

TASMANIA

---

**BURIAL AND CREMATION AMENDMENT BILL  
2018**

---

**CONTENTS**

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 3A inserted
  - 3A. Regulator
6. Section 8 amended (Power to establish crematoria)
7. Section 9 amended (Notification as to proposed management of crematorium)
8. Section 10 amended (Objection by Director of Local Government)
9. Section 11 amended (Hearing of objections)
10. Section 11A inserted
  - 11A. Approval of person as cemetery manager
11. Section 19 amended (Duties and powers of cemetery managers)
12. Section 21 amended (Requirement to remove monuments)
13. Section 23 amended (Exclusive right of burial)
14. Section 26 repealed
15. Parts 2A and 2B inserted
  - PART 2A – New cemeteries
    - 27A. Approval to establish new cemetery
    - 27B. Application to establish new cemetery
    - 27C. Approval of new cemetery

- 27D. Refusal to approve new cemetery
  - 27E. Notification of decision to not establish new cemetery
  - 27F. Notification of first interment at new cemetery
  - PART 2B – Sale of cemeteries
  - Division 1 – General*
  - 27G. Interpretation
  - 27H. Person must not sell cemetery without approval
  - 27I. Person must not purchase cemetery without approval
  - Division 2 – Requirements before sale of cemetery*
  - 27J. Notification of intention to sell cemetery
  - 27K. Audit required of cemetery proposed to be sold
  - 27L. Application for certificate of compliance in respect of proposed sale
  - 27M. Issue of certificate of compliance
  - 27N. Refusal to issue certificate of compliance
  - 27O. Notification of decision to not sell cemetery
  - Division 3 – Sale of cemetery*
  - 27P. Cemetery disclosure document
  - 27Q. Implied term in contract of sale for cemetery
  - 27R. Contract continues in certain circumstances
  - 27S. Notification to regulator of sale of cemetery
  - 27T. Effect of sale of cemetery
- 16. Sections 29 and 30 substituted
    - 29. Closure of cemeteries
    - 29A. Approval or refusal to approve closure of cemetery
    - 29B. Effect of closure of cemetery
    - 29C. Exclusive rights of burial in closed cemetery
    - 30. Closed cemeteries laid out as parks or gardens
  - 17. Section 31 amended (Land no longer required for cemetery)
  - 18. Section 33 amended (Cemetery manager to deal with closed cemetery)
  - 19. Section 35 amended (Land for re-interment to be made available)
  - 20. Section 36 amended (Exhumation and re-interment of human remains)
  - 21. Section 37 amended (Activities consistent with quiet recreation)
  - 22. Section 38 amended (Exhumation of human remains)
  - 23. Section 49 amended (Unlawfully managing crematorium or cemetery)

24. Sections 49A, 49B and 49C inserted
  - 49A. Compliance with Act
  - 49B. Regulator may issue directive to cemetery manager
  - 49C. Offences by body corporate
25. Section 50 amended (Offences)
26. Sections 50A and 50B inserted
  - 50A. Offences relating to regulator
  - 50B. Infringement notice offences
27. Section 54 amended (Regulations)
28. Repeal of Act

DRAFT

DRAFT

# **BURIAL AND CREMATION AMENDMENT BILL 2018**

*(Brought in by the Minister for Justice, the Honourable Elise  
Nicole Archer)*

## **A BILL FOR**

### **An Act to amend the *Burial and Cremation Act 2002***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Burial and Cremation Amendment Act 2018*.

#### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

#### **3. Principal Act**

In this Act, the *Burial and Cremation Act 2002*\* is referred to as the Principal Act.

---

\*No. 4 of 2002

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 4

---

**4. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *Aboriginal land*:

***approved form*** means a form approved by the regulator;

- (b) by omitting “human remains” first occurring from the definition of *cemetery* and substituting “human remains, and lawfully used for the interment or placement of human remains,”;

- (c) by inserting the following definitions after the definition of *crematorium manager*:

***Director of Local Government*** means the Director within the meaning of the *Local Government Act 1993*;

***Director of Public Health*** means the person appointed as the Director of Public Health under the *Public Health Act 1997*;

- (d) by inserting the following definition after the definition of *monument*:

***offer for sale*** includes display or expose for sale;

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 4

---

- (e) by inserting the following definition after the definition of *prescribed business*:

***regulator*** – see section 3A(1);

- (f) by omitting “Director of Public Health.” from the definition of *religious or cultural practice* and substituting “Director of Public Health;”;

- (g) by inserting the following definition after the definition of *religious or cultural practice*:

***sell*** includes any of the following, whether by wholesale or retail:

- (a) barter or exchange;
- (b) deal in or agree to sell;
- (c) offer for sale;
- (d) supply for, in expectation of receiving, payment or consideration;
- (e) receive for sale;
- (f) dispose of by way of raffle, lottery or other game of chance;
- (g) offer as a gift, prize or reward;
- (h) give away for any purpose.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 5

---

**5. Section 3A inserted**

After section 3 of the Principal Act, the following section is inserted in Part 1:

