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Dated 3 April 2019



TASMANIA

BURIAL AND CREMATION ACT 2002

No. 4 of 2002

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BURIAL AND CREMATION ACT 2002

No. 4 of 2002

An Act to make provision for the establishment and management of crematoria and cemeteries, to provide for, and regulate, the handling and storage of human remains, to amend certain Acts and to repeal the *Cremation Act 1934*

[Royal Assent 30 May 2002]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Burial and Cremation Act 2002*.

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2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

Aboriginal land has the same meaning as in
the *Aboriginal Lands Act 1995*;

approved form means a form approved by the
regulator;

cemetery –

(a) means –

(i) a place approved under
the *Land Use Planning
and Approvals Act 1993*
for the interment of
human remains and
lawfully used for the
interment or placement of
human remains; or

(ii) a place, land or structure,
or a class of places, land
or structures, prescribed
as a cemetery; and

(b) includes any other place that,
immediately before the
commencement of this Act, was
lawfully used –

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(i) for the interment of human remains; or

(ii) as a mausoleum or any similar structure which was suitable for the placement of human remains –

but does not include any land on which there is a grave as mentioned in section 41;

cemetery manager means the council, trustees or other person by whom a cemetery is managed;

closed cemetery – see section 29B(1);

contravene includes fail to comply with;

council means a council established under section 18 of the *Local Government Act 1993*;

cremation means the reduction of human remains to ash by a process involving the application of heat or flame, or by any other means approved by the Minister having the administration of the *Public Health Act 1997*;

crematorium means premises that are approved under the *Land Use Planning and Approvals Act 1993* for the purpose of cremations and includes any other premises that, immediately before the

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commencement of this Act, were approved for that purpose under the *Cremation Act 1934*;

crematorium manager means the council, trustees or other person by whom a crematorium is managed;

Director of Local Government means the Director within the meaning of the *Local Government Act 1993*;

Director of Public Health means the person appointed as the Director of Public Health under the *Public Health Act 1997*;

environmental health officer means an environmental health officer appointed under section 10 or 11 of the *Public Health Act 1997*;

exclusive right of burial means an exclusive right of burial referred to in section 23;

exhumation means the removal of human remains from a grave but does not include the reopening of a grave if human remains are not removed;

human remains means the body of a deceased person and includes a part of the body but does not include any human remains that have been reduced to ash;

interment means the burial of any human remains in the ground, and includes the

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placement of human remains as mentioned in section 4;

mausoleum means a structure –

- (a) that is designed to hold one or more vaults for the interment of human remains that have not been cremated; and
- (b) in which at least one vault (excluding any memorial attached to the vault) is wholly above the surface of the ground or protrudes at least 150 millimetres above the surface of the ground;

monument includes a tombstone, plaque, tablet, cenotaph or any other structure or object intended to commemorate a deceased person;

offer for sale includes display, or expose, for sale;

plot includes a place in a mausoleum that is set aside for the placement of human remains;

prescribed business means a business for –

- (a) the handling, storage or transport of human remains; or
- (b) the preparation of human remains for interment or cremation –

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but does not include any such business that is carried on –

- (c) in accordance with the *Anatomical Examinations Act 2006*; or
- (d) in connection with a hospital or nursing home; or
- (e) as incidental to the donation of human remains;

regulator – see section 3A(1);

religious or cultural practice means a rite or practice pertaining to religious or cultural ceremonies relating to the mourning process, including interment and cremation of human remains or a similar ceremony approved by the Director of Public Health;

sell includes any of the following, whether by wholesale or retail:

- (a) barter or exchange;
- (b) deal in or agree to sell;
- (c) offer for sale;
- (d) supply for, in expectation of receiving, payment or consideration;
- (e) receive for sale;

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- (f) dispose of by way of raffle, lottery or other game of chance;
- (g) offer as a gift, prize or reward;
- (h) give away for any purpose;

senior next of kin – see section 3B;

spouse includes the other party to a significant relationship, within the meaning of the *Relationships Act 2003*.

- (2) A reference in this Act to the council is to be read as a reference to the council in the municipal area of which –
 - (a) a crematorium or cemetery is situated or proposed to be situated; or
 - (b) it is proposed to inter any human remains as mentioned in section 41.

3A. Regulator

- (1) For the purposes of this Act, the regulator is –
 - (a) the person prescribed as the regulator for the purposes of this Act; or
 - (b) if no such person is prescribed, the Director of Local Government.
- (2) Subject to subsection (3), the regulator may exempt a person from complying with one or more requirements under Part 2A or 2B if satisfied that the exemption –

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- (a) is reasonable in the circumstances; and
 - (b) will not have a negative effect on the entitlements of another person under this Act.
- (3) The regulator may not exempt a person from a requirement in any of the following sections:
- (a) section 27A;
 - (b) section 27B(1) or (5);
 - (c) section 27H(2);
 - (d) section 27I;
 - (e) section 27J(1)(c);
 - (f) section 27L;
 - (g) section 27P(3);
 - (h) section 27Q;
 - (i) section 27R;
 - (j) section 27S;
 - (k) any other section as prescribed.

3B. Meaning of *senior next of kin*

- (1) For the purposes of this Act, a person is the senior next of kin in relation to the human remains of a deceased person, including human remains that are reduced to ash, if the person –

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- (a) immediately before the death of the deceased person, was the spouse of the deceased person; or
- (b) if there is no person within paragraph (a) in respect of the deceased person – the deceased person’s eldest available child, within the meaning of section 3(13) of the *Evidence Act 2001*, if that child has attained the age of 18 years; or
- (c) if there is no person within paragraph (a) or (b) in respect of the deceased person – the person with whom, immediately before the death of the deceased person, the deceased person had a caring relationship which was the subject of a deed of relationship registered under Part 2 of the *Relationships Act 2003*; or
- (d) if there is no person within paragraph (a), (b) or (c) in respect of the deceased person – a parent of the deceased person; or
- (e) if there is no person within paragraph (a), (b), (c) or (d) in respect of the deceased person – the eldest available sibling of the deceased person, if that sibling has attained the age of 18 years; or
- (f) if there is no person within paragraph (a), (b), (c), (d) or (e) in respect of the deceased person – the personal representative of the deceased person; or
- (g) if –

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- (i) there is no person within paragraph (a), (b), (c), (d), (e) or (f) in respect of the deceased person; and
 - (ii) the deceased person is an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995* –

a person who is an appropriate person according to the customs and traditions of the community or group to which the deceased person belonged; or
 - (h) if there is no person within paragraph (a), (b), (c), (d), (e), (f) or (g) in respect of the deceased person – a person approved under subsection (3) by the Director of Local Government as the next of kin of the deceased person.
- (2) For the purposes of a paragraph of subsection (1), there is no person within the paragraph in respect of a deceased person, or a person referred to in the paragraph is not available, if the person referred to in that paragraph –
- (a) is unable to be contacted after all reasonable steps to contact the person have been taken; or
 - (b) has declined to act as the senior next of kin for the deceased person; or

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(c) is, in the opinion of a medical practitioner, unable to perform adequately, or competently, the duties of senior next of kin.

(3) For the purposes of subsection (1)(h), the Director of Local Government may approve a person as the next of kin of a deceased person by notifying, in writing, the person so approved that he or she is the next of kin of the deceased person.

4. Application of Act to mausoleums

The application of this Act extends to the placement of human remains in any place that is approved under the *Land Use Planning and Approvals Act 1993* for use as a mausoleum and, for the purposes of this Act, any human remains that have been so placed are taken to be interred.

5. Crown to be bound

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities, but not so as to impose criminal liability on the Crown.

6. Application of this Act

(1) Except as provided in section 40, this Act does not apply to the Settlement Point cemetery shown on Plan 4806 in the Central Plan Register.

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- (2) This Act does not apply to the exclusion of any other Act providing for –
- (a) the use of any land as a crematorium or cemetery; or
 - (b) the use of any disused burial ground or land formerly used as a cemetery.

PART 2 – CREMATORIA AND CEMETERIES

Division 1 – Existing and proposed crematoria and cemeteries

7. Existing crematoria and cemeteries

Where a person was, immediately before the commencement of this Act, managing a crematorium or cemetery, the person must, within one month after that commencement, notify the Director of Local Government in writing of –

- (a) in the case of a natural person, the full name and address of that person; and
- (b) in the case of a body corporate, the full name and address of that body and of a director, secretary or public officer of that body; and
- (c) the name and address of the crematorium or cemetery and a plan depicting the area of land used as a crematorium or cemetery; and
- (d) the business name, if any, under which the crematorium or cemetery is managed.

Penalty: Fine not exceeding 20 penalty units.

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8. Power to establish crematoria

- (1) Subject to this and any other Act, any person may establish or manage a crematorium for the interment or disposal of human remains.
- (2) This section does not apply to Aboriginal cremations conducted on Aboriginal land.

9. Notification as to proposed management of crematorium

- (1) This section does not apply to a person who, immediately before the commencement of this Act, was managing a crematorium.
- (2) A person who proposes to manage a crematorium must give to the Director of Local Government at least one month's notice in writing of the intention to do so.

Penalty: Fine not exceeding 20 penalty units.

- (3) The notice is to specify –
 - (a) in the case of a natural person, the full name and address of that person; and
 - (b) in the case of a body corporate, the full name and address of that body and of a director, secretary or public officer of that body; and
 - (c) the name and address of the crematorium that the person proposes to manage and a plan depicting the area of land proposed to be used for that purpose; and

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- (d) the business name, if any, under which it is proposed to manage the crematorium.

10. Objection by Director of Local Government

- (1) Within 21 days after receipt of a notice under section 9, the Director of Local Government may lodge a notice of objection in the court of petty sessions nearest to the place or premises where it is proposed to manage the crematorium if –

- (a) in the case of a natural person –

- (i) the person has been convicted of an offence under this Act, the *Cremation Act 1934* or Part 4 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or

- (ii) the person is not, in the opinion of the Director of Local Government, a fit and proper person to manage a crematorium; or

- (b) in the case of a body corporate –

- (i) a person concerned in the management of the body corporate has been convicted of an offence under this Act, the *Cremation Act 1934* or Part 4 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or

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- (ii) any person concerned in the management of the body corporate is not, in the opinion of the Director of Local Government, a fit and proper person to manage a crematorium.
- (2) The Director of Local Government must, on lodging a notice of objection under subsection (1), cause a copy of the notice to be served –
 - (a) in the case of a natural person proposing to manage the crematorium, personally on that person; or
 - (b) in the case of a body corporate, personally on a director, the secretary or the public officer, or any person who the Director of Local Government reasonably believes is a responsible officer, of the body corporate.
- (3) Service of the notice of objection may be proved in the same way as service of a summons under the *Justices Act 1959*.
- (4)

11. Hearing of objections

- (1) For the purpose of hearing an objection of which notice has been lodged under section 10, a court of petty sessions is to be constituted by a magistrate.

