



Local Law No. 14

(Cemeteries) 2011

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Chief Executive Officer



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Logan City Council

Local Law No. 14

(Cemeteries) 2011

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 14 (Cemeteries) 2011*.

2 Object

The object of this local law is to—

- (a) provide for the proper management and control of a cemetery in the local government area; and
- (b) regulate the disposal of human remains in the local government area within and outside a cemetery; and
- (c) ensure proper records are kept about the disposal of human remains within and outside a cemetery.

3 Definitions—the dictionary

The dictionary in the Schedule (Dictionary) defines particular words used in this local law.

4 Relationship to other laws

The powers given by this local law must be exercised in a way that is consistent with all Acts (including subordinate legislation) including—

- (a) the *Environmental Protection Act 1994*; and
- (b) the *Public Health Act 2005*; and
- (c) the *Land Act 1994*; and
- (d) the *Criminal Code Act 1899*; and
- (e) the *Coroners Act 2003*; and
- (f) the *Births, Deaths and Marriages Registration Act 2003*; and
- (g) the *Sustainable Planning Act 2009*.

Part 2 Local government cemetery

5 Cemetery authority

- (1) The local government may, by a subordinate local law—
 - (a) establish a cemetery authority to manage a local government cemetery; and
 - (b) specify the membership and structure of a cemetery authority; and
 - (c) specify the procedures governing the operation of a cemetery authority; and
 - (d) specify policies and guidelines governing the management of the local government cemetery by a cemetery authority; and
 - (e) specify the powers given to the local government pursuant to this local law that may be exercised by a cemetery authority on behalf of the local government.
- (2) A cemetery authority may exercise the powers of the local government pursuant to this local law that are specified in a subordinate local law.
- (3) A cemetery authority must comply with this local law and all subordinate local laws.

6 Contractual powers

- (1) The local government may enter into a contract in respect of—
 - (a) a resting place in a local government cemetery; and
 - (b) the disposal of human remains in a local government cemetery; and
 - (c) the construction, maintenance and repair of a resting place (including a grave, columbarium, mausoleum, niche, vault, crypt or other structure) in a local government cemetery; and
 - (d) the construction, maintenance and repair of a memorial, building or structure in a local government cemetery; and
 - (e) a matter the subject of a permit under this local law.
- (2) A contract made pursuant to section 6(1) (Contractual powers) of this local law must—
 - (a) provide for the maintenance and repair of any structure; and

- (b) if the structure is not to be maintained under the terms of the contract, authorise the local government to demolish and remove the structure if it falls into disrepair.
- (3) If a party to a contract made pursuant to section 6(1) (Contractual powers) of this local law dies, the local government may in its absolute discretion (having regard to the wishes (if any) the deceased person had made known in writing to the local government) allow relatives of the deceased person, whose identity and whereabouts are known to the local government, a reasonable opportunity to take over the deceased person's contractual rights and liabilities.

7 Epitaphs and inscriptions

It is an offence for an epitaph or inscription to be engraved or placed on a memorial in a local government cemetery, unless authorised by a permit.

Maximum penalty—50 penalty units.

8 Disposal of human remains in a local government cemetery

It is an offence for a person to dispose of human remains in a local government cemetery, unless authorised by a permit.

Maximum penalty—200 penalty units.

9 Prescribed containers

It is an offence for a person to bring human remains into a local government cemetery which are not enclosed in a prescribed container, unless authorised by a permit.

Maximum penalty—50 penalty units.

10 Hours of operation

- (1) The local government may, by a subordinate local law, fix times when—
 - (a) a local government cemetery is open to the public; and
 - (b) human remains may be disposed of in a local government cemetery; and
 - (c) a funeral, commemorative service or other activity of a spiritual, religious or commemorative character may be undertaken in a local government cemetery.
- (2) It is an offence for a person to act contrary to a subordinate local law made pursuant to section 10(1) (Hours of operation) of this local law, unless authorised by a permit.

Maximum penalty—50 penalty units.

- (3) The local government may waive the requirements of section 10(1) (Hours of operation) of this local law if—
- (a) there is an emergency; or
 - (b) there are special reasons for dispensing with the requirement.

11 Erection, maintenance and repair of a memorial

- (1) It is an offence for a person to erect or install a memorial in a local government cemetery, unless authorised by a permit

Maximum penalty for subsection (1)—50 penalty units.

- (2) It is an offence for a person to maintain or repair a memorial in a local government cemetery unless that person is—

- (a) authorised by a permit; and
- (b) a member of the family of the deceased person or has a proper interest in the maintenance of the memorial.

Maximum penalty for subsection (2)—20 penalty units.

- (3) It is an offence for a person to carry out work to a memorial in a local government cemetery pursuant to section 11 (Erection, maintenance and repair of a memorial) of this local law unless the person complies with any direction given by the local government.

