

CLAUSE NOTES

Burial and Cremation Bill 2019

PART I – PRELIMINARY

Clause 1 **Short title**

Provides that the Act may be called the *Burial and Cremation Act 2019*.

Clause 2 **Commencement**

Provides for the commencement of the Act on a day or days to be proclaimed.

Clause 3 **Interpretation**

This clause defines certain terms for the purposes of the Act, consistent with section 3 of the *Burial and Cremation Act 2002* (the current Act).

The definition of ‘cremation’ has been expanded to include the reduction of human remains by a prescribed means (in addition to reduction to ash by heat or flame). This will allow new or alternative methods to cremation to be prescribed if necessary.

The definition of ‘monument’ has been expanded to include a structure that contains cremated remains, in order to support increased protection of cremated remains throughout the Act.

The term ‘regulated business’ has been adopted to replace ‘prescribed business’ used under the previous Act, to clarify there is no requirement for these businesses to be listed under the Regulations.

The term ‘spouse’ (which is used in determining the senior next of kin) includes the other party to a significant relationship, within the meaning of the *Relationships Act 2003*.

Clause 4 **Meaning of *closed cemetery***

This clause defines which cemeteries are closed cemeteries under the Act.

Clarifies that a closed cemetery is still a cemetery for the purposes of the Act and therefore the provisions that apply to cemeteries also apply to closed cemeteries.

The equivalent clause is section 29B of the current Act.

Clause 5**Meaning of *fit and proper***

This clause outlines what a regulator may take into account in determining whether a person or entity meets the 'fit and proper' person test that is used by a regulator in determining an application to manage a cemetery or crematorium or to carry on a regulated business.

This clause replicates the test applied by section 11A(6) of the current Act, noting that the 'fit and proper person' test is now also applied to persons applying to manage a crematorium or carry on a regulated business.

Clause 6**Meaning of *senior next of kin***

Sets out the process for determining the senior next of kin. The equivalent section is set out in section 3B of the current Act. This clause has been amended to clarify that the executor may be the senior next of kin if provided for in the Will of the deceased.

Clause 7**Crown to be bound**

Requires the Crown to comply with the Act in the same way as any other person.

Clause 8**Application and non-application of Act**

Provides that nothing in this Act can override any other Act.

PART 2 – ADMINISTRATION***Division 1 – Regulator*****Clause 9****Regulator**

This clause identifies who holds the position of regulator and provides that different regulators may be appointed for different provisions of the Act.

This clause has been amended from the equivalent provision in the current Act at section 3A by allowing a different regulator to be prescribed for different sections of the Act.

Clause 10**Regulator may issue exemptions**

This clause provides the regulator with the power to exempt a person from certain provisions of the Act, and sets out the provisions that the regulator may not exempt a person from.

The equivalent provision is section 3A(2) of the current Act.

This section acknowledges the new processes to manage a crematorium or carry on a regulated business by clarifying that the regulator cannot exempt a person from obtaining approval (but can exempt from certain aspects of the approval process).

The previous Act specified that the regulator could not issue an exemption from section 27L, which imposes the requirement to apply for a certificate of compliance. This clause applies only to section 54(1) of the new Act, which means that, while the regulator cannot exempt from the application for a certificate of compliance, some aspects of the application process could be waived if reasonable in the circumstances.

Clause 11 Regulator may accept partial compliance in certain circumstances

Allows the regulator to accept that a person has complied with their record keeping obligations under the Act if a record is incomplete but it is not possible or reasonable for the person to find the information to complete the record.

Clause 12 Regulator may delegate

Allows a regulator to delegate the performance of their functions or exercise of their powers to another person, other than the power of delegation.

Clause 13 Regulator may issue directions

This clause provides the regulator with the power to issue directions to a person carrying on a regulated business or managing a cemetery or crematorium if the regulator is not satisfied that the relevant person or organisation has complied with the Act. A penalty of up to 100 penalty units applies for not complying with a direction given by the regulator.

This clause builds on section 49B of the current Act, which allows the regulator to issue directives to cemetery managers.

Clause 14 Regulator to keep register

Requires the regulator to maintain a register of regulated businesses, cemeteries and crematoria, and sets out the information that is to be included in the register, in line with the equivalent sections 27 and 48 of the current Act.

Subsection (4) supports the regulator to maintain the register by requiring a person carrying on a regulated business or managing a cemetery or crematorium to notify the regulator if they become aware that the information in the register is incorrect, incomplete or missing.

Subsection (5) allows the register to be kept in any legible form and requires it to be made available for viewing by members of the public by any means the regulator considers appropriate.