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- (2) The Director of Local Government and the person proposing to manage a crematorium are entitled to be heard and to adduce evidence on the hearing of the objection.
- (3) Where, on the hearing of the objection, the court is of the opinion that it is not in the public interest that the person should manage the crematorium, the court may, by order, prohibit that person from managing the crematorium for such period as the court thinks fit.
- (4) Service of an order made under subsection (3) is to be effected on the person referred to in subsection (2) in the same way as service of a summons under the *Justices Act 1959*.

11A. Approval of person as cemetery manager

- (1) This section does not apply to a person managing a cemetery if the person was managing that cemetery immediately before the commencement of this section.
- (2) A person must not manage a cemetery unless he or she has been approved under this section to be the cemetery manager for the cemetery.

Penalty: Fine not exceeding 50 penalty units.
- (3) A person who proposes to manage a cemetery must apply to the regulator for approval to manage the cemetery.
- (4) An application under subsection (3) –
 - (a) is to be in an approved form; and

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- (b) must be accompanied by –
 - (i) any information that the regulator considers relevant to the application; and
 - (ii) the relevant prescribed fee, if any.
- (5) The regulator may only approve a person as a cemetery manager under this section if the regulator is satisfied that the person is –
 - (a) a fit and proper person to be a cemetery manager; and
 - (b) a body corporate with perpetual succession.
- (6) In considering whether a person is a fit and proper person to be a cemetery manager, the regulator is to take into account the following matters:
 - (a) the capacity, including the financial capacity, of the proposed cemetery manager to maintain the cemetery, to which the application relates, and the records of that cemetery;
 - (b) the capacity of the proposed cemetery manager to comply with this Act in respect of the cemetery to which the application relates;
 - (c) whether the proposed cemetery manager, or any officer of the proposed cemetery manager, has any previous experience in

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the management and maintenance of a cemetery and, if so, the details of that experience;

- (d) whether the proposed cemetery manager, or any officer of the proposed cemetery manager, has been found guilty of one of the following offences within the immediately previous 10 years, regardless of where the proposed cemetery manager was convicted:
 - (i) an indictable offence where the maximum penalty for the offence is a term of imprisonment of at least 3 months;
 - (ii) an offence of dishonesty, fraud, or trafficking, where the maximum penalty for the offence is a term of imprisonment of at least 3 months;
- (e) whether or not any allegations of misconduct, relevant to the management or operation of a cemetery, or crematorium or prescribed business, have been made against the proposed cemetery manager, or any officer of the proposed cemetery manager, regardless of the jurisdiction in which the allegation was made;
- (f) any other prescribed matter;

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- (g) any other matter, in respect of the proposed cemetery manager, that the regulator considers relevant.
- (7) After receiving an application under subsection (3), the regulator may –
- (a) approve the person as the cemetery manager for the cemetery; or
 - (b) refuse to approve the person as the cemetery manager for the cemetery; or
 - (c) request further information from the applicant and, after receiving the requested information –
 - (i) approve the person as the cemetery manager for the cemetery; or
 - (ii) refuse to approve the person as the cemetery manager for the cemetery.
- (8) If the regulator approves a person as the cemetery manager under this section, the regulator, by notice in writing, is to notify that person of the approval.
- (9) If the regulator refuses to approve a person as the cemetery manager under this section, the regulator, by notice in writing, is to notify that person –
- (a) of the refusal to approve; and
 - (b) of the reasons for that refusal; and

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- (c) that the person has a right to apply for a review of the decision to refuse the approval, in accordance with the *Magistrates Court (Administrative Appeals Division) Act 2001*.
- (10) A decision of the regulator, under this section, to refuse to approve a person as a cemetery manager is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

Division 2 – Management of crematoria

12. Duties and powers of crematorium managers

- (1) A crematorium manager must keep a crematorium under the control of that manager in good order, so as not to be prejudicial to public health or public safety and in accordance with this Act.

Penalty: Fine not exceeding 20 penalty units.

- (2) A crematorium manager must keep prescribed records of all cremations in the crematorium and of all monuments maintained on the premises.

Penalty: Fine not exceeding 20 penalty units.

- (3) Subject to any other Act, a crematorium manager may –
- (a) improve, embellish and enlarge a crematorium under his or her control; and

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- (b) take any other action as may be required for the proper management of the crematorium.

13. Equipment and apparatus

- (1) A person must not manage a crematorium unless the equipment and apparatus to be used for the purpose comply with the requirements of this and any other Act.
- (2) A person who contravenes this section is liable to a fine not exceeding 20 penalty units and to a further fine not exceeding 2 penalty units for each day during which the contravention continues after conviction.

14. Closure of crematorium for reasons of public health or public safety

- (1) If it appears to the Director of Public Health or the general manager of the council that the whole or any part of any crematorium is prejudicial to public health or public safety, he or she may give notice to the crematorium manager that the whole or part of the crematorium is to be closed on a date specified in the notice.
- (2) The notice may require the crematorium manager to carry out any works, or to take any action, specified in the notice before a date so specified as may be necessary in the interests of public health or public safety.

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- (3) If the crematorium manager complies with the requirements of the notice to the satisfaction of the Director of Public Health or the general manager of the council before the date specified in the notice, the notice is taken to be withdrawn, but if the crematorium manager fails to do so, the crematorium is taken to be closed on that date until the requirements have been complied with.
- (4) If there are no requirements in the notice to be observed by the crematorium manager, the crematorium is taken to be closed on the date specified in the notice.
- (5) A crematorium manager who receives a notice under this section may, within 14 days, appeal to a magistrate against the notice who may, if he or she does not dismiss the appeal, vary or revoke the notice.

15. Access to crematorium

A crematorium manager must permit any person to have access free of charge at any reasonable time to visit any monument erected on the premises of the crematorium.

Penalty: Fine not exceeding 5 penalty units.

16. Religious and cultural ceremonies

- (1) A crematorium manager must not, by any act, matter or thing, hinder or disturb the

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performance of any religious or cultural ceremony in the cremation of human remains.

Penalty: Fine not exceeding 10 penalty units.

- (2) A crematorium manager must permit a representative of any religious or cultural group to exercise any religious or cultural practices in connection with the cremation of human remains without any hindrance or disturbance by the crematorium manager or any other person.

Penalty: Fine not exceeding 20 penalty units.

17. Duties of manager on closure of crematorium

On the closure of a crematorium –

- (a) the crematorium manager must advise the Director of Local Government in writing of that fact; and
- (b) the crematorium manager must forward all prescribed records relating to the crematorium to the State Archivist; and
- (c) those records vest in the Crown.

Penalty: Fine not exceeding 50 penalty units.

Division 3 – Management of cemeteries

18. Cemetery to be held in trust

Subject to this and any other Act, a cemetery manager holds the land on which the cemetery is

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situated and all documents relating to the cemetery in trust for the purposes of a cemetery.

19. Duties and powers of cemetery managers

- (1) A cemetery manager must keep a cemetery under the control of that manager in accordance with this Act and so as not to be prejudicial to public health or public safety.

Penalty: Fine not exceeding 50 penalty units.

- (1A) Subject to subsection (1B), a cemetery manager must ensure that –

- (a) so far as reasonable, a cemetery under the control of that manager is maintained so as to prevent the cemetery from falling into disrepair, or from being defaced or damaged; and
- (b) any disrepair or defacement of, or damage to, the cemetery is rectified as soon as practicable.

Penalty: Fine not exceeding 50 penalty units.

- (1B) Subsection (1A) does not apply to a vault, grave or monument within a cemetery unless –

- (a) the defacement or damage to the vault, grave or monument was caused, or approved, by the cemetery manager for the cemetery; or
- (b) the cemetery manager for the cemetery has entered into an agreement under

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section 20(3) in respect of the vault,
grave or monument.

- (2) A cemetery manager must keep records as prescribed of all interments in the cemetery.

Penalty: Fine not exceeding 50 penalty units.

- (3) A cemetery manager must permit any person to have access free of charge at any reasonable time to visit monuments and graves in any portion of the cemetery.

Penalty: Fine not exceeding 30 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (4) Subject to this and any other Act, a cemetery manager may –

- (a) improve, embellish and enlarge a cemetery under the control of that manager; and
- (b) restrict interments in any portion of the cemetery, except as may be required by an exclusive right of burial granted before the commencement of this Act; and
- (c) take any other action as may be required for the proper management and maintenance of the cemetery.

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20. Monuments, &c.

- (1) A cemetery manager may permit any vault or grave to be made or dug, and any monument to be erected or placed, in any portion of the cemetery as the manager thinks proper on payment of a fee fixed by the manager.
- (2) A cemetery manager may determine the position of any monument to be erected or placed according to its description, size and character and having regard to the general plan for ornamenting the cemetery in an appropriate manner.
- (3) A person and the cemetery manager of a cemetery may agree, in writing and on payment, by the person, of a fee fixed by the cemetery manager, that the cemetery manager is to maintain a vault, grave or monument within the cemetery according to the terms of the agreement.
- (4) A cemetery manager of a cemetery that contains a vault, grave or monument that is the subject of an agreement made under subsection (3) must comply with the terms of that agreement.

Penalty: Fine not exceeding 50 penalty units.

21. Requirement to remove monuments

- (1) If any monument has been erected or placed contrary to the terms and conditions on which the permission to erect or place it was granted or, in the opinion of the cemetery manager, is

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unsafe, the cemetery manager may, by notice in writing given to the person responsible for the monument, require the person –

- (a) to take it down and remove it; or
- (b) to render it safe –

within such reasonable time as may be specified in the notice.

- (1A) For the purposes of this section, a person is the person responsible for a monument if –
 - (a) the person has entered into an agreement with the cemetery manager under section 20(3) in respect of the monument; or
 - (b) if there is no agreement under section 20(3) in respect of the monument and the monument is intended to commemorate a single deceased person, the person is the senior next of kin of the deceased person; or
 - (c) if there is no agreement under section 20(3) in respect of the monument and the monument is intended to commemorate more than one deceased person, the person –
 - (i) is the senior next of kin of a deceased person commemorated by the monument; and

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(ii) has been determined by the regulator as the person responsible for the monument.

