



TASMANIA

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## **BURIAL AND CREMATION ACT 2019**

**No. 50 of 2019**

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## **BURIAL AND CREMATION ACT 2019**

**No. 50 of 2019**

**An Act to make provision for the establishment and management of cemeteries and crematoria, to provide for, and regulate, the handling and storage of human remains and to repeal the *Burial and Cremation Act 2002***

**[Royal Assent 13 December 2019]**

Be it enacted by Her 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 2019*.

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**2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

**3. Interpretation**

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

*Aboriginal cremation* means the cremation of an Aboriginal person, within the meaning of the *Aboriginal Lands Act 1995*, that is performed in accordance with Aboriginal custom on Aboriginal land;

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

*approved form* means a form approved by the regulator;

*authorised officer* includes –

- (a) a regulator; and
- (b) a State Service employee who is authorised in writing by the regulator, or the Director of Public Health, as an authorised officer for the purposes of this Act; and
- (c) an officer or employee of a council who is authorised, in writing by the council, as an

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authorised officer for the purposes of this Act; and

- (d) a police officer; and
- (e) a person, or class of persons, prescribed as an authorised officer;

***cemetery*** means –

- (a) a place that has been –
  - (i) approved, under the *Land Use Planning and Approvals Act 1993*, for the interment of human remains; and
  - (ii) lawfully used for the interment or placement of human remains; or
- (b) a place that is, or was, lawfully used for the interment or placement of human remains; or
- (c) a place, land or structure, or a class of places, land or structures, prescribed as a cemetery –

but does not include any land on which there is an interment permitted under section 29;

***cemetery manager***, in relation to a cemetery, means the person –

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(a) approved under this Act to manage the cemetery; or

(b) deemed, under this Act, to be the cemetery manager for the cemetery;

***closed cemetery*** – see section 4;

***contravene*** includes fail to comply with;

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

***cremated remains*** means the remains that are the result of the cremation of human remains;

***cremation*** means the reduction of human remains –

(a) 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*; or

(b) by a prescribed means;

***crematorium*** means premises that have been approved, under the *Land Use Planning and Approvals Act 1993*, for the purpose of cremations and includes any other premises that, immediately before the commencement of this definition, were

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approved for that purpose under the  
*Burial and Cremation Act 2002*;

***crematorium manager***, in relation to a  
crematorium, means the person approved  
under this Act to manage the  
crematorium;

***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 41;

***exhumation*** means the removal of human  
remains from where the remains are  
interred but does not include the  
reopening of a place where human  
remains are interred if the human remains  
are not removed from that place;

***fit and proper***, in relation to a person – see  
section 5;

***human remains*** means –

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- (a) the body of a deceased person and includes a part of a body of a deceased person; or
- (b) a detached part of a person who is not deceased –

but does not include cremated remains;

*interment* includes –

- (a) the burial of human remains, or cremated remains, in the ground; and
- (b) the placement of human remains, or cremated remains, as mentioned in section 8(2); and
- (c) the placement of human remains, or cremated remains, as prescribed;

*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 a 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;

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***monument*** includes a tombstone, plaque, tablet, cenotaph, columbarium and any other structure or object –

(a) that is located in a cemetery and –

(i) is intended to commemorate a deceased person; or

(ii) contains human remains or cremated remains; or

(b) that –

(i) is located in a place that is, or has previously been, open for public access; and

(ii) contains human remains, or cremated remains;

***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;

***regulated 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 such a 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 9;

***relevant organisation*** means –

- (a) in relation to a cemetery manager, the cemetery that the cemetery manager is approved to manage; or
- (b) in relation to a crematorium manager, the crematorium that the crematorium manager is approved to manage; or
- (c) in relation to a person approved to carry on a regulated business, the regulated business;

***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

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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;
- (f) dispose of by way of raffle, lottery or other game of chance;
- (g) offer as a gift, other than to offer as a gift to a religious or cultural group in accordance with this Act;
- (h) offer as a prize or reward;
- (i) give away for any purpose;

***senior next of kin*** – see section 6;

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

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- (2) A reference in this Act to a council is to be read as a reference to the council of the municipal area in which –
- (a) a crematorium or cemetery is situated or proposed to be situated; or
  - (b) it is proposed to inter human remains as mentioned in section 29.

**4. Meaning of *closed cemetery***

- (1) For the purposes of this Act, a cemetery is a closed cemetery if the cemetery –
- (a) immediately before the commencement of this section, was a closed cemetery within the meaning of the *Burial and Cremation Act 2002*; or
  - (b) was closed under section 63 and a notice under that section remains in effect in respect of the cemetery; or
  - (c) was approved to be closed under section 65; or
  - (d) meets the prescribed criteria for a closed cemetery.
- (2) For the avoidance of doubt, a closed cemetery is still a cemetery for the purposes of this Act unless –
- (a) all human remains have been removed from the closed cemetery as required under section 72(1); or

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- (b) the land is declared under section 73 not to be a cemetery.

**5. Meaning of *fit and proper***

- (1) The regulator may take into account the following matters when determining, for the purposes of this Act, if a person is a fit and proper person:
  - (a) the capacity, including the financial capacity, of the person including his or her ability to maintain, if relevant, a regulated business, cemetery or crematorium, and the related records;
  - (b) the capacity of the person to comply with the relevant provisions of this Act;
  - (c) whether the person has any previous relevant experience in the management and maintenance of a regulated business, cemetery or crematorium and, if so, the details of that experience;
  - (d) whether the person has been found guilty of one of the following offences within the immediately previous 10 years, regardless of where the conviction occurred:
    - (i) an indictable offence where the maximum penalty for the offence is a term of imprisonment of at least 3 months;

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- (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 regulated business, cemetery or crematorium, have been made against the person, regardless of the jurisdiction in which the allegation was made;
  - (f) any other prescribed matter;
  - (g) any other matter, in respect of the person, that the regulator considers relevant to the determination.
- (2) If the regulator is required to determine, for the purposes of this Act, if a body corporate is a fit and proper person, subsection (1) applies to that determination as if a reference in that subsection to a person were a reference to each officer of that body corporate.

**6. Meaning of *senior next of kin***

- (1) Subject to subsection (4), a person is the senior next of kin in relation to a deceased person, including the cremated remains of the deceased person, for the purposes of this Act, if –
  - (a) the person is the executor or administrator of the estate of the

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deceased person, if the administration of the estate is not complete; or

- (b) if there is no person within paragraph (a) in respect of the deceased person – the person was the spouse of the deceased person immediately before the death of the deceased person; or
- (c) if there is no person within paragraph (a) or (b) in respect of the deceased person – the person is 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
- (d) if there is no person within paragraph (a), (b) or (c) in respect of the deceased person – the person was in a caring relationship, within the meaning of the *Relationships Act 2003*, with the deceased person immediately before the death 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 person is a parent of the deceased person; or
- (f) if there is no person within paragraph (a), (b), (c), (d) or (e) in respect of the deceased person – the person is the eldest available sibling of the deceased person, if that sibling has attained the age of 18 years; or

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(g) if there is no person within paragraph (a), (b), (c), (d), (e) or (f) in respect of the deceased person – the person is the personal representative of the deceased person; or

(h) if –

(i) there is no person within paragraph (a), (b), (c), (d), (e), (f) or (g) in respect of the deceased person; and

(ii) the deceased person is an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995* –

the person is 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

(i) if there is no person within paragraph (a), (b), (c), (d), (e), (f), (g) or (h) in respect of the deceased person – the person is a person approved under subsection (3) as the senior next of kin of the deceased person.

(2) For the purposes of subsection (1) or (3), 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 –

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- (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 of the deceased person; or
  - (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)(i), the regulator may approve, by notice in writing to a person, that person as the senior next of kin of the deceased person.
- (4) Despite subsection (1), a reference to *senior next of kin* in respect of human remains, or cremated remains, of a person who is not yet deceased is taken to be a reference to the person if the person has legal capacity.

**7. 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.

**8. Application and non-application of Act**

- (1) This Act –

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- (a) is in addition to, but does not derogate from, any other Act relating to any matter in this Act; and
  - (b) does not apply to the exclusion of any other Act providing for –
    - (i) the use of land as a crematorium or cemetery; or
    - (ii) the use of any disused burial ground or land formerly used as a cemetery.
- (2) For the avoidance of doubt, this Act applies to the placement of human remains, or cremated remains, in any place that is approved in accordance with the *Land Use Planning and Approvals Act 1993* for use as a mausoleum and, for the purposes of this Act, human remains, or cremated remains, that have been so placed are taken to be interred.
- (3) This Act, other than sections 23, 28 and 30, does not apply to the Settlement Point cemetery shown on Plan 4806 in the Central Plan Register.

