

Authorised Version No. 024
Cemeteries and Crematoria Act 2003
No. 80 of 2003

Authorised Version incorporating amendments as at
1 March 2015

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Cemeteries and Crematoria Act 2003
No. 80 of 2003

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1 March 2015

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to provide for the management and operation of cemeteries and crematoria; and
- (b) to repeal the **Cemeteries Act 1958**.

2 Commencement

This Act comes into operation on 1 July 2005.

2A Objects

The objects of this Act are to ensure that—

- (a) human remains are treated with dignity and respect;
- (b) all Victorians have access to cemetery and crematoria services;
- (c) cemetery trusts operate effectively and efficiently in accordance with this Act.

S. 2A
inserted by
No. 61/2009
s. 3.

3 Definitions

(1) In this Act—

authorised officer means a person appointed as an authorised officer under Part 13;

bodily remains means a corpse of a human being, including a corpse of a still-born child but does not include—

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- (a) body parts; or
- (b) cremated human remains;

body parts means human tissue or a part of a person where that tissue or part is not part of a corpse and includes foetal remains which are not a still-born child;

building for ceremonies means a building, chapel or other place of worship or commemoration for the use of a particular faith, religion or cultural group;

S. 3(1) def. of *cemetery trust* substituted by No. 61/2009 s. 4(2).

cemetery trust means a cemetery trust established under Part 2 and includes a Class A cemetery trust and a Class B cemetery trust;

S. 3(1) def. of *cemetery trust fee* substituted by No. 61/2009 s. 26(b).

cemetery trust fee means a fee or charge or scale of fees and charges set under section 39 and either—

- (a) approved under section 40; or
- (b) exempt under section 40A from approval under section 40;

cemetery trust rules means rules made by a cemetery trust under section 26;

S. 3(1) def. of *Class A cemetery trust* inserted by No. 61/2009 s. 4(1).

Class A cemetery trust means a cemetery trust established as a Class A cemetery trust under Part 2 or Schedule 4 or converted under Schedule 3;

S. 3(1) def. of *Class B cemetery trust* inserted by No. 61/2009 s. 4(1).

Class B cemetery trust means a cemetery trust other than a Class A cemetery trust;

closed cemetery means a cemetery or part of a cemetery to which an order under section 62 applies;

community advisory committee means an advisory committee established by a Class A cemetery trust under section 18D;

S. 3(1) def. of ***community advisory committee*** inserted by No. 61/2009 s. 4(1).

community advisory committee guidelines means guidelines made by the Secretary under section 18G;

S. 3(1) def. of ***community advisory committee guidelines*** inserted by No. 61/2009 s. 4(1).

conversion order means an order made under section 9A;

S. 3(1) def. of ***conversion order*** inserted by No. 61/2009 s. 4(1).

cremated human remains means—

- (a) a corpse of a human being (including a corpse of a still-born child) which has been cremated in a crematorium;
- (b) body parts which have been cremated in a crematorium;

cremation approval means an approval to cremate bodily remains at a crematorium in a public cemetery granted by the Secretary under section 134;

cremation authorisation means an authorisation to cremate bodily remains granted by a cemetery trust under section 133;

crematorium means a building or structure fitted with appliances for the purposes of cremating bodily remains;

S. 3(1) def. of
*fees and
charges
guidelines*
inserted by
No. 61/2009
s. 26(a).

exhumation licence means a licence to exhume or
remove human remains granted by the
Secretary under Part 12;

fees and charges guidelines means guidelines
made under section 42A;

S. 3(1) def. of
*film friendly
principles*
inserted by
No. 51/2014
s. 9(Sch. 2
item 1.1).

film friendly principles has the same meaning as
in the **Filming Approval Act 2014**;

S. 3(1) def. of
film permit
inserted by
No. 51/2014
s. 9(Sch. 2
item 1.1).

film permit has the same meaning as in the
Filming Approval Act 2014;

S. 3(1) def. of
*governance
committee*
inserted by
No. 61/2009
s. 4(1).

governance committee means a governance
committee established by a Class A cemetery
trust under section 18B;

human remains means—

- (a) bodily remains;
- (b) cremated human remains;
- (c) body parts;

interment means the interring, burial or placing of
human remains in a place of interment and,
in relation to cremated human remains,
includes the interment of those remains
whether or not the remains are enclosed in a
receptacle;

interment approval means an approval granted by the Secretary under Part 8 to inter bodily remains in a place other than a public cemetery;

interment authorisation means an authorisation granted by a cemetery trust under Part 8 to inter bodily remains in a public cemetery for which the cemetery trust is responsible;

lift and re-position procedure means the procedure described in section 90;

listed Class B cemetery trust means a Class B cemetery trust included on a list prepared by the Secretary under section 18K;

S. 3(1) def. of *listed Class B cemetery trust* inserted by No. 61/2009 s. 4(1).

memorial means a monument, tombstone, headstone, ledger, cenotaph, plaque or other method of memorialising a deceased person where that memorial is within a public cemetery;

model rules means model rules made in accordance with section 25;

municipal council means a Council within the meaning of the **Local Government Act 1989**;

place of interment means a grave, vault, mausoleum, niche wall or any other structure or plot used for the interment of human remains;

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 14.1).

public grave means a grave for multiple interments in which more than one person may be interred and in respect of which more than one person may be granted a right of interment that permits one interment only and no re-use of the grave by the holder of the right of interment;

S. 3(1) def. of *registered medical practitioner* substituted by No. 97/2005 s. 182(Sch. 4 item 7), amended by No. 13/2010 s. 51(Sch item 9).

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

right of interment means a right of interment granted by a cemetery trust in accordance with Part 6;

S. 3(1) def. of *Secretary* substituted by No. 29/2010 s. 50(1).

Secretary means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health;

still-born child has the same meaning as it has in the **Births, Deaths and Marriages Registration Act 1996**;

transfer, in relation to a right of interment, means—

- (a) sale; or
- (b) gift; or
- (c) bequest in a will; or
- (d) other assignment.

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(2) If under the **Public Administration Act 2004** the name of the Department of Health is changed, a reference in the definition of *Secretary* in subsection (1) to that Department must, from the date that the name is changed, be treated as a reference to the Department by its new name.

S. 3(2)
amended by
Nos 108/2004
s. 117(1)
(Sch. 3
item 27.1),
29/2010
s. 50(2).

3A Filming Approval Act 2014

This Act is filming approval legislation within the meaning of the **Filming Approval Act 2014**.

S. 3A
inserted by
No. 51/2014
s. 9(Sch. 2
item 1.2).

PART 2—CEMETERIES AND CEMETERY TRUSTS

4 Establishment of public cemeteries

- (1) The Governor in Council, by order published in the Government Gazette, may establish a public cemetery.
- (2) A public cemetery may only be established on Crown land reserved or deemed to be reserved for the purposes of cemeteries and crematoria under section 4 of the **Crown Land (Reserves) Act 1978** or any corresponding previous enactment.
- (3) The Order must specify the land in respect of which the public cemetery is established.
- (4) The Governor in Council, by order published in the Government Gazette, may—
 - (a) change the name of a public cemetery;
 - (b) include additional reserved Crown land in a public cemetery;
 - (c) remove any land that has ceased to be reserved for the purposes of a cemetery from a public cemetery;
 - (d) amend or vary an order made under subsection (1).

S. 4(4)
substituted by
No. 61/2009
s. 27.

5 Establishment of cemetery trusts

- (1) The Governor in Council, by order published in the Government Gazette, may establish a cemetery trust.
- (1A) An order under subsection (1)—
 - (a) must specify whether the cemetery trust is a Class A cemetery trust or a Class B cemetery trust;

S. 5(1A)
inserted by
No. 61/2009
s. 5.

- (b) may make provision for any other matter which, in the opinion of the Governor in Council, is necessary or expedient for the effective operation of that order;
 - (c) may include savings, transitional or consequential provisions to facilitate the operation of the order.
- (2) A cemetery trust—
- (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) may acquire hold and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of each cemetery trust must be kept as directed by the trust.
- (4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

5A Conversion of certain regional cemetery trusts to Class A cemetery trusts

Schedule 3 has effect.

5B Abolition of certain cemetery trusts and establishment of new Class A cemetery trusts

Schedule 4 has effect.

S. 5A
inserted by
No. 61/2009
s. 6.

S. 5B
inserted by
No. 61/2009
s. 7.

S. 6 (Heading)
amended by
No. 61/2009
s. 8(1).

6 Constitution and membership of Class B cemetery trusts

S. 6(1)
amended by
No. 61/2009
s. 8(2).

(1) A Class B cemetery trust consists of not less than 3 and not more than 11 members appointed by the Governor in Council on the recommendation of the Minister.

S. 6(2)
amended by
No. 61/2009
s. 8(2).

(2) Despite subsection (1), in the case of a closed cemetery or a historic cemetery park, a Class B cemetery trust which manages that cemetery may consist of one member.

S. 6(3)
amended by
No. 61/2009
s. 8(2).

(3) Schedule 1 has effect with respect to the membership and procedure of a Class B cemetery trust.

S. 6A
inserted by
No. 61/2009
s. 9.

6A Constitution and membership of Class A cemetery trusts

(1) A Class A cemetery trust consists of not less than 6 and not more than 9 members appointed by the Governor in Council on the recommendation of the Minister.

(2) In making a recommendation under subsection (1), the Minister must ensure that any appointment contributes to the Class A cemetery trust collectively having the skills and expertise required to perform its functions.

(3) Schedule 1A has effect with respect to the membership and procedure of a Class A cemetery trust.

S. 6B
inserted by
No. 61/2009
s. 10.

6B Cemetery trusts are Class B cemetery trusts unless order or Act otherwise specifies

On and from the commencement of section 10 of the **Cemeteries and Crematoria Amendment Act 2009**, a cemetery trust in existence at that commencement is taken to be a Class B cemetery

trust unless this Act or any subsequent order made under this Act otherwise specifies.

7 Cemetery trusts do not represent the Crown

A cemetery trust does not represent and is not to be taken to be part of the Crown.

8 Management of public cemeteries

- (1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette—
- (a) may appoint—
 - (i) a cemetery trust to manage one or more public cemeteries;
 - (ii) a municipal council to manage one or more public cemeteries;
 - (b) may cancel any appointment made under paragraph (a);
 - (c) may change the name of a cemetery trust;
 - (d) may abolish a cemetery trust and transfer all its assets and liabilities to another cemetery trust, a municipal council or to another entity, including the State of Victoria;
 - (e) may abolish a cemetery trust.

S. 8(1)
amended by
No. 61/2009
s. 11(1)(a).

S. 8(1)(d)
substituted by
No. 61/2009
s. 11(1)(b).

S. 8(1)(e)
inserted by
No. 61/2009
s. 11(1)(b).

Note

Section 5 provides for the establishment of cemetery trusts.

- (2) An order made under this section—
- (a) may provide for the transfer of—
 - (i) assets and liabilities (whether contingent or otherwise);
 - (ii) duties and obligations in relation to staff;

S. 8(2)(ab)
inserted by
No. 61/2009
s. 11(2).

- (iii) duties and obligations under contracts or other arrangements;
- (iv) records and registers; and
- (ab) may apply to a single cemetery trust or multiple cemetery trusts; and

S. 8(2)(ac)
inserted by
No. 61/2009
s. 11(2).

- (ac) may provide for—
 - (i) the appointment of new members to a cemetery trust;
 - (ii) the removal of members from a cemetery trust; and
 - (b) may make provision for any other matter which, in the opinion of the Governor in Council, is necessary or expedient for the effective operation of that order; and
 - (c) may include savings, transitional or consequential provisions to facilitate the operation of the order.
- (3) If the Governor in Council makes an order under this section, the order takes effect—
- (a) on the date the order is published in the Government Gazette; or
 - (b) if a later date is specified in the order, on that later date.

9 Effect of order abolishing cemetery trust

On the abolition of a cemetery trust by order under section 8, subject to that order—

S. 9(a)
amended by
No. 61/2009
s. 12(a).

- (a) the cemetery trust is abolished and its members go out of office; and

(b) in the case of an order under section 8(1)(d), the cemetery trust, municipal council or other person or body to which the abolished cemetery trust's assets and liabilities are transferred becomes the successor in law to the abolished cemetery trust; and

S. 9(b)
amended by
No. 61/2009
s. 12(b).

(c) in the case of an order under section 8(1)(d), unless a contrary intention appears, any reference to the abolished cemetery trust in any Act, subordinate instrument, certificate of title, agreement or other document is to be construed as a reference to the cemetery trust, municipal council or other person or body to which the abolished cemetery trust's assets and liabilities were transferred.

S. 9(c)
amended by
No. 61/2009
s. 12(c).

9A Conversion order—Class A cemetery trust or Class B cemetery trust

S. 9A
inserted by
No. 61/2009
s. 13.

- (1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may convert—
- (a) a Class A cemetery trust to a Class B cemetery trust;
 - (b) a Class B cemetery trust to a Class A cemetery trust.
- (2) The Minister must not recommend the making of a conversion order unless satisfied that the order is in the public interest having regard to—
- (a) the objects of this Act;
 - (b) the size or scale of the operations of the cemetery trust;
 - (c) the services provided, or to be provided, by the cemetery trust;
 - (d) the communities served, or to be served, by the cemetery trust;

- (e) any other matters the Minister considers relevant.
- (3) A conversion order—
- (a) may apply to a single cemetery trust or multiple cemetery trusts;
 - (b) may change the name of a cemetery trust;
 - (c) may provide for—
 - (i) the appointment of new members to a cemetery trust;
 - (ii) the removal of members from a cemetery trust;
 - (d) may provide for the transfer of—
 - (i) assets and liabilities (whether contingent or otherwise);
 - (ii) duties and obligations in relation to staff;
 - (iii) duties and obligations under contracts or other arrangements;
 - (iv) records and registers;
 - (e) may make provision for any other matter which, in the opinion of the Governor in Council, is necessary or expedient for the effective operation of the order;
 - (f) may include savings, transitional or consequential provisions to facilitate the operation of the order.
- (4) A conversion order takes effect—
- (a) on the date the order is published in the Government Gazette; or
 - (b) if a later date is specified in the order, on that later date.

10 Appointment of an administrator

- (1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may appoint an administrator to manage a public cemetery.
- (2) The Minister may only make a recommendation referred to in subsection (1) in respect of a public cemetery managed by a Class B cemetery trust if, in his or her opinion—
 - (a) the public cemetery is being inefficiently or incompetently managed; or
 - (b) the appointment is necessary to protect the interests of the public; or
 - (c) the Class B cemetery trust has failed to comply with a direction under section 18 or 50 and that failure justifies the appointment of an administrator; or
 - (d) after an audit under section 50 or an audit or investigation under section 51 has been conducted into the Class B cemetery trust, the outcome of that audit or investigation justifies the appointment of an administrator.
- (2A) The Minister may only make a recommendation referred to in subsection (1) in respect of a public cemetery managed by a Class A cemetery trust if, in his or her opinion—
 - (a) the public cemetery is being inefficiently or incompetently managed; or
 - (b) the appointment is necessary to protect the interests of the public; or
 - (c) the Class A cemetery trust has failed significantly to meet its outcomes as specified in its annual plan; or

S. 10(2)
substituted by
No. 61/2009
s. 14.

S. 10(2A)
inserted by
No. 61/2009
s. 14.

- (d) the Class A cemetery trust has failed to comply with a direction under section 18 and that failure justifies the appointment of an administrator; or
 - (e) after an audit or an investigation has been conducted under section 51 into the Class A cemetery trust, the outcome of that audit or investigation justifies the appointment of an administrator.
- (3) On the appointment of an administrator—
- (a) the members of the cemetery trust of the public cemetery cease to hold office; and
 - (b) the administrator acquires all the functions, powers, immunities and duties of the members of the cemetery trust.
- (4) The Governor in Council, by order published in the Government Gazette, may replace an administrator—
- (a) with another administrator; or
 - (b) by declaring that the administration is to end and by appointing members to the cemetery trust in accordance with section 6.
- (5) If the Governor in Council makes an order under subsection (4), the administrator who is being replaced ceases to hold office—
- (a) on the date the order is published in the Government Gazette; or
 - (b) if a later date is specified in the order, on that later date.

11 Membership of cemetery trust not office of profit

S. 11
amended by
No. 61/2009
s. 15.

A member of a Class B cemetery trust is not to be taken to hold an office or place of profit under the Crown which would—

- (a) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or
- (b) make void the member's election to the Legislative Council or the Legislative Assembly; or
- (c) prevent the member continuing to be a member of the Legislative Council or the Legislative Assembly; or
- (d) subject the member of the Legislative Council or the Legislative Assembly to liability to a penalty under the **Constitution Act 1975**.

12 Functions of Class B cemetery trusts

S. 12
(Heading)
amended by
No. 61/2009
s. 16(1).

(1) The functions of a Class B cemetery trust are—

S. 12(1)
amended by
No. 61/2009
s. 16(2).

- (a) to properly and efficiently manage and maintain each public cemetery for which it is responsible; and
- (b) to carry out any other function conferred on a Class B cemetery trust by or under this Act or any other Act.

S. 12(1)(b)
amended by
No. 61/2009
s. 16(2).

(2) In exercising its functions, a Class B cemetery trust must have regard to—

S. 12(2)
amended by
No. 61/2009
s. 16(2).

- (a) its obligations in relation to funding of the perpetual maintenance of the public cemetery for which it is responsible; and

- (b) the cultural and religious values of the community; and
- (c) the heritage values (if any) of the public cemetery for which it is responsible.

S. 12A
inserted by
No. 61/2009
s. 17.

12A Functions of Class A cemetery trusts

- (1) The functions of a Class A cemetery trust are—
 - (a) to properly and efficiently manage and maintain each public cemetery for which it is responsible;
 - (b) to develop, in accordance with this Act, annual plans and strategic plans for the operation of the trust and to monitor compliance with those plans;
 - (c) to develop annual business plans, strategies and budgets to ensure the efficient and accountable provision of services under the Act and the long term viability of the cemetery trust;
 - (d) to establish and maintain effective systems to ensure that—
 - (i) the services provided by the cemetery trust meet the needs of the communities which it serves; and
 - (ii) the views of those communities are taken into account;
 - (e) to oversee the organisational structure of the cemetery trust;
 - (f) to employ a chief executive officer (by whatever title called) for the effective operation and management of the cemetery trust and each public cemetery for which it is responsible;
 - (g) to monitor the performance of the chief executive officer;

- (h) to ensure there are systems in place to enable effective and accountable risk management, financial management and records management of the cemetery trust;
- (i) to provide leadership, assistance and advice as requested to listed Class B cemetery trusts;
- (j) to establish committees in accordance with the Act and ensure those committees operate effectively;
- (k) to ensure the Secretary is informed as soon as practicable of—
 - (i) any significant issues of public concern in relation to the cemetery trust, cemetery or crematoria services provided by that cemetery trust or the public cemeteries for which that cemetery trust is responsible; or
 - (ii) any significant risks that affect, or may affect, the cemetery trust or cemetery or crematoria services provided by that cemetery trust or the public cemeteries for which that cemetery trust is responsible;
- (l) to develop or adopt a code of conduct for members of the cemetery trust and for staff of the trust;
- (m) to ensure members of the cemetery trust receive adequate training to enable them to meet their obligations as members of the cemetery trust;
- (n) to carry out any other function conferred on a Class A cemetery trust by or under this Act or any other Act.

- (2) In exercising its functions, a Class A cemetery trust must have regard to—
- (a) its obligations in relation to funding of the perpetual maintenance of the public cemetery for which it is responsible; and
 - (b) the cultural values and religious values (if any) of the community; and
 - (c) the heritage values (if any) of the public cemetery for which it is responsible; and
 - (d) the need to ensure that it uses its resources in an effective and efficient manner; and
 - (e) the need to ensure that public resources across the cemeteries and crematoria sector are used effectively and efficiently.

S. 12B
inserted by
No. 61/2009
s. 17.

12B Application of Public Administration Act 2004— converted cemetery trusts

Without limiting the operation of Schedule 1A, the **Public Administration Act 2004** applies to a cemetery trust (whenever established) that is converted under this Act to a Class A cemetery trust and for that purpose, that Class A cemetery trust is a public entity, but not a small entity, within the meaning of that Act.

13 General powers of cemetery trusts

A cemetery trust may do anything necessary or convenient to enable it to carry out its functions.

14 Powers in respect of more than one cemetery

If a cemetery trust is responsible for the management of more than one public cemetery, the cemetery trust may manage all the cemeteries as if they were one cemetery.

15 Power to delegate

- (1) Subject to subsection (2), a cemetery trust may delegate to a member of the trust, the secretary of the trust (by whatever title called) or any other employee of the trust its powers or functions under this Act other than—
 - (a) a power under section 26 (to make cemetery trust rules); or
 - (b) a power under Division 2 of Part 3 (powers in respect of land); or
 - (c) a power under section 21 (power to establish crematoria); or
 - (d) a power under section 22 (power to establish mausolea facilities); or
 - (e) a power under section 39 (to fix fees or charges); or
 - (f) a power under section 45 or 46 (borrowing and investment powers); or
 - (g) this power of delegation.
- (2) A cemetery trust may delegate its power or function to approve an application for a lift and re-position procedure to—
 - (a) a member of the trust; or
 - (b) a person approved by the Secretary for the purposes of this section.
- (3) A delegation under this section must be in writing.
- (4) A cemetery trust must keep—
 - (a) a copy of any delegation of a power or function under this section; and
 - (b) a record of all the delegations it has made under this section.

16 Immunity of members of cemetery trust

- (1) A member of a cemetery trust is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the exercise of a power or the carrying out of a function under this Act or the regulations; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the carrying out of a function under this Act or the regulations.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a member of the cemetery trust attaches instead to the cemetery trust.

17 Staff and other assistance

- (1) A cemetery trust may employ any persons it considers necessary for the purposes of carrying out its functions.
- (2) A cemetery trust may engage any professional, technical and other assistance it considers necessary for the purposes of carrying out its functions.
- (3) The terms and conditions of employment or engagement are as determined by the cemetery trust, subject to any guidelines or directions of the Secretary notified to the cemetery trust.