Maximum penalty for subsection (3)—20 penalty units.

12 Maintenance of a local government cemetery

- (1) The local government may—

- (a) carry out works for the maintenance of a local government cemetery; or
- (b) carry out works for the repair of anything located within a local government cemetery; or
- (c) carry out works for the improvement of anything located within a local government cemetery; or
- (d) otherwise interfere with a local government cemetery.

- (2) The local government may interfere with a resting place or memorial in a local government cemetery notwithstanding that it is the subject of any contractual arrangement with the local government provided that the interference is in the reasonable exercise of its powers to maintain the local government cemetery.

- (3) It is an offence for a person to carry out any of the work which a local government is empowered to carry out pursuant to section 12(1) (Maintenance of a local government cemetery) of this local law, unless authorised by a permit.

Maximum penalty for subsection (3)—20 penalty units.

13 Conduct in a local government cemetery

It is an offence for a person in a local government cemetery, unless authorised by a permit, to—

- (a) do an act which is prohibited conduct, or
- (b) omit to do an act which causes prohibited conduct; or
- (c) conduct a meeting other than a meeting of a funeral, commemorative, religious or spiritual character.

Maximum penalty—50 penalty units.

14 Prohibition of plants

- (1) The local government may, by a subordinate local law, prohibit a person from bringing a plant into a local government cemetery.
- (2) It is an offence for a person to bring a plant into a local government cemetery in contravention of a subordinate local law made pursuant to section 14(1) (Prohibition of plants) of this local law, unless authorised by a permit.

Maximum penalty for subsection (2)—20 penalty units.

Part 3 Cemeteries generally

15 Disposal of human remains

- (1) It is an offence for a person to—
 - (a) unless authorised by a permit, dispose of human remains (not being cremated human remains) outside a cemetery; or
 - (b) unless authorised by the owner of premises to dispose of cremated human remains on the premises.

Maximum penalty for subsection (1)—200 penalty units.

- (2) The local government may by a subordinate local law specify the family relationship to the persons previously interred in the family cemetery that may be disposed of in a family cemetery.

16 Standards for the disposal of human remains

- (1) The local government may, by a subordinate local law, specify in relation to a cemetery—

- (a) the dimensions of a resting place; and

Example—

A subordinate local law may prescribe the size and portion of a niche, mausoleum, vault, crypt, memorial garden or other resting place.

- (b) the number of bodies which may be disposed of in a resting place; and

Example—

A subordinate local law may permit the burial of no more than two bodies in one grave.

- (c) the standards with which a prescribed container must comply; and

Example—

A subordinate local law may prescribe the size of coffins.

- (d) the practical experience and qualifications of an undertaker; and

- (e) prescribed disposal criteria; and

- (f) such other standards as the local government considers appropriate for the disposal of human remains.

- (2) A local government may grant an exemption from the requirements of a standard prescribed under section 16(1) (Standards for the disposal of human remains) of this local law—

- (a) by a subordinate local law; or

- (b) where the local government considers appropriate.

- (3) It is an offence for the following people not to comply with the standards prescribed under section 16(1) (Standards for the disposal of human remains) of this local law—

- (a) a cemetery controller; and

- (b) an undertaker; and

- (c) the holder of a permit; and

- (d) any person disposing of human remains.

Maximum penalty for subsection (3)—50 penalty units.

17 Records to be kept

- (1) It is an offence for a cemetery controller not to keep a record of—
- (a) the names of all persons whose human remains have been disposed of in the cemetery; and
 - (b) the date of the disposal of the human remains; and
 - (c) the place where the human remains of each person have been disposed of unless the human remains are cremated human remains that have been scattered in the cemetery; and
 - (d) any dealing with the human remains after they have been disposed of in the cemetery; and
 - (e) such other information required by a subordinate local law.

Maximum penalty for subsection (1)—50 penalty units.

- (2) It is an offence for an undertaker not to keep a record of—
- (a) the names of all persons whose human remains have been disposed of by the undertaker; and
 - (b) the date of the disposal of the human remains; and
 - (c) the place where the human remains of each person have been disposed of unless the human remains are cremated human remains that have been scattered in a cemetery; and
 - (d) any dealing by the undertaker with human remains after they have been disposed of in a cemetery; and
 - (e) such other information required by a subordinate local law.

Maximum penalty for subsection (2)—50 penalty units.

- (3) The local government may, by a subordinate local law, prescribe—
- (a) the place at which the records required to be kept pursuant to sections 17(1) and (2) (Records to be kept) of this local law must be kept; and
 - (b) the period for which the records required to be kept pursuant to sections 17(1) and (2) (Records to be kept) of this local law must be kept; and
 - (c) the times at which the records required to be kept pursuant to sections 17(1) and (2) (Records to be kept) of this local law must be made available for inspection by members of the public.