Clause 15 Extension of certain periods relating to applications determined by the regulator

This clause provides that when a regulator requests information in respect of an application, the 'clock stops' – that is, the time between the request for information and information being provided does not count towards the timeframe for determining the application.

Division 2 – Authorised officers

Clause 16 Powers of authorised officers to enter premises

This clause sets out the circumstances and conditions to be met to allow authorised officers to enter the premises of, or premises associated with, a regulated business, cemetery or crematorium of the purposes of determining whether there is or has been a contravention of the Act. This clause refines section 51 of the current Act by clarifying that a warrant is required if entering a person's home.

Clause 17 Collection of evidence by authorised officers

This clause provides powers for authorised officers who enter a premises for the purposes of this Act to collect evidence.

This clause is based on regulation 59 of the *Burial and Cremation Regulations 2015* (the current Regulations).

Clause 18 Retention of records, &c., by authorised officers

This clause allows a record, document or thing (or a copy) seized under this Act to be retained for the purposes of an investigation, subsequent prosecution or investigation under Part 5 of the *Coroners Act 1995*. A person otherwise entitled to possession of a record or document retained by an authorised officer is entitled to a copy.

This clause reflects existing powers in regulation 62 of the current Regulations.

Clause 19 Authorised officers to not impede business

Requires that authorised officers performing a function or exercising a power under the Act not unnecessarily impede the operation of a regulated business, cemetery or crematorium. The equivalent requirement is currently outlined in regulation 59(3).

Division 3 – General

Clause 20 Director of Public Health may issue directions

Provides that the Director of Public Health may issue directions if it is in the interest of public health or public safety to do so, in relation to the handling and disposal of human remains, carrying on of a regulated business, the management of a cemetery or crematorium or any other prescribed manner. A fine of up to 100 penalty units applies for not complying with a direction, which is increased from the equivalent provision (regulation 4) of 20 penalty units.

Clause 21 Director of Public Health may delegate

This clause allows the Director of Public Health to delegate their powers, other than the power of delegation. The equivalent provision is section 53 of the current Act.

PART 3 – HANDLING OF HUMAN REMAINS

Division 1 – General

Clause 22 Notifications of death

This section sets out the obligation for a person to notify a relevant person if they reasonably believe another person has died. This section also makes it clear that this Act and Regulations deal with the processes immediately after the death of a person.

The equivalent provision is set out in regulation 5 of the current Regulations.

Clause 23 Unlawful disposal of human remains

This provision imposes a penalty of a fine up to 100 penalty units, a term of imprisonment not exceeding 2 years, or both, for disposing of human remains other than in accordance with this Act, any other Act, or any conditions imposed by the Director of Public Health under Division 3 of Part 3.

This is in accordance with section 50(1) of the current Act.

Clause 24 Handling of human remains

This clause strengthens the protection of human remains and cremated remains by ensuring that at all times, they are clearly identifiable, stored in accordance with any prescribed requirements, kept securely and handled respectfully.

A fine applies of up to 50 penalty units, and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

This clause strengthens obligations that are set out in the current Regulations at regulations 35, 36, 54 and 56.

Division 2 – Regulated businesses

Clause 25 Person must be approved to carry on regulated business

This clause provides that a person must not carry on a regulated business unless they have been approved under the Act, carry on the business in accordance with the approval, and have not been prohibited under section 23(1) from carrying on a regulated business.

A fine applies of up to 50 penalty units and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

This clause amends section 46 of the current Act, which requires a person intending to carry on a prescribed business to notify the Director of Local Government (regulator) of their intention.

Clause 26 Approval to carry on regulated business

Outlines the obligation and process to apply for approval to carry on a regulated business, including the information requirements, application timeframes and process for a review of the regulator's decision.

This clause amends section 44 of the current Act, which requires persons intending to carry on such a business to notify the Director of Local Government of their intention to do so. This changes the process from a notification to an application process, in line with the process to become a cemetery manager. This removes the requirement for the regulator to lodge an objection in court if the person intending to carry on the business is not a fit and proper person to do so.

Clause 27 Carrying on regulated business

This clause includes a fine of up to 50 penalty units (and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues) if a person carries on a regulated business other than in accordance with this Act or in a manner which is, or may be, prejudicial to public health or public safety.

The equivalent provision of the current Act is section 43.

Division 3 – Other handling of human remains

Clause 28

Use of Aboriginal land for Aboriginal cremations

This clause sets out the approval process for Aboriginal cremations on Aboriginal land (currently provided in section 40 of the current Act). The person wishing to undertake the cremation must have the approval of the Director of Public Health and the Aboriginal Land Council of Tasmania.

