



New South Wales

# Rookwood Necropolis Repeal Bill 2009

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The public cemetery at Rookwood (*the Rookwood Necropolis*) is administered under the *Rookwood Necropolis Act 1901 (the 1901 Act)*. Almost all the other major public cemeteries in Sydney, together with one in the Hunter Valley, are administered under the *Crown Lands Act 1989 (the 1989 Act)*.

The objects of this Bill are to repeal the 1901 Act and, by means of amendments to the 1989 Act and the by-laws under that Act, to transfer the administration of the Rookwood Necropolis from the 1901 Act to the 1989 Act. The co-ordinating functions exercised by the Joint Committee of Necropolis Trustees under the 1901 Act are in future to be exercised by the Rookwood Necropolis Trust to be established under the 1989 Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day to be proclaimed.

**Clause 3** repeals the *Rookwood Necropolis Act 1901* and the regulations under that Act.

## **Schedule 1      Amendment of Crown Lands Act 1989 No 6**

### **Savings and transitional provisions**

**Schedule 1 [6]** inserts a new Part 6 into Schedule 8. The proposed Part contains the following provisions:

**Proposed clause 51** defines various words and expressions for the purposes of the proposed Part.

**Proposed clause 52** abolishes the Joint Committee of Necropolis Trustees (established under the 1901 Act) and the Rookwood Necropolis Trust (a reserve trust recently established under the 1989 Act) and removes the members of those bodies from office.

**Proposed clause 53** establishes a new Rookwood Necropolis Trust as a reserve trust for the lands in the Rookwood Necropolis that are not currently managed by a reserve trust. The new trust is taken to be a continuation of, and the same legal entity as, the existing Joint Committee, and is to take over the assets, rights and liabilities of the existing Rookwood Necropolis Trust.

**Proposed clause 54** preserves the effect of any dedications, appointments and vestings that currently depend on provisions of the 1901 Act.

**Proposed clause 55** preserves existing obligations under the 1901 Act with respect to the payment of certain contributions, fees and other amounts and the provision of certain information.

**Proposed clause 56** provides that the general crematorium lease referred to in the 1901 Act is taken to be a lease granted under section 34A of the 1989 Act, and preserves certain rights of appeal that are provided for under section 8E of the 1901 Act with respect to the valuations that are made for the purpose of determining the rent payable under that lease.

**Proposed clause 57** provides that certain references to the Joint Committee and the existing Rookwood Necropolis Trust are to extend to the new Rookwood Necropolis Trust.

**Schedule 1 [5]** amends clause 25 of Schedule 8 so as to enable further savings and transitional provisions to be made by the regulations.

### **Partial revocation of dedications**

**Schedule 1 [1]** amends section 84 so as to enable a dedication of land under the 1989 Act to be revoked in relation to part only of that land. Currently, a dedication can be revoked in relation only to the whole of the dedicated land. This amendment will bring section 84 into line with section 90 (which deals with the revocation of reservations under the 1989 Act).

### **Payment between reserve trusts**

**Schedule 1 [2]** amends section 128 so as to enable the by-laws to make provision with respect to the payments to be made from one reserve trust to another. The proposed amendment is intended to support certain provisions of the new Division 3 that is proposed to be inserted into Part 3 of the *Crown Lands (General Reserves) By-law 2006* (see **Schedule 2 [1]**).

### **Recovery of debts owed to reserve trusts**

**Schedule 1 [4]** amends section 147 so as to enable a reserve trust to commence debt recovery proceedings against those persons who owe money to it under the 1989 Act or the by-laws. This amendment will ensure that the Rookwood Necropolis Trust has the same means of enforcing the debts owed to it as the Joint Committee currently has under section 36A of the 1901 Act. **Schedule 1 [3]** makes a consequential amendment to section 147 (1).

## **Schedule 2      Amendment of Crown Lands (General Reserves) By-law 2006**

### **Special provisions concerning the Rookwood Necropolis**

**Schedule 2 [1]** inserts a new Division 3 into Part 3. The proposed Division contains the following provisions:

**Proposed clause 41A** defines various words and expressions for the purposes of the proposed Division.

**Proposed clause 41B** provides for the payment of contributions to the Rookwood Necropolis Trust by the various denominational trusts that manage cemeteries within the Rookwood Necropolis. The clause replicates section 20B of the 1901 Act, except that the contributions are in future to be made in relation to the financial year commencing 1 July.

