



New South Wales

Cemeteries and Crematoria Bill 2013

Explanatory note

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

Overview of Bill

The objects of this Bill 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 11 of the *Crown Lands Act 1989*.

Outline of provisions

Part 1 Preliminary

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 states the objects of the proposed Act.

Clause 4 provides that certain words or expressions are defined in the Dictionary to the proposed Act or have the same meaning as in the *Crown Lands Act 1989*. It also states that references in the proposed Act to a *cemetery* in general extend to include references to a crematorium and to part of a cemetery or crematorium and references to a *cemetery operator* include references to a crematorium operator or an operator of part of a cemetery or crematorium.

Clause 5 describes the relationship between the proposed Act and certain other legislation.

Part 2 Administration

Division 1 Constitution and management of Cemeteries Agency

Clauses 6–11 constitute Cemeteries and Crematoria NSW (the *Cemeteries Agency*) as a body corporate and deal with its management, control and staff. All decisions relating to the functions of the Cemeteries Agency are to be made by or under the authority of the Board of the Cemeteries Agency (the *Board*). The Chief Executive Officer of the Cemeteries Agency is responsible for the day-to-day management of the affairs of the Cemeteries Agency subject to the policies and directions of the Board.

Division 2 Functions of Cemeteries Agency

Subdivision 1 Principal functions

Clauses 12 and 13 set out the principal functions of the Cemeteries Agency and make it clear that the Cemeteries Agency may do all acts necessary or expedient for the exercise of its functions.

Subdivision 2 Ancillary functions

Clauses 14 and 15 set out some ancillary functions of the Cemeteries Agency. These include a reserve power to acquire land and transfer it to the operator of a Crown cemetery trust or other cemetery operator in specified circumstances if the Cemeteries Agency considers it is necessary to do so to ensure equitable access to interment services by all religious and cultural groups (clause 14).

Division 3 The Board

Subdivision 1 Constitution of Board

Clause 16 provides for the constitution of the Board and the voting rights of its members.

Subdivision 2 Duties and liabilities of Board members

Clauses 17–21 contain provisions requiring the honest and diligent conduct of, and the disclosure of personal interests by, voting members of the Board. A person who contravenes such a provision is liable to a civil penalty.

Division 4 Finance

Clauses 22–25 contain provisions relating to financial matters, including the establishment of a Cemeteries Agency Fund, the amounts to be paid into and out of that Fund and investment powers in relation to the Fund. Clause 24 enables the Cemeteries Agency to impose general and special levies on operators of cemeteries, or classes of cemetery, prescribed by the regulations. General levies are contributions towards the cost of the administration of the proposed Act to the extent that it relates to cemeteries. Special levies may be imposed as a contribution towards the cost of

acquiring land under clause 14. Contributions by way of a special levy will not be able to exceed an amount in total to be prescribed by the regulations.

Part 3 Regulation of interment industry

Division 1 Preliminary

Clause 26 defines *interment industry* to include the operators of cemeteries, funeral directors, funeral contribution funds and other persons, or persons of a class, prescribed by the regulations.

Clause 27 requires the Cemeteries Agency to keep a register of cemeteries and crematoria. An operator of a cemetery must not fail to provide the Cemeteries Agency with certain information prescribed as information that must be included in the register or fail to notify material changes in that information. An operator who contravenes this provision is liable to a civil penalty.

Division 2 Codes of practice

Clauses 28–30 provide for the development and approval of codes of practice to provide guidelines regarding activities of participants in the interment industry or sectors of the industry. The Cemeteries Agency may develop a code of practice on its own initiative or in collaboration with interment industry participants. Compliance with a code of practice will not be mandatory unless made so by a regulation establishing an interment industry scheme under proposed Division 3.

Division 3 Interment industry schemes

Clauses 31 and 32 provide for the establishment by the regulations of an interment industry scheme following consultation with participants in the interment industry that will be affected. A scheme may, for example, require compliance with the whole or part of a code of practice, require the operators of cemeteries to ensure adequate provision is made for perpetual care of interment sites or require the licensing of activities, persons or businesses providing interment services. A person who fails to comply with a requirement of a scheme that applies to the person is liable to a civil penalty.

Division 4 Improvement notices

Clauses 33–35 enable the Cemeteries Agency to issue an improvement notice requiring the operator of a cemetery to end a contravention of a provision of an interment industry scheme or take action to remedy the consequences of the contravention within a stated time. An operator who contravenes an improvement notice by failing to end a contravention of a provision of an interment industry scheme is liable to a civil penalty. If the operator fails to remedy the consequences, the Cemeteries Agency may take action to do so and the cost of that action will be payable by the operator.

Division 5 Short term orders

Clauses 36–38 enable the Cemeteries Agency to order operators of cemeteries to take specified action or refrain from taking specified action 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 the proposed Act pending the making of a regulation under proposed section 31 establishing an interment industry scheme that makes provision for a mandatory code of practice requirement. An operator who contravenes a short term order is liable to a civil penalty.

Division 6 Enforceable undertakings

Clauses 39 and 40 enable the Cemeteries Agency to accept undertakings to take action or refrain from taking action from a person who the Cemeteries Agency considers has contravened the proposed Act, the regulations or a provision of an interment industry scheme. An undertaking will be able to be enforced (including by the making of orders relating to compensation) by the Local Court or any other court or tribunal prescribed by the regulations.

Division 7 Management of cemetery operators

Clauses 41–43 enable the Cemeteries Agency to require cemetery operators to report to the Cemeteries Agency about the operators' performance in managing cemeteries and to keep certain records. An operator who fails to comply with the reporting and record requirements is liable to a civil penalty.

Part 4 Interment rights and cemetery renewal

At present, provisions of the *Crown Lands (General Reserves) By-law 2006* (the *CL By-law*) provide for a burial licence scheme for Crown cemeteries for which a reserve trust has been established under the *Crown Lands Act 1989*. A burial licence entitles its holder to a right of burial with respect to a particular place and, under the common law, a right to remain interred until dissolution arises on burial.

The proposed Part incorporates the current provisions with necessary adaptations to provide for one form of authority (an *interment right*) giving both a right to burial in a particular place and a further right to remain interred undisturbed for all cemeteries. The duration of that right will depend on whether the interment right is a perpetual interment right or a renewable interment right within the meaning of clause 47.

Division 1 Preliminary

Clause 44 defines certain terms for the purposes of the proposed Part, including *interment right*.

Division 2 Interment rights

Subdivision 1 Preliminary

Clause 45 provides for the application of the proposed Division. It makes it clear that burial licences granted under the *Crown Lands Act 1989* and other rights, licences or entitlements that are similar in nature to interment rights given before the commencement of the proposed section under the proposed Division are preserved unless otherwise provided.

Subdivision 2 Interment rights generally

Clause 46 states the nature of an interment right given under the proposed Division.

An interment right requires the cemetery operator:

- (a) to 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) to permit any such 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) to permit a memorial to the deceased person to be erected at the site with the approval of the cemetery operator, and
- (d) to 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 the proposed Act) unless disturbance or removal at an earlier time is requested or authorised by the holder of the interment right, and
- (e) to 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 the proposed Act unless disturbance at an earlier time is requested or authorised by the holder of the interment right.

A cemetery operator who disturbs remains or a memorial in contravention of the provisions described in paragraph (d) and (e) is liable to a civil penalty.

Subject to the regulations, a cemetery operator must also ensure that any remains that are disturbed or removed are dealt with in accordance with any cultural or religious practices applicable to the remains.

Clauses 47 and 48 describe the types and duration of interment rights. An interment right may be granted in perpetuity (a *perpetual interment right*) or for the period an interment right granted under proposed section 54 remains in force (a *renewable interment right*).

Clauses 49–51 provide for the bequeathal of interment rights, the effect of intestacy of the holder of such a right and for the devolution of the right on the death of a joint holder. They essentially mirror clauses 31–33 of the CL By-law with necessary modifications for the wider application of the provisions explained above.

Clause 49 requires the executor of the estate of the holder of an interment right who has bequeathed the right to notify the cemetery operator of the death of the holder. This is to enable the operator to more easily comply with the requirements of the proposed Act concerning the keeping of a cemetery operator's register (clause 63).

Clauses 52 and 53 provide for the revocation of unexercised perpetual interment rights and payment of compensation on revocation. They are similar to clauses 34 and 35 of the CL By-law.

Subdivision 3 Renewable interment rights

Clause 54 provides for the grant and renewal of renewable interment rights. A renewable interment right is granted for an initial term of up to 99 years for cremated remains and 25 years for human remains other than cremated remains. The right may (and in specified cases must) be renewed by the operator on application by the holder for further terms of at least 5 years so long as the aggregate of the initial and any further terms does not exceed 99 years.

Clause 55 provides for the re-use of an interment site 2 years after the expiration of a renewable interment right. An interment site can only be re-used after the notice requirements set out in the clause have been complied with and the necessary authorisations obtained. Before an interment site is re-used, the cemetery operator must ensure that any cremated remains are returned to the holder of the right or scattered in the cemetery and that any bodily remains of a deceased person 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. An interment site cannot be re-used if this requirement cannot be complied with because of the insufficiently decomposed state of such bodily remains or if certain specified memorials are erected on the site. In any case, an interment site cannot be reused until human remains of a deceased person (other than cremated remains) that are interred in the site have been interred for at least 10 years (or such other period as may be prescribed by the regulations). A cemetery operator who contravenes certain of these requirements is liable to a civil penalty.

Subdivision 4 Grant and transfer of interment rights generally

Clauses 56–62 contain provisions relating to the grant and transfer of interment rights. The provisions relating to transfer largely mirror (with necessary modifications) clauses 28–30 of the CL By-law.

Subdivision 5 Miscellaneous

Clause 63 requires the operator of a cemetery to maintain a register containing particulars relating to the grant of interment rights and other specified events. Operators will also be required to include particulars relating to burials and cremations. This requirement will replace the requirement to keep registers of these matters under the *Public Health Regulation 2012*. An operator who contravenes these requirements is liable to a civil penalty.

Clauses 64–68 contain provisions concerning the keeping of registers and documents and the exhumation and interment of bodies. An operator who contravenes certain such provisions under proposed section 64 is liable to a civil penalty.

Clause 69 requires a cemetery operator to establish a heritage advisory committee if renewable interment rights are offered.

Division 3 Cemetery renewal

Clauses 70–75 largely mirror the provisions of clauses 34A–34F of the CL By-law with necessary modifications to enable such a scheme to be implemented by the operator of any cemetery (not only for a reserve dedicated or reserved for cemetery purposes under the *Crown Lands Act 1989*) with the approval of the Cemeteries Agency. Approval of a renewal scheme for a cemetery enables the re-development of existing parts of the cemetery to accommodate new burial sites and locations for memorials.

Division 4 Offence

Clause 76 creates an offence concerning conduct in cemeteries.

Part 5 Operation of Crown cemeteries and crematoria

Division 1 Preliminary

Clause 77 defines certain terms and expressions used in the proposed Part.

Clause 78 enables the Cemeteries Agency to exempt a Crown cemetery operator, class of Crown cemetery operators, trust member or class of trust members from the operation of provisions of the proposed Part.

Division 2 Cemetery trust operators

Subdivision 1 Appointment of trust operators

Clauses 79–86 mirror (with necessary modifications) section 92 (6)–(6B) and related provisions of the *Crown Lands Act 1989* so that the affairs of reserve trusts for cemetery and crematorium, and related, purposes established after the commencement of proposed section 79 will be managed by trust members appointed under the proposed Act instead of that Act.

Subdivision 2 Conduct of trust members

Clauses 87–91, 93 and 94 contain provisions requiring the honest and diligent conduct of, and the disclosure of personal interests by, trust members. A person who contravenes such a provision is liable to a civil penalty. **Clause 92** requires a Crown cemetery operator to prepare a code of conduct to be complied with by trust members. This requirement and the provisions of such a code will apply to both trust members appointed under the proposed Act and those appointed under the *Crown Lands Act 1989* before the commencement of the new provisions.

Clause 95 protects certain persons from personal liability for acts or omissions done in good faith in the course of managing the affairs of a Crown cemetery trust.

Subdivision 3 Strategic plans

Clauses 96–98 require a Crown cemetery operator to prepare a strategic plan identifying the main priorities for the future of a Crown cemetery in the period to which the plan relates in accordance with guidelines made by the Cemeteries Agency. This requirement will apply to both Crown cemetery operators appointed under the proposed Act and those appointed under the *Crown Lands Act 1989* before the commencement of the new provisions.

Subdivision 4 Plans of management

Clauses 99–104 require a Crown cemetery operator to prepare a draft plan of management in accordance with guidelines made by the Cemeteries Agency and to submit it to the Cemeteries Agency for adoption. If a plan of management is adopted, the operator must carry out and give effect to it and no operations may be undertaken in relation to the cemetery except in accordance with the plan. This requirement will apply to both Crown cemetery operators appointed under the proposed Act and those appointed under the *Crown Lands Act 1989* before the commencement of the new provisions.

Subdivision 5 Financial management, audits and reports

Clauses 105–108 contain provisions relating to financial and audit matters such as annual reports. The requirements will apply to both Crown cemetery operators appointed under the proposed Act and those appointed under the *Crown Lands Act 1989* before the commencement of the new provisions. The provision relating to annual reports will only apply in respect of a financial year commencing on or after 1 July 2014 (see clause 8 of Schedule 3).

A Crown cemetery operator who fails to comply with a direction given by the Cemetery Agency under proposed section 107 (1) concerning provision of information relating to a financial report or operations is liable to a civil penalty.

Subdivision 6 Committees

Clauses 109–111 require a trust board to establish a finance committee, an audit and risk committee and a community advisory committee in accordance with guidelines made by the Cemeteries Agency and contain provisions with respect to the membership and procedure of such committees.

Subdivision 7 Miscellaneous

Clauses 112 and 113 contain provisions with respect to the powers exercisable by Crown cemetery operators, including the powers to fix fees and charges.

Part 6 Legal proceedings and other matters

Division 1 Proceedings for offences

Clauses 114–117 are provisions with respect to proceedings for offences and the issue of penalty notices.

Division 2 Civil penalty provisions

Clauses 118–128 are provisions with respect to proceedings in respect of civil penalty provisions.

Division 3 Civil infringement notices

Clauses 129 and 130 are provisions with respect to proceedings for the issue of civil infringement notices in respect of civil penalty provisions.

Part 7 Investigation and enforcement powers

Division 1 Appointment of authorised officers

Clauses 131–133 provide for the appointment, scope of authority and identification of authorised officers.

Division 2 Powers of authorised officers

Clauses 134–142 deal with the powers of authorised officers.

Division 3 Offences in relation to authorised officers

Clauses 143 and 144 make it an offence to obstruct an authorised officer in the exercise of his or her functions under the proposed Act or to impersonate an authorised officer.

Part 8 Miscellaneous

Clause 145 provides for the service of documents under the proposed Act.

Clause 146 provides for the exchange of information between the Cemeteries Agency and specified government agencies.

Clause 147 protects certain persons from personal liability for acts or omissions done in good faith.

Clause 148 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 149 provides for the review of the proposed Act in 5 years.

Schedule 1 Members and procedure of Board

Schedule 1 contains provisions dealing with the constitution and procedure of the Board.

Schedule 2 Members and procedure of trust boards

Schedule 2 contains provisions dealing with the constitution and procedure of trust boards. These substantially mirror Schedules 3 and 5 of the *Crown Lands Act 1989*.

Schedule 3 Savings, transitional and other provisions

Schedule 3 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 4 Conversion of cemeteries

Schedule 4 transfers the provisions of the *Conversion of Cemeteries Act 1974* to the proposed Act so as to enable its repeal and the consolidation of the provisions in the proposed Act.

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

Schedule 5 transfers the provisions of a number of Acts and subordinate instruments relating to certain cemeteries and crematoria so as to enable their repeal and the consolidation of the provisions in one Act. It also enables regulations to be made modifying the application of those provisions for the purposes of the proposed Act.

Schedule 6 Amendment of Acts and subordinate instruments

Schedule 6 makes consequential amendments to the Acts and subordinate instruments specified in the Schedule. It also includes amendments to section 8 of the *Summary Offences Act 1988* to extend the application of that section to conduct related to an interment site in a cemetery.

Dictionary

The Dictionary to the proposed Act defines certain terms and expressions used in the proposed Act.



