

FACT SHEET

Burial and Cremation Amendment Bill 2018

The Burial and Cremation Amendment Bill 2018 (the Bill) amends the *Burial and Cremation Act 2002* (the Act) to strengthen the regulatory framework for cemeteries and, in doing so, addresses legitimate concerns raised by community members in relation to the future management of cemeteries.

Key changes to the Act include:

- establishing a Regulator role for cemeteries, which will continue to be the Director of Local Government at this time;
- allowing the Regulator to impose conditions on the closure of a cemetery, for example, the protection of war veteran graves;
- increasing the length of time from the last burial before a cemetery can be closed (from the current 30 years to 50 years), and requiring cemetery managers to obtain approval from the Regulator to close a cemetery;
- imposing a default time period of 100 years (but with a power to reduce on a case by case basis) since the last interment before the cemetery manager can:
 - remove monuments and leave only the tombstone;
 - apply to lay the cemetery out as a park or garden; or
 - apply to exhume and reverently reinter human remains;
- requiring new cemetery managers to be a body corporate with perpetual succession, and approved by the Regulator;
- a strengthened sale and transfer process, which requires sellers to notify the public of an intention to sell and obtain a certificate of compliance from the Regulator before proceeding with the sale of a cemetery. This will prevent transfers of cemeteries to persons not suited to the task of managing cemeteries;
- requiring purchasers to apply to the Regulator for approval to purchase a cemetery, so that the Regulator can ensure the purchaser is a body corporate with perpetual succession and meets a clearer 'fit and proper' person test;
- requiring purchasers to notify the public when they become the new cemetery manager;
- allowing the Regulator to issue directives to cemetery managers;
- allowing the Regulator to issue infringement notices;
- providing certainty as to whether land is a cemetery by:
 - allowing land to be prescribed to be a cemetery; and
 - allowing the Regulator to declare land ceases to be a cemetery if it 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. This provision deals with historical cemeteries that have not been

used as cemeteries for some time and little to no evidence that it was a once a cemetery;

- increasing maximum penalties relating to key cemetery management responsibilities, including requirements around maintenance, record keeping, allowing access and honouring exclusive rights of burial; and
- allowing the Regulator to request evidence of compliance and require cemetery managers to undertake a compliance audit, to ensure the cemetery, cemetery records and cemetery manager are all compliant with the Act.

These amendments are the priority changes that have been identified as necessary to address an immediate need (arising from the potential imminent sale of a number of cemeteries) to address community concerns relating to the future management of cemeteries.

Further amendments to address any broader issues identified in the Act through the Cemeteries Legislative Review may be introduced in 2019.

The amendments will be supported by amendments to the *Burial and Cremation Regulations 2015*. The Regulations will provide the detail of the matters referenced in the Amendment Bill that are to be prescribed, and make other minor changes to support the policy intent of the Amendment Bill.