

1991—No. 477

**CROWN LANDS ACT 1989—BY-LAW**  
(Crown Lands (General Cemetery) By-law 1991)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Crown Lands Act 1989, has been pleased to make the By-law set forth hereunder.

GARRY WEST  
Minister for Conservation and Land Management.

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**PART 1—PRELIMINARY**

**Citation**

1. This By-law may be cited as the Crown Lands (General Cemetery) By-law 1991.

**Commencement**

2. This By-law commences on 6th September, 1991.

**Application**

3. (1) This By-law applies to a general cemetery or a portion of a general cemetery specified in Schedule 1.

(2) In the application of this By-law to a portion of a cemetery, a reference to a cemetery is taken to include a reference to a portion of a cemetery.

(3) This By-law does not affect the operation of any regulations under the Public Health Act 1991 or any ordinances under the Local Government Act 1919 relating to cemeteries.

### **Definitions**

4. In this By-law:

“**burial place**” means a grave site, vault site, crypt site or other place for the disposition of the remains of the dead;

“**exclusive right of burial**” means an exclusive right of burial granted by a reserve trust in respect of a burial place;

“**holder**”, in relation to an exclusive right of burial, means the person recorded, in the register kept by the reserve trust, as the person entitled to the exclusive right;

“**reserve trust**”, in relation to a cemetery, means the reserve trust that is the trustee of the cemetery under the Act;

“**secretary**”, in relation to a reserve trust, means the secretary to the reserve trust;

“**the Act**” means the Crown Lands Act 1989.

## **PART 2—ADMINISTRATION**

### **Officers and employees**

5. A reserve trust may appoint and employ a secretary and such other officers and employees as may be necessary for the efficient operation of the cemetery.

### **Meetings**

6. Meetings of a reserve trust are to be held not less than once in each 2 months at the places and times appointed by the trust.

### **Common seal**

7. (1) The common seal of a reserve trust is to be kept by the secretary to the trust or, if there is no secretary, by such other person as may be appointed by the trust.

(2) The affixing to an instrument of the common seal of a reserve trust that is managed by a trust board is to be attested by the secretary to the reserve trust and by a member of the trust board.

(3) If an administrator of a reserve trust has been appointed under the Act, the common seal may be affixed and attested by the administrator alone.

### **PART 3—MANAGEMENT OF CEMETERY**

#### **Planning, conduct and maintenance of cemetery**

8. A reserve trust may make such provision as it considers necessary for the following:

- (a) the setting aside of sections for different types and classes of burials;
- (b) the establishment of standards of construction and design for monuments and structures;
- (c) the size, multiple use and location of burial places;
- (d) burials in vaults;
- (e) the erection or installation of structures and the making of inscriptions;
- (f) the carrying out of work by monumental masons;
- (g) the qualifications required by, and the security deposits required to be lodged by, monumental masons;
- (h) the removal, replacement and maintenance of structures;
- (i) the improvement and maintenance of the cemetery;
- (j) the making of mangers for the care of burial places on an annual or other basis;
- (k) the supply of goods and services incidental to the conduct of burials and other matters relating to the cemetery;
- (l) the conduct of religious or other ceremonies of burial or commemoration.

#### **Fees and charges**

9. (1) The fees and charges for the services provided in respect of a cemetery are to be as from time to time determined by the reserve trust and approved by the Minister.

(2) A reserve trust may, in any particular case that it considers to be one of hardship, waive payment of, or accept part payment as sufficient for, any fee or charge.

**Grant of exclusive rights of burial**

10. (1) A reserve trust may grant an exclusive right of burial in respect of a burial place in the cemetery.

(2) An application for an exclusive right of burial must be in the form approved by the reserve trust and accompanied by the appropriate fee.

(3) An exclusive right of burial may be granted to 1 person or to 2 or more persons as joint holders.

(4) An exclusive right of burial entitles the person or persons to whom it is granted to the exclusive right of burial in the burial place in respect of which it is granted.