## **PART 2 – ADMINISTRATION**

### ***Division 1 – Regulator***

#### **9. Regulator**

- (1) For the purposes of this Act or a provision of this Act, a person is the regulator if –
  - (a) the person prescribed as the regulator for the purposes of this Act or the provision;  
or
  - (b) if no such person is prescribed for this Act or the provision, the Director of Local Government.
- (2) In this Act, a reference to the regulator in respect of a regulated business, cemetery or crematorium is a reference to the regulator appointed for the provision of the Act in which the reference occurs.

#### **10. Regulator may issue exemptions**

- (1) Subject to subsection (2) and section 11, the regulator may exempt a person from complying with one or more requirements of this Act if satisfied that the exemption –
  - (a) is reasonable in the circumstances; and
  - (b) does not have a negative effect on the entitlements of another person under this Act.

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- (2) The regulator may not exempt a person from a requirement in the following sections:
- (a) section 25;
  - (b) section 32(1) and (4);
  - (c) section 43;
  - (d) section 44(1) and (5);
  - (e) section 50;
  - (f) section 51;
  - (g) section 52(1)(c);
  - (h) section 54(1);
  - (i) section 58(3);
  - (j) section 59;
  - (k) section 60;
  - (l) section 61;
  - (m) section 74;
  - (n) any other prescribed provision.

**11. Regulator may accept partial compliance in certain circumstances**

- (1) The regulator may accept partial compliance with a requirement under this Act for a person to keep a record if –

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- (a) the person has made all reasonable attempts to get the information required to be kept under this Act as part of the record; and
  - (b) the person is unable to find the information; and
  - (c) the regulator is satisfied that the person required to keep the record has made all reasonable attempts to comply with this Act in respect of the record.
- (2) The regulator may accept partial compliance under subsection (1) on his or her own initiative or on the application of the person who is required to keep the record under this Act.

**12. Regulator may delegate**

- (1) A regulator may, by written instrument, delegate the performance of his or her functions, or the exercise of his or her powers, under this Act, other than this power of delegation.
- (2) A regulator may, by written instrument, revoke wholly or in part any such delegation.
- (3) Notwithstanding any delegation under this section, a regulator may continue to exercise all or any of the functions or powers delegated.
- (4) An instrument purporting to be signed by a delegate of a regulator in his or her capacity as such a delegate may in all courts and before all persons acting judicially be received in evidence

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as if it were an instrument executed by the regulator and, until the contrary is proved, is taken to be an instrument signed by a delegate of that regulator under this section.

**13. Regulator may issue directions**

- (1) A regulator may issue a written direction to a person carrying on a regulated business, or a cemetery manager or a crematorium manager, specifying the steps to be taken by the person to ensure compliance with this Act if the regulator is not satisfied that –
  - (a) the person has complied with this Act; or
  - (b) the relevant organisation managed by the person does not comply with this Act.
- (2) A person who is issued with a written direction under subsection (1) must comply with the written direction within the period specified in the direction.

Penalty: Fine not exceeding 100 penalty units.

**14. Regulator to keep register**

- (1) The regulator is to maintain a register of information in respect of each of the following organisations within the State:
  - (a) regulated businesses;
  - (b) cemeteries;

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- (c) crematoria.
- (2) An entry in the register kept under subsection (1) in relation to a regulated business is to include, but is not limited to, the following information:
- (a) the name and address of each regulated business;
  - (b) if the manager or person responsible for carrying on the regulated business is –
    - (i) a natural person, the full name and address of that person; or
    - (ii) a body corporate, the full name and address of that body corporate and of a director, secretary or public officer of that body corporate;
  - (c) the business name, if any, under which the regulated business is carried on.
- (3) An entry in the register kept under subsection (1) in relation to a cemetery or crematorium is to include, but is not limited to, the following information:
- (a) the name and address of the cemetery or crematorium;
  - (b) the full name and business address of –
    - (i) in the case of a cemetery, the cemetery manager for the cemetery; or

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- (ii) in the case of a crematorium, the crematorium manager for the crematorium;
  - (c) the business name, if any, under which the cemetery or crematorium is managed;
  - (d) a means of identifying the area of land used for the cemetery or crematorium.
- (4) If an entry in the register is incorrect, incomplete or missing, the following person in respect of the entry must, as soon as is practicable after becoming aware that the information is incorrect, incomplete or missing, notify the regulator of that fact and provide the full, correct information:
  - (a) if the entry relates to a regulated business, the person approved to carry on the regulated business;
  - (b) if the entry relates to a cemetery, the cemetery manager for the cemetery;
  - (c) if the entry relates to a crematorium, the crematorium manager for the crematorium.

Penalty: Fine not exceeding 30 penalty units.

- (5) The register –
  - (a) may be kept in any form that permits its contents to be readily inspected in a legible form; and

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- (b) must be made available for viewing by members of the public; and
- (c) is to be made so available to the public by any means, or in any form, that the regulator considers appropriate.

**15. Extension of certain periods relating to applications determined by regulator**

- (1) If this Act requires the regulator to determine an application within a specific period and the regulator has requested further information in respect of the application, the specified period is exclusive of any time between –
  - (a) the regulator requesting the information; and
  - (b) the regulator receiving all of the requested information.
- (2) If this Act requires the regulator to determine an application within a specific period, the regulator may, by notice in writing to the applicant, extend the specified period for such further period as is specified in the notice.

*Division 2 – Authorised officers*

**16. Powers of authorised officers to enter premises**

- (1) For the purpose of ascertaining whether there is, or has been, a contravention of this Act, an authorised officer may enter –

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- (a) any place or premises that are, have been or may be used for, or in connection with, a regulated business or any cemetery or crematorium; or
  - (b) any other place or premises in which the authorised officer has reason to believe records relating to a regulated business, cemetery or crematorium are kept.
- (2) An authorised officer may only enter a regulated business, cemetery, crematorium, or another place or premises under subsection (1) –
  - (a) at a reasonable time; and
  - (b) after providing reasonable notice to the person carrying on the regulated business, the cemetery manager, the crematorium manager or the person responsible for the management of the other place or premises.
- (3) Despite subsections (1) and (2), an authorised officer may only enter, under subsection (1), part of a place, or premises, in which a person ordinarily resides if the authorised officer –
  - (a) is authorised to so enter by a warrant issued by a justice of the peace; or
  - (b) is given permission to enter by the occupier of the residence.
- (4) On entering and on leaving the place or premises, an authorised officer must ensure that

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they are as effectively secured against trespassers as the authorised officer found them.

- (5) An authorised officer may use reasonable force to enter on land or enter a building or structure on land –
- (a) if the force used is authorised by 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 authorising the use of force 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.

**17. Collection of evidence by authorised officers**

- (1) An authorised officer who enters any cemetery, crematorium, place or premises for the purposes of this Act, may do any one or more of the following to determine if the Act has been, is being, or is likely to be, contravened:
- (a) search the cemetery, crematorium, place or premises;

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- (b) require any person to produce a record, document or other thing for inspection by the authorised officer;
  - (c) take extracts from, or make copies of, a record, document or thing;
  - (d) take photographs, films and video recordings;
  - (e) take samples of things for analysis;
  - (f) take into the cemetery, crematorium, place or premises any equipment or materials reasonable necessary for the purpose of the authorised officer exercising a power, or performing a function, under this Act;
  - (g) require any person to give the authorised officer any reasonable assistance that the authorised officer may require.
- (2) If an authorised officer has a reasonable belief that this Act has been, is being, or is likely to be, contravened, the authorised officer may seize any record, document or other thing relevant to the contravention.