Subsection (5) clarifies that this Act does not apply to the handling of cremated remains that are the result of an Aboriginal cremation and are being handled in accordance with Aboriginal custom.

The equivalent provision is section 40 of the current Act.

Clause 29

Interment of human remains otherwise than in cemetery

This sets out the process for obtaining approval for the interment of human remains in a place other than a cemetery.

The equivalent provision is section 41 of the current Act.

To ensure this provision is not used as a 'loophole' to establish a cemetery that has not been approved, subsection (4) imposes a new requirement that a general manager not approve the interment if the land may be considered a cemetery to which this Act applies.

Clause 30

Exhumation of human remains

Sets out the process for obtaining approval for the exhumation of human remains from any land, which requires the approval of the Director of Public Health.

Imposes a penalty of up to 100 penalty units or a term of imprisonment not exceeding 2 years, or both, if the exhumation is not authorised, or does not comply with conditions of the approval.

The equivalent provision is section 38 of the current Act.

Clause 31

Reopening of interments

This clause allows a cemetery manager or the Chief Magistrate to authorise the reopening of a grave (but not exhumation) of a deceased person in certain circumstances, in line with section 39 of the current Act.

PART 4 – CEMETERIES

Division 1 – Cemetery managers

Clause 32 Approval of persons as cemetery manager

This clause outlines the process for approval of a person as a cemetery manager, identifies the matters the regulator may take into consideration in making a decision whether to approve an application, and describes the administrative review process.

The equivalent provision is section 11A of the current Act.

This clause amends the current provision by providing that the regulator may approve a person other than a body corporate (a natural person) as cemetery manager if the relevant cemetery is currently owned by a natural person and was also owned by a natural person before the commencement of the *Burial and Cremation Amendment Act 2018*. This will allow cemetery owners who are private individuals to sell their cemetery (which may contain their home) to a person other than a body corporate.

This clause also clarifies that a person may only be approved as a cemetery manager if they own the land containing the cemetery, or lease public land.

Clause 33 Cemetery managers to hold cemeteries in trust

Provides that a cemetery manager must hold the land on which the cemetery is situated, and all documents, in trust for the purposes of the cemetery. This means that trustee duties apply to the cemetery manager.

The equivalent provision is section 18 of the current Act.

Clause 34 Duties and powers of cemetery managers

Sets out the duties and powers of cemetery managers to:

- keep the cemetery in accordance with the Act and so as not to be prejudicial to public health and safety (the penalty is a fine not exceeding 50 penalty units and a further fine not exceeding 5 penalty units for each day during which the offence continues);
- maintain the cemetery and rectify disrepair or defacement as soon as practicable (the penalty is a fine not exceeding 50 penalty units);
- permit access free of charge at any reasonable time (the penalty is a fine not exceeding 30 penalty units and a further fine not exceeding 5 penalty units for each day during which the offence continues); and

- improve the cemetery, restrict interments or take any other action necessary to manage and maintain the cemetery.

This equivalent provision is section 19 of the current Act. This clause amends the existing provision by adding a defence in proceedings for failing to provide access if the person was refused access because of their behaviour or previous behaviour.

Clause 35

Religious and cultural ceremonies and original distributions

Provides that a cemetery manager must not hinder or disturb the performance of any religious or cultural ceremony related to the interment of human remains and must permit a representative of any religious or cultural group to exercise their religious or cultural practice. A fine not exceeding 20 penalty units may apply for non-compliance (an increase from 10 penalty units in the current Act).

This clause also provides that any variation to the original division or allocation of a cemetery made in accordance with any trust, must be in accordance with the *Variation of Trusts Act 1994*. A fine not exceeding 20 penalty units may apply for non-compliance.

The equivalent provision is section 22 of the current Act.

Clause 36

Cemetery managers to ensure application of revenue of cemeteries

Subsection (1) requires cemetery managers to make adequate provision out of any revenue received to defray the costs of establishing the cemetery, and for its maintenance and management.

Subsection (2) requires a cemetery manager to ensure that money taken for the future maintenance of vaults and monuments are dealt with as capital money as if the manager were a trustee. A fine of up to 50 penalty units applies (this is a new penalty).

The equivalent provision is section 25 of the current Act.

Clause 37

Owner of land taken to be cemetery manager in certain circumstances

This clause provides, for the avoidance of doubt, that where no other cemetery manager is in place for the cemetery, the landowner is the cemetery manager.

Division 2 – Cemeteries generally

Clause 38

Interments within cemeteries

Requires a person to obtain the permission of the cemetery manager before interring human remains in a cemetery (the penalty is a fine not exceeding 50 penalty units).

