

## Impacts of the *Crown Land Management Act 2016* on Crown cemetery operators

*The Crown Land Management Act 2016 (CLM Act) commenced on 1 July 2018. This fact sheet covers the key changes that will affect Crown cemetery operators specifically and how certain provisions will apply differently to Crown cemetery operators.*

### Operating under the CLM Act

The CLM Act replaces numerous pieces of existing legislation relating to Crown land.

The CLM Act applies to:

- cemeteries on Crown land
- Crown cemetery operators.

Councils are affected depending on how they manage cemeteries on Crown land. If a council manages the cemetery:

- under section 48 of the *Local Government Act 1993*, then it is not impacted by the changes.
- because it has been appointed under the *Cemeteries & Crematoria Act 2013*, then it is a Crown cemetery operator and will be impacted.

Crown cemetery operators will become 'Crown land managers' under the CLM Act. They will also either be council Crown land managers or non-council Crown land managers depending on whether the Crown cemetery operator is a local council.

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

### Provisions with special application to Crown cemetery operators

#### Non-council Crown land managers

The CLM Act provides for the categorisation of non-council Crown land managers into one of two categories—category 1 non-council Crown land managers and category 2 non-council Crown land managers. Categorisation determines the authority of a non-council manager to exercise certain functions of the minister under the CLM Act without the need to obtain ministerial consent.

The categorisation does not change the functions of Crown cemetery operators under the *Cemeteries & Crematoria Act 2013*, such as the grant of interment rights. It only affects functions carried out under the CLM Act.

#### Category 1 non-council Crown land managers

The Crown Land Management Regulation 2018 provides that five Crown cemetery operators are classified as category 1 non-council managers:

- Northern Metropolitan Cemeteries Land Manager
- Rookwood General Cemeteries Reserve Land Manager

- Catholic Metropolitan Cemeteries Trust
- Southern Metropolitan Cemeteries Land Manager
- Rookwood Necropolis Land Manager.

Category 1 non-council managers do not need to obtain ministerial consent to grant leases or licences under the CLM Act for a term of 10 years or less including any option to renew and holding over period, or to grant easements in connection with such leases or licences.

Written notice must be given to the minister within 14 days of any lease or license being granted under the CLM Act for a term of more than one year.

Ministerial consent is not needed to make minor changes to leases and licences under section 3.28 of the CLM Act.

### **Category 2 non-council Crown land managers**

All other non-council Crown cemetery operators are classified as category 2 non-council Crown land managers. Category 2 non-council Crown land managers need to obtain ministerial consent to grant any easements, leases or licences under the CLM Act, other than a short-term licence of less than 12 months—including any option to renew and holding over period.

### **Council Crown land managers**

Under the CLM Act, council Crown land managers manage land as if it were public land under the *Local Government Act 1993*, rather than just under the CLM Act. Council Crown land managers no longer need ministerial consent to issue leases and licences over Crown land.

Council Crown land managers may still be subject to ministerial rules made under the CLM Act, the Crown Land Management Regulation 2018 or restrictions in instruments appointing them as a Crown land manager.

### **Community engagement strategies**

The CLM Act enhances community engagement and involvement in Crown land decisions by requiring the preparation of a community engagement strategy for proposals that could affect public use and enjoyment of Crown land.

Compliance with community engagement strategies is not required for dealings by Crown cemetery operators under the *Cemeteries and Crematoria Act 2013* (C&C Act).

Compliance with community engagement strategies is required when non-council Crown cemetery operators undertake any of the dealings and actions listed in Division 5.3 of the CLM Act.

Information on the community engagement requirements is available from the NSW Department of Industry website.

### **Native title**

The five category 1 Crown cemetery operators, as well as Crown cemetery operators that are councils of relevant land, will be required to comply with specific obligations under Part 8 of the CLM Act—Native title rights and interests.

## **Provisions not exercisable in relation to Crown cemetery operators**

Section 5(2) of the C&C Act (as amended) states that if a provision is made both under the CLM Act and the C&C Act in relation to the exercise of functions of a Crown cemetery operator in the same or substantially the same circumstances, the function is not exercisable under the CLM Act.

The following provisions under the CLM Act are not exercisable by a Crown cemetery operator because the C&C Act provides for the same or substantially the same matters:

**Table 1. Comparing provisions of the two Acts**

CLM Act provisions not exercisable by a Crown cemetery operator	C&C Act provisions for the same or substantially the same matters
Section 3.19 Reports and information on other matters	Section 41 Performance reporting by cemetery and crematorium operators—civil obligations 43 Reports by cemetery and crematorium operators—civil obligations
Section 3.29 Community advisory groups  (The section still applies to Crown cemetery operators who are not statutory land managers with boards )	Section 103 Establishment and functions of committees
Section 3.30 Annual reports	Section 99 Annual report
Section 3.31 Record keeping	Section 42 Records—civil obligation Clause 2 Records Schedule 3
Section 3.33 Preparation of draft plan of management	Section 93 Preparation of draft plan of management
Section 3.34 Guidelines for draft plans of management	Section 94 Guidelines for draft plans of management
Section 3.36 Adoption of plan of management	Section 96 Adoption of plan of management
Section 3.37 Alteration or cancellation of plan	Section 97 Alteration or cancellation of plan
Section 3.45 Inquiries and audits of affairs of Crown land managers	Section 102 Inspection etc. of Crown cemetery trust
Clause 25 Schedule 5 Codes of conduct	Section 86 Codes of conduct

## More information

Email: [legislation@crowland.nsw.gov.au](mailto:legislation@crowland.nsw.gov.au) or [ccsw.info@cemeteries.nsw.gov.au](mailto:ccsw.info@cemeteries.nsw.gov.au)

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Phone: 1300 886 235 or call Cemeteries & Crematoria direct 02 9842 8471