- (4) It is an offence for a cemetery controller and an undertaker not to comply with the requirements specified in a subordinate local law pursuant to section 17(3) (Records to be kept) of this local law.

Maximum penalty for subsection (4)—50 penalty units.

18 Animals

It is an offence for a person to bring an animal into a cemetery, unless authorised by a permit.

Maximum penalty—20 penalty units.

19 Interference with a cemetery

- (1) It is an offence for a person (other than a local government) to interfere with human remains disposed of in a cemetery, unless authorised by a permit.

Maximum penalty for subsection (1)—200 penalty units.

- (2) It is an offence for a person (other than a local government), unless authorised by a permit, to interfere with—

- (a) a resting place in a local government cemetery; or
- (b) a memorial in a local government cemetery; or
- (c) a building or structure in a local government cemetery; or
- (d) a container for the disposal of human remains in a resting place or otherwise in a local government cemetery; or
- (e) a plant in a local government cemetery; or
- (f) a plant or token on a resting place or a memorial in a local government cemetery.

Maximum penalty for subsection (2)—200 penalty units.

- (3) A cemetery controller may interfere with any of the matters specified in section 19(2) (Interference with a cemetery) of the local law provided that the exercise of this power is in accordance with the objects of this local law.

20 Interference with services

It is an offence for a person to interrupt or interfere with a funeral, commemorative, religious or spiritual service, function or activity that is lawfully being conducted in a cemetery.

Maximum penalty—200 penalty units.

21 Conduct in a family cemetery or a private cemetery

It is an offence for a person in a family cemetery or a private cemetery, without the consent of the cemetery controller, to—

- (a) do an act which is prohibited conduct; or
- (b) omit to do an act which causes prohibited conduct; or
- (c) conduct a meeting other than a meeting of a funeral, commemorative, religious or spiritual character; or
- (d) conduct a business.

Maximum penalty—50 penalty units.

22 Memorials on a public place

- (1) It is an offence for a person (other than the local government) to erect or install a memorial (other than a memorial of a type permitted by a subordinate local law) on a public place (other than a State-controlled road) which is not a cemetery, unless authorised by a permit.

Maximum penalty for subsection (1)—50 penalty units.

- (2) The local government may interfere with a memorial erected or installed on a public place pursuant to section 22(1) (Memorials on a public place) of this local law in the reasonable exercise of its powers as a local government.

Part 4 Permits

23 Requirement for a permit

- (1) It is an offence for a person to undertake a prescribed activity, unless authorised by a permit granted pursuant to section 25 (Grant of a permit) of this local law.

Maximum penalty for subsection (1)—50 penalty units.

- (2) It is an offence for a person to—
 - (a) exhibit a sign which indicates that a prescribed activity which does not comply with this local law does comply with this local law; or
 - (b) in any manner or by any means indicate that a prescribed activity which does not comply with this local law does comply with this local law.

Maximum penalty for subsection (2)—50 penalty units.

- (3) Notwithstanding section 23(1) (Requirement for a permit) of this local law a permit is not required under this local law if—

- (a) a subordinate local law specifies that a permit is not required in respect of the undertaking of the prescribed activity; or
- (b) the undertaking of the prescribed activity is authorised by a Local Government Act.

Example—

The undertaking of a prescribed activity which is development for which a development approval has been issued under the *Sustainable Planning Act 2009* does not require a permit.

24 Application for a permit

- (1) An application for a permit must be—
 - (a) made by the person who will be undertaking the prescribed activity; and
 - (b) made in the prescribed form; and
 - (c) accompanied by—
 - (i) the prescribed fee; and
 - (ii) evidence that all approvals under the Local Government Acts required for undertaking the prescribed activity have been obtained; and
 - (iii) full details of the prescribed activity; and
 - (iv) such other information and materials as are requested by the local government or specified in a subordinate local law.
- (2) The local government may waive the requirements of section 24 (Application for a permit) of this local law in an emergency or if there are special reasons for dispensing with the requirements.

25 Grant of a permit

- (1) The local government may grant a permit if satisfied that the undertaking of the prescribed activity—
 - (a) will not result in harm to human health or safety or personal injury; and
 - (b) will not result in property damage or a loss of amenity; and
 - (c) will not result in environmental harm or environmental nuisance; and
 - (d) will not result in a nuisance; and
 - (e) complies with the provisions of the Local Government Acts that regulate the undertaking of the prescribed activity; and

- (f) complies with the prescribed criteria.
- (2) Before the local government decides an application for a permit, an authorised person may—
 - (a) inspect any vehicle, equipment, animal, plant or thing to be involved in the undertaking of the prescribed activity; and
 - (b) measure, weigh, sample, test or otherwise examine anything that may be inspected.