This clause also amends the exiting equivalent provision (regulation 30) to clarify what it means for a cemetery to be closed, by providing that a cemetery manager may not grant permission for an interment in a closed cemetery (the penalty is a fine not exceeding 50 penalty units).

Clause 39

Monuments, &c.

Allows a cemetery manager to permit a vault to be made, grave to be dug, monument to be erected on payment of a fee. Provides that the cemetery manager may determine its position.

Subsection (3) allows a cemetery manager to agree in writing, and on payment, to maintain a vault, grave or monument. Subsection (4) requires a cemetery manager comply with the agreement, and a fine not exceeding 50 penalty units may apply for failing to do so (a new penalty), in addition to any remedies that may be applicable under contract law.

The equivalent provision is section 20 of the current Act.

Clause 40

Removal of certain monuments in cemeteries

This clause outlines 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.

This provision replicates section 21 of the current Act.

Clause 41

Exclusive rights of burial

This clause provides that a cemetery manager may grant an exclusive right of burial to inter human remains in a specified plot or portion of a cemetery.

A fine of up to 20 penalty units applies if the cemetery manager fails to provide the applicant with a certificate of exclusive right of burial, and a fine of up to 50 penalty units if the cemetery manager refuses to fulfil a valid exclusive right.

This clause also sets out the resolution process if a cemetery manager is not able to grant the holder of the right the interment plot specified on the certificate.

The equivalent provision is section 23 of the current Act.

Clause 42**Notifications of possible cemetery**

This clause requires a person who discovers that their land contains a cemetery that is not on the register kept by the regulator to notify the regulator. This supports the regulator to maintain an accurate register of cemeteries, and differs from the requirements in clause 14 as it applies to any person who discovers a cemetery on their land, not just a person who has been approved as a cemetery manager. A fine of up to 10 penalty units applies for failing to notify the regulator.

Division 3 – New cemeteries**Clause 43****Approval required to establish new cemetery**

This clause requires a person to obtain approval from the regulator to establish a cemetery (a fine of up to 50 penalty units applies if approval is not obtained) and clarifies that the person establishing the cemetery must also be approved as the cemetery manager and responsible for the management of the cemetery.

This provision replicates section 27A of the current Act.

Clause 44**Application to establish new cemetery**

Sets out the application process for a person to establish a new cemetery, including the process for a review of the regulator's decision.

This provision replicates section 27B of the exiting Act.

Clause 45**Approval of new cemetery**

This clause specifies how an approval to establish a new cemetery is to be issued and that the regulator may impose conditions on the approval. A decision to impose conditions is reviewable.

This clause requires the cemetery manager to publish a notice containing the prescribed information in relation to the approved cemetery.

This provision replicates section 27C of the exiting Act.

Clause 46**Refusal to approve new cemetery**

Requires the regulator to provide reasons for a refusal to approve the establishment of a new cemetery and notify the applicant of their right for a review of the decision.

This provision replicates section 27D of the exiting Act.

Clause 47**Notification of decision to not establish new cemetery**

Requires a person who publishes a notice of their intention to establish a cemetery to notify the regulator if they no longer intend to establish the cemetery (a fine of up to 20 penalty units applies).

This provision replicates section 27E of the exiting Act.

Clause 48**Notification of first interment at new cemetery**

Requires a cemetery manager to notify the regulator within 30 days of the first interment at a new cemetery (a fine of up to 20 penalty units applies).

This provision replicates section 27F of the exiting Act.

Division 4 – Sale of cemeteries***Subdivision I – General*****Clause 49****Interpretation**

This clause defines certain terms for the purposes of Division 4.

This provision replicates section 27G of the exiting Act.

Clause 50**Person must not sell cemetery without approval**

This clause requires a person selling a cemetery to obtain approval, ensuring the regulator and prospective purchaser can be satisfied that the cemetery is compliant with the Act (or identify non-compliance).

Subsection (1) imposes a penalty for offering a cemetery for sale without the relevant approval (certificate of compliance) being issued (a fine of up to 20 penalty units applies).

Subsection (2) imposes a penalty for selling a cemetery without a certificate of compliance being issued and the cemetery manager being approved in accordance with the Act (a fine of up to 100 penalty units applies).

The equivalent provision is set out in section 27H of the exiting Act.

This clause amends the existing provision to clarify that a person may 'offer to sell' their cemetery before a certificate of compliance is issued. This allows cemetery managers to participate in pre-sale negotiations with prospective purchasers without contravening the Act.