**Proposed clause 41C** requires denominational trusts that operate crematoria in the Rookwood Necropolis to pay fees to the Rookwood Necropolis Trust for each cremation they carry out. The clause replicates section 20G of the 1901 Act.

**Proposed clause 41D** requires denominational trusts that carry out interments or cremations in the Rookwood Necropolis to provide information in that regard to the Rookwood Necropolis Trust. The clause replicates section 20H of the 1901 Act.

### **Extension of by-law to the Rookwood Necropolis**

**Schedule 2 [3]** amends Part 2 of Schedule 1 so as to apply the *Crown Lands (General Reserves) By-law 2006* to the various cemeteries and crematoria within the Rookwood Necropolis. **Schedule 2 [2]** makes a further amendment consequent on the repeal of the 1901 Act.

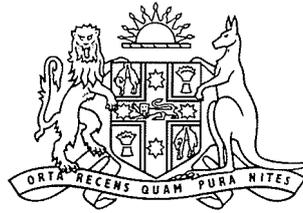
### **Schedule 3      Amendment of other Acts and instruments**

**Schedule 3.1** amends Schedule 3 to the *Freedom of Information Regulation 2005* so as to remove a reference to the Joint Committee of Necropolis Trustees.

**Schedule 3.2** amends section 19 of the *Land and Environment Court Act 1979* as a consequence of the repeal of the 1901 Act.

**Schedule 3.3** amends rule 3.7 of the *Land and Environment Court Rules 2007* so as to preserve the operation of that rule in relation to proceedings on an appeal under proposed clause 56 of Schedule 8 to the 1989 Act (the proposed successor to section 8E of the 1901 Act).

First print



New South Wales

# Rookwood Necropolis Repeal Bill 2009

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Repeal of Rookwood Necropolis Act 1901 (1902 No 20)	2
Schedule 1 Amendment of Crown Lands Act 1989 No 6	3
Schedule 2 Amendment of Crown Lands (General Reserves) By-law 2006	7
Schedule 3 Amendment of other Acts and instruments	10





New South Wales

# Rookwood Necropolis Repeal Bill 2009

No. , 2009

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## A Bill for

An Act to repeal the *Rookwood Necropolis Act 1901* and to make consequential amendments to the *Crown Lands Act 1989* and to other Acts and instruments.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Rookwood Necropolis Repeal Act 2009</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day to be appointed by proclamation.	5
<b>3 Repeal of Rookwood Necropolis Act 1901 (1902 No 20)</b>	6
The <i>Rookwood Necropolis Act 1901</i> , and the regulations under that Act, are repealed.	7 8

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<b>Schedule 1</b>	<b>Amendment of Crown Lands Act 1989</b>	1
	<b>No 6</b>	2
<b>[1]</b>	<b>Section 84 Revocation of dedication</b>	3
	Omit “a dedication made before or after the commencement of this section” from section 84 (1).	4 5
	Insert instead “the whole or part of a dedication under this Act”.	6
<b>[2]</b>	<b>Section 128 By-laws</b>	7
	Insert after section 128 (1) (p3):	8
	(p4) the payments to be made from one reserve trust to another,	9
<b>[3]</b>	<b>Section 147 Recovery of money</b>	10
	Omit “Money” from section 147 (1).	11
	Insert instead “Subject to subsection (3), money”.	12
<b>[4]</b>	<b>Section 147 (3)</b>	13
	Insert after section 147 (2):	14
	(3) Money payable to a reserve trust under this Act or the by-laws may be recovered by the trust as a debt.	15 16
<b>[5]</b>	<b>Schedule 8 Savings, transitional and other provisions</b>	17
	Insert at the end of clause 25 (1):	18
	<i>Rookwood Necropolis Repeal Act 2009</i>	19
<b>[6]</b>	<b>Schedule 8, Part 6</b>	20
	Insert after Part 5:	21
	<b>Part 6 Provisions consequent on Rookwood Necropolis Repeal Act 2009</b>	22 23
<b>51</b>	<b>Definitions</b>	24
	In this Part:	25
	<i>appointed day</i> means the day appointed for the commencement of the 2009 Act pursuant to section 2 of that Act.	26 27
	<i>general crematorium lease</i> means the lease referred to in section 8B of the 1901 Act, as that lease was in force immediately before the appointed day, and includes the terms and conditions specified in Schedule 3 to that Act.	28 29 30 31

