

Burial and Cremation Act 2002

SUMMARY OF 2018 AMENDMENTS

The 2018 amendments to the *Burial and Cremation Act 2002* (the Act) took effect on 26 December 2018.

Cemetery managers should familiarise themselves with the requirements of the Act and *Burial and Cremation Regulations 2015* (the Regulations).

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;
- a strengthened sale and transfer process, which requires that:
 - sellers obtain a certificate of compliance from the Regulator before offering a cemetery for sale;
 - sellers must publish a notice of intention to sell a cemetery;
 - new cemetery managers must be a body corporate with perpetual succession, meet a 'fit and proper person' test, and approved by the Regulator;
 - new cemetery managers must notify the public when they become a new cemetery manager;
- improved compliance and enforcement powers, including:
 - new and increased maximum penalties relating to key cemetery management responsibilities, including maintenance, record keeping, allowing access and honouring exclusive rights of burial;
 - allowing the Regulator to issue directives to cemetery managers;
 - allowing the Regulator to issue infringement notices;
 - allowing the Regulator to request evidence of compliance and require cemetery managers to undertake a compliance audit;
- a strengthened cemetery closure process, including:
 - 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 a cemetery manager can remove monuments, apply to lay the cemetery out as a park or garden, or apply to exhume human remains;

- 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;

The Regulations have been amended to support the changes to the Act. Cemetery managers must now request (as part of the application for interment process) whether a person is a war veteran and the details of the service or duty performed by the person and keep this information in the register of interments.

Other changes to the Regulations provide detail of the matters in the Act that are to be prescribed, including technical requirements for publishing notices that are required as part of the sale and closure processes, the detail for application processes and increased penalties for key cemetery management responsibilities.