Clause 51

Person must not purchase cemetery without approval

Ensures that cemeteries are only purchased by suitable entities by providing that a person must not purchase a cemetery unless they are approved under section 33 of the Act (a fine not exceeding 100 penalty units applies).

This provision replicates 27I of the current Act.

Subdivision 2 – Requirements before sale of cemetery

Clause 52

Notification of intention to sell cemetery

This provision helps to ensure the records of the cemetery are up to date and that relevant persons are aware of the sale process by requiring a cemetery manager to publish a notice of intention to sell the cemetery.

This provision replicates 27J of the current Act.

Clause 53

Audit required of cemetery proposed to be sold

Requires the cemetery manager to ensure an audit of the cemetery is undertaken before the cemetery is sold.

This provision replicates 27K of the current Act.

Clause 54

Application for certificate of compliance in respect of proposed sale

Provides the application process for a certificate of compliance, which must be obtained by a cemetery manager before a cemetery can be sold.

This provision replicates section 27L of the current Act.

Clause 55

Certificate of compliance

Sets out the process for the regulator to approve a certificate of compliance, including the form, what it should contain and that the decision of the regulator to impose a condition is a reviewable decision.

This provision replicates section 27M of the current Act.

Clause 56

Refusal to issue certificate of compliance

Sets out the information the regulator must provide to the applicant if a decision is made not to issue a certificate of compliance.

This provision replicates section 27N of the current Act.

Clause 57**Notification of decision to not sell cemetery**

Ensures the regulator is aware that a sale process that has commenced will not be proceeding by requiring a person to notify the regulator if a notice of intention to sell is published but a decision is made not to proceed with the sale of the cemetery (a fine of up to 20 penalty units applies).

This provision replicates section 27O of the exiting Act.

Subdivision 3 – Sale of cemetery**Clause 58****Cemetery disclosure document**

Ensures the prospective purchaser is aware of their obligations by requiring a cemetery manager intending to sell a cemetery to provide the proposed purchaser under a contract for sale with a cemetery disclosure document, setting out their responsibilities under the Act and details of the cemetery.

A fine of up to 100 penalty units applies for knowingly providing false or misleading information in a cemetery disclosure document.

This provision replicates section 27P of the current Act.

Clause 59**Implied term in contract of sale for cemetery**

This clause is an additional safeguard to ensure the processes for the sale of a cemetery are followed, by providing that it is an implied term in a contract for sale of a cemetery that the purchaser if approved under the Act – if the purchaser is not approved, the contract is not valid.

This provision replicates section 27Q of the current Act.

Clause 60**Contract continues in certain circumstances**

This clause ensures that a contract for sale for a cemetery does not end due to the contract not being completed if this is due to length of time that it may take to determine an application to become a cemetery manager.

This provision replicates section 27R of the exiting Act.

Clause 61**Notification to regulator of sale of cemetery**

This clause supports the regulator to keep the register accurate and ensures the cemetery manager is known to interested persons by requiring the new owner of a cemetery to notify the regulator of the transfer of ownership, notify each person who holds an exclusive right of burial, and publish a notice in relation to the change of ownership. A fine of up to 20 penalty units applies.

This provision replicates section 27S of the current Act.

Clause 62

Effect of sale of cemetery

Subsection (1) clarifies that, on transfer of ownership of the cemetery, the owner is the new cemetery manager.

Subsections (2) and (3) provide further protection from the unauthorised sale of cemeteries by setting 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.

This provision replicates section 27T of the current Act.

Division 5 – Closure of cemeteries

Clause 63

Closure of cemeteries for reasons of public health or public safety

This clause allows the general manager of a council or the Director of Public Health to close a cemetery for reasons of public health or public safety, and require the cemetery manager to take action to address the issue. A fine of up to 100 penalty units applies for not complying with the notice.

The equivalent provision is section 28 of the current Act.

Clause 64

Intention of cemetery manager to close cemetery

This clause sets out the requirements for a cemetery manager to close a cemetery, including publishing a notice of intention and the information to be included, and the application process for applying to the regulator for approval to close the cemetery.

The equivalent provision is section 29 of the current Act.

Clause 65

Approval or refusal to approve closure of cemetery

Sets out the process for the regulator to approve or refuse to approve the closure of a cemetery, including the information that is to be provided to the applicant.

This provision replicates section 29A of the current Act.

Clause 66

Effect of closure of cemetery

This clause sets out that upon closure, a cemetery manager must provide records to the State Archivist, and outlines the changes that may be made to the cemetery upon closure.

The equivalent provision is in section 29B of the current Act.

