

CLAUSE NOTES

Burial and Cremation Amendment Bill 2018

Clause 1: Short title

Clause 1 is a formal provision specifying the title of the Act.

Clause 2: Commencement

Clause 2 provides that this Act will commence on a day or days to be proclaimed.

Clause 3: Principal Act

Clause 3 clarifies that references to the Principal Act refer to the *Burial and Cremation Act 2002*.

Clause 4: Section 3 amended (Interpretation)

Clause 3 defines certain terms for the purposes of the Bill. The definition of “cemetery” is updated to include the power to prescribe a place, land or structure, or a class of place, land or structure, as a cemetery.

Clause 5: Sections 3A and 3B inserted

Section 3A sets out who holds the role of regulator and identifies the scope of the regulator’s power to exempt a person from complying with some requirements under Part 2A or 2B (the establishment and sale processes).

Section 3B defines *senior next of kin* for the purposes of the Act.

Clause 6: Section 8 amended (Power to establish crematoria)

Clause 6 removes references to cemeteries from section 8 so that it only applies to crematoria, as the Bill establishes a new process for the establishment of crematoria.

Clause 7: Section 9 amended (Notification as to proposed management of crematorium)

Clause 7 removes references to cemeteries from section 9 so that it only applies to crematoria, as the Bill establishes a new process for proposed crematorium managers.

Clause 8: Section 10 amended (Objection by Director of Local Government)

Clause 8 removed references to cemeteries from section 10 so that it only applies to crematoria, as the Bill establishes an application process for prospective crematorium managers.

Clause 9: Section 11 amended (Hearing of objections)

Clause 9 removes references to cemeteries from section 11, as the Bill establishes an application process for prospective cemetery managers.

Clause 10: Section 11A inserted

Clause 10 inserts a section outlining the process for approval of a person as a cemetery manager, identifies matters the regulator may take into consideration in making a decision whether to approve an application, and describes the administrative review process.

Clause 11: Section 19 amended (Duties and powers of cemetery managers)

Clause 11 increases the penalties that apply if cemetery managers do not meet their duties.

Clause 11 also clarifies that a cemetery manager's maintenance obligations are to prevent the cemetery from falling into disrepair, from being defaced or damaged but do not apply to vaults, graves or monuments unless the cemetery manager has entered into an agreement to maintain these under the Act, or the defacement or damage was caused or approved by the cemetery manager.

Clause 12: Section 20 amended (Monuments, &c.)

Clause 12 introduces a penalty if cemetery managers do not meet their obligation to maintain a vault, grave or monument that is the subject of an agreement made under section 20(3) of the Act.

Clause 13: Section 21 amended (Requirement to remove monuments)

Clause 13 clarifies the process a cemetery manager must take to notify an appropriate person when a monument is placed contrary to the terms of the permission or is unsafe, and the circumstances in which a cemetery manager would be required to render the monument safe or may remove it.

Clause 14: Section 23 amended (Exclusive right of burial)

Clause 14(a) clarifies uncertainty in the existing Act around the arbitration process if the holder of an exclusive right of burial does not consent to a new grant of an exclusive right when the original right cannot be honoured.

Clause 14(b) requires cemetery managers to fulfil a valid exclusive right other than in accordance with the process in the Act, and introduces a penalty of up to 50 penalty units for failing to comply.

Clause 15: Section 26 repealed

Clause 15 repeals section 26, which allowed a cemetery manager to remove material other than the tombstone, such as kerbs, railings and monuments and cover an area with grass when there is insufficient revenue for the cemetery manager to keep the cemetery in good order.

Clause 16: Parts 2A and 2B inserted

Part 2A applies to the establishment of new cemeteries. It specifies that a person must not establish a new cemetery unless approved by the regulator, and introduces a penalty for contravening this requirement. This Part sets out the application process for establishing a new cemetery.

Part 2B applies to the sale of cemeteries. It sets out the process for sellers to apply for a certificate of compliance before proceeding with the sale of a cemetery, and introduces a penalty for offering for sale, or selling, a cemetery unless a certificate of compliance has been issued and the purchaser has been approved under the Act. The administrative appeal process is also identified.

Part 2B also sets out that the Recorder of Titles must not register a transfer under the Act unless the Recorder is satisfied that the sale occurred in accordance with the Act.

Clause 17: Sections 29 and 30 substituted

Clause 17 increases the length of time since the last interment before a cemetery can be closed from 30 to 50 years.

Clause 17 also introduces a process for cemetery managers to apply to the regulator for approval to close the cemetery, and allows the regulator to impose conditions on the closure. The administrative appeal process is also identified.

This clause introduces a penalty of up to 100 penalty units for failing to comply with the existing requirement to offer a closed cemetery (or portion of a closed cemetery) that has been lawfully consecrated to the relevant religious or cultural group.

