept in respect of cremations carried out at that cemetery under section 63 of this Act.

### **5 Register of mortuaries and crematories**

A register of mortuaries and crematories maintained by the Director-General of the Ministry of Health under clause 89 of the [Public Health Regulation 2012](#), as in force before its amendment by this Act, is taken, to the extent it relates to a crematorium, on that amendment to form part of the Cemeteries and Crematoria Register required to be kept in respect of that crematorium under section 27 of this Act.

### **6 Existing members of trust boards**

- (1) A person who, immediately before the commencement of this clause, was a member of a trust board appointed under section 93 of the [Crown Lands Act 1989](#) continues to hold office for the unexpired term of his or her appointment (subject to the terms of his or her original appointment and subclause (2)) as if the person had been appointed under section 74 of this Act.
- (2) The instrument of appointment of such a member is taken to include the matters referred to in section 74 (2) and to have been signed by the member.

### **7 Annual reports and records**

- (1) Section 99 (Annual report) of this Act applies only to and in respect of a financial year commencing on or after 1 July 2014.
- (2) Section 122 of the [Crown Lands Act 1989](#) and clauses 32 and 33 of the [Crown Lands Regulation 2006](#) continue (subject to the regulations) to apply to and in respect of a Crown cemetery trust within the meaning of this Act for the financial year that commenced on 1 July 2013.

## Schedule 4 Conversion of cemeteries

### Part 1 Preliminary

#### 1 Transferred provisions

- (1) This Schedule re-enacts (with minor modifications) provisions of the *Conversion of Cemeteries Act 1974* that are repealed by section 143 and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
- (2) In the event of an inconsistency between Part 2 and any other provision of this Act, the provisions of Part 2 prevail to the extent of the inconsistency.

#### 2 Definitions

In this Schedule—

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

**Minister** means the Minister administering the *Crown Land Management Act 2016*.

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

**resolution** means a resolution of a council under clause 3 (1).

**the conversion date**, in relation to land within a cemetery, means the day on which a declaration made by the Minister under clause 7 (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 clause 7 (1).

### Part 2 Conversion of cemeteries into public parks

#### Division 1 Dedication of cemeteries as public parks

##### 3 Council may resolve to convert cemetery

- (1) A council may, by resolution, decide to apply under this Part for the conversion of the whole or any part of land within a cemetery into a public park.
- (2) The council must give notice of the resolution—
  - (a) twice, at an interval of not less than 2 weeks, in a newspaper or newspapers published and circulating in the locality and twice, at an interval of not less than 2 weeks, in a newspaper or newspapers published in Sydney and circulating widely

throughout New South Wales, or

- (b) in a manner approved in writing by the Minister having regard to the object of bringing notices of that kind to the attention of members of the public in the relevant localities and elsewhere in the State to whom the relevant resolutions may be of interest.

#### **4 Objections**

- (1) A person may, within 3 months after the date of first publication of the notice referred to in clause 3 (2), object in writing to the council against its resolution and must state the grounds for his or her objection.
- (2) The council must consider and determine all objections made under subclause (1) and must notify each objector of its determination concerning the objector's objection.

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

- (1) The council may, after considering and determining the objections made under clause 4, 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 subclause (1) must be made in writing addressed to the Minister and must be accompanied by the following—
  - (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, and
    - (ii) the dates of the first and last burials, and
    - (iii) the number of monuments, and
    - (iv) the number of monuments which have been provided or maintained by the Commonwealth War Graves Commission, and
    - (v) whether the monuments are proposed to be removed, re-arranged within the cemetery, relocated in another cemetery, or disposed of, and
    - (vi) the number of outstanding exclusive rights to burial, and
    - (vii) the number of graves for which money is held for perpetual care, and
    - (viii) the amount of money held for the perpetual care of graves, and
    - (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 clause 3 (2),
  - (e) copies of all objections received by the council pursuant to clause 4 and of the council's determinations in respect of those objections, and
  - (f) such other information as may be prescribed.
- (3) The council must furnish such additional or other information as the Minister, by request in writing, may require for the purpose of considering the application under subclause (1).