**3A. Regulator**

- (1) For the purposes of this Act, the regulator is –
  - (a) the person prescribed as the regulator for the purposes of this Act; or
  - (b) if no such person is prescribed, the Director of Local Government.
- (2) Subject to subsection (3), the regulator may exempt a person from complying with one or more requirements under Part 2A or 2B if satisfied that the exemption –
  - (a) is reasonable in the circumstances; and
  - (b) will not have a negative effect on the entitlements of another person under this Act.
- (3) The regulator may not exempt a person from a requirement in any of the following sections:
  - (a) section 27A;
  - (b) section 27B(1) or (5);



*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 6

---

- (c) section 27J(1)(b);
- (d) section 27L;
- (e) section 27P(3);
- (f) section 27Q;
- (g) section 27R;
- (h) section 27S;
- (i) any other section as prescribed.

**6. Section 8 amended (Power to establish crematoria)**

Section 8(1) of the Principal Act is amended by omitting “or cemetery”.

**7. Section 9 amended (Notification as to proposed management of crematorium)**

Section 9 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or cemetery”;
- (b) by omitting from subsection (2) “or cemetery”;
- (c) by omitting from subsection (3)(c) “or cemetery”;
- (d) by omitting from subsection (3)(d) “crematorium or cemetery.” and substituting “crematorium.”.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 8

---

**8. Section 10 amended (Objection by Director of Local Government)**

Section 10 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or cemetery” first occurring;
- (b) by omitting from subsection (1)(a)(ii) “crematorium or cemetery;” and substituting “crematorium;”;
- (c) by omitting from subsection (1)(b)(ii) “crematorium or cemetery.” and substituting “crematorium.”;
- (d) by omitting from subsection (2)(a) “crematorium or cemetery,” and substituting “crematorium,”;
- (e) by omitting subsection (4).

**9. Section 11 amended (Hearing of objections)**

Section 11 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “or cemetery”;
- (b) by omitting from subsection (3) “crematorium or cemetery,” and substituting “crematorium,”;
- (c) by omitting from subsection (3) “or cemetery” second occurring.

**10. Section 11A inserted**

After section 11 of the Principal Act, the following section is inserted in Division 1:

**11A. Approval of person as cemetery manager**

- (1) This section does not apply to a person who, immediately before the commencement of the *Burial and Cremation Amendment Act 2018*, was managing a cemetery.
- (2) A person must not manage a cemetery unless he or she has been approved under this section to be the cemetery manager for the cemetery.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person who proposes to manage a cemetery must apply to the regulator for approval to manage the cemetery.
- (4) An application under subsection (3) –
  - (a) is to be in an approved form; and
  - (b) must be accompanied by –
    - (i) any information that the regulator considers relevant to the application; and
    - (ii) the relevant prescribed fee, if any.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 10

---

- (5) The regulator may only approve a person as a cemetery manager under this section if the regulator is satisfied that the person is –
- (a) a fit and proper person to be a cemetery manager; and
  - (b) a body corporate with perpetual succession.
- (6) In considering whether a person is a fit and proper person to be a cemetery manager, the regulator is to take into account the following matters:
- (a) the capacity, including the financial capacity, of the proposed cemetery manager to maintain the cemetery, to which the application relates, and the records of that cemetery;
  - (b) the capacity of the proposed cemetery manager to comply with this Act in respect of the cemetery to which the application relates;
  - (c) whether the proposed cemetery manager, or any officer of the proposed cemetery manager, has any previous experience in the management and maintenance of a cemetery or crematorium and, if so, the details of that experience;

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 10

---

- (d) whether the proposed cemetery manager, or any officer of the proposed cemetery manager, has been found guilty of one of the following offences within the immediately previous 10 years, regardless of where the proposed cemetery manager was convicted:
- (i) an indictable offence where the maximum penalty for the offence is a term of imprisonment of at least 3 months;
  - (ii) an offence of dishonesty, fraud, or trafficking, where the maximum penalty for the offence is a term of imprisonment of at least 3 months;
- (e) whether or not any allegations of misconduct, relevant to the management or operation of a cemetery or crematorium, have been made against the proposed cemetery manager, or any officer of the proposed cemetery manager, regardless of jurisdiction in which the allegation was made;
- (f) any other prescribed matter;

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 10

---

- (g) any other matter, in respect of the proposed cemetery manager, that the regulator considers relevant.
- (7) After receiving an application under subsection (3), the regulator may –
- (a) approve the person as the cemetery manager for the cemetery; or
  - (b) refuse to approve the person as the cemetery manager for the cemetery; or
  - (c) request further information from the applicant and, after receiving the requested information –
    - (i) approve the person as the cemetery manager for the cemetery; or
    - (ii) refuse to approve the person as the cemetery manager for the cemetery.
- (8) A decision of the regulator, under this section, to refuse to approve a person as a cemetery manager is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**11. Section 19 amended (Duties and powers of cemetery managers)**

Section 19 of the Principal Act is amended as follows:

- (a) by omitting from the penalty under subsection (1) “10 penalty units” and substituting “50 penalty units”;
- (b) by inserting the following subsection after subsection (1):