26 Term of a permit

- (1) A permit granted by the local government is for a term—
 - (a) specified in the permit; or
 - (b) otherwise specified in a subordinate local law.
- (2) A permit expires at the end of the day specified in section 26(1) (Term of a permit) of this local law.

27 Conditions of a permit

- (1) A permit may be granted by the local government on conditions the local government considers appropriate.
- (2) The local government may prescribe by subordinate local law the conditions that must be imposed in a permit or that will ordinarily be imposed in a permit.

28 Power to change the conditions of a permit

- (1) The local government may change a condition of a permit where—
 - (a) the holder of the permit agrees to the proposed change; or
 - (b) the change is necessary to prevent—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (c) the change is necessary to ensure that the undertaking of the prescribed activity complies with the prescribed criteria.
- (2) If the local government is satisfied it is necessary to change a condition of a permit, the local government must—

- (a) give the holder of the permit a written notice stating—
 - (i) the proposed change and the reasons for the change; and
 - (ii) that the holder of the permit may make written representations to the local government about the proposed change; and
 - (iii) the time (at least 15 business days after the notice is given to the holder of the permit) within which the written representations may be made; and
 - (b) consider any written representation made by the holder of the permit within the time stated in the notice.
- (3) After considering any written representation made by the holder of the permit, the local government must give to the holder of the permit—
- (a) if the local government is not satisfied the change is necessary – a written notice stating that it has decided not to change the condition; or
 - (b) if the local government is satisfied that the change is necessary – a written notice stating that it has decided to change the condition including details of the changed condition.
- (4) The changed condition takes effect from the day the notice was given to the holder of the permit.

29 Cancellation of a permit

- (1) The local government may cancel a permit where—
- (a) the holder of the permit agrees to the cancellation; or
 - (b) the cancellation is necessary to prevent—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (c) the holder of the permit contravenes—
 - (i) this local law; or
 - (ii) a condition of a permit; or
 - (iii) a requirement of a compliance notice or a stop order; or

- (d) the undertaking of the prescribed activity does not comply with—
 - (i) the provisions of the Local Government Acts that regulate the undertaking of the prescribed activity; or
 - (ii) the prescribed criteria; or
 - (e) the permit was granted on false, misleading or incomplete information; or
 - (f) changes in circumstances since the permit was granted make the continued undertaking of the permit inappropriate.
- (2) If the local government is satisfied it is necessary to cancel a permit, the local government must—
- (a) give the holder of the permit a written notice stating—
 - (i) the reasons for the proposed cancellation; and
 - (ii) that the holder of the permit may make written representations to the local government about the proposed cancellation; and
 - (iii) the time (at least 15 business days after the notice is given to the holder of the permit) within which written representations may be made; and
 - (b) consider any written representation made by the holder of the permit within the time stated in the notice.
- (3) After considering any written representation made by the holder of the permit the local government must give to the holder of the permit—
- (a) if the local government is not satisfied that the cancellation is necessary – a written notice stating it has decided not to cancel the permit; or
 - (b) if the local government is satisfied that the cancellation is necessary – a written notice stating it has decided to cancel the permit.
- (4) The cancellation of the permit takes effect from the day the written notice was given to the holder of the permit.
- (5) Where the local government has cancelled a permit, the holder of the permit must cease to undertake the prescribed activity.

Maximum penalty for subsection (5)—50 penalty units.

30 General compliance provision

- (1) It is an offence for the holder of a permit not to ensure that the conditions of the permit are complied with.

Maximum penalty for subsection (1)—50 penalty units.

- (2) The holder of a permit and a person undertaking a prescribed activity must ensure that the prescribed activity—
- (a) does not result in harm to human health or safety or personal injury; and
 - (b) does not result in property damage or a loss of amenity; and
 - (c) does not result in environmental harm or environmental nuisance; and
 - (d) does not result in a nuisance; and
 - (e) complies with the prescribed criteria.
- (3) It is an offence for the holder of a permit and a person undertaking a prescribed activity not to comply with subsection (2).

Maximum penalty for subsection (3)—50 penalty units.

Part 5 Enforcement

31 Compliance notice

- (1) An authorised person may give a compliance notice to—
- (a) a person who contravenes this local law; and
 - (b) any person involved in the contravention of this local law pursuant to section 39 (Liability of third parties) of this local law.
- (2) A compliance notice may require the person to whom it is given to—
- (a) stop the contravention, if the contravention is of a continuing or recurrent nature; and
 - (b) perform work or otherwise take specified action to remedy the contravention (including the making of an application for a permit) for or within a time specified in the compliance notice, whether or not the contravention is of a continuing or recurrent nature; and
 - (c) perform work or otherwise take specified action for or within a time specified in the compliance notice to ensure compliance with the criteria specified in section 30 (General compliance provision) of this local law.
- (3) It is an offence for a person to whom the compliance notice is given not to comply with the compliance notice.