#### **6 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 subclause (1) must be laid before each House of Parliament within 14 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 15 sitting days of that House after a copy of the notification under subclause (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 must not make that declaration pursuant to that notification.
- (4) For the purposes of subclauses (2) and (3), sitting days are to be counted, whether or not they occur during the same session.

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

- (1) Subject to clause 6, 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 subclause (1) is deemed to have been dedicated as a public park under section 2.3 of the [Crown Land Management Act 2016](#).

## **Division 2 Functions of a council with respect to conversion land**

### **8 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 is divested, and
  - (b) any person or body referred to in paragraph (a) and the council are discharged from any duties, liabilities or obligations existing immediately before the conversion date in respect of or in relation to the conversion land, and
  - (c) any trusts, conditions, encumbrances, dedications or reservations affecting the conversion land immediately before the conversion date are revoked and annulled, and
  - (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 are 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 is freed from any conditions or trusts subject to or on which they were held immediately before that date and must be used by the council for or towards maintaining the graves or monuments preserved pursuant to clause 11 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 6 months after the conversion date, apply in writing to the Minister to be granted a fresh exclusive right to burial.
- (3) The Minister must, as soon as practicable after any application has been made under subsection (2), arrange for the provision to that person of a new burial site in a cemetery selected at the discretion of the Minister.

### **9 Council sole Crown land manager**

- (1) Subject to this Part, the council is to be the sole Crown land manager of the converted land and is taken to have been appointed as the sole Crown land manager under section 3.3 of the [Crown Land Management Act 2016](#).
- (2) The conversion land must be maintained by the council as a rest park and, despite anything in any other Act, but subject to the provisions of this Part, the council must

not use the conversion land or permit it to be used for any other purpose.

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

- (1) In this clause, 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 must, as soon as practicable after the conversion date—
  - (a) if 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 is to be maintained so as to be available for inspection by any interested person from time to time, or
  - (b) if 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 that supplementary register at the Mitchell Library, Sydney, where they are to be maintained so as to be available for inspection by any interested person from time to time, or
  - (c) if 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, and
    - (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 is to 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 subclause (2), the council must, 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 subclause (2) (b) (i) or the register compiled under subclause (2) (c) (i) may be inspected and that a copy of the register compiled under subclause (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 Part, the council may do all such other things as it may consider necessary to convert the conversion land into a rest park.

#### **11 Preservation of certain monuments**

- (1) The council must, subject to clause 12, preserve in its existing position on the conversion land or remove and preserve in a new position, as provided in subclause (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 subclause (1) must be preserved is, at the discretion of the council, to be anywhere on the conversion land or in another cemetery, whether that other cemetery is a cemetery within the meaning of this Part or otherwise.
- (3) Subject to clause 12, 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 subclause (1), or remove pursuant to subclause (3), the council must 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 3 months of the conversion date.

- (5) If any monument preserved in accordance with subclause (1) ceases at any time after the expiration of the period of 3 months referred to in clause 12 (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.

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

- (1) At least 3 months before any monuments are removed by the council pursuant to clause 11, an advertisement of the intention to remove them and drawing attention to the right conferred by subclause (3) on the representatives (or persons claiming to be representatives) is to be inserted—
- (a) twice at an interval of not less than 2 weeks in a newspaper or newspapers published and circulating in the locality, and
  - (b) twice at an interval of not less than 2 weeks in a newspaper or newspapers published in Sydney and circulating widely throughout New South Wales.
- (2) The council must send a copy of the advertisement to the Commonwealth War Graves Commission within one week after the date of the first publication of the advertisement.
- (3) At any time after the first publication of the advertisement and before the expiration of 3 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 subclause (5), 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 clause 11 (1).
- (4) The representatives (or persons claiming to be representatives) or Commission may, at their or its own expense, and with the permission of the Director-General of the Ministry of Health, 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 Schedule or otherwise, or to a crematorium for cremation.
- (5) Subclause (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.

