

Interment services levy

Plain Language Explainer for the *Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024*

This document has been prepared by Cemeteries and Crematoria NSW (CCNSW). The purpose of this document is to provide a plain language explanation of the *Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024*.

In this document ‘the Regulation’ means the *Cemeteries and Crematoria Regulation 2022*, while ‘the Amendment’ means the *Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024*.

‘Operators’ means operators of cemeteries and/or crematoria. ‘Facility’ means a particular cemetery or crematorium.

Parts of the Amendment that enact the interment services levy.

[1] Section 3 Definitions

In the Regulation, definitions appear in Section 3. The Amendment removes the existing definitions of three terms from the Regulation (**‘prescribed cemetery operator’**, **‘prescribed interment service’** and **‘prescribed period’**). New definitions for these terms are provided in Section 4 Definitions of the Amendment below.

[2] Part 2

This section of the Regulation described the pre-existing interment services levy that only applied to Crown operators. The Amendment deletes that content and goes on to describe the new interment services levy arrangements as follows.

4 Definitions

These are the new definitions for the terms mentioned in [1] Section 3 Definitions above. **‘Prescribed cemetery operator’**, **‘prescribed interment service’** and **‘prescribed period’** are all more fully explained in the corresponding section below.

4AA Prescribed interment services

Subsection (1) means that operators will usually be charged a levy based on the number of burials (bodily interments), cremations, or ash interments (interment of cremated

remains) they perform. **These are called ‘prescribed interment services’, or just interment services elsewhere in this document.**

Subsection (2) outlines circumstances where operators do not have to pay the levy. If the interment service was for a destitute person, an unviable pregnancy, a stillborn child, or a child under 12, then no levy is payable.

Subsection (3) gives the definition of ‘destitute person’. This refers to a particular NSW Ministry of Health program. Either the police or a public health facility will determine whether the deceased is a destitute person. Usually, the Local Health District will contact an operator to organise the interment service for a destitute person.

4AB Prescribed cemetery operators

This section means that anyone who operates a cemetery and/or crematorium that is performing interment services is liable to pay the levy.

Subsection (2) means that operators who hold (or will hold) a Caretaker licence do not have to pay the levy. This is because these operators are prohibited from providing interment services except in limited circumstances listed on their licence.

4AC Calculation of levy—general

Subsection (1) defines the dollar amount of the levy for each interment service type. The total amount owed each period is the number of each service type conducted during the period multiplied by the corresponding dollar amount. As an equation, this would look like:

$$\text{Total amount owed} = (\text{number of burials} \times \$156) + (\text{number of ash interments} \times \$63) + (\text{number of cremations} \times \$41)$$

Subsection (2) means that CCNSW will calculate the amount owed based on the data operators submit in their annual or quarterly activity report. Operators are already required to report their data either annually or quarterly. If an operator does not submit this information when requested, they can be fined up to \$9,900.

4AD Calculation of levy—failure to report

This section describes how CCNSW will calculate what the operator owes if they do not provide an activity report. CCNSW will either estimate the number and type of services the operator conducted based on the best available information or take an average of the last three financial years and add 10%. It is always better for operators to provide data when requested as CCNSW must use the method that produces the higher amount owed.

If an operator does not report data, CCNSW may make an estimate of their activity and **use that to calculate that operator's levy obligation. If CCNSW** does this it will write to the operator and give them opportunities to provide the correct data.

4AE Period for which levy is payable

This section means that the levy is calculated at the end of each quarter. In practice quarterly payments will only be required from operators who typically perform 1,000 or more interment services in a year.

Operators who typically perform fewer than 1,000 interment services each year can report and pay the levy once for the entire year at the end of the financial year. CCNSW will create a policy to this effect using their power under s4AG(1) of the Act.

It was necessary to draft the Amendment in this way. However, it is not the intention, and it will not be the effect, that smaller operators are required to pay quarterly.

4AF Indexation of levy amounts

This section means that CCNSW can increase the levy amount for each service type in line with inflation. This is consistent with the current provision in the Regulation. Historically CCNSW has not increased the levy every year.

If CCNSW does index the levy it will announce the change before the financial year in which it applies, both on its own website and on the NSW Legislation website, and will inform operators in writing via email.

4AG Waivers and exemptions

This section means that operators that provided 50 or fewer interment services in financial year 2022/23 will not pay a levy on services performed in financial year 2024/25. From financial year 2025/26, these operators will need to pay the levy on any interment services they perform.

This section also gives CCNSW the power to waive, reduce or postpone levies. CCNSW will release a policy by the end of 2024 outlining how this power will be used to address particular cases of hardship.

Parts of the Amendment that enact other amendments to the Regulation

[3] Section 4C Application for licence

[4] Section 4C(2)(c)

The Regulation laid out rules for applications for licences but did not explain the process for amendments to existing licences. The Amendment clarifies that operators can apply to CCNSW to amend their licence, for example to add or remove a facility.

[5] Section 4C(4)(c) and (d) Reduction in license fee

If operators apply to amend their licence, CCNSW can charge less than the licence application fee if it believes a lower amount is more appropriate depending on the work involved. This will often be the case for minor amendments.

[6] Section 4D Grant or refusal of application

This section means that CCNSW might refuse to remove a facility from an operator's licence if removal means that there is no operator responsible for that facility.

[7] Section 4F Authority of licence

These changes clarify that one licence may cover multiple facilities. This is a common occurrence.

[8] Section 4H Conditions of licence

This section means that payment of the interment services levy will be a condition of all licences. Failure to comply with any licence condition carries a maximum civil penalty of \$27,500.

[9] Section 4OA

This section means that CCNSW can amend a licence on its own initiative to correct an **error or make a small change that won't have a significant impact on the operator's rights or liabilities**. Amending a licence will often be more efficient for CCNSW and operators than applying for a new licence to correct an error.

If CCNSW is considering making a change like this, it will write to the operator ahead of time and give them an opportunity to respond.

[10] Section 6A Disclosure of transfer fees

[11] Section 10 Cemetery operator must disclose fees and charges to applicant for interment right

The Regulation already required operators to disclose any fee associated with transferring a *renewable* interment right at the time of application. Price transparency is equally important whether an interment right is renewable or perpetual. The Amendment requires disclosure of transfer fees for all interment rights, not just renewable ones.

[12] Schedule 1

This section makes certain activities that are already offences under the Act penalty notice offences. A penalty notice is an on-the-spot fine. These fines are limited to 10% of the maximum penalty for the offence. The fines range from 2.5 to 10 penalty units (or \$275-\$1,200)

The offences are described in Sections 70, 102, 137, 138 of the Act. They are:

- Disturbing or interrupting any service, procession or cortege without lawful authority
- Interring any human remains without lawful authority
- Obstructing or refusing to provide information to an appointed person inquiring into or auditing a Crown cemetery operator
- Obstructing or refusing to provide information to an authorised officer in the conduct of their duties
- Impersonating an authorised officer

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