(2) If –

(a) the person responsible for the monument fails to comply with the requirement; or

(ab) the cemetery manager is the person responsible for the maintenance of the monument by virtue of an agreement under section 20(3) in respect of the monument; or

(b) the cemetery manager, after diligent enquiry, is unable to find the person responsible for the monument –

the cemetery manager may –

(c) render the monument safe or, if it is not reasonable in the opinion of the cemetery manager to render the monument safe, take the monument down and remove it; and

(d) recover in any court of competent jurisdiction the reasonable cost of doing so from the person responsible for the monument.

(2A) Subsection (2)(d) does not apply in respect of a monument if –

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- (a) an agreement has been entered into under section 20(3) in respect of the monument; and
 - (b) the terms of the agreement require the cemetery manager to bear the cost of rendering the monument safe, or taking the monument down and removing it, in accordance with this section.
- (3) A cemetery manager may exercise his or her powers under this section without notice if the monument appears to be a danger to persons or property.
- (4) As soon as practicable after a cemetery manager takes a monument down and removes it under subsection (3), the cemetery manager must –
- (a) notify the person responsible for the monument; and
 - (b) if an agreement is in place under section 20(3) in respect of the monument and the terms of that agreement meet the requirements of subsection (2A)(b), re-erect the monument at no charge to the person responsible for the monument.

22. Religious and cultural ceremonies and original distribution

- (1) A cemetery manager must not, by any act, matter or thing, hinder or disturb the performance of any religious or cultural ceremony relating to the interment of human remains.

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Penalty: Fine not exceeding 10 penalty units.

- (2) A cemetery manager must not, by any act, matter or thing, hinder or disturb the original division or allocation of the cemetery made in accordance with any trust to which the cemetery is subject, unless the trust is varied in accordance with the *Variation of Trusts Act 1994*.

Penalty: Fine not exceeding 20 penalty units.

- (3) A cemetery manager must permit a representative of any religious or cultural group to exercise any religious or cultural practices relating to the interment of human remains without any hindrance or disturbance by the cemetery manager or any other person.

Penalty: Fine not exceeding 20 penalty units.

23. Exclusive right of burial

- (1) A person may apply to a cemetery manager for an exclusive right of burial to inter any human remains in a specified interment plot or specified portion of a cemetery.
- (2) A cemetery manager may grant an exclusive right of burial in accordance with subsection (1) either in fee or for a term of 25 years which may be renewed on such other terms and conditions as may be agreed.
- (3) If it is impracticable for a cemetery manager to inter any human remains in an interment plot or portion of a cemetery in accordance with an

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exclusive right of burial, the cemetery manager must, with the consent of the holder of the right and without further charge, grant to the holder of the right –

- (a) an exclusive right of burial in another plot or portion of the cemetery; or
 - (b) an exclusive right of burial in another cemetery if so agreed with the manager of that other cemetery.
- (4) If the holder of an exclusive right of burial does not consent, as required under subsection (3), to a new grant of an exclusive right of burial, the matter is to be referred to arbitration under the *Commercial Arbitration Act 2011* as if there were a request for the dispute to be referred to arbitration under that Act.
- (5) The cemetery manager must pay the costs of an arbitration under subsection (4).
- (6) A cemetery manager must fulfil a valid exclusive right of burial, held by a person, that is in force in respect of the cemetery managed by the cemetery manager unless –
- (a) another exclusive right of burial is granted to the person under subsection (3); or
 - (b) the cemetery manager has been notified in writing by the holder of the exclusive right of burial, or his or her legal representative, that –

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- (i) the exclusive right of burial is terminated; or
- (ii) the holder of the exclusive right of burial has been interred other than in accordance with the exclusive right of burial.

Penalty: Fine not exceeding 50 penalty units.

24. Saving for interment rights

Nothing in this Act disturbs the effect of a grant in fee, or a grant for a term, of an interment plot that was made before the commencement of this Act.

25. Application of revenue of cemetery

- (1) A cemetery manager must make adequate provision out of any revenue received in respect of any cemetery under the control of the manager for the purposes of –
 - (a) defraying the cost of its establishment or acquisition, including interest and such amount as the manager thinks proper for administrative expenses; and
 - (b) the maintenance, management and improvement of the cemetery.
- (2) Any fees received by a cemetery manager in respect of future maintenance of vaults, graves and monuments are to be dealt with by the

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manager as capital money as if the manager were a trustee.

26.

Division 4 – Register of crematoria and cemeteries

27. Register of crematoria and cemeteries

- (1) The Director of Local Government is to maintain a register of crematoria and cemeteries showing –
 - (a) the name and address of each crematorium and cemetery; and
 - (b) the full name and business address of the manager of the crematorium or cemetery; and
 - (c) the business name, if any, under which the crematorium or cemetery is managed; and
 - (d) a plan depicting the area of land used for the crematorium or cemetery.
- (2) The register is to be available for inspection by any member of the public at the office of the Director of Local Government during normal business hours.

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PART 2A – NEW CEMETERIES

27A. Approval to establish new cemetery

- (1) A person must not establish a cemetery for the interment or disposal of human remains unless the establishment of that cemetery has been approved by the regulator under this Part.

Penalty: Fine not exceeding 50 penalty units.

- (2) For a new cemetery to be established under this Part for the interment or disposal of human remains, the person who intends to establish the cemetery must be –
- (a) responsible for the management of the cemetery; and
 - (b) approved under section 11A as the cemetery manager for the cemetery.

27B. Application to establish new cemetery

- (1) If a person intends to establish a cemetery for the interment or disposal of human remains, the person must apply to the regulator for approval to establish the cemetery.
- (2) An application to the regulator under subsection (1) –
- (a) is to be in an approved form; and
 - (b) must be accompanied by –

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- (i) an application under section 11A for the person intending to establish the cemetery to be approved as the cemetery manager for the cemetery; and
 - (ii) any other information that the regulator considers relevant to the application; and
 - (iii) the relevant prescribed fee, if any.
- (3) Before determining an application under subsection (1), the regulator may consider one or more of the following matters in respect of the application:
 - (a) the location, and condition, of the land on which the cemetery is proposed to be established;
 - (b) whether the proposed cemetery may be prejudicial to public health or public safety;
 - (c) any other matter that the regulator considers relevant to determining the application.
- (4) After receiving an application under subsection (1), the regulator may –
 - (a) approve the establishment of the cemetery subject to any conditions that he or she thinks fit; or

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- (b) refuse to approve the establishment of the cemetery; or
- (c) request further information from the applicant and, after receiving the requested information –
 - (i) approve the establishment of the cemetery subject to any conditions that he or she thinks fit; or
 - (ii) refuse to approve the establishment of the cemetery.
- (5) Despite subsection (4), the regulator may only approve an application under that subsection in respect of a proposed cemetery if the person intending to establish the cemetery has been approved under section 11A as the cemetery manager for the proposed cemetery.
- (6) If the regulator has not determined an application under subsection (4) within 60 days after receiving the application, the regulator is to provide the applicant with such information as to the status of the application as the regulator thinks fit.

27C. Approval of new cemetery

- (1) If the regulator approves an application under section 27B(4), the regulator is to issue to the applicant a written approval to establish the cemetery to which the application relates.

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- (2) An approval to establish a cemetery issued under subsection (1) is to –
 - (a) be in an approved form; and
 - (b) specify any conditions imposed in respect of the approval.
- (3) On receipt of an approval to establish a cemetery issued under subsection (1), the person who was issued the approval may establish the cemetery in accordance with the approval so issued.
- (4) On receipt of an approval to establish a cemetery issued under subsection (1), the person who was issued the approval must publish, in the prescribed manner, a notice containing the prescribed information in relation to the cemetery so approved.

Penalty: Fine not exceeding 20 penalty units.
- (5) A decision of the regulator, under section 27B(4), to impose a condition on an approval is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

27D. Refusal to approve new cemetery

- (1) If the regulator refuses, under section 27B(4), to approve the establishment of a cemetery, the regulator is to notify the applicant in writing of –
 - (a) the refusal; and
 - (b) the reasons for that refusal; and

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- (c) the applicant's right to apply for a review of the decision to refuse the approval, in accordance with the *Magistrates Court (Administrative Appeals Division) Act 2001*.
- (2) A decision of the regulator, under section 27B(4), to refuse to approve the establishment of the cemetery is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

27E. Notification of decision to not establish new cemetery

If a person publishes a notice under section 27B in respect of his or her intention to establish a new cemetery and the person no longer intends to establish the new cemetery, the person must notify the regulator of that fact as soon as practicable after making the decision to not establish the cemetery.

Penalty: Fine not exceeding 20 penalty units.

27F. Notification of first interment at new cemetery

Within 30 days after interring or placing, in a proposed cemetery approved under this Part, the first human remains in that cemetery, the cemetery manager for the cemetery must notify, in an approved form, the regulator of the interment, or placing, of those human remains.

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Part 2A – New cemeteries

Penalty: Fine not exceeding 20 penalty units.

PART 2B – SALE OF CEMETERIES

Division 1 – General

27G. Interpretation

In this Part –

certificate of compliance, in respect of a sale, means the certificate issued for that sale under section 27M(1);

contract, in relation to a cemetery, means an agreement to sell the cemetery, regardless of whether the contract is –

- (a) formal or informal; or
- (b) express or implied; or
- (c) for consideration or not;

proposed purchaser means a person who –

- (a) has entered into a contract in respect of the sale of all, or any portion, of a cemetery; and
- (b) on the completion of the contract, will transfer ownership of all, or any portion, of the cemetery into the person's name.

27H. Person must not sell cemetery without approval

- (1) A person must not offer for sale all, or any portion, of the cemetery unless a certificate of

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compliance has been issued in respect of the proposed sale.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person must not sell a cemetery to another person, unless –
- (a) a certificate of compliance has been issued in respect of the proposed sale; and
 - (b) he or she is satisfied that the proposed purchaser has been approved under section 11A as the cemetery manager for the cemetery.

Penalty: Fine not exceeding 100 penalty units.

- (3) For the purposes of subsection (2), sell does not include to offer for sale or to agree to sell.

27I. Person must not purchase cemetery without approval

A person must not purchase all, or any portion, of a cemetery unless the person has been approved under section 11A as the cemetery manager for the cemetery.

Penalty: Fine not exceeding 100 penalty units.