New South Wales

Cemeteries and Crematoria Bill 2013

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New South Wales

Cemeteries and Crematoria Bill 2013

No. , 2013

A Bill for

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

The Legislature of New South Wales enacts:	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Cemeteries and Crematoria Act 2013</i> .	4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Objects of Act	7
The objects of this Act are as follows:	8
(a) to recognise the right of all individuals to a dignified interment and treatment of their remains with dignity and respect,	9 10
(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,	11 12 13
(c) to ensure that sufficient land is acquired and allocated so that current and future generations have equitable access to interment services,	14 15
(d) to provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria,	16 17
(e) to ensure that the operators of cemeteries and crematoria demonstrate satisfactory levels of accountability, transparency and integrity,	18 19
(f) to ensure that cemeteries and crematoria on Crown land are managed in accordance with the principles of Crown land management specified in section 11 of the <i>Crown Lands Act 1989</i> .	20 21 22
4 Interpretation	23
(1) Expressions used in this Act that are defined in the Dictionary have the meanings set out in the Dictionary.	24 25
(2) Unless the contrary intention is shown, a reference in this Act to:	26
(a) a <i>cemetery</i> includes a reference to:	27
(i) a crematorium, and	28
(ii) a part of a cemetery or crematorium, and	29
(b) a <i>cemetery operator</i> includes a reference to:	30
(i) a crematorium operator, and	31
(ii) an operator of part of a cemetery or crematorium.	32
(3) An expression that is used in this Act and that is defined in the <i>Crown Lands Act 1989</i> (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 a reserve or person managing the affairs of a reserve trust, respectively.	33 34 35 36
Note. Expressions used in this Act (or in a particular provision of this Act) that are defined in the <i>Interpretation Act 1987</i> have the meanings set out in that Act.	37 38
(4) Notes included in this Act do not form part of this Act.	39
5 Relationship of Act and Crown Lands Act 1989 and other legislation	40
(1) Nothing in the <i>Crown Lands Act 1989</i> or an instrument made under that Act (including any by-law or plan of management for a reserve) prevents or restricts the	41 42

use of a reserve for anything that is authorised, permitted or required by or under this Act.	1 2
(2) If provision is made both by or under the <i>Crown Lands Act 1989</i> 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 <i>Crown Lands Act 1989</i> .	3 4 5 6
(3) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of the <i>Crown Lands Act 1989</i> 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.	7 8 9 10 11
(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:	12 13 14
(a) <i>Aboriginal Land Rights Act 1983</i> ,	15
(b) <i>Fair Trading Act 1987</i> ,	16
(c) <i>Funeral Funds Act 1979</i> ,	17
(d) <i>Heritage Act 1977</i> ,	18
(e) <i>National Parks and Wildlife Act 1974</i> ,	19
(f) <i>Public Health Act 2010</i> ,	20
(g) <i>Threatened Species Conservation Act 1995</i> .	21

Part 2 Administration	1
Division 1 Constitution and management of Cemeteries Agency	2
6 Constitution of Cemeteries and Crematoria NSW	3
There is constituted by this Act a body corporate with the corporate name of Cemeteries and Crematoria NSW.	4 5
Note. Section 50 of the <i>Interpretation Act 1987</i> provides for the powers of a statutory corporation.	6 7
7 Status of Cemeteries Agency	8
(1) The Cemeteries Agency is a NSW Government agency.	9
(2) The Cemeteries Agency is, for the purposes of the <i>Public Finance and Audit Act 1983</i> , the <i>Annual Reports (Departments) Act 1985</i> , or any other Act prescribed by the regulations, taken to be part of the Department.	10 11 12
8 Control and management of Cemeteries Agency	13
(1) All decisions relating to the functions of the Cemeteries Agency are to be made by or under the authority of the Board.	14 15
(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.	16 17
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.	18 19 20
(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.	21 22 23
9 Ministerial control of Cemeteries Agency	24
(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:	25 26
(a) the contents of any advice, report or recommendation given to the Minister,	27
(b) decisions whether to grant, suspend or cancel a licence held by a particular person under an interment industry scheme,	28 29
(c) decisions whether to institute civil or criminal proceedings in a particular case.	30
(2) The Minister must:	31
(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,	32 33 34 35
and	35
(b) give the direction in writing.	36
(3) The Cemeteries Agency is to publish a copy of the direction in the Gazette.	37
10 Staff of Cemeteries Agency	38
(1) Persons may be employed in the Public Service to enable the Cemeteries Agency to exercise its functions.	39 40
(2) The Cemeteries Agency may engage such consultants and independent contractors as it requires to exercise its functions.	41 42

(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.	1 2 3
	Note. See section 95A of the <i>Police Act 1990</i> .	4
11	Delegation of functions	5
(1)	The Cemeteries Agency may delegate to an authorised person any of its functions, other than this power of delegation.	6 7
(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.	8 9 10
(3)	The following powers may not be delegated:	11
(a)	the power under section 14 to acquire land in certain circumstances,	12
(b)	the power under section 36 to make a short term order,	13
(c)	the power under section 70 to approve a cemetery renewal scheme.	14
(4)	In this section, <i>authorised person</i> means:	15
(a)	a member of the Board, or	16
(b)	a member of staff of a Government agency, or	17
(c)	a person, or person of a class, prescribed by the regulations.	18
Division 2	Functions of Cemeteries Agency	19
Subdivision 1	Principal functions	20
12	Functions—generally	21
(1)	The functions of the Cemeteries Agency include the following:	22
(a)	to assess current and future interment needs and develop planning strategies for cemetery space to meet those needs,	23 24
(b)	to provide advice or make recommendations to the Minister in relation to the sustainable use of cemetery and crematorium space and capacity,	25 26
(c)	to develop, approve and promote voluntary codes of practice for cemeteries and crematoria and report on adoption of those codes by the interment industry,	27 28 29
(d)	to provide advice or make recommendations to the Minister on the establishment, implementation or alteration of interment industry schemes,	30 31
(e)	to regulate the provision of services in relation to interment matters that are subject to interment industry schemes,	32 33
(f)	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,	34 35 36
(g)	to collect information and carry out research as is necessary to exercise its functions.	37 38
(2)	In exercising its functions, the Cemeteries Agency is to have regard to the objects of this Act.	39 40
13	Other functions	41
(1)	The Cemeteries Agency has such other functions as are conferred or imposed on it by or under this or any other Act.	42 43

(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.	1 2
Subdivision 2 Ancillary functions		3
14 Reserve power to acquire land in the public interest		4
(1)	The Cemeteries Agency may:	5
(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:	6 7
(i)	acquire land by agreement (not compulsory process) for the purpose of providing land for cemetery purposes,	8 9
(ii)	transfer the land to a Crown cemetery trust or other operator or prospective operator of a cemetery, or	10 11
(b)	with the approval of the Minister administering the <i>Crown Lands Act 1989</i> and subject to such conditions as the Minister thinks fit to impose, require a Crown cemetery trust to acquire land by agreement (not compulsory process) for the purposes of the Crown cemetery under its care, control and management.	12 13 14 15
(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.	16 17 18 19
(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:	20 21
(a)	are satisfied that the Crown cemetery trust concerned has sufficient funds available for the acquisition, and	22 23
(b)	has taken into consideration the impact of the land acquisition on the trust, including (without limitation) the long term financial implications for the care, control and management of the additional land.	24 25 26
(4)	For the purposes of the <i>Public Works Act 1912</i> , 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.	27 28 29
(5)	Sections 34, 35, 36 and 37 of the <i>Public Works Act 1912</i> do not apply to or in respect of works constructed on land acquired under this section.	30 31
15 Arrangements with other persons and bodies		32
	The Cemeteries Agency may:	33
(a)	appoint agents, and act as an agent, for other persons and bodies, and	34
(b)	enter into arrangements with a government agency with respect to the exercise under this Act of the functions of authorised officers.	35 36
Division 3 The Board		37
Subdivision 1 Constitution of Board		38
16 Board of the Cemeteries Agency		39
(1)	There is to be a Board of the Cemeteries Agency.	40
(2)	The Board is to consist of the following members:	41
(a)	a person appointed by the Minister by instrument in writing as the Chair of the Board,	42 43

- (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, 1
2
3
- (c) the head of, or a person nominated by the head to represent each of the following: 4
5
- (i) the Department of Planning and Infrastructure, 6
- (ii) the Office of Environment and Heritage, Department of Premier and Cabinet, 7
8
- (iii) NSW Fair Trading, Department of Finance and Services, 9
- (iv) the Crown Lands Division, Department of Trade and Investment, Regional Infrastructure and Services, 10
11
- (d) a person nominated by the Director General of the Ministry of Health to represent NSW Health, 12
13
- (e) a person who: 14
- (i) has knowledge and expertise relevant to local government matters, and 15
- (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, 16
17
18
19
- (f) the Chief Executive Officer. 20
- (3) A person is not eligible to be a voting member of the Board if the person is an interment industry participant. 21
22
- (4) 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. 23
24
- (5) 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. 25
26
27
- (6) In this section: 28
- interment industry participant* means a person who is: 29
- (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 30
31
32
33
- (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 34
35
36
- (c) is an employee of such a participant. 37
- (7) Schedule 1 contains provisions with respect to the members and procedure of the Board. 38
39

Subdivision 2 Duties and liabilities of Board members 40

17 Interpretation 41

- A person is *involved in a contravention* of a provision of this Division if, and only if, the person: 42
43
- (a) has aided, abetted, counselled or procured the contravention, or 44
- (b) has induced, whether by threats or promises, or otherwise, the contravention, or 45
46

(c)	has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention, or	1 2
(d)	has conspired with others to effect the contravention.	3
18	Care and diligence—civil obligation only	4
(1)	Care and diligence—voting members of Board	5
	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:	6 7 8
(a)	were a member of the Board in the Cemeteries Agency’s circumstances, and	9
(b)	occupied the office held by, and had the same responsibilities as, the member of the Board.	10 11
	Maximum civil penalty: \$27,500.	12
(2)	Business judgment rule	13
	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:	14 15 16
(a)	makes the judgment in good faith for a proper purpose, and	17
(b)	does not have a material personal interest in the subject matter of the judgment, and	18 19
(c)	informs the member about the subject matter of the judgment to the extent that the member reasonably believes to be appropriate, and	20 21
(d)	rationally believes that the judgment is in the best interests of the Cemeteries Agency.	22 23
(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.	24 25 26
	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.	27 28 29 30
(4)	In this section:	31
	business judgment means any decision to take or not take action in respect of a matter relevant to the functions of the Cemeteries Agency.	32 33
19	Disclosure of material personal interest—civil obligations	34
(1)	If:	35
(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	36 37 38
(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,	39 40
	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.	41 42
	Maximum civil penalty: \$5,500.	43
(2)	A disclosure by a member of the Board at a meeting of the Board that the member:	44
(a)	is a member, or is in the employment, of a specified company or other body, or	45
(b)	is a partner, or is in the employment, of a specified person, or	46

(c)	has some other specified interest relating to a specified company or other body or to a specified person,	1
	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.	2
(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.	3
(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:	4
(a)	be present during any deliberation of the Board with respect to the matter, or	5
(b)	take part in any decision of the Board with respect to the matter.	6
	Maximum civil penalty: \$5,500.	7
(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:	8
(a)	be present during any deliberation of the Board for the purpose of making the determination, or	9
(b)	take part in the making by the Board of the determination.	10
(6)	A contravention of this section does not invalidate any decision of the Board.	11
20	Use of position—civil obligations	12
(1)	Use of position—member of the Board	13
	A member of the Board must not improperly use his or her position to:	14
(a)	gain an advantage for the member of the Board or someone else, or	15
(b)	cause detriment to the Cemeteries Agency.	16
	Maximum civil penalty: \$27,500.	17
(2)	A person who is involved in a contravention of subsection (1) contravenes this subsection.	18
	Maximum civil penalty: \$27,500.	19
21	Use of information—civil obligations	20
(1)	Use of information—former member of Board	21
	A person who obtains information because they are, or have been, a member of the Board must not improperly use the information to:	22
(a)	gain an advantage for the member of the Board or someone else, or	23
(b)	cause detriment to the Cemeteries Agency.	24
	Maximum civil penalty: \$27,500.	25
(2)	The duty under subsection (1) continues after the person stops being a member of the Board.	26
(3)	A person who is involved in a contravention of subsection (1) contravenes this subsection.	27
	Maximum civil penalty: \$27,500.	28

Division 4	Finance	1
22	The Cemeteries Agency Fund	2
(1)	There is to be established in the Special Deposits Account a Cemeteries and Crematoria NSW Fund (the <i>Cemeteries Agency Fund</i>) into which is to be paid the following:	3 4 5
(a)	all money advanced to the Cemeteries Agency by the Treasurer or appropriated by Parliament for the purposes of the Cemeteries Agency,	6 7
(b)	all money directed or authorised to be paid into the Cemeteries Agency Fund by or under this or any other Act,	8 9
	Note. See, for example, section 6 (1) (f1) of the <i>Public Reserves Management Fund Act 1987</i> .	10 11
(c)	levies or other payments made under section 24,	12
(d)	payments directed to be paid to the Cemeteries Agency under section 40,	13
(e)	the proceeds of the investment of money in the Cemeteries Agency Fund,	14
(f)	all money received by the Cemeteries Agency from any other source.	15
(2)	Money may be paid from the Cemeteries Agency Fund for the following purposes:	16
(a)	enabling the Cemeteries Agency to exercise its functions,	17
(b)	the acquisition of land under section 14.	18
(3)	All expenditure incurred by the Cemeteries Agency is to be paid from the Cemeteries Agency Fund.	19 20
23	Investment of money in Cemeteries Agency Fund	21
	The Cemeteries Agency may invest money in the Cemeteries Agency Fund:	22
(a)	in the manner authorised by the <i>Public Authorities (Financial Arrangements) Act 1987</i> , or	23 24
(b)	if that Act does not confer power on the Cemeteries Agency to invest the money, in any other manner approved by the Minister with the concurrence of the Treasurer.	25 26 27
24	Interment service levies	28
(1)	The Cemeteries Agency may levy the following:	29
(a)	a contribution towards the cost of the administration of this Act to the extent that it relates to cemeteries (a <i>general levy</i>),	30 31
(b)	in special circumstances, a contribution towards the cost of acquiring particular land under section 14 (a <i>special levy</i>).	32 33
(2)	A general levy or special levy:	34
(a)	may be imposed by reference to an interment service of a kind prescribed by the regulations, and	35 36
(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	37 38
(c)	is to be of an amount, or calculated in the manner, prescribed by the regulations, and	39 40
(d)	is payable in respect of the period prescribed by the regulations, and	41
(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.	42 43

(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.	1 2 3
(4)	A special levy under this section must not exceed an amount in total prescribed by the regulations.	4 5
(5)	The regulations may make provision for or with respect to the following:	6
(a)	the waiver, reduction, postponement or refund of any levy payable under this section,	7 8
(b)	exempting (whether conditionally or unconditionally) persons or persons of a specified class from a requirement to pay a levy imposed under this section.	9 10
(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.	11 12 13 14
(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.	15 16
(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.	17 18 19 20
25	Payment of penalties and fines into the Cemeteries Agency Fund	21
(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.	22 23 24 25
(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.	26 27 28
(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.	29 30 31
(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.	32 33 34 35
(5)	Any such regulation may be made only with the approval of the Treasurer.	36
(6)	In this section, a reference to proceedings instituted by the Cemeteries Agency includes:	37 38
(a)	a reference to proceedings instituted under the direction or on behalf, or for the benefit, of the Cemeteries Agency, and	39 40
(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.	41 42
(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.	43 44 45 46 47

Part 3	Regulation of interment industry	1
Division 1	Preliminary	2
26	Definitions	3
	In this Act:	4
	<i>interment industry</i> means the following:	5
	(a) cemetery operators,	6
	(b) funeral directors,	7
	(c) funeral funds within the meaning of the <i>Funeral Funds Act 1979</i> ,	8
	(d) any other persons, or persons of a class, prescribed by the regulations.	9
27	Cemeteries and Crematoria Register	10
(1)	The Cemeteries Agency must keep a register of cemeteries and crematoria (the <i>Cemeteries and Crematoria Register</i>).	11 12
(2)	The Cemeteries and Crematoria Register may be kept in the way the Cemeteries Agency decides.	13 14
(3)	A cemetery operator must notify the Cemeteries Agency of the following matters for inclusion on the Cemeteries and Crematoria Register:	15 16
	(a) the name and location of the cemetery or crematorium,	17
	(b) the name and address of the cemetery operator,	18
	(c) the telephone number of the cemetery or the crematorium or the cemetery operator,	19 20
	(d) any other information required by the regulations to be included in that register.	21 22
(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.	23 24 25
(5)	A cemetery operator must:	26
	(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	27 28 29
	(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.	30 31 32 33
	Maximum civil penalty: \$2,200.	34
	Note. A reference in this Part to a <i>cemetery operator</i> includes a reference to a crematorium operator—see section 4 (2).	35 36
(6)	The Cemeteries and Crematoria Register must be open for public inspection, without charge, during ordinary business hours.	37 38
(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.	39 40 41

Division 2	Codes of practice	1
28	Codes of practice	2
(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.	3 4 5 6 7
(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:	8 9
(a)	the disposal and handling of human remains (including the cremation of such remains) that is regulated by or under the <i>Public Health Act 2010</i> —without the concurrence of the Minister administering that Act,	10 11 12
(b)	funeral funds that is regulated by or under the <i>Funeral Funds Act 1979</i> —without the concurrence of the Minister administering that Act,	13 14
(c)	the supply of funeral goods and services that is regulated by or under the <i>Fair Trading Act 1987</i> —without the concurrence of the Minister administering that Act.	15 16 17
(3)	A code of practice may apply to any one or more of the following:	18
(a)	any specified activity or class of activities,	19
(b)	all participants in the interment industry or a specified sector of the industry.	20
(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.	21 22 23 24
(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.	25 26 27
29	Nature of codes of practice	28
	Codes of practice are in the nature of guidelines and compliance is not mandatory (except as provided by section 31 (2) (a) and (3)).	29 30
30	Approval of codes of practice	31
(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.	32 33
(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.	34 35 36
(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).	37 38
(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.	39 40 41

Division 3	Interment industry schemes	1
31	Regulations relating to establishment of interment industry schemes	2
(1)	The regulations may establish schemes for or with respect to the interment industry (<i>interment industry schemes</i>).	3 4
(2)	Without limiting subsection (1), the regulations establishing an interment industry scheme may make provision for or with respect to the following:	5 6
(a)	requiring compliance with any or all provisions of a code of practice (a <i>mandatory code of practice requirement</i>),	7 8
(b)	requiring an operator of a cemetery to ensure adequate provision is made for perpetual care of interment sites and the cemetery,	9 10
(c)	requiring the licensing of any activity, person, business, premises, vehicle or equipment in relation to the provision of interment services,	11 12
(d)	the imposition of conditions on licences,	13
(e)	the suspension or cancellation of licences,	14
(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,	15 16 17
(g)	setting fees and charges that are necessary for the funding of the scheme.	18
(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.	19 20 21 22
(4)	A regulation may be made under subsection (1) only:	23
(a)	with the concurrence of the Minister administering the <i>Public Health Act 2010</i> —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	24 25 26 27
(b)	with the concurrence of the Minister administering the <i>Funeral Funds Act 1979</i> —if it impacts on an aspect of the operation of funeral funds regulated by or under that Act, and	28 29 30
(c)	with the concurrence of the Minister administering the <i>Fair Trading Act 1987</i> —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.	31 32 33
32	Consultation to be undertaken on regulations establishing interment industry schemes	34 35
(1)	The Minister is to ensure that consultation with participants in the interment industry generally or a sector of the interment industry is undertaken before the making of any regulation that establishes an interment industry scheme.	36 37 38
(2)	The provisions of section 5 (Regulatory impact statements) of the <i>Subordinate Legislation Act 1989</i> 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).	39 40 41 42
(3)	Consultation is taken to have been undertaken on an interment industry scheme for the purposes of subsection (1) if:	43 44

