

Consequential amendments to the *Cemeteries and Crematoria Act 2013* arising from the *Crown Land Management Act 2016*

Consequential amendments to the Cemeteries and Crematoria Act 2013 (C&C Act) commenced from 1 July 2018. The consequential amendments are as a result of the commencement of the Crown Land Management Act 2016 (CLM Act). This fact sheet covers the key changes to the C&C Act for Crown cemetery operators.

Who is affected

Persons appointed as being responsible for the management of cemeteries located on Crown land, such as Crown cemetery operators, are affected by the changes.

The changes primarily relate to how managers of Crown cemeteries are appointed and manage cemeteries under Crown land legislation. Specifically, those parts of the C&C Act relating to cemeteries on Crown land and Crown cemetery operators have been amended to align terminology and the application of the legislation with the CLM Act.

Local councils managing cemeteries on Crown land under section 48 of the *Local Government Act 1993*, who are cemetery operators, but not Crown cemetery operators, are not affected by the changes.

Who is not affected

There are no amendments to the provisions of the C&C Act that relate to other cemetery and crematoria operators such as private, church, community and local council-owned cemeteries and crematoria and their operators.

There are no changes to burial rights or how consumers use and access cemeteries on Crown land as part of these amendments.

New terminology

Amendments to the C&C Act include changes to the terminology associated with Crown cemeteries and Crown cemetery operators. These changes are summarised in the table below:

Table 1. Changes to terminology

Terminology before 1 July 2018	Terminology from 1 July 2018
<i>Crown Lands Act 1989</i>	<i>Crown Lands Management Act 2016</i>
reserve	dedicated or reserved Crown land
by-law	regulation
Crown cemetery trust	Crown cemetery operator
trust	operator
<i>Public Reserves Management Fund Act 1989</i>	<i>Crown Lands Management Act 2016</i>
Public Reserves Management Fund	Crown Reserves Improvement Fund
Crown cemetery trust with a trust board	statutory land manager (with a board)
trust member	operator member
trust board	statutory operator board
reserve trust	Crown land manager

Under the amendments to Section 71 of the C&C Act, a ‘Crown cemetery operator’ will mean the ‘Crown land manager of a Crown cemetery or any other person responsible under the CLM Act for the care, control and management of a Crown cemetery’.

Application of the CLM Act

- Crown cemetery operators are now appointed under the CLM Act instead of the C&C Act.
- Crown cemetery trusts managed by boards and administrators have converted to ‘statutory land managers’ on 1 July 2018 (Clause 11(3) & (4), Schedule 7 to the CLM Act).
- Corporations now manage Crown cemeteries directly as Crown cemetery operators, rather than through a reserve trust. To give effect to this change, Crown cemetery trusts managed by corporations and councils will be abolished on 1 July 2019. On that same date, the corporations and councils managing the trusts will be directly appointed as Crown land managers under the CLM Act. Those entities will also become the Crown cemetery operator under the C&C Act (Clause 11(5) & (5A) Schedule 7 to the CLM Act and Section 71 C&C Act)
- The application of Subdivision 2 of Division 2 of Part 5 C&C Act—Conduct of trust members—is broader in application so that the governance and oversight best practice provisions of the Division applies to all Crown cemetery operators by the insertion of Section 80A into the C&C Act.
- The note to Section 85(1) of the C&C Act has been amended to clarify that Crown cemetery operators may have other obligations under Part 3 of the CLM Act.

Other amendments

- Amendments to Section 86 of the C&C Act—**codes of conduct**—provide for the transition of existing codes of conduct Section 90 of the C&C Act —**strategic plans**—amended so that strategic plans relate to Crown cemeteries rather than Crown cemetery trusts. Transitional arrangements are included for existing strategic plans.
- Section 98A—**savings of certain plans of management**—is inserted into the C&C Act to provide for the transition of existing plans of management that are in force.
- Clause 2A—**reference to abolished reserve trusts**—is inserted into Schedule 5 of the C&C Act to provide for transitional arrangements from reserve trusts to Crown land managers.

