



New South Wales

Crown Lands (General Reserves) Amendment (Sustainable Burials) By-law 2011

under the

Crown Lands Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following By-law under the *Crown Lands Act 1989*.

TONY KELLY, MLC
Minister for Lands

Explanatory note

The object of this By-law is to amend the *Crown Lands (General Reserves) By-law 2006*:

- (a) to allow, after consultation with the community and with the approval of the Minister for Lands, reserve trusts that manage cemeteries to revoke burial licences to facilitate cemetery renewal schemes, and
- (b) to limit the granting of burial licences to no more than 2 burial places per person, and
- (c) to reduce the period required before reserve trusts may revoke burial licences from 60 years to 50 years, and
- (d) to extend the application of the provisions of the By-law to all cemeteries for which a reserve trust has been established, and
- (e) to update the language of the By-law to clarify its intent and reflect terminology used in the industry.

This By-law is made under the *Crown Lands Act 1989*, including section 128 (the general by-law making power) and in particular section 128 (1) (p1) and (p2).

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**Crown Lands (General Reserves) Amendment
(Sustainable Burials) By-law 2011**

under the

Crown Lands Act 1989

1 Name of By-law

This By-law is the *Crown Lands (General Reserves) Amendment (Sustainable Burials) By-law 2011*.

2 Commencement

This By-law commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Crown Lands (General Reserves) By-law 2006

[1] Part 3, Division 2, Subdivision 1

Insert the following heading before clause 23:

Subdivision 1 Preliminary

[2] Clause 23 Application of this Division

Omit clause 23 (1). Insert instead:

- (1) This Division applies to a crematorium, cemetery or portion of a cemetery that is a reserve for which a reserve trust has been established.

[3] Clause 24 Definitions

Omit the definitions of *exclusive right of burial* and *holder*.

[4] Clause 24

Insert the following definitions in alphabetical order:

burial licence means a licence granted by a reserve trust that confers an exclusive right to bury the remains of one or more persons in a burial place.

Crown Cemeteries Advisory Committee means the advisory committee established by the Minister under section 12 of the Act to give information and recommendations about matters affecting the management of cemeteries.

holder, in relation to a burial licence, means the person recorded in the register kept by the reserve trust as the holder of the burial licence.

renewal scheme has the meaning given by clause 34A.

[5] Part 3, Division 2, Subdivision 2

Insert the following heading before clause 25:

Subdivision 2 Planning, conduct and maintenance

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[6] Part 3, Division 2, Subdivision 3

Omit clauses 27–31. Insert instead:

Subdivision 3 Burial licences

27 Grant of burial licence

- (1) A reserve trust may grant a burial licence in respect of a burial place in the cemetery.
- (2) An application for burial licence must be in the form approved by the reserve trust and accompanied by the appropriate fee.
- (3) A burial licence may be granted to one person or to two or more persons as joint holders.
- (4) A reserve trust cannot, without the Minister's approval, grant a burial licence to a person if the granting of the licence will result in the person holding (including jointly holding) burial licences in respect of more than 2 burial places in the cemetery for which the reserve trust is trustee.
- (5) A burial licence entitles the person or persons to whom it is granted the exclusive right of burial of the remains of a person in the burial place in respect of which it is granted.

28 Transfer of burial licence to person other than reserve trust

- (1) A reserve trust may, on application, transfer a burial licence from one person or two or more persons as joint holders to one person or two or more other persons as joint holders.
- (2) An application under subclause (1) may be made only by the holder of the burial licence concerned or, if the burial licence is held by joint holders, by all the joint holders.
- (3) An application for the transfer of a burial licence must be in the form approved by the reserve trust and accompanied by the appropriate fee.

29 Transfer of burial licence to reserve trust

A reserve trust may enter into arrangements with the holder of a burial licence for the transfer of the burial licence to the reserve trust.

30 Grant or transfer of burial licence may be refused

A reserve trust may refuse to grant or transfer a burial licence if, in the trust's opinion, the grant or transfer would tend to create a monopoly or encourage dealing in burial licences.

31 Burial licence to pass to surviving joint holder

On the death of a joint holder of a burial licence, the remaining joint holder is, or joint holders are, entitled to the burial licence.

[7] Clause 32 Exclusive rights of burial may be bequeathed

Omit “an exclusive rights of burial” from clause 32 (1), (2) and (3) wherever occurring.

Insert instead “a burial licence”.

[8] Clauses 32 (1), (2) and (3), 33 (1), (2) and (3) and 36 (1) (a) and (2)

Omit “the right” wherever occurring. Insert instead “the licence”.

[9] Clause 33 Rules of intestacy to apply to burial licences not bequeathed

Omit “an exclusive right of burial” from clause 33 (1), (2) and (3) wherever occurring.

Insert instead “a burial licence”.