(a)	notice of the proposed regulation establishing the interment industry scheme has been published in accordance with section 5 (2) (a) of the <i>Subordinate Legislation Act 1989</i> , and	1 2 3
(b)	consultation on the regulation has taken place in accordance with section 5 (2) (b) of that Act, and	4 5
(c)	comments and submissions received have been appropriately considered in accordance with section 5 (2) (c) of that Act.	6 7
Division 4	Improvement notices	8
33	Issue of improvement notice by Cemeteries Agency	9
(1)	The Cemeteries Agency may give the operator of a cemetery a notice under this subsection (a <i>preliminary notice</i>) if:	10 11
(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	12 13 14
(b)	the contravention is not an offence against this Act or the regulations.	15
(2)	The preliminary notice must:	16
(a)	state the contravention and the reasons for the belief, and	17
(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.	18 19 20
(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 <i>improvement notice</i>).	21 22 23 24 25
(4)	The improvement notice:	26
(a)	must require the operator to end the contravention or remedy the consequences of the contravention, or both, within a stated time, and	27 28
(b)	may state the action the operator must take to comply with the notice, and	29
(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	30 31 32
(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.	33 34 35 36 37
(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.	38 39
34	Failure to end contravention—civil obligation	40
	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.	41 42 43
	Maximum civil penalty: \$27,500.	44

35 Cemeteries Agency may take action to remedy consequences of contravention	1
(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 3 4 5 6 7
(2) The reasonable cost of any action taken under this section is a debt due to the Cemeteries Agency payable by the operator.	8 9
Division 5 Short term orders	10
36 Making of short term orders	11
(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 <i>short term order</i>).	12 13 14 15
(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.	16 17 18 19 20 21
(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.	22 23 24
(4) A short term order may be made without the concurrence of the Ministers referred to in section 31 (4).	25 26
37 Duration of short term orders	27
(1) A short term order takes effect on the day on which the order is given to the person or persons concerned.	28 29
(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.	30 31
(3) On a review, the Cemeteries Agency may confirm, vary or revoke the order.	32
(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.	33 34 35
38 Compliance with short terms orders—civil obligation	36
A person to whom a short term order is given must comply with any requirement imposed on that person by that order.	37 38
Maximum civil penalty: \$27,500.	39

Division 6	Enforceable undertakings	1
39	Undertakings relating to contraventions of Act, regulations and interment industry scheme	2 3
(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.	4 5 6
(2)	The Cemeteries Agency may accept any of the following undertakings given by the person:	7 8
(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,	9 10 11
(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,	12 13 14 15
(c)	a written undertaking of a kind specified in the regulations.	16
(3)	The person may withdraw or vary the undertaking at any time, but only with the consent of the Cemeteries Agency.	17 18
(4)	The Cemeteries Agency may, by written notice given to the person, cancel the undertaking.	19 20
(5)	The undertaking may be published in the Gazette.	21
40	Enforcement of undertakings	22
(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:	23 24
(a)	a person has given an undertaking under section 39 that has not been withdrawn or cancelled, and	25 26
(b)	the Cemeteries Agency considers the person has breached the undertaking.	27
(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:	28 29 30
(a)	an order directing the person to comply with the undertaking within a time (if any) specified in the order,	31 32
(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,	33 34 35
(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.	36 37 38
Division 7	Management of cemetery operators	39
41	Performance reporting by cemetery and crematorium operators—civil obligations	40
(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.	41 42 43 44 45

(2)	Any such requirement may specify:	1
(a)	the intervals at which operators must report to the Cemeteries Agency, and	2
(b)	the performance management criteria against which the performance of operators is to be assessed by the Cemeteries Agency.	3
(3)	A cemetery operator must comply with any requirement imposed on the operator by a notice under this section.	5
	Maximum civil penalty: \$9,900.	6
		7
42	Records—civil obligation	8
	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.	9
		10
		11
	Maximum civil penalty: \$9,900.	12
43	Reports by cemetery and crematorium operators—civil obligations	13
(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.	14
		15
		16
	Maximum civil penalty: \$9,900.	17
(2)	A cemetery operator must, at the request of the Cemeteries Agency:	18
(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	19
		20
		21
(b)	forward to the Cemeteries Agency specified records (including accounting records), or copies of or extracts from specified records, kept by the operator.	22
		23
	Maximum civil penalty: \$9,900.	24

Part 4	Interment rights and cemetery renewal	1
Division 1	Preliminary	2
44	Definitions	3
	In this Part:	4
	<i>appropriate fee</i> :	5
	(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 113, and	6 7 8
	(b) in relation to any other cemetery operator—means a fee determined in relation to a matter by the operator.	9 10
	<i>cemetery operator's register</i> means the register kept by a cemetery operator under section 63.	11 12
	<i>holder</i> 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.	13 14
	<i>interment</i> of human remains means:	15
	(a) the placement of human remains in a mausoleum, vault, columbarium or other structure designed for the placement of such remains, or	16 17
	(b) the burial in the earth of human remains (directly in the earth or in a container).	18
	<i>interment right</i> means an interment right granted under this Part.	19
	<i>interment site</i> means a place in a cemetery for the interment of human remains.	20
	<i>statutory renewal period</i> —see section 48.	21
Division 2	Interment rights	22
Subdivision 1	Preliminary	23
45	Application of Division	24
	(1) Except as provided by subsection (2), Subdivision 3 does not apply to or in respect of, or affect, the following:	25 26
	(a) any burial licence granted under the <i>Crown Lands Act 1989</i> before the commencement of this section,	27 28
	(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.	29 30 31
	(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:	32 33 34
	(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	35 36 37
	(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.	38 39 40
	(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.	41 42

- (4) This Division does not affect the operation of any regulations under the *Public Health Act 2010* relating to cemeteries. 1
2

Subdivision 2 Interment rights generally 3

46 Nature of interment right 4

- (1) A cemetery operator must: 5
- (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 6
7
 - (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 8
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 - (c) permit a memorial to the deceased person to be erected at the site with the approval of the cemetery operator, and 11
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 - (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 13
14
15
16
 - (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. 17
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- (2) A cemetery operator must comply with the requirements of subsection (1) (d) and (e). Maximum civil penalty: \$27,500. 23
24
- (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. 25
26
27

47 Types of interment right 28

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: 29
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- (a) in perpetuity (a *perpetual interment right*), or 31
- (b) for the period an interment right granted under section 54 remains in force (a *renewable interment right*). 32
33

48 Duration of interment right 34

An interment right remains in force: 35

- (a) if it is a perpetual interment right—in perpetuity, and 36
- (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*). 37
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39

49 Exclusive interment rights may be bequeathed 40

- (1) The holder of an interment right may (subject to section 51) bequeath the right as if it were the holder's personal estate. 41
42

(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.	1 2 3
(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 5 6
(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.	7 8
(5)	The executor or administrator (within the meaning of the <i>Probate and Administration Act 1898</i>) 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.	9 10 11 12 13
50	Rules of intestacy to apply to interment rights not bequeathed	14
(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.	15 16 17
(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.	18 19 20
(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.	21 22 23
(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.	24 25
51	Interment right to pass to surviving joint holder	26
	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.	27 28
52	Revocation of perpetual interment rights	29
(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.	30 31 32 33
(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.	34 35 36 37
(3)	If no response to the notice 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:	38 39 40
	(a) displayed in a prominent position at the crematorium, cemetery or portion of a cemetery concerned, and	41 42
	(b) published in the Gazette and in a newspaper circulating throughout the State.	43
(4)	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	44 45 46

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 (6).	1 2
(5) If the cemetery operator has insufficient information to properly address the notice referred to in subsection (2) or (4), 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 (3) and may take any other notification action the operator considers appropriate.	3 4 5 6 7
(6) At any time before the expiry of the period for responding to the final notice referred to in subsection (4) (or, in the circumstances referred to in subsection (5), within 28 days after the last date on which an advertisement referred to in subsection (3) (b) is published) the holder of the perpetual interment right concerned may enter into negotiations with the cemetery operator for:	8 9 10 11 12
(a) the sale of the perpetual interment right, or	13
(b) the retention of the perpetual interment right.	14
(7) Any notice required to be displayed or published under this section may relate to more than one interment site.	15 16
53 Compensation	17
(1) If a cemetery operator revokes the perpetual interment right for an interment site the former holder of that interment right is entitled to the following (but no other compensation or entitlement with respect to the revocation):	18 19 20
(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,	21 22 23
(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.	24 25 26 27 28
(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.	29 30 31 32 33 34
(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.	35 36
(4) The cemetery operator may elect whether the former holder of the revoked interment right is to be granted an alternative interment site or paid compensation.	37 38
(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.	39 40 41 42
(6) An application for an entitlement under this section:	43
(a) must be in the form approved by the Cemeteries Agency, and	44
(b) must be accompanied by the appropriate fee, and	45

- (c) must be lodged with the cemetery operator within 6 years after the date on which the relevant interment right was revoked. 1
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- Note.** Pursuant to section 113 (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. 3
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- (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. 5
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- (8) The Cemeteries Agency's decision on such a review: 7
- (a) is final, and 8
- (b) is taken to be the decision of the cemetery operator, and 9
- (c) is to be given effect to accordingly. 10
- (9) In this section, *former holder* of a revoked interment right means the person who held that right immediately before it was revoked. 11
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Subdivision 3 Renewable interment rights 13

54 Grant and renewal of renewable interment rights 14

(1) Grant of right for initial term 15

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: 16
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- (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 19
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21
- (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. 22
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- (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. 25
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(3) Renewal of right on application 27

The cemetery operator, on application and payment of the appropriate fee: 28

- (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 29
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- (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, 32
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- (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. 36
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(4) Notice requirements concerning fees 41

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. 42
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- (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. 1
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- (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 written notice setting out the entitlement (if any) to apply to renew the right and the fee for doing so. 3
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- (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
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- (8) The regulations may prescribe a different period of any term of a renewable interment right to a period specified in subsection (1) or (3). 12
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55 Re-use of interment sites and removal of memorials 14

- (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: 15
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- (a) re-use the interment site to which the renewable interment right related, 18
- (b) remove any memorial to a deceased person erected on or at the site. 19
- (2) A cemetery operator must not re-use an interment site or remove any memorial to a deceased person on an interment site unless: 20
21
- (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 22
23
- (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 a newspaper circulating throughout the State, and 24
25
26
- (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 listed in the cemetery operator's register, and 27
28
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- (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. 30
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- (3) Subsection (1) does not apply to an interment site on or at which a memorial of the following kind is erected: 33
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- (a) a memorial that is an item of local heritage significance or State heritage significance under the *Heritage Act 1977*, 35
36
- (b) a memorial relating to a grave listed by the Office of Australian War Graves, 37
- (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*. 38
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- (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: 41
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- (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 43
44
45
- (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 46
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- (c) any other requirements prescribed by the regulations with respect to human remains interred at the site are complied with. 1
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- (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. 3
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6
- (6) Despite subsection (1), an interment site may not be re-used by a cemetery operator unless: 7
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- (a) any human remains of a deceased person (other than cremated remains) that are interred in the site have been interred for at least 10 years (or such other period as may be prescribed by the regulations), and 9
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- (b) the cemetery operator considers the body is in a sufficiently decomposed state to comply with subsection (4). 12
13
- Maximum civil penalty (subsection (6) (a)): \$27,500. 14
- (7) The regulations may make provision for or with respect to: 15
- (a) the re-use of interment sites and removal and disposition of memorials under this section, and 16
17
- (b) the notices and authorisations required before any thing is done under subsection (1). 18
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Subdivision 4 Grant and transfer of interment rights generally 20

56 Grant of interment right 21

- (1) A cemetery operator may grant an interment right in respect of an interment site in a cemetery. 22
23
- (2) An application for an interment right must be in the form approved by the cemetery operator and be accompanied by the appropriate fee. 24
25
- (3) An interment right may be granted to one person or to 2 or more persons as joint holders. 26
27
- (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. 28
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57 Content of interment right 33

- An interment right granted by a cemetery operator must: 34
- (a) identify the person or persons to whom the right is granted, and 35
- (b) identify the interment site to which the right relates, and 36
- (c) specify the number of persons whose remains may be interred pursuant to the right at that site, and 37
38
- (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 39
40
41
42
- (e) identify whether the interment right is granted as a perpetual interment right or as a renewable interment right, and 43
44

(f)	specify that the interment right may (subject to section 56 (4)) be transferred, and	1 2
(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.	3 4 5
58	Transfer of interment right to person other than a cemetery operator	6
(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.	7 8 9
(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.	10 11 12
(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.	13 14 15
59	Transfer of interment right to cemetery operator	16
	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.	17 18
60	Grant or transfer of interment right may be refused	19
	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.	20 21 22
61	Cemetery operator may determine holder of interment right	23
(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.	24 25
(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.	26 27 28
(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.	29 30 31
(4)	However, the cemetery operator may make a decision that the person holds the interment right for the interment site only if:	32 33
(a)	at least 28 days before making the decision, the cemetery operator:	34
(i)	displays a notice about its intention to make the decision in a prominent position at the cemetery, and	35 36
(ii)	publishes a notice about its intention to make the decision in the Gazette and in a newspaper circulating throughout the State, and	37 38
(iii)	takes any other steps it considers reasonable in the circumstances to determine who holds the interment right for the interment site, or	39 40
(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:	41 42 43 44
(i)	the applicant, or	45
(ii)	a person interred in the interment site.	46

- (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. 1
2
3

62 Interment right not required for scattering of cremated remains 4

No interment right is required for the scattering of cremated remains in a cemetery. 5

Subdivision 5 Miscellaneous 6

63 Register of interment rights, memorials, cremations and interments 7

- (1) A cemetery operator for a cemetery must cause a register to be kept of the following events: 8
9

(a) interment rights granted by the cemetery operator in respect of interment sites in the cemetery after the commencement of this paragraph, 10
11

(b) memorials erected in respect of interment sites in the cemetery after the commencement of this paragraph, 12
13

(c) each interment carried out in the cemetery after the commencement of this paragraph, 14
15

(d) each cremation carried out at the cemetery after the commencement of this paragraph, 16
17

(e) such other events (whether of the same or a different kind) as may be prescribed by the regulations. 18
19

Maximum civil penalty: \$2,200. 20

- (2) A reference in this Act to the *cemetery operator's register* is a reference to the register kept under subsection (1). 21
22

- (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. 23
24
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- (4) Without limiting subsection (3), the cemetery operator's register is to: 26

(a) identify (as far as possible) each holder of an interment right, and 27

(b) include contact details for that holder, and 28

(c) 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 29
30

(d) 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. 31
32
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- (5) The cemetery operator must make an entry relating to an interment or cremation immediately after the interment or cremation is carried out. 34
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Maximum civil penalty: \$2,200. 36

- (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*. 37
38
39

Maximum civil penalty: \$2,200. 40

- (7) A cemetery operator must make the cemetery operator's register available for public inspection free of charge. 41
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- (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. 43
44

(9)	The cemetery operator may amend the cemetery operator's register from time to time for any of the following purposes:	1
		2
(a)	to remove any inaccuracies contained in it,	3
(b)	to record any changes to interment rights as a result of a transfer, revocation or death of the holder of an interment right.	4
		5
(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.	6
		7
		8
(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.	9
		10
(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.	11
		12
		13
	Maximum civil penalty: \$2,200.	14
64	Keeping of register and documents	15
(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.	16
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	Maximum civil penalty: \$2,200.	20
(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.	21
		22
(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.	23
		24
		25
		26
	Maximum civil penalty: \$2,200.	27
65	Certificates for interment rights	28
(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:	29
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		31
(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	32
		33
		34
(b)	setting out the notice required to have been given by section 54 (4).	35
(2)	A statement in a certificate referred to in subsection (1) is presumed (unless the contrary is proved) to be correct.	36
		37
(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.	38
		39
		40
(4)	A certificate under this section is to be in a form prescribed by the regulations or approved by the Cemeteries Agency.	41
		42

66 Exhumations	1
(1) Exhumations are not to take place:	2
(a) except in accordance with the requirements of the regulations made under the <i>Public Health Act 2010</i> , and	3 4
Note. See Division 4 of Part 8 of the <i>Public Health Regulation 2012</i> .	5
(b) unless an order for exhumation has been issued by the cemetery operator.	6
(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.	7 8 9
(3) In this section:	10
<i>exhumation</i> 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).	11 12 13 14 15
67 Order for interment	16
(1) An interment must not take place in a cemetery unless the cemetery operator has issued an order for interment.	17 18
(2) A cemetery operator must not unreasonably delay or withhold from making an order for interment.	19 20
(3) A cemetery operator may set down the procedure to be followed to obtain an order for interment.	21 22
68 Hours of burial	23
Interments are not to take place except at such reasonable times as the cemetery operator may from time to time determine.	24 25
69 Heritage advisory committee	26
(1) The cemetery operator for a cemetery that offers renewable interment rights must establish a heritage advisory committee:	27 28
(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	29 30 31
(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.	32 33 34
(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.	35 36 37 38 39 40
(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.	41 42
(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.	43 44 45 46

- (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. 1
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- (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. 4
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- (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. 7
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Division 3 Cemetery renewal 9

Note. This Division enables a cemetery operator to implement, with the approval of the Cemeteries Agency, a renewal scheme for the cemetery by re-using interment sites in the cemetery and removing, re-locating or disposing of memorials on the sites. Approval of a renewal scheme does not authorise the removal of the remains of a deceased person from an interment site. 10
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70 Implementation of renewal scheme 14

- (1) The operator of a cemetery may, with the approval of the Cemeteries Agency, implement a scheme (a *renewal scheme*) for the renewal of a portion of the cemetery that has been used for interments to enable further interment sites to be located in the portion. 15
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- (2) The operator of a cemetery may, in a portion of the cemetery that is subject to a renewal scheme: 19
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- (a) remove, relocate or dispose of a memorial placed on the interment site, and 21
- (b) erect in that portion of the cemetery a memorial recording the names and dates of death of persons buried in the portion. 22
23
- (3) A renewal scheme does not authorise the operator of a cemetery: 24
- (a) to remove the remains of a deceased person from an interment site, or 25
- (b) to otherwise disturb the remains of a deceased person in the portion of the cemetery subject to the renewal scheme. 26
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Note. Separate procedures set out in sections 55 and 66 must be followed before remains of a deceased person may be removed from an interment site. 28
29