Maximum penalty for subsection (3)—50 penalty units.

32 Stop order

- (1) An authorised person may by notice to the person undertaking a prescribed activity require the person to cease to undertake the prescribed activity within the time allowed in the notice where—
- (a) a compliance notice is not complied with within the time allowed for compliance in the compliance notice; or
 - (b) the person does not hold a permit from the local government; or
 - (c) the undertaking of the prescribed activity is in the authorised person's opinion likely to give rise to—
 - (i) harm to human health or safety or personal injury;
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (d) the undertaking of the prescribed activity does not comply with—
 - (i) the provisions of the Local Government Acts that regulate the undertaking of prescribed activity; or
 - (ii) the prescribed criteria.
- (2) Subject to section 32(3) (Stop order) of this local law, it is an offence for the person to whom a stop order is given not to—
- (a) cease to undertake the prescribed activity; and
 - (b) comply with the stop order.

Maximum penalty for subsection (2)—200 penalty units.

- (3) The stop order ceases where the person to whom a stop order is given has complied with to the satisfaction of an authorised person—
- (a) the requirements of this local law; and
 - (b) the prescribed criteria relevant to the prescribed activity; and
 - (c) the conditions of any relevant permit; and
 - (d) the requirements of any relevant compliance notice.

33 Inspection of a prescribed activity

- (1) An authorised person may inspect the undertaking of a prescribed activity and any vehicle, equipment, animal, plant or thing involved in the undertaking of the prescribed activity to establish whether there is compliance with¹—
 - (a) the requirements of this local law; and
 - (b) the prescribed criteria; and
 - (c) the conditions of the permit; and
 - (d) the requirements of a compliance notice; and
 - (e) the requirements of a stop order.
- (2) An authorised person may direct the person undertaking the prescribed activity to produce for inspection²—
 - (a) the permit granted by the local government; and
 - (b) any records that are required to be kept as a condition of the permit or as specified in a subordinate local law and may take copies of or extracts from those records; and
 - (c) any vehicle, equipment, animal, plant or thing involved in the undertaking of the prescribed activity.
- (3) An authorised person may measure, weigh, sample, test or otherwise examine anything that may be inspected pursuant to section 33 (Inspection of a prescribed activity) of this local law.³
- (4) It is an offence for the person undertaking the prescribed activity not to comply with—
 - (a) a direction of an authorised person pursuant to section 33(2) (Inspection of a prescribed activity) of this local law; and
 - (b) the terms of a periodic inspection, monitoring or management program in respect of the undertaking of the prescribed activity specified in a subordinate local law.

Maximum penalty for subsection (4)—50 penalty units.

¹ See the powers contained in Chapter 5, Part 2, Division 1 of the *Local Government Act 2009*.

² See the powers contained in Chapter 5, Part 2, Division 1 of the *Local Government Act 2009*.

³ See the powers contained in Chapter 5, Part 2, Division 1 of the *Local Government Act 2009*.

34 Performance of works

- (1) A person committing an offence under this local law must make good any damage caused directly or indirectly by the commission of the offence.
- (2) The local government may perform work where a person has failed to perform work required to be performed by⁴—
 - (a) section 34(1) (Performance of works) of this local law; or
 - (b) a compliance notice or stop order issued under this local law; or
 - (c) a condition of a permit; or
 - (d) any other provision of this local law.
- (3) The local government may in the course of performing work remove any structure, vehicle, equipment, animal, plant or thing involved in the undertaking of the prescribed activity where—
 - (a) the local government is satisfied there is a risk of⁵—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (b) the undertaking of the prescribed activity does not comply with—
 - (i) the provisions of the Local Government Acts that regulate the undertaking of the prescribed activity; or
 - (ii) the prescribed criteria.
- (4) The local government may dispose as it sees fit of and in accordance with the laws of the State, any material of any nature removed by the local government pursuant to section 34 (Performance of works) of this local law.
- (5) An authorised person may perform the work that the local government is empowered to undertake pursuant to section 34 (Performance of works) of this local law.

⁴ The exercise of this power is subject to Chapter 5, Part 2, Division 2 of the *Local Government Act 2009*.

⁵ The exercise of this power is subject to Chapter 5, Part 2, Division 2 of the *Local Government Act 2009*.

35 Power of entry and cost recovery

- (1) If the work to be carried out by the local government is on land of which the local government is not the owner or occupier, the local government may enter the land to perform the work⁶—
 - (a) if the person who has failed to perform the work is the owner or occupier of the land; or
 - (b) if the entry is necessary for the exercise of the local government's jurisdiction.
- (2) If the person who failed to perform the work is the owner of the land, the amount properly and reasonably incurred by the local government to perform the work is recoverable (together with any interest) under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009*.
- (3) If the person who failed to perform the work is not the owner of the land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person in default together with interest on the same basis as applies to an owner of the land under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009*.