**Transfer of exclusive rights of burial**

11. (1) A reserve trust may transfer an exclusive right of burial from one or more persons to one or more other persons.

(2) An application for the transfer of an exclusive right of burial must be in the form approved by the reserve trust and accompanied by the appropriate fee.

**Grant or transfer of exclusive rights of burial may be refused**

12. A reserve trust may refuse to grant or transfer an exclusive right of burial if, in its opinion, the grant or transfer would tend to create a monopoly or encourage dealing in such rights as a business.

**Exclusive rights of burial may be bequeathed**

13. (1) The holder of an exclusive right of burial may bequeath the right as if it were the holder's personal estate.

(2) A person to whom an exclusive right of burial devolves as a result of a bequest does not become the holder of the right until the register is amended to indicate that fact.

(3) On application made by a person to whom an exclusive right of burial has devolved as a result of a bequest, a reserve trust must amend the register so as to indicate that the person has become the holder of the right.

(4) An application under this clause must be in the form approved by the reserve trust and accompanied by the appropriate fee.

**Burials in burial places in respect of which exclusive rights have been granted**

14. (1) The remains of a deceased person may not be buried in a burial place in respect of which an exclusive right of burial has been granted unless:

- (a) the person was the holder of the right immediately before he or she died; or
- (b) the holder of the right gives written consent to the person's remains being buried in the burial place.

(2) On the death of the spouse or a child of the holder of an exclusive right of burial, the remains of the spouse or child may be buried in the burial place to which the right relates without the written consent of the holder of the right if the reserve trust is satisfied:

- (a) that the holder is not available to give consent to the burial; and
- (b) that consent to the burial would be given if the holder were available.

(2) The only compensation that the reserve trust is liable to pay to the holder of an exclusive right of burial in the event that it permits the holder's spouse or child to be buried in the burial place without the consent of the holder is an amount equivalent to the fee currently charged by the trust for the grant of an exclusive right of burial in respect of a comparable burial place.

**Register of burial places**

15. (1) A reserve trust must cause a register of burial places to be kept in respect of all burial places in the cemetery.

(2) The register, which may be kept in electronic or written form:

- (a) must readily identify (whether by reference to a plan or by other means) the location of each burial place; and
- (b) must contain the name and address of the holder of any exclusive right of burial granted in relation to a burial place.

(3) A reserve trust must, immediately after a burial in a burial place, ensure that there is entered in the register, opposite the entry for that burial place:

- (a) the name of the deceased; and
- (b) any other details that are likely to help in the identification of the deceased; and
- (c) the date of burial.

(4) A reserve trust may amend its register from time to time so as to remove any inaccuracies contained in it.

(5) A reserve trust must, on application made by any person, make available to the person a copy of any entry made in the register in relation to a burial place.

(6) Such an application must be in the form approved by the reserve trust and accompanied by the appropriate fee.

(7) The register is admissible in any proceedings as evidence of the identity of the holder of an exclusive right of burial that has been granted in respect of any particular burial site.

#### **Certificates of exclusive rights of burial**

16. (1) A reserve trust may issue to the owner of an exclusive right of burial a certificate of exclusive right of burial in relation to the burial place concerned.

(2) An application for such a certificate must be in the form approved by the reserve trust and accompanied by the appropriate fee.

(3) A certificate under this clause is to be in such form as the reserve trust may from time to time determine.

#### **Order for burial**

17. (1) A burial must not take place in a cemetery unless the reserve trust has issued an order for burial.

(2) A reserve trust may set down the procedure to be followed to obtain an order for burial.

#### **Hours of burial**

18. Burials are not to take place except at such times as the reserve trust may from time to time determine.

#### **Exhumations**

19. (1) Exhumations are not to take place unless:

- (a) prior written consent has been obtained from the Director-General of the Department of Health; and
- (b) an order for exhumation has been issued by the reserve trust.

(2) This clause does not apply if an exhumation order has been issued by a court.