S. 17(3)
inserted by
No. 61/2009
s. 18.

18 Secretary may give directions to cemetery trusts

- (1) The Secretary may give directions to a cemetery trust with respect to—
 - (a) the manner in which the cemetery trust is to manage and maintain any public cemetery for which it is responsible; and

- (ab) the management, operation or governance of the cemetery trust in accordance with this Act; and **S. 18(1)(ab) inserted by No. 61/2009 s. 19(1).**
- (ac) any matter arising as a result of an audit under section 50 or an audit or investigation under section 51; and **S. 18(1)(ac) inserted by No. 61/2009 s. 19(1).**
- (b) the records to be kept by the cemetery trust; and
- (c) the expenditure of funds of the cemetery trust; and
- (d) the carrying out of any other function or the exercise of any other power of the cemetery trust under—
- (i) this Act or any other Act; or
 - (ii) the regulations made under this Act (including the model rules) or regulations made under any other Act; or
 - (iii) cemetery trust rules.
- (2) A direction given under this section—
- (a) must be in writing; and
 - (b) may apply to—
 - (i) an individual cemetery trust; or
 - (ii) a class of cemetery trusts; or
 - (iii) all cemetery trusts.
- (3) A cemetery trust must comply with a direction applying to it under this section.
- (4) A direction given under this section must not— **S. 18(4) inserted by No. 61/2009 s. 19(2).**
- (a) refer to the cemetery services or crematoria services provided, or proposed to be provided, by a cemetery trust to a particular person; or

- (b) refer to a decision made under the Act by a cemetery trust in relation to a particular person; or
- (c) refer to a decision by a cemetery trust to employ or engage a particular person; or
- (d) require the supply of goods or services to a cemetery trust by any particular person or other entity unless the supply is in accordance with a tender process.

S. 18A
inserted by
No. 61/2009
s. 20.

18A Secretary to develop policies and plans for cemetery and crematoria sector

- (1) For the purposes of long term planning, the Secretary, from time to time, may cause to be developed and prepared policies and plans in relation to the provision of cemetery services and crematoria services.
 - (2) Policies and plans under subsection (1) may—
 - (a) apply on a Statewide, regional or local basis; and
 - (b) apply to—
 - (i) Class A cemetery trusts; or
 - (ii) Class B cemetery trusts; or
 - (iii) both Class A cemetery trusts and Class B cemetery trusts.
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**PART 2A—ADDITIONAL REQUIREMENTS FOR CLASS A
CEMETERY TRUSTS**

Pt 2A
(Heading and
ss 18B–18Q)
inserted by
No. 61/2009
s. 21.

**18B Establishment and functions of governance
committees**

S. 18B
inserted by
No. 61/2009
s. 21.

- (1) A Class A cemetery trust—
 - (a) must establish—
 - (i) a finance committee; and
 - (ii) an audit and risk committee; and
 - (b) may establish any other governance committee as it determines from time to time.
- (2) A Class A cemetery trust must establish the governance committees referred to in subsection (1)(a) within 12 months of the Class A cemetery trust becoming a Class A cemetery trust.
- (3) A governance committee—
 - (a) must consider any matters that are referred to it by the Class A cemetery trust; and
 - (b) may investigate and make any inquiries about any matter referred to it by the Class A cemetery trust; and
 - (c) must report back to the Class A cemetery trust as required by the cemetery trust; and
 - (d) must carry out any other functions conferred on a governance committee—
 - (i) under this Act or any other Act; or
 - (ii) by the Class A cemetery trust.

- (4) Subsection (1)(a)(ii) does not apply to a Class A cemetery trust to which an exemption under the **Financial Management Act 1994** with respect to governance committees applies.

S. 18C
inserted by
No. 61/2009
s. 21.

18C Membership and procedure

- (1) The membership of any governance committee is to be determined by the Class A cemetery trust.
- (2) Subject to this Act or any other Act which imposes requirements in relation to governance committees, and except as otherwise determined by the Class A cemetery trust, the procedure of any governance committee is to be determined by the committee.

Note

There may be requirements under the **Financial Management Act 1994** and other legislation.

S. 18D
inserted by
No. 61/2009
s. 21.

18D Community advisory committees

- (1) For the purpose of liaising with communities to which a Class A cemetery trust provides cemetery or crematoria services, a Class A cemetery trust—
- (a) must appoint one community advisory committee; and
 - (b) may appoint any additional community advisory committees it considers appropriate.
- (2) A Class A cemetery trust must establish a community advisory committee referred to in subsection (1)(a) within 12 months of the Class A cemetery trust becoming a Class A cemetery trust.
- (3) A Class A cemetery trust must include in its report of operations under Part 7 of the **Financial Management Act 1994** a report on the activities of its community advisory committees.

18E Functions of community advisory committee

The functions of a community advisory committee are—

- (a) to consider any matters that are referred to it by the Class A cemetery trust which established it;
- (b) to report to the Class A cemetery trust on those matters;
- (c) to raise with the Class A cemetery trust any issues of concern or matters of interest to the community regarding the cemetery or crematoria services provided by the Class A cemetery trust;
- (d) to carry out any other functions conferred on it—
 - (i) under this Act; or
 - (ii) by the community advisory committee guidelines; or
 - (iii) by the Class A cemetery trust.

S. 18E
inserted by
No. 61/2009
s. 21.

18F Membership and procedure of community advisory committees

- (1) A community advisory committee consists of the persons appointed by the Class A cemetery trust, having regard to the community advisory committee guidelines.
- (2) In appointing a person to a community advisory committee, a Class A cemetery trust must give preference to a person who is not a funeral director or a stonemason or the holder of a similar position.

S. 18F
inserted by
No. 61/2009
s. 21.

- (3) A community advisory committee may regulate its own proceedings subject to—
 - (a) this Act; and
 - (b) any directions of the Class A cemetery trust which established the community advisory committee; and
 - (c) the community advisory committee guidelines.

S. 18G
inserted by
No. 61/2009
s. 21.

18G Community advisory committee guidelines

- (1) The Secretary must make guidelines for or with respect to community advisory committees, including but not limited to—
 - (a) the appointment of members of community advisory committees;
 - (b) the composition, roles and functions of community advisory committees;
 - (c) the procedure of community advisory committees;
 - (d) any other matter relating to the operation of community advisory committees.
- (2) The Secretary must cause the community advisory committee guidelines—
 - (a) to be provided to each Class A cemetery trust; and
 - (b) to be published on the Internet.
- (3) The community advisory committee guidelines take effect on the date specified in the guidelines.

S. 18H
inserted by
No. 61/2009
s. 21.

18H Annual meeting

- (1) A Class A cemetery trust must hold an annual meeting before 30 December in each calendar year.
- (2) An annual meeting is to be open to the public.

- (3) At an annual meeting, a Class A cemetery trust must—
- (a) report to the public on the operation of that cemetery trust for the preceding financial year; and
 - (b) make the cemetery trust's most recent annual report available; and
 - (c) report to the public on the accounts of the cemetery trust; and
 - (d) report to the public on the activities of any community advisory committee of the cemetery trust.

18I Notice of annual meeting

- (1) A reasonable time before the date of the annual meeting of a Class A cemetery trust, the cemetery trust must publish a public notice in a newspaper circulating in the relevant area of the holding of the annual meeting of that Class A cemetery trust.
- (2) A public notice published under subsection (1) must state—
- (a) the time, date and place of the annual meeting of the Class A cemetery trust; and
 - (b) that the annual meeting is open to the public.

S. 18I
inserted by
No. 61/2009
s. 21.

18J Leadership role for Class B cemetery trusts

- (1) A Class A cemetery trust must provide leadership, assistance and advice in relation to operational and governance matters relating to cemeteries, as requested, to a listed Class B cemetery trust to which the Class A cemetery trust has been allocated.
- (2) Without limiting the matters on which a Class A cemetery trust may provide advice, a Class A cemetery trust may provide a listed Class B

S. 18J
inserted by
No. 61/2009
s. 21.

cemetery trust with assistance and advice about the following—

- (a) record keeping systems suited to the requirements of cemetery trusts;
- (b) standard form documentation suitable for cemetery trust purposes;

Example

Standard form contracts of sale for graves and other places of interment, including niches for cremated remains.

- (c) tendering and contracting processes and requirements.

S. 18K
inserted by
No. 61/2009
s. 21.

18K Listed Class B cemetery trusts

- (1) The Secretary may prepare a list of Class B cemetery trusts which are eligible to receive leadership, assistance and advice from Class A cemetery trusts.
- (2) The Secretary—
 - (a) must specify in the list prepared under subsection (1) which Class A cemetery trust has the leadership, assistance and advice role in relation to which Class B cemetery trust;
 - (b) may amend the list as the Secretary considers appropriate by—
 - (i) adding, varying or deleting names of cemetery trusts from the list; or
 - (ii) allocating different Class B cemetery trusts to different Class A cemetery trusts.
- (3) The Secretary must cause the list prepared under subsection (1)—
 - (a) to be provided to each Class A cemetery trust; and

(b) to be published on the Internet.

(4) The list prepared under subsection (1) takes effect on the date specified in the list.

18L Chief executive officer

S. 18L
inserted by
No. 61/2009
s. 21.

(1) A Class A cemetery trust must employ a person as the chief executive officer (by whatever title called) of the Class A cemetery trust.

(2) The chief executive officer holds office—

(a) for the period determined by the Class A cemetery trust; and

(b) subject to subsection (3), on the terms and conditions, including remuneration, determined by the Class A cemetery trust.

(3) The Secretary must approve the terms and conditions, including remuneration, of the chief executive officer of a Class A cemetery trust before a person is employed as chief executive officer.

18M Chief executive officer's functions

S. 18M
inserted by
No. 61/2009
s. 21.

(1) The chief executive officer of a Class A cemetery trust must—

(a) prepare material for the consideration and approval of the cemetery trust, including—

(i) draft annual plans;

(ii) draft strategic plans;

(iii) draft business plans and strategies;

(iv) budgets;

(b) manage the cemetery trust in accordance with any annual plans, strategic plans, business plans and strategies and budgets approved by the cemetery trust;

- (c) provide the Class A cemetery trust with relevant and timely information to enable the cemetery trust to fulfil its functions and objectives efficiently and effectively;
 - (d) ensure the Class A cemetery trust's decisions are implemented efficiently and effectively;
 - (e) inform the Class A cemetery trust of—
 - (i) any significant issues of public concern in relation to the cemetery trust, cemetery or crematoria services provided by that cemetery trust or the public cemeteries for which that cemetery trust is responsible; or
 - (ii) any significant risks that affect, or may affect, the cemetery trust, cemetery or crematoria services provided by that cemetery trust or the public cemeteries for which that cemetery trust is responsible;
 - (f) ensure that the resources of the Class A cemetery trust are used effectively and efficiently.
- (2) In the exercise of his or her functions, the chief executive officer is subject to the direction of the Class A cemetery trust.

S. 18N
inserted by
No. 61/2009
s. 21.

18N Annual plans

- (1) A Class A cemetery trust must prepare an annual plan for each financial year that specifies—
- (a) the objectives, priorities and key performance outcomes to be met by the Class A cemetery trust during the relevant year; and

- (b) the performance indicators or other measures against which the Class A cemetery trust's performance is to be assessed and monitored; and
 - (c) how and when the Class A cemetery trust is to report on its performance in relation to the specified objectives, priorities and key performance outcomes; and
 - (d) any other matters agreed to by the Minister and the Class A cemetery from time to time.
- (2) An annual plan must be consistent with—
- (a) the strategic plan of the Class A cemetery trust; and
 - (b) the guidelines made by the Secretary under section 18P, if any.
- (3) A Class A cemetery trust must give a copy of the proposed annual plan to the Secretary on or before 30 September each year for the Secretary's approval.
- (4) On the submission of a proposed annual plan under subsection (3), the Secretary may—
- (a) approve the annual plan; or
 - (b) refer the annual plan back to the cemetery trust for amendment in accordance with any comments or directions the Secretary may give.
- (5) If the Secretary refers an annual plan back to a Class A cemetery trust under subsection (4)(b), the Class A cemetery trust must—
- (a) make the amendments required by the Secretary; and

- (b) deliver the completed annual plan to the Secretary within 3 months after it was submitted to the Secretary under subsection (3).
- (6) On receipt of a completed annual plan under subsection (5)(b), the Secretary—
 - (a) may approve the annual plan; or
 - (b) if the Secretary requires further amendments—
 - (i) may refer the annual plan back to the Class A cemetery trust; and
 - (ii) this section applies to that second referral and any subsequent referral, with any necessary modifications.
- (7) A Class A cemetery trust must ensure that an approved annual plan for that cemetery trust is available to members of the public on request.

S. 180
inserted by
No. 61/2009
s. 21.

180 Strategic plans

- (1) A Class A cemetery trust must—
 - (a) prepare a strategic plan for the management and operation of the cemetery trust and the public cemeteries for which it is responsible; and
 - (b) submit that strategic plan to the Secretary for approval.
- (2) A strategic plan developed by a Class A cemetery trust must be prepared—
 - (a) at the direction of the Secretary; and
 - (b) at the time or times determined by the Secretary; and
 - (c) in accordance with any guidelines prepared by the Secretary under section 18P.

- (3) The Secretary may—
 - (a) approve a strategic plan; or
 - (b) approve a strategic plan with amendments;
or
 - (c) refuse to approve a strategic plan.
- (4) A Class A cemetery trust must advise the Secretary if it wishes to exercise its functions in a manner inconsistent with its approved strategic plan.
- (5) A Class A cemetery trust must ensure that an approved strategic plan for that cemetery trust is available to members of the public on request.

18P Annual plan and strategic plan guidelines

S. 18P
inserted by
No. 61/2009
s. 21.

- (1) The Secretary may make guidelines for or with respect to—
 - (a) the content of annual plans;
 - (b) the content and timing of strategic plans for Class A cemetery trusts;
 - (c) any other matters relating to annual plans or strategic plans.
- (2) The Secretary must cause the annual plan and strategic plan guidelines—
 - (a) to be provided to each Class A cemetery trust; and
 - (b) to be published on the Internet.
- (3) The annual plan and strategic plan guidelines take effect on the date specified in the guidelines.

18Q Payment of levy

S. 18Q
inserted by
No. 61/2009
s. 21.

- (1) For the purposes of assisting in defraying the costs of administering this Act, making improvements in cemetery trust governance and administration and the provision of services to the community,

each Class A cemetery trust must pay an annual levy on its gross earnings as reported in the annual financial statements for that Class A cemetery trust for the previous financial year.

- (2) The annual levy payable under subsection (1) is—
 - (a) 3 per cent; or
 - (b) if any other amount is fixed for the purposes of this section by the Minister by notice published in the Government Gazette, that amount.
- (3) An amount fixed under subsection (2)(b) must not exceed 5 per cent.
- (4) The Minister must give each Class A cemetery trust a written notice setting out—
 - (a) the amount it is required to pay as levy in respect of a specified period; and
 - (b) the date by which the amount is required to be paid; and
 - (c) how the payment is to be made.
- (5) The Minister must ensure that all amounts paid as levy are paid into the Consolidated Fund.
- (6) The Minister must cause the following information to be included in the annual report of operations for the Department of Health under Part 7 of the **Financial Management Act 1994** for each financial year—
 - (a) the total amount paid as levy in that financial year;
 - (b) the total amount appropriated from the Consolidated Fund for the purposes of this Act for that financial year;

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- (c) a summary of the matters on which money appropriated from the Consolidated Fund for the purposes of this Act was expended in that financial year and of the amounts expended for those matters.
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PART 3—MANAGEMENT OF PUBLIC CEMETERIES

Division 1—General management powers

19 Power to carry out works in public cemetery

In carrying out its functions under this Act, a cemetery trust may carry out or permit the carrying out of works in a public cemetery for which it is responsible.

20 Setting aside areas

- (1) A cemetery trust must set aside areas for the interment of human remains in a public cemetery for which it is responsible.
- (2) A cemetery trust may set aside areas for the purposes of managing a public cemetery for which it is responsible.
- (3) Without limiting subsection (2), a cemetery trust may set aside areas for—
 - (a) interment of human remains of persons of a particular religious denomination or faith or community or other group; and
 - (b) buildings for ceremonies; and
 - (c) crematoria; and
 - (d) places of interment or memorials; and
 - (e) parks, gardens, plantations or other buildings, structures or places that are required for the effective operation or use of the public cemetery.

21 Establishment of a crematorium

- (1) With the prior approval in writing of the Secretary, a cemetery trust may establish and operate a crematorium in a public cemetery for which it is responsible.

- (2) A cemetery trust must not establish and operate a crematorium in any area set aside for interments of persons of a particular religious denomination or faith or community or other group.

22 Establishment of mausolea facilities

With the prior approval in writing of the Secretary, a cemetery trust may establish mausolea facilities in a public cemetery for which it is responsible.

23 Secretary may revoke approvals

- (1) The Secretary may—
- (a) revoke an approval of the establishment and operation of a crematorium under section 21; and
 - (b) direct that cremations be discontinued at a crematorium.
- (2) The Secretary may—
- (a) revoke an approval of the establishment of mausolea facilities under section 22; and
 - (b) direct that interments be discontinued at any mausolea facilities.
- (3) A revocation under this section must be in writing.

24 Interference with distribution of land

- (1) In the management of a public cemetery, a cemetery trust must not interfere directly or indirectly with—
- (a) the original distribution of lands or hereditaments made or intended to be made by the deed of grant or other conveyance to and amongst the separate and distinct religious denominations and communions; or
 - (b) the existing distribution of land to particular community or other groups.

- (2) Despite subsection (1), a cemetery trust may apply to the Secretary for approval to alter the existing distribution of land which has been allocated to—
 - (a) a particular religious denomination or communion; or
 - (b) a particular community or other group.
- (3) If a cemetery trust makes an application under subsection (2), the Secretary must not approve any alteration to an existing distribution of land unless the Secretary is satisfied that—
 - (a) the re-distribution only relates to clearly identifiable parcels of land, not individual places of interment; and
 - (b) that the land to which the application relates does not contain any existing interments or pre-existing rights of interment; and
 - (c) any requirements under the **Heritage Act 1995** and the **Planning and Environment Act 1987** (as the case requires) have been complied with.
- (4) The approval of the Secretary under this section must be given in writing.

25 Model rules

- (1) The regulations may prescribe model rules for or with respect to the general care, protection and management of a public cemetery by a cemetery trust.
- (2) The model rules apply to all public cemeteries unless—
 - (a) a cemetery trust makes cemetery trust rules; and
 - (b) those cemetery trust rules are approved and published in accordance with section 27.

26 Power to make cemetery trust rules

- (1) A cemetery trust may make rules for or with respect to the general care, protection and management of a public cemetery for which the cemetery trust is responsible.
- (2) Without limiting subsection (1), cemetery trust rules may be made for or with respect to—
 - (a) the disposition of human remains;
 - (b) the granting of rights of interment;
 - (c) the protection of buildings, memorials, structures, parks, gardens, plantations and enclosures;
 - (d) regulating the behaviour of persons in the cemetery or crematorium to ensure good order and decency;
 - (e) regulating vehicular traffic in the cemetery;
 - (f) the position and depth of places of interment which are graves;
 - (g) the position of places of interment which are vaults and mausolea facilities, the construction of coffins to be put into vaults and mausolea facilities and the covering of vaults and mausolea facilities to prevent the escape of noxious fumes;
 - (h) conditions to be complied with by persons who conduct interments, cremations or ceremonies in the cemetery;
 - (i) conditions to be complied with by persons who undertake works in the cemetery;
 - (j) the hours of opening or operation of the cemetery or crematorium in the cemetery.

- (3) Cemetery trust rules may impose a penalty not exceeding 20 penalty units for any contravention of the cemetery trust rules.
- (4) Cemetery trust rules—
 - (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may leave any matter or thing to be from time to time determined, approved or dispensed with by the Secretary or a cemetery trust;
 - (d) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method, formulated, issued, prescribed or published by any other person, whether—
 - (i) wholly or partially or as amended by the cemetery trust rules; or
 - (ii) as formulated, issued, prescribed or published at the time the cemetery trust rules are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time.
- (5) Cemetery trust rules may incorporate all or any of the model rules.
- (6) A cemetery trust rule—
 - (a) must not be inconsistent with any Act or statutory rule; and
 - (b) is inoperative to the extent that it is inconsistent with any Act or statutory rule.
- (7) A cemetery trust rule may be inconsistent with the model rules.

27 Approval and publication of cemetery trust rules

- (1) A cemetery trust rule does not come into operation until it has been—
 - (a) approved by the Governor in Council; and
 - (b) published in the Government Gazette.
- (2) A cemetery trust rule is not a statutory rule for the purposes of the **Subordinate Legislation Act 1994**.

28 Governor in Council may revoke cemetery trust rules

- (1) Without limiting section 27 of the **Interpretation of Legislation Act 1984**, the Governor in Council, by order published in the Government Gazette, may revoke cemetery trust rules.
- (2) An order under subsection (1)—
 - (a) may revoke cemetery trust rules in whole or in part; and
 - (b) takes effect on the day it is published in the Government Gazette.
- (3) If cemetery trust rules are wholly revoked by an order under subsection (1), the model rules apply to the public cemetery for which the cemetery trust is responsible and in respect of which the order is made from the date that the order takes effect.

Division 2—Powers in respect of land

29 Effect of Division

This Division has effect despite anything to the contrary in the **Land Act 1958** or the **Crown Land (Reserves) Act 1978**.

30 Cemetery trust may purchase or acquire land for cemetery

- (1) A cemetery trust, with the approval of the Minister, may purchase or acquire land for the purposes of a public cemetery for which it is responsible.
- (2) A cemetery trust cannot purchase or acquire land for any other purpose.
- (3) The Minister must not approve the purchase or acquisition of the land unless he or she is satisfied that it is necessary or desirable that the land be purchased or acquired for the purposes of the public cemetery.
- (4) If the Minister is satisfied that the cemetery trust has sufficient funds available for the purchase or acquisition of land for the purposes of a public cemetery, the Minister may direct the cemetery trust to use its own funds for the purchase or acquisition.

31 Minister may acquire land

The Minister may purchase or compulsorily acquire land for cemeteries and crematoria purposes.

32 Land Acquisition and Compensation Act 1986 applies

- (1) The **Land Acquisition and Compensation Act 1986** applies to the purchase or compulsory acquisition of land under section 31 and for that purpose—
 - (a) the **Cemeteries and Crematoria Act 2003** is the special Act; and
 - (b) the Minister is the Authority.

- (2) Any land compulsorily acquired by the Minister under section 31—
- (a) vests in the Crown under section 24 of the **Land Acquisition and Compensation Act 1986** despite anything to the contrary in that section; and
 - (b) is deemed to be unalienated Crown land.

33 Land purchased or acquired vests in Crown

Subject to section 32(2), on the acquisition of any land purchased or acquired by a cemetery trust or the Minister under this Division, that land vests in the Crown as unalienated Crown land.

