

**FLINDERS SHIRE COUNCIL**  
**LOCAL LAW NO.18 (CEMETERIES)**  
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## PART 1-PRELIMINARY

### Citation

1. This local law may be cited as Local Law No.18 (Cemeteries).

### Objects

2. The objects of this local law are to-
  - (a) empower the local government to establish public cemeteries; and
  - (b) provide for the proper management and control of public cemeteries in the local government's area (whether established by the local government or someone else); and
  - (c) regulate the disposal of human remains in the local government's area (either inside or outside a public cemetery); and
  - (d) ensure that proper records are kept about the disposal of human remains within and outside public cemeteries.

### Definitions

3. In this local law-

**“authorised person”** means a person authorised by the local government to exercise the powers of an authorised person under this local law.

**“cemetery”** means a place for the disposal of human remains.

**“cemetery authority”** means the person or body of persons that has the administration and management of a cemetery.

**“disposal”** of human remains includes-

- (a) burial (including burial at sea);
- (b) cremation;
- (c) placing the remains in a niche, mausoleum or vault.

**“family”** of a deceased person includes-

- (a) a spouse of the deceased;
- (b) a guardian of the deceased;
- (c) brothers and sisters of the deceased, or of a spouse or guardian of the deceased;
- (d) ascendants and descendants of the deceased, or of a spouse or guardian of the deceased.

**“local government cemetery”** means a public cemetery administered by the local government under this local law.

**“memorial”** includes-

- (a) a headstone;
- (b) an inscribed plaque or commemorative plate;

- (c) monumental, ornamental or other structures erected on a grave site;
- (d) anything else erected or placed in a cemetery to mark the site where human remains have been buried or placed, or to commemorate a deceased person.

**“operate”** a cemetery means to dispose, or permit the disposal, of human remains in the cemetery.

**“the Act”** means the *Local Government Act 1993*.

**“undertaker”** means a person who carries on the business of disposing of human remains and, if a person who carries on that business is not engaged in a particular case, includes the person who actually undertakes the disposal of the human remains.

## **PART 2-LOCAL GOVERNMENT CEMETERIES**

### **Division 1-Establishment of cemeteries**

#### **Establishment of cemeteries**

**4. (1)** The local government may, subject to the *Integrated Planning Act 1997*, establish a cemetery on land under the local government’s control.

**(2)** A cemetery may include-

- (a) a crematorium;
- (b) a columbarium;
- (c) a mausoleum or vault;
- (d) a garden of remembrance;
- (e) other structures and improvements the local government considers appropriate.

### **Division 2-Administration of cemeteries**

#### **Administration of cemeteries**

**5. (1)** The local government may, by local law policy, establish a cemetery authority to manage a local government cemetery.

**(2)** If the cemetery authority consists of a committee of management, the committee is appointed and its members hold office under the relevant local law policies.

#### **Responsibilities of the cemetery authority**

**6.** The cemetery authority must manage a local government cemetery subject to management policies laid down by the local government by local law policy.

#### **Delegation**

**7.** The local government may delegate powers under this local law to the cemetery authority.

### **Division 3-Rights to burial sites etc.**

**Grant of burial rights etc.**

8. The local government may enter into contracts giving rights to burial sites or other rights relating to the placement of human remains in a local government cemetery.

**Private columbariums, mausoleums and vaults**

9. (1) The local government may enter into a contract authorising a person to construct and maintain a private columbarium, mausoleum or vault in a local government cemetery.

(2) A contract under this section does not dispense with the need for a development permit for the proposed structure under the *Integrated Planning Act 1997*.

(3) A contract under this section must-

- (a) provide for the maintenance and repair of the structure; and
- (b) if the structure is not to be maintained by the cemetery authority under the terms of the contract-authorise the local government to demolish and remove the structure if it falls into disrepair.

(4) If a party to a contract under this section dies, the local government must (subject to wishes the deceased had made known to the local government) allow members of the deceased's family whose identity and whereabouts are known to the local government a reasonable opportunity to take over the deceased's contractual rights and liabilities

**Division 4-Disposal of human remains in local government cemetery****Disposal of human remains in local government cemetery**

10. (1) A person must not dispose of human remains in a local government cemetery unless the disposal of the remains is authorised by a permit under this Division.