### **13 Remains not to be disturbed**

- (1) The council, the Commonwealth War Graves Commission or any person or body of persons must 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 subclause (1) are unearthed or disturbed, the council must cause those remains or ashes to be reverently interred anywhere in the conversion land.
- (3) Nothing in this clause prevents the removing of any remains or ashes pursuant to clause 12 (3).

### **14 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 subclause (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, on such terms and conditions as may be agreed upon from time to time between the council and the caretaker or groundsman.
- (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 must 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) Despite the provisions of subclauses (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 clause 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 clause.

## **Division 3 Miscellaneous**

### **15 No compensation payable**

Except where otherwise in this Act expressly provided, no compensation is payable to any person or body of persons in respect of the divesting of any estate or interest by this Part

or in respect of the performance of any act authorised by this Part.

## **Part 3 Bodangora General Cemetery**

### **16 Application of Part 2**

Part 2 applies to the land described in Schedule 2 to the *Conversion of Cemeteries Act 1974*, as in force immediately before its repeal by this Act, as if—

- (a) a reference to the **conversion date** were a reference to 1 July 1974, and
- (b) a reference to the **conversion land** were a reference to the land so described, and
- (c) a reference to the Council were a reference to Wellington Council.

## **Schedule 5 Transferred and other provisions relating to certain cemeteries and crematoria**

### **Part 1 Preliminary**

#### **1 Transferred provisions**

- (1) Parts 2–5 of this Schedule re-enact (with minor modifications) Acts or provisions of Acts or statutory instruments repealed by section 143 and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
- (2) In the event of an inconsistency between this Schedule and any other provision of this Act, the provisions of this Schedule prevail to the extent of the inconsistency.

#### **2 Regulations**

- (1) The regulations may modify the application of a provision referred to in clause 1 to or in respect of a cemetery referred to in that provision, or the operator of that cemetery, for the purposes of this Act.
- (2) Without limiting subclause (1), the regulations may do either or both of the following—
  - (a) provide that this Act applies as if the provision were omitted and replaced with another provision,
  - (b) confer jurisdiction on a court or tribunal.

#### **2A References to abolished reserve trusts**

- (1) A reference in this Schedule to a trust that was a reserve trust for a reserve immediately before the repeal day (or a reference to its trustees) is to be read, on and from that day, as a reference to the Crown land manager of the land that was comprised by that reserve.

(2) Subclause (1) does not affect any matter or thing that had already taken effect before the commencement of this clause.

(3) In this clause—

**Crown land manager** means the Crown land manager of the land concerned under the [Crown Land Management Act 2016](#).

**repeal day** means the day on which the [Crown Lands Act 1989](#) is repealed by the [Crown Land Management Act 2016](#).

**reserve** and **reserve trust** have the same meanings as they had in Part 5 of the [Crown Lands Act 1989](#) immediately before the repeal day.

## Part 2 Botany Cemetery and Crematorium

### 3 Interpretation

In this Part—

**monument** means monument or other surface structure.

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

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

**regulations** means regulations made under this Act.

**repealed Act** means the [Botany Cemetery and Crematorium Act 1972](#) as in force immediately before its repeal by this Act.

**the cemetery** means the land described in the First Schedule to the repealed Act.

**the cemetery trust** means The Botany Cemetery Trust.

**the crematorium** means the land described in the Second Schedule to the repealed Act.

**the crematorium trust** means The Eastern Suburbs Crematorium Trust.

### 4 Re-use of certain lands for burials

(1) Without affecting the generality of the power of the cemetery trust to use the cemetery or any part of it for or in connection with burials or burial purposes—

(a) the land formerly occupied by a prescribed grave from which the trust is satisfied that—

