

Cemetery sale and transfer process Information Sheet

June 2020

Any person or organisation selling or purchasing a cemetery (including a closed cemetery) must comply with the requirements set out in the *Burial and Cremation Act 2019* (the Act) and *Burial and Cremation Regulations 2015* (the Regulations). The information below summarises the process that must be followed.

Obligations on the seller

- 1. The cemetery manager must publish a notice of intention that the cemetery is to be sold (section 52(1)(a)).**

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. In order to effectively comply with the Regulations, the notice must be published in the three Tasmanian daily newspapers circulating generally across the State, in the general or public notice section of that newspaper.

- 2. Cemetery manager to provide written notification to holders of exclusive rights of burial of the intention to sell the cemetery (section 52(1)(b)).**

This ensures that holders of exclusive rights of burial are aware there may be a change to cemetery manager contact details, and allows holders to ensure that information held by the cemetery manager is up to date.

- 3. Cemetery manager must ensure that an audit of the cemetery is undertaken (section 53).**

The cemetery manager must ensure that an audit of the cemetery is undertaken within six months of the publication of the notice under step 1 (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 purchaser.

Cemetery managers should refer to the [audit guidelines](#) to ensure the audit complies with the Act.

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

This allows the Regulator to determine whether there are compliance issues to be addressed before the sale proceeds.

5. 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.

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

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

7. 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 [Cemetery Disclosure Document](#), outlining their obligations under the Act, and other obligations that transfer with the sale (such as exclusive rights of burial, agreements to maintain graves).

8. Ensure purchaser is a body corporate with perpetual succession and approved by the Regulator (section 50(1)(b)).

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).

Obligations on the purchaser

(Purchasers should refer to the [Information Sheet – Becoming a Cemetery Manager](#))

1. **Purchaser must apply to the Regulator for approval to be a cemetery manager (section 32).**
2. **Purchaser must ensure they are a body corporate (section 32(4)(b)).**

An exemption applies to a small number of cemeteries owned by natural persons (section 32(5)). Purchasers should contact the Local Government Division if they believe the exemption may apply.

3. **Regulator considers application (section 32(4)).**

The person must be a fit and proper person to manage a cemetery and a body corporate with perpetual succession. The Regulator may also consider:

- the capacity, including financial capacity of the proposed cemetery manager to maintain the cemetery;
- the capacity of the proposed cemetery manager to comply with the Act;
- previous cemetery management experience;
- whether the proposed cemetery manager (or officer of the body corporate) has been found guilty of certain offences or allegations of misconduct relevant to the management of a cemetery have been raised; and
- any other matter the Regulator considers relevant.

4. **Refusal or approval of the new cemetery manager (section 32(6)).**

The Regulator may refuse to approve the person as the cemetery manager, approve the application or request further information from the applicant.

5. **Notification of new ownership (section 61).**

Within 30 days of the transfer of ownership, the new owner must notify the Regulator, each person who holds an exclusive right of burial that is yet to be fulfilled, and publish a notice informing the public that they are the new owner.

Finalisation of sale process

1. **Contract finalised (section 59).**

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

2. 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).