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Division 2 – Requirements before sale of cemetery

27J. Notification of intention to sell cemetery

- (1) If a person intends to sell all, or any portion, of a cemetery, the cemetery manager for the cemetery must –
 - (a) publish, in the prescribed manner, a notice in accordance with subsection (2) in respect of the cemetery manager’s intention to sell the cemetery; and
 - (b) notify, in writing, each person who holds an exclusive right of burial, in respect of the cemetery, that is yet to be fulfilled of the cemetery manager’s intention to sell the cemetery; and
 - (c) apply to the regulator in accordance with section 27L for a certificate of compliance in respect of the proposed sale.
- (2) A notice to be published under subsection (1)(a) –
 - (a) is to contain the prescribed information; and
 - (b) must clearly identify, in a prescribed manner, the cemetery, or portion of the cemetery, that is intended to be sold; and
 - (c) must –

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- (i) state that the cemetery manager intends to sell the cemetery, or portion of the cemetery, specified in the notice; and
 - (ii) state that any person who has any information in respect of the records of the cemetery that are required to be kept under this Act, or any exclusive right of burial granted in respect of the cemetery, may provide that information to the cemetery manager; and
 - (iii) specify the contact information for the cemetery manager; and
 - (iv) specify the period during which information may be provided under subparagraph (ii).
- (3) As soon as practicable after publishing a notice in accordance with subsection (2), the cemetery manager must give the regulator a copy of the notice so published.

27K. Audit required of cemetery proposed to be sold

If a person intends to sell all, or any portion, of a cemetery, the cemetery manager for the cemetery is to ensure that an audit is undertaken, in accordance with section 49A(1), in respect of the cemetery within 6 months of the publication of the notice under section 27J(1)(a) in respect of the proposed sale.

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27L. Application for certificate of compliance in respect of proposed sale

- (1) After publishing a notice under section 27J(1)(a) in respect of the proposed sale of all, or any portion, of a cemetery, the cemetery manager for the cemetery must apply to the regulator for a certificate of compliance in respect of the proposed sale.
- (2) An application to the regulator under section 27J(1)(c) –
 - (a) is to be in an approved form; and
 - (b) must be accompanied by –
 - (i) a copy of the notice published in accordance with section 27J(1)(a) in respect of the proposed sale; and
 - (ii) a copy of an audit, undertaken as required under section 27K; and
 - (iii) a copy of any information provided under section 27J(2)(c) in respect of the cemetery; and
 - (iv) any other information that the regulator considers relevant to the application; and
 - (v) the relevant prescribed fee, if any.
- (3) Before determining an application under subsection (1), the regulator may consider one or

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more of the following matters in respect of the application:

- (a) the location and condition of the cemetery, or portion of the cemetery, proposed to be sold;
 - (b) whether, at the time of the application, the cemetery, the records of the cemetery and the maintenance of the cemetery comply with the requirements of the Act;
 - (c) whether the proposed sale of the cemetery may be prejudicial to public health or public safety;
 - (d) any other matter that the regulator considers relevant to determining the application.
- (4) After receiving an application under subsection (1), the regulator may –
- (a) approve the application subject to any conditions that he or she thinks fit; or
 - (b) refuse to approve the application; or
 - (c) request further information from the relevant cemetery manager and, after receiving the requested information –
 - (i) approve the application subject to any conditions that he or she thinks fit; or
 - (ii) refuse to approve the application.

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- (5) If the regulator has not determined an application of a cemetery manager under subsection (4) within 60 days after receiving the application, the regulator is to provide the cemetery manager with such information as to the status of the application as the regulator thinks fit.

27M. Issue of certificate of compliance

- (1) If the regulator approves an application of a cemetery manager in accordance with section 27L(4), the regulator is to issue to the cemetery manager a certificate in respect of the proposed sale.
- (2) A certificate of compliance issued under subsection (1) –
- (a) is to be in an approved form; and
 - (b) is to specify any conditions imposed on the certificate.
- (3) A certificate of compliance issued under subsection (1) has effect –
- (a) for such period as is specified in the certificate of compliance; or
 - (b) if no period is specified in the certificate of compliance, for the period of 12 months immediately following its issue.
- (4) On receipt of a certificate of compliance issued under subsection (1), the cemetery manager, or any other person, may offer for sale all, or any

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portion, of the cemetery that is the subject of the certificate of compliance.

- (5) A decision of the regulator, under section 27L(4), to impose a condition on a certificate of compliance is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

27N. Refusal to issue certificate of compliance

- (1) If the regulator refuses an application of a cemetery manager in accordance with section 27L(4), the regulator is to notify the cemetery manager in writing of –
- (a) the refusal; and
 - (b) the reasons for that refusal; and
 - (c) the cemetery manager’s right to apply for a review of the decision to refuse the application, in accordance with the *Magistrates Court (Administrative Appeals Division) Act 2001*.
- (2) A decision of the regulator, under section 27L(4), to refuse an application is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

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27O. Notification of decision to not sell cemetery

If a person publishes a notice under section 27J(1)(a) in respect of his or her intention to sell all, or a portion, of a cemetery and the person no longer intends to sell the cemetery, the person must notify the regulator of that fact as soon as practicable after making the decision to not sell the cemetery.

Penalty: Fine not exceeding 20 penalty units.

Division 3 – Sale of cemetery

27P. Cemetery disclosure document

- (1) A cemetery manager intending to sell all, or any portion, of a cemetery under this Part must ensure that the proposed purchaser under a contract for sale of the cemetery receives a document disclosing the information specified in subsection (2) –
 - (a) if the contract is in writing, at least 48 hours before the contract is entered into; or
 - (b) if the contract is not in writing, at least 48 hours before ownership of all, or any portion, of the cemetery is transferred in accordance with the contract.

Penalty: Fine not exceeding 50 penalty units.

- (2) A document disclosing information under subsection (1) is to be in an approved form and include the following information:

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- (a) a statement –
 - (i) that, on the transfer of the ownership of the cemetery, the proposed purchaser is the cemetery manager for the cemetery; and
 - (ii) specifying the obligations under this Act that would apply to the proposed purchaser as cemetery manager for the cemetery;
- (b) the number of persons who have been granted one of the following rights, in respect of the cemetery, that is yet to be fulfilled:
 - (i) an exclusive right of burial;
 - (ii) a grant in fee of an interment plot;
 - (iii) a grant for a term of an interment plot;
- (c) the number of agreements under section 20(3) in force in respect of a vault, grave or monument within the cemetery and the obligations imposed on the cemetery manager of the cemetery under the agreement;
- (d) the provisions made in respect of the cemetery, in accordance with section 25, for the purposes specified in that section;

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- (e) a statement that, on the transfer of the ownership of the cemetery, the proposed purchaser is required to fulfil each of the rights specified in paragraph (b), or the agreements referred to in paragraph (c), in respect of the cemetery, whether or not the person holding the right was included in the number of persons provided under that paragraph;
 - (f) a statement that the audit undertaken in respect of the cemetery, as required under section 27K, is available to the proposed purchaser as specified;
 - (g) any other prescribed information.
- (3) A cemetery manager must not knowingly provide false or misleading information to a proposed purchaser under this section.

Penalty: Fine not exceeding 100 penalty units.

27Q. Implied term in contract of sale for cemetery

It is an implied term in each contract for the sale of all, or any portion, of a cemetery under this Part that, before the ownership of the cemetery can be transferred under the contract, the proposed purchaser must be approved under section 11A as the cemetery manager for the cemetery.

27R. Contract continues in certain circumstances

If –

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- (a) a contract for the sale of all, or any portion, of a cemetery to which this Part applies has been entered into by a proposed purchaser; and
- (b) the proposed purchaser has applied under section 11A to be approved as the cemetery manager for the cemetery and that application has not been determined before ownership of the cemetery is to be transferred under the contract –

the contract is taken to have remained in force until the application under section 11A has been determined under that section and, if the application has been approved, the contract has been settled, unless the contract is earlier terminated by either party in accordance with the contract.

27S. Notification to regulator of sale of cemetery

Within 30 days after ownership of all, or any portion, of a cemetery has been transferred in accordance with a contract to which this Part relates, the new owner of the cemetery under the contract must –

- (a) notify, in an approved form, the regulator of the transfer of the ownership; and
- (b) notify, in writing, each person who holds an exclusive right of burial, in respect of the cemetery, that is yet to be fulfilled that the new owner is now the cemetery manager of the cemetery; and

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- (c) publish, in the prescribed manner, a notice containing the prescribed information in relation to the sale of the cemetery.

Penalty: Fine not exceeding 20 penalty units.

27T. Effect of sale of cemetery

- (1) On transfer of the ownership of all, or any portion, of a cemetery in accordance with a contract to which this Part relates, the person who is the owner of the cemetery after the transfer is the cemetery manager for the cemetery.
- (2) The Recorder, within the meaning of the *Land Titles Act 1980*, must not register a transfer, under that Act, involving a cemetery to which this Part applies unless the Recorder is satisfied that –
 - (a) the sale of the cemetery, to which the transfer relates, was approved under section 27L(4); and
 - (b) the person to whom the ownership of the cemetery is to be transferred was approved under section 11A as the cemetery manager for the cemetery.
- (3) For the purposes of subsection (2) –
 - (a) evidence that the regulator has approved the person, to whom the ownership of the cemetery is to be transferred, under

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section 11A as the cemetery manager for the cemetery is evidence that the sale of that cemetery was approved under section 27L(4); and

- (b) the Recorder, within the meaning of the *Land Titles Act 1980*, may rely on the written notice of the regulator under section 11A(8), approving the person as the cemetery manager for the cemetery, as evidence of the matters referred to in paragraph (a).

**PART 3 – CLOSURE AND DISPOSAL OF
CEMETERIES**

Division 1 – Closure of cemeteries

28. Closure of cemeteries for reasons of public health or public safety

(1) If –

(a) it appears to the general manager of a council that the whole or any portion of a cemetery is prejudicial to public health or public safety; or

(b) it appears to the Director of Public Health that the whole or any portion of a cemetery is prejudicial to public health –

the general manager or Director of Public Health may give notice to the cemetery manager that the whole or portion of the cemetery is to be closed on a date specified in the notice.

(2) The notice may require the cemetery manager to carry out any works, or to take any action, specified in the notice and within such time as may be so specified as necessary in the interests of public health or public safety.

(3) If the cemetery manager complies with the requirements of the notice to the satisfaction of the general manager of the council or the Director of Public Health before the date specified in the notice, the notice is taken to be withdrawn, but, if the cemetery manager fails to

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do so, the cemetery is taken to be closed on that date until the requirements have been complied with.

- (4) If there are no requirements in the notice to be observed by the cemetery manager, the cemetery is taken to be closed on a date specified in the notice.
- (5) A cemetery manager who receives a notice under this section may, within 14 days, appeal to a magistrate against the notice who may, if he or she does not dismiss the appeal, vary or revoke the notice.