Maximum penalty-200 penalty units.

(2) A permit is required under this section even though the remains are to be placed in a private columbarium, mausoleum or vault<sup>1</sup>.

**Application for permit**

11. (1) An application for a permit permitting disposal of human remains in a local government cemetery must-

- (a) identify the burial site, niche or other place in which the remains are to be buried or placed; and
- (b) state the nature of any funeral or memorial ceremony to be conducted in the cemetery and the time of the proposed ceremony.

(2) An application for disposal of human remains in a local government cemetery must be accompanied by certified copies of other legal authorities that are required for the disposal of the remains.

**Grant of permit**

12. The local government may grant a permit authorising the proposed disposal of human remains in a local government cemetery if satisfied that-

- (a) the proposal is consistent with rights that have been granted under this local law; and

- (b) the proposal is consistent with the requirements of relevant local law policies.

### **Conditions of permit**

**13. (1)** A permit for the disposal of human remains in a local government cemetery may be granted on conditions the local government considers appropriate.

**(2)** The conditions of a permit may, for example-

- (a) regulate the opening of a grave site;
- (b) require an appropriate identifying plaque to be placed on or adjacent to the place of disposal until an appropriate memorial to the deceased is erected or installed.

### **Compliance with conditions of permit**

**14.** An undertaker who arranges for the disposal of human remains in a local government cemetery must ensure that the conditions of the relevant permit are complied with.

Maximum penalty-200 penalty units.

### **Bringing of human remains into cemetery**

**15.** A person must not bring human remains into a local government cemetery unless-

- (a) a permit has been issued for disposal of the human remains in the cemetery; and
- (b) the remains are enclosed in a coffin or other form of container appropriate to the proposed form of disposal that complies with the requirements specified by local law policy.

Maximum penalty-200 penalty units.

## **Division 5-Erection and installation of memorials**

### **Erection of memorials to deceased persons**

**16. (1)** A person must not erect or install a memorial to a deceased person in a local government cemetery unless authorised by a permit under this Division.

Maximum penalty-200 penalty units.

**(2)** However, if a development permit is required for the erection or installation of a memorial to a deceased person under the *Integrated Planning Act 1997*, a further permit is not required under this local law.

### **Application for permit**

**17.** An application for a permit authorising the erection or installation of a memorial to a deceased person in a local government cemetery must-

- (a) identify the burial site or other place in which the memorial is to be erected or installed; and
- (b) state the nature and dimensions of the proposed memorial.

### **Grant of permit**

**18.** The local government may grant a permit authorising the erection or installation of a memorial to a deceased person in a local government cemetery if satisfied that the proposal is consistent with criteria laid down under local law policies.

**Conditions of permit**

19. A permit for the erection or installation of a memorial to a deceased person in a local government cemetery may be granted on conditions the local government considers appropriate.

**Compliance with conditions of permit**

20. A person who erects or installs a memorial to a deceased person in a local government cemetery must ensure that the conditions of the relevant permit are complied with.

Maximum penalty-200 penalty units.

**Division 6-Maintenance of memorials****Maintenance and repair of memorials by family members**

21. (1) A member of the family of a deceased person, or another person who has a proper interest in the maintenance of a memorial to a deceased person, may with the approval of the cemetery authority carry out maintenance or repair work on a memorial.

(2) A person who carries out maintenance or repair work under this section must comply with directions by the cemetery authority about how the work is to be carried out.

*Examples-*

*The cemetery authority may, for example, give directions about-*

- *the addition of structural elements to the memorial;*
- *the planting, watering, mowing or maintenance of grass or other plants in the vicinity of the memorial;*
- *the use of fertilisers, pesticides or weedicides in the vicinity of the memorial;*
- *ensuring that the heritage value of the cemetery is not impaired by the maintenance or repair work.*

(3) A person must comply with a direction under this section.