New locations for existing provisions

Table 2. Existing and new provisions

Existing provision of the C&C Act	New provision	Comments
Section 73—Appointment of Crown cemetery operator	Section 3.3, CLM Act	Crown cemetery operators will now be appointed under the CLM Act instead of the C&C Act. Corporations will manage Crown cemeteries directly as Crown cemetery operators, rather than through a Crown reserve trust.
Section 74 (1) to (5)—Membership of trust board	Clauses 4, 7, 11 & 14 Schedule 5, CLM Act New Clause 3 Schedule 2, C&C Act	Schedule 5 CLM Act sets out provisions relating to statutory land managers, including those that replace Crown cemetery trusts managed by trust boards and administrators.

Existing provision of the C&C Act	New provision	Comments
		<p>Schedule 2 C&C Act provides additional provisions specific to statutory land managers who are Crown cemetery operators.</p> <p>Rather than consequences of any breach of duty being set out in appointment instruments, board members may be suspended Clause 14 Schedule 5 CLM Act.</p>
Section 75—Appointment of corporation to operate Crown cemetery trust	Section 3.3 & 3.4, CLM Act	Not applicable
Section 76—Vacation of office by corporate manager	Section 3.12, CLM Act	Under the new provision, a local council or statutory land manager cannot resign as a Crown land manager without the minister's consent. However if the Crown land manager is a statutory land manager with a board, a board member can resign from the board.
Section 77—Appointment of administrator	Clause 29 Schedule 5, CLM Act	Under the new provision, the minister may extend appointment of an administrator by further notice published in the NSW Government Gazette.
Section 78—Vacancies in office of administrator	Clause 31 Schedule 5, CLM Act	Under the new provision, the office of administrator effectively ends if a board is appointed for the statutory land manager.
Section 79—Remuneration of administrator	Clause 30 Schedule 5, CLM Act	Not applicable
Schedule 2—Members and procedure of trust boards	<p>Schedule 5 CLM Act</p> <p>Schedule 2 C&C Act —Special provisions for Crown cemetery operators that are statutory land managers,</p>	As Crown cemetery operators will now be appointed under the CLM Act, the existing Schedule is replaced with a new Schedule that removes provisions outlined as follows and re-numbers the remaining provisions.
Clause 1 Schedule 2—Maximum number of members	Clause 4 Schedule 5, CLM Act	Boards appointed under the CLM Act can have a maximum of seven members including ex-officio appointments. All existing boards exceeding seven members will remain valid until expiry of the current term of the board or individual board members.
Clause 2 Schedule 2—Acting members	Clause 12 Schedule 5, CLM Act	Not applicable
Clause 3 Schedule 2—Nominee	Clause 4 Schedule 2, C&C Act	Not applicable

Existing provision of the C&C Act	New provision	Comments
of ex officio member		
Clause 4 Schedule 2—Term of office	Clause 9 Schedule 5, CLM Act	Not applicable
Clause 5(1) Schedule 2—Vacancy in office of member	Clause 13 Schedule 5, CLM Act	Not applicable
Clause 6 Schedule 2—Filling of vacancy in office of member	Clause 12 Schedule 5, CLM Act	Not applicable
Clause 9 Schedule 2—General procedure	Clause 16 Schedule 5, CLM Act	Not applicable
Clause 10 Schedule 2—Quorum	Clause 17 Schedule 5, CLM Act	Not applicable
Clause 11 Schedule 2—Voting	Clause 19 Schedule 5, CLM Act	Not applicable
Clause 13 Schedule 2—Meetings	Clause 7 Schedule 5, CLM Act Clause 22 Crown Lands Management Regulation 2018 (CLM Regulation)	Not applicable
Clause 14 Schedule 2—Special Meetings	Clause 23 CLM Regulation	Not applicable
Clause 15 Schedule 2—Prior notice of meetings	Clause 24 CLM Regulation	Not applicable
Clause 16 Schedule 2—Casual vacancy	Clause 12 Schedule 5, CLM Act	Not applicable
Clause 17 Schedule 2—Conduct of meetings	Clause 18 Schedule 5, CLM Act	Not applicable
Clause 18 Schedule 2—Officers and employees	Clause 5 Schedule 2, C&C Act	Not applicable
Clause 19 Schedule 2—Duties of chief executive officer and chief financial officer	Clause 6 Schedule 2, C&C Act	Not applicable
Clause 20 Schedule 2—Receipts and disbursements	Clause 7 Schedule 2, C&C Act	Not applicable

More information

More information

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