



THE ANGLICAN DIOCESE OF GRAFTON

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Facts Sheet for Parishes Cemeteries and Crematoria Act 2013 (NSW)

Purpose

1. To brief parishes on NSW legislation which regulates the cemeteries and crematoria industry in NSW, including cemeteries and columbaria operated by parishes. This facts sheet is only of relevance to parishes which operate a cemetery or columbaria.

Background

2. The *Cemeteries and Crematoria Act 2013* regulates private and local government cemetery and crematoria operators, as well as Crown operators of cemeteries and crematoria.
3. There are a number of cemeteries in operation in the Diocese. Some are operated by parishes; in other cases the operation may be through a trust. Since no parish operates crematoria, this facts sheet does not set out the legislative obligations applying to crematoria operators.
4. The Government states that its primary aims in introducing the legislation are to –
 - (a) address the problem of diminishing cemetery space (especially in the metropolitan areas),
 - (b) provide equitable access to cemetery and crematoria services,
 - (c) provide land for faith-groups to ensure that they are adequately and properly provided for, and
 - (d) improve the governance and regulation of cemeteries and crematoria to ensure they operate with accountability, transparency and integrity.
5. The legislation is subject to a staged introduction.

Cemetery operators

6. The obligations in the legislation primarily apply to "cemetery operators". A cemetery operator is "the person or body for the time being responsible for the management of the cemetery".
7. The minister and wardens of the parish in which an Anglican cemetery is situated are the representatives of The Corporate Trustees of the Diocese of Grafton for that cemetery and would generally be the "cemetery operators". However if the cemetery operates under a separate instrument of trust this may specify alternative trustees.
8. It is important to note that the legislation regulates closed/heritage cemeteries as well as open cemeteries, though the obligations applying to each will be different. It also regulates columbaria, but not places at which cremated remains are merely scattered that are not otherwise used for the disposal of human remains.

Stage 1: Register of Cemetery Operators

9. Stage 1 involves the establishment of the new regulator known as Cemeteries and Crematoria NSW, and the register of cemetery and crematoria operators that it will administer. The regulator commenced operation on 1 November 2014.
10. The only obligation incumbent on cemetery operators during Stage 1 is notifying the regulator of the existence of the cemetery, using a prescribed registration form, and keeping the regulator updated of

any material change to this information within 14 days of the change occurring. The Corporate Trustees of the Diocese of Grafton is writing to all parishes in relation to this matter to provide instructions on making notifications.

Stage 2: Interment rights

11. Stage 2 involves the establishment of a new system of interment rights, including regulating the grant and renewal of renewable rights and setting out the conditions for re-use of interment sites, though we understand that initially the obligations will mainly focus on keeping records and reporting.
12. Stage 2 is expected to commence sometime in mid-2015. We will notify parishes that have cemeteries and/or columbaria of the date that Stage 2 is expected to commence.
13. The following is a summary of the interment rights aspects of the legislation.
 - A. Register of interment rights, memorials, cremations and interments
14. Cemetery operators will be required to maintain a register of interment rights, memorials, cremations and interments. This must record the following events which occur after Stage 2 commences –
 - (a) interment rights granted by the cemetery operator in respect of interment sites in the cemetery,
 - (b) memorials erected in respect of interment sites in the cemetery,
 - (c) each interment carried out in the cemetery,
 - (d) each cremation carried out at the cemetery, and
 - (e) such other events (whether of the same or a different kind) as may be prescribed by the regulations.
15. The register must also -
 - (a) identify (as far as possible) each holder of an interment right, and
 - (b) include contact details for that holder, and
 - (c) include contact details for any next-of-kin or other persons nominated by the holder as secondary contacts with respect to the holder, and
 - (d) include the name, age and last address of the person whose remains have been interred, the date of the person's death and the date of the interment, and
 - (e) include the name, age and last address of the person whose remains have been cremated, the date of the person's death, the date of the cremation and details of the disposal of the cremated remains.
16. The cemetery operator must make an entry relating to an interment or cremation immediately after the interment or cremation is carried out. A copy of the register must be kept at the cemetery and must be made available for public inspection free of charge. There are also other requirements pertaining to the keeping of registers.
 - B. Interment rights
17. The legislation sets out certain interment rights which will be binding on cemetery operators. These principally relate to the erection of memorials and leaving remains undisturbed for the duration of an interment right.
18. The legislation allows rights holders to bequeath those rights as if they form part of their personal estate. They may also be transferred.
19. The legislation sets out a process for revoking perpetual interment rights if they have not be exercised within 50 years after having been granted.
 - C. Renewable interment rights
20. In an effort to increase cemetery space and address equity issues, the legislation provides for cemetery operators to offer a new renewable interment right for an initial term of 25 years. This will be renewable up to a maximum term of 99 years. At the end of the renewable interment right, the cemetery operator may place the remains of the deceased person in an ossuary box and re-inter these remains at a greater depth or place them in an ossuary house. The site can then be reused. There are rules about the preservation of memorials in such instances.

21. Private cemetery operators could already offer renewable interments prior to the legislation but few offered them. The reforms are aimed at stimulating greater acceptance of renewable tenure burial in the community.
22. The legislation does not compel cemetery operators to offer renewable interment rights. Cemetery operators will be able to continue to offer perpetual interment rights.

Codes of Practice

23. The regulator will also have power to issue codes of practice for the operation of cemeteries. These will initially be voluntary, but have the capacity to be made mandatory by the Government if an "interment industry scheme" is created. If such a scheme was to be introduced a raft of new requirements may apply including - licensing for cemetery operators, obligations to ensure the perpetual care of interment sites, the imposition of industry levies and so forth.

Governance requirements

24. It is expected that in time cemetery operators will be required to comply with certain governance standards. This part of the legislation is largely a framework for later reforms. Departmental representatives have indicated to us that they have concerns many cemeteries may be insufficiently capitalised to ensure perpetual obligations to maintain cemeteries can be met. Depending on what is ascertained via the reporting mechanisms under the legislation, the Government may introduce requirements for cemetery operators to retain a certain proportion of capital to meet these obligations.

Further information

25. Further information about the NSW cemeteries reforms can be obtained from the website of the Department of Primary Industries at <http://www.dpi.nsw.gov.au/lands/cemetery-reform>.

Adapted by the Anglican Diocese of Grafton on 30 January 2015 from original document by STEVE LUCAS, Legal Counsel and Corporate Secretary, Sydney Diocesan Secretariat.