- (i) all monuments and remains have been removed pursuant to Part 3 of the repealed Act, or
  - (ii) there being no monuments on the grave, all remains have been so removed, or
  - (iii) there being no remains in the grave, all monuments have been so removed, may be used for or in connection with burials or burial purposes in the same manner as if it had never been occupied by that grave, and
- (b) the land formerly occupied by a prescribed monument which the trust is satisfied was not on a grave and which the trust is satisfied has been removed pursuant to Part 3 of the repealed Act may be used for or in connection with burials or burial purposes in the same manner as if it had never been occupied by that monument.
- (2) Any estate or interest in or right created in respect of or in relation to any land referred to in subclause (1) (a) or (b), being an estate, interest or right, which (immediately before any monuments or remains or both were removed from that land pursuant to Part 3 of the repealed Act) was vested in or held by any person or body of persons (other than the trust), is hereby divested and—
- (a) that person or body is hereby discharged from any duties, liabilities or obligations existing immediately before that removal in respect of or in relation to that land, and
  - (b) the trust is hereby discharged from any duties, liabilities or obligations existing immediately before that removal in respect of or in relation to that land, in so far as those duties, liabilities or obligations arose by virtue of the estate, interest or right so divested.

## 5 No compensation payable

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

## Part 3 Christ Church Cathedral, Newcastle, Cemetery

### 6 Definitions

In this Part—

**Council** means Council of the City of Newcastle.

**repealed Act** means the *Christ Church Cathedral, Newcastle, Cemetery Act 1966* as in force immediately before its repeal by this Act.

**the Cathedral lands** means the lands described in the Third Schedule to the repealed Act.

**the Corporate Trustees** means the Trustees of Church Property for the Diocese of Newcastle.

#### **7 Maintenance of land in First Schedule to repealed Act as a public park**

The land described in the First Schedule to the repealed Act is to be maintained by the Council as a rest park and garden area and, despite anything in any other Act, but subject to the provisions of this Part, the Council must not use the land or permit it to be used for any other purpose.

#### **8 Vesting of land in Second Schedule to repealed Act in Corporate Trustees**

- (1) The Corporate Trustees hold the land described in the Second Schedule to the repealed Act vested in them by that Act for such use, benefit, or purposes of the Church of England as the Synod of the Diocese of Newcastle from time to time declares, directs or appoints.
- (2) In this clause, the expression **minerals** has the meaning given to it in section 5 of the [Crown Lands Consolidation Act 1913](#) immediately before the repeal of that Act.

#### **9 Responsibility of Council for relocation of power lines, stormwater drainage and damage to Cathedral lands**

The Council is responsible for the following—

- (a) the cost of relocating any power lines in or on the Cathedral lands or other church trust property if their relocation is required in connection with the carrying out of any work, act or thing authorised by this Part,
- (b) making adequate provision for the discharge of roof and storm water from the Cathedral lands and the land described in the Second Schedule to the repealed Act across or through the land described in the First Schedule to the repealed Act,
- (c) repairing any damage that may be caused by the carrying out of any work, act or thing authorised by this Part, to the Cathedral lands or other church trust property, or any building structure or other property on it.

#### **10 Access to be granted by Corporate Trustees**

The Corporate Trustees must grant the Council access through the Cathedral lands and other church trust property for the purpose of carrying out any work, act or thing authorised by this Part.

#### **11 No compensation payable**

No compensation is payable to any person in respect of the divesting of any estate or

interest by the repealed Act or in respect of the performance of any work, act or thing authorised by this Part.

## 12 Disputes between Council and Corporate Trustees

If any difference arises between the Council and the Corporate Trustees with respect to the carrying out of any provision of this Part under which it is required that any act is to be performed or thing done in a manner agreed on by the Council and the Corporate Trustees, the Council or the Corporate Trustees may submit such difference to the Minister and the act is to be performed or the thing done in such manner as the Minister may direct.

## Part 4 Gore Hill Memorial Cemetery

### 13 Definitions

In this Part—

**historic cemetery** means a cemetery, containing monuments of historic significance, that is closed to further burials.