**18. Retention of records, &c., by authorised officers**

- (1) An authorised officer may retain a record, document or other thing seized under this Act –
  - (a) for the purpose of investigating if this Act has been, is being, or is likely to be, contravened and, if required, for the

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- purposes of any subsequent prosecution;  
or
- (b) for the purpose of an investigation under Part 5 of the *Coroners Act 1995*.
- (2) An authorised officer who retains a record, document or other thing under subsection (1) may provide it, or a copy of it, to a regulator –
- (a) for the purpose of investigating if this Act has been, is being, or is likely to be, contravened and, if required, for the purposes of any subsequent prosecution;  
or
- (b) for the purpose of an investigation under Part 5 of the *Coroners Act 1995*.
- (3) If an authorised officer provides a record, document or other thing, or a copy of a record, document or other thing, to a regulator under subsection (2), the regulator may retain it, or a copy of it, while required for the purpose referred to in that subsection.
- (4) A person otherwise entitled to possession of a record or document, retained by an authorised officer under this Act, is entitled to be provided with a copy of that record, or document, certified by the authorised officer to be a true copy, if the person requests such a copy from the authorised officer.
- (5) A certified copy of a record or document provided under subsection (4) is to be received

in all courts and elsewhere as if it were the original record or document.

**19. Authorised officers not to impede business**

An authorised officer performing a function or exercising a power under this Act, or a person assisting such an authorised officer, must not unnecessarily impede or obstruct the operation of a regulated business, cemetery, crematorium or any place or premises that are, have been or may be used for, or in connection with, a regulated business, cemetery or crematorium.

*Division 3 – General*

**20. Director of Public Health may issue directions**

- (1) If the Director of Public Health considers it in the interest of public health or public safety to do so, the Director may make a direction, in writing, in respect of one or more of the following:
  - (a) the handling and disposal of human remains;
  - (b) the carrying on of a regulated business;
  - (c) the management of a cemetery or crematorium;
  - (d) any other prescribed matter.

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- (2) A person to whom a direction under subsection (1) applies must comply with the direction.

Penalty: Fine not exceeding 100 penalty units.

**21. Director of Public Health may delegate**

- (1) The Director of Public Health may, by written instrument, delegate the performance of his or her functions, or the exercise 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 written instrument, revoke wholly or in part any such delegation.
- (3) Notwithstanding any delegation under this section, the Director of Public Health may continue to exercise all or any of the functions or powers delegated.
- (4) 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.

**PART 3 – HANDLING OF HUMAN REMAINS**

*Division 1 – General*

**22. Notifications of death**

- (1) If a person reasonably believes that another person has died, he or she is to notify at least one of the following persons of that death as soon as practicable:
  - (a) a medical practitioner;
  - (b) a police officer;
  - (c) a nurse;
  - (d) a midwife;
  - (e) an officer of the Ambulance Service within the meaning of the *Ambulance Service Act 1982*;
  - (f) a prescribed person.
- (2) If a person other than a medical practitioner is notified of a death under subsection (1), the person so notified is to notify a medical practitioner of that death as soon as is practicable.
- (3) Subsection (1) or (2) does not apply to a person if –
  - (a) the person is required, under either subsection, to give notification of a death; and

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- (b) the person is satisfied, on reasonable grounds, that another person has given notification of the death under that subsection.

**23. Unlawful disposal of human remains**

A person must not dispose of any human remains except in accordance with –

- (a) this Act or any other Act; and
- (b) any conditions which may be imposed by the Director of Public Health under Division 3.

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

**24. Handling of human remains**

Each person carrying on a regulated business, cemetery manager and crematorium manager must ensure that, at all times, human remains and cremated remains held at the premises of the relevant organisation are –

- (a) stored and labelled –
  - (i) so as to enable the human remains or cremated remains to be clearly identified; and

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- (ii) in accordance with the relevant prescribed requirements, if any; and
- (b) held in a manner that is secure; and
- (c) handled in a manner that is respectful.

Penalty: Fine not exceeding 50 penalty units and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

***Division 2 – Regulated businesses***

**25. Person must be approved to carry on regulated business**

A person must not carry on a regulated business unless the person –

- (a) has been approved in accordance with this Act to carry on that regulated business; and
- (b) is carrying on the regulated business in accordance with the approval; and
- (c) has not been prohibited under section 93 from carrying on a regulated business.

Penalty: Fine not exceeding 50 penalty units and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

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**26. Approval to carry on regulated business**

- (1) A person who proposes to carry on a regulated business must apply to the regulator for approval to carry on that business.
- (2) An application under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) must be made to the regulator at least one calendar month before the person intends to carry on the regulated business; and
  - (c) must be accompanied by the prescribed fee if any.
- (3) In determining an application under subsection (1), the regulator may take into account any one or more of the following matters:
  - (a) if the applicant is a natural person –
    - (i) whether the applicant has been convicted of an offence under this Act, the *Cremation Act 1934*, the *Burial and Cremation Act 2002* or Part 4 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or
    - (ii) whether the applicant is or is not, in the opinion of the regulator, a fit and proper person to carry on the regulated business;

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- (b) if the applicant is a body corporate –
    - (i) whether a person concerned in the management of the body corporate has been convicted of an offence under this Act, the *Cremation Act 1934*, the *Burial and Cremation Act 2002* or Part 4 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or
    - (ii) whether any such person is or is not, in the opinion of the regulator, a fit and proper person to carry on the regulated business;
  - (c) any other matter prescribed for the purposes of this section.
- (4) Within 21 days after receipt of an application under subsection (1), the regulator is to –
- (a) approve the applicant to carry on a regulated business subject to any conditions that the regulator considers appropriate; or
  - (b) refuse to approve the applicant to carry on a regulated business; or
  - (c) request further information from the applicant and, after considering the further information –

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- (i) approve the applicant to carry on a regulated business subject to any conditions that the regulator considers appropriate; or
  - (ii) refuse to approve the applicant to carry on a regulated business.
- (5) As soon as practicable after making a decision under subsection (4) in respect of an application, the regulator is to notify an applicant of that decision.
- (6) A decision of the regulator under subsection (4) is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**27. Carrying on regulated business**

- (1) A person must not carry on a regulated business other than –
  - (a) in accordance with this Act; and
  - (b) in a manner which is not, or may not be, prejudicial to public health or public safety.

Penalty: Fine not exceeding 50 penalty units and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

- (2) A person carrying on a regulated business must keep all prescribed records, in the prescribed manner, in respect of the business.

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Penalty: Fine not exceeding 50 penalty units.

***Division 3 – Other handling of human remains***

**28. Use of land for Aboriginal cremations**

- (1) A person may only conduct an Aboriginal cremation in accordance with this section.
- (2) A person who wishes to conduct an Aboriginal cremation must apply, in writing, to –
  - (a) the Aboriginal Land Council of Tasmania, as established under the *Aboriginal Lands Act 1995*, for approval to use the Aboriginal land specified in the application for the purposes of an Aboriginal cremation; and
  - (b) the Director of Public Health for approval to use Aboriginal land for the purposes of an Aboriginal cremation.
- (3) On receipt of an application under subsection (2)(b), the Director of Public Health is to consult with the general manager of the council of the municipal area in which the land is situated.
- (4) The Director of Public Health must not give approval for the use of Aboriginal land for the purpose of an Aboriginal cremation unless the Director is satisfied that the person who wishes to conduct the Aboriginal cremation has obtained the approval of the Aboriginal Land Council under subsection (2)(a) for that use.

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- (5) Unless otherwise stated, this Act does not apply to –
- (a) an Aboriginal cremation performed in accordance with this section; or
  - (b) the handling of cremated remains that –
    - (i) are the result of an Aboriginal cremation; and
    - (ii) are being handled in accordance with Aboriginal custom.

**29. Interment of human remains otherwise than in cemetery**

- (1) A person may only inter human remains other than in a cemetery with the written permission of –
- (a) the landholder; and
  - (b) the Director of Public Health; and
  - (c) the general manager of the relevant council.
- (2) The Director of Public Health must not give permission for the purposes of this section if the Director of Public Health believes, on reasonable grounds, that the land on which the proposed interment is to occur would be considered a cemetery to which this Act applies.
- (3) The general manager must not give permission for the purposes of this section unless –

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- (a) the Director of Public Health has given written permission for the proposed interment; and
  - (b) the general manager is satisfied, on reasonable grounds, that the land on which the proposed interment will occur is not a cemetery to which this Act applies.
- (4) If the general manager gives permission for an interment under this section, the general manager must ensure that a record of the proposed interment –
- (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, the regulator or the general manager for the purposes of this section may be subject to any conditions necessary to ensure that the proposed interment will not be prejudicial to public health or public safety.