(1A) A cemetery manager must ensure that –

- (a) so far as practicable, a cemetery under the control of that manager is maintained so as to prevent the cemetery from falling into disrepair, or from being defaced or damaged; and
- (b) any disrepair or defacement of, or damage to, the cemetery is rectified as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

- (c) by omitting from the penalty under subsection (2) “10 penalty units” and substituting “50 penalty units”;

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 12

---

- (d) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: Fine not exceeding 30 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

**12. Section 21 amended (Requirement to remove monuments)**

Section 21(2) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:

- (c) render the monument safe or, if it is not practicable to render the monument safe, take the monument down and remove it; and

**13. Section 23 amended (Exclusive right of burial)**

Section 23 of the Principal Act is amended as follows:

- (a) by omitting subsections (3) and (4) and substituting the following subsections:

- (3) If it is impracticable for a cemetery manager to inter any human remains in an interment plot or portion of a cemetery in accordance with an exclusive



*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 13

---

right of burial, the cemetery manager must, with the consent of the holder of the right and without further charge, grant to the holder of the right –

(a) an exclusive right of burial in another plot or portion of the cemetery;  
or

(b) an exclusive right of burial in another cemetery if so agreed with the manager of that other cemetery.

(4) If the holder of an exclusive right of burial does not consent, as required under subsection (3), to a new grant of an exclusive right of burial, the matter is to be referred to arbitration under the *Commercial Arbitration Act 2011* as if there were a request for the dispute to be referred to arbitration under that Act.

(b) by inserting the following subsection after subsection (5):

(6) A cemetery manager must fulfil a valid exclusive right of burial, held by a person, that is in force in respect of the cemetery

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 14

---

managed by the cemetery manager unless –

- (a) another exclusive right of burial is granted to the person under subsection (3); or
- (b) the cemetery manager has been notified in writing by the holder of the exclusive right of burial, or his or her legal representative, that –
  - (i) the exclusive right of burial is terminated; or
  - (ii) the holder of the exclusive right of burial has been interred other than in accordance with the exclusive right of burial.

Penalty: Fine not exceeding 50 penalty units.

**14. Section 26 repealed**

Section 26 of the Principal Act is repealed.

**15. Parts 2A and 2B inserted**

After section 27 of the Principal Act, the following Parts are inserted:

**PART 2A – NEW CEMETERIES**

**27A. Approval to establish new cemetery**

- (1) A person must not establish a cemetery for the interment or disposal of human remains unless the establishment of that cemetery has been approved by the regulator under this Part.

Penalty: Fine not exceeding 50 penalty units.

- (2) For a new cemetery to be established under this Part for the interment or disposal of human remains, the person who intends to establish the cemetery must be –

- (a) responsible for the management of the cemetery; and
- (b) approved under section 11A as the cemetery manager for the cemetery.

**27B. Application to establish new cemetery**

- (1) If a person intends to establish a cemetery for the interment or disposal of human remains, the person must apply to

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

the regulator for approval to establish the cemetery.

(2) An application to the regulator under subsection (1) –

(a) is to be in an approved form; and

(b) must be accompanied by –

(i) an application under section 11A for the person intending to establish the cemetery to be approved as the cemetery manager for the cemetery; and

(ii) any other information that the regulator considers relevant to the application; and

(iii) the relevant prescribed fee, if any.

(3) Before determining an application under subsection (1), the regulator may consider one or more of the following matters in respect of the application:

(a) the location, and condition, of the land on which the cemetery is proposed to be established;

(b) whether the proposed cemetery may be prejudicial to public health or public safety;

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

- (c) any other matter that the regulator considers relevant to determining the application.
- (4) After receiving an application under subsection (1), the regulator may –
- (a) approve the establishment of the cemetery subject to any conditions he or she thinks fit; or
  - (b) refuse to approve the establishment of the cemetery; or
  - (c) request further information from the applicant and, after receiving the requested information –
    - (i) approve the establishment of the cemetery subject to any conditions he or she thinks fit; or
    - (ii) refuse to approve the establishment of the cemetery.
- (5) Despite subsection (4), the regulator may only approve an application under that subsection in respect of a proposed cemetery if the person intending to establish the cemetery has been approved under section 11A as the cemetery manager for the proposed cemetery.
- (6) If the regulator has not determined an application under subsection (4) within

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

60 days after receiving the application, the regulator is to provide the applicant with such information as to the status of the application as the regulator thinks fit.

**27C. Approval of new cemetery**

- (1) If the regulator approves an application under section 27B(4), the regulator is to issue to the applicant a written approval to establish the cemetery to which the application relates.
- (2) An approval to establish a cemetery issued under subsection (1) is to –
  - (a) be in an approved form; and
  - (b) specify any conditions imposed in respect of the approval.
- (3) On receipt of an approval to establish a cemetery issued under subsection (1), the person who was issued the approval may establish the cemetery in accordance with the approval so issued.
- (4) On receipt of an approval to establish a cemetery issued under subsection (1), the person who was issued the approval must publish, in the prescribed manner, a notice containing the prescribed information in relation to the cemetery so approved.