**monument** means—

- (a) a monument, headstone or other surface structure, or
- (b) a vault.

**repealed Act** means the [Gore Hill Memorial Cemetery Act 1986](#) as in force immediately before its repeal by this Act.

**the cemetery land** means the land described in Schedule 1 to the repealed Act dedicated as an historic cemetery with the name of “Gore Hill Memorial Cemetery” under section 5 of that Act.

**trustees** means the persons holding office as trustees of the cemetery land under Part 5 of the [Crown Lands Act 1989](#).

### 14 Management of cemetery

- (1) Except as provided by this Act, the cemetery land is to be maintained by the trustees as an historic cemetery.
- (2) The trustees must use property held by them relating to the care, control and management of the cemetery land for or towards maintaining the cemetery land as an historic cemetery.

### 15 Burial registers and records

The trustees, or a nominee of the trustees, must keep in safe custody any burial register

and other records in respect of persons who are buried in or whose ashes have been placed in or on the cemetery land.

#### **16 Erection of memorials by Commonwealth War Graves Commission**

The trustees may grant to the Commonwealth War Graves Commission the right to erect and maintain, in or on the cemetery land, a memorial to any person who is buried in or whose ashes have been placed in or on the cemetery land and over whose grave that Commission has provided or maintained a monument.

#### **17 Remains not to be disturbed**

- (1) The trustees or any person or body of persons must take due care not to unearth or disturb—
  - (a) the remains of any person who is buried in, or
  - (b) the ashes of any person which are contained in an article which has been placed in or on, or
  - (c) any monument over the grave of or in respect of a person in or on, the cemetery land.
- (2) If any such remains, articles or monuments are unearthed or disturbed the trustees must cause the remains or articles to be reverently interred or the monument placed—
  - (a) where practicable, in the original place of interment or erection in or on the cemetery land, or
  - (b) elsewhere in or on the cemetery land.

#### **18 Placement of ashes**

The trustees may use the cemetery land, or permit it to be used, on such terms and conditions as the trustees may determine, for the purpose of the placement of ashes of any person.

#### **19 Sexton's dwelling**

- (1) The trustees may maintain the dwelling erected on the cemetery land at the commencement of the repealed Act and may, from time to time, repair, rebuild or replace it.
- (2) The trustees may use the dwelling, or permit it to be used, for such purposes and subject to such terms and conditions as the Minister may approve in writing.
- (3) A reference in this clause to the dwelling erected on the cemetery land at the



commencement of the repealed Act includes a reference to that dwelling as repaired, rebuilt or replaced from time to time under this clause.

## 20 No compensation payable

No compensation is payable to any person or body of persons in respect of the performance of anything authorised to be done by this Part.

## Part 5 Provisions relating to general crematorium lease and funding of Rookwood Necropolis Trust

### 21 Definitions

In this Part—

**appointed day** means the day appointed for the commencement of the 2009 Act pursuant to section 2 of that Act.

**denominational trust**, in relation to land within the Rookwood Necropolis that is set aside for use as a cemetery or crematorium, means the reserve trust that has been, or is taken to have been, appointed as trustee of that land under section 92 (1) of the [Crown Lands Act 1989](#), and includes a person conducting a crematorium on the general crematorium site (if there is no other denominational trust for that site), but does not include the Rookwood Necropolis Trust.

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

**general crematorium site** means the land within the Rookwood Necropolis that comprises Lot 488, Deposited Plan 48288.

**interment** does not include interment of ashes arising from a cremation.

**JCNT** means the Joint Committee of Necropolis Trustees constituted by section 20 of the 1901 Act.

**new RNT** means the reserve trust established by clause 53 of Schedule 8 to the [Crown Lands Act 1989](#) immediately before its repeal by this Act.

**old RNT** means the Rookwood Necropolis Trust established under section 92 (1) of the [Crown Lands Act 1989](#) by notification published in Gazette No 73 of 15 May 2009 at page 2244.