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	<i>JCNT</i> means the Joint Committee of Necropolis Trustees constituted by section 20 of the 1901 Act.	1
		2
	<i>new RNT</i> means the reserve trust established by clause 53.	3
	<i>old RNT</i> means the Rookwood Necropolis Trust established under section 92 (1) by notification published in Gazette No 73 of 15 May 2009 at page 2244.	4
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		6
	<i>Rookwood Necropolis</i> means the land comprising Lot 500, Deposited Plan 1015565, Lot 7053, Deposited Plan 1029128, and Lot 10, Deposited Plan 829656, being land at Haslem's Creek and Rookwood that, immediately before the appointed day, was set aside for use as a cemetery or crematorium, or for conservation as a historic site, under the 1901 Act.	7
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	<i>the 1901 Act</i> means the <i>Rookwood Necropolis Act 1901</i> , as in force immediately before the appointed day.	13
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	<i>the 2009 Act</i> means the <i>Rookwood Necropolis Repeal Act 2009</i> .	15
	<i>unallocated lands</i> means those parts of the Rookwood Necropolis for which, immediately before the appointed day, there was no reserve trust appointed.	16
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<b>52</b>	<b>Abolition of JCNT and old RNT</b>	19
	(1) The JCNT and the old RNT are abolished.	20
	(2) A person who, immediately before the appointed day, held office as a member of the JCNT or the old RNT, ceases to hold office as such on that day, but is eligible to be appointed as a member of the new RNT.	21
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	(3) A person who, by operation of subclause (2), ceases to hold office as a member of the JCNT or the old RNT is not thereby entitled to be paid any remuneration or compensation.	25
		26
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<b>53</b>	<b>Establishment of new RNT</b>	28
	(1) On the appointed day:	29
	(a) a reserve trust is established under the name "Rookwood Necropolis Trust", and	30
		31
	(b) the reserve trust so established is appointed as trustee of the unallocated lands.	32
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	(2) The new RNT is taken to have been established and named, and to have been appointed as trustee of the unallocated lands, under section 92 (1).	34
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	<b>Note.</b> Accordingly, it may be dissolved, its name may be altered and its appointment as trustee of the unallocated lands may be revoked under section 92 (3).	37
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(3)	The new RNT is taken to be a continuation of, and the same legal entity as, the JCNT.	1 2
	<b>Note.</b> Accordingly, the staff, assets, rights and liabilities of the JCNT become staff, assets, rights and liabilities of the new RNT.	3 4
(4)	The assets, rights and liabilities that, immediately before the appointed day, belonged, or purportedly belonged, to the old RNT become the assets, rights and liabilities of the new RNT.	5 6 7
(5)	In subclause (4):	8
	<b>assets</b> means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.	9 10 11 12 13
	<b>liabilities</b> means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).	14 15 16
	<b>rights</b> means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).	17 18 19
(6)	Anything that, before the appointed day, was done or purportedly done by or on behalf of the old RNT is taken to have been done by or on behalf of the new RNT.	20 21 22
<b>54</b>	<b>Continuation of existing dedications and appointments</b>	23
(1)	Nothing in this Part affects:	24
(a)	any dedication of land within the Rookwood Necropolis, or	25 26
(b)	any appointment of a reserve trust for land within the Rookwood Necropolis,	27 28
	that, pursuant to section 6A of the 1901 Act, is taken to have occurred under Part 5 of this Act.	29 30
(2)	Subject to Part 5 of this Act, the repeal of the 1901 Act does not affect any vesting of land that, before the appointed day, had been effected under section 11 of that Act.	31 32 33
<b>55</b>	<b>Continuation of existing obligations</b>	34
(1)	The repeal of the 1901 Act does not affect any contribution, fee or other amount that, immediately before the appointed day, was payable to the JCNT under section 20B or 20G of that Act, except that any such contribution, fee or amount is instead to be paid to the new RNT.	35 36 37 38 39

