

## Schedule 2

# Model by-law about cemeteries, crematoriums and mortuaries

Section 4 of the current Land Regulation

## Trust Land Cemeteries, Crematoriums and Mortuaries Model By-law

### Part 1            General

#### 1. Short title

This model by-law may be cited as the *Trust Land Cemeteries, Crematoriums and Mortuaries Model By-law*.

#### 2. Purposes of model by-law

The purposes of this model by-law are—

- (a) to protect the trust land, including buildings on the land; and
- (b) to regulate the use of the trust land as a cemetery, crematorium or mortuary.

#### 3. Definitions

In this model by-law—

**authority**, of the trustee, includes a trustee permit.

**dispose**, for human remains, means—

- (a) to bury in a grave; or
- (b) if the remains have been exhumed—to rebury in a grave; or
- (c) to place in a vault; or
- (d) to cremate; or
- (e) if the remains have been cremated—to place the cremated remains in a niche, or scatter the cremated remains, in the grounds of the trust land.

**formed road** means an existing road or track on private or public land used, or that may be reasonably capable of being used, to drive or ride motor vehicles.

**grounds of the trust land** means the part or parts of the trust land not occupied by buildings, but includes a columbarium on the land.

**motor vehicle** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

**regulatory notice** see section 4(1).

**State Archivist** means the State Archivist under *the Public Records Act 2002*, section 21(1).

**trust** means the trust under which the trustee holds the trust land.

**trust land** means the trust land in relation to which the trustee has adopted this model by-law, but only if it is dedicated or granted in trust for cemetery, crematorium or mortuary purposes.

**vehicle** includes a motor vehicle, trailer, bicycle, carriage, cart, wagon and any other means of transport or conveyance designed for movement on wheels, whether or not the vehicle is capable of being operated or used in a way that is normal for the vehicle.

#### **4. Trustee may erect or display regulatory notices**

- (1) The trustee may, consistent with the community purpose of the trust land, erect or display in relation to the land or a part of the land a notice (a regulatory notice) for regulating or prohibiting—
  - (a) the use of the land or the part of the land by persons; or
  - (b) the use in the land or the part of the land of vehicles or vehicles included in a class of vehicles stated in the notice; or
  - (c) the bringing onto the land or the part of the land of all animals or animals included in a class of animals stated in the notice.
- (2) A regulatory notice—
  - (a) may be erected or displayed on, or at or near the entrances to, the trust land or the part of the land to which the notice relates; and
  - (b) must indicate a particular requirement to be complied with by persons entering, or on, the trust land or the part of the land.

#### **5. References to person acting for trustee**

- (1) In a provision of this model by-law, a reference to a person acting for the trustee is a reference to a person chosen by the trustee to act for the trustee under the provision.
- (2) A person chosen by the trustee to act for the trustee under a provision must be appropriately qualified to act for the trustee under the provision.
- (3) In this section—

**appropriately qualified** includes having the qualifications, experience or standing appropriate to act for the trustee.

## **Part 2                    Grounds of the trust land**

### **Division 1            Application**

#### **6. Application of pt 2**

This part applies if there is a cemetery or crematorium on the trust land.

## **Division 2                      Particular activities prohibited**

### **Subdivision 1                      Activities relating to human remains**

#### **7.    No disposal of human remains without trustee's approval**

- (1) A person must not dispose of human remains in the trust land other than under an approval of the trustee.

Maximum penalty—10 penalty units.

- (2) An application to the trustee for an approval must be accompanied by the documents or authorities required for the lawful disposal of human remains.
- (3) An applicant seeking the trustee's approval must apply to the trustee at least 24 hours before the proposed date for the disposal.

#### **8.    Disturbing human remains buried in grave**

- (1) After a body has been disposed of by burial in a coffin in a grave (the *first burial*), a person must not—

- (a) move or disturb the coffin; or  
(b) re-open the grave for a further burial until at least 1 year has elapsed since the first burial.

- (2) Despite subsection (1)(b), the trustee, or a person acting for the trustee, may authorise the re-opening of the grave for a further burial before 1 year has elapsed if—

- (a) the further burial is within 6 days after the first burial; or  
(b) if paragraph (a) does not apply—the trustee, or a person acting for the trustee, reasonably considers that the re-opening of the grave is not likely to create a danger to public health.