71 Proposed renewal scheme to be submitted to Cemeteries Agency for approval to carry out consultation 30 31

- (1) After preparing a proposed renewal scheme, the operator of a cemetery must: 32
- (a) submit the scheme to the Cemeteries Agency for approval to carry out consultation about the scheme, and 33
34
- (b) advise the Cemeteries Agency if the operator intends to re-use any interment site affected by the scheme in accordance with section 55. 35
36
- (2) After considering the proposed renewal scheme, the Cemeteries Agency may decide: 37
- (a) to approve the release of the scheme for consultation, with or without changes, or 38
39
- (b) to return the scheme to the operator for changes and re-submission to the Cemeteries Agency. 40
41
- (3) The Cemeteries Agency may also decide that the operator must consult with the following about the proposed renewal scheme: 42
43
- (a) the Heritage Council of New South Wales if the scheme affects an item of local heritage significance, 44
45
- (b) the local council for the area in which the cemetery is located, 46

- (c) any other Commonwealth or State authority. 1
- 72 Consultation about proposed renewal scheme** 2
- (1) If the Cemeteries Agency approves the release of a proposed renewal scheme for consultation, the operator of the cemetery concerned must: 3
- (a) prepare and make available for public inspection a plan that shows the following: 4
- (i) the portion of the cemetery that is subject to the proposed renewal scheme, 5
6
- (ii) all existing used and unused interment sites within the portion, 7
8
- (iii) details of the removal and relocation of any memorial placed on interment sites within the portion, 9
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- (iv) the proposed layout and landscaping of the renewed portion, and 12
- (b) send a notice to each holder of an interment right in the portion subject to the proposed renewal scheme, at any address recorded for the holder in the cemetery operator's register, informing the holder of the proposed scheme, and 13
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- (c) not less than 12 months before the date the proposed renewal scheme is to commence, place in a prominent position in the portion of the cemetery subject to the renewal scheme, a notice that states the following: 17
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- (i) that the operator proposes to renew the portion of the cemetery, 20
- (ii) where plans of the proposed renewal scheme may be inspected, 21
- (iii) that written submissions may be made to the operator about the proposed renewal scheme by the date, and in the way, specified in the notice, and 22
23
24
- (d) not less than 3 months before the date the proposed renewal scheme is to commence, publish in the Gazette and at least once in a newspaper circulating throughout the State a notice about the proposed renewal scheme that states the following: 25
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27
28
- (i) that the operator proposes to renew the portion of the cemetery, 29
- (ii) where plans of the proposed renewal scheme may be inspected, 30
- (iii) that written submissions may be made to the operator about the proposed renewal scheme by the date, and in the way, specified in the notice, and 31
32
33
- (e) if the Cemeteries Agency has decided the operator must consult with the Heritage Council, prepare a statement of heritage impact for the proposed renewal scheme and refer it to the Heritage Council. 34
35
36
- (2) A reference in subsection (1) (b) to an interment right includes a reference to a burial licence that was in force under the *Crown Lands Act 1989* immediately before the commencement of this section. 37
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39
- (3) In this section: 40
- local heritage significance** has the meaning it has in the *Heritage Act 1977*. 41
- statement of heritage impact**, in relation to a proposed renewal scheme that affects an item of local heritage significance, means a statement that: 42
43
- (a) identifies the local heritage item and its significance, and 44
- (b) assesses and justifies the impact the proposed renewal scheme will have on the significance of the heritage item. 45
46

73 Submissions	1
(1) A submission about the proposed renewal scheme may be made by any person by the date, and in the way, specified in the notice placed in the cemetery or published in the newspaper.	2 3 4
(2) The holder of an interment right for an interment site may, in a submission, object to the proposed renewal scheme concerned (a <i>formal objection</i>) if:	5 6
(a) in the case of an interment site to which a perpetual interment right relates—the scheme involves the revocation under section 52 of the holder’s interment right, or	7 8 9
(b) in the case of any other interment site (whether or not the subject of an interment right)—the scheme involves the removal, relocation or disposal of a memorial placed on the interment site.	10 11 12
(3) The operator must consider each submission made under subsection (1).	13
(4) After considering any submissions, including formal objections, the operator must decide:	14 15
(a) to proceed with the proposed renewal scheme, with or without modifications, or	16 17
(b) not to proceed with the proposed renewal scheme.	18
(5) The operator must not proceed with a proposed renewal scheme in respect of which a formal objection has been made unless:	19 20
(a) the objection has been withdrawn, or	21
(b) the proposed renewal scheme has been modified so that it does not provide for the revocation of the interment right, or provide for the removal, relocation or disposal of a memorial placed on the interment site, that was the subject of the formal objection.	22 23 24 25
74 Submission of renewal scheme to Cemeteries Agency	26
(1) If the operator decides to proceed with the proposed renewal scheme, the operator must submit the renewal scheme to the Cemeteries Agency for approval.	27 28
(2) The proposed renewal scheme must:	29
(a) be accompanied by any written submissions received by the operator about the renewal scheme, and	30 31
(b) indicate what modifications, if any, have been made to the renewal scheme after the operator’s consideration of the written submissions.	32 33
(3) Before making a decision about the proposed renewal scheme, the Cemeteries Agency must obtain advice about the renewal scheme from the Minister administering the <i>Heritage Act 1977</i> .	34 35 36
75 Cemeteries Agency’s decision about renewal scheme	37
After considering any advice received from the Minister administering the <i>Heritage Act 1977</i> , the Cemeteries Agency may decide to:	38 39
(a) approve the proposed renewal scheme, or	40
(b) approve the proposed renewal scheme with any modifications the Cemeteries Agency considers appropriate, or	41 42
(c) reject the proposed renewal scheme.	43

Division 4	Offence	1
76	Offence relating to conduct in cemeteries	2
	A person must not, without lawful authority, in a cemetery:	3
	(a) disturb or interrupt any service, procession or cortege, or	4
	(b) inter any human remains (whether cremated or not).	5
	Maximum penalty: 25 penalty units.	6

Part 5	Operation of Crown cemeteries and crematoria	1
Division 1	Preliminary	2
77	Definitions	3
	In this Part:	4
	<i>Crown cemetery operator</i> means the person or body having management of the affairs of a Crown cemetery trust.	5 6
	Note. The Crown cemetery operator for a Crown cemetery trust established on or after the commencement of section 79 is the trust board or person having management of the affairs of the trust under that section. The Crown cemetery operator for a Crown cemetery trust established before that commencement is the trust board or person having management of the affairs of the trust under section 92 (6) of the <i>Crown Lands Act 1989</i> (as in force before that section was amended by this Act).	7 8 9 10 11 12
	<i>Crown cemetery trust</i> means a reserve trust established under the <i>Crown Lands Act 1989</i> (whether before or after the commencement of this section) in relation to a reserve or part of a reserve that is dedicated or reserved for the purposes of a public cemetery or crematorium or a related purpose.	13 14 15 16
	<i>trust board</i> , in relation to a Crown cemetery trust, means a trust board appointed under section 80.	17 18
	<i>trust member</i> , in relation to a Crown cemetery trust means the following:	19
	(a) if the Crown cemetery operator is a trust board—a member of the trust board,	20
	(b) if the Crown cemetery operator is a corporation—a director or other officer of the corporation,	21 22
	(c) if the Crown cemetery operator is the Minister or an administrator—the Minister or administrator.	23 24
78	Exemption power—Cemeteries Agency	25
(1)	The Cemeteries Agency may, by order in writing, exempt a Crown cemetery operator or class of Crown cemetery operators, or a trust member or class of trust members, from the operation of this Part or a specified provision of this Part if:	26 27 28
	(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	29 30 31
	(b) taking into account the scale and nature of operations of the cemetery concerned, it considers it appropriate to do so.	32 33
(2)	The exemption may be limited in duration or may be subject to such factors or circumstances as may be specified in the order.	34 35
Division 2	Cemetery trust operators	36
Subdivision 1	Appointment of trust operators	37
79	Appointment of Crown cemetery operator	38
(1)	The affairs of a Crown cemetery trust that is established after the commencement of this section are to be managed:	39 40
	(a) by the Minister, or	41
	(b) if a trust board is appointed under section 80—by the trust board, or	42
	(c) if a corporation is appointed under section 81—by the corporation, or	43
	(d) if an administrator is appointed under section 83—by the administrator.	44

(2)	There can be more than one Crown cemetery operator for a Crown cemetery trust with the function of managing the affairs of the trust allocated between the operators by the Minister in accordance with the following provisions:	1 2 3
(a)	the Minister can allocate the exercise of functions in respect of different aspects of the affairs of the trust or different parts of the Crown cemetery to different operators, as specified in the allocation or as determined by the Minister, with those functions to be exercised in accordance with such arrangements (if any) as may be determined by the Minister,	4 5 6 7 8
(b)	the Minister is the Crown cemetery operator for any aspect of the affairs of a Crown cemetery trust or any part of the Crown cemetery not allocated to another operator and is accordingly allocated the function of managing the affairs of the trust in respect of any such unallocated aspects of those affairs or unallocated parts of the cemetery,	9 10 11 12 13
(c)	a Crown cemetery operator has the function of managing the affairs of the Crown cemetery trust only to the extent of the allocated functions and is, for the purposes of this or any other Act or law, the Crown cemetery operator to that extent only.	14 15 16 17
(3)	Subject to this Division and the regulations, the provisions of the <i>Crown Lands Act 1989</i> applying to or in respect of reserve trust managers referred to in section 92 of that Act and the functions exercisable by them under that Act apply to and in respect of a Crown cemetery operator referred to in this section.	18 19 20 21
80	Membership of trust board	22
(1)	A trust board for a Crown cemetery trust is to consist of at least 3, but not more than 7, members (none of them being a corporation) appointed by the Minister by instrument in writing and such number of ex officio members as are so appointed.	23 24 25
(2)	The instrument of appointment is to specify:	26
(a)	the duties and liabilities relating to the exercise of functions as a member of the relevant trust board, and	27 28
(b)	the consequences of any breach of duty.	29
(3)	The appointment of a person as a member of a trust board 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 member.	30 31 32
(4)	One of the members is, in and by the instrument of appointment as a member or another instrument, to be appointed by the Minister as chairperson of the trust board.	33 34
(5)	A member of a trust board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	35 36 37
(6)	Schedule 2 contains provisions with respect to the members and procedure of a trust board.	38 39
81	Appointment of corporation to operate Crown cemetery trust	40
(1)	The Minister may, by notification in the Gazette, appoint:	41
(a)	a local council, or	42
(b)	a corporation constituted by or under an Act providing for the holding, managing of or dealing with church property, or	43 44
(c)	any other corporation (including the Ministerial Corporation), to manage the affairs of a Crown cemetery trust.	45 46

(2)	A corporation so appointed has power to accept the appointment and to exercise all the functions of a Crown cemetery operator despite the provisions of the Act by or under which the corporation is constituted.	1 2 3
(3)	A corporation may be appointed as a Crown cemetery operator for such term as may be specified in the notification of appointment or by any subsequent notification in the Gazette.	4 5 6
(4)	The term of office of a corporation that has been appointed as the operator of a Crown cemetery trust may be extended by the Minister from time to time by a further notification in the Gazette.	7 8 9
(5)	A local council may not be appointed to operate a Crown cemetery trust if the Crown cemetery is wholly or partly within the area of another local council, except with the consent of the other council.	10 11 12
(6)	A document is sufficiently executed by a Crown cemetery trust operated by a corporation if it is executed under the seal of the corporation instead of the seal of the trust.	13 14 15
82	Vacation of office by corporate manager	16
(1)	A corporation which is managing the affairs of a Crown cemetery trust vacates the office if:	17 18
(a)	it resigns its office by writing under its seal addressed to the Minister, or	19
(b)	it is removed from office by the Minister, or	20
(c)	it completes a term of office and is not re-appointed.	21
(2)	The Minister may, by notification in the Gazette, remove such a corporation from office at any time.	22 23
(3)	If a corporation is removed from office by the Minister as the operator of a Crown cemetery trust, no compensation is payable to the corporation because of the corporation ceasing to hold office.	24 25 26
83	Appointment of administrator	27
(1)	The Minister may, by notification in the Gazette, appoint an administrator to manage the affairs of a Crown cemetery trust.	28 29
(2)	Subject to this Act, an administrator holds office for such period as may be specified in the administrator's instrument of appointment.	30 31
84	Vacancies in office of administrator	32
(1)	The Minister may, by notification in the Gazette:	33
(a)	remove an administrator from office, or	34
(b)	fill a vacancy in the office of administrator.	35
(2)	The office of an administrator becomes vacant if the administrator:	36
(a)	completes a term of office, or	37
(b)	resigns the office by instrument in writing addressed to the Minister, or	38
(c)	is removed from office by the Minister under this section.	39
85	Remuneration of administrator	40
(1)	If the Minister so directs, an administrator is entitled to be paid such remuneration as the Minister directs.	41 42

(2)	The office of administrator is not, for the purposes of any Act, an office or place of profit under the Crown.	1 2
86	Delegation of functions by Crown cemetery operators	3
(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.	4 5 6
(2)	Without limiting section 49 of the <i>Interpretation Act 1987</i> , a delegation by an operator under subsection (1) may, with the approval of the Cemeteries Agency, be revoked by an operator at any time.	7 8 9
(3)	The regulations may make provision for or with respect to delegations under this section.	10 11
(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.	12 13
Subdivision 2	Conduct of trust members	14
87	Interpretation	15
	A person is <i>involved in a contravention</i> of a provision of this Subdivision if, and only if, the person:	16 17
(a)	has aided, abetted, counselled or procured the contravention, or	18
(b)	has induced, whether by threats or promises, or otherwise, the contravention, or	19 20
(c)	has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention, or	21 22
(d)	has conspired with others to effect the contravention.	23
88	Care and diligence—civil obligation only	
(1)	Care and diligence—trust members	24
	A trust 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:	25 26 27
(a)	were a trust member in the Crown cemetery trust’s circumstances, and	28
(b)	occupied the office held by, and had the same responsibilities as, the trust member.	29 30
	Maximum civil penalty: \$27,500.	31
(2)	Business judgment rule	32
	A trust 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:	33 34 35
(a)	makes the judgment in good faith for a proper purpose, and	36
(b)	does not have a material personal interest in the subject matter of the judgment, and	37 38
(c)	informs themselves about the subject matter of the judgment to the extent that the member reasonably believes to be appropriate, and	39 40
(d)	rationaly believes that the judgment is in the best interests of the Crown cemetery trust.	41 42

(3)	The trust 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.	1 2 3
	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 5 6 7
(4)	In this section:	8
	<i>business judgment</i> means any decision to take or not take action in respect of a matter relevant to the business operations of the Crown cemetery trust.	9 10
89	Use of position—civil obligations	11
(1)	Use of position—trust members	12
	A trust member must not improperly use his or her position to:	13
(a)	gain an advantage for the trust member or someone else, or	14
(b)	cause detriment to the Crown cemetery trust.	15
	Maximum civil penalty: \$27,500.	16
(2)	A person who is involved in a contravention of subsection (1) contravenes this subsection.	17 18
	Maximum civil penalty: \$27,500.	19
90	Use of information—civil obligations	20
(1)	Use of information—trust members	21
	A person who obtains information because the person is, or has been, a trust member must not improperly use the information to:	22 23
(a)	gain an advantage for that trust member or someone else, or	24
(b)	cause detriment to the Crown cemetery trust.	25
	Maximum civil penalty: \$27,500.	26
(2)	The duty under subsection (1) continues after the person stops being a trust member.	27
(3)	A person who is involved in a contravention of subsection (1) contravenes this subsection.	28 29
	Maximum civil penalty: \$27,500.	30
91	Notification of significant events	31
(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:	32 33 34
(a)	form a company or participate in the formation of a company,	35
(b)	participate in a significant partnership, trust, unincorporated joint venture or similar arrangement,	36 37
(c)	acquire or dispose of a significant share holding in a company,	38
(d)	acquire or dispose of a significant business,	39
(e)	commence or cease a significant business activity,	40
(f)	make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.	41 42
	Note. Trust boards also have obligations under sections 101–109 of the <i>Crown Lands Act 1989</i> .	43 44

(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).	1 2
92	Codes of conduct	3
(1)	A cemetery operator who manages the affairs of a Crown cemetery trust must, within 3 months after the commencement of this section or its establishment (whichever first occurs) prepare and adopt a code of conduct to be observed by members of the board of the trust and persons employed by it.	4 5 6 7
(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.	8 9 10
(3)	The code must include such matters as are prescribed by the regulations.	11
(4)	In particular, the code may contain provisions for or with respect to the following conduct:	12 13
(a)	conduct that contravenes all or specified provisions of this Act or the regulations in all or specified circumstances,	14 15
(b)	improper or unethical conduct,	16
(c)	abuse of power and other misconduct,	17
(d)	the disclosure of interests (whether pecuniary or otherwise) that could conflict with the proper performance of functions and avoidance of conflicts of interest,	18 19 20
(e)	the disclosure of confidential documents and information.	21
(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.	22 23 24
(6)	A member of a trust board or employee must not contravene a code to which he or she is a signatory.	25 26
(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.	27 28 29
93	Disclosure of material personal interest by members of trust board—civil obligations	30
(1)	If:	31
(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	32 33 34
(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,	35 36
	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.	37 38 39
	Maximum civil penalty: \$5,500.	40
(2)	A disclosure by a member of a trust board at a meeting of the trust board that the member:	41 42
(a)	is a member, or is in the employment, of a specified company or other body, or	43
(b)	is a partner, or is in the employment, of a specified person, or	44