Penalty: Fine not exceeding 20 penalty units.

- (5) A decision of the regulator, under section 27B(4), to impose a condition on an approval is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**27D. Refusal to approve new cemetery**

- (1) If the regulator refuses, under section 27B(4), to approve the establishment of a cemetery, the regulator is to notify the applicant in writing of –
- (a) the refusal; and
  - (b) the reasons for that refusal; and
  - (c) the applicant's right to apply for a review of the decision to refuse the approval, in accordance with the *Magistrates Court (Administrative Appeals Division) Act 2001*.
- (2) A decision of the regulator, under section 27B(4), to refuse to approve the establishment of the cemetery is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

**27E. Notification of decision to not establish new cemetery**

If a person publishes a notice under section 27B in respect of his or her intention to establish a new cemetery and the person no longer intends to establish the new cemetery, the person must notify the regulator of that fact as soon as practicable after making the decision to not establish the cemetery.

Penalty: Fine not exceeding 20 penalty units.

**27F. Notification of first interment at new cemetery**

Within 30 days after interring or placing, in a proposed cemetery approved under this Part, the first human remains in that cemetery, the cemetery manager for the cemetery must notify, in an approved form, the regulator of the interment, or placing, of those human remains.

Penalty: Fine not exceeding 20 penalty units.



---

**PART 2B – SALE OF CEMETERIES**  
*Division 1 – General*

**27G. Interpretation**

In this Part –

*certificate of compliance*, in respect of a sale, means the certificate issued for that sale under section 27M;

*contract*, in relation to a cemetery, means an agreement to sell the cemetery, regardless of whether the contract is –

- (a) formal or informal; or
- (b) express or implied; or
- (c) for consideration or not;

*proposed purchaser* means a person who –

- (a) has entered into a contract in respect of the sale of all, or any portion, of a cemetery; and
- (b) on the completion of the contract, will transfer ownership of all, or any portion, of the cemetery into the person's name.

**27H. Person must not sell cemetery without approval**

- (1) A person must not offer for sale all, or any portion, of the cemetery unless a certificate of compliance has been issued in respect of the proposed sale.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person must not sell a cemetery to another person, unless –

(a) a certificate of compliance has been issued in respect of the proposed sale; and

(b) he or she is satisfied that the proposed purchaser has been approved under section 11A as the cemetery manager for the cemetery.

Penalty: Fine not exceeding 100 penalty units.

**27I. Person must not purchase cemetery without approval**

A person must not purchase all, or any portion, of a cemetery unless the person has been approved under section 11A as the cemetery manager for the cemetery.

Penalty: Fine not exceeding 100 penalty units.

---

***Division 2 – Requirements before sale of cemetery***

**27J. Notification of intention to sell cemetery**

(1) If a person intends to sell all, or any portion, of a cemetery, the cemetery manager for the cemetery must –

(a) publish, in the prescribed manner, a notice in accordance with subsection (2) in respect of his or her intention to sell the cemetery; and

(b) apply to the regulator in accordance with section 27L for a certificate of compliance in respect of the proposed sale.

(2) A notice to be published under subsection (1)(a) –

(a) is to contain the prescribed information; and

(b) must clearly identify, in a prescribed manner, the cemetery, or portion of the cemetery, that is intended to be sold; and

(c) must –

(i) state that the cemetery manager intends to sell the cemetery, or portion of the cemetery, specified in the notice; and

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

- (ii) state that any person who has any information in respect of the records of the cemetery that are required to be kept under this Act, or any exclusive right of burial granted in respect of the cemetery, may provide that information to the cemetery manager; and
  - (iii) specify the contact information for the cemetery manager; and
  - (iv) specify the period during which information may be provided under subparagraph (ii).
- (3) As soon as practicable after publishing a notice in accordance with subsection (2), the cemetery manager must give the regulator a copy of the notice so published.

**27K. Audit required of cemetery proposed to be sold**

If a person intends to sell all, or any portion, of a cemetery, the cemetery manager for the cemetery is to ensure that an audit is undertaken, in accordance with section 49A(1), in respect of the cemetery within 6 months of the

---

publication of the notice under section 27J(1)(a) in respect of the proposed sale.

**27L. Application for certificate of compliance in respect of proposed sale**

- (1) After publishing a notice under section 27J(1)(a) in respect of the proposed sale of all, or any portion, of a cemetery, the cemetery manager for the cemetery must apply to the regulator for a certificate of compliance in respect of the proposed sale.
- (2) An application to the regulator under section 27J(1)(b) –
  - (a) is to be in an approved form; and
  - (b) must be accompanied by –
    - (i) a copy of the notice published in accordance with section 27J(1)(a) in respect of the proposed sale; and
    - (ii) a copy of an audit, undertaken as required under section 27K; and
    - (iii) a copy of any information provided under section 27J(2)(c) in