29. Closure of cemeteries

- (1) If, for a period of 50 years or more, no interments have taken place in a cemetery or portion of a cemetery and the cemetery manager wishes to close the cemetery or that portion of the cemetery, the cemetery manager is to –
 - (a) cause a notice of intention to close all, or any portion, of the cemetery to be published in accordance with subsection (2); and
 - (b) apply to the regulator in accordance with subsection (4) for approval to close all, or any portion, of the cemetery.
- (2) A notice to be published under subsection (1)(a) –

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-
- (a) is to contain the prescribed information;
and
 - (b) must clearly identify, in a prescribed manner, the cemetery or portion of the cemetery that is proposed to be closed by the cemetery manager; and
 - (c) must –
 - (i) contain a statement that any of the following persons may provide that information, or make a submission, to the cemetery manager:
 - (A) a person who has any information in respect of the records of the cemetery that are required to be kept under this Act;
 - (B) the holder of an exclusive right of burial granted in respect of the cemetery;
 - (C) a person with the intention of having his or her human remains interred at the cemetery;
 - (D) a person who has entered into an agreement under section 20(3) in respect of a vault, grave or monument in the cemetery; and

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- (ii) specify the contact information for the cemetery manager; and
 - (iii) specify the period during which information may be provided under subparagraph (i); and
 - (d) must be published in the prescribed manner at least 60 days, but not more than 365 days, before the cemetery manager applies to the regulator under subsection (1)(b) for approval to close the cemetery or portion.
- (3) As soon as practicable after publishing a notice in accordance with subsection (2), the cemetery manager must give the regulator a copy of the notice so published.
- (4) An application under subsection (1)(b) for approval to close a cemetery or portion –
 - (a) is to be in an approved form; and
 - (b) must specify –
 - (i) the number of exclusive rights of burial granted in respect of the cemetery that are yet to be fulfilled; and
 - (ii) the number of agreements under section 20(3) in force in respect of a vault, grave or monument within the cemetery; and

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- (iii) the provisions made in respect of the cemetery, in accordance with section 25, for the purposes specified in that section; and
- (c) must be accompanied by –
 - (i) a copy of the notice published in accordance with subsection (2) in respect of the proposed closure; and
 - (ii) a copy of any information provided, or submission made, in accordance with subsection (2)(c) in respect of the cemetery; and
 - (iii) a copy of the records of the cemetery required to be kept under section 19(2); and
 - (iv) any other information that the regulator considers relevant to the application; and
 - (v) the relevant prescribed fee, if any.
- (5) Before determining an application under subsection (1)(b), the regulator may consider any one or more of the following matters in respect of the application:
 - (a) the cultural and historical value of the cemetery, including whether the cemetery contains graves of persons of historical or cultural significance to the community;

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- (b) whether the proposed closure of the cemetery may be prejudicial to public health or public safety;
 - (c) any other matter that the regulator considers relevant to determining the application.
- (6) At least 60 days, but no later than 120 days, after receiving an application under subsection (1)(b), the regulator must –
- (a) approve the application subject to any conditions that he or she thinks fit; or
 - (b) refuse to approve the application; or
 - (c) request further information from the relevant cemetery manager in respect of the closure and, after receiving the requested information –
 - (i) approve the application subject to any conditions that he or she thinks fit; or
 - (ii) refuse to approve the application.
- (7) A decision of the regulator, under subsection (6), to impose a condition on an approval, or to refuse an application, is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

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29A. Approval or refusal to approve closure of cemetery

- (1) If the regulator approves an application under section 29(6), the regulator is to notify the cemetery manager in writing of –
 - (a) the approval; and
 - (b) any conditions to which the approval is subject; and
 - (c) any other prescribed matter.
- (2) On receipt of a notification under subsection (1), the cemetery manager –
 - (a) must notify, in the prescribed manner, any holder of an exclusive right of burial that the cemetery is to be closed and that the cemetery manager intends to discharge that exclusive right in accordance with section 29C; and
 - (b) subject to any conditions specified in the notification, may proceed to close the cemetery and exercise the powers conferred by section 29B in respect of the cemetery.
- (3) If the regulator refuses to approve an application under section 29(6) for the closure of a cemetery, the regulator is to notify the cemetery manager in writing of –
 - (a) the refusal; and
 - (b) the reasons for that refusal; and

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- (c) the cemetery manager's right to apply for a review of the decision to refuse the application, in accordance with the *Magistrates Court (Administrative Appeals Division) Act 2001*.

29B. Effect of closure of cemetery

- (1) For the purposes of this Act, a cemetery is a closed cemetery if –
 - (a) the cemetery was closed before the commencement of section 16 of the *Burial and Cremation Amendment Act 2018*; or
 - (b) the cemetery was closed under section 28; or
 - (c) the cemetery was approved to be closed under section 29A.
- (2) For the avoidance of doubt, a closed cemetery is still a cemetery for the purposes of this Act unless otherwise dealt with under this Act.
- (3) On the closure of a cemetery under this Act, the cemetery manager must forward to the State Archivist, as soon as practicable, all prescribed records relating to the closed cemetery.

Penalty: Fine not exceeding 50 penalty units.

- (4) On being forwarded under subsection (3), the records of a cemetery vest in the Crown.

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- (5) Subject to any conditions imposed under section 29A and any approval given under section 51A, the cemetery manager of a closed cemetery may do one or more of the following in respect of the closed cemetery if at least 100 years have passed since the last interment has taken place in the closed cemetery:
- (a) if there is a tombstone showing the name of the person buried there, remove kerbs, railings and other monuments, shrubs, marble chips and other adornments and cover the area with grass, leaving only the tombstone;
 - (b) if there is a monument other than a tombstone –
 - (i) treat the monument as if it were a tombstone and act in accordance with paragraph (a); or
 - (ii) remove the monument and re-erect it in another portion of the cemetery, with or without any kerbs, railings or other adornments, and cover the area with grass, having first set a stone showing who was buried there and where the former monument is to be found.

29C. Exclusive rights of burial in closed cemetery

- (1) If a person holds an exclusive right of burial in respect of a closed cemetery or a portion of a

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cemetery that is closed, the cemetery manager for the closed cemetery or portion must, with the agreement of the holder of that right –

- (a) grant the holder of the right –
 - (i) an exclusive right of burial in another plot or portion of the cemetery; or
 - (ii) an exclusive right of burial in another cemetery if so agreed with the manager of that other cemetery; and
 - (b) move to the plot or portion so agreed any human remains, coffin, vault, monument or other thing in or on the plot or portion in respect of which the original exclusive right of burial was held.
- (2) If there is no agreement between the cemetery manager and the holder of an exclusive right of burial as required under subsection (1), the matter is to be referred to arbitration under the *Commercial Arbitration Act 2011* as if there were a request for the dispute to be referred to arbitration under that Act.
 - (3) The cemetery manager must pay the costs of an arbitration under subsection (2).
 - (4) For the purpose of this section, the Public Trustee may represent the holder of an exclusive right of burial if it appears that the cemetery manager, after diligent inquiry, cannot find the holder.

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30. Closed cemeteries laid out as parks or gardens

- (1) Subject to section 51A, if at least 100 years have passed since the last interment has taken place in a closed cemetery, the cemetery manager of the closed cemetery may apply, in writing, to the regulator for approval to lay out the closed cemetery as a park or garden for use as a place of quiet recreation only.
- (2) At least 3 months before applying to the regulator under subsection (1), the cemetery manager –
 - (a) must publish, in a daily newspaper circulating in the municipal area in which the cemetery is situated, a notice specifying his or her intention to lay out the cemetery as a park or garden; and
 - (b) is to provide a copy of a notice published under paragraph (a) to the regulator.
- (3) On receipt of an application under subsection (1), the regulator may –
 - (a) approve the application subject to any conditions that he or she thinks fit; or
 - (b) refuse the application; or
 - (c) ask the cemetery manager for further information in respect of the application and –

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- (i) approve the application subject to any conditions that he or she thinks fit; or
 - (ii) refuse the application.
- (4) Subject to any conditions imposed under subsection (3), and to subsection (5), if the regulator approves an application under subsection (1) –
 - (a) the cemetery manager may lay out the closed cemetery as a park or garden, for use as a place of quiet recreation only, as so approved; and
 - (b) sections 35 and 36 extend to a closed cemetery laid out as a park or garden under paragraph (a).
- (5) A cemetery manager must not take any action under subsection (4)(a) in respect of the closed cemetery, or portion of the closed cemetery, that has been lawfully consecrated according to the rites or practices of a religious or cultural group, unless –
 - (a) the cemetery manager has offered that cemetery, or portion, as a gift to that group; and
 - (b) the group has not accepted the gift within the 12-month period immediately after the offer of the gift was made to the group.

Penalty: Fine not exceeding 100 penalty units.

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Division 2 – Disposal of land used as cemetery

31. Land no longer required for cemetery

- (1) The whole or any portion of any land held for a cemetery in which no interments have taken place or from which all human remains have been removed may, subject to this and any other Act, be dealt with in the ordinary course of commerce.
- (2) A cemetery manager may dispose of the whole or any portion of a cemetery which is not required for interment, even though exclusive rights of burial are held in respect of any portion of, or plots in, that cemetery.
- (3) If a cemetery manager disposes of the whole or any portion of a cemetery in which a person has an exclusive right of burial, the cemetery manager must grant to that person, without further charge, an exclusive right of burial in another portion of the cemetery, or in another cemetery if so agreed with the manager of that other cemetery.
- (4) If there is no such agreement, the matter is to be referred to arbitration under the *Commercial Arbitration Act 2011* as if there were a request for the dispute to be referred to arbitration under that Act.
- (5) The cemetery manager must pay the costs of an arbitration under subsection (4).

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- (6) The cemetery manager must, within 14 days after dealing with any land under this section, notify the regulator in writing of that fact.
- (7) The regulator may declare, by notice published in the *Gazette*, that the relevant land ceases to be a cemetery.

31A. Declaration that land ceases to be cemetery

- (1) The regulator may declare, by notice published in the *Gazette*, that land that contains human remains is not a cemetery for the purposes of this Act.
- (2) A declaration may only be made under subsection (1) in respect of land if, in the opinion of the regulator –
 - (a) the land was, on the commencement of this section, being used for a purpose other than as a cemetery or crematorium; and
 - (b) the land had been used for that purpose, or another purpose other than as a cemetery or crematorium, for at least 50 years before the commencement of this section; and
 - (c) the purpose for which the land is being used is not consistent with the use of the land for a cemetery or crematorium.
- (3) Subsection (2)(b) does not apply in respect of a cemetery if the regulator is satisfied that it is in

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the interests of the public to make a declaration under subsection (1) even though the land has not been used for another purpose for the period specified in that paragraph.