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

**Rookwood Necropolis** means the land comprising Lot 500, Deposited Plan 1015565, Lot 7053, Deposited Plan 1029128, and Lot 10, Deposited Plan 829656, being land at Haslem's Creek and Rookwood that, immediately before the appointed day, was set aside

for use as a cemetery or crematorium, or for conservation as a historic site, under the 1901 Act.

**Rookwood Necropolis Trust** means the Rookwood Necropolis Trust established by clause 53 of Schedule 8 to the [Crown Lands Act 1989](#) immediately before its repeal by this Act.

**the 1901 Act** means the [Rookwood Necropolis Act 1901](#), as in force immediately before the appointed day.

**the 2009 Act** means the [Rookwood Necropolis Repeal Act 2009](#).

## 22 General crematorium lease

(1) In this clause—

**general crematorium lease** means the lease referred to in section 8B of the 1901 Act, as that lease was in force immediately before the appointed day, and includes the terms and conditions specified in Schedule 3 to that Act.

(2) On and from the appointed day, the general crematorium lease is taken to have been granted by the Minister under section 34A of the [Crown Lands Act 1989](#) for the purposes of a crematorium.

(3) The lessor or lessee under the general crematorium lease, or the new RNT, may appeal to the Land and Environment Court against a valuation made, or purporting to have been made, by the Valuer-General under the terms of the lease.

### Note—

As at the appointed day, the terms of the lease included those prescribed by Schedule 3 to the 1901 Act, clause 5 of which provided for the valuation of the general crematorium site by the Valuer-General for the purpose of determining the rent payable in relation to that site.

(4) Pending the determination of an appeal under this clause, the valuation to which the appeal relates, and the lessee's liability for any rent payable on the basis of that valuation, are unaffected by the appeal.

### Note—

Pursuant to section 19 of the [Land and Environment Court Act 1979](#), an appeal under this clause falls within Class 3 of the Land and Environment Court's jurisdiction.

(5) Section 6.4 and Division 6.3 of the [Crown Land Management Act 2016](#) do not apply to or in respect of the general crematorium lease.

## 23 Construction of references to JCNT or old RNT

In any other Act or instrument, a reference to the JCNT or the old RNT extends to the new RNT.

**24 Contributions payable to Rookwood Necropolis Trust by denominational trusts etc**

- (1) During the last 6 months of each financial year commencing on or after 1 July 2010, the Rookwood Necropolis Trust—
  - (a) must make estimates for the following financial year of its expenditure and of its revenue apart from this clause, and
  - (b) must determine, on the basis of those estimates, the total amount that it will need to obtain for the following financial year from contributions from the denominational trusts, and
  - (c) must notify the Minister of the total amount so determined, and
  - (d) subject to the Minister’s approval of the total amount so determined, must determine the contribution payable by each denominational trust in respect of that amount, and
  - (e) must notify each denominational trust of the contribution payable by it for the following financial year.
- (2) The Rookwood Necropolis Trust must consult with the denominational trusts as to its expenditure and revenue before making the estimates referred to in subclause (1) (a).
- (3) Each denominational trust must pay the contribution determined in respect of it under subclause (1) (d), by way of 4 equal instalments, within 28 days after the start of each quarter.
- (4) For the purposes of subclause (1) (d), the contribution payable to the Rookwood Necropolis Trust by a denominational trust is to be calculated in accordance with the following formula—

$$P = \frac{A \times I\&C}{\Sigma I\&C}$$

where—

**P** represents the contribution payable.

**A** represents the amount approved by the Minister under subclause (1) in relation to the amount assessed by the Rookwood Necropolis Trust, from time to time, as the amount it requires to enable it to exercise its functions under this Act.

**I&C**, in relation to a denominational trust, represents the number of interments and cremations carried out during the previous calendar year in the portion of the

Rookwood Necropolis managed by that denominational trust.