Maximum penalty-50 penalty units.

**Maintenance contracts**

22. The cemetery authority may enter into a contract (a “**maintenance contract**”) to maintain a memorial to a deceased person and keep it in good repair.

**Maintenance and repair of memorials by local government**

23. (1) The cemetery authority may carry out maintenance or repair work on a memorial.

(2) The cemetery authority is not obliged to carry out maintenance or repair work on a memorial unless the cemetery authority has undertaken to do so under a maintenance contract.

**Removal of memorials**

24. (1) The cemetery authority may remove a memorial if it has become unsafe or has fallen into a state of disrepair.

(2) If there is no immediate danger to the public, the local government must, before removing a memorial under this section, give members of the deceased’s family whose identity and



whereabouts are known to the local government reasonable notice of its intention to remove the memorial.

(3) The cemetery authority is not obliged to reinstate a memorial removed under this section unless the authority is obliged under a maintenance contract to maintain the memorial.

### **Division 7-Conduct in local government cemeteries**

#### **Animals**

25. A person must not bring an animal into a local government cemetery unless the cemetery authority approves.

Maximum penalty-20 penalty units.

#### **Interference with grave etc.**

26. A person must not interfere with a grave, memorial, or with flowers or tokens on a grave or memorial unless the cemetery authority approves.

Maximum penalty-50 penalty units.

#### **Interference with services**

27. A person must not interrupt or interfere with a funeral or commemorative service lawfully conducted in a local government cemetery.

Maximum penalty-200 penalty units.

#### **General power to regulate conduct**

28. (1) The local government may, by local law policy, regulate, restrict or prohibit specified conduct in a local government cemetery.

(2) A regulation, restriction or prohibition imposed by local law policy under this section must be notified on a public notice erected at or near the main public entrance to the cemetery.

(3) A person must not contravene a regulation, restriction or prohibition imposed under this section.

Maximum penalty-50 penalty units.

#### **Use of force to prevent contravention**

29. (1) An authorised person who finds a person committing or about to commit an offence against this Division may use reasonable force to prevent the commission or further commission of the offence.

(2) An authorised person who finds a person committing or about to commit an offence against this Division may use reasonable force to remove the person from the cemetery.

## **PART 3-OTHER CEMETERIES**

### **Division 1-Permit to operate cemetery**

#### **Operation of cemeteries within the area**

30. A person must not operate a cemetery in the area unless authorised by a permit under this local law.

Maximum penalty-200 penalty units.

#### **Application for permit**

**31. (1)** An application for a permit to operate a cemetery must include or be accompanied by-

- (a) details of the cemetery; and
- (b) details of the proposed administration and management of the cemetery; and
- (c) if approval for the cemetery is required under the *Integrated Planning Act 1997*-a certified copy, or other appropriate evidence, of the approval; and
- (d) other information and materials required under local law policies.

**(2)** The application must be made by the proposed cemetery authority.

#### **Grant of permit**

**32. (1)** The local government may grant a permit authorising the operation of the cemetery if the local government is satisfied that-

- (a) any development permit for the cemetery required under the *Integrated Planning Act 1997* has been granted; and
- (b) the proposed administration and management of the cemetery is appropriate; and
- (c) the grant of the permit is consistent with criteria for the grant of the permit prescribed under the local law policies.

**(2)** A local law policy may specify criteria for the grant of a permit.

#### **Term of permit**

**33. (1)** A permit is granted for a term specified in the permit.

**(2)** The local government may, from time to time, on application by the operator renew the permit.

**(3)** The term for which a permit is granted or renewed is to be-

- (a) fixed as required by a relevant local law policy; or
- (b) in the absence of a relevant local law policy-decided by the local government when it grants the permit or the renewal.

#### **Conditions of permit**

**34. (1)** A permit may be granted on conditions the local government considers appropriate.

**(2)** The conditions of a permit may, for example-

- (a) regulate the hours when the cemetery may be open to the public;
- (b) regulate the hours when burials and cremations may be conducted in the cemetery;
- (c) regulate the size and position of grave sites;
- (d) prescribe minimum periods of leases of grave sites;

(e) require the proper maintenance of memorials and other buildings and structures in the cemetery.

