



New South Wales

# Cemeteries Legislation Amendment (Unused Burial Rights) Bill 2001

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Necropolis Act 1901* so as to allow the body of trustees for a cemetery at Rookwood to revoke burial rights it has granted if they remain unused for more than 60 years, and to provide for the compensation of holders of burial rights revoked by the trustees in those circumstances, and
- (b) to amend the *Crown Lands (General Reserves) By-law 2001* so as to allow the reserve trust for any other public cemetery to revoke burial rights it has granted if they remain unused for more than 60 years, and to provide for the compensation of holders of burial rights revoked by the trust in those circumstances, and
- (c) to make minor, consequential and ancillary amendments to the *Crown Lands Act 1989* and the *Land Acquisition (Just Terms Compensation) Act 1991*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Necropolis Act 1901* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Crown Lands (General Reserves) By-law 2001* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to the amendments to the *Crown Lands Act 1989* and the *Land Acquisition (Just Terms Compensation) Act 1991* set out in Schedule 3.

## Schedule 1 Amendment of Necropolis Act 1901

### Revocation of exclusive rights of burial

**Schedule 1 [1]** amends section 24 so as to enable a body of trustees that has granted exclusive rights of burial to revoke those rights if they remain unused for more than 60 years, provided that it advertises its intention to do so in accordance with the regulations under the Act.

**Schedule 1 [2]** inserts proposed section 24A. The new section requires a body of trustees that has revoked a person's exclusive rights of burial in certain circumstances to compensate the person, either by granting the person burial rights for an alternative burial place in the same cemetery or by paying the person an amount equivalent to half the fee currently chargeable by the trustees for such a burial place. It also empowers the regulations under the Act to control the manner in which, and the time within which, an application for compensation is to be made.

**Schedule 1 [4]** amends the Fifth Schedule so as to authorise the regulations under the Act to make savings and transitional provisions. **Schedule 1 [3]** makes a consequential amendment.

## **Schedule 2 Amendment of Crown Lands (General Reserves) By-law 2001**

### **Revocation of exclusive rights of burial**

**Schedule 2** inserts proposed clauses 31A and 31B.

**Proposed clause 31A** enables a reserve trust for a cemetery that has granted exclusive rights of burial to revoke those rights if they remain unused for more than 60 years.

**Proposed clause 31B** requires a reserve trust that has revoked a person's exclusive rights of burial in certain circumstances to compensate the person, either by granting the person burial rights for an alternative burial place in the same cemetery or by paying the person an amount equivalent to half the fee currently chargeable by the trust for such a burial place.

## **Schedule 3 Amendment of other Acts**

### **Crown Lands Act 1989 No 6**

**Schedule 3.1** amends section 128 so as to ensure that the power to make by-laws under the Act in relation to land reserved for the purposes of a public cemetery is sufficient to support provisions of the kind being inserted into the *Crown Lands (General Reserves) By-law 2001* by Schedule 2.

### **Land Acquisition (Just Terms Compensation) Act 1991 No 22**

**Schedule 3.2** amends section 6 so as to ensure that the Act does not apply to any acquisition of land arising from the revocation of exclusive rights of burial that have been granted under an Act in relation to a public cemetery.



New South Wales

# Cemeteries Legislation Amendment (Unused Burial Rights) Bill 2001

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Necropolis Act 1901 (1902 No 20)	2
4 Amendment of Crown Lands (General Reserves) By-law 2001	2
5 Amendment of other Acts	2
<b>Schedules</b>	
1 Amendment of Necropolis Act 1901	3
2 Amendment of Crown Lands (General Reserves) By-law 2001	6
3 Amendment of other Acts	8



New South Wales

# **Cemeteries Legislation Amendment (Unused Burial Rights) Bill 2001**

No. , 2001

---

## **A Bill for**

An Act to amend the *Necropolis Act 1901*, the *Crown Lands Act 1989* and other legislation with respect to the revocation of exclusive rights of burial and associated compensation; and for other purposes.

---

---

<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Cemeteries Legislation Amendment (Unused Burial Rights) Act 2001</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Necropolis Act 1901 (1902 No 20)</b>	8
The <i>Necropolis Act 1901</i> is amended as set out in Schedule 1.	9
<b>4 Amendment of Crown Lands (General Reserves) By-law 2001</b>	10
The <i>Crown Lands (General Reserves) By-law 2001</i> is amended as set out in Schedule 2.	11 12
<b>5 Amendment of other Acts</b>	13
Each Act listed in Schedule 3 is amended as set out in that Schedule.	14