**ΣI&C** represents the total number of interments and cremations carried out during the previous calendar year in the Rookwood Necropolis.

## **25 Fees payable to Rookwood Necropolis Trust by denominational trusts operating crematoria**

(1) In this clause—

**general crematorium lease** means a lease of the whole or any part of the general crematorium site that has been, or is taken to have been, granted by the Minister for the purposes of a crematorium under section 34A of the [Crown Lands Act 1989](#).

(2) Within 28 days after the end of each quarter, a denominational trust that operated a crematorium in the Rookwood Necropolis during that quarter must pay to the Rookwood Necropolis Trust a fee calculated by multiplying \$100 by the number of cremations carried out by it in the crematorium during that quarter.

(3) No such fee is payable in respect of cremations carried out, by the lessee under the general crematorium lease, in the crematorium situated on the general crematorium site.

### **Note—**

The fee payable under this clause is additional to any contribution payable under clause 24.

## **26 Information to be provided to Rookwood Necropolis Trust by reserve trusts etc**

Within 7 days after the end of each quarter, a denominational trust that carried out interments or cremations in the Rookwood Necropolis during that quarter must provide the Rookwood Necropolis Trust with the number of interments and cremations carried out by it in the Rookwood Necropolis during that quarter.

## **Schedule 6 (Repealed)**

### **Dictionary**

**authorised officer** means a person appointed as an authorised officer under section 125.

**Board** means the Board of Cemeteries and Crematoria NSW.

**bodily remains** means the whole or any part of the body of a person who has died (whatever its physical state may be) but does not include the whole or any part of a body that has been cremated.

**building** includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure).

**Cemeteries Agency** means Cemeteries and Crematoria NSW.

**Cemeteries Agency Fund** means the Cemeteries and Crematoria NSW Fund.

**Cemeteries and Crematoria Register**—see section 27.

**cemetery** means a building or place used primarily for the interment and memorialisation of human remains (whether or not it contains an associated building for conducting memorial services) but does not include the following—

- (a) an Aboriginal place, or land reserved as a historic site, within the meaning of the [National Parks and Wildlife Act 1974](#),
- (b) a place at which cremated remains are scattered but which is not otherwise used for the disposal of human remains,
- (c) a place on private land, where the area of the landholding is 5 hectares or more and the location has been approved by a local government authority for the purposes of placing a body in a grave or vault,
- (d) any other place, or place of a class, prescribed by the regulations.

**Note—**

**Cemetery** as defined includes the following places—

- (a) Crown land, or part of Crown land, that is dedicated or reserved under the [Crown Land Management Act 2016](#) for use for the purposes of a public cemetery or crematorium (or both),
- (b) a private cemetery or other place approved for that purpose by a local government authority,
- (c) land reserved (otherwise than as a historic site) under the [National Parks and Wildlife Act 1974](#) or acquired under Part 11 of that Act, where the location has been approved for that purpose by—
  - (i) a person or body (including a local council, trust board or board of management within the meaning of that Act) in which the care, control and management of the land is vested, or
  - (ii) if no such person or body has been vested with the care, control and management of the land—the Secretary of the Department of Planning and Environment.

**cemetery operator's register**—see section 63.

**Chief Executive Officer** means the person employed in the Public Service as the Chief Executive Officer of Cemeteries and Crematoria NSW.

**civil penalty provision**—see section 113.

**code of practice** means a code approved under section 30.

**council** has the same meaning as in the [Local Government Act 1993](#).

**cremation** means a process for the reduction of bodily remains by fire or heat, alkaline hydrolysis or by other means prescribed by the regulations.

**crematorium** means a building in which deceased persons are cremated (whether or not it contains an associated building for conducting memorial services) and includes premises in which bodily remains are disposed of by alkaline hydrolysis.

**Crown cemetery** means Crown managed land, or part of Crown managed land, dedicated, reserved or used (whether before or after the commencement of this definition) for the purposes of a public cemetery or crematorium (or both) under the [Crown Lands Act 1989](#) or [Crown Land Management Act 2016](#).