(3) However the conditions of the permit must be consistent with the conditions of any statutory authorisation or approval for the establishment of the cemetery.

(4) The local government may, by local law policy, prescribe conditions that must be imposed in a permit or that will ordinarily be imposed in a permit.

#### **Power to change conditions of permit**

35. (1) The local government may, by written notice given to the cemetery authority, change<sup>2</sup> the conditions of the cemetery authority's permit.

(2) However, the local government may only change the conditions of a permit if-

(a) the cemetery authority agrees to the proposed change; or

(b) the local government-

(i) gives the cemetery authority reasonable written notice of the proposed change inviting the authority to make written representations about the proposed change within a reasonable period fixed in the notice; and

(ii) if the cemetery authority makes written representations within the time allowed in the notice-takes the representations into account.

#### **Compliance with conditions of permit**

36. A cemetery authority must ensure that the conditions of a permit are complied with.  
Maximum penalty-200 penalty units.

#### **Transfer of permit**

37. (1) A cemetery authority may, with the approval of the local government, transfer the authority's permit to another person.

(2) The local government may impose conditions on the transfer of a permit.

(3) However, the local government cannot-

(a) unreasonably refuse its approval of the transfer of a permit; or

(b) impose unreasonable conditions on the transfer of a permit.

### **Division 2-Compliance notices**

#### **Compliance notices**

38. (1) If the cemetery authority contravenes a provision of this local law or a condition of the permit, an authorised person may give the authority a written notice (a "**compliance notice**") under this section.

(2) A compliance notice may-

(a) if the contravention is of a continuing or recurrent nature-require the cemetery authority to stop the contravention; and

(b) whether or not the contravention is of a continuing or recurrent nature- require the cemetery authority to take specified action, within a time specified in the notice, to remedy the contravention.

(3) The cemetery authority must comply with a notice under this section.

Maximum penalty-50 penalty units.

### **Division 3-Suspension or cancellation of permit**

#### **Suspension or cancellation of permit**

**39. (1)** If a cemetery authority fails to remedy contravention of this local law or a condition of a permit within the time allowed in a compliance notice, the local government may, by written notice given to the authority, suspend or cancel the permit.

(2) However, before suspending or cancelling a permit, the local government must-

- (a) give written notice to the cemetery authority of the proposed suspension or cancellation; and
- (b) allow the cemetery authority a period stated in the notice (which must be at least 2 months from when the notice is given) to make written representations to the local government about the proposed suspension or cancellation; and
- (c) consider representations made in response to the notice.

### **Division 4-Local government's power to carry out work**

#### **Local government's power to have work carried out**

**40.** If a cemetery authority fails to have work required by a compliance notice carried out, the local government may itself have the work carried out.

#### **Powers of entry and cost recovery**

**41. (1)** The local government may enter land to perform work under section 1066 of the Act.

(2) If the cemetery authority is the owner of the relevant land, the amount properly and reasonably incurred by the local government in performing the work is recoverable (together with interest) under sections 1066, 1067 and 1068 of the Act.

(3) If the cemetery authority is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the operator (together with interest) on the same basis as applies to an owner of land under section 1067 of the Act.<sup>3</sup>

## **PART 4-CEMETERIES GENERALLY**

#### **Standards for disposal of human remains in cemeteries**

**42. (1)** The local government may, under the local law policies, prescribe standards for the disposal of human remains in cemeteries.

*Examples-*

*The local government may for example-*

- *prescribe standards with which coffins must comply;*
- *prescribe minimum dimensions for graves;*
- *limit the number of bodies that may be buried in a single grave.*

(2) A cemetery authority must ensure that the standards are complied with.

Maximum penalty-200 penalty units.

(3) However, an authorised person may, in an appropriate case, grant an exemption from the requirements of a standard prescribed under this section.