- (4) A declaration under subsection (1) –
 - (a) may be made by the regulator on his or her own initiative or on the application of the owner of the land; and
 - (b) may be subject to any conditions that the regulator considers appropriate.
- (5) As soon as practicable after making a declaration under subsection (1), the regulator, by written notice to the owner, is to –
 - (a) state that a declaration has been made under this section in respect of land; and
 - (b) specify each condition that applies in respect of the declaration.
- (6) The owner of land that is the subject of a declaration under this section must comply with any conditions of the declaration.

Penalty: Fine not exceeding 100 penalty units.
- (7) If the owner of land that is the subject of a declaration under this section intends to sell that land, the owner of the land must notify each prospective purchaser of the land –
 - (a) that a declaration under this section has been made in respect of the land; and

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- (b) of the conditions that apply in respect of the declaration, if any.

Penalty: Fine not exceeding 100 penalty units.

- (8) A decision of the regulator to not make a declaration under this section in respect of land, or to impose a condition on a declaration under this section, is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

Division 3 – Management of closed cemeteries

32.

33. Cemetery manager to deal with closed cemetery

- (1) For the purposes of complying with section 30, a cemetery manager may –
 - (a) construct roads, avenues and walks in or through the land; and
 - (b) erect and construct on the land any ornamental and other buildings and structures, and provide any seats, shelters and conveniences for the use of persons, as the cemetery manager thinks fit; and
 - (c) enclose, drain, turf, level and light the whole or any part of the land; and
 - (d) plant any trees, shrubs and plants that the cemetery manager thinks fit; and

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- (e) subject to sections 34 and 38 –
 - (i) demolish or remove any graves, monuments or vaults erected on the land; and
 - (ii) exhume any human remains which are interred there and inter those remains either in the land or elsewhere; and
 - (f) build on or under any portion of the land any structures or vaults that the cemetery manager thinks fit for the reception of any human remains which are not removed from the land for interment elsewhere; and
 - (g) generally execute works and do all acts and things necessary for laying out the land as a park or garden.
- (2) A closed cemetery which is laid out as a park or garden under this Part is to be available as a place of quiet recreation only.

34. Conditions for removal of human remains

- (1) Before proceeding under section 33 with the demolition or removal of any graves, monuments or vaults erected on the land or with the exhumation and removal of any human remains, a cemetery manager must –
 - (a) give public notification in a newspaper circulating in the relevant municipal area

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on 3 occasions at intervals over a period of 12 months of the intention to demolish or remove the graves, monuments or vaults or to exhume and remove the human remains; and

- (b) prepare a statement setting out –
 - (i) the names and dates appearing on the graves, monuments or vaults to be demolished or removed; and
 - (ii) any other particulars necessary for the identification of those graves, monuments or vaults and of the human remains to which they relate, so far as the particulars are ascertainable from the records of the cemetery or the inscriptions on the graves, monuments or vaults; and
- (c) make the statement available for inspection by any person free of charge.

- (2) A notice published under subsection (1)(a) is to state where and when the statement prepared in accordance with subsection (1)(b) may be inspected.

35. Land for re-interment to be made available

Subject to any conditions imposed on a closed cemetery or the closure of a cemetery under this Act, at any time within 12 months after the closure of a cemetery, the cemetery manager, at

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the request of any lineal descendant of a deceased person whose remains are interred in the cemetery or whose name appears on any grave, monument or vault in the cemetery, must make available at no further cost at another cemetery any land necessary for –

- (a) the interment in that cemetery of those human remains; or
- (b) the relocation in that cemetery of the grave or the re-erection of the monument or vault.

36. Exhumation and re-interment of human remains

(1) Subject to sections 38 and 51A and any conditions imposed on a closed cemetery or the closure of a cemetery under this Act, if at least 100 years have passed since the last interment has taken place in a closed cemetery –

- (a) all rights of any person in, or to –
 - (i) any human remains interred in the cemetery or any grave, monument or vault; and
 - (ii) any prescribed records showing details and locations of interments, graves and monuments –

are vested in the cemetery manager; and

- (b) the cemetery manager may demolish and remove any grave, monument or vault,

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and reverently exhume and re-inter any human remains.

- (1A) A cemetery manager must not take any action under subsection (1) in respect of the closed cemetery, or closed portion of the cemetery, that has been lawfully consecrated according to the rites or practices of a religious or cultural group, unless –
- (a) the cemetery manager has offered that cemetery, or portion, as a gift to that group; and
 - (b) the group has not accepted the gift within the 12-month period immediately after the offer of the gift was made to the group.

Penalty: Fine not exceeding 100 penalty units.

- (2) The cemetery manager must record in a register to be kept for the purpose full details of any exhumation and re-interment of any human remains under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

- (3) The register is to be –
- (a) maintained by the cemetery manager; and
 - (b) available at all reasonable times for inspection by any person.

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37. Activities consistent with quiet recreation

- (1) Where a cemetery or portion of a cemetery has been closed under section 29A, the general manager of the council may, in writing and subject to this and any other Act and to such conditions as he or she thinks fit, permit the carrying on in the closed cemetery, or closed portion of the cemetery, of an activity that is consistent with quiet recreation.
- (2) A person must not organise or participate in any competitive games or sports on any ground laid out as a park or garden under subsection (1).

Penalty: Fine not exceeding 5 penalty units.

Division 4 – Exhumation and reopening of graves

38. Exhumation of human remains

- (1) The Director of Public Health may, in writing, authorise the exhumation of any human remains from any place of interment, including private land, on any specified conditions.
- (2) A person must, before beginning an exhumation –
 - (a) be authorised as provided in subsection (1); and
 - (b) comply with any conditions imposed by the Director of Public Health and the requirements of any person supervising the work on that Director's behalf in the

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course of the exhumation, re-interment or cremation of the human remains.

- (3) A person must not exhume any human remains –
- (a) without authority under subsection (1); or
 - (b) otherwise than in accordance with any conditions specified in the authority; or
 - (c) without complying with any requirements under subsection (2).

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

- (4) This section does not disturb the effect of section 39 of the *Coroners Act 1995*.

39. Reopening of graves

- (1) A cemetery manager may reopen a grave if it is not intended to remove any human remains.
- (2) The Chief Magistrate may authorise the reopening of the grave of a deceased person whose death has been the subject of an investigation under the *Coroners Act 1995*.
- (3) If, on the reopening of a grave, an exhumation is intended, an authority under section 38 is required.

PART 4 – OTHER DISPOSAL OF HUMAN REMAINS

40. Use of Aboriginal land for Aboriginal cremations

- (1) A person who wishes to conduct an Aboriginal cremation on Aboriginal land must apply, in writing, to –
 - (a) the Aboriginal Land Council of Tasmania for approval to use the Aboriginal land specified in the application for the purpose of an Aboriginal cremation; and
 - (b) the Director of Public Health for approval to use that Aboriginal land for the purpose of an Aboriginal cremation.
- (2) On receipt of an application under subsection (1)(b), the Director of Public Health is to consult with the general manager of the council in the municipal area of which the Aboriginal land is situated.
- (3) The Director of Public Health must not give approval for the use of Aboriginal land for the purpose of an Aboriginal cremation unless he or she is satisfied that the person who wishes to conduct the Aboriginal cremation has obtained the approval of the Aboriginal Land Council of Tasmania for that use.
- (4) Notwithstanding anything in this Act, it is lawful to conduct an Aboriginal cremation in accordance with this section.

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Part 4 – Other disposal of human remains

41. Interment otherwise than in cemetery

- (1) A person may inter any human remains otherwise than in a cemetery only with the written permission of the landholder and the general manager of the council.
- (2) A person who proposes to conduct any such interment must provide the general manager with –
 - (a) the written permission of the landholder; and
 - (b) a statement whether there are any other graves on the land; and
 - (c) a plan depicting the exact location of the proposed grave and of any other graves.
- (3) The general manager must not give permission for the purposes of this section unless the Director of Public Health has given written permission for the proposed interment.
- (4) The general manager must, on giving permission, ensure that a record of the proposed grave –
 - (a) is kept by the council; and
 - (b) is shown on any certificate issued by the council under section 337 of the *Local Government Act 1993*.
- (5) Permission given by the Director of Public Health or the general manager for the purposes of this section may be subject to any conditions

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necessary to ensure that the proposed grave will not be prejudicial to public health or public safety.

42. Disposal of human remains at sea

The Director of Public Health may, in writing, authorise the disposal of any human remains at sea in accordance with such conditions as that Director considers necessary or desirable in the interests of public health.

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Part 5 – Prescribed businesses

PART 5 – PRESCRIBED BUSINESSES

43. Carrying on prescribed business

A person must not carry on a prescribed business –

- (a) except in accordance with the regulations; or
- (b) if no provision is made by the regulations, in a manner which is, or might be, prejudicial to public health or public safety.

Penalty: Fine not exceeding 20 penalty units and a further fine not exceeding 2 penalty units for each day during which the contravention continues after conviction.

44. Notification to Director of Local Government as to prescribed business

- (1) This section does not apply to a person who, immediately before the commencement of this Act, was carrying on a prescribed business.
- (2) A person who proposes to carry on a prescribed business must give to the Director of Local Government at least one month's notice in writing of his or her intention to do so.
- (3) A notice under subsection (2) is to specify –

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- (a) in the case of a natural person, the full name and address of the person proposing to carry on the prescribed business; and
 - (b) in the case of a body corporate, the full name and address of that body and of a director, secretary or public officer of that body; and
 - (c) the business name, if any, and address of the premises at which it is proposed to carry on the prescribed business.
- (4) Within 21 days after receipt of a notice under subsection (2), the Director of Local Government may lodge a notice of objection in the court of petty sessions nearest to the premises where it is proposed to carry on the prescribed business if –
- (a) in the case of a natural person –
 - (i) the person has been convicted of an offence under this Act, the *Cremation Act 1934* or Part 4 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or
 - (ii) the person is not, in the opinion of the Director of Local Government, a fit and proper person to carry on the prescribed business; or
 - (b) in the case of a body corporate –

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- (i) a person concerned in the management of the body corporate has been convicted of an offence under this Act, the *Cremation Act 1934* or Part 4 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or
 - (ii) any such person is not, in the opinion of the Director of Local Government, a fit and proper person to carry on the prescribed business.
- (5) The Director of Local Government must, on lodging a notice of objection under subsection (4), serve a copy of the notice –
 - (a) in the case of a natural person proposing to carry on the prescribed business, personally on that person; or
 - (b) in the case of a body corporate, personally on a director of the body corporate, the secretary or the public officer, or any person who the Director of Local Government reasonably believes is a responsible officer, of the body corporate.
- (6) Service of the notice of objection may be proved in the same way as service of a summons under the *Justices Act 1959*.