(c)	has some other specified interest relating to a specified company or other body or to a specified person,	1
	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.	2
(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 on payment of a fee of \$25 (or such other amount as may be prescribed by the regulations).	3
(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:	4
(a)	be present during any deliberation of the trust board with respect to the matter, or	5
(b)	take part in any decision of the trust board with respect to the matter.	6
	Maximum civil penalty: \$5,500.	7
(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:	8
(a)	be present during any deliberation of the trust board for the purpose of making the determination, or	9
(b)	take part in the making by the trust board of the determination.	10
(6)	A contravention of this section does not invalidate any decision of the trust board.	11
94	Invitations for tenders	12
(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:	13
(a)	the board must, by notice published in the Gazette and in a newspaper circulating throughout the State, invite tenders for the proposed contract, and	14
(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.	15
(2)	The notice inviting tenders must:	16
(a)	set out the nature of the work or services to be performed or the goods to be supplied under the contract, and	17
(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.	18
(3)	This section does not apply in the case of an emergency.	19
(4)	A contravention of this section does not invalidate any decision of the trust board.	20
95	Liability of trust board, members and other persons	21
(1)	A matter or thing done or omitted to be done by:	22
(a)	a trust member (other than a director or officer of a corporation referred to in subsection (2)) in the course of managing the affairs of a Crown cemetery trust, or	23

- (b) a person acting under the direction of a trust member (other than a director or officer of a corporation) in the course of managing the affairs of a Crown cemetery trust, 1
2
3
does not, if the matter or thing was done or omitted to be done in good faith for the 4
purposes of executing this or any other Act, subject the trust member or a person so 5
acting personally to any action, liability, claim or demand. 6
- (2) If a Crown cemetery trust is managed by a corporation, the corporation is jointly and 7
severally liable with the Crown cemetery trust: 8
- (a) for any liability of the Crown cemetery trust, or 9
- (b) if the corporation is managing the affairs of the Crown cemetery trust with 10
another person or body in accordance with section 92 (6B) of the *Crown Lands 11
Act 1989*—for the liability of the Crown cemetery trust to the extent only that 12
the liability relates to the functions of the corporation as the manager of the 13
trust. 14

Subdivision 3 Strategic plans 15

96 Strategic plans 16

- (1) A strategic plan identifies the main priorities for the future of a Crown cemetery trust 17
for the period to which the plan relates. 18
- (2) A Crown cemetery operator must: 19
- (a) prepare a draft strategic plan for the management of the operation of each 20
Crown cemetery trust for which it is responsible in accordance with this 21
section, and 22
- (b) submit the strategic plan to the Cemeteries Agency for review. 23
- (3) A Crown cemetery operator who is responsible for more than one Crown cemetery 24
trust may prepare a single draft strategic plan for all those trusts. 25
- (4) The first draft strategic plan for a Crown cemetery trust: 26
- (a) that is established on or after the commencement of this section—must be 27
prepared within 12 months after it is established, or 28
- (b) that was established before the commencement of this section—must be 29
prepared within 12 months of that commencement. 30
- (5) Subsequent draft strategic plans must be prepared at such times as the Cemeteries 31
Agency directs. 32
- (6) The strategic plan must be in the form and provide for such matters as may be 33
required by the Cemeteries Agency and must be prepared in accordance with any 34
guidelines made by the Cemeteries Agency under section 97. 35
- (7) The Cemeteries Agency may require an operator to amend and re-submit a draft 36
strategic plan that is not prepared in accordance with the guidelines. 37
- (8) The Cemeteries Agency may: 38
- (a) approve a strategic plan, or 39
- (b) approve a strategic plan with amendments, or 40
- (c) refuse to approve a strategic plan. 41
- (9) A Crown cemetery operator must advise the Cemeteries Agency if it wishes to 42
exercise its functions in a manner inconsistent with its approved strategic plan. 43
- (10) A Crown cemetery operator must ensure that an approved strategic plan is published 44
in the Gazette and is made available to members of the public on request. 45

97	Guidelines for strategic plans	1
(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 3 4
(2)	The Cemeteries Agency must provide a copy of any guidelines made for or with respect to a Crown cemetery trust under this section to the Crown cemetery operator concerned.	5 6 7
(3)	The Cemeteries Agency may make any other arrangements that it considers necessary to ensure that strategic plans are readily accessible to the public.	8 9
(4)	The guidelines take effect on the date specified in the guidelines.	10
(5)	A failure to comply with subsection (2) does not affect the validity of any guidelines made under this section.	11 12
98	Amendment, replacement or revocation of strategic plan	13
(1)	A strategic plan may be amended or replaced by a subsequent such plan prepared and approved in accordance with this Subdivision.	14 15
(2)	The Cemeteries Agency may revoke a strategic plan, wholly or in part.	16
(3)	The amendment or revocation of a strategic plan under this section takes effect:	17
(a)	on the day notice of the amendment or revocation is published by the Cemeteries Agency in the Gazette, or	18 19
(b)	on a later day specified in a notice under paragraph (a).	20
Subdivision 4	Plans of management	21
99	Preparation of draft plan of management	22
(1)	The Cemeteries Agency may direct a Crown cemetery operator to prepare a draft plan of management for a cemetery for which a Crown cemetery trust has been established and the affairs of which are managed by the operator.	23 24 25
(2)	A Crown cemetery operator may, with the consent of the Cemeteries Agency, prepare such a draft plan on the operator's own initiative.	26 27
(3)	The Crown cemetery operator must forward a copy of the draft plan to the Cemeteries Agency.	28 29
(4)	If the Cemeteries Agency directs a Crown cemetery operator to prepare a draft plan of management, the operator must:	30 31
(a)	prepare it within the time directed by the Cemeteries Agency, and	32
(b)	forward a copy of it to the Cemeteries Agency.	33
(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 100.	34 35 36
(6)	A Crown cemetery operator who is responsible for more than one Crown cemetery trust may prepare a single draft plan of management for all cemeteries the subject of those trusts.	37 38 39
100	Guidelines for draft plans of management	40
(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.	41 42 43

(2)	The Cemeteries Agency must:	1
(a)	provide a copy of any guidelines made for or with respect to a Crown cemetery trust to the Crown cemetery operator concerned, and	2 3
(b)	publish the guidelines in the Gazette.	4
(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.	5 6
(4)	The guidelines take effect on the date specified in the guidelines.	7
(5)	A failure to comply with subsection (2) does not affect the validity of any guidelines made under this section.	8 9
101	Referral and exhibition of draft plans	10
(1)	If a draft plan of management for a Crown cemetery is prepared, the Cemeteries Agency:	11 12
(a)	may refer a copy of it to any other person for consideration, and	13
(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.	14 15 16
(2)	Any person may make representations concerning the draft plan to the Cemeteries Agency within the time allowed by it.	17 18
(3)	The Cemeteries Agency must consider any such representations before adopting the draft plan.	19 20
102	Adoption of plan of management	21
(1)	The Cemeteries Agency may adopt a plan of management for a Crown cemetery without alteration or with such alterations as it thinks fit.	22 23
(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.	24 25
(3)	If a plan of management is adopted:	26
(a)	the Crown cemetery operator concerned must carry out and give effect to it, and	27 28
(b)	no operations may be undertaken on or in relation to the cemetery unless they are in accordance with the plan.	29 30
103	Alteration or cancellation of plan	31
(1)	The Cemeteries Agency may from time to time alter a plan of management adopted under this Subdivision or may cancel the plan.	32 33
(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.	34 35
(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.	36 37 38
(4)	The plan as altered may not include use of the cemetery for an additional purpose.	39
(5)	The plan as altered becomes the plan adopted for the purposes of this Subdivision.	40

104	Plan of management for submerged land	1
(1)	If land usually submerged by water is wholly or partly the subject of a plan of management, the Minister must refer the plan to the Minister administering the <i>Fisheries Management Act 1994</i> before adopting it.	2 3 4
(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.	5 6 7
	Subdivision 5 Financial management, audits and reports	8
105	Annual report	9
(1)	A Crown cemetery operator for a Crown cemetery trust must, within 4 months after the end of each financial year, submit an annual report of the Crown cemetery trust for the financial year to the Cemeteries Agency.	10 11 12
(2)	The annual report must include the following:	13
(a)	an audited financial statement for the period to which the report relates,	14
(b)	a report about the operations of the trust and the performance of its functions under this Act during the period to which the annual report relates prepared in accordance with this Act and the regulations,	15 16 17
(c)	such financial reports, opinions, budgets, reports and other matters as may be prescribed by the regulations.	18 19
(3)	The financial statement is to be prepared in accordance with Australian Accounting Standards.	20 21
(4)	The financial statement is to be audited by an independent auditor and a report is to be provided by the auditor.	22 23
(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 <i>Corporations Act 2001</i> of the Commonwealth).	24 25 26
(6)	An auditor of a Crown cemetery trust is not an independent auditor:	27
(a)	if (otherwise than as an auditor) the person is an officer or employee of the trust, or	28 29
(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 trust.	30 31 32
(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.	33 34
(8)	In this section: <i>Australian Accounting Standards</i> means Accounting Standards issued by the Australian Accounting Standards Board.	35 36 37
106	Nature of report of operations	38
(1)	The report about the operations referred to in section 105 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 for which the Crown cemetery trust concerned was established.	39 40 41 42
(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.	43 44 45

(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.	1 2
107	Additional information and audits—civil obligation	3
(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 105 or by means of a separate report, such information relating to the financial report or operations, or both, of the Crown cemetery trust as is so specified.	4 5 6 7 8
(2)	The Crown cemetery operator must comply with a direction given to the operator under subsection (1). Maximum civil penalty: \$19,800.	9 10 11
108	Inspection etc of Crown cemetery trust	12
(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 trust.	13 14
(2)	The person appointed may, for the purposes of the inquiry or audit:	15
(a)	inspect and take copies of or extracts from any records (including accounting records) of the trust, or	16 17
(b)	require any person concerned in the management of the trust to give information and answer questions relating to the affairs of the trust.	18 19
(3)	The power of the appointed person to inspect the records of a Crown cemetery trust includes the power to inspect any records of a lessee or licensee which the trust has power to inspect under the lease or licence.	20 21 22
(4)	A person must not:	23
(a)	refuse or fail without lawful excuse to allow the appointed person access to records to which the person is entitled, or	24 25
(b)	refuse or fail without lawful excuse to give information or answer questions, as required by the appointed person, or	26 27
(c)	wilfully obstruct or delay the appointed person in the exercise of a function under this section.	28 29
	Maximum penalty: 100 penalty units.	30
	Subdivision 6 Committees	31
109	Establishment and functions of committees	32
(1)	A trust board:	33
(a)	must establish:	34
(i)	a finance committee, and	35
(ii)	an audit and risk committee, and	36
(iii)	a community advisory committee to liaise with communities to which the trust board provides cemetery services, and	37 38
(b)	may establish any other committee as it determines from time to time.	39
(2)	A trust 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 trust board (whichever first occurs).	40 41 42

(3)	A finance committee or audit and risk committee:	1
(a)	must consider any matters that are referred to it by the trust board, and	2
(b)	may investigate and make inquiries about any matter referred to it by the trust board, and	3 4
(c)	must report back to the trust board as required by the trust board, and	5
(d)	must carry out any other function conferred on it by or under this or any other Act or by the Cemeteries Agency.	6 7
(4)	A community advisory committee:	8
(a)	must consider any matters that are referred to it by the trust board, and	9
(b)	must report back to the trust board as required by the trust board, and	10
(c)	must raise with the trust board any issues of concern or matters of interest to the community regarding the cemetery services provided by the trust board, and	11 12 13
(d)	must carry out any other function conferred on it by or under this Act or by the trust board.	14 15
(5)	A trust 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.	16 17 18
110	Membership and procedure of committees	19
(1)	A committee established under section 109 consists of the persons appointed by the trust board, in accordance with any applicable committee guidelines made under section 111.	20 21 22
(2)	It does not matter that any or all members of the committee are not members of the trust board.	23 24
(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 111 and except as otherwise determined by the trust board.	25 26 27
111	Committee guidelines	28
(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:	29 30 31
(a)	the appointment of members of the committee,	32
(b)	the composition, roles and functions of the committee,	33
(c)	the procedure of the committee,	34
(d)	any other matter relating to the operation of the committee.	35
(2)	The Cemeteries Agency must provide a copy of any guidelines made for or with respect to a committee under this section to the trust board that established the committee.	36 37 38
(3)	The guidelines take effect on the date specified in the guidelines.	39
(4)	A failure to comply with subsection (2) does not affect the validity of any guidelines made under this section.	40 41

Subdivision 7	Miscellaneous	1
112	Planning, conduct and maintenance	2
	The Crown cemetery operator for a cemetery may make such provision as it considers necessary for the following:	3 4
	(a) the setting aside of parts of the cemetery for different types and classes of interments,	5 6
	(b) the establishment of standards of construction and design for monuments and structures,	7 8
	(c) the size, multiple use and location of interment sites,	9
	(d) interments in vaults,	10
	(e) the erection or installation of structures and the making of inscriptions,	11
	(f) the carrying out of work by monumental masons,	12
	(g) the qualifications required by, and the security deposits required to be lodged by, monumental masons,	13 14
	(h) the removal, replacement and maintenance of structures,	15
	(i) the placing of vases, statuettes, jars, bottles or other items of embellishment on or near graves, monuments, crypts or vaults,	16 17
	(j) the improvement and maintenance of the cemetery,	18
	(k) the making of arrangements for the care of interment sites on an annual (or longer term) or other basis,	19 20
	(l) the supply of goods and services incidental to the conduct of interments and other matters relating to the cemetery,	21 22
	(m) the conduct of religious or other ceremonies of interment or commemoration,	23
	(n) the disposition and memorialisation of cremated human remains,	24
	(o) landscaping and setbacks from stormwater and drainage canals and similar watercourses and structures,	25 26
	(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.	27 28
113	Fees and charges	29
	(1) A Crown cemetery operator may from time to time set the fees or charges payable with respect to the following:	30 31
	(a) grant of interment rights (including the renewal of renewable interment rights) with respect to interment sites in the cemetery under Part 4,	32 33
	(b) use of the whole or any part of the cemetery and any building, structure or enclosure in the cemetery,	34 35
	(c) parking or use of any vehicle or class of vehicles in the cemetery,	36
	(d) use of electricity, gas and water,	37
	(e) rubbish disposal and cleaning of the cemetery,	38
	(f) removal of effluent.	39
	(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.	40 41

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|-----|---|----|
| (3) | In setting fees and charges, the Crown cemetery operator is to have regard to the following: | 1 |
| | | 2 |
| (a) | any contractual arrangements entered into by the responsible operator in relation to the cemetery, | 3 |
| | | 4 |
| (b) | the number of intended interments or cremations, | 5 |
| (c) | the costs of developing the land to be used for interment sites, | 6 |
| (d) | future maintenance, | 7 |
| (e) | infrastructure costs. | 8 |
| (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. | 9 |
| | | 10 |
| (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. | 11 |
| | | 12 |
| | | 13 |
| (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. | 14 |
| | | 15 |
| (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. | 16 |
| | | 17 |
| | | 18 |
| (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. | 19 |
| | | 20 |
| | | 21 |

Part 6	Legal proceedings and other matters	1
Division 1	Proceedings for offences	2
114	Nature of proceedings for offences	3
	Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.	4 5
115	Persons who may commence proceedings	6
(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.	7 8 9
(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.	10 11 12
116	Time for commencing proceedings	13
(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.	14 15
(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.	16 17 18
(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.	19 20 21 22 23
(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.	24 25
(5)	This section applies despite anything in the <i>Criminal Procedure Act 1986</i> or any other Act.	26 27
(6)	In this section: <i>evidence</i> of an offence means evidence of any act or omission constituting the offence.	28 29 30
117	Penalty notices for certain offences	31
(1)	An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.	32 33 34
(2)	A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.	35 36 37 38
(3)	A penalty notice under this section is declared to be a penalty notice for the purposes of the <i>Fines Act 1996</i> .	39 40
(4)	A penalty notice may be served personally or by post.	41
(5)	If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.	42 43

(6)	Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.	1 2 3
(7)	The regulations may:	4
(a)	prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and	5 6
(b)	prescribe the amount of penalty payable for the offence if dealt with under this section, and	7 8
(c)	prescribe different amounts of penalties for different offences or classes of offences.	9 10
(8)	The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.	11 12
(9)	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.	13 14
Division 2 Civil penalty provisions		15
118	Definitions	16
	In this Part:	17
	<i>maximum civil penalty</i> —see section 119 (2).	18
	<i>pecuniary penalty order</i> means an order under section 120.	19
119	When a provision is a civil penalty provision	20
(1)	A subsection of this Act (or a section of this Act that is not divided into subsections) is a <i>civil penalty provision</i> 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).	21 22 23 24
(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 <i>maximum civil penalty</i>).	25 26 27
(3)	Proceedings in relation to a civil penalty provision are to be dealt with in accordance with this Division.	28 29
120	Proceedings for contravention of civil penalty provision	30
(1)	Within 12 months of a person (the <i>wrongdoer</i>) 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 127) may apply to the Local Court for an order that the wrongdoer pay a pecuniary penalty.	31 32 33 34
(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).	35 36 37 38 39
(3)	In determining the pecuniary penalty, the Local Court must have regard to all relevant matters, including the following:	40 41
(a)	the nature and extent of the contravention,	42
(b)	the nature and extent of any loss or damage suffered as a result of the contravention,	43 44

(c)	the circumstances in which the contravention took place,	1
(d)	whether the person has previously been found by a court or tribunal to have engaged in any similar conduct.	2 3
(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.	4 5 6 7 8
121	Contravening a civil penalty provision is not an offence	9
	A contravention of a civil penalty provision is not an offence.	10
122	Persons involved in contravening a civil penalty provision	11
(1)	A person must not:	12
(a)	aid, abet, counsel or procure a contravention of a civil penalty provision, or	13
(b)	induce (by threats, promises or otherwise) a contravention of a civil penalty provision, or	14 15
(c)	be in any way, directly or indirectly, knowingly concerned in, or a party to, a contravention of a civil penalty provision, or	16 17
(d)	conspire to effect a contravention of a civil penalty provision.	18
(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.	19 20
123	Civil proceedings after criminal proceedings	21
	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.	22 23 24 25
124	Criminal proceedings during civil proceedings	26
(1)	Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:	27 28
(a)	criminal proceedings are started or have already been started against the person for an offence, and	29 30
(b)	the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.	31 32
(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.	33 34
125	Criminal proceedings after civil proceedings	35
	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.	36 37 38
126	Recovery of pecuniary penalty	39
(1)	A pecuniary penalty is a civil debt payable by the person to the Cemeteries Agency on behalf of the State.	40 41