#### **Records to be kept by cemetery authorities**

**43. (1)** A cemetery authority must keep records of-

- (a) the names of all persons whose remains have been buried, cremated or placed in the cemetery; and
- (b) the date of the disposal, and the form of the disposal, of the remains; and
- (c) the place where the remains of each person have been buried or placed (but not if the remains are cremated remains that have been scattered in the cemetery); and
- (d) any dealing with the remains after they have been buried or placed in the cemetery; and
- (e) other information required under the local law policies.

(2) The records must be kept at an office on the grounds of the cemetery or another place approved by the local government for the purposes of this section.

(3) The records must be kept available for inspection by members of the public at reasonable times.

(4) The cemetery authority must ensure that the requirements of this section are complied with.

Maximum penalty-50 penalty units.

### **PART 5-DISPOSAL OF HUMAN REMAINS OUTSIDE CEMETERIES**

#### **Requirement for permit**

**44. (1)** A person must not dispose of human remains in the local government's area except in a cemetery or as authorised by a permit under this Part.

Maximum penalty-200 penalty units.

(2) However, a permit is not required for scattering cremated remains outside a cemetery.

#### **Application for permit**

**45. (1)** An application for a permit authorising disposal of human remains outside a cemetery must-

- (a) identify the burial site or other place in which the remains are to be buried or placed; and
- (b) state when and how the remains are to be disposed of; and

(c) contain other information required under local law policies.

(2) An application for a permit authorising disposal of human remains outside a cemetery must be accompanied by-

- (a) certified copies of other legal authorities that are required for the disposal of the remains; and
- (b) the written agreement of the owner of, and anyone else with a registered interest in, the land on which the remains are to be buried or placed to the disposal of the remains on the land.

### **Grant of permit**

**46.** The local government may grant a permit authorising the proposed disposal of human remains outside a cemetery if satisfied that-

- (a) the grant of the permit is justified by-
  - (i) a special family, personal or historical association between the deceased person and the place in which the remains are to be buried or placed; or
  - (ii) some other special reason; and
- (b) the implementation of the proposal-
  - (i) will not create a risk to health or other nuisance; and
  - (ii) will not cause reasonable offence to others; and
  - (iii) is consistent with criteria laid down under local law policies.

### **Conditions of permit**

**47. (1)** A permit for the disposal of human remains outside a cemetery may be granted on conditions the local government considers appropriate.

(2) The conditions of a permit may, for example-

- (a) regulate the preparation of a grave and require the holder of the permit to allow an authorised person to inspect the grave before burial of human remains in the grave;
- (b) require the disposal of the human remains to take place at a particular time or within a particular period;
- (c) require the erection or installation of a memorial or marker to identify a site in which human remains have been buried.

### **Compliance with conditions of permit**

**48.** An undertaker who arranges for the disposal of human remains outside a cemetery must ensure that the conditions of the relevant permit are complied with.

Maximum penalty-200 penalty units.

## **PART 6-MISCELLANEOUS**

### **Division 1-Disturbance of remains**

**Disturbance of remains**

**49. (1)** A person must not disturb or interfere with human remains that have been buried or placed within or outside a cemetery under this local law unless the local government authorises the disturbance or interference with the remains.

Maximum penalty-500 penalty units.

**(2)** However, this section does not affect the exhumation or other disturbance or interference with human remains on the order of a coroner or other lawful authority.

**Authorisation for disturbance or interference with remains**

**50. (1)** The local government may give an authorisation under this Division on conditions the local government considers appropriate.

*Examples-*

*The local government may authorise the removal of the remains from 1 cemetery to another to comply with the wishes of members of the deceased's family.*

*The local government may authorise the opening of a grave and the burial of another in the same grave in compliance with the expressed wishes of both or all deceased persons who have been or are to be buried in the grave.*

**(2)** A person to whom an authorisation is given under this local law must comply with the conditions of the authorisation.

Maximum penalty-500 penalty units.

**Division 2-Removal of remains****Power to direct removal of remains**

**51. (1)** If human remains are buried or placed on land without the authorisation required under this local law, or contrary to the conditions of an authorisation under this local law<sup>4</sup>, the local government may, by notice in writing given to the owner of the land (a “**compliance notice**”), require the owner to have the remains removed to a cemetery within a specified period.