**30. 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 conditions specified in the authorisation.

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- (2) Before an exhumation is commenced, the Director of Public Health may –
- (a) impose conditions on the exhumation; and
  - (b) specify that a person is to supervise, on that Director’s behalf, the exhumation, re-interment or cremation of the human remains.
- (3) A person must not exhume any human remains unless the person –
- (a) is authorised to exhume the human remains under subsection (1); and
  - (b) complies with the conditions imposed in the authorisation under subsection (1); and
  - (c) complies with the conditions imposed, or specifications made, in respect of the exhumation under subsection (2).

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

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

**31. Reopening of interments**

- (1) The Chief Magistrate may authorise the re-opening of the place of interment of a deceased

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person whose death has been the subject of an investigation under the *Coroners Act 1995*.

- (2) If, on the reopening of a place of interment of human remains, an exhumation of the remains is intended, an authorisation under section 30 is required before the exhumation is performed.
- (3) Despite subsections (1) and (2), a cemetery manager may reopen a place of interment of human remains without an authorisation under subsection (1) if it is not intended to remove any human remains from the interment.

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**PART 4 – CEMETERIES**

***Division 1 – Cemetery managers***

**32. Approval of persons as cemetery manager**

- (1) A person must not manage a cemetery unless –
- (a) the person has been approved under this section to be the cemetery manager for the cemetery; or
  - (b) the person is deemed under this Act to be the cemetery manager for the cemetery.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person who proposes to manage a cemetery must apply to the regulator for approval to manage the cemetery.
- (3) An application under subsection (2) –
- (a) is to be in an approved form; and
  - (b) must be accompanied by –
    - (i) any information that the regulator considers relevant to the application; and
    - (ii) the relevant prescribed fee, if any.
- (4) The regulator may only approve a person as a cemetery manager under this section if the regulator is satisfied that –

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- (a) the person is a fit and proper person to be a cemetery manager; and
  - (b) the person is a body corporate with perpetual succession; and
  - (c) the person –
    - (i) owns, or is to own within a reasonable period after the approval of the person as cemetery manager, the land on which the cemetery is located or is to be located; or
    - (ii) is leasing, or is to lease within a reasonable period after the approval of the person as cemetery manager, from the State, or a council, the land on which the cemetery is located or is to be located.
- (5) Despite subsection (4)(b), the regulator does not need to be satisfied that a person proposing to manage a cemetery (*the applicant*) is a body corporate with perpetual succession if –
- (a) immediately before the commencement of the *Burial and Cremation Amendment Act 2018*, or in accordance with section 56 of the *Burial and Cremation Act 2002*, the cemetery was owned by a natural person; and
  - (b) the applicant has made an application under this section as a result of entering

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into an agreement to purchase, or is purchasing, the cemetery from the current owner of the cemetery who is a natural person.

- (6) Within 21 days after receiving an application under subsection (2), the regulator is to –
- (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.
- (7) 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.
- (8) 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

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- (b) of the reasons for that refusal; and
  - (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*.
- (9) 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*.

**33. Cemetery managers to hold cemeteries in trust**

Subject to this and any other Act, the cemetery manager for a cemetery is taken to hold the land on which the cemetery is situated and all documents relating to the cemetery in trust for the purposes of the cemetery.

**34. Duties and powers of cemetery managers**

- (1) A cemetery manager must keep the cemetery for which he or she is the cemetery manager –
- (a) in accordance with this Act; and
  - (b) so as not to be prejudicial to public health or public safety.

Penalty: Fine not exceeding 50 penalty units and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

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- (2) Subject to subsection (3), a cemetery manager must ensure that –
- (a) as far as reasonably practicable, the cemetery, for which he or she is the cemetery 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.

- (3) Subsection (2) 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 by, or was the result of an act that was approved by, the cemetery manager for the cemetery; or
  - (b) the cemetery manager for the cemetery has entered into an agreement under section 39(3) in respect of the vault, grave or monument.

- (4) A cemetery manager must keep all prescribed records, in the prescribed manner, in respect of the cemetery.

Penalty: Fine not exceeding 50 penalty units.

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- (5) 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 in respect of each day during which the offence continues.

- (6) It is a defence in proceedings for an offence under subsection (5) if the cemetery manager establishes that –
- (a) the person was refused access to all, or a portion, of the cemetery due to the person's behaviour or previous behaviour; or
  - (b) the person was refused access in accordance with the rules of operation for the cemetery.
- (7) Subject to this and any other Act, a cemetery manager may –
- (a) improve, embellish and enlarge the cemetery under the management of that manager; and
  - (b) restrict interments in any portion of the cemetery, except as may be required by an exclusive right of burial; and

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- (c) take any other action as may be required for the reasonable management and maintenance of the cemetery.

**35. Religious and cultural ceremonies and original distributions**

- (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 or cremated remains.

Penalty: Fine not exceeding 20 penalty units.

- (2) 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, or cremated remains, without any hindrance or disturbance by the cemetery manager or any other person.

Penalty: Fine not exceeding 20 penalty units.

- (3) 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.

- (4) It is a defence in proceedings for an offence under subsection (1) or (2) if the cemetery

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manager establishes that the cemetery manager did not permit the performance of the religious or cultural ceremony, or the exercise of the religious or cultural practices, as to do so would mean that the cemetery would not be in compliance with this or any other Act.

**36. Cemetery managers to ensure application of revenue of cemeteries**

- (1) A cemetery manager must make adequate provision, out of any revenue received in respect of each cemetery for which he or she is the cemetery 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) A cemetery manager must ensure that any fees received by the cemetery manager in respect of future maintenance of vaults, graves and monuments are dealt with by the manager as capital money as if the manager were a trustee.

Penalty: Fine not exceeding 50 penalty units.

**37. Owner of land taken to be cemetery manager in certain circumstances**

- (1) The owner of land that is a cemetery is taken to be the cemetery manager for the cemetery if –

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- (a) the former cemetery manager for the cemetery is taken to be no longer approved as a cemetery manager by virtue of section 93(3) and a new cemetery manager has not been approved under this Act in respect of the cemetery; or
  - (b) the former cemetery manager for the cemetery leased the land, on which the cemetery is located, from that owner and no longer leases the land; or
  - (c) prescribed circumstances exist in respect of the cemetery.
- (2) An owner of land that is a cemetery is only taken to be the cemetery manager for the cemetery under this section until –
- (a) he or she ceases to be the owner of the land; or
  - (b) the land ceases to be a cemetery; or
  - (c) a new cemetery manager is approved under this Act in respect of the cemetery.

*Division 2 – Cemeteries generally*

**38. Interments within cemeteries**

- (1) A person must not inter human remains in a cemetery unless the interment is approved, as prescribed, by the cemetery manager for the cemetery.

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Penalty: Fine not exceeding 50 penalty units.

- (2) A cemetery manager for a closed cemetery must not approve an interment of human remains in the closed cemetery.

Penalty: Fine not exceeding 50 penalty units.

**39. 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 cemetery manager.
- (2) A cemetery manager may determine the position of any monument to be erected or placed –
  - (a) according to its description, size and character; and
  - (b) 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

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an agreement made under subsection (3) must comply with the terms of that agreement.

Penalty: Fine not exceeding 50 penalty units.

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

Penalty: Fine not exceeding 50 penalty units.

**40. Removal of certain monuments in cemeteries**

- (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, it is 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.

- (2) 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 39(3) in respect of the monument; or

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- (b) if there is no agreement under section 39(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 39(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
    - (ii) has been determined by the regulator as the person responsible for the monument.
- (3) If –
- (a) the person responsible for a monument fails to comply with a requirement made under subsection (1) in respect of the monument; or
  - (b) the cemetery manager is the person responsible for the maintenance of the monument by virtue of an agreement under section 39(3) in respect of the monument; or
  - (c) the cemetery manager, after diligent enquiry, is unable to find the person responsible for the monument –

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the cemetery manager may –

- (d) 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
  - (e) recover in any court of competent jurisdiction the reasonable cost of doing so from the person responsible for the monument.
- (4) Subsection (3)(b) does not apply in respect of a monument if –
- (a) an agreement has been entered into under section 39(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.
- (5) 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.
- (6) As soon as practicable after a cemetery manager takes a monument down and removes it under subsection (5) the cemetery manager must –
- (a) notify the person responsible for the monument; and

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- (b) if an agreement is in place under section 39(3) in respect of the monument and the terms of that agreement meet the requirements of subsection (4)(b), re-erect the monument at no charge to the person responsible for the monument.