(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.	1 2 3
(3)	The debt arising from the order is taken to be a judgment debt.	4
127	Proceedings may be brought by Cemeteries Agency or authorised officer	5
	Proceedings for a contravention of a civil penalty provision may only be brought by:	6
(a)	the Cemeteries Agency, or	7
(b)	an authorised officer with the written authorisation of the Cemeteries Agency (either generally or in a particular case).	8 9
128	Evidence given in proceedings for pecuniary penalty order not admissible in criminal proceedings	10 11
(1)	Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:	12 13
(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	14 15 16 17
(b)	the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.	18 19
(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.	20 21 22
Division 3	Civil infringement notices	23
129	Object	24
	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 120.	25 26 27
130	When an infringement notice can be given	28
(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.	29 30 31
(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.	32 33 34
(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.	35 36 37 38
(4)	An infringement notice must be served within 12 months after the day on which the contravention is alleged to have occurred.	39 40
(5)	An infringement notice may be served personally or by post.	41
(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 120 in respect of the alleged contravention.	42 43 44

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|-----|---|-------------|
| (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. | 1
2
3 |
| (8) | In this section: | 4 |
| | <i>civil penalty provision</i> means the following: | 5 |
| (a) | section 27 (5), | 6 |
| (b) | section 31 (3), | 7 |
| (c) | section 34, | 8 |
| (d) | section 38, | 9 |
| (e) | section 41 (3), | 10 |
| (f) | section 42, | 11 |
| (g) | section 43 (1) and (4), | 12 |
| (h) | section 46 (2), | 13 |
| (i) | section 55 (6) (a), | 14 |
| (j) | sections 63 (1), (5) and (6) and (12), | 15 |
| (k) | section 64 (1) and (3), | 16 |
| (l) | section 107 (2). | 17 |

Part 7	Investigation and enforcement powers	1
Division 1	Appointment of authorised officers	2
131	Authorised officers	3
	The Chair of the Board may appoint any of the following persons as an authorised officer for the purposes of this Act:	4
	(a) a police officer,	5
	(b) a Public Service employee,	6
	(c) a person of a class prescribed by the regulations.	7
132	Scope of authority	9
(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.	10
(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.	11
(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.	12
133	Identification	13
(1)	Every authorised officer (other than a police officer) is to be provided by the Chair of the Board with an identification card.	14
(2)	The identification card must:	15
	(a) state that it is issued under this Act, and	16
	(b) give the name of the person to whom it is issued, and bear a photograph of that person, and	17
	(c) state any limitations on the authorised officer's functions, and	18
	(d) state the date (if any) on which it expires, and	19
	(e) bear the signature of the Chair of the Board.	20
(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.	21
(4)	Subsection (3) does not apply to a police officer or to a power conferred by a search warrant.	22
Division 2	Powers of authorised officers	23
134	Interpretation	24
(1)	In this Division:	25
	<i>premises</i> includes:	26
	(a) a building or structure, or	27
	(b) land or a place (whether built on or not).	28
	<i>search</i> includes examine or inspect.	29

(2)	For the purposes of this Division, a thing is <i>connected</i> with an offence under this Act or the regulations if it is:	1
		2
(a)	a thing with respect to which the offence has been committed, or	3
(b)	a thing that will afford evidence of the commission of the offence, or	4
(c)	a thing that was used, or is intended to be used, for the purpose of committing the offence,	5
		6
	and a reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.	7
		8
(3)	For the purposes of this Division, a thing is <i>connected</i> with a civil penalty provision under this Act or the regulations if it is:	9
		10
(a)	a thing with respect to which the civil penalty provision has been contravened, or	11
		12
(b)	a thing that will afford evidence of the contravention of the civil penalty provision, or	13
		14
(c)	a thing that was used, or is intended to be used, for the purpose of contravening the civil penalty provision,	15
		16
	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.	17
		18
		19
135	Purposes for which powers under Division may be exercised	20
	Powers may be exercised under this Division for the following purposes (referred to as <i>enforcement purposes</i>):	21
		22
(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,	23
		24
(b)	for obtaining information or records for purposes connected with the administration of this Act,	25
		26
(c)	in connection with exercising the functions of an authorised officer under this Act.	27
		28
136	Power to enter premises	29
(1)	An authorised officer may enter any premises for enforcement purposes.	30
(2)	The authorised officer may enter the premises with such assistants (including police officers) as may reasonably be required.	31
		32
(3)	The authorised officer must give the occupier of the premises notice of intention to enter the premises unless:	33
		34
(a)	the entry is made with the permission of the occupier, or	35
(b)	the entry is made to a part of the premises open to the public, or	36
(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.	37
		38
		39
(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.	40
		41
(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:	42
		43
(a)	with the permission of the occupier of the premises, or	44
(b)	under the authority conferred by a search warrant.	45

137	Search warrants	1
(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 3 4 5
(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:	6 7 8 9
	(a) to enter the premises concerned, and	10
	(b) to search the premises for evidence of a contravention of this Act or the regulations.	11 12
(3)	Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.	13 14
(4)	In this section:	15
	<i>issuing officer</i> means an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	16 17
	<i>premises</i> includes a vehicle.	18
138	Powers of authorised officers	19
(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:	20 21 22
	(a) examine and inspect any part of the premises or any article or thing on the premises,	23 24
	(b) take and remove samples,	25
	(c) make such examinations, inquiries and tests as the officer considers necessary,	26
	(d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,	27 28
	(e) require records to be produced for inspection,	29
	(f) examine and inspect any records,	30
	(g) copy any records,	31
	(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,	32 33 34
	(i) require a person to take reasonable steps to produce a document,	35
	(j) do any other thing the officer is empowered to do under this Division.	36
(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.	37 38 39 40 41
(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.	42 43 44
(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	45 46

to the authorised officer as may be requested by the authorised officer to exercise the authorised officer's functions.	1 2
(5) If the authorised officer takes any document or thing under this section, he or she must:	3 4
(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	5 6
(b) return the document or thing to that person or the premises within 7 days after taking it.	7 8
(6) In this section:	9
<i>specified person</i> means any of the following persons who are carrying out functions relating to the operations of a cemetery:	10 11
(a) a member or employee of a cemetery operator,	12
(b) a volunteer working at a cemetery.	13
139 Power to detain and search vehicles	14
(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:	15 16
(a) stop and detain the vehicle, and	17
(b) enter and search the vehicle, and	18
(c) break open and search any container in or on the vehicle that the officer has reason to believe contains any such thing, and	19 20
(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.	21 22 23
(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.	24 25 26
(3) An authorised officer may only exercise the power under this section of requiring a vehicle to stop if accompanied by a police officer.	27 28
140 Requirement to provide information and records	29
(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.	30 31 32 33
(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.	34 35 36
(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.	37 38
(4) The authorised officer to whom any record is furnished under this section may take copies of it.	39 40
(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.	41 42 43
(6) This section applies whether or not a power of entry under this Division is being or has been exercised.	44 45

141	Requirement to state name and address	1
(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 3 4
(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.	5 6 7
(3)	A person does not commit an offence under section 143 in respect of a requirement made under this section if:	8 9
(a)	the authorised officer does not, at the time when the officer makes the requirement, show the person the officer's identification card, or	10 11
(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.	12 13 14
142	Provisions relating to requirements to provide documents or information or answer questions	15 16
(1)	Warning to be given on each occasion	17
	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.	18 19 20
(2)	Self-incrimination not an excuse	21
	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.	22 23 24 25
(3)	Information or answer not admissible if objection made	26
	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 143 (1) (d)) or in proceedings with respect to a contravention of a civil penalty provision if:	27 28 29 30 31
(a)	the person objected at the time to doing so on the ground that it might incriminate the person, or	32 33
(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.	34 35 36
(4)	Documents admissible	37
	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.	38 39 40
(5)	Further information	41
	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:	42 43 44
(a)	that the document or information had to be provided or the answer had to be given, or	45 46

(b)	that the document or information provided or answer given might incriminate the person.	1 2
Division 3	Offences in relation to authorised officers	3
143	Offence: obstructing authorised officer	4
(1)	A person who:	5
(a)	prevents an authorised officer from exercising a function conferred or imposed by or under this Act, or	6 7
(b)	hinders, obstructs, threatens or assaults an authorised officer in the exercise of such a function, or	8 9
(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	10 11 12
(d)	provides an authorised officer with a document or information knowing that it is false or misleading in a material particular,	13 14
	is guilty of an offence.	15
	Maximum penalty: 100 penalty units.	16
(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:	17 18
(a)	identified himself or herself as an authorised officer, and	19
(b)	warned the person that a failure or refusal to comply with the requirement may constitute an offence.	20 21
144	Offence: impersonating authorised officer	22
	A person who impersonates or falsely represents that the person is an authorised officer is guilty of an offence.	23 24
	Maximum penalty: 100 penalty units.	25

Part 8	Miscellaneous	1
145	Service of documents	2
(1)	A document that is authorised or required by this Act or the regulations to be served on any person may be served by:	3
		4
(a)	in the case of a natural person:	5
(i)	delivering it to the person personally, or	6
(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	7
		8
		9
		10
(iii)	sending it by facsimile transmission to the facsimile number of the person, or	11
		12
(b)	in the case of a body corporate:	13
(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	14
		15
		16
		17
(ii)	sending it by facsimile transmission to the facsimile number of the body corporate.	18
		19
(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.	20
		21
146	Exchange of information	22
(1)	The Cemeteries Agency may enter into an arrangement (an <i>information sharing arrangement</i>) with a relevant agency for the purposes of sharing or exchanging any information that is held by the Cemeteries Agency or the agency.	23
		24
		25
(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.	26
		27
		28
		29
(3)	Under an information sharing arrangement, the Cemeteries Agency and the relevant agency are, despite any other Act or law of the State, authorised:	30
		31
(a)	to request and receive information that is held by the other party to the arrangement, and	32
		33
(b)	to disclose that information to the other party.	34
(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 <i>Privacy and Personal Information Protection Act 1998</i> and the <i>Health Records and Information Privacy Act 2002</i>).	35
		36
		37
		38
(5)	In this section:	39
	<i>relevant agency</i> means any of the following:	40
(a)	NSW Health,	41
(b)	NSW Fair Trading, Department of Finance and Services,	42
(c)	Division of Local Government, Department of Premier and Cabinet,	43
(d)	the Department,	44
(e)	Office of Environment and Heritage, Department of Premier and Cabinet,	45

(f)	any other person or body (or person or body belonging to a class) prescribed by, or approved in accordance with, the regulations.	1 2
147	Personal liability	3
(1)	A matter or thing done or omitted to be done by:	4
(a)	the Minister, or	5
(b)	the Cemeteries Agency, or	6
(c)	the Board or a member of the Board, or	7
(d)	the Chief Executive Officer, or	8
(e)	a person acting under the direction of the Minister, Cemeteries Agency, the Board or the Chief Executive Officer,	9 10
	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.	11 12 13 14
(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.	15 16 17
148	Regulations	18
(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.	19 20 21 22
(2)	In particular, regulations may be made for or with respect to the following:	23
(a)	regulating the use and enjoyment of, and the conduct of persons in, cemeteries,	24
(b)	regulating the use of vehicles in cemeteries,	25
(c)	the fees and charges that may be imposed for the purposes of this Act,	26
(d)	the care, control and management of cemeteries.	27
(3)	The regulations may create an offence punishable by a penalty not exceeding 25 penalty units.	28 29
(4)	The regulations may adopt any document (including for example a code of practice) as in force from time to time.	30 31
(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.	32 33 34 35 36
149	Repeals	37
	The following are repealed:	38
(a)	the <i>Botany Cemetery and Crematorium Act 1972</i> ,	39
(b)	the <i>Christ Church Cathedral, Newcastle, Cemetery Act 1966</i> ,	40
(c)	the <i>Conversion of Cemeteries Act 1974</i> ,	41
(d)	Part 6 of Schedule 8 to the <i>Crown Lands Act 1989</i> ,	42
(e)	the <i>Gore Hill Memorial Cemetery Act 1986</i> ,	43
(f)	the <i>Merriwa Roman Catholic Cemetery Act 1966</i> ,	44

(g)	the <i>Randwick Cemetery Unused Lands Sale Act of 1886 (50 Vic)</i> .	1
150	Review of Act	2
(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.	3 4 5
(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.	6 7
(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.	8 9

Schedule 1	Members and procedure of Board	1
	(Section 16)	2
Part 1	Preliminary	3
1	Definitions	4
	In this Schedule:	5
	<i>appointed member</i> means the Chair of the Board, Deputy Chair of the Board or other member of the Board who is appointed by the Minister.	6 7
	<i>member</i> means an appointed or ex officio member of the Board.	8
	<i>voting member</i> means the Chair, Deputy Chair or person appointed as a member of the Board under section 16 (2) (b).	9 10
Part 2	Members	11
2	Terms of office of appointed members	12
(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.	13 14 15
(2)	Despite subclause (1), a person cannot be re-appointed for more than 3 successive terms of office.	16 17
3	Remuneration	18
	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 Public Service Commissioner may from time to time determine in respect of the member.	19 20 21 22
4	Vacancy in office of appointed member	23
(1)	The office of an appointed member becomes vacant if the member:	24
(a)	dies, or	25
(b)	completes a term of office and is not re-appointed, or	26
(c)	resigns the office by instrument in writing addressed to the Minister, or	27
(d)	is removed from office by the Minister under this clause, or	28
(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	29 30 31 32
(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	33 34 35
(g)	becomes a mentally incapacitated person, or	36
(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	37 38 39 40
(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.	41 42

(2)	The Minister may remove an appointed member from office at any time for any or no reason and without notice.	1 2
5	Suspension of members	3
(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.	4 5 6 7
(2)	A copy of an order under this clause must be served on the member.	8
(3)	The member, while suspended from office under this clause:	9
(a)	is not entitled to exercise any functions of the office, and	10
(b)	is not entitled to any fee or remuneration to which he or she would otherwise be entitled as the holder of the office.	11 12
(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.	13 14 15
6	Filling of vacancy in office of appointed member	16
	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.	17 18
7	Part-time appointments	19
	Appointed members hold office as part-time members.	20
8	Effect of certain other Acts	21
(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.	22 23
(2)	If by or under any Act provision is made:	24
(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	25 26
(b)	prohibiting the person from engaging in employment outside the duties of that office,	27 28
	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.	29 30 31
Part 3	Procedure	32
9	General procedure	33
(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.	34 35 36
(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.	37 38 39
(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.	40 41

10	Quorum	1
	The quorum for a meeting of the Board is 3 voting members of the Board.	2
11	Presiding member	3
(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.	4 5
(2)	The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	6 7
12	Voting	8
	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.	9 10
	Note. A person appointed under section 16 (2) (c), (d), (e) or (f) is a non-voting member of the Board.	11 12
13	Transaction of business outside meetings or by telephone	13
(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.	14 15 16 17
(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.	18 19 20 21
(3)	For the purposes of:	22
(a)	the approval of a resolution under subclause (1), or	23
(b)	a meeting held in accordance with subclause (2),	24
	the Chair and each member have the same voting rights as they have at an ordinary meeting of the Board.	25 26
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.	27 28
(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.	29 30
14	Subcommittees	31
(1)	The Board may establish subcommittees to assist it in connection with the exercise of any of its functions.	32 33
(2)	A subcommittee has such functions as the Board may from time to time determine in respect of it.	34 35
(3)	It does not matter that any or all of the members of a subcommittee are not members of the Board.	36 37
(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.	38 39 40
15	First meeting	41
	The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.	42 43

Schedule 2	Members and procedure of trust boards	1
Part 1	Members	2
1	Maximum number of members	3
(1)	A person must not be appointed as a member (whether to fill a vacancy or otherwise) if the appointment would result in the number of members for the time being of the trust board exceeding, or being maintained above, 7.	4 5 6
(2)	As long as it does not exceed 7, the number of members is not limited to the number appointed when the trust board was constituted.	7 8
(3)	A person who is appointed as an ex officio member must not be counted for the purposes of this clause.	9 10
2	Acting members	11
(1)	The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.	12 13 14
(2)	The Minister may remove a person from the office to which he or she was appointed under this clause.	15 16
(3)	For the purposes of this clause, a vacancy in the office of a member is to be regarded as an absence from office of the member.	17 18
3	Nominee of ex officio member	19
(1)	An ex officio member may, with the approval of the Minister, appoint a nominee.	20
(2)	The nominee may attend a meeting of the members in the place of the ex officio member.	21 22
(3)	For the purposes of the meeting the nominee is taken to be the ex officio member.	23
4	Term of office	24
(1)	Subject to this Schedule, a member holds office for such period not exceeding 5 years as may be specified in the member's instrument of appointment.	25 26
(2)	A member is eligible (if otherwise qualified) for re-appointment.	27
5	Vacancy in office of member	28
(1)	The office of a member becomes vacant if the member:	29
(a)	dies, or	30
(b)	completes a term of office and is not re-appointed, or	31
(c)	resigns the office by instrument in writing addressed to the Minister, or	32
(d)	is removed from office by the Minister under this clause, or	33
(e)	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	34 35 36
(f)	becomes a mentally incapacitated person, or	37
(g)	except as described in subclause (2), is an ex officio member who ceases to hold the office by reason of which he or she became a member, or	38 39
(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	40 41

