

GUIDE | CEMETERIES & CREMATORIA NSW

Guide for a cemetery operator's register

Published by Cemeteries & Crematoria NSW

Guide for a cemetery operator's register

First published January 2019.

Updated March 2020

More information

Cemeteries & Crematoria NSW

industry.nsw.gov.au/ccnsw

DOC18/137375

© State of New South Wales through Department of Planning Industry and Environment 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Industry as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (February 2019/updated March 2020) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Contents

Introduction	1
Historical context	1
Details to be kept on the register	1
Details relevant to cremations	1
Details relevant to interment rights and burials	1
Details relevant to disturbances and/or removal of remains	2
Details relevant to memorials	2
Accuracy of the register	2
Other record-keeping requirements	2
Form of, and access to, the register	3
When a cemetery register must be surrendered.....	3
Non compliance penalties	4
Frequently asked questions	4
More information	5

Introduction

This guide by Cemeteries & Crematoria NSW (CCNSW) provides information for cemetery operators about the obligations under the *Cemeteries and Crematoria Act 2013* (the C&C Act) and *Cemeteries and Crematoria Regulation 2014* (the C&C Regulation) relevant to keeping a cemetery operator's register.

Note that 'cemetery operator' is used throughout this guide to include a crematorium operator if they conduct interments (see the definition of 'cemetery' in the C&C Act).

A 'cemetery operator's register' describes the mandatory register every cemetery operator must keep under section 63 of the C&C Act. As from 25 June 2018, the cemetery operator's register must record the following activities conducted by the operator, if not already the current practice:

- granting of interment rights
- establishing memorials in respect of an interment right
- interments carried out
- cremations carried out
- disturbance/removal of remains.

The requirements in relation to Part 4 are not retrospective. Cemetery operators are not required to investigate activities that occurred before 25 June 2018 and retain the detailed information for those activities except to the extent that the information was previously required by the Public Health Regulation 2012. The requirements of the C&C Act to keep detailed register information is for activities that occur on or after 25 June 2018.

Historical context

Prior to the introduction of the register obligations under the C&C Act, cemetery operators were required to keep records under the Public Health Regulation 2012 (which is now repealed).

For some operators, the requirements of the C&C Act will likely require the collection of additional information than was previously needed, such as contact details for any next-of-kin or nominated secondary contact(s). While some operators previously collected this information, it was not mandatory.

Details to be kept on the register

Details relevant to cremations

Where a cremation has occurred, the operator must, immediately after the cremation, include on the register:

- details of the deceased, including name, age and last address before death
- date of the person's death
- date of the cremation
- relevant cultural or religious practices of the deceased person
- name of the funeral director who transported the body to the crematorium
- details of the disposal of the cremated remains (e.g. given to family, interred or scattered on-site).

If cremated remains are buried at the cemetery, additional details about interment are required, see below.

Details relevant to interment rights and burials

Where the cemetery operator grants an interment right, carries out an interment and/or establishes a memorial for an interment right, the register must include:

- the identity of each interment right holder
- contact details for the holder of the interment right

- contact details for any next-of-kin or nominated secondary contact of the right holder.

Where a burial has occurred the operator must, immediately after the burial, also include on the register:

- details of the deceased, including name, age and last address before death
- date of the person's death
- date of the burial
- cultural or religious practices, if any, that apply to the deceased person
- section and allotment where the burial occurred
- if the relevant section or allotment of the cemetery is consecrated for use by a cultural or religious group
- the name of the person (if any) who continues to hold a interment right to that allotment
- name of the funeral director who transported the body to the cemetery
- fees paid to the cemetery authority for the burial.

Details relevant to disturbances and/or removal of remains

Under the C&C Regulation, for each disturbance or removal of human remains, the following details must be recorded in the register:

- the cultural or religious practices (if any) applying to the remains
- how the cultural or religious practices (if any) applying to the remains were ascertained
- if the remains were removed after the expiry of a renewable right, how the remains were dealt with (e.g. description of the site where remains were removed to or scattered or if cremated remains were returned to another person, the name and contact details of that person).

Details relevant to memorials

Under the C&C Act, memorial information needs to be kept—either in the cemetery operator's register or in a way that can be linked to the register, such as from an existing separate memorial database.

Register information for memorials is a source for the verification of rights. This is required by heritage advisory committees where an operator has introduced renewable interment rights and as such, a committee must be established in accordance with the C&C Act. A separate guide to heritage advisory committees is available.

Accuracy of the register

A cemetery operator must ensure the register is accurate and kept up-to-date. This can be challenging where operators receive information about the interment rights holder from other parties such as funeral directors. It is the responsibility of the cemetery operator to check the accuracy of this information. Where insufficient information is provided, the cemetery operator will need to undertake inquiries to ensure that all details required by the C&C Act are recorded in the register.

Under subsection 63(9) of the C&C Act, amendments to the register can be made by the operator to remove inaccuracies and to record changes such as the transfer of a interment right or the death of a right holder.

Other record-keeping requirements

For cremations, operators are required to keep for 15 years copies of all:

- applications made
- certificates issued
- permits
- other documents relating to any burial or cremation carried out at the cemetery.

These records must be marked with the number allocated to the burial or cremation in the cemetery operator's register.

After 15 years from the date of cremation or burial, the cemetery operator can destroy the above documents (but not any part of the register that relates to that cremation or burial). It is the responsibility of the cemetery operator to ensure, before destroying any document, that all relevant required information is kept in the register.