**41. Exclusive rights 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 with –
  - (a) an absolute right of burial; or
  - (b) a right of burial for a term of at least 25 years which may be renewed on such other terms and conditions as may be agreed.
- (3) If a cemetery manager grants an exclusive right of burial in accordance with subsection (1), the cemetery manager must provide the applicant with a certificate of exclusive right of burial as prescribed.

Penalty: Fine not exceeding 20 penalty units.

- (4) 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.
- (5) If the holder of an exclusive right of burial does not consent, as required under subsection (4), 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.
- (6) The cemetery manager must pay the costs of an arbitration under subsection (5).
- (7) 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 (4); or
  - (b) the exclusive right of burial –
    - (i) relates to part of a closed cemetery; and

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- (ii) has been dealt with in accordance with section 67(1); or
- (c) the cemetery manager has been notified in writing by the holder of the exclusive right of burial, or his or her legal representative, that –
  - (i) the exclusive right of burial is terminated; or
  - (ii) the holder of the exclusive right of burial has been cremated and is not to be interred in accordance with the exclusive right of burial; or
  - (iii) 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.

- (8) Nothing in this Act disturbs the effect of an exclusive right of burial granted, but not fulfilled or terminated, before the commencement of this section.

**42. Notifications of possible cemeteries**

- (1) If –
  - (a) a person believes, on reasonable grounds, that land owned by the person is a cemetery or holds more than one monument; and

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- (b) the person knows, or reasonably suspects, that the land is not covered by an entry in the register kept by the regulator under section 14 –

the person is to notify the regulator of that belief, and the reasons that the person holds that belief, as soon as practicable after forming the belief.

Penalty: Fine not exceeding 10 penalty units.

- (2) The general manager of a council is to notify the regulator as soon as practicable after the general manager becomes aware that land within the municipal area of the council –
- (a) is a cemetery, or holds more than one monument; and
- (b) is not covered by an entry in the register kept by the regulator under section 14.
- (3) If the regulator is notified under this section in respect of land, the regulator is to inform the owner of the land of his or her obligations and rights under this Act.

*Division 3 – New cemeteries*

**43. Approval required to establish new cemeteries**

- (1) A person must not establish a cemetery under this Act unless the establishment of that cemetery has been approved by the regulator under this Part.

Penalty: Fine not exceeding 50 penalty units.

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- (2) For a new cemetery to be established under this Part, the person who intends to establish the cemetery must be –
  - (a) responsible for the management of the cemetery; and
  - (b) approved under section 32 as the cemetery manager for the cemetery.

**44. Application to establish new cemeteries**

- (1) If a person intends to establish a cemetery under this Act, 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 –
    - (i) an application under section 32 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

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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) Within 21 days after receiving an application under subsection (1), the regulator is to –
- (a) approve the establishment of the cemetery subject to any conditions that the regulator thinks fit; or
  - (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 the regulator thinks fit; or
    - (ii) refuse to approve the establishment of the cemetery.

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- (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 32 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.

**45. Approval of new cemeteries**

- (1) If the regulator approves an application under section 44(4), the regulator is to issue to the applicant a written approval to establish the cemetery to which the application relates.
- (2) An approval to establish a cemetery issued under subsection (1) is to –
  - (a) be in writing; 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

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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 44(4), to impose a condition on an approval is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.
- (6) If –
- (a) an approval to establish a cemetery is issued under subsection (1); and
  - (b) no human remains are interred at the cemetery so approved within 2 years after the approval was so issued –

the approval lapses, unless the person who was issued the approval applies to the regulator for an extension of the approval and the regulator grants such an extension.

**46. Refusal to approve new cemeteries**

- (1) If the regulator refuses, under section 44(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 44(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*.

**47. Notification of decision to not establish new cemeteries**

If a person publishes a notice under section 44 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.

**48. Notification of first interments at new cemeteries**

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 the human remains.

Penalty: Fine not exceeding 20 penalty units.

*Division 4 – Sale of cemeteries*

*Subdivision 1 – General*

**49. Interpretation**

In this Division –

*certificate of compliance*, in respect of a sale, means the certificate issued for that sale under section 55(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.

**50. Person must not sell cemetery without approval**

- (1) A person must not sell a cemetery to another person, unless –

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- (a) a certificate of compliance has been issued in respect of the proposed sale; and
- (b) the person is satisfied that the proposed purchaser has been approved under section 32 as the cemetery manager for the cemetery.

Penalty: Fine not exceeding 100 penalty units.

- (2) For the purposes of subsection (1), sell does not include –
  - (a) to offer for sale; or
  - (b) to agree to sell, if the agreement is not binding on either party.

**51. 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 32 as the cemetery manager for the cemetery.

Penalty: Fine not exceeding 100 penalty units.

***Subdivision 2 – Requirements before sale of cemetery***

**52. 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 –

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- (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 or exclusive right granted under section 85 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 54 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 –
    - (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

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Act, or any exclusive right of burial or exclusive right under section 85 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), being a period that is not less than 28 days from the date on which the notice is published.
- (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.

**53. 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 87(1), in respect of the cemetery within 6 months of the publication of the notice under section 52(1)(a) in respect of the proposed sale.

**54. Application for certificate of compliance in respect of proposed sale**

- (1) After publishing a notice under section 52(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 52(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 52(1)(a) in respect of the proposed sale; and
    - (ii) a copy of the audit, undertaken in accordance with section 53; and
    - (iii) a copy of any information provided under section 52(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 section 52(1)(c), the regulator may consider one

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or 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 section 52(1)(c), the regulator may –
- (a) approve the application subject to any conditions that the regulator 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 the regulator 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 section 52(1)(c) 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.

**55. Certificate of compliance**

- (1) If the regulator approves an application of a cemetery manager in accordance with section 54(4)(a), 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 the conditions imposed on the certificate, if any.
- (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) A decision of the regulator, under section 54(4)(a), 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*.

**56. Refusal to issue certificate of compliance**

- (1) If the regulator refuses an application of a cemetery manager in accordance with section 54(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 54(4), to refuse an application is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**57. Notification of decision to not sell cemetery**

If a person publishes a notice under section 52(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.

***Subdivision 3 – Sale of cemetery***

**58. 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:
  - (a) a statement specifying –
    - (i) that, on the transfer of the ownership of the cemetery, the proposed purchaser is the cemetery manager for the cemetery; and

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- (ii) that, as the cemetery manager for the cemetery, the proposed purchaser would hold the cemetery on trust in accordance with this Act; and
  - (iii) the other 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) an exclusive right granted under section 85;
  - (iii) a grant in fee of an interment plot;
  - (iv) a grant for a term of an interment plot;
- (c) the number of agreements under section 39(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 36, 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, in accordance with section 53, 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.

**59. 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 32 as the cemetery manager for the cemetery.

**60. 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 32 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 32 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.

**61. 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 or exclusive right under section 85, in respect of the cemetery, that is yet to be fulfilled that

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the new owner is now the cemetery manager of the cemetery; and

- (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.

**62. 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 54(4); and
  - (b) the person to whom the ownership of the cemetery is to be transferred was approved under section 32 as the cemetery manager for the cemetery.
- (3) For the purposes of subsection (1) –

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- (a) evidence that the regulator has approved the person, to whom the ownership of the cemetery is to be transferred, under section 32 as the cemetery manager for the cemetery is evidence that the sale of that cemetery was approved under section 54(4); and
- (b) the Recorder, within the meaning of the *Land Titles Act 1980*, may rely on the notice in writing by the regulator under section 32(7), approving the person as the cemetery manager for the cemetery, as evidence of the matters referred to in paragraph (a).

***Division 5 – Closure of cemeteries***

**63. 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 or public safety –

the general manager or Director of Public Health may give notice to the cemetery manager that the

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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 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 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 the appeal is not dismissed, vary or revoke the notice.
- (6) If a cemetery manager is given a notice under subsection (1), the cemetery manager must comply with the notice unless the notice is withdrawn or revoked in accordance with this section.

Penalty: Fine not exceeding 100 penalty units.

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- (7) If a notice under subsection (1) is revoked or withdrawn in respect of a cemetery, the cemetery is no longer taken to be a closed cemetery for the purposes of this Act solely on the basis of that notice.
- (8) If a cemetery is a closed cemetery solely on the basis of a notice under subsection (1), the provisions of this Division, other than this section, do not apply in respect of the closed cemetery unless the closure of the cemetery has also been approved under section 65.