South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or	1 2
(i) is found to have contravened a civil penalty provision set out in section 88 (1), 89, 90 or 93 (1), unless the Local Court otherwise orders.	3 4
(2) If a person is an ex officio member because he or she holds a local government office and he or she ceases to hold the local government office, he or she continues as a member until:	5 6 7
(a) one month has elapsed, or	8
(b) the local government office is filled, whichever first occurs.	9 10
(3) Subclause (2) does not apply if the member ceased to hold office:	11
(a) in circumstances giving rise to a vacancy in civic office under section 234 of the <i>Local Government Act 1993</i> , or	12 13
(b) because of a declaration under section 255 of that Act.	14
(4) The Minister may, by notification in the Gazette, remove a member from office at any time.	15 16
6 Filling of vacancy in office of member	17
If the office of a member becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.	18 19
7 Ex officio members—special provision	20
A person who is an ex officio member is not affected by a duty or disability which is imposed on the person as a member:	21 22
(a) by a provision of this or any other Act or by a rule of law or equity, and	23
(b) as a result of the person both being a member and holding the office or position on which the ex officio appointment is based.	24 25
8 Definition	26
In this Part:	27
<i>local government office</i> means the office of a councillor (including a mayor) under the <i>Local Government Act 1993</i> .	28 29
Part 2 Procedure	30
9 General procedure	31
The procedure for the calling of meetings of a trust 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.	32 33 34
10 Quorum	35
The quorum for a meeting of a trust board is the number of members that is one more than half the number of members of the board (any fraction being disregarded), unless a greater number is fixed by regulations applying to the board.	36 37 38
11 Voting	39
A decision supported by a majority of the votes cast at a meeting of a trust board at which a quorum is present is the decision of the board.	40 41

12 Minutes	1
A trust board must cause full and accurate minutes to be kept of the proceedings of each meeting of the board.	2 3
Part 3 Administration	4
Division 1 Trust boards	5
13 Meetings	6
(1) The trust board is to meet at least 4 times a year at the places and times as determined by the board.	7 8
(2) At one such meeting, to be termed the annual general meeting, the trust board is to elect a member to be deputy chairperson.	9 10
(3) A person elected under subclause (2) is to hold office until the next annual general meeting of the trust board.	11 12
(4) A statement of accounts is to be presented to the annual general meeting of the trust board.	13 14
14 Special meetings	15
On receipt by the chairperson of a written request for a meeting of the trust board, the chairperson, if the request is signed by at least 2 members of the board and specifies the purpose of the meeting, is to call a special meeting to be held within 28 days after receipt of the request at the place and time specified by the chairperson.	16 17 18 19
15 Prior notice of meetings	20
(1) Subject to subclause (2), the chairperson, not later than 10 days before the day appointed for a meeting referred to in clause 13 or 14, is to forward to each member of the trust board a notice in writing setting out the place and time of the meeting and the agenda for that meeting.	21 22 23 24
(2) If the chairperson is of the opinion that a special meeting should be held as soon as possible, the chairperson may give such notice of the place and time of, and the agenda for, the meeting as the chairperson considers appropriate.	25 26 27
16 Casual vacancy	28
(1) If a casual vacancy occurs in the office of the chairperson, the Minister is to appoint a person to fill the vacancy for the unexpired part of the term of office of that person's predecessor.	29 30 31
(2) If a casual vacancy occurs in the office of the deputy chairperson, the trust board, at the first meeting held after the occurrence of the casual vacancy, is to elect a person to fill the vacancy of the person for the unexpired part of the term of office of that person's predecessor.	32 33 34 35
17 Conduct of meetings	36
(1) At a meeting of the trust board, the chairperson or, in the absence of the chairperson, the deputy chairperson, is to preside.	37 38
(2) In the absence of the chairperson and the deputy chairperson, the members of the trust board present are to elect a person from among the members to preside at the meeting and the person so elected is to preside.	39 40 41

(3)	The person presiding at a meeting of the trust board is to have a deliberative vote and, in the event of an equality of votes, is to have a second or casting vote.	1 2
Division 2	General administrative matters	3
18	Officers and employees	4
(1)	A trust 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 Crown cemetery trust.	5 6 7
(2)	One person may be appointed to the positions of chief executive officer and chief financial officer of the Crown cemetery trust.	8 9
(3)	A member of the trust board may be appointed and employed under this clause but only with the approval of the Minister.	10 11
19	Duties of chief executive officer and chief financial officer	12
(1)	The chief executive officer is:	13
(a)	to keep and maintain minutes of each meeting of the trust board, and	14
(b)	to keep and maintain the book (disclosure of material personal interests of members of a trust board) required by section 93 (3), and	15 16
(c)	to perform other duties as directed by the Crown cemetery trust.	17
(2)	The chief financial officer is:	18
(a)	to be responsible to the trust board for the keeping and maintaining of proper financial records, and	19 20
(b)	to keep and maintain the records required to be kept by the Crown cemetery trust for the purposes of section 122 (1) (b) of the <i>Crown Lands Act 1989</i> and section 42 of this Act.	21 22 23
20	Receipts and disbursements	24
(1)	All money received by the trust board is to be deposited to the credit of an account established with any authorised deposit-taking institution in the name of the Crown cemetery trust.	25 26 27
(2)	Each item of expenditure by or on behalf of the trust board is to be authorised or confirmed for payment, at a duly convened and constituted meeting of the trust board, by tabling and approval of a report by the chief financial officer relating to that item of expenditure.	28 29 30 31
21	Delegation	32
(1)	The trust board may delegate the exercise of any function of the trust board under this Act (other than this power of delegation) to:	33 34
(a)	any member of the trust board, or	35
(b)	any officer or employee appointed or employed by the trust board under clause 18.	36 37
(2)	The trust board must keep:	38
(a)	a copy of any delegation of a function under this clause, and	39
(b)	a record of all delegations it has made under this clause.	40

22 Common seal	1
(1) The common seal of the Crown cemetery trust is to be kept by the chief executive officer or, if there is no chief executive officer, by such other person as may be appointed by the trust.	2 3 4
(2) A trust's seal may be affixed to an instrument or document only:	5
(a) following a resolution to do so passed at a meeting of the trust, and	6
(b) in the presence of the chief executive officer or a member of the trust board, and	7 8
(c) with an attestation by the signature of the chief executive office or member of the fact of the affixing of the seal.	9 10
(3) If an administrator of a trust has been appointed, the trust's seal may be affixed and attested by the administrator alone.	11 12

Schedule 3	Savings, transitional and other provisions	1
Part 1	General	2
1	Regulations	3
(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.	4 5
(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.	6 7
(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:	8 9 10
(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	11 12 13
(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.	14 15 16
(4)	Regulations under this clause may have effect despite any provision of Part 2.	17
Part 2	Provisions consequent on enactment of this Act	18
2	Records	19
	Clause 33 (2) of, and Schedule 4 to, the <i>Crown Lands Regulation 2006</i> , 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.	20 21 22 23 24 25 26
3	Register of burials	27
	A register of burials kept by a cemetery authority in relation to burials carried out at a cemetery under clause 68 of the <i>Public Health Regulation 2012</i> , 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.	28 29 30 31 32
4	Register of cremations	33
	A register of cremations kept by a cremation authority in relation to cremations carried out at a cemetery under clause 86 of the <i>Public Health Regulation 2012</i> , 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.	34 35 36 37 38
5	Register of mortuaries and crematories	39
	A register of mortuaries and crematories maintained by the Director-General of the Ministry of Health under clause 89 of the <i>Public Health Regulation 2012</i> , 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.	40 41 42 43 44

6	Renewal schemes	1
(1)	A renewal scheme approved under Subdivision 4 of Division 2 of Part 3 of the <i>Crown Lands (General Reserves) By-law 2006</i> (the repealed Subdivision) before the repeal of that Subdivision by this Act is taken to be a renewal scheme approved under Part 4 of this Act.	2 3 4 5
(2)	A proposal for approval of a renewal scheme submitted under the repealed Subdivision before its repeal by this Act that has not been determined by the Minister before that repeal is taken to have been made under Division 3 of Part 4 of this Act.	6 7 8
7	Existing members of trust boards	9
(1)	A person who, immediately before the commencement of this clause, was a member of a trust board appointed under section 93 of the <i>Crown Lands Act 1989</i> 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 80 of this Act.	10 11 12 13 14
(2)	The instrument of appointment of such a member is taken to include the matters referred to in section 80 (2) and to have been signed by the member.	15 16
8	Annual reports and records	17
(1)	Section 105 (Annual report) of this Act applies only to and in respect of a financial year commencing on or after 1 July 2014.	18 19
(2)	Section 122 of the <i>Crown Lands Act 1989</i> and clauses 32 and 33 of the <i>Crown Lands Regulation 2006</i> 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.	20 21 22 23

Schedule 4	Conversion of cemeteries	1
Part 1	Preliminary	2
1	Transferred provisions	3
(1)	This Schedule re-enacts (with minor modifications) provisions of the <i>Conversion of Cemeteries Act 1974</i> that are repealed by section 149 and are transferred provisions to which section 30A of the <i>Interpretation Act 1987</i> applies.	4 5 6
(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.	7 8
2	Definitions	9
	In this Schedule:	10
	<i>area</i> has the same meaning as in the <i>Local Government Act 1993</i> .	11
	<i>cemetery</i> means a cemetery of which a council has the care, control and management.	12
	<i>council</i> has the same meaning as in the <i>Local Government Act 1993</i> .	13
	<i>Minister</i> means the Minister administering the <i>Crown Lands Act 1989</i> .	14
	<i>monument</i> means a monument, headstone or other surface structure, or a vault.	15
	<i>resolution</i> means a resolution of a council under clause 3 (1).	16
	<i>the conversion date</i> , 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.	17 18 19
	<i>the conversion land</i> , in relation to land within a cemetery, means the land declared by the Minister to be a public park under clause 7 (1).	20 21
Part 2	Conversion of cemeteries into public parks	22
Division 1	Dedication of cemeteries as public parks	23
3	Council may resolve to convert cemetery	24
(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.	25 26
(2)	The council must give notice of the resolution 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.	27 28 29 30
4	Objections	31
(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.	32 33 34
(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.	35 36 37
5	Council may apply to have a cemetery declared a public park	38
(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.	39 40 41

- (2) An application under subclause (1) must be made in writing addressed to the Minister and must be accompanied by the following: 1
2
- (a) details of the proposal to convert the cemetery into a public park in the nature of a rest park, 3
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 - (b) information, so far as it can be obtained, indicating, in respect of the cemetery: 5
 - (i) the total number of burials, and 6
 - (ii) the dates of the first and last burials, and 7
 - (iii) the number of monuments, and 8
 - (iv) the number of monuments which have been provided or maintained by the Commonwealth War Graves Commission, and 9
10
 - (v) whether the monuments are proposed to be removed, re-arranged within the cemetery, relocated in another cemetery, or disposed of, and 11
12
 - (vi) the number of outstanding exclusive rights to burial, and 13
 - (vii) the number of graves for which money is held for perpetual care, and 14
 - (viii) the amount of money held for the perpetual care of graves, and 15
 - (ix) the amount of money held otherwise than for the perpetual care of graves, and 16
17
 - (x) the nature and proposed future use of any building erected on the land, 18
 - (c) estimates of the costs of: 19
 - (i) the conversion of the cemetery into a public park, and 20
 - (ii) the future annual maintenance of the land, 21and information stating the means by which the council proposes to meet those costs, 22
23
 - (d) evidence of compliance by the council with clause 3 (2), 24
 - (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 25
26
 - (f) such other information as may be prescribed. 27
- (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). 28
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6 Minister may notify intention to declare cemetery a public park 31

- (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. 32
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- (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. 36
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- (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. 38
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- (4) For the purposes of subclauses (2) and (3), sitting days are to be counted, whether or not they occur during the same session. 43
44

7	Minister may declare cemetery to be a public park	1
(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 3
(2)	The land declared to be a public park under subclause (1) is deemed to have been dedicated as a public park under section 80 of the <i>Crown Lands Act 1989</i> .	4 5
Division 2	Functions of a council with respect to conversion land	6
8	Divesting of estate, interest etc in conversion land on conversion date	7
(1)	On the conversion date:	8
(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	9 10 11
(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	12 13 14
(c)	any trusts, conditions, encumbrances, dedications or reservations affecting the conversion land immediately before the conversion date are revoked and annulled, and	15 16 17
(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	18 19 20
(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.	21 22 23 24 25 26 27
(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.	28 29 30 31 32
(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.	33 34 35
9	Council sole trustee of conversion land	36
(1)	Subject to this Part, the council is to be sole trustee of the conversion land and is deemed to have been appointed sole trustee under section 95 of the <i>Crown Lands Act 1989</i> .	37 38 39
(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.	40 41 42
10	Duties and powers of council in relation to conversion land	43
(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.	44 45 46

- (2) The council must, as soon as practicable after the conversion date: 1
- (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 2
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 - (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: 6
7
 - (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 8
9
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12
 - (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 13
14
15
 - (c) if no burial register exists: 16
 - (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 17
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 - (ii) furnish a certified copy of the register to the Minister if required to do so by the Minister, and 23
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 - (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. 25
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- (3) In addition to the duties conferred on the council under subclause (2), the council must, as soon as practicable after the conversion date: 28
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- (a) convert the conversion land into a rest park, and 30
 - (b) erect a memorial in a suitable position on the conversion land indicating: 31
 - (i) the sacred nature of the area, and 32
 - (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. 33
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- (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. 37
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- (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. 41
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11 Preservation of certain monuments 43

- (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): 44
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- (a) any monument which: 47
 - (i) is erected over any grave which, in the opinion of the council, is of historical importance, and 48
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(ii)	is, in the opinion of the council, reasonably capable of being preserved, and	1 2
(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.	3 4
(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.	5 6 7 8
(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.	9 10
(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:	11 12 13
(a)	the Royal Australian Historical Society relating to the historical importance of each or any monument, and	14 15
(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.	16 17 18
(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.	19 20 21 22
12	Advertisement to be published before removal of monuments	23
(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:	24 25 26 27
(a)	twice at an interval of not less than 2 weeks in a newspaper or newspapers published and circulating in the locality, and	28 29
(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.	30 31
(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.	32 33 34
(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:	35 36
(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	37 38 39
(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).	40 41 42 43
(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.	44 45 46 47 48

(5)	Subclause (3) does not authorise the Commonwealth War Graves Commission:	1
(a)	to remove a monument unless that Commission has provided or maintained the monument, or	2 3
(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.	4 5 6
13	Remains not to be disturbed	7
(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.	8 9 10 11
(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.	12 13 14
(3)	Nothing in this clause prevents the removing of any remains or ashes pursuant to clause 12 (3).	15 16
14	Maintenance etc of building on conversion land	17
(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.	18 19
(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.	20 21 22 23
(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.	24 25 26 27
(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.	28 29 30 31
(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.	32 33 34
Division 3	Miscellaneous	35
15	No compensation payable	36
	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.	37 38 39
Part 3	Bodangora General Cemetery	40
16	Application of Part 2	41
	Part 2 applies to the land described in Schedule 2 to the <i>Conversion of Cemeteries Act 1974</i> , as in force immediately before its repeal by this Act, as if:	42 43
(a)	a reference to the <i>conversion date</i> were a reference to 1 July 1974, and	44

- (b) a reference to the *conversion land* were a reference to the land so described, 1
and 2
- (c) a reference to the Council were a reference to Wellington Council. 3

Schedule 5	Transferred and other provisions relating to certain cemeteries and crematoria	1 2
Part 1	Preliminary	3
1	Transferred provisions	4
(1)	Parts 2–5 of this Schedule re-enact (with minor modifications) Acts or provisions of Acts or statutory instruments repealed by section 149 and are transferred provisions to which section 30A of the <i>Interpretation Act 1987</i> applies.	5 6 7
(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.	8 9
2	Regulations	10
(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.	11 12 13
(2)	Without limiting subclause (1), the regulations may do either or both of the following:	14 15
(a)	provide that this Act applies as if the provision were omitted and replaced with another provision,	16 17
(b)	confer jurisdiction on a court or tribunal.	18
Part 2	Botany Cemetery and Crematorium	19
3	Interpretation	20
	In this Part:	21
	<i>monument</i> means monument or other surface structure.	22
	<i>prescribed grave</i> 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.	23 24 25
	<i>prescribed monument</i> means a monument in the cemetery, being a monument which relates to a person who was buried in the former Devonshire-street Cemetery.	26 27
	<i>regulations</i> means regulations made under this Act.	28
	<i>repealed Act</i> means the <i>Botany Cemetery and Crematorium Act 1972</i> as in force immediately before its repeal by this Act.	29 30
	<i>the cemetery</i> means the land described in the First Schedule to the repealed Act.	31
	<i>the cemetery trust</i> means The Botany Cemetery Trust.	32
	<i>the crematorium</i> means the land described in the Second Schedule to the repealed Act.	33 34
	<i>the crematorium trust</i> means The Eastern Suburbs Crematorium Trust.	35
4	Re-use of certain lands for burials	36
(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:	37 38
(a)	the land formerly occupied by a prescribed grave from which the trust is satisfied that:	39 40
(i)	all monuments and remains have been removed pursuant to Part 3 of the repealed Act, or	41 42

(ii)	there being no monuments on the grave, all remains have been so removed, or	1 2
(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	3 4 5 6
(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.	7 8 9 10 11
(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:	12 13 14 15 16
(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	17 18 19
(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.	20 21 22 23
5	No compensation payable	24
	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.	25 26 27
Part 3	Christ Church Cathedral, Newcastle, Cemetery	28
6	Definitions	29
	In this Part:	30
	<i>Council</i> means Council of the City of Newcastle.	31
	<i>repealed Act</i> means the <i>Christ Church Cathedral, Newcastle, Cemetery Act 1966</i> as in force immediately before its repeal by this Act.	32 33
	<i>the Cathedral lands</i> means the lands described in the Third Schedule to the repealed Act.	34 35
	<i>the Corporate Trustees</i> means the Trustees of Church Property for the Diocese of Newcastle.	36 37
7	Maintenance of land in First Schedule to repealed Act as a public park	38
	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.	39 40 41 42
8	Vesting of land in Second Schedule to repealed Act in Corporate Trustees	43
(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	44 45

