

TASMANIA

**BURIAL AND CREMATION AMENDMENT
REGULATIONS 2018**

STATUTORY RULES 2018, No. 86

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BURIAL AND CREMATION AMENDMENT REGULATIONS 2018

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Burial and Cremation Act 2002*.

Dated 18 December 2018.

C. WARNER
Governor

By Her Excellency's Command,

ELISE ARCHER
Acting for and on behalf of the Minister for Local Government

1. Short title

These regulations may be cited as the *Burial and Cremation Amendment Regulations 2018*.

2. Commencement

These regulations take effect on the day on which the *Burial and Cremation Amendment Act 2018* commences.

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3. Principal Regulations

In these regulations, the *Burial and Cremation Regulations 2015** are referred to as the Principal Regulations.

4. Regulation 3 amended (Interpretation)

Regulation 3 of the Principal Regulations is amended as follows:

- (a) by omitting the definition of *deceased person* from subregulation (1);
- (b) by inserting the following definition after the definition of *personal representative* in subregulation (1):

proclaimed war means any war or hostilities or special assignment in which any of the naval, military or air forces of the Crown or of the Commonwealth of Australia have been, are, or may be, engaged;

- (c) by omitting the definition of *senior next of kin* from subregulation (1) and substituting the following definition:

service or duty includes –

- (a) any naval, military or air service in any proclaimed war; and

*S.R. 2015, No. 33

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- (b) any special defence undertaking within the meaning of section 6 of the *Defence (Special Undertakings) Act 1952* of the Commonwealth; and
 - (c) any peacetime activities, including any peace-keeping activities; and
 - (d) any training activities conducted in conditions simulating war or war-like activities;
- (d) by omitting “interred.” from the definition of *vault* in subregulation (1) and substituting “interred;”;
- (e) by inserting the following definition after the definition of *vault* in subregulation (1):
- veteran** means a person –
- (a) who is, or has been, employed as an officer, or a member, of the naval, military or air forces of –
 - (i) the Commonwealth of Australia; or

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- (ii) the Crown or an ally of the Crown;
and
- (b) who, while so employed, performed a service or duty;
- (f) by omitting subregulations (2), (3) and (4).

5. Regulation 27 amended (Certificate of exclusive right of burial)

Regulation 27 of the Principal Regulations is amended as follows:

- (a) by omitting from subregulation (1) “is to issue” and substituting “must issue, in accordance with subregulation (2),”;
- (b) by inserting the following penalty after subregulation (1):

Penalty: Fine not exceeding 20 penalty units.

- (c) by omitting from the penalty under subregulation (4) “5 penalty units” and substituting “20 penalty units”.

6. Regulation 31 amended (Information required before permitting interment of human remains)

Regulation 31 of the Principal Regulations is amended as follows:

- (a) by inserting the following paragraph after paragraph (g) in subregulation (1):
 - (ga) if known –
 - (i) whether the deceased person was a veteran; and
 - (ii) if the deceased person was a veteran, details of the service or duty performed by the person;
- (b) by omitting from the penalty under subregulation (2) “2 penalty units” and substituting “10 penalty units”.

7. Regulation 39 amended (Plan of cemetery)

Regulation 39 of the Principal Regulations is amended as follows:

- (a) by omitting from the penalty under subregulation (1) “10 penalty units” and substituting “20 penalty units”;
- (b) by omitting from the penalty under subregulation (2) “10 penalty units” and substituting “20 penalty units”;
- (c) by inserting the following penalty after subregulation (3):

Penalty: Fine not exceeding 10 penalty units.

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8. Regulation 40 amended (Register of interments)

Regulation 40 of the Principal Regulations is amended as follows:

- (a) by inserting the following subparagraph after subparagraph (iv) in subregulation (1)(a):
 - (iva) whether the deceased person was a veteran, if known;
- (b) by omitting from the penalty under subregulation (1) “10 penalty units” and substituting “20 penalty units”;
- (c) by inserting the following penalty after subregulation (2):

Penalty: Fine not exceeding 10 penalty units.

