

Becoming a Cemetery Manager Information Sheet

December 2019

Introduction

Cemetery managers have a wide range of important legal obligations and duties. For example, cemetery managers are responsible for the correct handling and interment of human remains, providing public access, administration and record-keeping, and general maintenance and upkeep.

Cemetery managers hold the land on which the cemetery is situated and all documents relating to the cemetery in trust for the purposes of a cemetery. This means that cemetery managers have certain moral and legal duties as a trustee, including preserving the trust property and acting in good faith in the interests of the trust.

The *Burial and Cremation Act 2019* requires all new managers of a cemetery to be a body corporate with perpetual succession and be approved by the Regulator. It is important that an entity intending to take on the role of cemetery manager understands the associated obligations and duties, and is willing and able to fulfil them.

The role should not be taken on lightly. Failure by a cemetery manager to meet its obligations and duties can result in fines or expose a cemetery manager (and/or officer of the cemetery manager) to legal action from affected parties for breaches of its duties (for example, friends and families of interred persons, or the holders of exclusive rights of burial).

For more detail on cemetery managers' legislative and regulatory obligations, please see the *Burial and Cremation Act 2019* and the *Burial and Cremation Regulations 2015* available at www.legislation.tas.gov.au

Application for approval to become a Cemetery Manager

Anyone intending to take on the role of cemetery manager is required by law to apply in writing to the Regulator for approval to become a cemetery manager (section 32).

The Regulator can only approve a cemetery manager if the applicant:

- is a body corporate with perpetual succession (except in very limited circumstances – refer to *Cemeteries owned by natural persons* below);
- meets the 'fit and proper person' test detailed under section 5 of the Act; and

- owns or leases from the State or a council, the land on which the cemetery is located (or will do so within a reasonable time after the approval of the person as cemetery manager).

If approval is provided by the Regulator, this approval only applies to the management of the cemetery detailed in the application. If the cemetery manager intends to manage another cemetery, a new application would need be lodged.

The Regulator requires certain evidence to inform the decision whether or not to approve a body corporate as a cemetery manager. In general terms, the Regulator needs to be satisfied that the proposed cemetery manager:

1. has not been convicted of any offence that would make the applicant unsuitable for the role (such as an offence of dishonesty or fraud)(this also relates to the office bearers of the corporation) and there have been no allegations of misconduct that would mean the applicant is not suited to managing a cemetery;
2. has capacity, including financial capacity to maintain the cemetery and comply with the Act;
3. has previous experience relevant to managing a cemetery; and
4. understands the various duties and obligations of a cemetery manager.

What do I need to provide to the Regulator?

If you intend to become a cemetery manager, you must provide the Regulator with a completed **Cemetery Manager Application**. The application must include:

- a completed Cemetery Management Program;
- evidence of incorporation;
- National Police Check for all office bearers of the body corporate;
- contract of sale for the cemetery; and
- payment of the application fee.

Due Diligence

Any corporation intending to become a cemetery manager needs to be confident that it is in a position to meet all of its statutory obligations.

The application process for approval as a cemetery manager requests prospective cemetery managers to confirm that all of its office bearers have read the Act and Regulations and understand the role, duties and obligations of a cemetery manager.

If the prospective cemetery manager is purchasing an existing cemetery, the seller must provide the purchaser with a 'cemetery disclosure document' outlining:

- the obligations that will apply to the new cemetery manager under the Act;

- agreements that will need to be honoured (including exclusive rights of burial and agreements to maintain graves);
- financial provisions made in respect of the cemetery; and
- a statement that the proposed purchaser may view the most recent audit of the cemetery.

The intending cemetery manager should satisfy itself that necessary documents and records provided by the current manager are accurate and up-to-date.

Preparing a Cemetery Management Program

A Cemetery Management Program sets out in detail how the cemetery manager will meet its duties and obligations under the *Burial and Cremation Act 2019* and the *Burial and Cremation Regulations 2015*.

Submission of the Program to the Regulator is a key part of the notification process because it allows the Regulator to make an informed assessment as to whether or not the entity intending to become the cemetery manager meets the 'fit and proper person' test. A key part of this assessment is establishing that the intending manager will have appropriate systems and processes in place to support the appropriate and lawful management of the cemetery.

An outline of the minimum information requirements that need to be included as part of a Cemetery Management Program is included in the application form.

The Regulator's Assessment

The Regulator will provide a response to the application within 21 days of receiving all the required information. If the Regulator is not able to make a decision within 21 days, the Regulator will provide the intending cemetery manager with notice of the extended timeframe.

If the application is refused, the applicant may apply for a review of the decision in accordance with the *Magistrates Court (Administrative Appeals Division) Act 2001*.

Purchasing an existing cemetery

The Act sets out processes that the seller and purchaser must follow when transferring ownership of a cemetery.

The purchaser must obtain a certificate of compliance in respect of the sale from the Regulator before the cemetery can be offered for sale.

The contract cannot be finalised before the certificate of compliance has been issued to the seller, and the purchaser has been approved by the Regulator.

The [Sale and transfer of cemeteries – Information Sheet](#) provides a step-by-step description of the sale process.

Cemeteries owned by natural persons

There are a small number of cemeteries that meet the criteria which allow the Regulator to approve a purchaser that is a natural person (not a body corporate).

Under section 32(5) of the Act, a cemetery may be sold to a natural person if:

- immediately before the commencement of the *Burial and Cremation Act 2018* (i.e. before 26 December 2018) the cemetery was owned by a natural person; and
- the cemetery is currently owned by a natural person.

The seller or purchaser may wish to check with the Local Government Division if they are unsure whether a cemetery falls into this category.

The purchaser will still need to apply to the Regulator for approval to become a cemetery manager. All other cemetery management obligations apply to these cemeteries – the only difference is who may purchase them.

Establishing a new cemetery

A person intending to establish a cemetery must first ensure the land has been approved for use as a cemetery under the *Land Use Planning and Approvals Act 1993* (LUPAA). The council for the local government area where it is intended the cemetery will be located should be contacted in the first instance to apply for approval.

If the land has been approved for use as a cemetery, the intending cemetery manager can apply to the Regulator for [approval to establish the cemetery](#) and [approval as the cemetery manager](#).

In making an assessment, the Regulator may consider:

- the location, and condition, of the land on which the cemetery is proposed to be established;
- whether the proposed cemetery may be prejudicial to public health or public safety;
- any other matter that the Regulator considers relevant.

This process is not intended to duplicate the LUPAA approval process. The Regulator will consider broader issues relating to the suitability of the cemetery manager and whether there is a need to place conditions on the establishment of the cemetery.