**64. Intention of cemetery manager to close cemetery**

- (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 that, or that portion of the, cemetery.
- (2) A notice to be published under subsection (1)(a) –
  - (a) is to contain the prescribed information; and

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- (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) the holder of an exclusive right granted under section 85 in respect of a monument in the cemetery;
    - (D) a person intending to have his or her human remains interred at the cemetery;
    - (E) a person who has entered into an agreement under section 39(3) in respect of

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- a vault, grave or  
monument in the  
cemetery; and
- (ii) specify the contact information for the cemetery manager; and
  - (iii) specify the period during which information may be provided under subparagraph (i), being a period that is not less than 60 days; 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 of a cemetery –
- (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

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- (ii) the number of exclusive rights granted under section 85 in respect of a monument in the cemetery that are yet to be fulfilled; and
  - (iii) the number of agreements under section 39(3) in force in respect of a vault, grave or monument within the cemetery; and
  - (iv) the provisions made in respect of the cemetery, in accordance with section 36, 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 34(4); and
  - (iv) any other information that the regulator considers relevant to the application; and
  - (v) the relevant prescribed fee, if any.

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- (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;
  - (b) any other matter that the regulator considers relevant to determining the application.
- (6) Within 60 days after receiving an application under subsection (1)(b), the regulator is to –
- (a) approve the application subject to any conditions that the regulator 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 the regulator 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

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for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**65. Approval or refusal to approve closure of cemetery**

- (1) If the regulator approves an application under section 64(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, or exclusive right under section 85, in respect of the cemetery that the cemetery is to be closed and that the cemetery manager intends to discharge that exclusive right in accordance with section 67; and
  - (b) subject to any conditions specified in the notification, may proceed to close the cemetery and exercise the powers conferred by section 66 in respect of the cemetery.
- (3) If the regulator refuses, under section 64(6), to approve an application for the closure of a

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cemetery, 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*.

**66. Effect of closure of cemetery**

- (1) As soon as practicable after the closure of a cemetery under this Act, the cemetery manager must forward to the State Archivist all prescribed records relating to the closed cemetery.

Penalty: Fine not exceeding 50 penalty units.

- (2) On being forwarded under subsection (1), the records of a cemetery vest in the Crown.
- (3) Subject to section 71, if at least 100 years have passed since the last interment of human remains has taken place in the closed cemetery, the cemetery manager of a closed cemetery may do one or more of the following in respect of the closed cemetery subject to any relevant condition imposed by the regulator on the cemetery or its closure:
  - (a) if there is a tombstone showing the name of the person buried there, remove kerbs,

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- railings, 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.
- (4) Subject to section 71 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, all rights of any person in, or to –
- (a) any human remains interred in the cemetery or any grave, monument or vault; and
  - (b) any grave, monument or vault; and
  - (c) any prescribed records showing details and locations of interments, graves and monuments –

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are vested in the cemetery manager.

**67. Exclusive rights in closed cemetery**

- (1) If a person holds an exclusive right of burial in respect of a closed cemetery or a portion of a 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 a person holds an exclusive right under section 85 in respect of a monument in a closed cemetery or a portion of a 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 –

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- (i) an exclusive right under section 85 in respect of another monument in the cemetery; or
    - (ii) an exclusive right under section 85 in respect of a monument in another cemetery if so agreed with the manager of that other cemetery; and
  - (b) move to the monument so agreed any cremated remains, monument or other thing in or on the monument in respect of which the original exclusive right was held.
- (3) If there is no agreement between the cemetery manager and the holder of an exclusive right as required under subsection (1) or (2), 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.
- (4) The cemetery manager must pay the costs of an arbitration under subsection (3).
- (5) For the purpose of this section, the Public Trustee may represent the holder of an exclusive right if it appears that the cemetery manager, after diligent inquiry, cannot find the holder.

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**68. Approval required to take certain actions in closed cemeteries**

- (1) Subject to section 71, if at least 100 years have passed since the last interment of human remains has taken place in a closed cemetery, the cemetery manager of the closed cemetery may apply, in writing, to the regulator for approval to take one or more actions specified in section 69.
- (2) However, a cemetery manager does not have to apply for approval under subsection (1) if the action intended to be taken in the closed cemetery does not have an impact on –
  - (a) graves, monuments or vaults erected on the land of the closed cemetery; and
  - (b) human remains which are interred in, or cremated remains which are stored in, the closed cemetery.
- (3) 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 each action specified in section 69 that the cemetery manager intends to take in the closed cemetery; and
  - (b) is to provide a copy of a notice published under paragraph (a) to the regulator.

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- (4) Within 60 days after receiving an application under subsection (1), the regulator is to –
- (a) approve the application subject to any conditions that the regulator thinks fit; or
  - (b) refuse the application; or
  - (c) ask the cemetery manager for further information in respect of the application and –
    - (i) approve the application subject to any conditions that the regulator thinks fit; or
    - (ii) refuse the application.
- (5) Subject to any conditions imposed under subsection (4), and to subsection (6), if the regulator approves an application under subsection (1), the cemetery manager –
- (a) may take the action to which the application relates; and
  - (b) must comply with section 70 in respect of any human remains in the closed cemetery that may be affected by the taking of the action.
- (6) A cemetery manager must not take any action under subsection (5)(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 –

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- (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.

**69. Performance of certain actions in closed cemeteries**

With the approval of the regulator under section 68, a cemetery manager may do any one or more of the following actions in a closed cemetery:

- (a) lay out the closed cemetery as a park or garden for quiet enjoyment or quiet recreation, including any one or more of the following:
  - (i) constructing roads, avenues and walks in or through the land;
  - (ii) erecting and constructing 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;
- (b) subject to sections 30 and 70 –

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- (i) demolish or remove graves, monuments or vaults erected on the land; and
- (ii) exhume human remains which are interred there and inter the remains either in the land or elsewhere;
- (c) 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;
- (d) generally execute works and do all acts and things necessary for taking the approved action;
- (e) any other prescribed action.

**70. Removal of human remains, monuments, &c., in closed cemeteries**

- (1) A cemetery manager must not demolish or remove a grave, monument or vault, or remove human remains, from a closed cemetery under section 69 unless the cemetery manager has –
  - (a) given public notification in a newspaper circulating in the relevant municipal area on 3 occasions at regular intervals over a period of 12 months of the intention to demolish or remove the graves,

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monuments or vaults or to exhume and remove the human remains; and

- (b) prepared a statement specifying –
  - (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 the graves, monuments or vaults and of the human remains to which they relate, as far as the particulars are ascertainable from the records of the cemetery or the inscriptions on the graves, monuments or vaults; and
- (c) made the statement available for inspection by any person free of charge.

Penalty: Fine not exceeding 50 penalty units.

- (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.
- (3) If a notice published under subsection (1)(a) relates to the demolition or removal of a grave, monument or vault, the senior next of kin of a person commemorated by the grave, monument or vault may request that the cemetery manager for the closed cemetery relocate the grave to, or re-erect the monument or vault at, another cemetery.

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- (4) If a notice published under subsection (1)(a) relates to the removal of human remains, the senior next of kin of a person whose human remains are intended to be exhumed or removed may request that the cemetery manager for the closed cemetery re-inter the human remains at another cemetery.
  - (5) A cemetery manager who receives a request under subsection (3) or (4) must comply with the request, as far as is practicable and subject to any conditions imposed on the closed cemetery or the closure of the cemetery under this Act, at no further cost.

Penalty: Fine not exceeding 50 penalty units.

**71. Regulator may reduce certain time frames in respect of closed cemeteries**

- (1) A cemetery manager of a closed cemetery may apply to the regulator to take an action under section 66 or 68 even though fewer than 100 years have passed since the last interment of human remains 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 –

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- (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)(i), provide a copy of the notice, and any responses to the notice, to the regulator.
- (4) For the avoidance of doubt, 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
  - (b) must clearly identify –
    - (i) the closed cemetery to which it relates; and
    - (ii) the action under section 66 or 68 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

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- 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;
  - (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) Within 60 days 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 the regulator thinks fit; or
  - (b) refuse to approve the application; or

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- (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 the regulator 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 fewer than 100 years have passed since the last interment has taken place in the closed cemetery.
- (9) A decision of a regulator, under subsection (7), 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*.

***Division 6 – Land ceases to be cemetery***

**72. Certain land ceases to be cemetery**

- (1) The whole or any portion of any land forming part of a cemetery –
  - (a) in which no interments of human remains have taken place; or
  - (b) from which all human remains have been removed in accordance with this Act –

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ceases to be a cemetery and may, subject to this and any other Act, be dealt with in the ordinary course of commerce.