[10] Clause 33A

Insert after clause 33:

33A Reserve trust may determine holder of burial licences

- (1) This clause applies if there is a dispute or other doubt about who holds the burial licence for a particular burial place in a cemetery.
- (2) A person who believes he or she is the holder of the burial licence may apply to the reserve trust for the cemetery for a decision that the person holds the burial licence.
- (3) As soon as practicable after receiving the application the trust must make a decision about whether the person holds or does not hold the burial licence for the burial place.
- (4) However, the reserve trust may make a decision that the person holds the burial licence for the burial place only if:
 - (a) at least 28 days before making the decision, the trust:
 - (i) displays a notice about its intention to make the decision in a prominent position at the cemetery, and
 - (ii) publishes a notice about its intention to make the decision in at least one newspaper circulating throughout the State, and

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- (iii) takes any other steps it considers reasonable in the circumstances to determine who holds the burial licence for the burial place, or
- (b) in the reasonable opinion of the trust it is not possible to follow the procedure in paragraph (a) because it is necessary to make an urgent decision due to the imminent burial of a person who was related by blood or marriage to, or who was in a domestic relationship with:
 - (i) the applicant, or
 - (ii) a person buried in the burial place.
- (5) If the reserve trust decides that the person holds the burial licence for the burial place, the trust is taken to have revoked any other burial licence for the burial place.

[11] **Clause 34 Revocation of burial licences**

Omit “any exclusive right of burial” from clause 34 (1) and (2) wherever occurring.

Insert instead “a burial licence”.

[12] **Clause 34 (1)**

Omit “that right”. Insert instead “the right conferred by the licence”

[13] **Clause 34 (1)**

Omit “60 years”. Insert instead “50 years”.

[14] **Clause 34 (2), (4) and (6) (a) and (b)**

Omit “that right” wherever occurring. Insert instead “the burial licence”.

[15] **Clause 34 (6)**

Omit “the exclusive right of burial” wherever occurring.

Insert instead “the burial licence”.

[16] **Part 3, Division 2, Subdivision 4**

Insert after clause 34:

Subdivision 4 Renewal schemes

34A Implementation of renewal scheme

- (1) A reserve trust may, with the Minister’s approval, implement a scheme (a *renewal scheme*) for the renewal of a portion of the

cemetery that has been used for burials to enable further burial places to be located in the portion.

- (2) A renewal scheme does not authorise a reserve trust:
 - (a) to remove the remains of a deceased person from a burial place in respect of which a burial licence had been granted to the person, or
 - (b) to otherwise disturb the remains of a deceased person in the portion of the cemetery subject to the renewal scheme.
- (3) A reserve trust may, in a portion of the cemetery that is subject to a renewal scheme:
 - (a) revoke a burial licence, and
 - (b) remove, relocate or dispose of a memorialisation placed on the burial place to which the burial licence relates, and
 - (c) erect in that portion of the cemetery a memorial recording the names and dates of death of persons buried in the portion.

34B Proposed renewal scheme to be submitted to Minister for approval to carry out consultation

- (1) After preparing a proposed renewal scheme, a reserve trust must submit the scheme to the Minister for approval to carry out consultation about the scheme.
- (2) After considering the proposed renewal scheme, the Minister may decide:
 - (a) to approve the release of the scheme for consultation, with or without changes, or
 - (b) to return the scheme to the reserve trust for changes and resubmission to the Minister.
- (3) The Minister may also decide that the reserve trust must consult with the following about the proposed renewal scheme:
 - (a) the Heritage Council if the scheme affects a local heritage item,
 - (b) any other Commonwealth or State authority.

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34C Consultation about proposed renewal scheme

- (1) If the Minister approves the release of a proposed renewal scheme for consultation, the reserve trust must:
 - (a) prepare and make available for public inspection a plan that shows:
 - (i) the portion of the cemetery that is subject to the proposed renewal scheme, and
 - (ii) all existing used and unused burial plots within the portion, and
 - (iii) details of the removal and relocation of any memorialisation placed on burial places within the portion, and
 - (iv) the proposed layout and landscaping of the renewed portion, and
 - (b) send a notice to each holder of burial licences in the portion subject to the proposed renewal scheme, at any address recorded for the holder in the reserve trust's register of burial places, informing the holder of the proposed scheme, and
 - (c) not less than 12 months before the date the proposed renewal scheme is to commence, place in a prominent position in the portion of the cemetery subject to the renewal scheme, a notice that states the following:
 - (i) that the reserve trust proposes to renew the portion of the cemetery,
 - (ii) where plans of the proposed renewal scheme may be inspected,
 - (iii) that written submissions may be made to the reserve trust about the proposed renewal scheme by the date, and in the way, specified in the notice, and
 - (d) not less than 3 months before the date the proposed renewal scheme is to commence, publish at least once in a newspaper circulating nationally and another newspaper circulating in the locality of the cemetery a notice about the proposed renewal scheme that states the following:
 - (i) that the reserve trust proposes to renew the portion of the cemetery,
 - (ii) where plans of the proposed renewal scheme may be inspected,

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- (iii) that written submissions may be made to the reserve trust about the proposed renewal scheme by the date, and in the way, specified in the notice, and
 - (e) if the Minister has decided the reserve trust must consult with the Heritage Council, prepare a statement of heritage impact for the proposed renewal scheme and refer it to the Heritage Council.
- (2) In this clause:
- statement of heritage impact*, in relation to a proposed renewal scheme that affects a local heritage item, means a statement that:
- (a) identifies the local heritage item and its significance, and
 - (b) assesses and justifies the impact the proposed renewal scheme will have on the significance of the heritage item.

