



New South Wales

# Cemeteries and Crematoria Amendment Regulation 2022

under the

Cemeteries and Crematoria Act 2013

[*The following enacting formula will be included if this Regulation is made—*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Cemeteries and Crematoria Act 2013*.

Minister for Lands and Water

## **Explanatory note**

The object of this Regulation is to amend the *Cemeteries and Crematoria Regulation 2014* to establish an interment industry scheme to regulate the provision of interment services by cemetery operators.

This Regulation is made under the *Cemeteries and Crematoria Act 2013*, including section 142, the general regulation-making power.

Cemeteries and Crematoria Amendment Regulation 2022 [NSW]

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## **Cemeteries and Crematoria Amendment Regulation 2022**

under the

Cemeteries and Crematoria Act 2013

### **1 Name of Regulation**

This Regulation is the *Cemeteries and Crematoria Amendment Regulation 2022*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## **Schedule 1      Amendment of Cemeteries and Crematoria Regulation 2014**

### **[1] Part 2A**

Insert after Part 2—

## **Part 2A Interment industry scheme—the Act, s 31**

### **Division 1      Preliminary**

#### **Definitions**

In this Part—

*cemetery operator (caretaker) licence*—see clause \*(2)(b).

*cemetery operator licence*—see clause \*(2)(a).

*licence* means—

- (a) a cemetery operator licence, or
- (b) a cemetery operator (caretaker) licence.

#### **Interment industry scheme—cemetery operators**

- (1) For the Act, section 31(1), an interment industry scheme is established under this Part to regulate the provision of interment services by cemetery operators.
- (2) The Cemeteries Agency may, by granting a licence under this Part—
  - (a) for a *cemetery operator licence*—authorise a cemetery operator to provide interment services, or
  - (b) for a *cemetery operator (caretaker) licence*—
    - (i) authorise a cemetery operator to provide interment services, and
    - (ii) restrict the carrying out of interments.
- (3) It is a requirement of the scheme that a cemetery operator—
  - (a) provide interment services only under the authority of a licence issued under this Part, and
  - (b) comply with the conditions of a licence issued to the cemetery operator.

### **Division 2      Application for licence**

#### **Application for licence**

- (1) A cemetery operator may apply to the Cemeteries Agency for a grant of a licence.
- (2) An application must—
  - (a) be in the form approved by the Cemeteries Agency, and
  - (b) include or be accompanied by information or evidence the Cemeteries Agency reasonably requires to assess the application, and
  - (c) for an application for a cemetery operator licence—be accompanied by an application fee of \$800.
- (3) The Cemeteries Agency may require further documents or information to be provided by the applicant.

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Cemeteries and Crematoria Amendment Regulation 2022 [NSW]  
Schedule 1 Amendment of Cemeteries and Crematoria Regulation 2014

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- (4) The Cemeteries Agency may, by written notice, refund, reduce or waive an application fee if—
  - (a) the Cemeteries Agency is satisfied it is appropriate because the person who must pay the fee is suffering financial hardship, or
  - (b) the Cemeteries Agency considers the number of interments or type of services provided by the licence holder justify the reduction or waiver, or
  - (c) an application for the grant of a licence is withdrawn.
- (5) The notice must be—
  - (a) if the refund, reduction or waiver in the notice relates to a class of licences—published on the website maintained by the Cemeteries Agency, or
  - (b) if the refund, reduction or waiver in the notice relates only to a particular cemetery operator licence—given to the applicant for the licence.
- (6) If an application for renewal of a licence is made to the Cemeteries Agency before the expiry of the licence, the licence continues in force until the Cemeteries Agency notifies the applicant of a decision to grant or refuse the application.
- (7) In this clause—  
**grant** of a licence includes grant of a renewal of the licence.

## **Grant or refusal of application**

- (1) The Cemeteries Agency may, on application—
  - (a) grant the application, subject to conditions, or
  - (b) refuse the application.
- (2) The Cemeteries Agency may refuse an application if—
  - (a) the application is incomplete, or
  - (b) the application does not comply with a requirement of this Regulation, or
  - (c) the applicant is not a suitable person to hold the licence, or
  - (d) the Cemeteries Agency is of the opinion there is a significant risk the applicant will contravene the Act, this Regulation or a condition of the licence.
- (3) The Cemeteries Agency must give the applicant—
  - (a) written notice of the decision, and
  - (b) if the application is refused—the reasons for refusing the application.
- (4) If the Cemeteries Agency fails to give an applicant notice of a decision to grant or refuse the application within 60 business days, the Cemeteries Agency is taken to have refused the application.
- (5) If the Cemeteries Agency requires further information or documents to be provided by the applicant, the period of 60 days commences on the day on which the information or documents are provided by the applicant.