9. Regulation 41 amended (Register of exclusive rights of burial)

Regulation 41 of the Principal Regulations is amended as follows:

- (a) by omitting from the penalty under subregulation (2) “10 penalty units” and substituting “20 penalty units”;
- (b) by omitting from the penalty under subregulation (3) “10 penalty units” and substituting “20 penalty units”;

- (c) by omitting from the penalty under subregulation (5) “10 penalty units” and substituting “20 penalty units”;
- (d) by omitting subregulation (6) and substituting the following subregulation:
 - (6) A cemetery manager must ensure that an open entry in the register is available for inspection, by a member of the public, at all reasonable times.

Penalty: Fine not exceeding 10 penalty units.

10. Regulation 43 amended (Prohibited activities)

The penalty under regulation 43(1) of the Principal Regulations is amended by omitting “10 penalty units” and substituting “20 penalty units”.

11. Regulation 47 amended (Duty of cemetery manager on removal of monument)

Regulation 47 of the Principal Regulations is amended as follows:

- (a) by inserting the following penalty after paragraph (b) in subregulation (3):

Penalty: Fine not exceeding 20 penalty units.

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- (b) by inserting the following penalty after paragraph (b) in subregulation (4):

Penalty: Fine not exceeding 20 penalty units.

12. Part 3, Division 7 inserted

After regulation 47 of the Principal Regulations, the following Division is inserted in Part 3:

Division 7 – Miscellaneous

47A. Public notification requirements of Act in relation to cemeteries

- (1) This regulation applies in respect of the following sections of the Act:
- (a) section 27C(4);
 - (b) section 27J(1)(a);
 - (c) section 27S(c);
 - (d) section 29(2)(d).
- (2) For the purposes of a section of the Act to which this regulation applies, a notice under that section is published in the prescribed manner if –
- (a) the notice is published –
 - (i) in at least one daily newspaper circulating

- generally in all areas of the State; and
 - (ii) in the general, or public notice or equivalent section, of that newspaper; and
- (b) the font used in the notice –
- (i) is not smaller than the standard font used by the newspaper; and
 - (ii) does not use spacing that is smaller than the standard spacing used by the newspaper; and
- (c) the notice contains a heading, in bold text, that specifies –
- (i) if the notice is made under section 27C(4), that the notice relates to the approval of a new cemetery; or
 - (ii) if the notice is made under section 27J(1)(a), that the notice relates to the proposed sale of a cemetery; or
 - (iii) if the notice is made under section 27S(c), that the notice relates to the

sale and transfer of a cemetery; or

- (iv) if the notice is made under section 29(2)(d), that the notice relates to the closure of a cemetery.

47B. Prescribed information for certain notices relating to cemeteries

- (1) For the purposes of section 27C(4) of the Act, the following information is prescribed in respect of a notice under that section:
 - (a) the name of, and address for, the new cemetery to which the notice relates;
 - (b) the name and contact details of the cemetery manager for the new cemetery to which the notice relates;
 - (c) the date from which human remains may be interred at the new cemetery.
- (2) For the purposes of section 27J(2)(a) of the Act, if a notice under that section relates to a portion of a cemetery, the contact information for a person who can identify if a particular grave, monument or interment is in that portion is

prescribed as information to be contained in the notice.

- (3) For the purposes of section 27S(c) of the Act, the following information is prescribed in respect of a notice under that section:
 - (a) the name of, and address for, the cemetery to which the notice relates;
 - (b) the name and contact details of the new cemetery manager for the cemetery to which the notice relates;
 - (c) if the arrangements in respect of access to the cemetery, to which the notice relates, are to change under the new cemetery manager, details of those changes or details of how a member of the public may inspect a copy of those changes.
- (4) For the purposes of section 29(2)(a) of the Act, the date on which a cemetery, to which a notice under that section relates, is proposed to be closed under the Act is prescribed information.

47C. Manner of identification of cemeteries in certain circumstances

- (1) This regulation applies in respect of the following sections of the Act:
 - (a) section 27J(2)(b);
 - (b) section 29(2)(b).
- (2) For the purposes of a section of the Act to which this regulation applies, a cemetery, or portion of a cemetery, is identified in the prescribed manner in a notice under that section if the notice includes –
 - (a) the name of the cemetery; and
 - (b) the full address for the location of the cemetery; and
 - (c) if the name and address of the cemetery is not clear and unambiguous, a description and image of a map of the cemetery that clearly specifies the cemetery to be identified; and
 - (d) if a portion of the cemetery is to be identified, a description and a map of the cemetery that clearly specifies the portion of the cemetery to be identified.