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

- respect of the cemetery;  
and
- (iv) any other information that the regulator considers relevant to the application; and
- (v) the relevant prescribed fee, if any.
- (3) Before determining an application under subsection (1), the regulator may consider one or more of the following matters in respect of the application:
- (a) the location and condition of the cemetery, or portion of the cemetery, proposed to be sold;
  - (b) whether, at the time of the application, the cemetery, the records of the cemetery and the maintenance of the cemetery comply with the requirements of the Act;
  - (c) whether the proposed sale of the cemetery may be prejudicial to public health or public safety;
  - (d) any other matter that the regulator considers relevant to determining the application.
- (4) After receiving an application under subsection (1), the regulator may –

- (a) approve the application subject to any condition he or she thinks fit; or
  - (b) refuse to approve the application; or
  - (c) request further information from the relevant cemetery manager and, after receiving the requested information –
    - (i) approve the application subject to any condition he or she thinks fit; or
    - (ii) refuse to approve the application.
- (5) If the regulator has not determined an application of a cemetery manager under subsection (4) within 60 days after receiving the application, the regulator is to provide the cemetery manager with such information as to the status of the application as the regulator thinks fit.

**27M. Issue of certificate of compliance**

- (1) If the regulator approves an application of a cemetery manager in accordance with section 27L(4), the regulator is to issue to the cemetery manager a certificate of compliance in respect of the proposed sale.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

- (2) A certificate of compliance issued under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) is to specify any condition imposed on the certificate.
- (3) A certificate of compliance issued under subsection (1) has effect –
  - (a) for such period as is specified in the certificate of compliance; or
  - (b) if no period is specified in the certificate of compliance, for the period of 12 months immediately following its issue.
- (4) On receipt of a certificate of compliance issued under subsection (1), the cemetery manager, or any other person, may offer for sale all, or any portion, of the cemetery that is the subject of the certificate of compliance.
- (5) A decision of the regulator, under section 27L(4), to impose a condition on a certificate of compliance is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**27N. Refusal to issue certificate of compliance**

- (1) If the regulator refuses an application of a cemetery manager in accordance with



section 27L(4), the regulator is to notify the cemetery manager in writing of –

- (a) the refusal; and
  - (b) the reasons for that refusal; and
  - (c) the cemetery manager's right to apply for a review of the decision to refuse the application, in accordance with the *Magistrates Court (Administrative Appeals Division) Act 2001*.
- (2) A decision of the regulator, under section 27L(4), to refuse an application is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**27O. Notification of decision to not sell cemetery**

If a person publishes a notice under section 27J(1)(a) in respect of his or her intention to sell all, or a portion, of a cemetery and the person no longer intends to sell the cemetery, the person must notify the regulator of that fact as soon as practicable after making the decision to not sell the cemetery.

Penalty: Fine not exceeding 20 penalty units.

***Division 3 – Sale of cemetery***

**27P. Cemetery disclosure document**

(1) A cemetery manager intending to sell all, or any portion, of a cemetery under this Part must ensure that the proposed purchaser under a contract for sale of the cemetery receives a document disclosing the information specified in subsection (2) –

(a) if the contract is in writing, at least 48 hours before the contract is entered into; or

(b) if the contract is not in writing, at least 48 hours before ownership of all, or any portion, of the cemetery is transferred in accordance with the contract.

Penalty: Fine not exceeding 50 penalty units.

(2) A document disclosing information under subsection (1) is to be in an approved form and include the following information:

(a) a statement –

(i) that, on the transfer of the ownership of the cemetery, the proposed purchaser is the cemetery

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

- manager for the cemetery;  
and
- (ii) specifying the obligations under this Act that would apply to the proposed purchaser as cemetery manager for the cemetery;
- (b) the number of persons who have been granted one of the following rights, in respect of the cemetery, that is yet to be fulfilled:
  - (i) an exclusive right of burial;
  - (ii) a grant in fee of an interment plot;
  - (iii) a grant for a term of an interment plot;
- (c) a statement that, on the transfer of the ownership of the cemetery, the proposed purchaser is required to fulfil each of the rights specified in paragraph (b) in respect of the cemetery, whether or not the person holding the right was included in the number of persons provided under that paragraph;
- (d) a statement that the audit performed in respect of the cemetery, as required under

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

section 27K, is available to the proposed purchaser as specified;

(e) any other prescribed information.

- (3) A cemetery manager must not knowingly provide false or misleading information to a proposed purchaser under this section.

Penalty: Fine not exceeding 100 penalty units.

**27Q. Implied term in contract of sale for cemetery**

It is an implied term in each contract for the sale of all, or any portion, of a cemetery under this Part that, before the ownership of the cemetery can be transferred under the contract, the proposed purchaser must be approved under section 11A as the cemetery manager for the cemetery.

**27R. Contract continues in certain circumstances**

If –

- (a) a contract for the sale of all, or any portion, of a cemetery to which this Part applies has been entered into by a proposed purchaser; and
- (b) the proposed purchaser has applied under section 11A to be

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 15

---

approved as the cemetery manager for the cemetery and that application has not been determined before ownership of the cemetery is to be transferred under the contract –

the contract is taken to have remained in force until the application under section 11A has been determined under that section and, if the application has been approved, the contract has been settled, unless the contract is earlier terminated by either party in accordance with the contract.