34 Land permanently reserved

On the acquisition of any land purchased or acquired by a cemetery trust or the Minister under this Division that land is deemed to be permanently reserved under section 4 of the **Crown Land (Reserves) Act 1978** for cemeteries and crematoria purposes.

35 References to acquiring authority

Section 54 of the **Transfer of Land Act 1958** applies in relation to the purchase or acquisition of land by a cemetery trust or the Minister under this Division as if the Crown were the acquiring authority for the purposes of that section.

36 Power to grant licences over cemetery land

- (1) Subject to this section, a cemetery trust may grant a licence to enter and use any part of the land in a public cemetery for which it is responsible or any building on that land for any purpose approved by the Minister.

- (2) The Minister must not give approval under this section unless he or she is satisfied that the licence is for a purpose that is not detrimental to the purpose for which the land is reserved.
- (3) A licence granted under this section—
 - (a) must be for a period not exceeding 3 years; and
 - (b) is subject to the terms and conditions determined by the cemetery trust and approved by the Minister.

37 Power of trusts to lease cemetery land

- (1) Subject to this section, a cemetery trust may grant a lease of any land in the public cemetery for which it is responsible for any purpose approved by the Minister.
- (2) The Minister must not give approval under this section unless he or she is satisfied that the purpose for which the lease is to be granted is not detrimental to the purpose for which the land is reserved.
- (3) A lease granted under this section—
 - (a) must be for a specified term not exceeding 21 years; and
 - (b) is subject to any covenants, exceptions, reservations, terms and conditions that are determined by the cemetery trust and approved by the Minister.

38 Registrar of Titles to amend Register

The Registrar of Titles must make any recordings in or amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the operation of any provision of this Division.

Division 3—Financial powers

39 Power to fix fees and charges for services

- (1) A cemetery trust, from time to time, may fix fees and charges or a scale of fees and charges for its services.
- (2) In fixing fees and charges under this section, a cemetery trust must have regard to—
 - (a) the costs of operating and managing the public cemetery; and
 - (ab) the fees and charges guidelines, if any; and
 - (b) the need to provide for the maintenance of the public cemetery in perpetuity.
- (3) A cemetery trust may fix different fees and charges for different cases or classes of cases.
- (4) Fees and charges fixed by a cemetery trust under this section must be approved by the Secretary under section 40, unless they are exempt under section 40A.

S. 39(2)(ab)
inserted by
No. 61/2009
s. 28(1).

S. 39(4)
amended by
No. 61/2009
s. 28(2).

40 Secretary to approve fees and charges

- (1) On fixing a fee or charge or scale of fees and charges under section 39, a cemetery trust must notify the Secretary of those fees and charges.
- (2) The Secretary may approve or disapprove a fee or charge or scale of fees and charges fixed under section 39 in whole or in part, unless they are exempt under section 40A.

S. 40(2)
amended by
No. 61/2009
s. 29.

S. 40A
inserted by
No. 61/2009
s. 30.

40A Secretary may exempt certain fees and charges from approval

- (1) The Secretary may exempt specified fees and charges or scales of fees and charges from being approved under section 40 if, in the Secretary's opinion, there is no public benefit in those fees and charges being approved.
- (2) An exemption under subsection (1) may—
 - (a) specify individual fees and charges or scales of fees and charges which do not require approval under section 40;
 - (b) specify fees and charges or scales of fees and charges by class;
 - (c) be of general or limited application;
 - (d) differ according to differences in time, place or circumstance;
 - (e) apply to all cemetery trusts, specified cemetery trusts or specified classes of cemetery trusts;
 - (f) apply to all public cemeteries, specified public cemeteries or specified classes of public cemetery.
- (3) The Secretary—
 - (a) must cause an exemption under subsection (1) to be published in the Government Gazette; and
 - (b) may publish the exemption under subsection (1) on the Internet.
- (4) An exemption under subsection (1) takes effect on the date of publication in the Government Gazette or such later date as is specified in the exemption.

41 Secretary to publish notice of approval

- (1) If the Secretary approves a fee or charge or a scale of fees and charges under section 40, the Secretary must cause a notice of that approval to be published in the Government Gazette.
- (2) A fee or charge or scale of fees and charges does not take effect until notice of the Secretary's approval is published in the Government Gazette.

42 Secretary to publish fees and charges on the Internet

- (1) If the Secretary approves a fee or charge or a scale of fees and charges under section 40, the Secretary must cause those fees and charges to be published on the Internet.
- (2) Nothing in this section prevents a cemetery trust publishing their fees and charges or scale of fees and charges by any other additional means.

42A Fees and charges guidelines

- (1) The Secretary may make guidelines for or with respect to fees and charges fixed by cemetery trusts for services.
- (2) The guidelines may include, but are not limited to, processes and methodologies to be applied by a cemetery trust and matters it must take into account.
- (3) The Secretary—
 - (a) must cause the fees and charges guidelines to be published in the Government Gazette; and
 - (b) may publish the fees and charges guidelines on the Internet.
- (4) The fees and charges guidelines take effect on the date of publication in the Government Gazette or such later date as is specified in the guidelines.

S. 42A
inserted by
No. 61/2009
s. 31.

43 Fees and charges to increase by CPI

- S. 43(1)(b) amended by No. 42/2005 s. 3(1)(a), substituted by Nos 61/2009 s. 32(1)(a), 44/2014 s. 33(Sch. item 6(1)).
- (1) This section only applies—
- (a) to a cemetery trust fee which is \$50.00 or more; and
 - (b) if the CPI for the last reference period in the calendar year preceding the calendar year in which a declaration under subsection (2) is made is more than the CPI for the last reference period in the preceding calendar year.
- S. 43(1A) inserted by No. 61/2009 s. 32(2).
- (1A) This section does not apply to a cemetery trust fee to which an exemption under section 40A applies.
- S. 43(2) amended by No. 61/2009 s. 32(1)(b).
- (2) Not later than 1 March each year, the Secretary must declare that cemetery trust fees to which this section applies are, by force of this section, increased in accordance with this section.
- S. 43(2A) inserted by No. 42/2005 s. 3(2).
- (2A) A declaration under subsection (2) may provide that this section does not apply to—
- (a) a specified cemetery trust or specified cemetery trusts;
 - (b) specified cemetery trust fees of cemetery trusts generally;
 - (c) specified cemetery trust fees of a specified cemetery trust or specified cemetery trusts.
- (3) A declaration under subsection (2)—
- (a) is to be made by notice published in the Government Gazette; and
 - (b) takes effect on 1 July in the year in which it is made; and

(c) applies to cemetery trusts and cemetery trust fees in accordance with the declaration.

S. 43(3)(c) substituted by No. 42/2005 s. 3(1)(b).

(4) A cemetery trust fee to which this section applies is increased by an amount calculated in accordance with the following formula—

S. 43(4) substituted by No. 61/2009 s. 32(3), amended by No. 44/2014 s. 33(Sch. item 6(2)).

$$A \times \frac{B}{C}$$

where—

A is the relevant cemetery trust fee as at 1 February in the calendar year in which the declaration under subsection (2) is made;

B is the CPI for the last reference period in the calendar year preceding the calendar year in which the declaration under subsection (2) is made;

C is the CPI for the last reference period in the calendar year preceding the calendar year referred to in B last published by the Australian Bureau of Statistics before the date on which the declaration under subsection (2) is made.

(5) A cemetery trust fee increased in accordance with this section must be rounded to the nearest 5 dollar unit.

S. 43(5) substituted by No. 61/2009 s. 32(3).

Example

A CPI adjusted fee of \$1923 is rounded to \$1925. A CPI adjusted fee of \$1922 is rounded to \$1920.

* * * * *

S. 43(6) repealed by No. 44/2014 s. 33(Sch. item 6(3)).

(7) In this section—

Australian Statistician has the same meaning as it has in the Australian Bureau of Statistics Act 1975 of the Commonwealth;

S. 43(7) def. of *CPI* amended by No. 61/2009 s. 32(4)(a), substituted by No. 44/2014 s. 33(Sch. item 6(4)).

CPI means the all groups consumer price index for Melbourne in original terms published by the Australian Bureau of Statistics.

S. 43(7) def. of *relevant year* repealed by No. 61/2009 s. 32(4)(b).

* * * * *

44 Waiver or reduction of fees or charges

A cemetery trust must not waive or reduce any fees or charges that would otherwise be payable to it under this Act except on the grounds of extreme hardship or other special circumstance.

45 Investment powers

- (1) Subject to the direction of the Minister, a cemetery trust may invest its money in any manner it sees fit.
- (2) The Minister may give written directions as to how a cemetery trust is to invest its money.
- (3) A direction under subsection (2) may—
 - (a) apply to—
 - (i) an individual cemetery trust; or
 - (ii) a class of cemetery trusts; or
 - (iii) all cemetery trusts.

- (b) provide that any matter may be determined, approved or dispensed with by the Secretary or any employee or employees or class of employees employed under Part 3 of the **Public Administration Act 2004** in the Department of Health.

S. 45(3)(b)
amended by
Nos 108/2004
s. 117(1)
(Sch. 3
item 27.1),
29/2010
s. 50(3).

46 Borrowing powers

- (1) A cemetery trust may borrow money to enable it to perform its functions and exercise its powers under this Act.
- (2) A cemetery trust—
- (a) must not borrow money unless the prior approval of the Treasurer has been obtained; and
- (b) must comply with any conditions imposed by the Treasurer in that approval.

47 Payments for private streets

A cemetery trust may pay to a municipal council a contribution towards the cost of the construction and maintenance of any private street adjoining or abutting a cemetery for which the trust is responsible if that street is or was constructed pursuant to the **Local Government Act 1989** or any corresponding previous enactment.

Division 4—Accounts and reports

48 Application of Division

This Division does not apply to—

* * * * *

S. 48(a)
repealed by
No. 61/2009
s. 33.

- (b) a municipal council which is responsible under this Act for the management of a public cemetery.

49 Cemetery trust to keep accounts and records

- (1) A cemetery trust must keep proper accounts and records of its financial affairs.
- (2) In the case of a Class B cemetery trust that is not a cemetery trust to which the **Financial Management Act 1994** applies, the accounts and records required to be kept under subsection (1) must contain the particulars required by the Secretary.
- (3) The financial year of a cemetery trust is the year ending 30 June.

S. 49(2)
amended by
No. 61/2009
s. 34.

50 Auditing of accounts and records

- (1) If directed to do so by the Secretary, a Class B cemetery trust must have its accounts and records audited by a registered company auditor.
- (2) If a Class B cemetery trust does not receive a direction under subsection (1) in respect of a financial year, the cemetery trust must have its accounts and records—
- (a) verified by a statutory declaration—
- (i) by at least 3 members of the cemetery trust; or
- (ii) if there are less than 3 members of the cemetery trust, by all members of that trust; or
- (b) audited by a registered company auditor.
- (3) A Class B cemetery trust must comply with a direction given under this section.

S. 50(1)
amended by
No. 61/2009
s. 35(1).

S. 50(2)
amended by
No. 61/2009
s. 35(1).

S. 50(3)
inserted by
No. 61/2009
s. 35(2).

51 Secretary may ask for investigation

If the Secretary believes it is appropriate to do so, the Secretary may request the Auditor-General or a registered company auditor or other appropriate person—

- (a) to audit the accounts and records of a cemetery trust; or
- (b) to conduct an investigation into the financial affairs of a cemetery trust; or
- (c) to conduct a performance audit of a cemetery trust—
 - (i) to determine whether the trust is complying with the Act; or
 - (ii) to investigate any aspect of the trust's governance, management or operations.

S. 51
amended by
No. 61/2009
s. 36(a).

S. 51(b)
amended by
No. 61/2009
s. 36(b).

S. 51(c)
inserted by
No. 61/2009
s. 36(c).

51A Secretary to determine terms of reference and other matters

- (1) Before any audit or investigation is conducted under section 51, the Secretary must—
 - (a) determine the terms of reference of the audit or investigation, including any particular objectives or issues to be addressed;
 - (b) determine the reporting requirements, including when a final report of the audit or investigation is to be given to the Secretary;
 - (c) specify in writing to a person requested to conduct the audit or investigation under section 51—
 - (i) the terms of reference for the audit or investigation; and
 - (ii) the reporting requirements.

S. 51A
inserted by
No. 61/2009
s. 37.

- (2) The Secretary must notify a cemetery trust which is to be audited or investigated under section 51 of—
- (a) the terms of reference for the audit or investigation; and
 - (b) the name of the person requested to conduct the audit or investigation.

S. 51B
inserted by
No. 61/2009
s. 37.

51B Auditor's authority

- (1) The Secretary must issue to a person requested to conduct an audit or investigation under section 51 written evidence of that person's authority to conduct that audit or investigation.
- (2) A person requested by the Secretary to conduct an audit or investigation under section 51 must produce his or her authorisation for inspection if asked to do so during the exercise of a power under this Division.

S. 51C
inserted by
No. 61/2009
s. 37.

51C Powers of auditors

- (1) A person conducting an audit or investigation of a cemetery trust under section 51 may, at any reasonable time, enter any premises of the cemetery trust (other than residential premises) for the purposes of the audit or investigation and may—
- (a) inspect any records of the cemetery trust;
 - (b) copy or make extracts of any relevant records of the cemetery trust;
 - (c) ask questions of any person—
 - (i) employed or engaged by the cemetery trust (whether in a paid or honorary capacity); or
 - (ii) who is a member of the cemetery trust.

- (2) A person referred to in subsection (1)(c) must cooperate with a person conducting an audit or investigation of a cemetery trust under section 51, to the extent that the person is capable of doing so.
- (3) Without limiting subsection (2), a person conducting the audit or investigation who enters any premises of a cemetery trust under this section may direct a person referred to in subsection (1)(c)(i) or (ii) to—
 - (a) produce a document or part of a document that is in the person's possession or control;
 - (b) operate equipment to access information from that equipment;
 - (c) answer any questions put by the person conducting the audit or investigation.

51D Report to Secretary

A person conducting an audit or investigation under section 51 must report to the Secretary in accordance with any requirement under section 51A(1)(b).

S. 51D
inserted by
No. 61/2009
s. 37.

51E Confidentiality requirements

- (1) Except to the extent necessary to perform any official duties or to perform or exercise any power or function under this Act or any other Act, a person who is, or at any time has been, a person conducting an audit or investigation under section 51 must not, either directly or indirectly—
 - (a) make a record of, or divulge or communicate to any person, any information that is, or was acquired by the person by reason of being, or having been, a person conducting an audit or investigation under section 51; or

S. 51E
inserted by
No. 61/2009
s. 37.

- (b) make use of any such information for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 100 penalty units.

- (2) Subsection (1) does not preclude a person from—
 - (a) producing a document to a court in the course of criminal proceedings; or
 - (b) divulging or communicating to a court in the course of any criminal proceedings any matter or thing coming under the notice of the person in the performance of official duties or in the performance or exercise of a power referred to in subsection (1); or
 - (c) producing a document or divulging or communicating information that is expressly authorised or permitted by any Act to be produced, divulged or communicated; or
 - (d) producing a document or divulging or communicating information with the prior consent of—
 - (i) the person to whom it relates; or
 - (ii) if that person has died, with the consent of the senior available next of kin of that person.
- (3) In this section, *court* includes any board, tribunal or person authorised to receive evidence.

52 Report to Secretary on operations and accounts

- (1) A cemetery trust must submit a report in respect of the exercise of its powers and functions under this Act in relation to any public cemetery for which it is responsible to the Secretary for each financial year in respect of which it manages that cemetery.

- (2) A report under subsection (1) must be in a form and contain the particulars required by the Secretary including—
 - (a) particulars of accounts and records kept by the cemetery trust under section 49; and
 - (b) particulars relating to the operation of the public cemetery and any crematorium in the public cemetery for which the cemetery trust is responsible.
- (3) A cemetery trust must submit a report under this section for each financial year to the Secretary on or before 1 September in the following financial year.

52A Class A cemetery trust—operational report

A Class A cemetery trust must include in its report of operations under Part 7 of the **Financial Management Act 1994** particulars relating to the operation of the public cemetery and any crematorium in the public cemetery for which the Class A cemetery trust is responsible.

S. 52A
inserted by
No. 61/2009
s. 38.

Division 5—Management by municipal councils

53 Municipal council may manage public cemetery

Except as otherwise provided in this Act, if a municipal council is responsible under this Act for the management of a public cemetery, this Act applies in respect of that public cemetery and municipal council as if the municipal council were a cemetery trust responsible for the management of that public cemetery.

54 Limits on power to delegate

- (1) Despite anything to the contrary in the **Local Government Act 1989**, a municipal council is not authorised under that Act to delegate a power or function set out in paragraphs (a), (b), (c), (d), (e) or (g) of section 15(1).
- (2) Despite section 15(2), a municipal council is not authorised to delegate its power or function to approve an application for a lift and re-position procedure to any person other than—
 - (a) if a special committee of the kind referred to in section 88 of the **Local Government Act 1989** is established under section 86 of that Act and any functions, duties or powers of a municipal council under this Act have been delegated to that special committee under the **Local Government Act 1989**, the members of that committee; or
 - (b) a person approved by the Secretary for the purposes of this section.

55 Borrowing and investment powers of councils

If a municipal council is responsible under this Act for the management of a public cemetery—

- (a) sections 45 and 46 do not apply; and
- (b) the **Local Government Act 1989** applies in respect of the borrowing and investment powers of that council in the management of the public cemetery.

56 Use of council funds

If a municipal council is responsible under this Act for the management of a public cemetery, the **Local Government Act 1989** applies in respect of funds or money received by that council in the management of the public cemetery.

57 Report to Secretary

- (1) A municipal council which is responsible under this Act for the management of a public cemetery must submit a report in respect of the exercise of its powers and functions under this Act to the Secretary for each financial year in respect of which it manages that cemetery.
- (2) A report under subsection (1) must be in a form and contain the particulars required by the Secretary including—
 - (a) particulars of any accounts and records kept under the **Local Government Act 1989** to the extent that they relate to the exercise of any powers and functions under this Act; and
 - (b) particulars of any audit of those accounts; and
 - (c) particulars relating to the operation of the public cemetery and any crematoria in the public cemetery for which the municipal council is responsible.

58 Secretary may inspect accounts and records

For the purpose of section 140 of the **Local Government Act 1989**, the Secretary or any person authorised by the Secretary is authorised to inspect the accounts and records of a municipal council.

S. 58
amended by
No. 61/2009
s. 43.

PART 4—CEMETERY RECORDS

59 Cemetery trust to keep records

A cemetery trust must ensure that, for each public cemetery for which it is responsible, records containing the prescribed information are kept in respect of—

- (a) interments; and
- (b) places of interment; and
- (c) cremations; and
- (d) rights of interment.

60 Can the public inspect records?

- (1) Subject to this Part, a cemetery trust must make the information in the records required to be kept under this Part available for inspection by any person at the public cemetery for which that cemetery trust is responsible at any reasonable time for historical or research purposes.
- (2) A cemetery trust may charge a fee or fees for the reasonable costs incurred in providing the information sought or copies or extracts of information from the records required to be kept under this Part.

Note

The **Public Records Act 1973** also provides for the keeping and inspection of public records.

61 Records as evidence

- (1) A record required to be kept under this Part is evidence in any proceedings of the interments, places of interment, cremations or rights of interment appearing in that record.

Cemeteries and Crematoria Act 2003
No. 80 of 2003
Part 4—Cemetery records

- (2) A copy or extract from a record kept under this Part by a cemetery trust and sealed by that cemetery trust is evidence in any proceedings of the interments, places of interment, cremations or rights of interment appearing in that copy or extract.
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**PART 5—CLOSURE OF PUBLIC CEMETERIES AND
HISTORIC CEMETERY PARKS**

Division 1—Closure of public cemeteries

62 Order closing public cemetery

The Governor in Council, by order published in the Government Gazette, may close a public cemetery or part of a public cemetery if—

- (a) there has been no interment of human remains at the public cemetery or in that part of the public cemetery for at least 25 years; and
- (b) the cemetery trust responsible for the public cemetery has not granted a right of interment in relation to that cemetery or part of the cemetery for at least 25 years.

63 Effect of order closing public cemetery

- (1) On the making of an order under section 62—
 - (a) the public cemetery or part of the public cemetery to which the order applies is closed; and
 - (b) no further interments are permitted at the closed cemetery, regardless of whether there are any existing rights of interment in relation to the closed cemetery.
- (2) Subject to this Act, the regulations, the model rules or the cemetery trust rules (if any), members of the public may visit a closed cemetery.

64 What happens to rights of interment in a closed cemetery?

- (1) The holder of an unexercised right of interment at a closed cemetery may request—
 - (a) a refund based on the cemetery trust fee payable for the same type of right of interment immediately before the closure of the cemetery, less the relevant cemetery trust fee for administration from the cemetery trust which is responsible for managing the closed cemetery; or
 - (b) the Secretary to direct the cemetery trust which is responsible for managing the closed cemetery to grant the holder a right of interment in another cemetery for which that cemetery trust is responsible either free of charge or at a reduced rate.
- (2) A request under subsection (1) must be made in writing.
- (3) If the Secretary receives a request under subsection (1)(b), the Secretary, in his or her absolute discretion, may direct a cemetery trust to grant to the person making the request a new right of interment in another cemetery for which that cemetery trust is responsible either free of charge or at a reduced rate.
- (4) A cemetery trust must comply with a direction under subsection (3).

64A Order reopening closed cemetery

- (1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may reopen a closed cemetery or part of a closed cemetery.

S. 64A
inserted by
No. 61/2009
s. 39.

- (2) The Minister must not make a recommendation under subsection (1) unless he or she is satisfied that it is in the public interest to reopen the closed cemetery or part of the closed cemetery.
- (3) An order under subsection (1) may be made in respect of—
 - (a) a public cemetery or part of a public cemetery closed under section 62; or
 - (b) a cemetery, burial ground or place of burial discontinued under section 44 of the **Cemeteries Act 1958**, as in force immediately before its repeal or under any corresponding previous enactment.
- (4) An order under subsection (1) may be subject to any conditions that the Governor in Council thinks fit.
- (5) An order under subsection (1) must not be made in respect of a historic cemetery park.

S. 64B
inserted by
No. 61/2009
s. 39.

64B Effect of order reopening a closed cemetery

On the making of an order under section 64A—

- (a) the closed cemetery or closed part of the public cemetery to which the order applies is reopened; and
- (b) the cemetery trust responsible for managing the closed cemetery or closed part of the cemetery becomes the cemetery trust responsible for managing the reopened public cemetery or reopened part of the cemetery; and
- (c) the reopened public cemetery or reopened part of the cemetery is a public cemetery or part of a public cemetery for the purposes of this Act; and

- (d) subject to the order under section 64A, this Act, the regulations, the model rules or the cemetery trust rules (if any), the cemetery trust may permit interments at the reopened public cemetery or reopened part of the public cemetery.