## **Grounds for finding a person is not a suitable person to hold a licence**

- (1) A person is not a suitable person to hold a licence if—
  - (a) the person is disqualified from holding a licence, or

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Cemeteries and Crematoria Amendment Regulation 2022 [NSW]  
Schedule 1 Amendment of Cemeteries and Crematoria Regulation 2014

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- (b) the person is not a fit and proper person to hold a licence, or
  - (c) the Cemeteries Agency is of the opinion the person is not a suitable person to hold a licence.
- (2) The Cemeteries Agency may form an opinion a person is not a suitable person to hold a licence in the following circumstances—
- (a) the person has, within the previous 10 years, been convicted of a relevant offence,
  - (b) the person is an undischarged bankrupt,
  - (c) an equivalent licence of the person has been suspended or cancelled, other than at the person's request, under the law of another Australian jurisdiction,
  - (d) other circumstances the Cemeteries Agency considers appropriate.
- (3) In this clause—
- person** includes, if the person is a corporation, a director of the corporation.
- relevant offence** means the following offences, whether committed in this or another Australian jurisdiction—
- (a) an offence against the Act or this Regulation,
  - (b) an offence relating to the provision of interment services,
  - (c) an offence involving fraud or dishonesty.

## **Authority of licence**

- (1) The holder of a cemetery operator licence is authorised to provide interment services at the cemetery specified in the licence.
- (2) The holder of a cemetery operator (caretaker) licence is authorised to provide only the number of interment services specified in the licence.

## **Duration of licence**

- (1) A cemetery operator licence remains in force for a period of 5 or less years, as specified by the Cemeteries Agency in the notice by which the licence is granted, unless sooner cancelled.
- (2) A cemetery operator (caretaker) licence remains in force unless cancelled.

## **Division 3 Conditions of licence**

### **Conditions of licence**

- (1) A licence is subject to the conditions imposed by the Cemeteries Agency.
- (2) The Cemeteries Agency may impose conditions on a licence—
  - (a) at the time of the grant of the licence, or
  - (b) at another time by variation of the licence.
- (3) The Cemeteries Agency may impose conditions—
  - (a) on a particular licence, or
  - (b) on a class or category of cemetery, licence or other thing the Cemeteries Agency considers appropriate.

## **Types of conditions**

- (1) The Cemeteries Agency may impose conditions in relation to the following matters—
  - (a) consumer contracts,
  - (b) cemetery maintenance,
  - (c) pricing transparency,
  - (d) customer service,
  - (e) Aboriginal cultural and spiritual principles,
  - (f) religious and cultural principles,
  - (g) the cemeteries at which the operator is authorised to provide interment services,
  - (h) requiring an operator to inform the Cemeteries Agency of changes in relation to—
    - (i) the cemeteries at which the cemetery operator intends to provide interment services, and
    - (ii) other matters relating to the licence and the interment services authorised by the licence,
  - (i) for a cemetery operator (caretaker) licence only—to prohibit the carrying out of—
    - (i) interments, or
    - (ii) more than a specified number of interments in a year,
  - (j) other conditions the Cemeteries Agency considers appropriate.
- (2) The Cemeteries Agency may consider the following in determining whether to impose a condition on a licence—
  - (a) the volume of services likely to be provided by the cemetery operator during the term of the licence, based on the average number of interment services provided by the cemetery operator over the 3-year period immediately preceding the date of the application,
  - (b) the total number of existing interments and likely future interments on the premises,
  - (c) the compliance history of the operator,
  - (d) the heritage value of the cemetery, or a part of the cemetery or a structure on the cemetery, to which the licence will apply,
  - (e) whether the applicant is, or proposes to be, the operator of a cemetery or crematorium or both,
  - (f) other information the Cemeteries Agency considers relevant.

## **Variation of conditions of licence**

- (1) The Cemeteries Agency may, at any time, by written notice to the licence holder, vary the conditions imposed on a licence by the Cemeteries Agency.
- (2) A variation includes the imposition of new conditions on the licence, the substitution of a condition or the removal or amendment of a condition.

## **Division 4 Suspension or cancellation of licence**

### **Grounds for suspension or cancellation of licence**

Each of the following constitutes grounds for suspending or cancelling a licence—

- (a) the cemetery operator is not a suitable person to hold the licence,
- (b) the cemetery operator has applied for the licence to be suspended or cancelled,
- (c) the cemetery operator has contravened a condition of the licence held by the cemetery operator.