**PART 4—MISCELLANEOUS****Offences**

20. (1) A person must not do any of the following:
- (a) interfere with any grave or monument;
  - (b) disturb or interrupt any service, procession, cortege, gathering, meeting or assembly;
  - (c) bury any human remains, whether cremated, or not;
  - (d) enter or remain in the cemetery at night, between the hours of sunset and sunrise;
  - (e) cause or permit an animal that is under the person's control to enter or remain in the cemetery;
  - (f) take part in any gathering, meeting or assembly, except for the purpose of a religious or other ceremony of burial or commemoration;
  - (g) engage in trade or commerce;
  - (h) distribute any circular, advertisement, paper or other printed, drawn, written or photographic matter;
  - (i) drive a vehicle, or ride a horse, except on a road provided for that purpose;
  - (j) drive a vehicle at a speed of more than 35 kilometers per hour;
  - (k) drive a vehicle or a vehicle and trailer having an unladen weight of more than 3 tonnes;
  - (l) drive a vehicle for the purpose of travelling between places outside the cemetery;
  - (m) park a motor vehicle on my burial place, verge or plantation or in a manner that is likely to impede traffic;
  - (n) teach, learn or practise driving a motor vehicle;
  - (o) teach, learn or practise any trade or skill;
  - (p) camp or reside on any land;
  - (q) possess or drink my alcoholic or intoxicating beverage;
  - (r) bring into or leave in the cemetery my rubbish refuse, scrap metal (including any car or car part), rock, soil, sand, stone or other such substance;
  - (s) remove any dead timber, log or stump, whether standing or fallen;
  - (t) remove my rock, soil, sand, stone or other such substance;
  - (u) kill, capture or in any way interfere with any animal, bird or other fauna, whether native or introduced;
  - (v) plant any tree, shrub or other herbage or plant.

Maximum penalty: 5 penalty units.

(2) This clause does not prohibit a blind person from being accompanied by a guide dog while the person is in the cemetery.

(3) A person is not guilty of an offence under this clause if the person establishes that the act giving rise to the offence was done with the written consent of the reserve trust.

### **Repeals**

21. Any by-law made in relation to a cemetery specified in Schedule 1, and in force under the Act immediately before the commencement of this By-law, is repealed.

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## **SCHEDULE 1—GENERAL CEMETERIES OR PORTIONS OF GENERAL CEMETERIES TO WHICH THIS BY-LAW APPLIES**

(C11. 3, 21)

Field of Mars General Cemetery, Baptist Portion  
 Field of Mars General Cemetery, Church of England Portion  
 Field of Mars General Cemetery, Methodist Portion  
 Field of Mars General Cemetery, Presbyterian Portion  
 Field of Mars Catholic Cemetery  
 Field of Mars Independent (Congregational) Cemetery  
 French's Forest General Cemetery  
 Liverpool General Cemetery, Baptist Portion  
 Liverpool General Cemetery, Catholic Portion  
 Liverpool General Cemetery, Church of England. Portion  
 Liverpool General Cemetery, Muslim Portion  
 Liverpool General Cemetery, Seventh-day Adventist Portion  
 Liverpool General Cemetery, Uniting Church Portion  
 Northern Suburbs General Cemetery  
 Sandgate General Cemetery  
 Woronora General Cemetery

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**EXPLANATORY NOTE**

The object of this By-law is to repeal and remake, as 1 by-law, 15 sets of by-laws under the Crown Lands Act 1989 applicable to those general cemeteries and portions of general cemeteries as are administered by trustees.

The provisions of the new by-law deal with:

- (a) the appointment of a secretary and other officers and employees of the cemetery trusts, the holding of trust meetings and the affixing of a trust's seal to instruments; and
- (b) a trust's powers in relation to the management, planning and maintenance of a cemetery; and
- (c) the determination of fees and charges by a trust; and
- (d) the grant, transfer and bequest of exclusive rights of burial; and
- (e) the keeping of registers of burial places; and
- (f) the issue of certificates of exclusive rights of burial; and
- (g) the prescription of offences in relation to the cemeteries.

This by-law is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.

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