Part 6 Administration

36 Appointment of authorised persons

The local government may authorise a person to exercise the powers of an authorised person under this local law where that person possesses or has access to a person with appropriate expertise or qualifications in respect of the powers to be exercised.

37 Powers of authorised persons

- (1) An authorised person may—
 - (a) exercise the powers of an authorised person and such other powers under the local law as the local government may determine; and
 - (b) direct a person committing a breach of this local law to—
 - (i) cease any conduct or activity which constitutes a breach of this local law; and
 - (ii) take such action determined by the authorised person to ensure that the person does not commit a breach of this local law; and

⁶ See the powers contained in Chapter 5, Part 2, Division 2 of the *Local Government Act 2009*.

- (c) subject to the *Police Powers and Responsibilities Act 2000*, request the assistance of a member of the police force to take such action determined by the member of the police force to—
 - (i) assist the authorised person in the exercise of these powers; and
 - (ii) ensure that a person does not commit a breach of this local law.
- (2) It is an offence for a person not to comply with a direction of an authorised person made pursuant to this local law.

Maximum penalty for subsection (2)—50 penalty units.

38 Executive officers must ensure the corporation complies with the local law

- (1) The executive officers of a corporation must ensure the corporation complies with this local law.
- (2) If a corporation commits an offence against a provision of this local law, it is also an offence for each of the corporation's executive officers, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this local law is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complied with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence – the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) This section applies so as not to limit or affect in any way the liability of a corporation to be proceeded against and punished for an offence committed by the corporation in contravention of this local law.

39 Liability of third parties

- (1) It is an offence for any person to be involved in a contravention of this local law.

Maximum Penalty for subsection (1)—the penalty for which any person who committed the contravention would be liable.

- (2) For the purposes of section 39(1) (Liability of third parties) of this local law, a person involved in a contravention of this local law is any person who—
- (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced, whether by threats or promises or otherwise, the contravention; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) has conspired with others to effect the contravention; or
 - (e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

40 Attempts to commit offences

- (1) It is an offence for a person to attempt to commit an offence under this local law.
- Maximum penalty for subsection (1)—half the maximum penalty for committing the offence.
- (2) The provisions of the Criminal Code (relevant to attempts to commit offences) apply to the attempt.

Part 7 Subordinate local laws

41 Subordinate local laws

The local government may, in a subordinate local law, specify—

- (a) the prescribed criteria with which a prescribed activity must comply pursuant to section 3 (Definitions) of this local law; and
- (b) as a local government road a public place pursuant to section 3 (Definitions) of this local law; and
- (c) a container appropriate for the disposal of human remains pursuant to section 3 (Definitions) of this local law; and
- (d) the prescribed disposal criteria with which the disposal of human remains must comply pursuant to section 3 (Definitions) of this local law; and
- (e) a thing as a structure pursuant to section 3 (Definitions) of this local law; and
- (f) rights and obligations in respect of a cemetery authority pursuant to section 5(1) (Cemetery authority) of this local law; and

- (g) the hours of operation of a cemetery pursuant to section 10(1) (Hours of operation) of this local law; and
- (h) plants which a person is prohibited from bringing into a cemetery pursuant to section 14(1) (Prohibition of plants) of this local law; and
- (i) the family relationship to the persons previously interred in the family cemetery that may be disposed of in a family cemetery pursuant to section 15(2) (Disposal of human remains) of this local law; and
- (j) standards for the disposal of human remains pursuant to section 16(1) (Standards for the disposal of human remains) of this local law; and
- (k) exemptions for compliance with the prescribed standards for the disposal of human remains pursuant to section 16(2) (Standards for the disposal of human remains) of this local law; and
- (l) the information that is required to be kept by a cemetery authority pursuant to section 17(1)(e) (Records to be kept) of this local law; and
- (m) the information that is required to be kept by an undertaker pursuant to section 17(2)(e) (Records to be kept) of this local law; and
- (n) the place at which records must be kept pursuant to section 17(3)(a) (Records to be kept) of this local law; and
- (o) the period for which the records must be kept pursuant to section 17(3)(b) (Records to be kept) of this local law; and
- (p) the times at which the records may be inspected pursuant to section 17(3)(c) (Records to be kept) of this local law; and
- (q) a type of memorial the erection or installation of which a person is not required to hold a permit pursuant to section 22(1) (Memorials on a public place) of this local law; and
- (r) a prescribed activity the undertaking of which a person is not required to hold a permit pursuant to section 23(3) (Requirement for a permit) of this local law; and
- (s) the information that must accompany an application for a permit pursuant to section 24(1)(c)(iv) (Application for a permit) of this local law;
- (t) the term of a permit pursuant to section 26(1)(b) (Term of a permit) of this local law; and
- (u) the conditions that must be imposed in a permit or that will ordinarily be imposed in a permit pursuant to section 27(2) (Conditions of a permit) of this local law; and

- (v) the records that are required to be kept pursuant to section 33(2)(b) (Inspection of a prescribed activity) of this local law; and
- (w) the terms of a periodic inspection, monitoring or management program in respect of the undertaking of the prescribed activity pursuant to section 33(4)(b) (Inspection of a prescribed activity) of this local law; and
- (x) such other matters as are provided for in this local law.