Division 2—Historic cemetery parks

65 Definitions

In this Division—

approval to convert means an approval authorising the conversion of an eligible cemetery to a historic cemetery park given by the Minister under section 67;

eligible cemetery means—

- (a) a closed cemetery; or
- (b) a public cemetery to which an order under section 93 discontinuing the granting of rights of interment applies;

historic cemetery park means an eligible cemetery or part of that cemetery which is converted to parkland, whether or not any of the memorials are removed;

previous holder in relation to a right of interment, means the person who was the holder of the right of interment immediately before it was cancelled under this Division.

66 Application to Minister to approve conversion to a historic cemetery park

- (1) A cemetery trust responsible for the management of an eligible cemetery may apply to the Minister for an approval to convert the cemetery or part of the cemetery to a historic cemetery park.

- (2) An application under subsection (1) must include—
- (a) a plan of the area proposed to be converted; and
 - (b) a conservation management plan of the area proposed to be converted; and
 - (c) details of the proposed conversion; and
 - (d) details of consultation undertaken with relevant agencies, faiths, religions, cultural groups, holders of rights of interment and the public.

67 Minister may approve conversion to historic cemetery park

- (1) The Minister, after considering an application under section 66, may—
- (a) approve the application; and
 - (b) authorise the cemetery trust of the eligible cemetery to convert the cemetery to a historic cemetery park.
- (2) An approval to convert must be in writing.
- (3) An approval to convert may be granted subject to conditions relating to—
- (a) the disposition of any memorials or structures in the eligible cemetery; and
 - (b) the maintenance of the area to be converted; and
 - (c) any matters relating to heritage considerations; and
 - (d) any matters relating to consultation undertaken with relevant agencies, faiths, religions, cultural groups, holders of rights of interment and the public; and

- (e) any other matters the Minister thinks necessary or convenient to provide for in the public interest.
- (4) If an approval to convert has been given in respect of the whole or any part of an eligible cemetery, the cemetery trust responsible for the management of that cemetery must not permit any further interments in the area to which the approval to convert applies.

68 Rights of interment cancelled

On the giving of an approval to convert in respect of an eligible cemetery, any right of interment existing in relation to the area to which the approval to convert applies is cancelled.

69 Cemetery trust to notify holders of rights of interment

As soon as practicable after a cemetery trust is given an approval to convert, the cemetery trust must take all reasonable steps to notify in writing all holders of rights of interment in the area to which the approval to convert applies that—

- (a) the cemetery trust has an approval to convert the eligible cemetery to a historic cemetery park; and
- (b) the holder of the right of interment may—
 - (i) approve the removal of any memorial to which the right of interment applies; and
 - (ii) take the memorial from the cemetery if the holder so wishes; and
- (c) the right of interment has been cancelled.

70 Cemetery trust to prepare plan of existing places of interment

- (1) Before removing any memorials under this Division, a cemetery trust which has been given an approval to convert must—
 - (a) prepare a plan of all the memorials in the area to which the approval to convert applies and which are to be removed; and
 - (b) record any inscriptions on memorials which are to be removed.
- (2) The plans and records made under subsection (1) are to be made available to the public for inspection by the cemetery trust managing the historic cemetery park if the records are kept by that trust.

Note

The **Public Records Act 1973** also provides for the keeping and inspection of public records.

71 Cemetery trust may remove memorials

- (1) A cemetery trust may remove any memorials or other structures in the area to which an approval to convert applies.
- (2) A cemetery trust may dispose of any memorial or other structure removed under subsection (1) as it sees fit and must do so in a respectful and appropriate manner.

72 What happens if a right of interment is cancelled under this Division?

- (1) If an unexercised right of interment is cancelled under this Division, the previous holder of that right of interment may request that the cemetery trust—

- (a) pay to the holder a refund based on the current cemetery trust fee payable for the same type of right of interment, less the relevant cemetery trust fee for administration; or
 - (b) grant a right of interment to an alternative place of interment in a public cemetery for which the cemetery trust is responsible instead of paying the refund.
- (2) Subject to subsection (3), on receiving a request under this section, a cemetery trust must comply with the request.
- (3) If a request is made under subsection (1)(b) and the cemetery trust is not responsible for another public cemetery, the Secretary may direct another cemetery trust to provide a new right of interment in a public cemetery for which that cemetery trust is responsible to the previous holder free of charge or at a reduced fee.
- (4) A request under this section must be made in writing.
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**PART 6—RIGHTS OF INTERMENT IN A PUBLIC
CEMETERY**

Division 1—Rights of interment generally

73 Cemetery trust may grant right of interment

- (1) A cemetery trust may grant to any person a right of interment in a public cemetery for which it is responsible for payment of the relevant cemetery trust fee.
- (2) A right of interment may be granted subject to any conditions that the cemetery trust specifies in the right of interment.

74 How long does a right of interment last?

- (1) Subject to subsection (2), a right of interment is perpetual.
- (2) A right of interment for the interment of cremated human remains is for the period specified at the time it is granted and may be either—
 - (a) perpetual; or
 - (b) for 25 years from the date it is granted unless it is extended in accordance with this Part.

75 What types of rights of interment can be granted?

A cemetery trust may grant the following types of rights of interment in a public cemetery for which it is responsible—

- (a) a right of interment for interring human remains in a particular place of interment;
- (b) a right of interment for interring human remains in a public grave.

76 Right of interment may be allocated or unallocated

- (1) A right of interment may be—
 - (a) an allocated right of interment for a particular place of interment in a public cemetery; or
 - (b) an unallocated right of interment in a public cemetery.
- (2) An unallocated right of interment may be specific to a certain class of places of interment in the public cemetery or to a specific part of the public cemetery to which the right of interment applies.
- (3) If an unallocated right of interment is granted, the cemetery trust must allocate a place of interment of the type (if any) specified in the right of interment at the time of the first exercise of that right of interment.
- (4) On an unallocated right of interment being first exercised, it becomes an allocated right of interment in respect of that place of interment.
- (5) This section does not apply to a right of interment for interring human remains in a public grave.

77 Entitlements of right of interment for interring human remains

- (1) A holder of a right of interment for interring human remains in a particular place of interment—
 - (a) may inter human remains at that place of interment; and
 - (b) may establish or alter a memorial at that place of interment; and
 - (c) if the human remains are cremated human remains in a receptacle, may remove those remains from the place of interment; and

- (d) if the human remains are body parts, may remove those body parts from the place of interment.
- (2) A holder of a right of interment for interring human remains in a public grave—
 - (a) may inter human remains in a public grave in the cemetery; and
 - (b) may place or alter a memorial on the public grave.
- (3) The holder of a right of interment must obtain the approval of the cemetery trust before exercising any of the powers referred to in subsection (1) or (2).
- (4) On the application of a holder of a right of interment to exercise any of the powers referred to in subsection (1)(c) or (d), the cemetery trust may—
 - (a) authorise the exercise of that power; and
 - (b) impose such terms and conditions on the exercise of that power as the cemetery trust thinks fit.

78 Exercising a right of interment

- (1) A right of interment is exercised if, in accordance with this Act—
 - (a) human remains are interred at the place of interment to which the right of interment applies; or
 - (b) the holder of the right of interment creates a memorial at that place of interment.
- (2) If a right of interment is held by more than one person, it may be exercised jointly and severally.

Division 2—Transfer and surrender

79 Can a right of interment be transferred to another person?

- (1) Subject to this Part, a right of interment may be transferred to another person.
- (2) If a person is the sole holder of a right of interment, the person may transfer that right of interment for consideration which does not exceed the current cemetery trust fee payable for the same type of right of interment in the public cemetery for which that cemetery trust is responsible, less the cemetery trust fee for the recording by the cemetery trust of the transfer of that right of interment.

80 Transfer of right of interment must be recorded

- (1) A person to whom a right of interment is transferred must—
 - (a) notify in writing the cemetery trust which is responsible for the public cemetery to which the right of interment applies of that transfer; and
 - (b) pay the relevant cemetery trust fee for the recording by the cemetery trust of the transfer of that right of interment.
- (2) The transfer of a right of interment is not effective and the right of interment cannot be exercised by the new holder of the right of interment until the transfer is recorded by the cemetery trust.

81 Offence to receive certain consideration for right of interment

A person must not receive any consideration for or in connection with the transfer or use of a right of interment except—

- (a) in accordance with section 79(2); or
- (b) as a refund from a cemetery trust under this Act.

Penalty: 240 penalty units or 2 years imprisonment or both.

82 Surrender to cemetery trust of unexercised right of interment by sole holder

- (1) The holder of an unexercised right of interment who is the sole holder of that right of interment may surrender the right of interment to the cemetery trust which granted it.
- (2) On the surrender of a right of interment to a cemetery trust under subsection (1)—
 - (a) the cemetery trust must pay to the holder a refund based on the current cemetery trust fee payable for the same type of right of interment less the relevant cemetery trust fee for administration and any maintenance costs; and
 - (b) the person surrendering the right of interment has no further entitlements or responsibilities under that right of interment.

S. 82(2)(a)
amended by
No. 61/2009
s. 40.

83 Surrender to cemetery trust of exercised right of interment by sole holder

- (1) The holder of an exercised right of interment who is the sole holder of that right of interment may surrender the right of interment to the cemetery trust which granted it.

- (2) On the surrender of a right of interment to a cemetery trust under subsection (1)—
- (a) subject to subsection (2A), the cemetery trust must pay to the holder a refund based on the current cemetery trust fee payable for the same type of right of interment less—
 - (i) the relevant cemetery trust fee for administration and any maintenance costs; and
 - (ii) the restoration costs, if any; and
 - (b) the person surrendering the right of interment has no further entitlements or responsibilities under that right of interment.

S. 83(2)
substituted by
No. 61/2009
s. 41(1).

- (2A) No refund is payable to a person surrendering a right of interment to a cemetery trust under subsection (1) if, at the time of the surrender, human remains are interred at the place of interment to which the surrendered right of interment applied.

S. 83(2A)
inserted by
No. 61/2009
s. 41(1).

- (3) If a right of interment is surrendered to a cemetery trust under this section, the cemetery trust may—
- (a) remove any memorial on the place of interment to which the surrendered right of interment applied; and
 - (b) if there are no human remains interred in the place of interment to which the surrendered right of interment applied, grant a right of interment in respect of the place of interment to which the surrendered right of interment applied—
 - (i) for interring human remains in a public grave; or
 - (ii) for interring human remains in that place of interment.

S. 83(3)(b)
substituted by
No. 61/2009
s. 41(2).

**84 Surrender to cemetery trust of right of interment—
more than one holder**

- (1) The holder of a right of interment who is not the sole holder of that right of interment may surrender that person's entitlement in the right of interment by notifying the cemetery trust in writing.
- (2) On the surrender of an entitlement in a right of interment under subsection (1)—
 - (a) no refund is payable by the cemetery trust to the person surrendering the entitlement in the right of interment; and
 - (b) the person surrendering the entitlement in the right of interment has no further entitlements or responsibilities under that right of interment.

Division 3—Conversion of limited rights of interment

**85 Cemetery trust to offer to convert 25 year limited
right of interment**

- (1) At least 12 months before the expiry of a right of interment for interring cremated human remains for 25 years, the cemetery trust responsible for the public cemetery to which the right of interment applies must take reasonable steps to notify the holder of that right of interment that the right of interment will expire at the end of 25 years after it was granted.
- (2) A notification under subsection (1) must advise the holder of the right of interment that—
 - (a) under section 87, the holder may request the cemetery trust to—
 - (i) extend the right of interment for a further 25 years; or

- (ii) convert the right of interment to a perpetual right of interment; and
- (b) if the right of interment is not extended or converted to a perpetual right of interment, the cemetery trust may—
 - (i) remove interred cremated human remains from their current place of interment; and
 - (ii) dispose of those cremated human remains within the cemetery grounds; and
 - (iii) remove any memorial relating to those cremated human remains.
- (3) A notification under subsection (1) must be in writing.

86 Cemetery trust may remove cremated human remains and memorial

If a cemetery trust has given notification under section 85 and no action has been taken by the holder of the right of interment within the time limits specified by the cemetery trust, the cemetery trust may—

- (a) remove the interred cremated human remains from their current place of interment; and
- (b) dispose of those cremated human remains within the cemetery grounds; and
- (c) remove any memorial relating to those cremated human remains.

87 Conversion or extension of a 25 year limited right of interment

- (1) The holder of a right of interment for interring cremated human remains for 25 years may request the cemetery trust to—

- (a) extend the right of interment for a further 25 years; or
 - (b) convert the right of interment to a perpetual right of interment.
- (2) A request under subsection (1)—
- (a) must be in writing; and
 - (b) may be made at any time before the expiry date of the right of interment; and
 - (c) must be accompanied by the relevant cemetery trust fee.
- (3) On receiving a request under subsection (1), the cemetery trust must—
- (a) extend the right of interment for a further 25 years, if the request is a request referred to in subsection (1)(a); or
 - (b) convert the right of interment to a perpetual right of interment, if the request is a request referred to in subsection (1)(b).
- (4) A right of interment extended or converted under this section applies to the same place of interment as the original right of interment.

Division 4—Lift and re-position procedure

88 Application to carry out lift and re-position procedure

S. 88(1)
amended by
No. 61/2009
s. 42(1).

- (1) For the purposes of the re-use of a place of interment by the holder of a right of interment, the holder of the right of interment, or a person acting on behalf of that holder, may apply to the cemetery trust responsible for the public cemetery to which that right of interment applies for approval to carry out a lift and re-position procedure at the place of interment to which the right of interment applies.

- (2) An application under subsection (1) must—
- (a) be in writing; and
 - (ab) in the case of an application made by a person acting on behalf of a holder of a right of interment, include a written authorisation from that holder for the person to act on the holder's behalf; and
 - (b) be accompanied by the relevant cemetery trust fee.

S. 88(2)(ab)
inserted by
No. 61/2009
s. 42(2).

89 Cemetery trust may approve or refuse application

- (1) On receiving an application under section 88, a cemetery trust, in accordance with this section, may—
- (a) approve the carrying out of a lift and re-position procedure; or
 - (b) refuse to approve the carrying out of a lift and re-position procedure.
- (2) A cemetery trust must not approve the carrying out of a lift and re-position procedure if it considers that the lift and re-position procedure would be inappropriate for any of the following reasons—
- (a) in the case of an interment in the ground, the nature of the soil prevents or hinders the carrying out of a lift and re-position procedure; or
 - (b) a lift and re-position procedure would be impractical or impossible because the place of interment cannot be sufficiently deepened; or
 - (c) the physical state of the human remains in the place of interment; or

- (d) in the case of a mausoleum, the chamber is not able to accommodate additional human remains; or
 - (e) religious, cultural, health or safety considerations.
- (3) If the existing human remains interred in a place of interment are bodily remains, a cemetery trust must not approve the carrying out of a lift and re-position procedure unless those remains have been interred in that place of interment for least 10 years.
- (4) An approval under this section must be in writing.

90 Approval to carry out lift and re-position procedure without exhumation licence

- (1) A cemetery trust which has approved an application for a lift and re-position procedure may authorise a person, without an exhumation licence—
- (a) to open a place of interment; and
 - (b) to lift any existing human remains which are interred in the place of interment; and
 - (c) to deepen or enlarge the place of interment if necessary; and
 - (d) to reposition the existing human remains in the place of interment, whether contained in a receptacle or not, so as to provide space for further interments in that place of interment.
- (2) Without limiting the manner in which a lift and re-position procedure is carried out, for the purposes of subsection (1)(d), a person may remove human remains from any receptacle and place them in another receptacle.

Division 5—Cancellation and discontinuance

91 When can a cemetery trust cancel a right of interment?

- (1) A cemetery trust may cancel a right of interment in a public cemetery for which it is responsible if—
 - (a) the right of interment has never been exercised; and
 - (b) the holder of the right of interment cannot be found after diligent inquiries.
- (2) A cemetery trust must not cancel a right of interment referred to in subsection (1) until the end of at least 25 years after the original grant of the right of interment.
- (3) At least 14 days before cancelling a right of interment, a cemetery trust must publish notice of its intention to do so in a daily or weekly newspaper circulating generally in the area in which the public cemetery to which the right of interment applies is located.

92 What happens if a right of interment is cancelled?

If a cemetery trust cancels a right of interment in accordance with section 91, the cemetery trust, on the request of a person who can establish to the satisfaction of the cemetery trust that he or she was the previous holder of that right of interment, may—

- (a) pay to that person a refund based on the current cemetery trust fee payable for the same type of right of interment less the relevant cemetery trust fee for administration; or

- (b) grant to that person a right of interment in respect of another place of interment at the cemetery to be determined by the cemetery trust on the payment of the relevant cemetery trust fee fixed for the purposes of this paragraph.

93 Order discontinuing granting rights of interment

- (1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may direct a cemetery trust to discontinue the granting of rights of interment in a public cemetery for which the cemetery trust is responsible.
- (2) An order under subsection (1) may—
 - (a) provide for discontinuing the granting of rights of interment in the whole of a public cemetery or specified parts of a public cemetery;
 - (b) be subject to any exceptions, exemptions or qualifications in respect of discontinuing the granting of rights of interment as are specified in the order.

94 Effect of order discontinuing granting rights of interment

On the making of an order under section 93—

- (a) a cemetery trust must not grant any new rights of interment in respect of the area of the public cemetery to which the order applies; and
- (b) no further interments are permitted in the area of the public cemetery to which the order applies, unless the interment is pursuant to—

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- (i) a right of interment which was granted before the making of the order; or
 - (ii) an exception, exemption or qualification specified in the relevant order.
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**PART 7—MEMORIALS, PLACES OF INTERMENT AND
BUILDINGS FOR CEREMONIES**

Division 1—Memorials and places of interment

95 Offence to desecrate memorials

- (1) Except in accordance with this Act, a person must not wilfully break open, damage, desecrate or destroy a memorial.

Penalty: 240 penalty units or 2 years imprisonment or both.

- (2) Nothing in this section prevents a cemetery trust from carrying out any function under this Act.

96 Offence to desecrate places of interment

- (1) Except in accordance with this Act, a person must not wilfully break open, damage, desecrate or destroy a place of interment.

Penalty: 240 penalty units or 2 years imprisonment or both.

- (2) Nothing in this section prevents a cemetery trust from carrying out any function under this Act.

Division 2—Cemetery trust approvals

97 Definition of *place of interment* limited

In this Division and Division 3, *place of interment* does not include a grave or a plot for the interment of human remains unless otherwise stated.

98 Application for establishment or alteration of memorials and places of interment

- (1) A person may apply to the cemetery trust responsible for the management of a public cemetery for approval to establish or alter—
- (a) a memorial; or

- (b) a place of interment in the cemetery.
- (2) An application must be accompanied by—
 - (a) the relevant cemetery trust fee; and
 - (b) a plan or design of the memorial or place of interment proposed to be established or altered; and
 - (c) if the application relates to a memorial or place of interment for which there is a right of interment, the written consent of the holder of the right of interment.

99 Cemetery trust may approve or refuse the application

- (1) After considering an application made under section 98, a cemetery trust—
 - (a) may approve the application; or
 - (b) may refuse the application if it is satisfied that—
 - (i) the memorial or place of interment would be unsafe, dangerous or not of a sufficiently permanent nature; or
 - (ii) the establishment or alteration of the memorial or place of interment would be incompatible with the general nature and standard of surrounding memorials or places of interment or would not be sufficiently in keeping with the nature and character of the public cemetery; or
 - (iii) the establishment or alteration of the memorial or place of interment would not comply with the model rules or the cemetery trust rules (if any); or

- (iv) the establishment or alteration of the memorial or place of interment does not comply with the prescribed requirements; or
 - (c) may refuse the application for any other reason that the cemetery trust thinks fit.
- (2) An approval under this section may be granted subject to—
- (a) a condition that the memorial or place of interment be erected or placed in the position determined by the cemetery trust; and
 - (b) any other terms and conditions which the cemetery trust thinks fit.
- (3) A cemetery trust may cancel an approval under this section if the terms and conditions of the approval have not been complied with.
- (4) A cemetery trust must make a decision on an application made under section 98—
- (a) within 45 days after the receipt of the application, if sufficient information has been provided with the application; or
 - (b) if the cemetery trust has requested further information because sufficient information was not provided with the application, within 45 days after the cemetery trust has received the further information.

100 Cemetery trust may remove memorials or places of interment

- (1) A cemetery trust may require a person to remove or alter a memorial or place of interment in a public cemetery if that person—

- (a) has established or altered, or caused to be established or altered, the memorial or place of interment in the public cemetery without the approval of the cemetery trust under section 99; or
 - (b) has failed to comply with any term or condition to which the approval of the cemetery trust under section 99 was subject.
- (2) If a person to whom subsection (1) applies fails or refuses to remove or alter the memorial or place of interment, the cemetery trust may—
- (a) remove the memorial or place of interment and dispose of it as it sees fit; or
 - (b) remedy the failure to comply.
- (3) A cemetery trust may recover the costs of taking action under subsection (2) from the person referred to in subsection (1) as a debt recoverable in a court of competent jurisdiction.

101 Approval for establishment or alteration of a building for ceremonies

- (1) A person who is a member or representative of any faith, religion or cultural group may apply to the cemetery trust responsible for the management of a public cemetery for approval to establish or alter a building for ceremonies in the public cemetery.
- (2) An application must be accompanied by—
 - (a) the relevant cemetery trust fee; and
 - (b) a plan or design of the building for ceremonies proposed to be established or altered.

102 Cemetery trust may approve or refuse the application

- (1) After considering an application made under section 101, a cemetery trust—
 - (a) may approve the application; or
 - (b) may refuse the application if it is satisfied that—
 - (i) the building for ceremonies would be unsafe, dangerous or not of a sufficiently permanent nature; or
 - (ii) the establishment or alteration of the building for ceremonies would be incompatible with the general nature and standard of surrounding structures, memorials or places of interment or would not be sufficiently in keeping with the nature and character of the public cemetery; or
 - (iii) the establishment or alteration of the building for ceremonies would not comply with the model rules or the cemetery trust rules (if any); or
 - (iv) the establishment or alteration of the building for ceremonies does not comply with the prescribed requirements; or
 - (c) may refuse the application for any other reason that the cemetery trust thinks fit.
- (2) An approval under this section may be granted subject to—
 - (a) a condition that the building for ceremonies be erected or placed in the position determined by the cemetery trust; and

(b) any other terms and conditions which the cemetery trust thinks fit.