**(2)** A person must comply with a notice under this section.

Maximum penalty-200 penalty units.

**Local government's power to have work carried out**

**52.** If-

- (a) the local government considers it inappropriate to issue a compliance notice under this Division; or
- (b) a person fails to have the remains removed to a cemetery as required by a compliance notice;

the local government may itself remove the remains and dispose of them in a cemetery.

**Powers of entry and cost recovery**

**53. (1)** The local government may enter land to perform work under section 1066 of the Act.

(2) If the cemetery authority is the owner of the relevant land, the amount properly and reasonably incurred by the local government in performing the work is recoverable (together with interest) under sections 1066, 1067 and 1068 of the Act.

(3) If the cemetery authority is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the operator (together with interest) on the same basis as applies to an owner of land under section 1067 of the Act.<sup>5</sup>

### **Division 3-Power of direction**

#### **Compliance by undertakers with directions by authorised persons**

54. An undertaker must comply with directions given orally or in writing by an authorised person about-

- (a) the preparation of a grave for the burial of human remains; or
- (b) other matters affecting the disposal of human remains.

Maximum penalty-200 penalty units.

### **Division 4-Consistency with *Queensland Heritage Act 1992***

#### **Consistency with *Queensland Heritage Act 1992***

55. The powers given under this local law must be exercised in a way that is consistent with the *Queensland Heritage Act 1992*.

## **PART 7-LOCAL LAW POLICIES**

### **Local law policies**

56. The local government may make local law policies about-

- (a) the establishment of a cemetery authority to manage a local government cemetery;<sup>6</sup> or
- (b) management policies for a local government cemetery;<sup>7</sup> or
- (c) requirements for granting a permit authorising the disposal of human remains in a local government cemetery;<sup>8</sup> or
- (d) requirements for coffins or other containers for human remains brought into a local government cemetery;<sup>9</sup> or
- (e) criteria for granting a permit authorising the erection or installation of a memorial to a deceased person;<sup>10</sup> or
- (f) information and materials that must be included in or accompany an application for a permit to operate a cemetery;<sup>11</sup> or
- (g) criteria for granting a permit to operate a cemetery;<sup>12</sup> or
- (h) the term for which a permit is to be granted or renewed;<sup>13</sup> or
- (i) conditions that must, or will ordinarily, be imposed in a permit to operate a cemetery;<sup>14</sup> or



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- (j) standards for the disposal of human remains in cemeteries;<sup>15</sup>or
  - (k) information to be included in records kept by a cemetery authority;<sup>16</sup>or
  - (l) information to be included in an application for a permit to dispose of human remains outside a cemetery;<sup>17</sup>or
  - (m) criteria for granting a permit to dispose of human remains outside a cemetery;<sup>18</sup>or
  - (n) other matters about which this local law specifically allows for the making of local law policies.

<sup>1</sup> See section 9.

<sup>2</sup> A “**change**” to the conditions of a permit includes a change by omission, substitution or addition. (See *Acts Interpretation Act 1954*, s. 36)

<sup>3</sup> Section 1067(2) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

<sup>4</sup> It should be noted that when the human remains are discovered, the police are to be informed under section 12 of the *Coroners Act 1958*. If the remains are identified as Aboriginal remains or of historical significance, the police will notify the Department of Environment.

<sup>5</sup> Section 1067(2) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

<sup>6</sup> See section 5(1).

<sup>7</sup> See section 6.

<sup>8</sup> See section 12(b).

<sup>9</sup> See section 15(b).

<sup>10</sup> See section 18.

<sup>11</sup> See section 31(1)(d).

<sup>12</sup> See section 32(2).

<sup>13</sup> See section 33(3)(a).

<sup>14</sup> See section 34(4).

<sup>15</sup> See section 42(1).

<sup>16</sup> See section 43(1)(e).

<sup>17</sup> See section 45(1)(c).

<sup>18</sup> See section 46(b)(iii).

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