Church of England as the Synod of the Diocese of Newcastle from time to time declares, directs or appoints.	1 2
(2) In this clause, the expression <i>minerals</i> has the meaning given to it in section 5 of the <i>Crown Lands Consolidation Act 1913</i> immediately before the repeal of that Act.	3 4
9 Responsibility of Council for relocation of power lines, stormwater drainage and damage to Cathedral lands	5 6
The Council is responsible for the following:	7
(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,	8 9 10
(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,	11 12 13 14
(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.	15 16 17
10 Access to be granted by Corporate Trustees	18
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.	19 20 21
11 No compensation payable	22
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.	23 24 25
12 Disputes between Council and Corporate Trustees	26
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.	27 28 29 30 31 32
Part 4 Gore Hill Memorial Cemetery	33
13 Definitions	34
In this Act:	35
<i>historic cemetery</i> means a cemetery, containing monuments of historic significance, that is closed to further burials.	36 37
<i>monument</i> means:	38
(a) a monument, headstone or other surface structure, or	39
(b) a vault.	40
<i>repealed Act</i> means the <i>Gore Hill Memorial Cemetery Act 1986</i> as in force immediately before its repeal by this Act.	41 42

<i>the cemetery land</i> 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.	1 2 3
<i>trustees</i> means the persons holding office as trustees of the cemetery land under Part 5 of the <i>Crown Lands Act 1989</i> .	4 5
14 Management of cemetery	6
(1) Except as provided by this Act, the cemetery land is to be maintained by the trustees as an historic cemetery.	7 8
(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.	9 10 11
15 Burial registers and records	12
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.	13 14 15
16 Erection of memorials by Commonwealth War Graves Commission	16
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 18 19 20
17 Remains not to be disturbed	21
(1) The trustees or any person or body of persons must take due care not to unearth or disturb:	22 23
(a) the remains of any person who is buried in, or	24
(b) the ashes of any person which are contained in an article which has been placed in or on, or	25 26
(c) any monument over the grave of or in respect of a person in or on, the cemetery land.	27 28
(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:	29 30
(a) where practicable, in the original place of interment or erection in or on the cemetery land, or	31 32
(b) elsewhere in or on the cemetery land.	33
18 Placement of ashes	34
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.	35 36 37
19 Sexton’s dwelling	38
(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.	39 40 41
(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.	42 43

(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.	1 2 3
20	No compensation payable	4
	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.	5 6
Part 5	Provisions relating to general crematorium lease and funding of Rookwood Necropolis Trust	7 8
21	Definitions	9
	In this Part:	10
	<i>appointed day</i> means the day appointed for the commencement of the 2009 Act pursuant to section 2 of that Act.	11 12
	<i>denominational trust</i> , 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 <i>Crown Lands Act 1989</i> , 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.	13 14 15 16 17 18
	<i>financial year</i> means a period of 12 months commencing on 1 July.	19
	<i>general crematorium site</i> means the land within the Rookwood Necropolis that comprises Lot 488, Deposited Plan 48288.	20 21
	<i>interment</i> does not include interment of ashes arising from a cremation.	22
	<i>JCNT</i> means the Joint Committee of Necropolis Trustees constituted by section 20 of the 1901 Act.	23 24
	<i>new RNT</i> means the reserve trust established by clause 53 of Schedule 8 to the <i>Crown Lands Act 1989</i> immediately before its repeal by this Act.	25 26
	<i>old RNT</i> means the Rookwood Necropolis Trust established under section 92 (1) by notification published in Gazette No 73 of 15 May 2009 at page 2244.	27 28
	<i>quarter</i> means the 3-month period beginning 1 July, 1 October, 1 January or 1 April in each financial year.	29 30
	<i>Rookwood Necropolis</i> 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.	31 32 33 34 35
	<i>Rookwood Necropolis Trust</i> means the Rookwood Necropolis Trust established by clause 53 of Schedule 8 to the <i>Crown Lands Act 1989</i> immediately before its repeal by this Act.	36 37 38
	<i>the 1901 Act</i> means the <i>Rookwood Necropolis Act 1901</i> , as in force immediately before the appointed day.	39 40
	<i>the 2009 Act</i> means the <i>Rookwood Necropolis Repeal Act 2009</i> .	41
22	General crematorium lease	42
(1)	In this clause:	43
	<i>general crematorium lease</i> 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.	44 45 46

(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 <i>Crown Lands Act 1989</i> for the purposes of a crematorium.	1 2 3
(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 5 6 7 8 9
(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 <i>Land and Environment Court Act 1979</i> , an appeal under this clause falls within Class 3 of the Land and Environment Court's jurisdiction.	10 11 12 13 14
(5)	Divisions 2A and 3 of Part 7 of the <i>Crown Lands Act 1989</i> do not apply to or in respect of the general crematorium lease.	15 16
23	Construction of references to JCNT or old RNT	17
	In any other Act or instrument, a reference to the JCNT or the old RNT extends to the new RNT.	18 19
24	Contributions payable to Rookwood Necropolis Trust by denominational trusts etc	20
(1)	During the last 6 months of each financial year commencing on or after 1 July 2010, the Rookwood Necropolis Trust:	21 22
(a)	must make estimates for the following financial year of its expenditure and of its revenue apart from this clause, and	23 24
(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	25 26 27
(c)	must notify the Minister of the total amount so determined, and	28
(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	29 30 31
(e)	must notify each denominational trust of the contribution payable by it for the following financial year.	32 33
(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).	34 35 36
(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.	37 38 39
(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:	40 41 42
	$P = \frac{A \times I\&C}{\Sigma I\&C}$	
	where:	43
	P represents the contribution payable.	44

	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.	1 2 3
	<i>I&C</i> , 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.	4 5 6
	<i>ΣI&C</i> represents the total number of interments and cremations carried out during the previous calendar year in the Rookwood Necropolis.	7 8
25	Fees payable to Rookwood Necropolis Trust by denominational trusts operating crematoria	9 10
(1)	In this clause: <i>general crematorium lease</i> 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 <i>Crown Lands Act 1989</i> .	11 12 13 14
(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.	15 16 17 18
(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.	19 20 21 22 23
26	Information to be provided to Rookwood Necropolis Trust by reserve trusts etc	24
	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.	25 26 27 28

Schedule 6	Amendment of Acts and subordinate instruments	1
6.1	Crown Lands Act 1989 No 6	2
[1]	Section 3 Definitions	3
	Insert in alphabetical order in section 3 (1):	4
	<i>Crown cemetery trust</i> has the same meaning as in the <i>Cemeteries and Crematoria Act 2013</i> .	5 6
[2]	Section 78 Definitions	7
	Insert “or under section 80 of the <i>Cemeteries and Crematoria Act 2013</i> ” after “section 93” in the definition of <i>trust board</i> .	8 9
[3]	Section 92 Reserve trusts	10
	Insert after section 92 (6B):	11
	(6C) Subsections (6)–(6B) do not apply to a reserve trust established for cemetery or crematorium purposes on or after the commencement of section 79 of the <i>Cemeteries and Crematoria Act 2013</i> .	12 13 14
	(6D) In this Division, a reference to a <i>reserve trust manager</i> , in relation to a reserve trust established for cemetery or crematorium purposes on or after the commencement of section 79 of the <i>Cemeteries and Crematoria Act 2013</i> , is a reference to the Minister administering that Act (to the extent that the Minister is responsible for managing the affairs of that reserve trust) or the trust board, corporation or administrator appointed under that section to manage the affairs of the trust.	15 16 17 18 19 20 21
[4]	Section 92 (8)	22
	Insert after section 92 (7):	23
	(8) The Minister administering this Act is to consult the Minister administering the <i>Cemeteries and Crematoria Act 2013</i> before exercising any function after the commencement of section 79 of that Act with respect to a reserve trust established for cemetery or crematorium, or related, purposes.	24 25 26 27
[5]	Section 102 Consent of Minister to sale, lease, easement, licence or mortgage	28
	Insert after section 102 (7):	29
	(8) Nothing in this section applies to or in respect of the grant of an interment right under the <i>Cemeteries and Crematoria Act 2013</i> .	30 31
[6]	Section 112 Preparation of draft plan of management	32
	Insert “(other than a Crown cemetery within the meaning of the <i>Cemeteries and Crematoria Act 2013</i>)” after “reserve” where firstly occurring in section 112 (1).	33 34
[7]	Section 112 (2)	35
	Insert “(other than a Crown cemetery trust within the meaning of the <i>Cemeteries and Crematoria Act 2013</i>)” after “reserve trust”.	36 37
[8]	Section 128 By-laws	38
	Omit section 128 (1) (p1) and (p2).	39

[9] Section 128 (7), definition of “reserve”	1
Insert “but does not include a Crown cemetery within the meaning of the <i>Cemeteries and Crematoria Act 2013</i> ” after “trust”.	2 3
[10] Section 128 (7), definition of “reserve trust”	4
Insert in alphabetical order:	5
<i>reserve trust</i> does not include a Crown cemetery trust.	6
6.2 Crown Lands (General Reserves) By-law 2006	7
[1] Clause 4A	8
Insert after clause 4:	9
4A Application of By-law	10
This By-law does not, on or after the commencement of section 79 of the <i>Cemeteries and Crematoria Act 2013</i> , apply to or in respect of a trust board for a reserve trust established for cemetery or crematorium, or related, purposes.	11 12 13 14
[2] Clause 18 Fees and charges	15
Omit clause 18 (4), (5) (b), (7) and (9).	16
[3] Part 3, Divisions 2 and 3	17
Omit the Divisions.	18
[4] Clause 45 Transitional provision consequent on Crown Lands (General Reserves) Amendment (Sustainable Burials) By-law 2011	19 20
Omit the clause.	21
6.3 Crown Lands Regulation 2006	22
Clause 3 Interpretation	23
Insert after clause 3 (1):	24
(1A) A reference in this Regulation to a reserve trust does not include a Crown cemetery trust within the meaning of the <i>Cemeteries and Crematoria Act 2013</i> on or after the commencement of this subclause.	25 26 27
6.4 Environmental Planning and Assessment Regulation 2000	28
Clause 226 Prescribed persons: section 88	29
Insert after clause 226 (1) (d):	30
(e) without limiting paragraph (a), a Crown cemetery trust within the meaning of the <i>Cemeteries and Crematoria Act 2013</i> .	31 32
6.5 Law Enforcement (Powers and Responsibilities) Act 2002 No 103	33
Schedule 2 Search warrants under other Acts	34
Insert in alphabetical order:	35
<i>Cemeteries and Crematoria Act 2013</i> , section 137	36

6.6 Public Health Regulation 2012	1
[1] Clause 49 Definitions	2
Insert “or the re-interment of those remains in accordance with section 55 (4) of the <i>Cemeteries and Crematoria Act 2013</i> ” after “vault” where lastly occurring in the definition of <i>exhumation</i> .	3 4 5
[2] Clause 68 Register of burials	6
Omit the clause.	7
[3] Clause 86 Register of cremations	8
Omit the clause.	9
[4] Clause 87 Keeping of register and documents	10
Omit the clause.	11
[5] Clause 89 Register of mortuaries	12
Omit “and crematories” from clause 89 (1).	13
[6] Clause 89 (2) and (4)	14
Omit “or crematory” wherever occurring.	15
[7] Clause 89 (2) (d)	16
Omit the paragraph. Insert instead:	17
(d) the name and address of any funeral director that has access to the mortuary.	18 19
[8] Clause 90 Public access to registers	20
Omit the clause.	21
6.7 Public Reserves Management Fund Act 1987 No 179	22
[1] Section 6 Payments out of Public Reserves Management Fund	23
Omit “and” from section 6 (1) (f).	24
[2] Section 6 (1) (f1)	25
Insert after section 6 (1) (f):	26
(f1) any proceeds paid into the Fund for the purposes of the Crown Cemeteries Advisory Committee or Interim Cemeteries and Crematoria Board (established under section 12 of the <i>Crown Lands Act 1989</i>) before the commencement of section 22 of the <i>Cemeteries and Crematoria Act 2013</i> that the Minister directs be paid into the Cemeteries and Crematoria NSW Fund for the purposes of that Act, and	27 28 29 30 31 32
6.8 Summary Offences Act 1988 No 25	33
[1] Section 8 Damaging or desecrating protected places	34
Insert in alphabetical order in section 8 (1):	35
<i>interment site</i> has the meaning it has in Part 4 of the <i>Cemeteries and Crematoria Act 2013</i> and includes a memorial (within the meaning of that Act).	36 37 38

[2] Section 8 (1), definition of “protected place”	1
Insert “or an interment site” after “war memorial”.	2
[3] Section 8 (3)	3
Omit “in or on any war memorial”.	4
Insert instead “in, on or in connection with any war memorial or interment site”.	5

Dictionary

authorised officer means a person appointed as an authorised officer under section 131.	1
Board means the Board of Cemeteries and Crematoria NSW.	2
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.	3
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).	4
Cemeteries Agency means Cemeteries and Crematoria NSW.	5
Cemeteries Agency Fund means the Cemeteries and Crematoria NSW Fund.	6
Cemeteries and Crematoria Register —see section 27.	7
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:	8
(a) an Aboriginal place, or land reserved as a historic site, within the meaning of the <i>National Parks and Wildlife Act 1974</i> ,	9
(b) a place at which cremated remains are scattered but which is not otherwise used for the disposal of human remains,	10
(c) a place on private land, where the area of the landholding is 5 hectares or more and the location has been approved for the purposes of a cemetery by a local government authority,	11
(d) any other place, or place of a class, prescribed by the regulations.	12
Note. Cemetery as defined includes the following places:	13
(a) a reserve or part of a reserve dedicated or reserved as a public cemetery under the <i>Crown Lands Act 1989</i> ,	14
(b) a private cemetery or other place approved for that purpose by a local government authority,	15
(c) land reserved (otherwise than as a historic site) under the <i>National Parks and Wildlife Act 1974</i> or acquired under Part 11 of that Act, where the location has been approved for that purpose by:	16
(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	17
(ii) if no such person or body has been vested with the care, control and management of the land—the Director-General of the Department of Premier and Cabinet.	18
cemetery operator’s register —see section 63.	19
Chief Executive Officer means the person employed in the Public Service as the Chief Executive Officer of Cemeteries and Crematoria NSW.	20
civil penalty provision —see section 119.	21
code of practice means a code approved under section 30.	22
cremation means a process for the reduction of bodily remains by fire or heat, alkaline hydrolysis or by other means prescribed by the regulations.	23
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.	24
Crown cemetery means a reserve, or part of a reserve, dedicated or used (whether before or after the commencement of this definition) as a public cemetery or crematorium under the <i>Crown Lands Act 1989</i> .	25
Crown cemetery operator —see section 77.	26
Crown cemetery trust —see section 77.	27
Department means the Department of Trade and Investment, Regional Infrastructure and Services.	28
Director-General means the Director-General of the Department.	29
function includes a power, authority or duty, and exercise a function includes perform a duty.	30

funeral director means a person (other than the operator of a service that for fee, gain or reward, transports bodies) who, in the conduct of operating a business or a service that is not for fee, gain or reward, engages, for the purpose of burial, cremation or transport, in the collection, transport, storage, preparation or embalming of bodies or engages in the conduct of exhumations.	1 2 3 4
funeral fund has the meaning it has in the <i>Funeral Funds Act 1979</i> .	5
Government agency means:	6
(a) a public authority constituted by or under an Act, or	7
(b) a NSW Government agency, or	8
(c) a Public Service agency, or	9
(d) except in section 11 (4) (b)—a council (within the meaning of the <i>Local Government Act 1993</i>) or other local authority, or	10 11
(e) a State owned corporation.	12
human remains means bodily remains and includes:	13
(a) the remains of a stillborn child, and	14
(b) bodily remains after they have been cremated.	15
improvement notice means a notice given under section 33 (3).	16
interment of human remains—see section 44.	17
interment industry —see section 26.	18
interment industry scheme —see Division 3 of Part 3.	19
interment matter means any matter relating to the following:	20
(a) burials, exhumations and cremations,	21
(b) the operation of cemeteries and crematoria,	22
(c) the design, construction and maintenance of the following:	23
(i) buildings, memorials, mausoleums, vaults and other structures and things in cemeteries and crematoria,	24 25
(ii) walls, fences, paths, drains and other works of cemeteries and crematoria,	26
(d) without limiting paragraph (c) (i), responsibility for the maintenance of structures and things referred to in that subparagraph,	27 28
(e) the equipment used in cemeteries and crematoria, including its maintenance,	29
(f) the grounds of cemeteries and crematoria, including their maintenance,	30
(g) the position, depth and maintenance of graves,	31
(h) the construction of coffins to be placed in vaults,	32
(i) interment and other rights in relation to cemeteries and crematoria,	33
(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,	34 35 36
(k) the inspection of cemeteries and crematoria and their records.	37
interment right —see section 44.	38
interment service means any service (other than the supply of goods) provided with respect to the interment of human remains.	39 40
interment site —see section 44.	41
maintenance of a cemetery, crematorium, structure or thing includes alteration, removal, renewal, relocation and repair of the cemetery, crematorium, structure or thing.	42 43
mandatory code of practice requirement —see section 31 (2) (a).	44

<i>mausoleum</i> 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.	1 2 3
<i>memorial</i> means:	4
(a) a gravestone, plaque, cenotaph or other monument, or	5
(b) any other structure or permanent physical object used to memorialise a deceased person.	6
<i>operator</i> of a cemetery and <i>cemetery operator</i> means the following:	7
(a) for a Crown cemetery or crematorium—the Crown cemetery operator,	8
(b) for a cemetery or crematorium administered by a council having control under section 48 of the <i>Local Government Act 1993</i> —the council,	9 10
(c) in any other case—the person or body for the time being responsible for the management of the cemetery or crematorium.	11 12
<i>renewable interment right</i> —see section 54.	13
<i>renewal scheme</i> —see section 70.	14
<i>short term order</i> —see section 36.	15
<i>stillborn child</i> has the same meaning as in the <i>Births, Deaths and Marriages Registration Act 1995</i> .	16 17
<i>Tribunal</i> means the Administrative Decisions Tribunal.	18
<i>trust board</i> means a trust board appointed under section 80.	19
<i>voting member</i> of the Board—see clause 1 of Schedule 1.	20