(3) A cemetery trust may cancel an approval under this section if the terms and conditions of the approval have not been complied with.

103 Cemetery trust may remove building for ceremonies

(1) A cemetery trust may require a person to remove or alter a building for ceremonies in a public cemetery if that person—

(a) has established or altered, or caused to be established or altered, the building for ceremonies without the approval of the cemetery trust under section 102; or

(b) has failed to comply with any term or condition to which the approval of the cemetery trust under section 102 was subject.

(2) If a person to whom subsection (1) applies fails or refuses to remove or alter the building for ceremonies, the cemetery trust may—

(a) remove the building for ceremonies and dispose of it as it sees fit; or

(b) remedy the failure to comply.

(3) A cemetery trust may recover the costs of taking action under subsection (2) from the person referred to in subsection (1) as a debt recoverable in a court of competent jurisdiction.

Division 3—Maintenance of memorials, places of interment and buildings for ceremonies

104 Duty to maintain memorial or place of interment or buildings for ceremonies

(1) The holder of a right of interment in respect of a place of interment within the meaning of section 3 in a public cemetery must maintain or cause to be

maintained any memorial at that place of interment in a safe and proper condition.

- (2) The holder of a right of interment in respect of a place of interment within the meaning of section 97 in a public cemetery must maintain or cause to be maintained that place of interment in a safe and proper condition.
- (3) A person responsible for the establishment or alteration of a building for ceremonies approved under Division 2 in a public cemetery must maintain or cause to be maintained that building for ceremonies in a safe and proper condition.

105 What is meant by a safe and proper condition?

Without limiting this Part—

- (a) a memorial or place of interment is not in a safe and proper condition if—
 - (i) it is in a state likely to cause physical danger to any person; or
 - (ii) noxious fumes are escaping from that memorial or place of interment; and
- (b) a building for ceremonies is not in a safe and proper condition if it is in a state likely to cause physical danger to any person.

106 Powers of a cemetery trust—memorials and places of interment

- (1) If a cemetery trust believes that a memorial or place of interment is not in a safe and proper condition, the cemetery trust, by notice in writing, may require the holder of the right of interment in respect of that memorial or place of interment—
 - (a) to make the condition of the memorial or place of interment safe and proper; or
 - (b) to carry out the repairs specified in the notice.

- (2) Before giving a notice under subsection (1) in respect of a place of interment, a cemetery trust may require the holder of the right of interment to open the place of interment for examination.
- (3) If the holder of the right of interment fails to open the place of interment when required under subsection (2), the cemetery trust may open and examine the place of interment.
- (4) If the holder of the right of interment fails to comply with the notice under subsection (1) within 14 days of its receipt, the cemetery trust may—
 - (a) repair the memorial or place of interment to which the notice relates; or
 - (b) with the consent of the Secretary, take down, remove and dispose of any memorial or place of interment.

107 Powers of a cemetery trust—buildings for ceremonies

- (1) If a cemetery trust believes that a building for ceremonies is not in a safe and proper condition, the cemetery trust, by notice in writing, may require the person responsible for the establishment or alteration of that building for ceremonies—
 - (a) to make the condition of the building for ceremonies safe and proper; or
 - (b) to carry out the repairs specified in the notice.
- (2) If the person responsible for the establishment or alteration of that building for ceremonies fails to comply with the notice under subsection (1) within 14 days of its receipt, the cemetery trust may—

- (a) repair the building for ceremonies to which the notice relates; or
- (b) with the consent of the Secretary, take down, remove and dispose of the building for ceremonies.

108 Recovery of costs and expenses

A cemetery trust may recover from the holder of the right of interment in respect of a memorial or a place of interment or the person responsible for the establishment or alteration of a building for ceremonies (as the case requires) the costs and expenses of—

- (a) opening and examining a place of interment;
- (b) repairing a memorial, place of interment or building for ceremonies;
- (c) taking down and removing any memorial, place of interment or building for ceremonies—

as a debt recoverable in a court of competent jurisdiction.

109 What if the holder of right of interment or responsible person cannot be found?

- (1) If the cemetery trust believes that a memorial or place of interment is not in a safe and proper condition and the cemetery trust is unable to find the holder of the right of interment for that memorial or place of interment, the cemetery trust may—
 - (a) in the case of a place of interment—
 - (i) open and examine the place of interment; and
 - (ii) repair the place of interment; or

(b) in the case of a memorial—

(i) repair the memorial; or

(ii) with the consent of the Secretary, take down, remove and dispose of the memorial.

(2) If the cemetery trust believes that a building for ceremonies is not in a safe and proper condition and the cemetery trust is unable to find the person responsible for that building for ceremonies, the cemetery trust may—

(a) repair the building for ceremonies; or

(b) with the consent of the Secretary, take down, remove and dispose of the building for ceremonies.

110 Cemetery trust may repair or maintain from other funds

(1) If a cemetery trust is unable to find the holder of the right of interment for any memorial or place of interment, the cemetery trust may maintain, repair or restore any memorial or place of interment if the cemetery trust—

(a) obtains the consent of the Secretary to the maintenance, repair or restoration; and

(b) uses funds other than cemetery trust funds for the maintenance, repair or restoration.

(2) If a cemetery trust is unable to find the person responsible for a building for ceremonies, the cemetery trust may maintain, repair or restore any building for ceremonies if the cemetery trust—

(a) obtains the consent of the Secretary to the maintenance, repair or restoration; and

(b) uses funds other than cemetery trust funds for the maintenance, repair or restoration.

111 Cemetery trust may enter agreements to maintain memorials and places of interment

- (1) A cemetery trust may enter into an agreement with a holder of a right of interment in the public cemetery for which the cemetery trust is responsible to maintain a memorial or place of interment which the holder of the right of interment would otherwise be responsible to maintain.
- (2) An agreement under subsection (1)—
 - (a) must be for a limited term not exceeding 10 years; and
 - (b) may be renewed for a further term not exceeding 10 years.

112 Cemetery trust may sell and supply memorials

A cemetery trust may sell and supply memorials.

PART 8—INTERMENT OF BODILY REMAINS

Division 1—Interment generally

113 Bodily remains interred for perpetuity

Subject to this Act, bodily remains interred in a public cemetery are interred for perpetuity.

114 Unlawful interment

A person must not inter bodily remains in a place other than a public cemetery unless the Secretary has granted an interment approval for that interment.

Penalty: 600 penalty units or 5 years imprisonment or both.

115 Offence to inter bodily remains in public cemetery without interment authorisation

A person must not inter bodily remains in a public cemetery unless the cemetery trust responsible for that public cemetery has granted an interment authorisation for that interment.

Penalty: 600 penalty units or 5 years imprisonment or both.

Division 2—Interment authorisations

116 Application for interment authorisation

- (1) A person who wishes bodily remains to be interred in a public cemetery may apply to the cemetery trust responsible for that public cemetery for an interment authorisation.
- (2) An application for an interment authorisation must be in the prescribed form.

S. 116(3)(b)
substituted by
No. 77/2008
s. 129(Sch. 2
item 4.1).

- (3) An application for an interment authorisation must be accompanied by one of the following—
- (a) a notice under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996**; or
 - (b) a copy of an order made by a coroner under section 47 of the **Coroners Act 2008** releasing the body of the deceased to a specified person; or
 - (c) if the deceased died in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the deceased died; or
 - (d) if the interment authorisation is for a still-born child—
 - (i) a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996**; or
 - (ii) if the still-birth occurred in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the still-birth occurred; or
 - (e) a statutory declaration made by the person arranging the interment stating that, owing to special circumstances, it is not possible to produce the required documents referred to in paragraphs (a), (c) or (d) (as the case requires).

- (4) If a cemetery trust grants an interment authorisation where the application for the interment authorisation was accompanied by a statutory declaration referred to in subsection (3)(e), the cemetery trust must notify the Secretary in writing of that fact.
- (5) If an application for an interment authorisation relates to a place of interment for which a right of interment exists, the cemetery trust may require the applicant to produce evidence to the satisfaction of the trust that the holder of the right of interment has consented to the application.

117 Offence to make false statement in application for interment authorisation

A person must not make a false statement in an application for an interment authorisation.

Penalty: 240 penalty units or 2 years imprisonment or both.

118 Grant of interment authorisation

A cemetery trust must not grant an interment authorisation unless the cemetery trust is satisfied that the requirements of this Division have been met in relation to the application for the interment authorisation.

119 Conditions on interment authorisation

An interment authorisation may be granted on such conditions as the cemetery trust thinks fit.

120 Offence to fail to comply with interment authorisation

A person to whom an interment authorisation is granted must not fail to comply with any condition of that interment authorisation.

Penalty: 120 penalty units or 12 months imprisonment or both.

Division 3—Interment approvals

121 Application for interment approval for interment other than in a public cemetery

- (1) A person who wishes bodily remains to be interred in a place other than a public cemetery may apply to the Secretary for an interment approval.
- (2) An application for an interment approval must be—
 - (a) in the prescribed form; and
 - (b) accompanied by the prescribed fee (if any).

S. 121(2)(b)
amended by
No. 42/2005
s. 4.

- (3) An application for an interment approval must be accompanied by one of the following—
 - (a) a notice under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996**; or
 - (b) a copy of an order made by a coroner under section 47 of the **Coroners Act 2008** releasing the body of the deceased to a specified person; or
 - (c) if the deceased died in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the deceased died; or
 - (d) if the interment approval is for a still-born child—
 - (i) a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996**; or

S. 121(3)(b)
substituted by
No. 77/2008
s. 129(Sch. 2
item 4.2).

- (ii) if the still-birth occurred in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the still-birth occurred; or
- (e) a statutory declaration made by the person arranging the interment stating that, owing to special circumstances, it is not possible to produce the required documents referred to in paragraphs (a), (c) or (d) (as the case requires).

122 Offence to make false statement in application for interment approval

A person must not make a false statement in an application for an interment approval.

Penalty: 240 penalty units or 2 years imprisonment or both.

123 Grant of interment approval

- (1) The Secretary must not grant an interment approval unless the Secretary is satisfied that the requirements of this Division have been met in relation to the application for the interment approval.
- (2) An interment approval must—
 - (a) be in writing; and
 - (b) be signed by the Secretary.

124 Conditions on interment approval

- (1) An interment approval may be granted on such conditions as the Secretary thinks fit.
- (2) Without limiting subsection (1), the conditions on an interment approval may include conditions relating to—
 - (a) the minimum size of the land on which the interment is to take place; and
 - (b) the depth of the interment; and
 - (c) the standards of construction for any monument or vault on the land on which the interment is to take place.

125 Offence to fail to comply with interment approval

A person to whom an interment approval is granted must not fail to comply with any condition of that interment approval.

Penalty: 120 penalty units or 12 months imprisonment or both.

126 Notice of interment approval to Registrar of Titles

- (1) The Secretary must lodge with the Registrar of Titles notice of any interment approval if that interment approval affects land other than Crown land.
- (2) On receipt of a notice of an interment approval under this section, the Registrar of Titles must make any recordings in the Register that are necessary or convenient for the purpose of bringing the notice of the interment approval to the attention of persons who search the folios of the Register to which the notice relates.
- (3) The Registrar of Titles may require any evidence of the identity of any land affected by a notice of an interment approval lodged under this section that he or she thinks fit.

127 Secretary to notify Registrar of Titles to remove notice

- (1) The Secretary may lodge with the Registrar of Titles a notice requesting the removal of any notice of interment approval recorded under section 126.
 - (2) On receipt of a notice under this section requesting the removal of a notice of an interment approval, the Registrar of Titles must make any recordings in the Register that are necessary or convenient for the purpose of removing the notice of the interment approval from the folios of the Register to which the notice of an interment approval relates.
 - (3) The Registrar of Titles may require any evidence of the identity of any land affected by a notice lodged under this section requesting the removal of a notice of an interment approval that he or she thinks fit.
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PART 9—CREMATION

Division 1—Cremation generally

128 Interment of cremated human remains

Subject to this Act, cremated human remains—

- (a) may be interred or disposed of in a public cemetery, but are not required to be interred or disposed of in a public cemetery; and
- (b) if interred in a public cemetery may be interred—
 - (i) for perpetuity; or
 - (ii) for a limited tenure not exceeding 25 years in accordance with a right of interment.

129 Unlawful cremation

A person must not cremate bodily remains or assist in the cremation of bodily remains at any place other than—

- (a) at a crematorium in a public cemetery; or
- (b) in accordance with an approval of the Secretary under section 136.

Penalty: 600 penalty units or 5 years imprisonment or both.

130 Offence to cremate without cremation authorisation

A person must not cremate bodily remains or assist in the cremation of bodily remains in a crematorium in a public cemetery unless the cemetery trust has granted a cremation authorisation for the cremation.

Penalty: 600 penalty units or 5 years imprisonment or both.

Division 2—Cremation authorisation

131 Application for cremation authorisation

- (1) A person who wishes bodily remains to be cremated in a crematorium at a public cemetery may apply to the cemetery trust responsible for that public cemetery for a cremation authorisation.
- (2) An application for a cremation authorisation must be in the prescribed form.
- (3) An application for a cremation authorisation must be accompanied by any of the following—
 - (a) both—
 - (i) a certificate of a registered medical practitioner authorising cremation in the prescribed form; and
 - (ii) a notice as required under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996**; or
 - (b) a copy of an order made by a coroner under section 47 of the **Coroners Act 2008** releasing the body of the deceased to a specified person; or
 - (c) if the deceased person died in another State or Territory of the Commonwealth or overseas, an authority to cremate under the hand of the Coroner or other person permitted by the law of the jurisdiction where the deceased died to authorise cremation; or
 - (d) if the cremation authorisation is for a still-born child—
 - (i) a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996**; or

S. 131(3)(b)
substituted by
No. 77/2008
s. 129(Sch. 2
item 4.3).

(ii) if the still-birth occurred in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the still-birth occurred; or

(e) a cremation approval.

132 Offence to make false statement in application for cremation authorisation

A person must not make a false statement in an application for a cremation authorisation.

Penalty: 600 penalty units or 5 years imprisonment or both.

133 Grant of cremation authorisation

- (1) A cemetery trust must not grant a cremation authorisation unless the trust is satisfied that the requirements of this Division have been met in relation to that application.
- (2) If section 139 applies, a cemetery trust must not grant a cremation authorisation without a copy of an order made by a coroner under section 47 of the **Coroners Act 2008** releasing the body of the deceased to a specified person.

S. 133(2)
amended by
No. 77/2008
s. 129(Sch. 2
item 4.4).

Division 3—Approvals by Secretary

134 Secretary may grant cremation approval

- (1) The Secretary may grant an approval for the cremation of bodily remains at a crematorium in a public cemetery if the requirements of section 131(3)(a) to (d) cannot be met due to special circumstances.

- (2) A cremation approval must—
 - (a) be in writing; and
 - (b) be signed by the Secretary.

135 Application for approval to cremate in a place other than a crematorium in a public cemetery

- (1) A person who wishes bodily remains to be cremated at a place other than a crematorium in a public cemetery may apply to the Secretary for an approval to cremate bodily remains in a place other than a crematorium in a public cemetery.
- (2) Subject to section 136(2), an application for an approval to cremate bodily remains at a place other than a crematorium in a public cemetery must be accompanied by any of the following—
 - (a) both—
 - (i) a certificate of a registered medical practitioner authorising cremation in the prescribed form; and
 - (ii) a notice as required under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996**; or
 - (b) a copy of an order made by a coroner under section 47 of the **Coroners Act 2008** releasing the body of the deceased to a specified person; or
 - (c) if the deceased person died in another State or Territory of the Commonwealth or overseas, an authority to cremate under the hand of the Coroner or other person permitted by the law of the jurisdiction where the deceased died to authorise cremation; or

S. 135(2)(b)
substituted by
No. 77/2008
s. 129(Sch. 2
item 4.5).

- (d) if the cremation authorisation is for a still-born child—
 - (i) a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996**; or
 - (ii) if the still-birth occurred in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the still-birth occurred.

136 Approval by Secretary

- (1) The Secretary may grant an approval to cremate bodily remains at a place other than a crematorium in a public cemetery.
- (2) The Secretary may grant an approval under this section without the application under section 135 being accompanied by the relevant documents referred to in section 135(2) if the Secretary is satisfied that, owing to special circumstances, it is not possible to produce any of those documents.
- (3) An approval under this section must—
 - (a) be in writing; and
 - (b) be signed by the Secretary.

137 Offence to make false statement in application to Secretary

A person must not make a false statement in an application for—

- (a) a cremation approval; or

(b) an approval to cremate bodily remains at a place other than a crematorium in a public cemetery.

Penalty: 600 penalty units or 5 years imprisonment or both.

138 Who can sign certificate of a registered medical practitioner authorising cremation?

For the purposes of this Part, a certificate of a registered medical practitioner authorising cremation must be signed by a registered medical practitioner who is not the registered medical practitioner who signed the notice as required under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996** in respect of the death of the deceased person who is to be cremated.

139 Refusal to sign certificate of registered medical practitioner authorising cremation

If a registered medical practitioner refuses to sign a certificate of a registered medical practitioner authorising cremation, he or she must clearly endorse that fact on the certificate.

140 Offence to make false statement in certificate of registered medical practitioner authorising cremation

A person must not make a false statement in a certificate of a registered medical practitioner authorising cremation.

Penalty: 600 penalty units or 5 years imprisonment or both.

141 Offence to inter cremated human remains in public cemetery without authority

A person must not inter cremated human remains or assist in the interment of cremated human remains in a public cemetery unless the cemetery trust has authorised the interment under this Act.

Penalty: 20 penalty units.

**PART 10—INTERMENT AND CREMATION OF DECEASED
POOR PERSONS**

142 Prescribed person may apply for order

A prescribed person may apply to the Magistrates' Court or a coroner for an order under this Part.

S. 142
amended by
Nos 42/2005
s. 5, 77/2008
s. 129(Sch. 2
item 4.6).

143 Magistrates' Court may make order

(1) The Magistrates' Court or a coroner may make an order requiring a cemetery trust—

S. 143(1)
amended by
Nos 42/2005
s. 5, 77/2008
s. 129(Sch. 2
item 4.7).

(a) to either—

(i) cremate the bodily remains of a deceased poor person and inter those cremated human remains free of charge in the public cemetery for which it is responsible; or

(ii) to inter the bodily remains of a deceased poor person free of charge in the public cemetery for which it is responsible; and

(b) to place a plaque on the place of interment of the deceased poor person setting out the name, date of birth and date of death of the deceased poor person (if known) if it appears that the relatives or friends of that person are unable to provide a plaque or other memorial.

(2) The Magistrates' Court or a coroner must not make an order under this Part unless satisfied that—

S. 143(2)
amended by
Nos 42/2005
s. 5, 77/2008
s. 129(Sch. 2
item 4.8).

(a) the deceased person died without sufficient means to pay interment or cremation expenses; and

- (b) the deceased person's relatives and friends are unable to pay the interment or cremation expenses.

S. 144
amended by
Nos 42/2005
s. 5, 77/2008
s. 129(Sch. 2
item 4.9).

144 Order to generally specify cremation

An order under this Part must include a direction requiring the cemetery trust to arrange for the cremation of the bodily remains of the deceased poor person unless the Magistrates' Court or a coroner is satisfied that—

- (a) the wishes or religious beliefs of the deceased poor person in relation to cremation are unknown; or
- (b) cremation was contrary to the wishes or religious beliefs of the deceased poor person; or
- (c) it is not practicable for the bodily remains to be cremated.

145 Trust must comply with order

A cemetery trust must comply with an order made under this Part.

PART 11—OTHER DISPOSITION OF HUMAN REMAINS

Division 1—Disposal other than by interment or cremation

146 Disposal by methods other than interment or cremation

With the prior approval in writing of the Secretary, a cemetery trust may dispose of bodily remains by a method other than interment or cremation in a public cemetery for which it is responsible.

147 Secretary may grant approval

- (1) On the application of a cemetery trust for approval to dispose of bodily remains in a public cemetery for which it is responsible, the Secretary may approve the disposal by a method other than interment or cremation.
- (2) An approval under this section—
 - (a) is subject to any terms and conditions specified in the approval which the Secretary thinks fit; and
 - (b) may apply—
 - (i) generally; or
 - (ii) to a specific class of disposals; or
 - (iii) to a specific disposal.
- (3) An approval under this section must be in writing.

148 Secretary may vary or revoke approval

- (1) The Secretary may—
 - (a) revoke an approval granted under section 147;
 - (b) vary an approval granted under section 147;
 - (c) vary any terms and conditions specified in the approval granted under section 147.

- (2) A revocation or variation under this section must be in writing.

149 Cemetery trust to cease using method if approval revoked

If the Secretary revokes an approval granted under section 147, the cemetery trust must cease using the method of disposal to which that revoked approval related.

Division 2—Interment or cremation of body parts

150 Interment or cremation of body parts

A cemetery trust may authorise the interment or cremation of body parts in a public cemetery for which it is responsible.

151 Application for interment or cremation of body parts

- (1) A person who wishes body parts to be interred or cremated in a public cemetery may apply to the cemetery trust responsible for that public cemetery for an authority under section 150.
- (2) An application under subsection (1) must contain the prescribed information from a prescribed person.
- (3) For the purposes of subsection (2), *prescribed person* means—
- (a) a registered medical practitioner who treated the person to whom the body part belonged; or
 - (b) a registered medical practitioner of the hospital where the person to whom the body part belonged was treated; or
 - (c) a coroner; or

S. 151(3)(c)
substituted by
No. 77/2008
s. 129(Sch. 2
item 4.10).

- (d) a person or class of person prescribed for the purposes of this section.

152 Grant of authorisation

- (1) A cemetery trust must not grant an authorisation under section 150 unless the cemetery trust is satisfied that the requirements of this Division have been met in relation to the application for the authorisation.
- (2) An authorisation under section 150 may be granted on such terms and conditions as the cemetery trust thinks fit.

153 Offence to inter body parts in public cemetery without authority

A person must not inter body parts or assist in the interment of body parts in a public cemetery unless the cemetery trust has authorised the interment under this Act.

Penalty: 20 penalty units.

PART 12—EXHUMATION AND REMOVAL

S. 154
amended by
No. 77/2008
s. 129(Sch. 2
item 4.11).

154 Part does not apply to exhumation under Coroners Act

Nothing in this Part applies to an exhumation conducted under the **Coroners Act 2008**.

155 Offence to exhume other than in accordance with this Act

Except in accordance with this Act, a person must not exhume or remove human remains from any place of interment.

Penalty: 600 penalty units or 5 years imprisonment or both.