Clause 17 also requires (subject to section 51A) that at least 100 years to have passed since the last interment before a cemetery manager can remove material other than the tombstone, such as kerbs, railings and monuments and cover an area with grass.

This clause introduces an application process for laying a closed cemetery out as a park or garden, and states that this cannot occur for at least 100 years after the last interment (subject to section 51A).

This clause also clarifies the process for dealing with exclusive rights of burial in a closed cemetery.

Clause 18: Section 31 amended (Land no longer required for cemetery)

Clause 18 removes references to the Director of Local Government and replaces this with "regulator".

Clause 19: Section 31A inserted

Clause 19 allows the regulator to declare that land that contains human remains is no longer a cemetery if the land was being used for another purpose for at least 50 years before the commencement of the Amendment Act, or if it is in the public interest to make the declaration, and the purpose for which the land is being used is not consistent with the use of the land for a cemetery.

Clause 20: Section 32 repealed

Clause 20 repeals section 32 of the Act which allowed any person to assume management of a closed cemetery.

Clause 21: Section 33 amended (Cemetery manager to deal with closed cemetery)

Clause 21 clarifies the application of section 33 by changing a reference to “this Division” to “this Part”.

Clause 22: Section 35 amended (Land for re-interment to be made available)

Clause 22 clarifies that section 35 is subject to any other conditions imposed by the regulator on a closed cemetery under the Act.

Clause 23: Section 36 amended (Exhumation and re-interment of human remains)

Clause 23 clarifies that section 36 is subject to any other conditions imposed by the regulator on a closed cemetery under the Act, and introduces a requirement for 100 years to have passed since the last interment before action can be taken under this section.

This clause also clarifies that if the cemetery (or portion of the cemetery) has been consecrated, the cemetery must be offered as a gift to the group, and imposes a penalty of up to 100 penalty units for a failure to comply with this requirement.

Clause 24: Section 37 amended (Activities consistent with quiet recreation)

Clause 24 ensures that section 37 references section 29A rather than the section that would have applied before the amendments.

Clause 25: Section 38 amended (Exhumation of human remains)

Clause 25 increases the maximum penalty from 10 penalty units to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

Clause 26: Section 49 amended (Unlawfully managing crematorium or cemetery)

Clause 26 increases the maximum penalty from 10 penalty units to 50 penalty units.

Clause 27: Sections 49A, 49B and 49C inserted

Section 49A allows the regulator to request a cemetery manager to undertake an audit of compliance and introduces a penalty of up to 20 penalty units if the cemetery manager does not comply with the request within the period specified in the request.

Section 49B allows the regulator to issue a directive to a cemetery manager if the regulator is not satisfied the cemetery manager has complied with the Act and introduces a fine of up to 100 penalty units if the cemetery manager does not comply with the request within the period specified in the request.

Section 49C clarifies that if a body corporate contravenes the Act, a person who is concerned in or takes part in the management of the body corporate is taken to have contravened the

provision. This allows penalties to apply to individuals as well as the body corporate. This section also sets out appropriate defences.

Clause 28: Section 50 amended (Offences)

Clause 28(a) increases the maximum penalty for subsection (1) of the Act from 20 penalty units to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

Clause 28(b) introduces an offence of removing a monument from a cemetery otherwise than in accordance with the Act, and introduces a penalty of up to 50 penalty units.

Clause 29: Sections 50A and 50B inserted

Section 50A(1) introduces an offence for providing information (or omitting matters in information provided) knowing it to be false or misleading, and introduces a penalty of up to 50 penalty units. Subsection (2) sets out circumstances in which subsection (1) does not apply.

Subsection (3) creates an offence of failing to comply with a condition under the Act and introduces a fine of up to 50 penalty units.

Section 50B allows the regulator to issue infringement notices to individuals aged at least 16 years, and provides a head of power for the regulations to prescribe infringement offences and penalties payable under infringement notices.

Clause 30: Section 51A inserted

Clause 30 provides the regulator with the power to reduce the timeframe relating to action that can be taken in respect of a closed cemetery to less than 100 years, and sets out the application process for cemetery managers to apply to the regulator to make this decision.

Clause 31: Section 54 amended (Regulations)

Clause 31 provides a head of power for the regulations to provide for prescribed persons to enter cemeteries and crematoria to undertake measures required for compliance, and to recover costs for such measures.

Clause 32: Section 56 inserted

Clause 32 provides transitional arrangements for approval of proposed cemetery managers who had, within one month before the Section 11A commencement day, notified the Director of Local Government in accordance with Section 9(2) of the Principal Act.

Clause 32 also provides transitional arrangements for contracts of sale entered into but not completed prior to the commencement of Part 2B.

Clause 33: Repeal of Act

Clause 32 provides that this Act will expire 365 days from the date of commencement.