47D. Manner of notification to certain holders of exclusive rights of burial

For the purposes of section 29(2)(a) of the Act, the holder of an exclusive right of burial is notified, under that section, in the prescribed manner if the cemetery manager gives the holder the notification in writing.

47E. Manner of audit of cemeteries

For the purposes of section 49A of the Act, an audit of a cemetery is undertaken in the prescribed manner if the audit is performed –

- (a) if the regulator requests a formal audit, by an auditor who –
 - (i) is a member of a recognised professional body for auditors; and
 - (ii) does not have a conflict of interest in respect of the cemetery or the cemetery manager for the cemetery;
or
- (b) if the regulator requests a self-audit, by the cemetery manager in accordance with the request of the regulator.

47F. Certain churches to be cemeteries under Act

For the purposes of paragraph (a)(ii) of the definition of *cemetery* in section 3 of the Act, the following churches are prescribed as a cemetery:

- (a) St Mary's Church, located at 65 Church Lane in Hagley;
- (b) St John the Baptist Church, located at Bridge Hotel Road in Ouse.

13. Regulation 63 substituted

Regulation 63 of the Principal Regulations is rescinded and the following regulations are substituted:

63. Prescribed person may enter cemeteries and crematoria

- (1) The following persons may enter, at any reasonable time, a cemetery or crematorium, for the purpose of determining if the Act (including these regulations) has been, or is being, complied with:
 - (a) the Director of Local Government;
 - (b) an authorised officer.
- (2) In addition to subregulation (1), the regulator may enter a cemetery, at any

time, for the purpose of determining if the Act (including these regulations) has been, or is being, complied with.

- (3) A person who enters a cemetery or crematorium under this regulation, for the purpose of determining if the Act (including these regulations) has been, or is being, complied with, may do any one or more of the following measures:
- (a) search the crematorium or cemetery;
 - (b) require a person to produce any records, documents or other things for inspection;
 - (c) take extracts from, or make copies of, those records or documents;
 - (d) take into the crematorium or cemetery any equipment or material reasonably necessary for the purpose of undertaking a measure specified in this regulation;
 - (e) require a person to give the person entering the cemetery or crematorium under this regulation any assistance that the person so entering requires;
 - (f) if the person has a reasonable belief that the Act or these

regulations have been, or are being, contravened, seize any records, documents, samples or other things relevant to the contravention.

63A. Medical practitioner fees

A medical practitioner who attends a place of death of a deceased person in accordance with these regulations is entitled to claim from the estate of the deceased person a fee for that attendance as if a medical certificate or a declaration of life extinct had not been issued in respect of that deceased person.

63B. Fees generally

For the purposes of the Act, the fees specified in Schedule 2 are prescribed for the matters to which they respectively relate.

63C. Infringement offences

For the purposes of section 50B of the Act –

- (a) an offence against a provision specified in column 2 of the table in Schedule 3 is prescribed as an infringement notice offence; and
- (b) the penalty specified in column 3 of the table in Schedule 3 is prescribed as the penalty payable

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in respect of an individual for the relevant offence specified in column 2 of that table; and

- (c) the penalty specified in column 4 of the table in Schedule 3 is prescribed as the penalty payable in respect of a body corporate for the relevant offence specified in column 2 of that table.

14. Schedules 2 and 3 inserted

After Schedule 1 to the Principal Regulations,
the following Schedules are inserted:

SCHEDULE 2 – FEES

Regulation 63B

	Description	Fee units
1.	Application under section 11A to become a cemetery manager	120
2.	Application under section 27B to establish a new cemetery	60
3.	Application under section 27L for a certificate of compliance	120
4.	Application under section 29 for approval to close a cemetery	120
5.	Application under section 51A to reduce certain time frames	80

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**SCHEDULE 3 – INFRINGEMENT NOTICE
OFFENCES**

Regulation 63C

	Provision	Individual Penalty units	Body corporate Penalty units
1.	Section 7	5	10
2.	Section 9(2)	5	10
3.	Section 12(1)	5	10
4.	Section 12(2)	5	10
5.	Section 13(2)	5	10
6.	Section 15	1	3
7.	Section 16(1)	3	6
8.	Section 16(2)	5	10
9.	Section 17	15	30
10.	Section 19(1)	15	30
11.	Section 19(1A)	15	30
12.	Section 19(2)	15	30
13.	Section 19(3)	6	12
14.	Section 22(1)	3	6
15.	Section 22(2)	5	10