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(2)	The repeal of the 1901 Act does not affect any obligation of a reserve trust to provide the JCNT with information under section 20H of that Act, except that any such information is to be provided instead to the new RNT.	1 2 3 4
<b>56</b>	<b>General crematorium lease</b>	5
(1)	On and from the appointed day, the general crematorium lease is taken to have been granted by the Minister under section 34A for the purposes of a crematorium.	6 7 8
(2)	The lessor or lessee under the general crematorium lease, or the new RNT, may appeal to the Land and Environment Court against a valuation made, or purporting to have been made, by the Valuer-General under the terms of the lease.	9 10 11 12
	<b>Note.</b> As at the appointed day, the terms of the lease included those prescribed by Schedule 3 to the 1901 Act, clause 5 of which provided for the valuation of the general crematorium site by the Valuer-General for the purpose of determining the rent payable in relation to that site.	13 14 15 16
(3)	Pending the determination of an appeal under this clause, the valuation to which the appeal relates, and the lessee's liability for any rent payable on the basis of that valuation, are unaffected by the appeal.	17 18 19 20
	<b>Note.</b> Pursuant to section 19 of the <i>Land and Environment Court Act 1979</i> , an appeal under this clause falls within Class 3 of the Land and Environment Court's jurisdiction.	21 22 23
(4)	Divisions 2A and 3 of Part 7 do not apply to or in respect of the general crematorium lease.	24 25
<b>57</b>	<b>Construction of references to JCNT or old RNT</b>	26
	In any other Act or instrument, a reference to the JCNT or the old RNT extends to the new RNT.	27 28

<b>Schedule 2</b>	<b>Amendment of Crown Lands (General Reserves) By-law 2006</b>	1
		2
<b>[1] Part 3 Regulation of use of reserves</b>		3
Insert after Division 2:		4
<b>Division 3</b>	<b>Special provisions concerning the Rookwood Necropolis</b>	5
		6
<b>41A</b>	<b>Definitions</b>	7
	In this Division:	8
	<i>calendar year</i> means a period of 12 months commencing on 1 January.	9
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	<i>denominational trust</i> , in relation to land within the Rookwood Necropolis that is set aside for use as a cemetery or crematorium, means the reserve trust that has been, or is taken to have been, appointed as trustee of that land under section 92 (1) of the Act, and includes a person conducting a crematorium on the general crematorium site (if there is no other denominational trust for that site), but does not include the Rookwood Necropolis Trust.	11
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	<i>financial year</i> means a period of 12 months commencing on 1 July.	18
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	<i>general crematorium lease</i> means a lease of the whole or any part of the general crematorium site that has been, or is taken to have been, granted by the Minister for the purposes of a crematorium under section 34A of the Act.	20
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		23
	<i>general crematorium site</i> means the land within the Rookwood Necropolis that comprises Lot 488, Deposited Plan 48288.	24
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	<i>quarter</i> means the 3-month period beginning 1 July, 1 October, 1 January or 1 April in each financial year.	26
		27
	<i>Rookwood Necropolis</i> means the Rookwood Necropolis referred to in clause 51 of Schedule 8 to the Act.	28
		29
	<i>Rookwood Necropolis Trust</i> means the Rookwood Necropolis Trust established by clause 53 of Schedule 8 to the Act.	30
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<b>41B</b>	<b>Contributions payable to Rookwood Necropolis Trust by denominational trusts etc</b>	32
		33
	(1) During the last 6 months of each financial year commencing on or after 1 July 2010, the Rookwood Necropolis Trust:	34
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	(a) must make estimates for the following financial year of its expenditure and of its revenue apart from this clause, and	36
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- (b) must determine, on the basis of those estimates, the total amount that it will need to obtain for the following financial year from contributions from the denominational trusts, and
  - (c) must notify the Minister of the total amount so determined, and
  - (d) subject to the Minister's approval of the total amount so determined, must determine the contribution payable by each denominational trust in respect of that amount, and
  - (e) must notify each denominational trust of the contribution payable by it for the following financial year.
- (2) Each denominational trust must pay the contribution determined in respect of it under subclause (1) (d), by way of 4 equal instalments, within 28 days after the start of each quarter.
- (3) For the purposes of subclause (1) (d), the contribution payable to the Rookwood Necropolis Trust by a denominational trust is to be calculated in accordance with the following formula:
- $$P = \frac{A \times I\&C}{\Sigma I\&C}$$
- where:
- A* represents the amount approved by the Minister under subclause (1) in relation to the amount assessed by the Rookwood Necropolis Trust, from time to time, as the amount it requires to enable it to exercise its functions under the Act.
- I&C*, in relation to a denominational trust, represents the number of interments and cremations carried out during the previous calendar year in the portion of the Rookwood Necropolis managed by that denominational trust.
- $\Sigma I\&C$  represents the total number of interments and cremations carried out during the previous calendar year in the Rookwood Necropolis.
- P* represents the contribution payable.
- (4) A special contribution is to be determined under this clause to cover expenditure by the Rookwood Necropolis Trust in relation to the period from 1 January 2010 to 30 June 2010, for which purpose:
- (a) the procedure set out in subclause (1) is to be carried out during the last 6 months of 2009, and
  - (b) the formula referred to in subclause (3) is to be construed as if the interments and cremations mentioned in that