- Clause 67** **Exclusive rights in closed cemetery**
- Outlines the process for dealing with exclusive rights of burial in a closed cemetery.
- The equivalent provision is in section 29C of the current Act.
- Clause 68** **Approval required to take certain actions in closed cemeteries**
- Outlines the process for a cemetery manager to undertake certain actions in a closed cemetery, including laying the cemetery out as a park or garden or to demolish or remove graves.
- This clause clarifies the process in section 30 of the current Act.
- Clause 69** **Performance of certain actions in closed cemeteries**
- Provides detail on the things that a cemetery manager may do in a closed cemetery, subject to approval under section 69.
- This clause clarifies the process in sections 30 and 33 of the current Act.
- Clause 70** **Removal of human remains, monuments, &c., in closed cemeteries**
- Requires a cemetery manager to publish a notice before removing a grave, monument or vault in a closed cemetery, what the notice is to contain and that they must comply with a request of the senior next of kin of the deceased to reinter remains at another cemetery.
- The equivalent provision is section 34 of the current Act.
- Clause 71** **Regulator may reduce certain time frames in respect of closed cemeteries**
- This clause allows the regulator, on application, to reduce the default time period of 100 years since the last interment before the actions outlined in section 70 can occur. As these actions can only occur in a closed cemetery, the time frame could not be reduced to less than 50 years since the last interment.
- This provision replicates section 51A of the current Act.

Division 6 – Land ceases to be cemetery

- Clause 72** **Certain land ceases to be cemetery**
- Outlines the circumstances in which land ceases to be a cemetery and the procedures for dealing with land that is no longer a cemetery.
- The equivalent provision is section 31 of the current Act.

Clause 73**Declaration that land is not cemetery**

This clause allows the regulator to declare that land that contains human remains is not a cemetery if, before the commencement of the Act, the land was being used for another purpose other than a cemetery, or if burials have occurred on the land without it being intended to establish a cemetery (such as family burials on private property).

The regulator may place conditions on the declaration, and the owner of the land must notify prospective purchasers that a declaration has been made and any conditions applied by the declaration (a fine of up to 100 penalty units applies).

The equivalent provision is section 31A of the current Act.

PART 5 – CREMATORIA AND CREMATED REMAINS***Division 1 – Crematorium manager*****Clause 74****Person must be approved to manage crematorium**

This clause provides that a person must not manage a crematorium unless they have been approved (and not prohibited from managing a crematorium) under the Act, are managing the crematorium in accordance with the Act.

A fine of up to 50 penalty units applies, and a further 5 penalty units for each day an offence continues.

The equivalent provision is section 49 of the current Act.

Clause 75**Approval to manage crematorium**

Sets out the process for a person to apply to the regulator for approval to manage a crematorium, including the things the regulator may take into account and the process for issuing the approval and right for a review of the regulator's decision.

This clause amends section 9 of the current Act, which requires persons carrying on a prescribed business to notify the Director of Local Government (regulator) of their intention to do so.

Clause 76**Duties and powers of crematorium managers**

Sets out the duties of crematorium managers to keep the crematorium in good order, in accordance with the Act and so as to not be prejudicial to public health or public safety. A fine of up to 50 penalty units applies, and a further 5 penalty units for each day an offence continues.

This clause also introduces a penalty if the crematorium manager fails to keep prescribed records, of up to 50 penalty units.

This clause also outlines the powers of cemetery managers to improve the crematorium or take reasonable action for its responsible management.

Division 2 – Crematoria generally

Clause 77 Power to establish crematoria

This clause clarifies that any person may establish a crematorium, in line with the provisions of this Act or any other law that may apply.

The equivalent provision is section 8 of the current Act.

Clause 78 Equipment and apparatus

This clause imposes a penalty if the crematorium's equipment and apparatus does not comply with the requirements of this and any other Act of up to 50 penalty units and a further 5 penalty units for each day an offence continues.

The equivalent provision is section 13 of the current Act.

Clause 79 Identification of deceased persons before cremation

This clause (currently set out in regulation 53) requires the manager of a crematorium to ensure that a deceased person is properly identified before being accepted for cremation (a fine of up to 50 penalty units applies) and not cremated unless the identity of the deceased person has been confirmed as prescribed (a fine of up to 50 penalty units applies).

Clause 80 Access to crematoria

Requires a crematorium manager to permit any person access free of charge at any reasonable time to visit a monument erected on the premises of the crematorium. A fine of up to 30 penalty units applies, and up to a further 5 penalty units for each day an offence continues.

The equivalent provision is section 15 of the current Act.