- (2) A person may sell the whole or any portion of land to which subsection (1) applies, even though exclusive rights of burial are held in respect of any portion of, or plots in, that land.
- (3) If a person intends to sell land to which subsection (1) applies and in which a person holds an exclusive right of burial or exclusive right under section 85, the person must –
  - (a) before disposing of the land, make all reasonable efforts to notify each holder of such a right of the person's intention to dispose of the land; and
  - (b) arrange, without further charge, for each holder of such a right to be granted an exclusive right of burial or exclusive right under section 85 –
    - (i) in another portion of, or monument in, the cemetery; or
    - (ii) in another cemetery if so agreed with the cemetery 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.

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- (5) The person intending to sell the land must pay the costs of an arbitration under subsection (4).
- (6) The cemetery manager of land which formed all or a portion of a cemetery must, within 14 days after dealing with the land under this section, notify the regulator in writing of that fact.

Penalty: Fine not exceeding 20 penalty units.

**73. Declaration that land is not 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 regulator may only make a declaration under subsection (1) in respect of land that contains human remains if, in the opinion of the regulator –
  - (a) the land –
    - (i) was, on the commencement of this section, being used for a purpose other than as a cemetery; and
    - (ii) had been used for that purpose, or another purpose other than as a cemetery, for at least 50 years before the commencement of this section; and

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- (iii) is being used for a purpose which is not consistent with the use of the land for a cemetery; or
    - (b) the interment of the human remains in the land was not intended to result in the land being a cemetery for the purposes of this Act.
- (3) Subsection (2)(a)(ii) does not apply in respect of a cemetery if the regulator is satisfied that it is in 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 subparagraph.
- (4) For the purposes of determining under subsection (2)(b) whether an interment was not intended to result in the land being a cemetery, the regulator may take into account any one or more of the following:
  - (a) the relationship between, and the characteristics of, the deceased persons interred in the land;
  - (b) whether the land was available for the interment of human remains of any member of the public;
  - (c) whether the land, or interment, was open for public access generally;
  - (d) when the last interment occurred in the land;

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- (e) any other matter that the regulator considers relevant to the determination.
- (5) 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.
- (6) As soon as practicable after making a declaration under subsection (1), the regulator, by notice in writing 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.
- (7) 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.
- (8) 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
  - (b) of the conditions, if any, that apply in respect of the declaration; and

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- (c) the location of any human remains that remain interred in the land, as far as is known.

Penalty: Fine not exceeding 100 penalty units.

- (9) 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*.

**PART 5 – CREMATORIA AND CREMATED REMAINS**

*Division 1 – Crematorium managers*

**74. Person must be approved to manage crematorium**

A person must not manage a crematorium unless the person –

- (a) has been approved in accordance with this Act to manage the crematorium; and
- (b) is managing the crematorium in accordance with this Act; and
- (c) has not been prohibited under section 93 from managing a crematorium.

Penalty: Fine not exceeding 50 penalty units and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

**75. Approval to manage crematorium**

- (1) A person who proposes to manage a crematorium must apply to the regulator for approval to manage the crematorium.
- (2) An application under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) must be made to the regulator at least one calendar month before the person intends to commence the management of the crematorium; and

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- (c) must be accompanied by the prescribed fee, if any.
- (3) In determining an application under subsection (1), the regulator may take into account any one or more of the following matters:
- (a) if the applicant is a natural person –
    - (i) whether the applicant has been convicted of an offence under this Act, the *Cremation Act 1934*, the *Burial and Cremation Act 2002* or Part 4 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or
    - (ii) whether the applicant is or is not, in the opinion of the regulator, a fit and proper person to manage a crematorium;
  - (b) if the applicant is a body corporate –
    - (i) whether a person concerned in the management of the body corporate has been convicted of an offence under this Act, the *Cremation Act 1934*, the *Burial and Cremation Act 2002* or Part 4 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or

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- (ii) whether any such person is or is not, in the opinion of the regulator, a fit and proper person to manage a crematorium;
  - (c) any other matter prescribed for the purposes of this section;
  - (d) any other matter that the regulator considers relevant.
- (4) Within 21 days after receipt of an application under subsection (1), the regulator is to –
  - (a) approve the applicant to manage the crematorium subject to any conditions that the regulator considers appropriate; or
  - (b) refuse to approve the applicant to manage the crematorium; or
  - (c) request further information from the applicant and, after considering the further information –
    - (i) approve the applicant to manage the crematorium subject to any conditions that the regulator considers appropriate; or
    - (ii) refuse to approve the applicant to manage the crematorium.
- (5) As soon as practicable after making a decision under subsection (4) in respect of an application,

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the regulator is to notify an applicant of that decision.

- (6) A decision of the regulator under subsection (4) is a reviewable decision for the purposes of the *Magistrates Court (Administrative Appeals Division) Act 2001*.

**76. Duties and powers of crematorium managers**

- (1) A crematorium manager must keep the crematorium for which he or she is the crematorium manager –
- (a) in good order; and
  - (b) in accordance with this Act; and
  - (c) so as not to be prejudicial to public health or public safety.

Penalty: Fine not exceeding 50 penalty units and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

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

Penalty: Fine not exceeding 50 penalty units.

- (3) Subject to any other Act, a crematorium manager may –

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- (a) improve, embellish and enlarge a crematorium under his or her control; and
- (b) take any other action as may be required for the reasonable management of the crematorium.

***Division 2 – Crematoria generally***

**77. Power to establish crematoria**

Subject to this and any other Act, a person may establish or manage a crematorium for the interment or disposal of human remains.

**78. Equipment and apparatus**

A person must not operate a crematorium unless the equipment and apparatus to be operated for the purpose comply with the requirements of this and any other Act.

Penalty: Fine not exceeding 50 penalty units and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

**79. Identification of deceased persons before cremation**

- (1) A crematorium manager must ensure that a deceased person is not accepted for cremation at the crematorium, managed by the crematorium manager, if the prescribed documents in respect

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of the deceased person have not been provided to the crematorium.

Penalty: Fine not exceeding 50 penalty units.

- (2) A crematorium manager must ensure that a deceased person is not cremated at the crematorium, managed by the crematorium manager, unless the identity of the deceased person has been confirmed as prescribed.

Penalty: Fine not exceeding 50 penalty units.

**80. Access to crematoria**

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 30 penalty units and a further fine not exceeding 5 penalty units in respect of each day during which the offence continues.

**81. Religious and cultural ceremonies**

- (1) A crematorium manager must not, by any act, matter or thing, hinder or disturb the performance of any religious or cultural ceremony in the cremation of human remains.

Penalty: Fine not exceeding 20 penalty units.

- (2) A crematorium manager must permit a representative of any religious or cultural group

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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.

- (3) It is a defence in proceedings for an offence under this section if the crematorium manager establishes that the crematorium manager did not permit the performance of the religious or cultural ceremony, or the exercise of the religious or cultural practices, as to do so would mean that the cremation, or crematorium, would not be in compliance with this or any other Act.

**82. Closure of crematoria for reasons of public health or public safety**

- (1) If it appears to the Director of Public Health or the general manager of a council that the whole or any portion of a crematorium is prejudicial to public health or public safety, the Director or general manager may give notice to the crematorium manager that the whole or a specified portion 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.
- (3) If the crematorium manager complies with the requirements of the notice to the satisfaction of

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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 the appeal is not dismissed, vary or revoke the notice.
- (6) If a crematorium manager is given a notice under subsection (1), the crematorium manager must comply with the notice unless the notice is withdrawn or revoked in accordance with this section.

Penalty: Fine not exceeding 100 penalty units.

**83. Duties of crematorium managers on closure of crematoria**

On the closure of a crematorium –

- (a) the crematorium manager must advise the regulator in writing of that fact; and

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- (b) the crematorium manager must forward all prescribed records relating to the crematorium to the State Archivist; and
- (c) the records vest in the Crown.

Penalty: Fine not exceeding 50 penalty units.

***Division 3 – Cremated remains***

**84. Monuments containing cremated remains**

- (1) This section applies to a monument if –
  - (a) the monument holds, or is intended to hold, cremated remains; and
  - (b) a person has paid consideration, in any form, for the remains to be held in the monument; and
  - (c) the person in charge of the monument is taken to be responsible for the cremated remains for, and on behalf of, the senior next of kin for the deceased person; and
  - (d) there is an expectation, that is reasonable in the circumstances, that persons may be able to visit the monument.
- (2) A person in charge of a monument to which this section applies must permit any person to have access free of charge at any reasonable time to visit any part of the monument.