156 Application to Secretary for exhumation licence

- (1) A person may apply to the Secretary for an exhumation licence to exhume or remove human remains from any place of interment.
- (2) An application for an exhumation licence—
 - (a) must be in the prescribed form; and
 - (b) must be lodged with the Secretary at least 7 days before the proposed exhumation or removal; and
 - (c) must be accompanied by the prescribed fee.
- (3) An application for an exhumation licence must also be accompanied by one of the following—
 - (a) a certificate issued under section 46 of the **Births, Deaths and Marriages Registration Act 1996**;
 - (b) a copy of an order made by a coroner under section 47 of the **Coroners Act 2008** releasing the body of the deceased to a specified person;

S. 156(3)
inserted by
No. 42/2005
s. 6.

S. 156(3)(a)
substituted by
No. 46/2008
s. 249.

S. 156(3)(b)
substituted by
No. 77/2008
s. 129(Sch. 2
item 4.12).

- (c) if the deceased died in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the deceased died;
- (d) if the licence is for a stillborn child—
 - (i) a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996**; or
 - (ii) if the still-birth occurred in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the still-birth occurred;
- (e) a statutory declaration made by the applicant stating that owing to special circumstances, it is not possible to produce the required documents referred to in paragraph (a), (c) or (d).

157 Grant of exhumation licence

- (1) After considering an application for an exhumation licence, the Secretary may—
 - (a) grant the exhumation licence; or
 - (b) refuse to grant the exhumation licence.
- (2) An exhumation licence may be granted subject to such terms and conditions as the Secretary thinks fit and as are specified in the exhumation licence.

158 Exhumation licence required to move remains to another location

- (1) If a person wishes to remove human remains from a place of interment and re-inter those human remains at another location, the person must obtain an exhumation licence.
- (2) An exhumation licence is required under subsection (1) whether or not the proposed re-interment is—
 - (a) within the public cemetery where the human remains are currently interred; or
 - (b) outside the public cemetery where the human remains are currently interred.
- (3) This section does not apply to the removal or re-interment of cremated human remains or body parts by—
 - (a) a cemetery trust in a public cemetery for which it is responsible; or
 - (b) the holder of a right of interment in accordance with this Act.

S. 158A
inserted by
No. 42/2005
s. 7.

158A False statements

A person must not knowingly make a false statement in an application for an exhumation licence under this Part.

Penalty: 240 penalty units or 2 years imprisonment or both.

159 Offence to fail to comply with exhumation licence

A person who has been granted an exhumation licence must comply with the terms and conditions of the exhumation licence.

Penalty: 240 penalty units or 2 years imprisonment or both.

PART 13—ENFORCEMENT

Division 1—Enforcement powers

160 Appointment of authorised officers

- (1) The Secretary, by instrument, may appoint as an authorised officer any employee or employees or class of employees employed under Part 3 of the **Public Administration Act 2004**.
- (2) The Secretary is an authorised officer for the purposes of this Act.

S. 160(1)
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 27.1).

161 Identity card

- (1) The Secretary must issue an identity card to each authorised officer.
- (2) An identity card must contain a photograph of the authorised officer to whom it is issued.

162 Offence not to produce identity card

An authorised officer must produce his or her identity card for inspection—

- (a) before exercising a power under this Part;
and
- (b) at any time during the exercise of the power under this Part if asked to do so.

Penalty: 10 penalty units.

163 Powers of entry and inspection

- (1) For the purposes of monitoring compliance with this Act or the regulations by a cemetery trust in relation to its functions and powers under this Act or the regulations, an authorised officer, without a warrant or consent and with such assistance as he or she thinks necessary, may—

- (a) enter any place being used as a public cemetery or a crematorium;
 - (b) inspect and take copies of or take extracts from any documents kept at the place;
 - (c) require a specified person at the place—
 - (i) to answer a question to the best of that person's knowledge, information and belief;
 - (ii) to take reasonable steps to produce documents;
 - (d) test any equipment or facility at the place;
 - (e) seize any document or equipment at the place, if the authorised officer believes on reasonable grounds that the document or equipment relates to a contravention of this Act or the regulations.
- (2) An authorised officer must not enter or search any place under subsection (1) unless, before that entry or search, the authorised officer—
- (a) has produced his or her identity card for inspection; and
 - (b) has informed the occupier of the purpose of the entry or search.
- (3) An authorised officer may only exercise powers under this section during normal business hours.
- (4) If, under subsection (1)(c), an authorised officer requires a specified person to answer a question to the best of that person's knowledge, information and belief or to take reasonable steps to produce documents, the authorised officer must advise the person that it is a reasonable excuse for that person to refuse to comply with the request if it would tend to incriminate that person.

- (5) For the purposes of this section, *specified person* means—
- (a) a member of a cemetery trust; and
 - (b) an employee of a cemetery trust or other person referred to in section 17; and
 - (c) a volunteer engaged in volunteer work for the cemetery trust.

164 Retention and return of seized documents or equipment

- (1) If an authorised officer seizes any document or equipment under section 163, he or she must—
- (a) give notice of the seizure to—
 - (i) the person apparently in charge of the document or equipment; or
 - (ii) an occupier of the place; and
 - (b) return the document or equipment to that person or the place within 2 business days after seizing it, unless the document or equipment is brought before the Magistrates' Court within that period.
- (2) Section 78 of the **Magistrates' Court Act 1989** applies to any document or equipment brought before the Magistrates' Court under this section as if it were brought before that Court under that section 78.

165 Search warrants

- (1) An authorised officer or a police officer may apply to a magistrate for the issue of a search warrant in relation to a particular premises or a place if the authorised officer or the police officer believes on reasonable grounds that an offence against this Act or the regulations has been committed.

S. 165(1)
amended by
No. 37/2014
s. 10(Sch.
item 14.2).

S. 165(2)
amended by
No. 37/2014
s. 10(Sch.
item 14.2).

(2) If a magistrate is satisfied, by the evidence on oath or by affidavit of the authorised officer or the police officer (as the case requires), that there are reasonable grounds for believing that an offence against this Act or the regulations has been committed, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an authorised officer or a police officer named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—

(a) to enter the premises or place specified in the warrant, if necessary by force; and

(b) to do all or any of the following—

(i) search for;

(ii) seize;

(iii) secure against interference;

(iv) examine and inspect;

(v) make copies of or take extracts from—

a thing or things of a particular kind named or described in the warrant and which the authorised officer or the police officer believes, on reasonable grounds, to be connected with the commission of an offence against this Act or the regulations.

(3) A search warrant issued under this section must state—

(a) the purpose for which the search is required; and

(b) any conditions to which the warrant is subject; and

S. 165(2)(b)
amended by
No. 37/2014
s. 10(Sch.
item 14.2).

- (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

166 Announcement before entry

- (1) On executing a search warrant, the person executing it—
- (a) must announce that he or she is authorised by the warrant to enter the premises or place; and
 - (b) if the authorised officer or the police officer has been unable to obtain unforced entry, must give any person at the premises or place an opportunity to allow entry to the premises or place.
- (2) An authorised officer or a police officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises or place is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

S. 166(1)(b)
amended by
No. 37/2014
s. 10(Sch.
item 14.2).

S. 166(2)
amended by
No. 37/2014
s. 10(Sch.
item 14.2).

167 Details of warrant to be given to occupier

- (1) If the occupier is present at premises or a place where a search warrant is being executed, the person executing the warrant must—
 - (a) identify himself or herself to the occupier; and
 - (b) give a copy of the warrant to the occupier.
- (2) If the occupier is not present at the premises or a place where a search warrant is being executed, the person executing the warrant must—
 - (a) identify himself or herself to a person at the premises or place; and
 - (b) give a copy of the warrant to the person.

168 Copies of seized documents

- (1) If an authorised officer or a police officer retains possession of a document taken or seized from a person under a warrant, the authorised officer or the police officer (as the case requires) must give the person a copy of the document certified as correct by the authorised officer or the police officer (as the case requires).
- (2) A copy of a document certified under subsection (1) must be given within 21 days of the seizure.
- (3) A copy of a document certified under subsection (1) is to be received in all courts and tribunals as evidence of equal validity to the original.

169 Refusal or failure to comply with requirement

A person must not refuse or fail, without reasonable excuse, to comply with a requirement of an authorised officer under this Part.

Penalty: 60 penalty units.

S. 168(1)
amended by
No. 37/2014
s. 10(Sch.
item 14.2).

170 Offence to hinder or obstruct authorised officer

A person must not, without reasonable excuse, hinder or obstruct an authorised officer exercising a power under this Part.

Penalty: 60 penalty units.

171 Offence to give false or misleading information

- (1) A person must not give information to an authorised officer under this Part that the person believes to be false or misleading in any material particular.

Penalty: 60 penalty units.

- (2) A person must not produce a document to an authorised officer under this Part that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

172 Protection against self-incrimination

It is a reasonable excuse for a natural person to refuse to answer a question of an authorised officer or give information or produce a document to an authorised officer or do any other thing that the person is required to do by or under this Part if the answering of the question, giving of the information, production of the document or the doing of the thing would tend to incriminate the person.

173 Offence to impersonate authorised officer

A person who is not an authorised officer must not, in any way, hold himself or herself out to be an authorised officer.

Penalty: 60 penalty units.

174 Who may prosecute?

S. 174(1)
amended by
No. 37/2014
s. 10(Sch.
item 14.2).

- (1) Proceedings for an offence against this Act or the regulations may be taken by the Director of Public Prosecutions, an authorised officer or a police officer.
- (2) Proceedings started under subsection (1) may be taken over and continued at any time by any other person authorised by subsection (1) to take proceedings.
- (3) All courts must take judicial notice of the fact that any person purporting to be authorised by subsection (1) is authorised to take proceedings.

S. 175
amended by
No. 68/2009
s. 97(Sch.
item 17).

175 Extended period to prosecute certain offences

Despite section 7 of the **Criminal Procedure Act 2009**, proceedings for an offence against section 81 may be commenced within the period of 3 years after the commission of the alleged offence.

Division 2—Offences

176 Offence to dispose of falsely identified bodily remains

A person must not knowingly dispose of or arrange for the disposal of falsely identified bodily remains.

Penalty: 600 penalty units or 5 years imprisonment or both.

177 Indictable offences

An offence under section 114, 115, 129, 130, 132, 137, 140, 155 or 176 is an indictable offence.

178 Offences by bodies corporate

If a body corporate is guilty of an offence against this Act, any person who is concerned in or takes part in the management of that body corporate who knowingly authorised or permitted the contravention is also guilty of that offence and liable to the penalty for that offence.

PART 14—GENERAL

179 Review by VCAT

- (1) A holder of a right of interment may apply to the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998** for review of a decision of a cemetery trust—
 - (a) to refuse to grant an approval to establish or alter a memorial or a place of interment in the cemetery; or
 - (b) to grant an approval to establish or alter a memorial or a place of interment in the cemetery subject to terms and conditions.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

180 Regulations and model rules

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prescribing model rules for or with respect to the general care, protection and management of public cemeteries and crematoria;
 - (b) fees for the purposes of this Act;
 - (c) forms for the purposes of this Act;
 - (d) prescribing information for the purposes of this Act;

- (e) the protection of public health and the maintenance of public order in public cemeteries and crematoria;
 - (f) the care, protection and management of public cemeteries and crematoria;
 - (g) the interment or other disposition of human remains in public cemeteries, including disposition under Part 11;
 - (h) the structure, maintenance and management of memorials, places of interment and buildings for ceremonies in public cemeteries;
 - (i) the cremation of any human remains in crematoria and the disposition or interment of cremated human remains;
 - (j) the standards, conduct, operation, maintenance and management of crematoria;
 - (k) prescribing penalties not exceeding 20 penalty units for a contravention of the regulations or the model rules;
 - (l) any other matter or thing that is required or permitted by this Act to be prescribed or that is necessary to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations and the model rules made under this Act—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may leave any matter or thing to be from time to time determined, approved or dispensed with by the Secretary or a cemetery trust.

- (d) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method, formulated, issued, prescribed or published by any other person, whether—
 - (i) wholly or partially or as amended by the regulations or model rules; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations or model rules are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time.
- (3) Regulations made under this Act may exempt specified cemeteries or crematoria or any class of cemeteries or crematoria from complying with all or any of the regulations.
- (4) Any regulations made under this Act for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles.

S. 180(4)
inserted by
No. 51/2014
s. 9(Sch. 2
item 1.3).

Cemeteries and Crematoria Act 2003

No. 80 of 2003

Part 15—Repeals, transitional provisions and consequential amendments

**PART 15—REPEALS, TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS**

* * * * *

Ss 181–185
repealed by
No. 28/2007
s. 3(Sch.
item 4).

186 Transitional provisions

Schedule 2 has effect.

SCHEDULES

SCHEDULE 1

S. 6(3).

Sch. 1
(Heading)
amended by
No. 61/2009
s. 22(1).

MEMBERSHIP AND PROCEDURE OF CLASS B CEMETERY TRUSTS

Sch. 1 cl. 1
(Heading)
amended by
No. 61/2009
s. 22(2)(a).

1 Terms of appointment of Class B cemetery trust members

Sch. 1 cl. 1(1)
amended by
No. 61/2009
s. 22(2)(b).

(1) A member of a Class B cemetery trust holds office for the period, not exceeding 5 years, specified in the instrument of his or her appointment.

Sch. 1 cl. 1(2)
amended by
No. 61/2009
s. 22(2)(b).

(2) A member of a Class B cemetery trust is eligible for re-appointment.

Sch. 1 cl. 1(3)
amended by
No. 61/2009
s. 22(2)(b).

(3) The instrument of appointment of a member of a Class B cemetery trust may specify terms and conditions of appointment.

Sch. 1 cl. 1(4)
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 27.2) (as
amended by
No. 20/2005
s. 50(1)),
80/2006
s. 26(Sch.
item 9).

(4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

Sch. 1 cl. 2
(Heading)
amended by
No. 61/2009
s. 22(2)(c).

2 Chairperson of Class B cemetery trust

Sch. 1 cl. 2(1)
amended by
No. 61/2009
s. 22(2)(d).

(1) The members of a Class B cemetery trust must appoint one of the members to be chairperson.

- (2) A person appointed as chairperson of a Class B cemetery trust—
- (a) holds that office for the period not exceeding 5 years, as determined by the Class B cemetery trust; and
- (b) is eligible for re-appointment.
- (3) A person appointed as chairperson ceases to hold that office on ceasing to be a member of the Class B cemetery trust.

Sch. 1 cl. 2(2)
amended by
No. 61/2009
s. 22(2)(d).

Sch. 1 cl. 2(3)
amended by
No. 61/2009
s. 22(2)(d).

3 Resignation and removal of members

- (1) A member of a Class B cemetery trust may resign the office of member by writing signed by the member and addressed to the Minister.
- (2) The Governor in Council, on the recommendation of the Minister, may at any time remove a member of a Class B cemetery trust from office.

Sch. 1 cl. 3(1)
amended by
No. 61/2009
s. 22(2)(d).

Sch. 1 cl. 3(2)
amended by
No. 61/2009
s. 22(2)(d).

4 Vacancies in membership of Class B cemetery trusts

If a member of a Class B cemetery trust dies, resigns or is removed from office, the Governor in Council, in accordance with this Act, may fill the vacant office.

Sch. 1 cl. 4
(Heading)
amended by
No. 61/2009
s. 22(2)(e).

Sch. 1 cl. 4
amended by
No. 61/2009
s. 22(2)(f).

5 Fees and allowances of members

- (1) A member of a Class B cemetery trust, other than a member who is an employee of the public service, is entitled to receive the fees, travelling and other allowances from time to time fixed by the Minister in respect of that member.
- (2) The fees, travelling and other allowances payable to a member of a Class B cemetery trust are to be paid from the funds of that trust.

Sch. 1 cl. 5(1)
amended by
No. 61/2009
s. 22(2)(f).

Sch. 1 cl. 5(2)
amended by
No. 61/2009
s. 22(2)(f).

Sch. 1 cl. 6
(Heading)
amended by
No. 61/2009
s. 22(2)(g).

6 Validity of decisions of Class B cemetery trusts

Sch. 1 cl. 6(1)
amended by
No. 61/2009
s. 22(2)(h).

- (1) An act or decision of a Class B cemetery trust is not invalid merely because of—
 - (a) a defect or irregularity in, or in connection with, the appointment of a member; or
 - (b) a vacancy in the membership of the trust, including a vacancy arising from the failure to appoint an original member.
- (2) Anything done by or in relation to a person purporting to act as chairperson or as a member is not invalid merely because—
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect.

Sch. 1 cl. 7
(Heading)
amended by
No. 61/2009
s. 22(2)(i).

7 Presiding at meetings of Class B cemetery trusts

The person who is to preside at a meeting of a Class B cemetery trust is—

Sch. 1 cl. 7
amended by
No. 61/2009
s. 22(2)(j).

- (a) the chairperson, if he or she is present; or
- (b) if the chairperson is absent, a member elected to preside by the members of the trust present at the meeting.

Sch. 1 cl. 8
(Heading)
amended by
No. 61/2009
s. 22(2)(k).

8 Proceedings of Class B cemetery trusts

Sch. 1 cl. 8(1)
amended by
No. 61/2009
s. 22(2)(l).

- (1) Subject to subclause (2), meetings of a Class B cemetery trust are to be held at the times and places that the chairperson determines.

- (2) The chairperson of a Class B cemetery trust may at any time convene a meeting, but must do so when requested by at least 2 members of the trust. **Sch. 1 cl. 8(2) amended by No. 61/2009 s. 22(2)(l).**
- (3) A Class B cemetery trust may permit its members to participate in a particular meeting by—
(a) telephone; or
(b) closed-circuit television; or
(c) any other means of communication. **Sch. 1 cl. 8(3) amended by No. 61/2009 s. 22(2)(l).**
- (4) A member who participates in a meeting under a permission under subclause (3) is deemed to be present at the meeting.
- (5) A majority of the members for the time being constitutes a quorum of a Class B cemetery trust. **Sch. 1 cl. 8(5) amended by No. 61/2009 s. 22(2)(l).**
- (6) A question arising at a meeting must be determined by a majority of votes of members present and voting on that question and, if the voting is equal, the person presiding has a casting vote as well as a deliberative vote.
- (7) The person presiding must ensure that minutes are kept of each of its meetings.
- (8) Subject to this clause, a Class B cemetery trust may regulate its own proceedings. **Sch. 1 cl. 8(8) amended by No. 61/2009 s. 22(2)(l).**
- 9 Disclosure of interest of Class B cemetery trust members** **Sch. 1 cl. 9 (Heading) amended by No. 61/2009 s. 22(2)(m).**
- (1) A member of a Class B cemetery trust who has a direct or indirect pecuniary interest in a contract or other matter being dealt with by the trust must disclose the nature of that interest at a meeting of the trust as soon as possible after becoming aware of the interest. **Sch. 1 cl. 9(1) amended by No. 61/2009 s. 22(2)(n).**

Cemeteries and Crematoria Act 2003
No. 80 of 2003
Schedules

Sch. 1 cl. 9(2)
amended by
No. 61/2009
s. 22(2)(n).

- (2) A member of a Class B cemetery trust who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created in conflict with the member's duties as a member, must disclose that fact at a meeting of the trust as soon as possible after becoming aware of the potential conflict.
 - (3) The person presiding at a meeting at which a disclosure under this clause is made must cause that disclosure to be recorded in the minutes of the meeting.
 - (4) A person who has made a disclosure under this clause must not take any further part in the discussion of or vote on the contract or other matter to which the disclosure relates.
 - (5) If a member votes on a matter in contravention of subclause (4), his or her vote must be disallowed.
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SCHEDULE 1A

Section 6A(3)

Sch. 1A
inserted by
No. 61/2009
s. 23.

MEMBERSHIP AND PROCEDURE OF CLASS A CEMETERY TRUSTS

1 Terms of appointment

- (1) A member of a Class A cemetery trust holds office for the period, not exceeding 3 years, specified in the instrument of his or her appointment.
- (2) A member of a Class A cemetery trust is eligible for re-appointment.
- (3) A member of a Class A cemetery trust is appointed on the terms and conditions specified in the instrument of appointment.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

2 Chairperson of Class A cemetery trust

- (1) The Governor in Council, by instrument, must appoint one of the members of a Class A cemetery trust to be chairperson.
- (2) A person appointed as chairperson of a Class A cemetery trust—
 - (a) holds that office for the period not exceeding 3 years; and
 - (b) is eligible for re-appointment.
- (3) A person appointed as chairperson ceases to hold that office—
 - (a) on ceasing to be a member of the Class A cemetery trust; or

- (b) on resigning as chairperson but remaining as a member; or
- (c) on the expiry of his or her appointment as chairperson.

3 Resignation and removal of members

- (1) A member of a Class A cemetery trust may resign the office of member by writing signed by the member and addressed to the Minister.
- (2) The Governor in Council, on the recommendation of the Minister, may at any time remove a member of a Class A cemetery trust from office.

4 Vacancies in membership

If a member of a Class A cemetery trust dies, resigns or is removed from office, the Governor in Council, in accordance with this Act, may fill the vacant office.

5 Remuneration, fees and allowances of members

- (1) A member of a Class A cemetery trust is entitled to be paid any remuneration fixed for that member from time to time by the Governor in Council, whether—
 - (a) in the member's instrument of appointment; or
 - (b) by order published in the Government Gazette.
- (2) A member of a Class A cemetery trust is entitled to receive reimbursement of reasonable expenses incurred in that office.
- (3) Any amounts paid to a member of a Class A cemetery trust as reimbursement for expenses incurred are to be paid from the funds of that trust.

6 Validity of decisions of cemetery trusts

- (1) An act or decision of a Class A cemetery trust is not invalid merely because of—
 - (a) a defect or irregularity in, or in connection with, the appointment of a member; or
 - (b) a vacancy in the membership of the trust, including a vacancy arising from the failure to appoint an original member.
- (2) Anything done by or in relation to a person purporting to act as chairperson or as a member is not invalid merely because—
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect.

7 Presiding at meetings of Class A cemetery trusts

The person who is to preside at a meeting of a cemetery trust is—

- (a) the chairperson, if he or she is present; or
- (b) if the chairperson is absent, a member elected to preside by the members of the Class A cemetery trust present at the meeting.

8 Proceedings of Class A cemetery trusts

- (1) Subject to subclause (2), meetings of a Class A cemetery trust are to be held at the times and places that the chairperson determines.
- (2) The chairperson of a Class A cemetery trust may at any time convene a meeting, but must do so when requested by at least 2 members of the cemetery trust.