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	subclause referred to interments and cremations carried out during the first 6 months of 2009, and	1
	(c) a contribution referred to in subclause (2) is to be paid by way of 2 equal instalments to be paid by 28 January 2010 and 28 April 2010, respectively.	2
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		4
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<b>41C</b>	<b>Fees payable to Rookwood Necropolis Trust by denominational trusts operating crematoria</b>	6
		7
	Within 28 days after the end of each quarter, a denominational trust that operated a crematorium in the Rookwood Necropolis during that quarter must pay to the Rookwood Necropolis Trust a fee calculated by multiplying \$100 by the number of cremations carried out by it in the crematorium during that quarter.	8
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	<b>Note.</b> The fee payable under this clause is additional to any contribution payable under clause 41B.	13
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<b>41D</b>	<b>Information to be provided to Rookwood Necropolis Trust by reserve trusts etc</b>	15
		16
	Within 7 days after the end of each quarter, a denominational trust that carried out interments or cremations in the Rookwood Necropolis during that quarter must provide the Rookwood Necropolis Trust with the number of interments and cremations carried out by it in the Rookwood Necropolis during that quarter.	17
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<b>[2]</b>	<b>Schedule 1 Reserves to which this By-law applies</b>	22
	Omit from Part 2:	23
	Each cemetery and crematorium within the Necropolis referred to in the <i>Rookwood Necropolis Act 1901</i>	24
		25
<b>[3]</b>	<b>Schedule 1, Part 2</b>	26
	Insert in alphabetical order of reserves:	27
	Rookwood Necropolis, Anglican Portion	28
	Rookwood Necropolis, Catholic Portion	29
	Rookwood Necropolis, General Portion	30
	Rookwood Necropolis, Independent Portion	31
	Rookwood Necropolis, Jewish Portion	32
	Rookwood Necropolis, Muslim Portion	33
	Rookwood Necropolis, Rookwood Necropolis Trust Portion	34

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<b>Schedule 3</b>	<b>Amendment of other Acts and instruments</b>	1
		2
<b>3.1</b>	<b>Freedom of Information Regulation 2005</b>	3
	<b>Schedule 3 Public authorities</b>	4
	Omit from Part 3:	5
	Joint Committee of Necropolis Trustees Department of Lands	
<b>3.2</b>	<b>Land and Environment Court Act 1979 No 204</b>	6
	<b>Section 19 Class 3—land tenure, valuation, rating and compensation matters</b>	7
		8
	Omit section 19 (b1).	9
<b>3.3</b>	<b>Land and Environment Court Rules 2007</b>	10
	<b>Rule 3.7 Costs in certain proceedings</b>	11
	Insert “or clause 56 (2) of Schedule 8 to the <i>Crown Lands Act 1989</i> ” after	12
	“ <i>Rookwood Necropolis Act 1901</i> ” in rule 3.7 (1) (c) (iii).	13