Clause 81 Religious and cultural ceremonies

Provides that a crematorium manager must not hinder or disturb the performance of any religious or cultural ceremony related to the cremation of human remains and must permit a representative of any religious or cultural group to exercise their religious or cultural practice. A fine not exceeding 20 penalty units may apply for non-compliance.

The equivalent provision is section 16 of the current Act.

Clause 82 **Closure of crematoria for reasons of public health or public safety**

This clause allows the Director of Public Health or general manager of a council to close a crematorium for reasons of public health or public safety, including requiring the manager to take action to resolve the issue. A fine applies for not complying with the terms of the notice, of up to 100 penalty units.

The equivalent provision is section 14 of the current Act.

Clause 83 **Duties of crematorium managers on closure of crematoria**

This clause requires that, upon closure of the crematorium, the manager notify the regulator and forward records to the State Archivist. A fine of up to 50 penalty units applies.

Division 3 – Cremated remains

Clause 84 **Monuments containing cremated remains**

This clause increases protection for cremated remains that have been placed in a monument (for example, a columbarium or similar structure). If a monument contains cremated remains, it is reasonable to expect access be provided, and payment has been made for the remains to be placed there then the person in charge of the monument must:

- provide access (a fine of up to 30 penalty units applies and a further fine of up to 5 penalty units each day an offence continues); and
- unless consent is provided, notify the senior next of kin at least three months before moving or removing cremated remains from the monument, and move the remains in a respectful manner (a fine of up to 20 penalty units applies).

Clause 85 **Exclusive rights to all or part of monument**

This clause increases protection for cremated remains by providing that a person may apply for an exclusive right to inter cremated remains in a monument, and the terms on which the person in charge of a monument may grant the right.

A fine of up to 20 penalty units if the person in charge of a monument fails to provide the applicant with a certificate of exclusive right, and a fine of up to 50 penalty units if the person in charge of the monument does not fulfil the right.

This clause also sets out the resolution process if the person in charge of the monument is not able to grant the holder their exclusive right.

Clause 86**Closure of monument**

Sets out the process for a person responsible for a monument to deal with exclusive rights if that person is no longer allowing cremated remains to be placed in the monument, and the process to resolve any disputes.

PART 6 – MISCELLANEOUS**Clause 87****Compliance with Act**

This clause expands on section 49A of the current Act (which applies only to cemetery managers) by allowing the regulator to request a cemetery manager, crematorium manager or person carrying on a regulated business to undertake an audit of their business or to provide information to the regulator so that the regulator can ensure compliance with the Act. A fine of up to 20 penalty units applies.

Clause 88**Liability of body corporates**

This clause outlines the circumstances in which a person who takes part in the management of a body corporate may be liable for an offence by the body corporate. This provision ensures there is individual responsibility, however persons would not be liable for an offence if the contravention happened without that persons knowledge or they were not in a position to influence, or able to prevent, the contravention.

This provision replicates section 49C of the current Act.

Clause 89**Liability of owners of place, land, structure**

This clause outlines the circumstances in which a landowner may be liable for an offence by a cemetery manager, crematorium manager or person carrying on a regulated business. The landowner must have a direct or indirect ability to control or influence the use of the place. Defences apply where the contravention happened without the person's knowledge and the person was not in a position to influence or prevent the contravention.

Clause 90**False or misleading information**

This clause imposes a penalty of up to 50 penalty units for intentionally providing false or misleading information in providing any information, application or document under this Act (or omitting information).

The equivalent clause is sections 50A(1) and (2) of the current Act.

Clause 91**Failure to comply with conditions**

This clause provides that a fine of up to 50 penalty units applies for failing to comply with a condition imposed by a regulator under this Act.

The equivalent clause is section 50A(3) of the current Act.

Clause 92**Obstruction of authorised officers**

This clause creates an offence of obstruction or hindering an authorised officer (or person assisting an authorised officer) in the exercise of a power or function under the Act. A fine of up to 50 penalty units applies.

This clause also requires a person to comply with a lawful request of an authorised officer, produce records or provide reasonable assistance to an authorised officer. A fine of up to 50 penalty units applies.

The equivalent provision is regulation 60 of the current Regulations.

Clause 93**Orders preventing management of certain organisations**

This clause allows the court to order a person not carry on a regulated business, or manage a cemetery or crematorium. A fine of up to 100 penalty units applies, or a term of imprisonment up to 2 years, or both.

The equivalent provisions are sections 50(2) and (3) of the current Act.

Clause 94**Infringement notice offences**

This clause allows infringement notices to be issued (to persons 16 years or older) for offences under the Act. Infringement offences and the penalties payable may be prescribed by the regulations.