### **Suspension of licence**

- (1) The Cemeteries Agency may, by written notice to a licence holder, suspend the licence of the licence holder if the Cemeteries Agency is satisfied there are grounds for the suspension of the licence.
- (2) Notice of the suspension must specify—
  - (a) the date or time from which suspension takes effect, and
  - (b) the period of suspension, and
  - (c) the grounds for the suspension.

### **Cancellation of licence**

- (1) The Cemeteries Agency may, by written notice to a licence holder, cancel the licence of the licence holder if the Secretary is satisfied there are grounds for the cancellation of the licence.
- (2) Notice of the cancellation must specify—
  - (a) the date or time from which cancellation takes effect, and
  - (b) the grounds for the cancellation.

### **Suspension or cancellation may be subject to conditions**

- (1) A licence may be suspended or cancelled unconditionally or subject to the conditions the Cemeteries Agency determines to impose.
- (2) The conditions may include conditions to which the licence was subject immediately before it was suspended or cancelled.
- (3) The Cemeteries Agency may, by written notice given to the former licence holder, attach new conditions to, or vary or revoke existing conditions of, the suspension or cancellation of the licence.

## **Division 5 Miscellaneous**

### **Voluntary surrender or suspension of licence**

- (1) A cemetery operator may apply to the Cemeteries Agency for a cancellation or suspension of its licence.
- (2) An application must—
  - (a) be in a form approved by the Cemeteries Agency, and
  - (b) include or be accompanied by information or evidence required by the Cemeteries Agency to assess the application.
- (3) The Cemeteries Agency may require a fee to accompany the application.

- (4) The Cemeteries Agency may—
  - (a) grant the application, subject to conditions, or
  - (b) refuse the application.
- (5) A reference in this clause to an application for suspension of a licence includes a reference to an application to extend, cancel or vary a suspension imposed under this clause.

#### **Review by Cemeteries Agency**

- (1) A person aggrieved by the following decisions of the Cemeteries Agency may apply to the Cemeteries Agency for a review of the decision—
  - (a) a decision to refuse to grant a licence,
  - (b) a decision to suspend or cancel a licence,
  - (c) a decision to refuse an application to vary a licence,
  - (d) a decision to impose a condition on a licence, or on the suspension or cancellation of a licence,
  - (e) a decision to vary a licence,
  - (f) a decision to refuse an application for the cancellation or suspension of a licence.
- (2) An application for a review must—
  - (a) be in a form approved by the Cemeteries Agency, and
  - (b) include or be accompanied by information or evidence required by the Cemeteries Agency to assess the application, and
  - (c) be accompanied by a fee of \$100.

#### **Review by Civil and Administrative Tribunal**

A person aggrieved by the following decisions of the Cemeteries Agency may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision—

- (a) a decision to refuse to grant a licence,
- (b) a decision to suspend or cancel a licence,
- (c) a decision to refuse an application to vary a licence,
- (d) a decision to impose a condition on a licence, or on the suspension or cancellation of a licence,
- (e) a decision to vary a licence,
- (f) a decision to refuse an application for the cancellation or suspension of a licence.

#### **[2] Clause 19**

Insert after clause 18—

#### **19 Application of Cemeteries and Crematoria Amendment Regulation 2022**

- (1) This Regulation, as in force immediately before the commencement of the amending Regulation, continues to apply to an existing cemetery operator for the following period from the date on which the amending Regulation commenced—
  - (a) for a cemetery providing more than X interments in the financial year before the commencement of the amending Regulation—6 months,



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Cemeteries and Crematoria Amendment Regulation 2022 [NSW]  
Schedule 1 Amendment of Cemeteries and Crematoria Regulation 2014

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- (b) for a cemetery providing X or less, but more than Y interments in the financial year before the commencement of the amending Regulation—9 months,
- (c) for the operator of a crematoria only and for a cemetery providing Y or less interments in the financial year before the commencement of the amending Regulation—12 months.

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**Drafting note 2.1** *Number of interments in each category are to be determined.*

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- (2) In this clause—

***amending Regulation*** means the *Cemeteries and Crematoria Amendment Regulation 2022*.

***existing cemetery operator*** means a cemetery operator—

- (a) named in the Cemeteries and Crematoria Register immediately before the commencement of the amending Regulation, and
- (b) who does not hold a licence.