*Note—*

This model by-law does not provide for the trustee to authorise the exhumation of human remains. Authority required for the exhumation of human remains may be available under section 83 (Exhumations) of the Act and the *Coroners Act 2003*, section 20 (Exhuming body or recovering cremated remains).

### **Subdivision 2                      Graves, funerals and memorials**

#### **9.    Interference with graves and other things**

A person must not, other than under the authority of the trustee, interfere with—

- (a) a grave, memorial, niche or vault on the trust land; or  
(b) flowers or tokens on a grave, memorial, niche or vault on the trust land.

Maximum penalty—10 penalty units.

## 10. Interference with funeral or commemorative services

A person must not interrupt or interfere with a funeral or commemorative service lawfully conducted on the trust land.

Maximum penalty—10 penalty units.

## 11. Approval needed for memorials

A person must not build or install a memorial in the grounds of the trust land other than under the authority of the trustee or a person acting for the trustee.

Maximum penalty—10 penalty units.

## 12. Placement of flowers and tokens on graves and other things

(1) This section applies if—

- (a) a regulatory notice indicates flowers or tokens may be placed on a grave, memorial, niche or vault in the grounds of the trust land only in compliance with the requirements stated in the notice; and
- (b) the notice is erected at all places reasonably necessary for informing the public of the requirements, including, for example, the places of entry to and exit from the trust land.

(2) A person must not, other than under the authority of the trustee, place flowers or tokens on a grave, memorial, niche or vault on the trust land in a way that contravenes the requirements mentioned in subsection (1)(a).

Maximum penalty—5 penalty units.

## Subdivision 3 Animals

### 13. Animals

(1) A person must not, other than under the authority of the trustee, bring an animal onto the trust land.

Maximum penalty—5 penalty units.

(2) A person does not commit an offence under subsection (1) if the animal brought onto the trust land is for the ceremonial purposes associated with a funeral.

(3) A person must not, other than under the authority of the trustee, ride, or drive a vehicle drawn by, an animal other than on a formed road on the trust land.

Maximum penalty—5 penalty units.

(4) In this section—

***animal*** does not include a dog.

### 14. Dogs

(1) A person who has a dog in the person's charge on the trust land must, at all times the dog is on the land, restrain the dog by a lead or leash.

Maximum penalty—5 penalty units.

- (2) A person who has a dog in the person's charge on the trust land must not allow the dog to behave in a way that causes unreasonable noise, annoys another person or puts another person in danger.

Maximum penalty—5 penalty units.

- (3) A person does not commit an offence under subsection (1) if, in acting in a way that would otherwise contravene the subsection, the person is acting under the authority of the trustee.

## **Subdivision 4      General**

### **15. Disturbing peaceful use of trust land**

A person must not, other than under the authority of the trustee, act in a way or do anything that unreasonably disturbs, or is likely to disturb, another person's peaceful use of the trust land.

Maximum penalty—10 penalty units.

### **16. Displaying or distributing literature**

A person must not, other than under the authority of the trustee, display or distribute a handbill, notice, ticket or any other kind of literature on the trust land.

Maximum penalty—10 penalty units.

### **17. Vehicles to be used on formed road only**

Other than under the authority of the trustee, a person must not drive, or permit to be driven, a vehicle on the trust land other than on a formed road.

Maximum penalty—5 penalty units.

### **18. Damaging or interfering with land or improvements**

- (1) A person must not, other than under the authority of the trustee, damage or interfere with—

- (a) soil or turf on the trust land; or
- (b) a plant growing on the trust land; or
- (c) improvements, signs or equipment on the trust land.

Maximum penalty—10 penalty units.

- (2) This section does not apply to damage of or interference with trees.

### **19. Selling things**

A person must not, other than under the authority of the trustee, sell anything or offer anything for sale on the trust land.

Maximum penalty—5 penalty units.

## 20. Firearms

- (1) A person must not, other than under the authority of the trustee, discharge a firearm on the trust land.

Maximum penalty—5 penalty units.

- (2) A person does not commit an offence under subsection (1) if the person discharges a firearm as part of a military funeral.

## 21. Entering or remaining on grounds of the trust land when not open to public

- (1) This section applies if—

- (a) a regulatory notice indicates when the grounds of the trust land are open to the public (the **opening hours**); and
- (b) the notice is erected at all places reasonably necessary for informing the public of the opening hours, including, for example, at the places of entry to and exit from the land.