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	Provision	Individual Penalty units	Body corporate Penalty units
16.	Section 22(3)	5	10
17.	Section 23(6)	15	30
18.	Section 27C(4)	5	10
19.	Section 27E	5	10
20.	Section 27F	5	10
21.	Section 27H(1)	5	10
22.	Section 27O	5	10
23.	Section 27P(1)	15	30
24.	Section 27S	5	10
25.	Section 29B(3)	15	30
26.	Section 36(2)	15	30
27.	Section 43	5	10
28.	Section 46	3	6
29.	Section 47(1)	5	10
30.	Section 49	15	30
31.	Section 49A(2)	5	10
32.	Section 49B(2)	30	60

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	Provision	Individual Penalty units	Body corporate Penalty units
33.	Section 50(4)	15	30
34.	Section 50A(3)	15	30
35.	Regulation 4(2)	5	10
36.	Regulation 4(4)	5	10
37.	Regulation 10(6)	5	10
38.	Regulation 14(3)	1	2
39.	Regulation 15	3	6
40.	Regulation 16	1	2
41.	Regulation 18(1)	5	10
42.	Regulation 19(1)	5	10
43.	Regulation 19(2)	3	6
44.	Regulation 19(3)	3	6
45.	Regulation 20(1)	3	6
46.	Regulation 20(2)	1	2
47.	Regulation 21(1)	3	6
48.	Regulation 21(2)	3	6
49.	Regulation 22	3	6

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	Provision	Individual Penalty units	Body corporate Penalty units
50.	Regulation 23	3	6
51.	Regulation 24	3	6
52.	Regulation 25(1)	3	6
53.	Regulation 26	1	2
54.	Regulation 27(1)	5	10
55.	Regulation 27(4)	5	10
56.	Regulation 30(1)	3	6
57.	Regulation 31(2)	3	6
58.	Regulation 33(2)	3	6
59.	Regulation 34(1)	3	6
60.	Regulation 34(2)	3	6
61.	Regulation 35(2)	3	6
62.	Regulation 36	3	6
63.	Regulation 39(1)	5	10
64.	Regulation 39(2)	3	6
65.	Regulation 39(3)	3	6
66.	Regulation 40(1)	5	10

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	Provision	Individual Penalty units	Body corporate Penalty units
67.	Regulation 40(2)	3	6
68.	Regulation 41(2)	5	10
69.	Regulation 41(3)	5	10
70.	Regulation 41(5)	3	6
71.	Regulation 41(6)	3	6
72.	Regulation 42(1)	3	6
73.	Regulation 42(2)	3	6
74.	Regulation 43(1)	5	10
75.	Regulation 45(2)	1	2
76.	Regulation 46(2)	1	2
77.	Regulation 47(3)	5	10
78.	Regulation 47(4)	5	10
79.	Regulation 51(3)	5	10
80.	Regulation 52(1)	5	10
81.	Regulation 53(1)	5	10
82.	Regulation 53(3)	5	10
83.	Regulation 56	1	2

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	Provision	Individual Penalty units	Body corporate Penalty units
84.	Regulation 58(2)	3	6
85.	Regulation 60(1)	5	10
86.	Regulation 60(2)	5	10
87.	Regulation 61	5	10

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 26 December 2018.

These regulations are administered in the Department of Premier and Cabinet.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations amend the *Burial and Cremation Regulations 2015*, consequent on the commencement of the *Burial and Cremation Amendment Act 2018*, by –

- (a) specifying certain notification and publication requirements in respect of cemeteries; and
- (b) prescribing certain new fees payable; and
- (c) providing for certain persons to enter a cemetery or crematorium for the purpose of ensuring compliance with the *Burial and Cremation Act 2002*; and
- (d) prescribing –
 - (i) new offences and increasing the penalties payable for certain existing offences; and
 - (ii) certain offences as offences for which infringement notices may

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be issued under the *Burial and
Cremation Act 2002*; and

- (e) making minor consequential
amendments.