**27S. Notification to regulator of sale of cemetery**

Within 30 days after ownership of all, or any portion, of a cemetery has been transferred in accordance with a contract to which this Part relates, the new owner of the cemetery under the contract must –

- (a) notify, in an approved form, the regulator of the transfer of the ownership; and
- (b) publish, in the prescribed manner, a notice containing the prescribed information in relation to the sale of the cemetery.

Penalty: Fine not exceeding 20 penalty units.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 16

---

**27T. Effect of sale of cemetery**

- (1) On transfer of the ownership of all, or any portion, of a cemetery in accordance with a contract to which this Part relates, the person who is the owner of the cemetery after the transfer is the cemetery manager for the cemetery.
- (2) The Recorder, within the meaning of the *Land Titles Act 1980*, must not register a transfer, under that Act, involving a cemetery to which this Part applies unless satisfied that –
  - (a) the sale of the cemetery, to which the transfer relates, was approved under section 27L(4); and
  - (b) the person to whom the ownership of the cemetery is to be transferred was approved under section 11A as the cemetery manager for the cemetery.

**16. Sections 29 and 30 substituted**

Sections 29 and 30 of the Principal Act are repealed and the following sections are substituted:

**29. Closure of cemeteries**

- (1) If, for a period of 100 years or more, no interments have taken place in a

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 16

---

cemetery or portion of a cemetery and the cemetery manager wishes to close the cemetery or that portion of the cemetery, the cemetery manager is to –

- (a) cause a notice of intention to close all, or any portion, of the cemetery to be published in accordance with subsection (2); and
  - (b) apply to the regulator in accordance with subsection (4) for approval to close all, or any portion, of the cemetery.
- (2) A notice to be published under subsection (1)(a) –
- (a) is to contain the prescribed information; and
  - (b) must clearly identify, in a prescribed manner, the cemetery or portion of the cemetery that is proposed to be closed by the cemetery manager; and
  - (c) must –
    - (i) contain a statement that any person who has any information in respect of the records of the cemetery that are required to be kept under this Act, or any exclusive right of

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 16

---

burial granted in respect of the cemetery, may provide that information to the cemetery manager; and

(ii) specify the contact information for the cemetery manager; and

(iii) specify the period during which information may be provided under subparagraph (i); and

(d) must be published in the prescribed manner at least 60 days, but not more than 365 days, before the cemetery manager applies to the regulator under subsection (1)(b) for approval to close the cemetery or portion.

(3) As soon as practicable after publishing a notice in accordance with subsection (2), the cemetery manager must give the regulator a copy of the notice so published.

(4) An application under subsection (1)(b) for approval to close a cemetery or portion –

(a) is to be in an approved form; and

(b) must be accompanied by –



*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 16

---

- (i) a copy of the notice published in accordance with subsection (2) in respect of the proposed closure; and
  - (ii) a copy of any information provided in accordance with subsection (2)(c) in respect of the cemetery; and
  - (iii) any other information that the regulator considers relevant to the application; and
  - (iv) the relevant prescribed fee, if any.
- (5) Before determining an application under subsection (1)(b), the regulator may consider any one or more of the following matters in respect of the application:
- (a) the cultural and historical value of the cemetery, including whether the cemetery contains graves of persons of historical or cultural significance to the community;
  - (b) whether the proposed closure of the cemetery may be prejudicial to public health or public safety;

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 16

---

- (c) any other matter that the regulator considers relevant to determining the application.
- (6) At least 60 days, but no later than 120 days, after receiving an application under subsection (1)(b), the regulator must –
- (a) approve the application subject to any condition he or she thinks fit; or
  - (b) refuse to approve the application; or
  - (c) request further information from the relevant cemetery manager in respect of the closure and, after receiving the requested information –
    - (i) approve the application subject to any condition he or she thinks fit; or
    - (ii) refuse to approve the application.
- (7) A decision of the regulator, under subsection (6), to impose a condition on an approval, or to refuse an application, is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**29A. Approval or refusal to approve closure of cemetery**

- (1) If the regulator approves an application under section 29(6), the regulator is to notify the cemetery manager in writing of –
  - (a) the approval; and
  - (b) any conditions to which the approval is subject; and
  - (c) any other prescribed matter.
- (2) On receipt of a notification under subsection (1), the cemetery manager –
  - (a) must notify, in the prescribed manner, any holder of an exclusive right of burial that the cemetery is to be closed and that the cemetery manager intends to discharge that exclusive right in accordance with section 29C; and
  - (b) may proceed to close the cemetery and exercise the powers conferred by section 29B in respect of the cemetery.
- (3) If the regulator refuses to approve an application under section 29(6) for the closure of a cemetery, the regulator is to notify the cemetery manager in writing of –

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 16

---

- (a) the refusal; and
- (b) the reasons for that refusal; and
- (c) the cemetery manager's right to apply for a review of the decision to refuse the application, in accordance with the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**29B. Effect of closure of cemetery**

- (1) For the purposes of this Act, a cemetery is a closed cemetery if –
  - (a) the cemetery was closed before the commencement of section 16 of the *Burial and Cremation Amendment Act 2018*; or
  - (b) the cemetery was approved to be closed under section 29A.
- (2) For the avoidance of doubt, a closed cemetery is still a cemetery for the purposes of this Act unless otherwise dealt with under this Act.
- (3) On the closure of a cemetery under this Act, the cemetery manager must forward to the State Archivist, as soon as practicable, all prescribed records relating to the closed cemetery.