- (2) A person must not, other than under the authority of the trustee, enter, or remain on, the grounds of the trust land when the trust land is not open to the public.

Maximum penalty—10 penalty units.

# Division 3 Trustee to decide standards and keep records

## Subdivision 1 Standards

### 22. Graves

- (1) The trustee must decide the following matters, which must be reasonable and appropriate in the circumstances, for a grave in the grounds of the trust land—

- (a) its length;
- (b) its breadth;
- (c) its depth;
- (d) the clearance between the sides of a coffin in the grave and the sides of the grave;
- (e) the distance between the top of a coffin in the grave and the surface of the ground.

- (2) In deciding the depth of a grave under subsection (1)(c), the trustee must have regard to the number of bodies the trustee has approved, or may approve, to be buried in the grave.

### **23. Receptacle for cremated human remains to be placed in a niche**

(1) The trustee must decide the following matters, which must be reasonable and appropriate in the circumstances, for a receptacle for cremated human remains to be placed in a niche in the grounds of the trust land—

- (a) its length;
- (b) its breadth;
- (c) its depth;
- (d) the materials of which it is made.

### **24. Receptacle for human remains to be placed in vault**

The trustee must decide the following matters, which must be reasonable and appropriate in the circumstances, for a receptacle for human remains, other than cremated human remains, to be placed in a vault in the grounds of the trust land—

- (a) its length;
- (b) its breadth;
- (c) its depth;
- (d) the materials of which it is made.

### **25. Minimum specifications for construction of vault**

The trustee must decide the following matters, which must be reasonable and appropriate in the circumstances, for the minimum specifications for the design and construction of a vault in the grounds of the trust land—

- (a) its length;
- (b) its breadth;
- (c) its depth;
- (d) the materials of which it is made.

### **26. Inscription on headstone, memorial or niche**

The trustee must decide the following matters for an inscription on a headstone, memorial or niche in the grounds of the trust land—

- (a) content;
- (b) placement;
- (c) size;
- (d) style.

### **27. Trustee must ensure matters decided are complied with**

The trustee must take all reasonable steps to ensure the matters decided by the trustee under section 22, 23, 24, 25 or 26 about a grave, receptacle or vault, or inscription on a headstone, memorial or niche, in the grounds of the trust land are complied with.

## **Subdivision 2      Records**

### **28. Records trustee must keep**

- (1) The trustee, or a person acting for the trustee, must keep a record of—
  - (a) the name of each person whose remains have been—
    - (i) buried in the grounds of the trust land; or
    - (ii) cremated on the trust land; or
    - (iii) cremated and scattered, or placed in a niche, in the grounds of the trust land; and
  - (b) when the remains of each person were disposed of; and
  - (c) if a person's remains have been buried in the grounds of the trust land—the location of the grave; and
  - (d) if a person's remains have been cremated and the cremated remains have not been scattered in the grounds of the trust land or taken away from the trust land—the particular place where the person's remains have been placed in the grounds of the trust land; and
  - (e) any dealing with the person's remains after they have been buried or placed in the grounds of the trust land.
- (2) The trustee, or a person acting for the trustee, does not need to keep a record of a matter under subsection (1) if it is included in the register kept under section 79 of the Act.
- (3) The trustee must make a record kept under subsection (1) available for public inspection at all reasonable times.
- (4) If the trust is wound up, the record must be sent to the State Archivist.

## **Part 3      Mortuary**

### **29. Application of pt 3**

This part applies if there is a mortuary on the trust land.

### **30. Mortuary records**

- (1) The trustee, or a person acting for the trustee, must keep a record of all bodies delivered to the mortuary.
- (2) The record must contain the following particulars for each body—
  - (a) the date on which the body is delivered to the mortuary;
  - (b) the name of the person from whom the body is received;
  - (c) the name, age and sex of the person whose body is delivered;
  - (d) the date and place of death of the person whose body is delivered, if known;
  - (e) any post-mortem examination, or other medical procedure, carried out in the mortuary;
  - (f) the date on which the body is taken from the mortuary;
  - (g) the name of the person taking the body from the mortuary.
- (3) If the trust is wound up, the record must be sent to the State Archivist.



### **31. Authority needed to enter mortuary**

A person must not enter, or remain in, a mortuary other than under the authority of the trustee or a person acting for the trustee.

Maximum penalty—10 penalty units.