Form of, and access to, the register

Cemetery operators can decide the best way to keep their register. For example, the register can be wholly or partly in the form of a computer database, or in documentary form. Specialised software packages are available that are used in the sector by some operators. Other operators use modified database software to capture the information.

A cemetery operator must keep a copy of the register at the cemetery. This must be available for public inspection free of charge. Operators must also provide a copy of a register entry upon application by any person. Some operators have their cemetery register online in a searchable format.

Cemetery operators should make themselves aware of relevant privacy laws that can impact on what information is private and how it can be released or published. The requirements might be different for different operators, for example:

- Crown and local government-run cemeteries have obligations under the NSW state legislation, the *Privacy and Personal Information Protection Act 1998* (NSW)
- private operators might have obligations under the Commonwealth's *Privacy Act 1988* depending on the specific organisational definition and requirements as described in Commonwealth law.

The *Privacy Act 1988 (Cth)* generally applies to agencies of the Australian Government (but not State or Territory agencies) and an 'organisation' which includes an individual, a body corporate, a partnership or any other unincorporated association or trust. Certain entities are excluded such as a small business that has a turnover of three million dollars or less in the previous financial year or a health service. Private sector and community organisations in the interment sector will be required to comply with the *Privacy Act* if they fall within the definition of an organisation and do not meet the definition of a small business.

Organisations covered by the *Privacy Act 1988* must comply with the 13 Australian Privacy Principles (APPs) that govern standards, rights and obligations around the collection use and disclosure of personal information.

Personal information is information about an individual which means a natural person and does not include a deceased person. However if information about a deceased person includes information or an opinion about a living individual, it will be 'personal information' about that 'living individual'.

For the purposes of the 'register of interment rights, memorials, cremations and interments' required to be maintained by a cemetery operator under Section 63 of the C&C Act contact details of any next-of-kin or other nominated secondary contacts will be personal information.

Legislative privacy requirements may require operators to consider the reason why a third-party applicant is requesting access to the register. Operators can request an applicant provide a statutory declaration to determine the intended use of information obtained from the register. There are also requirements about removing personal information from a public register if requested by the individual to whom the information relates. For this reason, registers held by cemetery and crematoria operators must have adequate safeguards in place to limit unrestricted access by third parties.

When a cemetery register must be surrendered

Where a cemetery operator ceases to manage or direct a cemetery, the operator must send the register to CCNSW, or dispose of it in a manner directed by CCNSW. In surrendering a register, CCNSW will require all:

- computer files relating to the register for electronic registers

- access to the location and files of registers stored in an electronic external operating environment such as a cloud platform
- all physical records for paper-based registers.

Where a register is surrendered by a cemetery operator and there is no new operator appointed to manage the cemetery site, CCNSW will store the register. If a new operator subsequently takes over the cemetery, CCNSW will provide the register to the new cemetery operator.

Non compliance penalties - Failure by an operator to comply with the requirements under Part 4 of the C&C Act may lead to the following penalties being imposed for non-compliance:

Section 63 (1) not keeping a cemetery register with prescribed events recorded such as granting interment rights, memorials erected, interments and cremations carried out and such other events as may be prescribed the C&C Regulations: maximum civil penalty \$2,200

Section 63 (5) not making an entry in the register relating to an interment or cremation immediately after the interment or cremation is carried out: maximum civil penalty \$2,200

Section 63 (6) not ensuring a copy of the cemetery's register is available on request by an authorised officer under this Act or the *Public Health Act 2010*: maximum civil penalty \$2,200

Section 63(7) not making a cemetery register available for public inspection free of charge: maximum civil penalty \$2,200

Section 63(10) not making available to a person, on application, a copy of any entry made in the cemetery register in relation to an interment right or memorial: maximum penalty \$2,200

Section 63 (12) not ensuring the cemetery's register is sent to Cemeteries & Crematoria NSW (CCNSW) when the cemetery ceases to operate or not disposing of the register as CCNSW directs: maximum civil penalty \$2,200

Frequently asked questions

Q1: Are the requirements to keep and maintain a cemetery operator's register retrospective? If an operator does not have all the information for historical activities, how far back in time should the operator research for this information?

The requirements to keep and maintain a cemetery operator's register are not retrospective and only apply to activities that occurred on or after 25 June 2018. Therefore, cemetery operators are not required to do research to find information on historical activities. Nonetheless, having a record of all existing interment rights holders in the cemetery is desirable, as far as possible.

Q2: We rely on the funeral director to provide information about rights holders, but they don't always collect all the information required for the register. What should we do?

It is the responsibility of a cemetery operator under the C&C Act to maintain an accurate register with complete information. Where funeral directors are the primary source of information, operators should either:

- arrange for funeral directors to collect all the information needed on their behalf
- institute a process or modify an existing process to obtain all missing data
- conduct further inquiries to gather missing information.

Q3: Can we use our existing record-keeping system?

Operators can maintain their cemetery operator's register using a system that best suits their business. If your existing register can be modified to include all the information required by the C&C Act, you can use your existing system.

More information

More information is available from:

Cemeteries & Crematoria NSW

4 Parramatta Square

Parramatta NSW 2124

PO Box 5123 Parramatta NSW 2124

Phone: 9842 8473

Email: info.ccnsw@cemeteries.nsw.gov.au

Website: industry.nsw.gov.au/ccnsw