Penalty: Fine not exceeding 50 penalty units.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 16

---

- (4) On being forwarded under subsection (3), the records of a cemetery vest in the Crown.
- (5) Subject to any condition imposed under section 29A, the cemetery manager of a closed cemetery may do one or more of the following in respect of the closed cemetery:
  - (a) if there is a tombstone showing the name of the person buried there, remove kerbs, railings and other monuments, shrubs, marble chips and other adornments and cover the area with grass, leaving only the tombstone;
  - (b) if there is a monument other than a tombstone –
    - (i) treat the monument as if it were a tombstone and act in accordance with paragraph (a); or
    - (ii) remove the monument and re-erect it in another portion of the cemetery, with or without any kerbs, railings or other adornments, and cover the area with grass, having first set a stone showing who was buried there and

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 16

---

where the former  
monument is to be found.

**29C. Exclusive rights of burial in closed cemetery**

- (1) In the exercise of powers under section 29B in respect of a closed cemetery, the cemetery manager for a closed cemetery may discharge an exclusive right of burial by agreement with the holder to give a similar right to another portion or plot and move to it any human remains, coffin, vault, monument or other thing in or on the original place.
- (2) If there is no agreement between the cemetery manager and the holder of an exclusive right of burial as required under subsection (1), the matter is to be referred to arbitration under the *Commercial Arbitration Act 2011* as if there were a request for the dispute to be referred to arbitration under that Act.
- (3) The cemetery manager must pay the costs of an arbitration under subsection (2).
- (4) For the purpose of this section, the Public Trustee may represent the holder of an exclusive right of burial if it appears that the cemetery manager, after diligent inquiry, cannot find the holder.

---

**30. Closed cemeteries laid out as parks or gardens**

- (1) The cemetery manager of a closed cemetery may apply, in writing, to the regulator for approval to lay out the closed cemetery as a park or garden for use as a place of quiet recreation only.
- (2) At least 3 months before applying to the regulator under subsection (1), the cemetery manager –
  - (a) must publish, in a daily newspaper circulating in the municipal area in which the cemetery is situated, a notice specifying his or her intention to lay out the cemetery as a park or garden; and
  - (b) is to provide a copy of a notice published under paragraph (a) to the regulator.
- (3) On receipt of an application under subsection (1), the regulator may –
  - (a) approve the application subject to any conditions the regulator thinks fit; or
  - (b) refuse the application; or
  - (c) ask the cemetery manager for further information in respect of the application and –

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 16

---

- (i) approve the application subject to any conditions the regulator thinks fit; or
  - (ii) refuse the application.
- (4) Subject to any condition imposed under subsection (3), and to subsection (5), if the regulator approves an application under subsection (1) –
  - (a) the cemetery manager may lay out the closed cemetery as a park or garden, for use as a place of quiet recreation only, as so approved; and
  - (b) sections 35 and 36 extend to a closed cemetery laid out as a park or garden under paragraph (a).
- (5) A cemetery manager must not take any action under subsection (4)(a) in respect of the closed cemetery, or portion of the closed cemetery, that has been lawfully consecrated according to the rites or practices of a religious or cultural group, unless –
  - (a) the cemetery manager has offered that cemetery, or portion, as a gift to that group; and
  - (b) the group has not accepted the gift within the 12-month period immediately after the offer of the gift was made to the group.



*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 17

---

Penalty: Fine not exceeding 100 penalty units.

**17. Section 31 amended (Land no longer required for cemetery)**

Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (6) “Director of Local Government” and substituting “regulator”;
- (b) by omitting from subsection (7) “Director of Local Government” and substituting “regulator”.

**18. Section 33 amended (Cemetery manager to deal with closed cemetery)**

Section 33(2) of the Principal Act is amended by omitting “this Division” and substituting “this Part”.

**19. Section 35 amended (Land for re-interment to be made available)**

Section 35 of the Principal Act is amended by omitting “At” and substituting “Subject to any condition imposed on the closure of a cemetery under section 29(6), at”.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 20

---

**20. Section 36 amended (Exhumation and re-interment of human remains)**

Section 36 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “and any condition imposed on the closure of the cemetery under section 29(6)” after “section 38”;
- (b) by omitting from subsection (1) “section 29” and substituting “section 29A”;
- (c) by inserting the following subsection after subsection (1):

(1A) A cemetery manager must not take any action under subsection (1) in respect of the closed cemetery, or closed portion of the cemetery, that has been lawfully consecrated according to the rites or practices of a religious or cultural group, unless –

- (a) the cemetery manager has offered that cemetery, or portion, as a gift to that group; and
- (b) the group has not accepted the gift within the 12-month period immediately after the

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 21

---

offer of the gift was made to the group.

Penalty: Fine not exceeding 100 penalty units.