**Crown cemetery operator**—see section 71.

**Department** means the Department of Trade and Investment, Regional Infrastructure and Services.

**Director-General** means the Director-General of the Department.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**funeral director** means a person who, in the conduct of operating a business or a service—

- (a) engages, for the purpose of burial or cremation, in the collection, transport, storage, preparation or embalming of bodies, or
- (b) engages in the conduct of exhumations.

**funeral fund** has the meaning it has in the [Funeral Funds Act 1979](#).

**Government agency** means—

- (a) a public authority constituted by or under an Act, or
- (b) a NSW Government agency, or
- (c) a Public Service agency, or
- (d) except in section 11 (4) (b)—a council or other local authority, or
- (e) a State owned corporation.

**human remains** means bodily remains and includes—

- (a) the remains of a stillborn child, and
- (b) bodily remains after they have been cremated.

**improvement notice** means a notice given under section 33 (3).

**interment** of human remains—see section 44.

**interment industry**—see section 26.

**interment industry scheme**—see Division 3 of Part 3.

**interment matter** means any matter relating to the following—

- (a) burials, exhumations and cremations,
- (b) the operation of cemeteries and crematoria,
- (c) the design, construction and maintenance of the following—

- (i) buildings, memorials, mausoleums, vaults and other structures and things in cemeteries and crematoria,
- (ii) walls, fences, paths, drains and other works of cemeteries and crematoria,
- (d) without limiting paragraph (c) (i), responsibility for the maintenance of structures and things referred to in that subparagraph,
- (e) the equipment used in cemeteries and crematoria, including its maintenance,
- (f) the grounds of cemeteries and crematoria, including their maintenance,
- (g) the position, depth and maintenance of graves,
- (h) the construction of coffins to be placed in vaults,
- (i) interment and other rights in relation to cemeteries and crematoria,
- (j) the making and keeping of records about cemeteries and crematoria, including records of burials, exhumations and cremations and burial and other rights in relation to cemeteries and crematoria,
- (k) the inspection of cemeteries and crematoria and their records.

**interment right**—see section 44.

**interment service** means any service (other than the supply of goods) provided with respect to the interment of human remains.

**interment site**—see section 44.

**maintenance** of a cemetery, crematorium, structure or thing includes alteration, removal, renewal, relocation and repair of the cemetery, crematorium, structure or thing.

**mandatory code of practice requirement**—see section 31 (2) (a).

**mausoleum** means a structure erected and designed as a resting place for human remains without the burial of the remains in the earth, but does not include a structure designed as a resting place exclusively for cremated human remains.

**memorial** means—

- (a) a gravestone, plaque, cenotaph or other monument, or
- (b) any other structure or permanent physical object used to memorialise a deceased person.

**natural burial** of human remains means burial in the ground—

- (a) without preparation of the remains using chemical preservatives and by containment of the remains only in a shroud or biodegradable coffin, and
- (b) with no memorialisation on the interment site.

**operator** of a cemetery and **cemetery operator** means the following—

- (a) for a Crown cemetery or crematorium—the Crown cemetery operator,
- (b) for a cemetery or crematorium administered by a council having control under section 48 of the [Local Government Act 1993](#)—the council,
- (c) in any other case—the person or body for the time being responsible for the management of the cemetery or crematorium.

**private burial** means placing human remains in a grave or vault located on private land where the area of landholding is 5 hectares or more and the location has been approved for that purpose by a local government authority or on other private land prescribed by the regulations.

**renewable interment right**—see section 54.

**short term order**—see section 36.

**stillborn child** has the same meaning as in the [Births, Deaths and Marriages Registration Act 1995](#).

**Tribunal** means the Civil and Administrative Tribunal.

**trust board** means a trust board appointed under section 74.

**voting member** of the Board—see clause 1 of Schedule 1.