---

<b>Schedule 1</b>	<b>Amendment of Necropolis Act 1901</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 24 Burial rights</b>	3
	Insert after section 24 (3):	4
	(4) Each body of trustees may revoke any exclusive rights of burial it has granted if those rights are not exercised within 60 years after they are granted.	5 6 7
	(5) Before revoking any exclusive rights of burial under subsection (4), the body of trustees must cause notice of its intention to do so to be advertised in accordance with the regulations.	8 9 10 11
<b>[2]</b>	<b>Section 24A</b>	12
	Insert after section 24:	13
	<b>24A Compensation for revocation of exclusive rights of burial</b>	14
	(1) This section applies to the revocation of exclusive rights of burial by the body of trustees for a cemetery in which there are alternative burial places that are uncommitted (that is, burial places that are unused and for which nobody holds exclusive rights of burial).	15 16 17 18 19
	(2) If the body of trustees revokes the exclusive rights of burial for a burial place, whether granted before or after the commencement of this section, the former holder of those rights is entitled:	20 21 22 23
	(a) to be granted exclusive rights of burial:	24
	(i) for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and	25 26 27
	(ii) for an equivalent period to that for which the original exclusive rights of burial were granted, or	28 29 30

(b)	to be paid by the trustees, by way of compensation, an amount equal to half of the fee payable (as provided by the trustees' current scale of fees) for the granting of exclusive rights of burial:	1
		2
		3
		4
(i)	for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and	5
		6
		7
(ii)	for an equivalent period to that for which the original exclusive rights of burial were granted.	8
		9
(3)	The body of trustees may elect whether the former holder of the revoked exclusive rights of burial is to be granted an alternative burial place or paid compensation.	10
		11
		12
(4)	The regulations may make provision for or with respect to the manner in which, and the time within which, an application for an entitlement under this section must be made.	13
		14
		15
(5)	In this section, <i>former holder</i> of revoked exclusive rights of burial means the person who held those rights immediately before they were revoked.	16
		17
		18
<b>[3]</b>	<b>Fifth Schedule Savings and transitional provisions</b>	19
	Omit the heading " <i>Necropolis (Amendment) Act 1986</i> ".	20
<b>[4]</b>	<b>Fifth Schedule, clause 1A</b>	21
	Insert before clause 1 of the Fifth Schedule:	22
<b>1A</b>	<b>Regulations</b>	23
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	24
		25
		26
	<i>Cemeteries Legislation Amendment (Unused Burial Rights) Act 2001</i>	27
		28
(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.	29
		30
		31



- 
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, 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.

<b>Schedule 2</b>	<b>Amendment of Crown Lands (General Reserves) By-law 2001</b>	1
		2
	(Section 4)	3
<b>Clauses 31A and 31B</b>		4
Insert after clause 31:		5
<b>31A Revocation of exclusive rights of burial</b>		6
A reserve trust may revoke any exclusive rights of burial it has granted if those rights are not exercised within 60 years after they are granted.		7 8 9
<b>31B Compensation</b>		10
(1) This clause applies to the revocation of exclusive rights of burial by a reserve trust for a cemetery in which there are alternative burial places that are uncommitted (that is, burial places that are unused and for which nobody holds exclusive rights of burial).		11 12 13 14 15
(2) If a reserve trust revokes the exclusive rights of burial for a burial place, whether granted before or after the commencement of this clause, the former holder of those rights is entitled:		16 17 18 19
(a) to be granted exclusive rights of burial:		20
(i) for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and		21 22 23
(ii) for an equivalent period to that for which the original exclusive rights of burial were granted, or		24 25 26
(b) to be paid by the trust, by way of compensation, an amount equal to half of the fee payable (as provided by the trust's current scale of fees) for the granting of exclusive rights of burial:		27 28 29 30
(i) for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and		31 32 33

- 
- |      |  |             |
|------|--|-------------|
| (ii) | for an equivalent period to that for which the original exclusive rights of burial were granted.   | 1<br>2      |
| (3)  | The reserve trust may elect whether the former holder of the revoked exclusive rights of burial is to be granted an alternative burial place or paid compensation. | 3<br>4<br>5 |
| (4)  | In this clause, <i>former holder</i> of revoked exclusive rights of burial means the person who held those rights immediately before they were revoked.            | 6<br>7<br>8 |

<b>Schedule 3</b>	<b>Amendment of other Acts</b>	1
	(Section 5)	2
<b>3.1</b>	<b>Crown Lands Act 1989 No 6</b>	3
	<b>Section 128 By-laws</b>	4
	Insert after section 128 (1) (p):	5
	(p1) the granting, transfer and revocation of exclusive rights of burial in relation to a reserve that is dedicated or used for the purposes of a public cemetery,	6 7 8
	(p2) the measures to be taken by way of compensation to former holders of exclusive rights of burial in the event that those rights are revoked,	9 10 11
<b>3.2</b>	<b>Land Acquisition (Just Terms Compensation) Act 1991 No 22</b>	12
	<b>Section 6 Acquisition of land to which Act does not apply</b>	13
	Insert at the end of section 6 (c):	14
	, or	15
	(d) the acquisition consists of the revocation of exclusive rights of burial that have been granted under an Act in relation to a public cemetery.	16 17 18