

Selling a cemetery Information Sheet

June 2020

Under the [Burial and Cremation Act 2019](#) (the Act), a person or organisation wishing to sell a cemetery (including a closed cemetery) must apply to the Regulator for a certificate of compliance in respect of the proposed sale before offering the cemetery for sale.

Before submitting an application

Before a cemetery manager can apply for a certificate of compliance, they must:

1. publish a notice of intention that the cemetery is to be sold;
2. provide written notification to holders of exclusive rights of burial of the intention to sell the cemetery; and
3. undertake an audit of the cemetery.

Notice of intention

Section 52(1)(a) of the Act requires cemetery managers to publish a notice of intention that the cemetery is to be sold. Publishing the notice is not considered to be 'offering a cemetery for sale'.

The *Burial and Cremation Regulations 2015* (regulations 47A, 47B and 47C) set out the specific requirements for the notice. Cemetery managers must comply with these requirements.

- The notice must identify the cemetery or portion of the cemetery that is intended to be sold, by stating the name and address for the cemetery. If only a portion of the cemetery is being sold, the notice must provide the contact information for a person who can identify if a particular grave, monument or interment is in the portion to be sold.
- The notice must state that any person who has:
 - any information in respect of the records of the cemetery; or
 - an exclusive right of burial in respect of the cemetery;may provide this information to the cemetery manager. The notice must also state the timeframe for this information to be provided (at least 28 days) and the contact information for the cemetery manager.

- In order to effectively comply with the *Burial and Cremations Regulations 2015*, the notice must be published in the three Tasmanian daily newspapers circulating generally across the State, in the general or public notice section of each newspaper.
- The font used in the notice must not be smaller than the standard font used by the newspaper and should use standard spacing.
- The notice must have a heading in bold text stating 'Cemetery Sale' (or similar wording).

The notice process provides the public with an opportunity to provide information in respect of the cemetery (such as information relating to the records or exclusive rights of burial). This information forms part of the Regulator's decision to issue a compliance certificate and must be provided to prospective purchasers.

Notification to holders of an exclusive right of burial

Section 52(1)(b) of the Act requires cemetery managers to write to all holders of an exclusive right of burial notifying them of the intention to sell the cemetery. This notification must be in writing.

Audit

Section 53 requires the cemetery manager to undertake an audit within six months of the publication of the notice (this can be before or after the notice is published). This process allows any compliance issues to be brought to the attention of the Regulator and the purchaser.

The Regulator requires an audit that forms part of the application for a certificate of compliance to be conducted by an auditor who is a member of a recognised professional body for auditors and does not have a conflict of interest in respect of the cemetery or the cemetery manager.

The auditor must consider and report on all matters outlined in the [audit guidelines](#).

Cemeteries owned by natural persons

In limited circumstances, cemeteries that are already owned by natural persons (i.e. not a body corporate) may be purchased by another natural person. The cemetery must meet the criteria set out in section 32(5) of the Act, which allows the Regulator may approve a natural person as a cemetery manager if:

- (a) immediately before the commencement of the *Burial and Cremation Amendment Act 2018* (26 December 2018), or in accordance with section 56 of the *Burial and Cremation Act 2002* (had entered into a contract for sale that was not finalised before 26 December 2018), the cemetery was owned by a natural person; and
- (b) the applicant had made an application under this section as a result of entering into an agreement to purchase, or is purchasing, the cemetery from the current owner of the cemetery who is a natural person

Sellers or prospective purchasers should contact the Regulator to check whether a cemetery falls into this category before making an application.

Certificate of Compliance Application

1. Cemetery manager to apply to the Regulator for a certificate of compliance (section 54).

The application must be in the [approved form](#) and accompanied by payment of the [prescribed fee](#).

The application must be accompanied by:

- a copy of the notice published in accordance with section 52(1)(a), and any information received in response to that notice provided under section 52(2)(c); and
- a copy of an audit, undertaken as required under section 53.

2. Regulator assesses the application for a certificate of compliance (section 54(3)).

The Regulator may consider:

- the location and condition of the cemetery;
- whether the records and maintenance of the cemetery comply with the requirements of the Act;
- whether the proposed sale may be prejudicial to public health or safety; and
- any other matter that the Regulator considers relevant.

The Regulator may request further information from the cemetery manager.

The Regulator will provide a response to the application within 60 days of receiving all the required information. If the Regulator is not able to make a decision within 60 days, the Regulator will provide the cemetery manager with an update on the status of the application.

3. Issue or refusal to issue certificate of compliance (sections 54(4), 55, 56).

The Regulator may refuse to issue the certificate, or issue the certificate subject to any condition he or she sees fit.

Finalisation of Sale Process

After the certificate of compliance is issued, the next steps to complete the sale are:

1. Disclose cemetery management obligations to the purchaser (section 58).

At least 48 hours before entering into a contract (or 48 hours before ownership is transferred, if there is no written contract), the cemetery manager must provide the purchaser with a disclosure document (in the [approved form](#)).

The cemetery disclosure document outlines the role of the cemetery manager and the obligations that transfer with the sale (such as exclusive rights of burial and agreements to maintain graves).

2. Ensure purchaser can be approved by the Regulator (sections 50(1)(b) and 32) and enter into contract for sale.

The cemetery manager must ensure the purchaser has been approved in accordance with the Act before the sale is complete.

The seller can enter into a contract for sale before this has occurred, however it is an implied term in the contract that the purchaser must be approved before the sale process can be finalised (section 59).

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* above);
- 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).

3. Notice of approval of purchaser.

Under section 32 of the Act, the Regulator will provide written notice to a prospective purchaser if they have been approved as the cemetery manager. The seller should request a copy of this as evidence that the purchaser has been approved.

4. Contract finalised (section 59).

The contract can be finalised in the ordinary course of business once the certificate of compliance has been issued and the purchaser has been approved.

5. Transfer of title (section 62).

The Recorder of Titles will not transfer a title unless the sale complies with the Act (that is, a certificate of compliance was issued and the purchaser was approved by the Regulator).