The equivalent provision is section 50B of the current Act.

Clause 95**Regulations**

This clause sets out the matters which may be dealt with by regulations under this Act.

The equivalent provision is section 54 of the current Act.

Clause 96**Savings and transitional provisions**

This is a formal clause giving effect to the savings and transitional provisions set out in Schedule 1.

Clause 97**Administration of Act**

This is a formal clause assigning administration of the Act to the Minister for Local Government and Department of Premier and Cabinet until provision is made under section 4 of the *Administrative Arrangements Act 1990*.

The equivalent provision is section 55 of the current Act.

Clause 98**Legislation repealed**

This is a formal clause repealing the legislation listed in Schedule 2 upon commencement of this Act.

SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS**PART 1 - PRELIMINARY****Clause 1****Interpretation**

This clause defines certain terms for the purposes of Schedule 1.

Clause 2**Regulated businesses**

This clause provides that a prescribed business under the *Burial and Cremation Act 2002* is a regulated business under this Act.

Clause 3**Burial and Cremation Regulations 2015**

This clause provides that the *Burial and Cremation Regulations 2015* remain in force upon the commencement of this Act. This clause will apply until new Regulations are made under this Act.

PART 2 – APPOINTMENTS AND ADMINISTRATION**Clause 1****Register**

This clause transitions the cemetery register held under the *Burial and Cremation Act 2002* by providing that it is held to meet the requirements of the register required to be kept under this Act.

Clause 2**Authorised officers**

This clause transitions authorised officers under the former Act to be authorised officers under this Act.

Clause 3**Authorisations, directions and declarations**

This clause provides that authorisations, directions and declarations issued under the former Act remain in force as if they were issued under this Act.

Clause 4 **Exclusive rights of burial**

This clause provides that exclusive rights of burial issued under the previous Act are considered exclusive rights of burial under this Act.

PART 3 – APPROVALS AND PERMISSIONS

Clause 1 **Approved forms**

This clause provides that forms approved under the previous Act are taken to be an approved form for the equivalent provision of this Act.

Clause 2 **Exemptions by regulator**

Any exemptions issued by the regulator under the previous Act continue to apply as if they had been issued under the new Act.

Clause 3 **Aboriginal cremations**

Permission given for an Aboriginal cremation under the previous Act applies as if it had been granted under this Act.

Clause 4 **Interments other than in cemeteries**

This clause provides that interments other than in cemeteries under the previous legislation are considered interments other than in cemeteries under this Act.

Clause 5 **Approvals of senior next of kin**

Any person approved as a senior next of kin under the previous Act is taken to have been approved under this Act.

Clause 6 **Approvals as cemetery manager**

Any person approved as a cemetery manager under the previous Act is taken to be approved under this Act.

Any applications to become a cemetery manager that are underway continue as if they had been made under this Act.

Clause 7 **Approvals as crematorium manager**

Any person approved as a crematorium manager under the previous Act is taken to be approved under this Act.

If a notifications to become a crematorium manager is made before the commencement day, the objection process under the former Act applies, and if no objection is made by the Director of Local Government, that person is a crematorium manager.

Clause 8

Persons approved to carry on prescribed business

Any person approved to carry on a prescribed business under the previous Act is taken to be approved to carry on a regulated business under this Act.

If a notifications to become a crematorium manager is made before the commencement day, the objection process under the former Act applies, and if no objection is made by the Director of Local Government, that person is a crematorium manager.

Clause 9

Applications and approvals, &c., relating to new cemetery

An application to establish a cemetery provided under the previous Act is taken to be an application made under the equivalent provisions of this Act. An approval issued under the previous Act is also taken to be an approval issued under the equivalent provisions of this Act.

Clause 10

Applications and approvals, &c., relating to sale of cemeteries

Any documents issued, actions taken or agreements entered into for the sale of a cemetery under the previous Act are taken to have occurred under the equivalent provision of this Act.

Clause 11

Applications and approvals, &c., relating to closure of cemeteries

Any documents or approvals issued or actions taken in relation to the closure of a cemetery under the previous Act are taken to have occurred under the equivalent provision of this Act.

Clause 12

Applications and approvals, &c., relating to reduction in certain time frames

If a person has applied for a reduction in certain timeframes under the previous Act that application applies as if it had been made under this Act.

Any approval for a reduction in certain timeframes issued under the previous Act continues to apply.

SCHEDULE 2 – LEGISLATION REPEALED

This clause repeals the *Burial and Cremation Act 2002* and the *Burial and Cremation Amendment Act 2018*, as this Act replaces that legislation.