

In 1986 the Cemeteries Act was reviewed and on 1 July 1987, a new Cemeteries Act came into effect. It was the first review of the Act since 1897 and, accordingly, there were some significant changes. The biggest change was the legislation regarding the length of the Grant of Right of Burial.

The Grant of Right of Burial

In simple terms, a Grant of Right of Burial, or, Grant, is the tenure agreement over a stated burial plot which confers upon the holder of the Grant, known as the Grantee, the right to conduct burials, inter ashes and erect a monument within the burial plot.

Whether it be the first or a subsequent burial, the Grant held over a nominated burial plot must be current at the time a burial is conducted. Once a Grant expires, official ownership of the plot reverts to the Shire of Esperance as Trustees of the Esperance Cemetery.

The 1986 Review – Changes to Tenure

Under the 1897 Cemeteries Act, Cemetery authorities were able to issue Grants with a tenure period of 25, 50 or 99 years.

Whilst some cemetery authorities issued 99 year Grants, others issued either 25 or 50 year Grants. There was little consistency either throughout the State or within individual cemeteries.

Whilst the decision to modify the tenure of existing Grants was made by Parliament over 25 years ago, the logic of the decision is still pertinent. Of particular concern, many of the longer tenure Grants (50-99 years) were sold at nominal rates. As most cemetery authorities operate upon user pays principles with the revenue raised utilised to fund both maintenance and the development of new burial land, the levying of a nominal fee for such lengthy periods was, quite simple, not sustainable.

Under the revised 1986 Cemeteries Act, the new stipulated tenure of Grants was 25 years with an automatic option for Grant holders to purchase an additional 25 years wither initially or at any time during the first 25 years. The discretion of all cemetery authorities in Western Australia to issue 50 or 99 year Grants was revoked.

Under the 1986 Act, the maximum guaranteed tenure on any given plot is 50 years although this is able to be extended for further 25 year periods at the discretion of the managing cemetery authority.

Extensions can only be in 25 year increments.

So as to set a uniform expiry date for all Grants issued under the 1897 Act and provide Cemetery authorities with the ability to both manage their land holdings and have a known consistency of Grant expiry dates across their cemeteries, Parliament endorsed legislation stipulating that Grants of Rights of Burial issued prior to July 1 1987 that had not expired by July 2 2012 would, collectively, expire on July 2 2012.

Which cemeteries are affected?

The Cemeteries Act 1986 provides the legislative framework of all cemeteries in Western Australia. Some cemeteries are administered by dedicated cemetery administration authorities, with the remainder of cemeteries in Western Australia generally being administered by the local Shire.

Is my Grant affected?

If you have purchased a Grant of Right of Burial from July 2 1987 onwards you are definitely not affected. Your Grant remains valid for the period shown.

Only Grants purchased prior to July 1 1987 are affected.

Given that 25 years have passed since the changes to the Act were implemented, the vast majority of Grants issued prior to 1986 have not expired of their own accord (i.e. the full tenure has already been served) those that haven't expired will expire on July 2 2012.

To find out if your Grant is affected, please contact the Shire of Esperance.

Are refunds being offered for tenure that is being reduced?

Given that many of the original 99 and 50 year Grants were sold for nominal sums, no refunds will be issued for tenure that is to be reduced. In practical terms, many of the Grants were issued prior to the Australian adoption of decimal currency in 1966 making of monies almost impossible to process.

If I can purchase additional tenure do I need to do so?

A Grant must be current if additional interments in the form of burials or ashes placements are to take place at the plot. If monumental work on plot is to be modified, the Grant also needs to be current.

Some families prefer to purchase additional tenure for peace of mind even if they aren't anticipating additional interments or the modification of monumental work.

If your family wishes to secure additional tenure then please contact the Shire of Esperance to discuss the options available to you. Grants can generally only be renewed by the original Grantee.

This Grantee is traditionally the family member who organised the first interment.