- (3) A Class A cemetery trust may permit its members to participate in a particular meeting by—
 - (a) telephone; or
 - (b) closed-circuit television; or
 - (c) any other means of communication.
- (4) A member who participates in a meeting under a permission under subclause (3) is deemed to be present at the meeting.
- (5) A majority of the members for the time being constitutes a quorum of a Class A cemetery trust.
- (6) A question arising at a meeting—
 - (a) must be determined by a majority of votes of members present and voting on that question; and
 - (b) if the voting is equal, the person presiding has a casting vote as well as a deliberative vote.
- (7) The person presiding must ensure that minutes are kept of each of its meetings.
- (8) Subject to this clause, a Class A cemetery trust may regulate its own proceedings.

9 Disclosure of interest of Class A cemetery trust members

- (1) A member of a Class A cemetery trust who has a direct or indirect pecuniary interest in a contract or other matter being dealt with by the trust must disclose the nature of that interest at a meeting of the trust as soon as possible after becoming aware of the interest.
- (2) A member of a Class A cemetery trust who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created in conflict with the member's

duties as a member, must disclose that fact at a meeting of the trust as soon as possible after becoming aware of the potential conflict.

- (3) The person presiding at a meeting at which a disclosure under this clause is made must cause that disclosure to be recorded in the minutes of the meeting.
 - (4) A person who has made a disclosure under this clause must not take any further part in the discussion of or vote on the contract or other matter to which the disclosure relates.
 - (5) If a member votes on a matter in contravention of subclause (4), his or her vote must be disallowed.
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S. 186.

SCHEDULE 2

TRANSITIONAL PROVISIONS

1 General transitional provisions

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If this Schedule provides that a provision of an Act continues to apply to any matter or thing, then any regulation or other instrument having effect under that Act for the purposes of that provision also continues to apply to that matter or thing.
- (3) If, by virtue of this Schedule, a provision of an Act or a regulation or instrument continues to apply to a matter or thing, it continues to apply as in force immediately before the provision was repealed or revoked.
- (4) This Schedule applies despite anything to the contrary in any other provision of this Act.

2 Superseded references

On and from 1 July 2005, in any Act (other than this Act or a provision of the **Cemeteries Act 1958** continued by this Act), or in any instrument made under any Act or in any other document of any kind—

- (a) a reference to the **Cemeteries Act 1958** is deemed to be a reference to the **Cemeteries and Crematoria Act 2003**; and
- (b) a reference to a cemetery trust appointed under the **Cemeteries Act 1958** or to trustees of a public cemetery is deemed to be a reference to a cemetery trust established under Part 2; and

- (c) subject to clause 9, a reference to rules and regulations made by a cemetery trust under the **Cemeteries Act 1958** is deemed to be a reference to—
- (i) the model rules; or
 - (ii) if a cemetery trust makes cemetery trust rules, those cemetery trust rules—
- so far as the reference relates to any period on or after 1 July 2005 and unless the context otherwise requires.

3 Cemetery trusts

- (1) On 1 July 2005, a cemetery trust responsible for a public cemetery under the **Cemeteries Act 1958** in existence immediately before that date—
- (a) is deemed to be a cemetery trust established under Part 2 responsible for the management of the same public cemetery and known by the same name; and
 - (b) continues in existence as if established under Part 2.
- (2) On 1 July 2005, all money standing immediately before that date to the credit of a fund or account of a cemetery trust under the **Cemeteries Act 1958** and any other money belonging to the cemetery trust as at that date may, after that date, be used or invested by a cemetery trust in accordance with this Act.
- (3) On 1 July 2005, the trustees or members of a cemetery trust in office under the **Cemeteries Act 1958** immediately before that date—
- (a) are deemed to be the members of the cemetery trust continued in existence by subclause (1) appointed in accordance with section 6; and

- (b) continue in office for the remainder of their original terms as if appointed under this Act.
- (4) Despite subclause (3), a cemetery trust is to operate with the number of members it had immediately before 1 July 2005 until—
 - (a) if there were less than 3 trustees immediately before 1 July 2005, the Governor in Council appoints new members in accordance with this Act; or
 - (b) if there were more than 11 trustees immediately before 1 July 2005, the number of initial members falls to 11.

4 Public cemeteries and crematoria

- (1) On 1 July 2005, a public cemetery in existence immediately before that date is deemed to be a public cemetery established in accordance with Part 2 with the same name as it had before that date.
- (2) On 1 July 2005, a crematorium in existence immediately before that date is deemed to be a crematorium established under section 21.
- (3) On 1 July 2005, any mausoleum established by a cemetery trust under the **Cemeteries Act 1958** in existence immediately before that date is deemed to be a mausoleum facility established under section 22.

5 Rights of interment

- (1) On 1 July 2005, an exclusive right of burial under the **Cemeteries Act 1958** in existence immediately before that date—
 - (a) is deemed to be a right of interment specified in section 75(a) of this Act in respect of the same site as that exclusive right of burial; and

- (b) is subject to any terms and conditions on which it was originally granted under the **Cemeteries Act 1958** which are not inconsistent with this Act.
- (2) On 1 July 2005, any agreement for the interment of human remains which was not for a limited period made with a cemetery trust under the **Cemeteries Act 1958** or the rules made under that Act and in existence immediately before that date—
- (a) is deemed to be a right of interment specified in section 75(a) of this Act in respect of the same site as that to which the agreement related; and
 - (b) is subject to any terms and conditions on which it was originally granted under the **Cemeteries Act 1958** which are not inconsistent with this Act.
- (3) On 1 July 2005, any agreement for the interment of human remains for a limited period made with a cemetery trust under the **Cemeteries Act 1958** or the rules made under that Act and in existence immediately before that date—
- (a) is deemed to be a right of interment for a period not exceeding the time for which it is granted; and
 - (b) may be converted to a 25 year right of interment or a perpetual right of interment in accordance with section 87 as if it were a right of interment referred to in that section.
- (4) On 1 July 2005, any agreement for the interment of human remains in a public grave made with a cemetery trust under the **Cemeteries Act 1958** or the rules made under that Act and in existence immediately before that date is deemed to be a

right of interment specified in section 75(b) of this Act.

6 Interment authorisations and approvals

- (1) On 1 July 2005, an application for a burial permit under section 19 of the **Cemeteries Act 1958** which has been made but not determined before 1 July 2005 is deemed to be an application for an interment authorisation and may be considered and determined by a cemetery trust accordingly.
- (2) On 1 July 2005, a burial permit issued under section 19 of the **Cemeteries Act 1958** and in existence immediately before that date is deemed to be an interment authorisation.
- (3) On 1 July 2005, an application for an approval from the Secretary for burial in any private ground or land under section 47 of the **Cemeteries Act 1958** which has been made but not determined before 1 July 2005 is deemed to be an application for an interment approval and may be considered and determined by the Secretary accordingly.
- (4) On 1 July 2005, an approval from the Secretary for burial in any private ground or land under section 47 of the **Cemeteries Act 1958** and in existence immediately before that date is deemed to be an interment approval.

7 Cremation authorisations and approvals

- (1) On 1 July 2005, an application for permission to cremate a corpse under section 76 of the **Cemeteries Act 1958** which has been made but not determined before 1 July 2005 is deemed to be an application for a cremation authorisation and may be considered and determined by a cemetery trust accordingly.

- (2) On 1 July 2005, any permission to cremate a corpse given under section 76 of the **Cemeteries Act 1958** and in existence immediately before that date is deemed to be a cremation authorisation.
- (3) On 1 July 2005, an application for the consent the Secretary to cremate or destroy human remains by fire in any place outside a cemetery under section 79 of the **Cemeteries Act 1958** which has been made but not determined before that date is deemed to be an application for an approval to cremate outside a public cemetery under section 135 and may be considered and determined by the Secretary accordingly.
- (4) On 1 July 2005, a duly completed document authorising cremation signed by the Secretary under section 77(1)(b)(iv) of the **Cemeteries Act 1958** and in existence immediately before that date is deemed to be a cremation approval.

8 Registers and records

On 1 July 2005, a register or record kept under the **Cemeteries Act 1958** is deemed to be a record kept in accordance with Part 4.

9 Trustees rules and regulations

On 1 July 2005—

- (a) all rules and regulations made by a cemetery trust under section 9 of the **Cemeteries Act 1958** are revoked; and
- (b) the model rules apply to any public cemetery for which a cemetery trust continued in existence under clause 3 is responsible unless that cemetery trust makes cemetery trust rules.

10 Continuation of entitlement under section 25(5) of the Cemeteries Act 1958

Despite the repeal of section 25(5) of the **Cemeteries Act 1958**, a person who had a right to acquire an exclusive right under section 25 in respect of a place of burial in existence immediately before that repeal is entitled, on payment of the relevant cemetery trust fee, to purchase a right of interment specified in section 75(a) to that place.

11 Existing fees or charges or scales of fees and charges

On 1 July 2005, any scale of fees made by a cemetery trust under section 17 or section 69 of the **Cemeteries Act 1958** is deemed to be the cemetery trust fees in respect of that public cemetery and, subject to this Act, remains in force until 1 July 2006.

12 Administrators appointed under Cemeteries Act 1958

On 1 July 2005, any administrator appointed to manage a public cemetery under section 6 of the **Cemeteries Act 1958** and whose appointment was in force immediately before that date is deemed to have been appointed to manage that public cemetery in accordance with section 10.

13 Borrowings under Cemeteries Act 1958

Despite the repeal of section 8 of the **Cemeteries Act 1958**, that section, as in force immediately before its repeal, continues to apply in relation to any money borrowed by a cemetery trust under that section immediately before its repeal.

14 Existing borrowings approved by Treasurer

Despite the repeal of section 8A of the **Cemeteries Act 1958**, that section, other than subsection (7), as in force immediately before its repeal continues to apply in respect of any moneys borrowed by a cemetery trust in accordance with that section immediately before its repeal.

15 Permits to erect monuments and dig graves

- (1) On 1 July 2005, a permit issued under section 18 of the **Cemeteries Act 1958** and in existence immediately before that date is deemed to be an approval under section 99.
- (2) Section 179 does not apply to a permit issued under section 18 of the **Cemeteries Act 1958** which is deemed by subclause (1) to be an approval under section 99.

16 Erecting monuments

- (1) On 1 July 2005, a plan of a vault, monument or tombstone proposed to be erected or placed in a cemetery submitted to a cemetery trust and the Secretary under section 20 of the **Cemeteries Act 1958** which has not been determined before that date is deemed, on that date, to be an application under section 98 and may be considered and determined by a cemetery trust accordingly.
- (2) On 1 July 2005, a permit issued under section 20 of the **Cemeteries Act 1958** and in existence immediately before that date is deemed to be an approval under section 99.
- (3) Section 179 does not apply to a permit issued under section 20 of the **Cemeteries Act 1958** which is deemed by subclause (2) to be an approval under section 99.

17 Noxious exhalations or evaporations

On 1 July 2005, a notice under section 22 of the **Cemeteries Act 1958** existing immediately before that date is deemed to be a notice under section 106.

18 Repair of memorials

- (1) On 1 July 2005, a notice under section 23 of the **Cemeteries Act 1958** existing immediately before that date is deemed to be a notice under section 106.
- (2) On 1 July 2005, a consent of the Secretary under section 23(3)(b) of the **Cemeteries Act 1958** existing immediately before that date is deemed to be a consent of the Secretary under section 106(4)(b).

19 Money lent or paid and securities

Despite the repeal of sections 31 and 32 of the **Cemeteries Act 1958**, those sections, as in force immediately before their repeal, continue to apply in respect of any sum lent or paid under section 31 to a cemetery trust under that Act or security given under section 32 of that Act.

20 Accounts and abstracts

Despite the repeal of sections 33, 34 and 35 of the **Cemeteries Act 1958**, a cemetery trust must provide to the Secretary by 1 October 2005, accounts, abstracts and a statement for the period commencing 1 January 2005 and ending 30 June 2005 containing the information referred to in those sections as in force immediately before their repeal.

21 Exhumation licences

On 1 July 2005, any existing exhumation licence issued under section 48 of the **Cemeteries Act 1958** is deemed to be an exhumation licence under this Act.

22 Overlay sites at Melbourne General Cemetery

Despite the repeal of section 46A of the **Cemeteries Act 1958**, that section, as in force immediately before its repeal, continues to apply in respect of any right of burial or interment to which that section applied immediately before its repeal.

23 Mortuary churches or chapels

On 1 July 2005, a plan of a mortuary church or chapel proposed to be erected and built in a cemetery submitted for the approval of a cemetery trust under section 29 of the **Cemeteries Act 1958** which has not been determined before that date is deemed, on that date, to be an application under section 101 and may be considered and determined by a cemetery trust accordingly.

24 Pioneer memorial parks

- (1) On 1 July 2005, a pioneer memorial park established under Part IA of the **Cemeteries Act 1958** is deemed to be a historic cemetery park.
- (2) On 1 July 2005, a proposal to convert a cemetery to a pioneer memorial park submitted to the Secretary under section 60B(1) of the **Cemeteries Act 1958** which has been made but not determined before that date is deemed to be an application under section 66 and may be considered and determined by the Minister accordingly.

- (3) On 1 July 2005, an authority granted by the Minister under section 60B(3) of the **Cemeteries Act 1958** in existence at that date is deemed to be an approval to convert under section 67.

25 Third Schedule certificate

On 1 July 2005, a duly completed document in the form of the Third Schedule to the **Cemeteries Act 1958** and in existence immediately before that date is deemed to be a certificate of a registered medical practitioner authorising cremation referred to in section 131(3)(a)(i).

SCHEDULE 3

Section 5A

Sch. 3
inserted by
No. 61/2009
s. 24.

REGIONAL CLASS A CEMETERY TRUSTS

1 Application of Schedule

This Schedule applies to—

- (a) The Ballarat General Cemeteries Trust;
- (b) The Bendigo Cemeteries Trust;
- (c) The Geelong Cemeteries Trust.

2 Conversion to Class A cemetery trusts

- (1) On the commencement of this Schedule, a cemetery trust to which this Schedule applies—
 - (a) is deemed, on and from that commencement, to be a Class A cemetery trust for the purposes of this Act—
 - (i) responsible for the management of the same public cemeteries for which the relevant cemetery trust was responsible immediately before that commencement; and
 - (ii) known by the same name as it was known immediately before that commencement;
 - (b) continues in existence as if established as a Class A cemetery trust under Part 2;
 - (c) is the same body after that commencement as it was before the commencement, despite the change of its status to a Class A cemetery trust or any change in membership of the cemetery trust.

- (2) Subclause (1) does not affect any decision, matter or thing done or undertaken in accordance with this Act by a cemetery trust to which this Schedule applies immediately before the commencement of this Schedule.

3 Trust members

- (1) On the commencement of this Schedule, a member of a cemetery trust to which this Schedule applies in office immediately before that commencement—
- (a) is deemed to be a member of the relevant cemetery trust converted by clause 2 for the same cemetery trust of which that person was a member immediately before that commencement as if appointed in accordance with section 6A; and

Example

A member of the Ballarat General Cemeteries Trust is a member of the Ballarat General Cemeteries Trust which has been converted to a Class A cemetery trust.

A member of the Bendigo Cemeteries Trust is a member of the Bendigo Cemeteries Trust which has been converted to a Class A cemetery trust.

A member of the Geelong Cemeteries Trust is a member of the Geelong Cemeteries Trust which has been converted to a Class A cemetery trust.

- (b) continues in office for a period of 3 years from the commencement of this Schedule as if appointed in accordance with section 6A; and
- (c) if any member of a cemetery trust to which this Schedule applies was, immediately before that commencement, a life member of a cemetery trust, ceases to be a life member and paragraph (b) applies to that person; and

- (d) in the case of a chairperson of a cemetery trust to which this Schedule applies, that person continues as chairperson of the relevant cemetery trust converted by clause 2 as if he or she had been appointed under clause 2 of Schedule 1A for the remainder of the period for which he or she was elected chairperson of the cemetery trust as constituted immediately before the commencement of this Schedule, provided that period does not exceed 3 years from the commencement of this Schedule.
- (2) The Minister, by instrument, may fix the remuneration payable to any member of a cemetery trust referred to in subclause (1) for the period of the person's appointment under subclause (1).
- (3) In fixing remuneration under subclause (2), the Minister must take into account any Government guidelines for the remuneration of members of public bodies.
- (4) Nothing in this clause prevents a person being eligible for reappointment as a member of a Class A cemetery trust or a Class B cemetery trust.

4 Property and staff

- (1) For the avoidance of doubt, on and from the commencement of this Schedule—
- (a) all property vested in a cemetery trust to which this Schedule applies immediately before that commencement (including all money standing immediately before that commencement to the credit of a fund or account of a cemetery trust to which this Schedule applies and any other money belonging to the cemetery trust as at that

commencement) and all rights and liabilities—

- (i) continue as the property, rights and liabilities of the relevant Class A cemetery trust converted by this Schedule; and
 - (ii) may be used or invested by the Class A cemetery trust converted by this Schedule in accordance with this Act; and
- (b) a person employed immediately before the commencement of this Schedule by a cemetery trust to which this Schedule applies (including a chief executive officer of a cemetery trust to which this Schedule applies) continues to be employed by the relevant Class A cemetery trust converted by clause 2 subject to the same terms and conditions of employment.

(2) Nothing in subclause (1)(b) prevents—

- (a) any of the terms and conditions of employment of a person referred to in subclause (1)(b) from being altered by or under any law, award or agreement with effect from any time after the commencement of this Schedule; or
- (b) a person referred to in subclause (1)(b) from resigning or being dismissed at any time after the commencement of this Schedule in accordance with the then existing terms and conditions of his or her employment by the relevant Class A cemetery trust.

5 Amendment of Register

The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Schedule.

6 Validity of things done under this Schedule

Nothing effected or to be effected by this Schedule or done or suffered under this Schedule—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or

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- (f) is to be regarded as frustrating any contract;
or
 - (g) releases any surety or other obligee or
obligor wholly or in part from any
obligation.
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SCHEDULE 4

Section 5B

Sch. 4
inserted by
No. 61/2009
s. 25.

**ABOLITION OF CERTAIN CEMETERY TRUSTS AND
ESTABLISHMENT OF NEW CLASS A CEMETERY TRUSTS**

PART 1—PRELIMINARY

1 Definitions

In this Schedule—

appointed day means—

- (a) in relation to The Mildura Cemetery Trust, the appointed day specified in an order made under clause 2 in respect of The Mildura Cemetery Trust;
- (b) in relation to The Greater Metropolitan Cemeteries Trust, the appointed day specified in an order made under clause 2 in respect of The Greater Metropolitan Cemeteries Trust;
- (c) in relation to The Southern Metropolitan Cemeteries Trust, the appointed day specified in an order made under clause 2 in respect of The Southern Metropolitan Cemeteries Trust;

former council managed cemetery trust means—

- (a) the old Mildura Cemetery Trust;
- (b) The Keilor Cemetery Trust;
- (c) The Preston Cemetery Trust;
- (d) Wyndham Cemeteries Trust;

former instrument means an instrument (including a legislative instrument other than this Act) subsisting immediately before the relevant appointed day—

- (a) to which the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires) was a party; or
- (b) that was given to, or in favour of, the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires); or
- (c) that refers to the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires); or
- (d) under which—
 - (i) money is, or may become, payable to the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires); or
 - (ii) other property is to be, or may become liable to be, transferred to or by the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires);

former north west and eastern cemetery trust
means—

- (a) The Anderson's Creek Cemetery Trust;
- (b) The Keilor Cemetery Trust;
- (c) The Lilydale Cemeteries Trust;
- (d) The Preston Cemetery Trust;

- (e) The Templestowe Cemetery Trust;
- (f) The Trustees of the Altona Memorial Park;
- (g) The Trustees of the Fawkner Crematorium and Memorial Park;
- (h) Wyndham Cemeteries Trust;

former southern cemetery trust means—

- (a) The Cheltenham and Regional Cemeteries Trust;
- (b) The Trustees of the Necropolis, Spring Vale;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

listed employee means an employee of the Brimbank City Council, the Darebin City Council, the Mildura Rural City Council or the Wyndham City Council who is eligible for inclusion on a list prepared under clause 15;

property means a legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

staff transfer date means a date fixed by the Secretary under clause 16;

The Greater Metropolitan Cemeteries Trust means the Class A cemetery trust established by clause 4;

The Keilor Cemetery Trust means the Keilor Cemetery Trust of which the Brimbank City Council or its councillors are the members;

The Mildura Cemetery Trust means the Class A cemetery trust established by clause 3;

the old Mildura Cemetery Trust means the Mildura Cemetery Trust of which the Mildura Rural City Council or its councillors are the members;

The Preston Cemetery Trust means the Preston Cemetery Trust of which the Darebin City Council or its councillors are the members;

The Southern Metropolitan Cemeteries Trust means the Class A cemetery trust established by clause 5;

transfer order means an order made under clause 10;

Wyndham Cemeteries Trust means the Wyndham Cemeteries Trust of which the Wyndham City Council or its councillors are the members.

2 Appointed days

- (1) The Governor in Council, by order published in the Government Gazette, may appoint a day as the appointed day in relation to The Mildura Cemetery Trust for the purposes of this Schedule.
- (2) The Governor in Council, by order published in the Government Gazette, may appoint a day as the appointed day in relation to The Greater Metropolitan Cemeteries Trust for the purposes of this Schedule.
- (3) The Governor in Council, by order published in the Government Gazette, may appoint a day as the appointed day in relation to The Southern

Metropolitan Cemeteries Trust for the purposes of this Schedule.

PART 2—ESTABLISHMENT OF CLASS A CEMETERY TRUSTS

3 The Mildura Cemetery Trust

- (1) On the appointed day—
- (a) the old Mildura Cemetery Trust is abolished and its members go out of office; and
 - (b) The Mildura Cemetery Trust is established and is the successor in law of the old Mildura Cemetery Trust; and
 - (c) all property and rights of the old Mildura Cemetery Trust are, by virtue of this clause, vested in The Mildura Cemetery Trust; and
 - (d) all liabilities of the old Mildura Cemetery Trust are, by virtue of this clause, liabilities of The Mildura Cemetery Trust.
- (2) The Mildura Cemetery Trust—
- (a) is a Class A cemetery trust responsible for the management of the public cemeteries for which the old Mildura Cemetery Trust was responsible immediately before the appointed day; and
 - (b) is taken to have been established as a Class A cemetery trust under Part 2.