Schedule Dictionary

section 3

animal has the meaning given in the local government's animal management local laws.

approval has the meaning given in *Local Law No. 2 (Administration) 2010*.

authorised person means a person authorised by the local government or the cemetery authority to exercise the powers of an authorised person under this local law.

building has the meaning given in the *Building Act 1975*.

business means the commercial supply of goods or services.

cemetery means premises lawfully established for the disposal of human remains at the commencement of this local law or approved by a local government under the Local Government Acts that regulate the disposal of human remains which—

- (a) may include—
 - (i) a crematorium; and
 - (ii) a columbarium; and
 - (iii) a mausoleum or vault; and
 - (iv) a garden of remembrance; and
 - (v) other structures, plants and improvements the local government considers appropriate; and
- (b) does not include premises upon which the only human remains which are disposed of are cremated human remains.

cemetery authority means a cemetery authority established by the local government pursuant to section 5 (Cemetery authority) of this local law.

cemetery controller means—

- (a) the local government where it has the administration and management of a cemetery; and
- (b) a cemetery authority; and
- (c) a private cemetery controller; and
- (d) a family cemetery controller.

columbarium means a sepulchral vault or other structure with recesses in the walls for the interment of cremated human remains.

compliance notice means the written notice given pursuant to section 31 (Compliance notice) of this local law.

corporation means a corporation as defined in the *Corporations Act 2001* and includes an association as defined in the *Associations Incorporation Act 1981*.

Court means the court of law which has jurisdiction to deal with offences under this local law.

direction means a written or oral direction given by an authorised person pursuant to section 37(1)(b) (Powers of authorised persons) of this local law.

disposal of human remains—

- (a) includes burial (including burial at sea), cremation and placing the human remains in a niche, mausoleum, vault, crypt or memorial garden; and
- (b) includes any lawful act in relation to cremated human remains.

environmental harm has the meaning given in the *Environmental Protection Act 1994*.

environmental nuisance has the meaning given in the *Environmental Protection Act 1994*.

executive officer of a corporation means a person who is concerned with, or takes part in, the corporation's management whether or not the person is a director or the person's position is given the name of executive officer.

exhibit includes in relation to a sign the painting, writing, drawing, depiction, making, erection, affixing, putting up, operation, or transport of a sign.

family of a deceased person includes—

- (a) the brothers and sisters of the deceased person; and
- (b) the ascendants and descendants of the deceased person.

family cemetery means a cemetery established on premises—

- (a) prior to the commencement of this local law; and
- (b) owned by the family of the persons whose human remains are disposed of on the premises.

family cemetery controller means the owner of premises upon which a family cemetery is established.

goods includes an animal, a plant and a vehicle.

human remains means a human being who is deceased and includes part of a human being who is deceased.

interfere includes damage, destruction, tampering, removal, alteration, defacing, disturbance, change or the exhumation of human remains.

land has the meaning given in the *Sustainable Planning Act 2009*.

Local Government Act has the meaning given in the *Local Government Act 2009* and includes approvals granted pursuant to Local Government Acts.

local government area has the meaning given in the *Local Government Act 2009*.

local government cemetery means a cemetery established or administered by the local government or a cemetery authority under this local law.

local government road means—

- (a) a road under the *Local Government Act 2009*; and
- (b) a mall, square, court or other public place under the local government's control that is declared in a subordinate local law to be subject to this local law.

local law includes any subordinate local laws and all approvals granted pursuant to this local law.

memorial means—

- (a) a headstone; and
- (b) an inscribed plaque or commemorative plate; and
- (c) monumental, ornamental or other structures erected at a gravesite; and
- (d) anything else erected or placed in a manner to—
 - (i) mark the resting place; or
 - (ii) commemorate a deceased person.

memorial garden means a garden used for the internment of cremated human remains.

nuisance has the meaning given in *Local Law No. 10 (Public Health) 1999*.

occupier of premises means the person who has the control or management of the premises.

owner of premises means the person for the time being entitled to receive the rent for the premises or would be entitled to receive the rent for it if it were let to a tenant at a rent.