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45. Hearing of objections

- (1) For the purpose of hearing an objection of which notice has been lodged under section 44(4), a court of petty sessions is to be constituted by a magistrate.
- (2) The person proposing to carry on the prescribed business is entitled to be heard and to adduce evidence on the hearing of the objection.
- (3) Where, on the hearing of the objection, the court is of opinion that it is not in the public interest that the person should carry on the prescribed business, the court may, by order, prohibit that person from carrying on the prescribed business for such period as the court thinks fit.
- (4) Service of an order made under subsection (3) is to be effected on a person referred to in subsection (2) in the same way as service of a summons under the *Justices Act 1959*.

46. Unlawfully carrying on prescribed business

A person who carries on a prescribed business –

- (a) without giving notice as required by section 44(2); or
- (b) after service on that person of a copy of a notice of objection under section 44(5) and before the hearing of the objection by a court of petty sessions; or
- (c) during any period when, by virtue of an order made under section 45(3), that

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person is prohibited from carrying on the prescribed business –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units and a further fine not exceeding 2 penalty units in respect of each day during which that person carries on the prescribed business.

47. Existing prescribed businesses

- (1) Where a person was, immediately before the commencement of this Act, managing a prescribed business, the person must, within one month after that commencement, notify the Director of Local Government in writing of that fact.

Penalty: Fine not exceeding 20 penalty units.

- (2) The notice is to specify –
- (a) in the case of a natural person, the full name and address of that person; and
 - (b) in the case of a body corporate, the full name and address of that body and of a director, secretary or public officer of that body; and
 - (c) the address of the prescribed business; and
 - (d) the business name, if any, under which the prescribed business was carried on.

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48. Register of prescribed businesses

- (1) The Director of Local Government must maintain a register of prescribed businesses showing –
 - (a) the name and address of each prescribed business; and
 - (b) if the manager or person responsible for the management of the prescribed business is a natural person, the full name and address of that person or, in the case of a body corporate being the manager or responsible for the management of the prescribed business, the full name and address of that body and of a director, secretary or public officer of that body; and
 - (c) the business name, if any, under which the prescribed business is carried on.
- (2) The register is to be available for inspection by any member of the public at the office of the Director of Local Government during normal business hours.

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Part 6 – Miscellaneous and supplemental

PART 6 – MISCELLANEOUS AND SUPPLEMENTAL

49. Unlawfully managing crematorium or cemetery

A person who manages a crematorium or cemetery –

- (a) without giving notice as required by section 9(2); or
- (b) after service on that person of a copy of a notice of objection under section 10 and before the hearing of the objection by a court of petty sessions; or
- (c) during any period when, by virtue of an order made under section 11(3), that person is prohibited from managing a crematorium or cemetery –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units and a further fine not exceeding 2 penalty units in respect of each day during which that person manages the crematorium or cemetery.

49A. Compliance with Act

- (1) The regulator may request, in writing to a cemetery manager, that the cemetery manager do one or more of the following:
 - (a) undertake an audit, as prescribed, of the cemetery to ensure that the cemetery manager and the cemetery comply with this Act;

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- (b) provide such information that the regulator considers necessary to ensure that –
 - (i) the cemetery manager is complying, and has complied, with this Act; and
 - (ii) the cemetery being managed by the cemetery manager, and the records in respect of that cemetery, comply with this Act.
- (2) A cemetery manager who receives a written request under subsection (1) must comply with the written request within the period specified in the request.

Penalty: Fine not exceeding 20 penalty units.

49B. Regulator may issue directive to cemetery manager

- (1) If the regulator is not satisfied that a cemetery manager has complied with this Act, the regulator may issue a written directive to the cemetery manager specifying the steps to be taken by the cemetery manager to ensure compliance with this Act.
- (2) A cemetery manager who receives a written directive under subsection (1) must comply with the written directive within the period specified in the directive.

Penalty: Fine not exceeding 100 penalty units.

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49C. Offences by body corporate

- (1) If a body corporate contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision.
- (2) It is a defence in proceedings in respect of a contravention referred to in subsection (1) for a person to prove that –
 - (a) the body corporate contravened the provision without the person's knowledge; or
 - (b) the person was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (c) the person, if in such a position, attempted to prevent the contravention by the body corporate.
- (3) A person may be convicted of a contravention of a provision of this Act whether or not the body corporate has been convicted of its contravention.
- (4) Nothing in this section affects the liability of a body corporate for an offence committed by it against a provision of this Act.

50. Offences

- (1) A person must not dispose of any human remains except in accordance with this Act and

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any conditions which may be imposed by the Director of Public Health under section 41 or 42.

Penalty: Fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

- (2) On conviction for an offence against this Act, the court may order that the defendant is prohibited from managing a crematorium, cemetery or prescribed business for such period as the court thinks fit.
- (3) A person must not contravene an order under subsection (2).

Penalty: Fine not exceeding 100 penalty units or imprisonment for a period not exceeding 2 years, or both.

- (4) A person must not remove a monument from a cemetery otherwise than in accordance with this Act.

Penalty: Fine not exceeding 50 penalty units.

50A. Offences relating to regulator

- (1) A person, in providing any information, statement, application or document to the regulator under this Act, must not –
 - (a) provide it knowing it to be false or misleading; or
 - (b) omit any matter knowing that without that matter the information, statement,

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application or document is false or misleading.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subsection (1)(a) does not apply to a person if, at the time the person provides the information, statement, application or document, or as soon as practicable after becoming aware that the information or document provided is false or misleading, the person –
- (a) informs the regulator that the information, statement, application or document is false or misleading; and
 - (b) indicates the respects in which it is false or misleading; and
 - (c) provides the regulator with any correct information that is in the person's possession or control; and
 - (d) provides the regulator with any information that the person has concerning who else may have the correct information, statement, application or document.
- (3) If the regulator has imposed a condition under this Act, a person to whom that condition applies must comply with the condition.

Penalty: Fine not exceeding 50 penalty units.

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50B. Infringement notice offences

(1) In this section –

infringement offence means an offence against this Act or the regulations made under this Act that is prescribed by the regulations to be an infringement offence.

(2) The Director of Local Government, or a person authorised by the Director of Local Government, may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.

(3) An infringement notice may not be served on an individual who has not attained the age of 16 years.

(4) An infringement notice –

(a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and

(b) is not to relate to more than 3 offences.

(5) The regulations –

(a) may prescribe, for infringement offences, the penalties payable under infringement notices; and

(b) may prescribe different penalties for bodies corporate and individuals.

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51. Powers of authorised officers to enter premises

(1) In this section,

authorised officer means –

- (a) a State Service employee who is authorised in writing by the Director of Local Government for the purposes of this section; or
 - (b) an officer or employee of a council who is authorised in writing by the council for the purposes of this section; or
 - (c) a police officer.
- (2) For the purpose of ascertaining whether there is, or has been, a contravention of this Act, an authorised officer may enter –
- (a) any crematorium, cemetery or any place or premises that are, have been or may be used for, or in connection with, a prescribed business; or
 - (b) any other place or premises in which the authorised officer has reason to believe records relating to a crematorium, cemetery or prescribed business are kept.
- (3) An authorised officer may only enter a crematorium, cemetery, place or premises under subsection (2) –
- (a) at a reasonable time; and

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- (b) after providing reasonable notice to the cemetery manager, the crematorium manager or the person managing the prescribed business or other place or premises.
- (4) On entering and on leaving the place or premises, an authorised officer must ensure that they are as effectively secured against trespassers as he or she found them.
- (5) An authorised officer may use reasonable force to enter on land or enter a building or structure on land –
 - (a) with the authority of a warrant issued by a justice of the peace; or
 - (b) if the officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.
- (6) A justice of the peace must not issue a warrant under subsection (5) unless satisfied, on information given on oath –
 - (a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed; or
 - (b) that the warrant is reasonably required in the circumstances.

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51A. Regulator may reduce certain time frames

- (1) A cemetery manager of a closed cemetery may apply to the regulator to take an action specified in section 29B, 30 or 36 even though less than 100 years have passed since the last interment has taken place in the closed cemetery.
- (2) An application under subsection (1) –
 - (a) is to be in an approved form; and
 - (b) must be accompanied by the relevant prescribed fee.
- (3) After making an application under subsection (1), the cemetery manager is to –
 - (a) publish a notice in accordance with subsection (5) in respect of the closed cemetery; and
 - (b) on the expiry of the period specified in the notice in accordance with subsection (5)(c)(iii), provide a copy of the notice, and any responses to the notice, to the regulator.
- (4) For the avoidance of doubt, any information provided to the regulator under subsection (3)(b) is part of the application to which the information relates.
- (5) A notice to be published under subsection (3)(a) –
 - (a) is to contain the prescribed information; and

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- (b) must clearly identify –
 - (i) the closed cemetery to which it relates; and
 - (ii) the action specified in section 29B, 30 or 36 that is intended to be taken in respect of the cemetery; and
- (c) must –
 - (i) contain a statement that any lineal descendants of a person interred in the closed cemetery may provide the cemetery manager with a response in respect of the intended action; and
 - (ii) specify the contact information for the cemetery manager; and
 - (iii) specify the period during which any responses may be made.
- (6) Before determining an application under subsection (1), the regulator may consider any one or more of the following matters in respect of the application:
 - (a) the cultural and historical value of the cemetery, including whether the cemetery contains graves of persons of historical or cultural significance to the community;

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- (b) whether the intended action may be prejudicial to public health or public safety;
 - (c) any other matter that the regulator considers relevant to determining the application.
- (7) After receiving the information specified in subsection (3)(b) in respect of an application under subsection (1), the regulator is to –
- (a) approve the application subject to any conditions that he or she thinks fit; or
 - (b) refuse to approve the application; or
 - (c) request further information from the relevant cemetery manager in respect of the closure and, after receiving the requested information –
 - (i) approve the application subject to any conditions that he or she thinks fit; or
 - (ii) refuse to approve the application.
- (8) If the regulator approves an application under subsection (1), the cemetery manager may, subject to any conditions imposed on the approval, take the intended action even though less than 100 years have passed since the last interment has taken place in the closed cemetery.
- (9) A decision of the regulator, under subsection (6), to impose a condition on an approval, or to

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refuse an application, is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

52. Copies of code of practice to be made available

It is the duty of the Director of Local Government to provide, on request and on payment of such fee as may be approved by the Minister, a copy of –

- (a) any code of practice or guidelines which may be adopted by the regulations; or
- (b) any provision of any such code or guidelines –

to any person who is, or may be, affected by the provisions of this Act.