- (d) by omitting from the penalty under subsection (2) “5 penalty units” and substituting “50 penalty units”.

**21. Section 37 amended (Activities consistent with quiet recreation)**

Section 37(1) of the Principal Act is amended by omitting “section 29” and substituting “section 29A”.

**22. Section 38 amended (Exhumation of human remains)**

Section 38(3) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

**23. Section 49 amended (Unlawfully managing crematorium or cemetery)**

Section 49 of the Principal Act is amended by omitting “10 penalty units” and substituting “50 penalty units”.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 24

---

**24. Sections 49A, 49B and 49C inserted**

After section 49 of the Principal Act, the following sections are inserted in Part 6:

**49A. Compliance with Act**

(1) At least once in every 5-year period, a cemetery manager must cause an audit to be undertaken, as prescribed, of the following matters:

- (a) the cemetery being managed by the cemetery manager;
- (b) actions taken by the cemetery manager under this Act;
- (c) the records required under this Act to be kept in respect of the cemetery.

Penalty: Fine not exceeding 20 penalty unit.

(2) A cemetery manager must provide a copy of an audit undertaken under subsection (1) to the regulator within 14 days after the audit is completed.

Penalty: Fine not exceeding 20 penalty units.

(3) In addition to an audit under subsection (1), the regulator may request, in writing to a cemetery manager, that the cemetery manager provide such

information that the regulator considers necessary to ensure that –

- (a) the cemetery manager is complying, and has complied, with this Act; and
  - (b) the cemetery being managed by the cemetery manager, and the records in respect of that cemetery, comply with this Act.
- (4) A cemetery manager who receives a written request under subsection (3) must comply with the written request within the period specified in the request.

Penalty: Fine not exceeding 20 penalty units.

**49B. Regulator may issue directive to cemetery manager**

- (1) If the regulator is not satisfied that a cemetery manager has complied with this Act, the regulator may issue a written directive to the cemetery manager specifying the steps to be taken by the cemetery manager to ensure compliance with this Act.
- (2) A cemetery manager who receives a written directive under subsection (1) must comply with the written directive within the period specified in the directive.

Penalty: Fine not exceeding 100 penalty units.

**49C. Offences by body corporate**

- (1) If a body corporate contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision.
- (2) It is a defence in proceedings in respect of a contravention referred to in subsection (1) for a person to prove that –
  - (a) the body corporate contravened the provision without the person's knowledge; or
  - (b) the person was not in a position to influence the conduct of the body corporate in relation to the contravention; or
  - (c) the person, if in such a position, attempted to prevent the contravention by the body corporate.
- (3) A person may be convicted of a contravention of a provision of this Act whether or not the body corporate has been convicted of its contravention.
- (4) Nothing in this section affects the liability of a body corporate for an

offence committed by it against a provision of this Act.

**25. Section 50 amended (Offences)**

Section 50 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

- (b) by inserting the following subsection after subsection (3):

- (4) A person must not remove a monument from a cemetery otherwise than in accordance with this Act.

Penalty: Fine not exceeding 50 penalty units.

**26. Sections 50A and 50B inserted**

After section 50 of the Principal Act, the following sections are inserted in Part 6:

**50A. Offences relating to regulator**

(1) A person, in providing any information, statement, application or document to the regulator under this Act, must not –

- (a) provide it knowing it to be false or misleading; or
- (b) omit any matter knowing that without that matter the information, statement, application or document is false or misleading.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1)(a) does not apply to a person if, at the time the person provides the information, statement, application or document, or as soon as practicable after becoming aware that the information or document provided is false or misleading, the person –

- (a) informs the regulator that the information, statement, application or document is false or misleading; and
- (b) indicates the respects in which it is false or misleading; and
- (c) provides the regulator with any correct information that is in the



person's possession or control;  
and

- (d) provides the regulator with any information that the person has concerning who else may have the correct information, statement, application or document.
- (3) If the regulator has imposed a condition under this Act, a person to whom that condition applies must comply with the condition.

Penalty: Fine not exceeding 50 penalty units.

**50B. Infringement notice offences**

- (1) In this section –

*infringement offence* means an offence against this Act or the regulations made under this Act that is prescribed by the regulations to be an infringement offence.

- (2) The Director of Local Government, or a person authorised by the Director of Local Government, may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 27

---

- (3) An infringement notice may not be served on an individual who has not attained the age of 16 years.
- (4) An infringement notice –
  - (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
  - (b) is not to relate to more than 3 offences.
- (5) The regulations –
  - (a) may prescribe, for infringement offences, the penalties payable under infringement notices; and
  - (b) may prescribe different penalties for bodies corporate and individuals.

**27. Section 54 amended (Regulations)**

Section 54(2) of the Principal Act is amended by inserting after paragraph (q) the following paragraph:

- (qa) provide for a prescribed person to enter cemeteries and crematoria to undertake such measures as are required for compliance with the Act, and for the recovery of costs for such measures; and

*Burial and Cremation Amendment Act 2018*  
*Act No. of 2018*

s. 28

---

**28. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.

DRAFT