4 The Greater Metropolitan Cemeteries Trust

- (1) On the appointed day—
- (a) the following cemetery trusts are abolished and the members go out of office—
 - (i) The Anderson's Creek Cemetery Trust;
 - (ii) The Keilor Cemetery Trust;
 - (iii) The Lilydale Cemeteries Trust;

- (iv) The Preston Cemetery Trust;
 - (v) The Templestowe Cemetery Trust;
 - (vi) The Trustees of the Altona Memorial Park;
 - (vii) The Trustees of the Fawkner Crematorium and Memorial Park;
 - (viii) Wyndham Cemeteries Trust;
 - (b) The Greater Metropolitan Cemeteries Trust is established and is the successor in law to each of the cemetery trusts specified in paragraph (a); and
 - (c) all property and rights of each of the former north west and eastern cemetery trusts are, by virtue of this clause, vested in The Greater Metropolitan Cemeteries Trust; and
 - (d) all liabilities of each of the former north west and eastern cemetery trusts are, by virtue of this clause, liabilities of The Greater Metropolitan Cemeteries Trust.
- (2) The Greater Metropolitan Cemeteries Trust—
- (a) is a Class A cemetery trust responsible for the management of the public cemeteries for which each of the former north west and eastern cemetery trusts was responsible immediately before the appointed day; and
 - (b) is taken to have been established as a Class A cemetery trust under Part 2.

5 The Southern Metropolitan Cemeteries Trust

- (1) On the appointed day—
- (a) The Cheltenham and Regional Cemeteries Trust is abolished and the members go out of office; and

- (b) The Trustees of the Necropolis, Spring Vale is abolished and the members go out of office; and
 - (c) The Southern Metropolitan Cemeteries Trust is established and is the successor in law to each of the cemetery trusts specified in paragraphs (a) and (b); and
 - (d) all property and rights of each of the former southern cemetery trusts are, by virtue of this clause, vested in The Southern Metropolitan Cemeteries Trust; and
 - (e) all liabilities of each of the former southern cemetery trusts are, by virtue of this clause, liabilities of The Southern Metropolitan Cemeteries Trust.
- (2) The Southern Metropolitan Cemeteries Trust—
- (a) is a Class A cemetery trust responsible for the management of the public cemeteries for which each of the former southern cemetery trusts was responsible immediately before the appointed day; and
 - (b) is taken to have been established as a Class A cemetery trust under Part 2.

6 Substitution of party to agreement

- (1) If, under clause 3, the rights and liabilities of the old Mildura Cemetery Trust under an agreement, including an oral agreement, vest in, or become rights and liabilities of, The Mildura Cemetery Trust—
 - (a) on the appointed day, The Mildura Cemetery Trust becomes a party to the agreement in place of the old Mildura Cemetery Trust; and

- (b) on and after the appointed day, the agreement has effect as if The Mildura Cemetery Trust had always been a party to the agreement.
- (2) If, under clause 4, the rights and liabilities of a former north west and eastern cemetery trust under an agreement, including an oral agreement, vest in, or become rights and liabilities of, The Greater Metropolitan Cemeteries Trust—
 - (a) on the appointed day, The Greater Metropolitan Cemeteries Trust becomes a party to the agreement in place of the relevant former north west and eastern cemeteries trust; and
 - (b) on and after the appointed day, the agreement has effect as if The Greater Metropolitan Cemeteries Trust had always been a party to the agreement.
- (3) If, under clause 5, the rights and liabilities of a former southern cemetery trust under an agreement, including an oral agreement, vest in, or become rights and liabilities of, The Southern Metropolitan Cemeteries Trust—
 - (a) on the appointed day, The Southern Metropolitan Cemeteries Trust becomes a party to the agreement in place of the relevant former southern cemetery trust; and
 - (b) on and after the appointed day, the agreement has effect as if The Southern Metropolitan Cemeteries Trust had always been a party to the agreement.

7 Former instruments

Any former instrument continues to have effect according to its tenor on and after the relevant appointed day as if a reference in the instrument—

- (a) to the old Mildura Cemetery Trust were a reference to The Mildura Cemetery Trust;
- (b) to a former north west and eastern cemetery trust were a reference to The Greater Metropolitan Cemeteries Trust;
- (c) to a former southern cemetery trust were a reference to The Southern Metropolitan Cemeteries Trust.

8 Proceedings

- (1) If, immediately before the appointed day, proceedings to which the old Mildura Cemetery Trust was a party were pending or existing in any court or tribunal, on and after the appointed day, The Mildura Cemetery Trust—
 - (a) is substituted for the old Mildura Cemetery Trust as a party to the proceedings; and
 - (b) has the same rights in the proceedings as the old Mildura Cemetery Trust had.
- (2) If, immediately before the appointed day, proceedings to which a former north west and eastern cemetery trust was a party were pending or existing in any court or tribunal, on and after the appointed day, The Greater Metropolitan Cemeteries Trust—
 - (a) is substituted for the relevant former north west and eastern cemetery trust as a party to the proceedings; and
 - (b) has the same rights in the proceedings as the relevant former north west and eastern cemetery trust had.
- (3) If, immediately before the appointed day, proceedings to which a former southern cemetery trust was a party were pending or existing in any court or tribunal, on and after the appointed day, The Southern Metropolitan Cemeteries Trust—

- (a) is substituted for the relevant former southern cemetery trust as a party to the proceedings; and
- (b) has the same rights in the proceedings as the relevant former southern cemetery trust had.

9 Interests in land

Without limiting Division 2 of Part 3 or this Schedule and despite anything to the contrary in any other Act or law (other than the **Charter of Human Rights and Responsibilities Act 2006**), subject to clause 10, if—

- (a) immediately before the appointed day the old Mildura Cemetery Trust is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after that day—
 - (i) The Mildura Cemetery Trust is to be taken to be the registered proprietor of that interest in land; and
 - (ii) The Mildura Cemetery Trust has the same rights and remedies in respect of that interest as the old Mildura Cemetery Trust had;
- (b) immediately before the appointed day a former north west and eastern cemetery trust is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after that day—
 - (i) The Greater Metropolitan Cemeteries Trust is to be taken to be the registered proprietor of that interest in land; and
 - (ii) The Greater Metropolitan Cemeteries Trust has the same rights and remedies in respect of that interest as the relevant

former north west and eastern cemetery trust had;

- (c) immediately before the appointed day, a former southern cemetery trust is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after that day—
- (i) The Southern Metropolitan Cemeteries Trust is to be taken to be the registered proprietor of that interest in land; and
 - (ii) The Southern Metropolitan Cemeteries Trust has the same rights and remedies in respect of that interest as the relevant former southern cemetery trust had.

10 Transfer order—former council managed cemetery trusts

- (1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may allocate to a Class A cemetery trust established by this Schedule the property, rights and liabilities of a municipal council which constituted a former council managed cemetery trust primarily used for or related to a former council managed cemetery trust or used for or in connection with the provision of cemetery or crematoria services or the management of a public cemetery by the municipal council that are specified in the order.
- (2) Without limiting subclause (1), a transfer order may allocate property, rights and liabilities by reference—
- (a) to a public cemetery or other place; or
 - (b) to a class or category of property, rights or liabilities; or
 - (c) to a combination of paragraphs (a) and (b).

- (3) The Minister must not recommend the making of a transfer order unless he or she is satisfied that the details of the property, rights or liabilities to be transferred have been agreed between a municipal council which constituted a former council managed cemetery trust and the Secretary or a new Class A cemetery trust established by this Schedule.

11 Effect of transfer order

- (1) If a transfer order is made, on the date specified in the order as the transfer date—
- (a) all property and rights of the municipal council specified in the order vest in the Class A cemetery trust established by this Schedule and specified in the transfer order; and
 - (b) all liabilities of the municipal council specified in the order become liabilities of the Class A cemetery trust established by this Schedule and specified in the transfer order; and
 - (c) the Class A cemetery trust established by this Schedule and specified in the order becomes the successor in law of the municipal council in relation to the property, rights and liabilities specified in the transfer order.
- (2) If, under a transfer order, the property, rights and liabilities of a municipal council under an agreement, including an oral agreement, vest in, or become property, rights and liabilities of, a Class A cemetery trust established by this Schedule—
- (a) the Class A cemetery trust becomes, on the transfer date specified in the transfer order, a party to the agreement in place of the municipal council; and

- (b) on and after the transfer date specified in the transfer order, the agreement has effect as if the Class A cemetery trust had always been a party to the agreement.
- (3) If, immediately before the transfer date specified in the transfer order, proceedings relating to the property, rights or liabilities specified in the transfer order to which a municipal council was a party, were pending or existing in any court or tribunal, on and after the transfer date specified in the transfer order, the Class A cemetery trust established by this Schedule and specified in the order—
 - (a) is substituted for the municipal council as a party to the proceedings; and
 - (b) has the same rights in the proceedings as the municipal council had.
- (4) Without limiting this Schedule and despite anything to the contrary in any other Act or law (other than the **Charter of Human Rights and Responsibilities Act 2006**), if immediately before the transfer date specified in the transfer order, a municipal council is, in relation to the property, rights or liabilities specified in the transfer order, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—
 - (a) the Class A cemetery trust established by this Schedule and specified in the order is to be taken to be the registered proprietor of that interest in land; and
 - (b) the Class A cemetery trust established by this Schedule and specified in the order has the same rights and remedies in respect of that interest as the municipal council had.

- (5) Any instrument relating to property, rights and liabilities of a municipal council that under a transfer order have vested in, or become property, rights and liabilities of a Class A cemetery trust established by this Schedule has effect and continues to have effect according to its tenor on and after the transfer date specified in the transfer order as if a reference in the instrument to the municipal council were a reference to the Class A cemetery trust specified in the transfer order.
- (6) More than one transfer order may be made under this clause.

12 Interim CEO

- (1) The Secretary, by instrument, may appoint a person to act as the interim chief executive officer of The Mildura Cemetery Trust.
- (2) The Secretary, by instrument, may appoint a person to act as the interim chief executive officer of The Greater Metropolitan Cemeteries Trust.
- (3) The Secretary, by instrument, may appoint a person to act as the interim chief executive officer of The Southern Metropolitan Cemeteries Trust.
- (4) Subject to this Act, a person appointed to act as interim chief executive officer—
 - (a) of The Mildura Cemetery Trust appointed under subclause (1) is taken to have been appointed by The Mildura Cemetery Trust;
 - (b) of The Greater Metropolitan Cemeteries Trust appointed under subclause (2) is taken to have been appointed by The Greater Metropolitan Cemeteries Trust;
 - (c) of The Southern Metropolitan Cemeteries Trust appointed under subclause (3) is taken to have been appointed by The Southern Metropolitan Cemeteries Trust.

- (5) An appointment under subclause (1), (2) or (3)—
- (a) is subject to the terms and conditions specified in the instrument of appointment; and
 - (b) is for the period specified in that instrument, not exceeding 6 months.

Note

See section 13 of the **Interpretation of Legislation Act 1984**.

- (6) The Secretary may reappoint an interim chief executive officer appointed under this clause provided the total period of the interim chief executive officer's appointment does not exceed 12 months.
- (7) Nothing in this clause prevents a person appointed as an interim chief executive officer being employed by the relevant Class A cemetery trust in accordance with section 18L as a chief executive officer after his or her interim appointment expires.

13 Transfer of staff

- (1) A person who, immediately before the appointed day, was an employee of the old Mildura Cemetery Trust is to be taken as—
- (a) having been employed by The Mildura Cemetery Trust with effect from that day; and
 - (b) having been employed by The Mildura Cemetery Trust on the same terms and conditions as those that applied to the person immediately before that day as an employee of the old Mildura Cemetery Trust; and
 - (c) having accrued an entitlement to benefits in connection with that employment by The Mildura Cemetery Trust that is equivalent to

the entitlement that the person had accrued as an employee of the old Mildura Cemetery Trust immediately before that day.

- (2) A person who, immediately before the appointed day, was an employee of a former north west and eastern cemetery trust is to be taken as—
- (a) having been employed by The Greater Metropolitan Cemeteries Trust with effect from that day; and
 - (b) having been employed by The Greater Metropolitan Cemeteries Trust on the same terms and conditions as those that applied to the person immediately before that day as an employee of the relevant former north west and eastern cemetery trust; and
 - (c) having accrued an entitlement to benefits in connection with that employment by The Greater Metropolitan Cemeteries Trust that is equivalent to the entitlement that the person had accrued as an employee of the relevant former north west and eastern cemetery trust immediately before that day.
- (3) A person who, immediately before the appointed day, was an employee of a former southern cemetery trust is to be taken as—
- (a) having been employed by The Southern Metropolitan Cemeteries Trust with effect from that day; and
 - (b) having been employed by The Southern Metropolitan Cemeteries Trust on the same terms and conditions as those that applied to the person immediately before that day as an employee of the relevant former southern cemetery trust; and

- (c) having accrued an entitlement to benefits in connection with that employment by The Southern Metropolitan Cemeteries Trust that is equivalent to the entitlement that the person had accrued as an employee of the relevant former southern cemetery trust immediately before that day.
- (4) The service of an employee transferred under this clause as an employee—
- (a) of The Mildura Cemetery Trust is to be taken for all purposes as having been continuous with the service of the employee, immediately before the appointed day, as an employee of the old Mildura Cemetery Trust;
 - (b) of The Greater Metropolitan Cemeteries Trust is to be taken for all purposes as having been continuous with the service of the employee, immediately before the appointed day, as an employee of the relevant former north west and eastern cemetery trust;
 - (c) of The Southern Metropolitan Cemeteries Trust is to be taken for all purposes as having been continuous with the service of the employee, immediately before the appointed day, as an employee of the relevant former southern cemetery trust.
- (5) The superannuation entitlements of an employee transferred under this clause are to be taken not to be affected by the transfer of the person under this clause.
- (6) An employee transferred under this clause is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the old Mildura Cemetery Trust, the relevant former southern cemetery trust or the relevant

former north west and eastern cemetery trust, as the case requires, because of this clause.

- (7) A certificate purporting to be signed by the chief executive officer of The Mildura Cemetery Trust, The Greater Metropolitan Cemeteries Trust or The Southern Metropolitan Cemeteries Trust, as the case requires, certifying that a person named in the certificate was, with effect from the relevant appointed day, employed by virtue of this clause by The Mildura Cemetery Trust, The Greater Metropolitan Cemeteries Trust or The Southern Metropolitan Cemeteries Trust (as the case requires)—
- (a) is admissible in evidence in any proceedings; and
 - (b) is conclusive proof of the matters stated in it.
- (8) This clause does not apply to the chief executive officer (by whatever title called) of—
- (a) the old Mildura Cemetery Trust;
 - (b) a former north west and eastern cemetery trust;
 - (c) a former southern cemetery trust.
- (9) This clause does not apply to a listed employee.

14 Future terms and conditions of staff

Nothing in clause 13 prevents—

- (a) any of the terms and conditions of employment of a person referred to in that clause from being altered by or under any law, award or agreement with effect from any time after the relevant appointed day; or
- (b) a person referred to in that clause from resigning or being dismissed at any time after the relevant appointed day in accordance with the then existing terms and

conditions of his or her employment by The Mildura Cemetery Trust, The Greater Metropolitan Cemeteries Trust or The Southern Metropolitan Cemeteries Trust, as the case requires.

15 Listed employees

- (1) Before the relevant staff transfer date, the Secretary may prepare a list of employees of Brimbank City Council, Darebin City Council, Mildura Rural City Council or Wyndham City Council who are eligible to become employees of a new Class A cemetery trust established by this Schedule on that date.
- (2) A person is eligible to be a listed employee if that person—
 - (a) is employed by a municipal council referred to in subclause (1) primarily for the purposes of a cemetery trust or any public cemetery for which it is responsible; and
 - (b) agrees to be transferred in accordance with this Schedule.
- (3) The list may specify the listed employees—
 - (a) by name or position; or
 - (b) by class or category; or
 - (c) by reference to a municipal council, a cemetery trust, public cemetery or other place; or
 - (d) by any combination of paragraphs (a) to (c).
- (4) The list must specify the new Class A cemetery trust established by this Schedule which, on the staff transfer date, is to become the employer of each listed employee specified on the list.

- (5) Nothing in this clause prevents a person specified as a listed employee under this clause from resigning or being dismissed at any time before the relevant staff transfer date in accordance with the terms and conditions of his or her employment.

16 Staff transfer date

- (1) The Secretary, by notice published in the Government Gazette, may determine a date that is to be the staff transfer date for the purposes of transferring a listed employee or listed employees.
- (2) A staff transfer date must not be a date earlier than the appointed day in relation to the relevant Class A cemetery trust established by this Schedule.
- (3) The Secretary may give more than one notice under this clause.

17 Transfer of listed employees

- (1) A person who was a listed employee immediately before the relevant staff transfer date is to be taken as—
- (a) having been employed by the Class A cemetery trust established by this Schedule and specified in the list in respect of that listed employee with effect from the staff transfer date; and
- (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before the relevant staff transfer date, as an employee of the relevant municipal council; and
- (c) having accrued an entitlement to benefits in connection with that employment with the Class A cemetery trust established by this Schedule and specified in the list in respect of that listed employee that is equivalent to

the entitlement that the person had accrued as an employee of the relevant municipal council immediately before the relevant staff transfer date.

- (2) The service of a listed employee transferred under this clause as an employee of the Class A cemetery trust established by this Schedule and specified in the list in respect of that listed employee is to be regarded for all purposes as having been continuous with the service of the transferred listed employee, immediately before the relevant staff transfer date, as an employee of the relevant municipal council.
- (3) A listed employee transferred under this clause is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of a municipal council because of this Schedule.
- (4) The superannuation entitlements of an employee transferred under this clause are to be taken not to be affected by the transfer of the person under this clause.
- (5) A certificate purporting to be signed by the chief executive officer of the Class A cemetery trust established by this Schedule and specified in the list in respect of a listed employee certifying that a person named in the certificate was, with effect from the relevant staff transfer date, employed by virtue of this clause by the Class A cemetery trust named in the certificate—
 - (a) is admissible in evidence in any proceedings; and
 - (b) is conclusive proof of the matters stated in it.

18 Future terms and conditions of transferred listed employees

Nothing in clause 17 prevents—

- (a) any of the terms and conditions of employment of a listed employee transferred under that clause from being altered by or under any law, award or agreement with effect from any time after the relevant staff transfer date; or
- (b) a listed employee transferred under that clause from resigning, or the termination of that employee's employment, at any time after the relevant staff transfer date in accordance with the then existing terms and conditions of his or her employment by the Class A cemetery trust to which that listed employee was transferred.

19 Cemetery trust fees

- (1) Any cemetery trust fees fixed by the old Mildura Cemetery Trust, a former north west and eastern cemetery trust or a former southern cemetery trust and in force immediately before the relevant appointed day, on and from the relevant appointed day, are taken to be cemetery trust fees fixed by—
 - (a) The Mildura Cemetery Trust, in the case of cemetery trust fees fixed by the old Mildura Cemetery Trust;
 - (b) The Greater Metropolitan Cemeteries Trust, in the case of cemetery trust fees fixed by a former north west and eastern cemetery trust;
 - (c) The Southern Metropolitan Cemeteries Trust, in the case of cemetery trust fees fixed by a former southern cemetery trust.

- (2) Cemetery trust fees to which this clause applies must be reviewed by the relevant Class A cemetery trust established by this Schedule within 2 years of the relevant appointed day for each Class A cemetery trust.

20 Construction of references

On and from the relevant appointed day, in any Act (other than this Act), or in any subordinate instrument made under any Act or in any other document of any kind, unless the context otherwise requires—

- (a) a reference to The Cheltenham and Regional Cemeteries Trust is to be construed as a reference to The Southern Metropolitan Cemeteries Trust;
- (b) a reference to The Trustees of the Necropolis, Spring Vale is to be construed as a reference to The Southern Metropolitan Cemeteries Trust;
- (c) a reference to The Anderson's Creek Cemetery Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
- (d) a reference to The Keilor Cemetery Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
- (e) a reference to The Lilydale Cemeteries Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
- (f) a reference to The Preston Cemetery Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
- (g) a reference to The Templestowe Cemetery Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;

- (h) a reference to The Trustees of the Altona Memorial Park is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
- (i) a reference to The Trustees of the Fawkner Crematorium and Memorial Park is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
- (j) a reference to Wyndham Cemeteries Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
- (k) a reference to the Mildura Cemetery Trust is to be construed as a reference to The Mildura Cemetery Trust established by this Schedule.

PART 3—GENERAL

21 Amendment of Register

The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Schedule.

22 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Schedule or in respect of any act or transaction connected with or necessary to be done by reason of this Schedule, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of a cemetery trust.

23 Validity of things done under this Schedule

Nothing effected or to be effected by this Schedule or done or suffered under this Schedule—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
- (f) is to be regarded as frustrating any contract; or

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(g) releases any surety or other obligee or obligor wholly or in part from any obligation.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 28 August 2003

Legislative Council: 14 October 2003

The long title for the Bill for this Act was "to provide for the management and operation of cemeteries and crematoria, to repeal the **Cemeteries Act 1958**, to amend the **Crimes Act 1958** and to consequentially amend other Acts and for other purposes."

The **Cemeteries and Crematoria Act 2003** was assented to on 11 November 2003 and came into operation on 1 July 2005: section 2.

2 Table of Amendments

This publication incorporates amendments made to the **Cemeteries and Crematoria Act 2003** by Acts and subordinate instruments.

Public Administration Act 2004, No. 108/2004 (as amended by No. 20/2005)

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 27) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Health Legislation (Miscellaneous Amendments) Act 2005, No. 42/2005

Assent Date: 2.8.05
Commencement Date: Ss 3–7 on 3.8.05: s. 2
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 7) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 9) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 4) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 249 on 1.1.09: Special Gazette (No. 365) 12.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Coroners Act 2008, No. 77/2008

Assent Date: 11.12.08
Commencement Date: S. 129(Sch. 2 item 4) on 1.11.09: s. 2
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

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Cemeteries and Crematoria Amendment Act 2009, No. 61/2009

Assent Date: 27.10.09
Commencement Date: Ss 3–5, 8–23, 26–43 on 1.1.10: Government Gazette 17.12.09 p. 3338; ss 7, 25 on 1.2.10: Government Gazette 28.1.10 p. 146; ss 6, 24 on 1.3.10: Government Gazette 18.2.10 p. 288
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 17) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 9) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date: 8.6.10
Commencement Date: S. 50 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 14) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014

Assent Date: 27.06.14
Commencement Date: S. 33(Sch. item 6) on 30.6.14: s. 2(5)
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

Filming Approval Act 2014, No. 51/2014

Assent Date: 12.8.14
Commencement Date: S. 9(Sch. 2 item 1) on 1.3.15: s. 2(2)
Current State: This information relates only to the provision/s amending the **Cemeteries and Crematoria Act 2003**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.