53. Delegation by Director of Public Health

- (1) The Director of Public Health may, by instrument in writing, delegate the exercise of such of his or her powers under this Act (other than this power of delegation) to an environmental health officer or to a person employed as an environmental health officer by a council.
- (2) The Director of Public Health may, by instrument in writing, revoke wholly or in part any such delegation.
- (3) A power, the exercise of which has been delegated under this section, may, while the

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delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

- (4) A delegation under this section may be made subject to such conditions or limitation as to the exercise of any of the powers delegated, or as to time or circumstance, as are specified in the instrument.
- (5) Notwithstanding any delegation under this section, the Director of Public Health may continue to exercise all or any of the powers delegated.
- (6) Any act or thing done by or to a delegate while acting in the exercise of a delegation under this section has the same force and effect as if the act or thing had been done by or to the Director of Public Health and is taken to have been done by or to that Director.
- (7) An instrument purporting to be signed by a delegate of the Director of Public Health in his capacity as such a delegate may in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by that Director and, until the contrary is proved, is taken to be an instrument signed by a delegate of that Director under this section.

54. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) Without limiting the generality of subsection (1), the regulations may –
- (a) provide for and regulate the operation of crematoria, cemeteries and any places that are, or may be, used in connection with a prescribed business; and
 - (b) provide for all matters relating to the inspection by authorised officers of any places or premises entered under section 51 and the functions and powers of authorised officers, including their functions and powers in respect of the collection of evidence relating to offences under this Act; and
 - (c) prescribe in what cases and under what conditions the interment or cremation of human remains may take place; and
 - (d) provide for the equipment and apparatus to be used for the purposes of a crematorium; and
 - (e) provide for the handling, transport and storage of human remains; and
 - (f) provide for and regulate the construction and use of coffins and any other containers used for the handling, transport or storage of human remains; and
 - (g) provide for the persons who may authorise interment, cremations and the memorialisation and handling of human

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remains that have been reduced to ash;
and

- (h) provide for the appointment of medical referees for the purpose of cremations and prescribe their duties and obligations, the fees to be paid to them and the persons by whom those fees are to be paid, either generally or in particular cases; and
- (i) prescribe the notices, certificates and declarations to be given or made before any interment may be permitted to take place; and
- (j) prescribe the notices, certificates and declarations to be given or made before any cremation may be permitted to take place; and
- (k) provide for the preparation of human remains for interment or cremation; and
- (l) regulate and direct the disposition or interment of ashes; and
- (m) provide for the registration of interments and cremations which have taken place; and
- (n) provide for the keeping of records of any matter to which this Act applies and where and when the records are to be available to the public; and

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- (o) provide for and regulate the exhumation and removal of human remains; and
 - (p) provide for any matter relating to the conduct of Aboriginal cremations on Aboriginal land; and
 - (q) provide for fines not exceeding 20 penalty units for breaches of the regulations; and
 - (qa) provide for a prescribed person to enter cemeteries and crematoria to undertake such measures as are required for compliance with the Act, and for the recovery of costs for such measures; and
 - (r) provide generally with respect to all matters incidental to, or connected with, the interment, cremation or other disposal of human remains or a prescribed business.
- (3) The regulations may apply, adopt or incorporate all or any of the provisions of a code or guidelines published by any organisation or body for the regulation of any matter to which this Act applies and those provisions may be applied, adopted or incorporated as they currently exist, as amended by the regulations, or as amended from time to time.
- (4) The regulations may provide for the temporary suspension or modification, by a notice published in the *Gazette* by the Minister having the administration of the *Public Health Act 1997*,

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of any provision of this Act on the occasion of an epidemic, or for other sufficient reason.

- (5) The regulations may –
- (a) be of limited or general application; and
 - (b) be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and
 - (c) authorise any matter to be determined, applied or regulated by any specified person.

55. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Premier; and
- (b) the department responsible to the Premier in relation to the administration of this Act is the Department of Premier and Cabinet.

56. Savings and transitional on commencement of *Burial and Cremation Amendment Act 2018*

- (1) In this section –

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Part 2B commencement day means the day on which section 16 of the *Burial and Cremation Amendment Act 2018* commences;

proposed cemetery manager means a person who –

- (a) within the month before the section 11A commencement day, had notified the Director of Local Government under section 9(2) of the person's intention to manage a cemetery; and
- (b) on the section 11A commencement day –
 - (i) was not the cemetery manager of the cemetery; or
 - (ii) was not prohibited under section 11 from managing the cemetery;

section 11A commencement day means the day on which section 10 of the *Burial and Cremation Amendment Act 2018* commences;

section 29 commencement day means the day on which section 17 of the *Burial and Cremation Amendment Act 2018* commences.

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- (2) On and after the section 11A commencement day, this Act applies to a proposed cemetery manager as if the amendments contained in sections 7, 8, 9 and 10 of the *Burial and Cremation Amendment Act 2018* had not commenced.
- (3) If, before the Part 2B commencement day –
- (a) a person has entered into a contract to purchase a cemetery; and
 - (b) as a result of that contract, a person has notified the Director of Local Government, under section 9(2), of the person's intention to manage the cemetery; and
 - (c) the contract for the purchase of the cemetery has not been completed –

this Act applies to the sale of the cemetery as if the amendments contained in section 16 of the *Burial and Cremation Amendment Act 2018* had not commenced.

- (4) If, before the Part 2B commencement day –
- (a) a person has entered into a contract to purchase a cemetery; and
 - (b) there has been no notification to the Director of Local Government, under section 9(2), of who is to manage the cemetery after the purchase is complete; and

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(c) the contract for the purchase of the cemetery has not been completed –

sections 27H and 27P, and Division 2 of Part 2B, do not apply to the sale of the cemetery in accordance with the contract.

- (5) If, at least 3 months before the section 29 commencement day, a cemetery manager has given notice to the Director of Local Government under section 30(2) of the cemetery manager's intention to lay out the cemetery as a park or garden, this Act applies to the laying out of the cemetery as a park or garden as if the amendments contained in section 17 of the *Burial and Cremation Amendment Act 2018* had not commenced.

57. The amendment effected by this section has been incorporated into the authorised version of the Anglican Church of Australia Constitution Act 1973.

58. The amendment effected by this section has been incorporated into the authorised version of the Local Government (Building and Miscellaneous Provisions) Act 1993.

59. The amendment effected by this section has been incorporated into the authorised version of the Police Offences Act 1935.

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60. *The amendments effected by this section have been incorporated into the authorised version of the Southern Regional Cemetery Act 1981.*

61. Cremation Act 1934 repealed

The Cremation Act 1934 is repealed.

NOTES

The foregoing text of the *Burial and Cremation Act 2002* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 26 December 2018 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Burial and Cremation Act 2002</i>	No. 4 of 2002	1.7.2002
<i>Anatomical Examinations Act 2006</i>	No. 26 of 2006	1.3.2007
<i>Commercial Arbitration (Consequential Amendments) Act 2011</i>	No. 9 of 2011	1.10.2012
<i>Burial and Cremation Amendment Act 2018</i>	No. 40 of 2018	26.12.2018

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 26 of 2006, Sched. 2 and No. 40 of 2018, s. 4
Section 3A	Inserted by No. 40 of 2018, s. 5
Section 3B	Inserted by No. 40 of 2018, s. 5
Section 8	Amended by No. 40 of 2018, s. 6
Section 9	Amended by No. 40 of 2018, s. 7

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Provision affected	How affected
Section 10	Amended by No. 40 of 2018, s. 8
Section 11	Amended by No. 40 of 2018, s. 9
Section 11A	Inserted by No. 40 of 2018, s. 10
Section 19	Amended by No. 40 of 2018, s. 11
Section 20	Amended by No. 40 of 2018, s. 12
Section 21	Amended by No. 40 of 2018, s. 13
Section 23	Amended by No. 9 of 2011, Sched. 1 and No. 40 of 2018, s. 14
Section 26	Repealed by No. 40 of 2018, s. 15
Section 27A	Inserted by No. 40 of 2018, s. 16
Section 27B	Inserted by No. 40 of 2018, s. 16
Section 27C	Inserted by No. 40 of 2018, s. 16
Section 27D	Inserted by No. 40 of 2018, s. 16
Section 27E	Inserted by No. 40 of 2018, s. 16
Section 27F	Inserted by No. 40 of 2018, s. 16
Division 1	Inserted by No. 40 of 2018, s. 16
Division 2	Inserted by No. 40 of 2018, s. 16
Division 3	Inserted by No. 40 of 2018, s. 16
Section 29	Amended by No. 9 of 2011, Sched. 1 Substituted by No. 40 of 2018, s. 17
Section 29A	Inserted by No. 40 of 2018, s. 17
Section 29B	Inserted by No. 40 of 2018, s. 17
Section 29C	Inserted by No. 40 of 2018, s. 17
Section 30	Substituted by No. 40 of 2018, s. 17
Section 31	Amended by No. 9 of 2011, Sched. 1 and No. 40 of 2018, s. 18
Section 31A	Inserted by No. 40 of 2018, s. 19
Section 32	Repealed by No. 40 of 2018, s. 20
Section 33	Amended by No. 40 of 2018, s. 21
Section 35	Amended by No. 40 of 2018, s. 22
Section 36	Amended by No. 40 of 2018, s. 23
Section 37	Amended by No. 40 of 2018, s. 24
Section 38	Amended by No. 40 of 2018, s. 25
Section 49	Amended by No. 40 of 2018, s. 26
Section 49A	Inserted by No. 40 of 2018, s. 27
Section 49B	Inserted by No. 40 of 2018, s. 27
Section 49C	Inserted by No. 40 of 2018, s. 27
Section 50	Amended by No. 40 of 2018, s. 28
Section 50A	Inserted by No. 40 of 2018, s. 29
Section 50B	Inserted by No. 40 of 2018, s. 29
Section 51A	Inserted by No. 40 of 2018, s. 30
Section 54	Amended by No. 40 of 2018, s. 31
Section 56	Inserted by No. 40 of 2018, s. 32