perform work includes take action to comply with a Local Government Act and includes work required to be performed pursuant to a compliance notice, a stop order or a condition of a permit.

permit means a permit which has been granted pursuant to section 25 (Grant of a permit) of this local law which—

- (a) has not expired pursuant to section 26(2) (Term of a permit) of this local law; and
- (b) has not been cancelled pursuant to section 29 (Cancellation of a permit) of this local law.

planning scheme has the meaning given in the *Sustainable Planning Act 2009*.

plant means any tree, bush, scrub, grass, fungi, algae or other thing terrestrial or aquatic including all natural parts of it or things naturally produced of, by or from it.

premises means any land, building or structure and includes any part thereof.

prescribed activity means activity which is prohibited by this local law unless authorised by a permit.

prescribed container means a coffin or other form of container appropriate for the disposal of human remains specified in a subordinate local law.

prescribed criteria means the criteria specified in a subordinate local law with which the undertaking of the prescribed activity must comply.

prescribed disposal criteria means the criteria specified in a subordinate local law with which the disposal of human remains must comply.

prescribed fee means the fee prescribed by the local government.

prescribed form means the form prescribed by the local government.

private cemetery means a cemetery other than a local government cemetery or a family cemetery.

private cemetery controller means the occupier of the premises on which the private cemetery has been established.

prohibited conduct means conduct which in the opinion of the authorised person is likely to give rise to—

- (a) harm to human health or safety or personal injury; or
- (b) property damage or loss of amenity; or
- (c) environmental harm or environmental nuisance; or

- (d) a nuisance; or
- (e) harassment or disturbance of the person; or
- (f) interference with the reasonable use of a cemetery; or
- (g) an interruption or obstruction of the exercise of the powers of the local government or a cemetery authority; or
- (h) offence to a person; or
- (i) an interruption of the exercise of a power under an agreement with a local government or a cemetery authority.

public place means—

- (a) a road; or
- (b) trust land; or
- (c) a reserve; or
- (d) premises of which the local government is the owner or occupier; or
- (e) premises specified in a subordinate local law.

publicise means to draw to the attention of, make known, advertise or promote and **publicises** has the corresponding meaning.

reserve has the meaning given in *Local Law No. 5 (Parks, Jetties and Boat Ramps) 2011*.

resting place means the place of disposal of human remains within a cemetery.

road means a local government road and a State-controlled road.

sign means a device that publicises a matter.

State-controlled road means a State-controlled road under the *Transport Infrastructure Act 1994*.

stop order means the written notice given pursuant to section 32(1) (Stop order) of this local law which has not ceased pursuant to section 32(3) (Stop order) of this local law.

structure has the meaning given in the *Local Government Act 2009* and includes a structure as defined under the *Building Act 1975* and any other thing specified in a subordinate local law.

trust land means land dedicated as a reserve or granted in trust under the *Land Act 1994* and for which the local government is the trustee under the *Land Act 1994*.

undertaker means—

- (a) a person who operates a business of disposing of human remains; and
- (b) the person who actually undertakes the disposal of the human remains.

vehicle has the meaning given in the *Transport Operations (Road Use Management) Act 1995* and includes anything specified as a vehicle in a subordinate local law.

Endnotes

1 Index to Endnotes

- 2 Date to which amendments incorporated
- 3 Key
- 4 Table of reprints
- 5 List of legislation
- 6 List of annotations

2 Date to which amendments incorporated

This reprint includes all amendments that commenced operation on or before the 17 March 2017.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation
amd	= amended
ch	= chapter
def	= definition
div	= division
hdg	= heading
ins	= inserted
om	= omitted
p	= page
pt	= part
renum	= renumbered
rep	= repealed
s	= section
sch	= schedule
sdiv	= subdivision

4 Table of reprints

A reprint is issued upon the commencement of an amending instrument. A reprint is given the date of commencement of the amending instrument.

Table of reprints of this local law

Reprint No.	Amendments included	Reprint date
1	<i>Amending Local Law No. 1 (Miscellaneous Local Laws) 2017</i>	17 March 2017

5 List of legislation

Original Local Law

Local Law No. 14 (Cemeteries) 2011
date of gazettal 16 December 2011

Amending Local Laws

Amending Local Law No. 1 (Miscellaneous Local Laws) 2017
date of gazettal 17 March 2017

Original Subordinate Local Law

Subordinate Local Law No. 14.1 (Cemeteries) 2011
date of public notice 16 December 2011

Amending Subordinate Local Laws

Amending Subordinate Law No. 1 (Miscellaneous Local Laws) 2017
date of public notice 17 March 2017

6 List of annotations

PART 1—PRELIMINARY

SCHEDULE—DICTIONARY

amd def *reserve* Amending Local Law No. 1 (Miscellaneous Local Laws) 2017 s 41