34D Submissions

- (1) A submission about the proposed renewal scheme may be made by any person by the date, and in the way, specified in the notice placed in the cemetery or published in the newspaper.
- (2) The holder of a burial licence for a burial place may, in a submission, object to the proposed renewal scheme concerned (*a formal objection*) if it:
 - (a) provides for the revocation of the holder's burial licence, or
 - (b) provides for the removal, relocation or disposal of a memorialisation placed on the burial place.
- (3) The reserve trust must consider each submission made under subclause (1).
- (4) After considering any submissions, including formal objections, the reserve trust must decide:
 - (a) to proceed with the proposed renewal scheme, with or without modifications, or
 - (b) not to proceed with the proposed renewal scheme.
- (5) The reserve trust must not proceed with a proposed renewal scheme in respect of which a formal objection has been made unless:
 - (a) the objection has been withdrawn, or
 - (b) the proposed renewal scheme has been modified so that it does not provide for the revocation of the burial licence, or provide for the removal, relocation or disposal of a

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memorialisation placed on the burial place, that was the subject of the formal objection.

34E Submission of renewal scheme to Minister

- (1) If the reserve trust decides to proceed with the proposed renewal scheme, the reserve trust must submit the renewal scheme to the Minister for approval.
- (2) The proposed renewal scheme must:
 - (a) be accompanied by any written submissions received by the reserve trust about the renewal scheme, and
 - (b) indicate what modifications, if any, have been made to the renewal scheme after the reserve trust's consideration of the written submissions.
- (3) Before making a decision about the proposed renewal scheme, the Minister must obtain advice about the renewal scheme from:
 - (a) the Crown Cemeteries Advisory Committee, and
 - (b) the Minister administering the *Heritage Act 1977*.
- (4) For the purposes of providing advice under subclause (3) (a), the Crown Cemeteries Advisory Committee may refer the proposal to any person or body the Committee considers appropriate including, for example, the New South Wales Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*.

34F Minister's decision about renewal scheme

After considering any advice received from the Crown Cemeteries Advisory Committee and the Minister administering the *Heritage Act 1977*, the Minister may decide to:

- (a) approve the proposed renewal scheme, or
- (b) approve the proposed renewal scheme with any modifications the Minister considers appropriate, or
- (c) reject the proposed renewal scheme.

[17] Part 3, Division 2, Subdivision 5

Insert before clause 35:

Subdivision 5 Compensation

[18] Clause 35 Compensation

Omit “the exclusive right of burial” from clause 35 (1) and (2) wherever occurring.

Insert instead “the burial licence”.

[19] Clause 35 (1), (5) and (9)

Omit “that right” wherever occurring. Insert instead “that licence”.

[20] Clauses 35 (1) (a) and (b) and (2) and 38 (1)

Omit “an exclusive right of burial” wherever occurring.

Insert instead “a burial licence”.

[21] Clause 35 (1) (a) (ii) and (b) (ii)

Omit “original exclusive right of burial” wherever occurring.

Insert instead “original burial licence”.

[22] Clause 35 (3)

Omit “exclusive rights of burial”. Insert instead “burial licences”.

[23] Clause 35 (4), (6), (7) (c) and (9)

Omit “exclusive right of burial” wherever occurring.

Insert instead “burial licence”.

[24] Clause 35 (5)

Omit “exclusive right of burial is granted an exclusive right of burial”.

Insert instead “burial licence is granted a burial licence”.

[25] Part 3, Division 2, Subdivision 6

Insert before clause 36:

Subdivision 6 Effect of burial licences**[26] Clause 36 Burials in burial places in respect of which burial licenses have been granted**

Omit “an exclusive right of burial” from clause 36 (1), (2) and (3) wherever occurring.

Insert instead “a burial licence”.

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[27] Part 3, Division 2, Subdivision 7

Insert before clause 37:

Subdivision 7 Miscellaneous

[28] Clause 37 Register of burial places

Omit “burial rights” from clause 37 (3) and (4) wherever occurring.

Insert instead “burial licences”.

[29] Clause 37 (4)

Omit “burial right”. Insert instead “burial licence”.

[30] Clause 38 Certificates for burial licences

Omit “certificate of exclusive right of burial” from clause 38 (1).

Insert instead “certificate stating that the holder holds a current burial licence”.

[31] Clause 45

Insert after clause 44:

45 Transitional provision consequent on Crown Lands (General Reserves) Amendment (Sustainable Burials) By-law 2011

An exclusive right of burial granted before the commencement of the *Crown Lands (General Reserves) Amendment (Sustainable Burials) By-law 2011* is taken, after the commencement, to be a burial licence.

[32] Schedule 1 Reserves to which this By-law applies

Omit “(Clauses 3 and 23)”.

[33] Schedule 1, Part 2

Omit the Part.