Penalty: Fine not exceeding 30 penalty units and a further fine not exceeding 5

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penalty units in respect of each day during which the offence continues.

- (3) It is a defence in proceedings for an offence under subsection (2) if the person in charge of the monument establishes that –
- (a) the person was refused access to the monument due to the person’s behaviour or previous behaviour; or
  - (b) the person was refused access in accordance with the agreement made at the time that the consideration, in any form, was paid for the remains to be held in the monument.
- (4) If cremated remains held in a monument to which this section applies are to be moved or removed, the person in charge of the monument must ensure that –
- (a) at least 3 calendar months before the cremated remains are to be moved or removed, the senior next of kin for the deceased person, whose cremated remains are to be moved or removed from the monument, is notified of the intention to move, or remove, the cremated remains; and
  - (b) the cremated remains of the person are so moved and removed in a manner that –
    - (i) as far as practicable, respects the wishes of the person and, if

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applicable, his or her senior next of kin; and

- (ii) is not prejudicial to public health or public safety.

Penalty: Fine not exceeding 20 penalty units.

- (5) A person in charge of a monument to which this section applies may move, or remove, cremated remains from the monument before the expiry of the 3-month period referred to in subsection (4)(a), if the senior next of kin for each deceased person, whose cremated remains are to be moved or removed from the monument, has consented to the move, or removal, of the cremated remains.

**85. Exclusive rights to all or part of monument**

- (1) A person may apply to a person in charge of a monument for an exclusive right to place cremated remains in the monument or specified portion of the monument.
- (2) A person in charge of a monument may grant an exclusive right in accordance with subsection (1) either with –
  - (a) an absolute right to the specified monument or specified portion of the monument; or
  - (b) a right for a term of at least 25 years which may be renewed on such other terms and conditions as may be agreed.

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- (3) If a person in charge of a monument grants an exclusive right in accordance with subsection (1), the person in charge of the monument must provide the applicant with a certificate of exclusive right as prescribed.

Penalty: Fine not exceeding 20 penalty units.

- (4) If it is impracticable for a person in charge of a monument to place cremated remains in the monument, or portion of the monument, in accordance with an exclusive right, the person 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 in another portion of the same monument; or
  - (b) an exclusive right in another monument, or portion of the other monument, in another location if so agreed with the person in charge of the other monument.
- (5) If the holder of an exclusive right does not consent, as required under subsection (4), to a new grant of an exclusive right, 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.
- (6) The person in charge of the monument must pay the costs of an arbitration under subsection (5).

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- (7) A person in charge of a monument must fulfil a valid exclusive right that is in force in respect of the monument unless –
- (a) another exclusive right is granted to the holder of the right under subsection (4);  
or
  - (b) the person in charge of the monument has been notified in writing by the holder of the exclusive right, or his or her legal representative, that –
    - (i) the exclusive right is terminated;  
or
    - (ii) the holder of the exclusive right has been placed in a monument, or otherwise interred, other than in accordance with the exclusive right.

Penalty: Fine not exceeding 50 penalty units.

**86. Closure of monument**

- (1) If a person holds an exclusive right under section 85 in respect of a monument and the person in charge of the monument is no longer allowing cremated remains to be placed in the monument, the person in charge of the monument must, with the agreement of the holder of that right –
- (a) grant the holder of the right –

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- (i) an exclusive right under section 85 in respect of another monument managed by the person; or
    - (ii) an exclusive right under section 85 in respect of another monument if so agreed with the person in charge of the other monument; and
  - (b) move to the monument so agreed any cremated remains, monument or other thing in or on the monument in respect of which the original exclusive right was held.
- (2) If the holder of an exclusive right does not consent, as required under subsection (1), to a new grant of an exclusive right, 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 person in charge of the monument must pay the costs of an arbitration under subsection (2).

**PART 6 – MISCELLANEOUS**

**87. Compliance with Act**

- (1) The regulator may require, by notice in writing to one of the following persons, the person to take the action specified in the notice in respect of the regulated business, cemetery or crematorium respectively:
  - (a) a person approved to carry on a regulated business;
  - (b) a cemetery manager;
  - (c) a crematorium manager.
- (2) A notice under subsection (1) may specify that the person to whom the notice is given must do one or more of the following:
  - (a) undertake an audit, as prescribed, of the relevant organisation to ensure that the person and the relevant organisation comply with this Act;
  - (b) provide such information that the regulator considers necessary to ensure that –
    - (i) the person is complying, and has complied, with this Act; and
    - (ii) the relevant organisation, and the records in respect of the relevant organisation, comply with this Act.

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- (3) A person who is given a notice under subsection (1) must comply with the notice within the period specified in the notice.

Penalty: Fine not exceeding 20 penalty units.

**88. Liability of body corporates**

- (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 referred to in subsection (1) may be convicted of a contravention of a provision of this Act whether or not the body corporate has been convicted of its contravention.

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- (4) Nothing in this section affects the liability of a body corporate for an offence committed by it against a provision of this Act.

**89. Liability of owners of places, land or structures**

(1) If –

- (a) a place, land or structure is used as, or in connection with, a regulated business, cemetery or crematorium; and
- (b) the place, land or structure is owned by a person other than the person carrying out the regulated business, the cemetery manager or the crematorium manager; and
- (c) the owner of the place, land or structure has a direct, or indirect, ability to control or influence the use of the place, land or structure as the regulated business, cemetery or crematorium; and
- (d) a provision of this Act is contravened in respect of the regulated business, cemetery or crematorium –

the owner of the place, land or structure 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 the owner of the place, land or structure to prove that –

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- (a) the relevant person carrying out the regulated business, the cemetery manager or the crematorium manager contravened the provision without the owner's knowledge; or
  - (b) the owner was not in a position to influence the conduct of the person carrying out the regulated business, the cemetery manager or the crematorium manager in relation to the contravention; or
  - (c) the owner, if in such a position, attempted to prevent the contravention.
- (3) An owner may be convicted of a contravention of a provision of this Act whether or not any other person has been convicted of its contravention.

**90. False or misleading information**

- (1) A person, in providing any information, statement, application or document 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, application or document is false or misleading.

Penalty: Fine not exceeding 50 penalty units.

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- (2) Subsection (1)(a) does not apply to a person if, at the time when 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 person receiving the information 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 all the correct information that is in the person's possession or control; and
  - (d) provides all the information that the person has concerning who else may have the correct information, statement, application or document.

**91. Failure to comply with conditions**

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.

**92. Obstruction of authorised officers**

- (1) A person must not obstruct or hinder –

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- (a) an authorised officer in the exercise or performance of a power or function under this Act; or
- (b) a person assisting an authorised officer in the exercise or performance of such a power or function.

Penalty: Fine not exceeding 50 penalty units.

(2) A person must not –

- (a) fail to comply with a lawful request or requirement of an authorised officer or another person assisting an authorised officer; or
- (b) fail to produce to an authorised officer, or another person assisting an authorised officer, any record, document or other thing in the person's possession or under the person's control, when the person has been required by the authorised officer to produce the record, document or other thing; or
- (c) fail to give any reasonable assistance to an authorised officer, or another person assisting an authorised officer, when required to do so by the authorised officer.

Penalty: Fine not exceeding 50 penalty units.

**93. Orders preventing management of certain organisations**

- (1) On conviction for an offence against this Act, the court may order that the defendant is prohibited from carrying on a regulated business, or managing a crematorium or cemetery, for such period as the court thinks fit.
- (2) A person must not contravene an order under subsection (1).

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

- (3) If an order is made under subsection (1) in respect of a person who is approved to carry on a regulated business, or who is a cemetery manager or crematorium manager, the person is taken to no longer be approved under this Act in respect of the relevant organisation.

**94. 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 regulator, or a person authorised by the regulator, may issue and serve an infringement notice on a person if the regulator, or person so

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authorised, 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.

**95. Regulations**

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

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- (b) provide for all matters relating to the inspection by authorised officers of any places or premises entered under this Act and the functions and powers of authorised officers, including the 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 actions to be taken in respect of a deceased person once the death of the deceased person has been notified under this Act; and
- (e) provide for the equipment and apparatus to be used for the purposes of a crematorium; and
- (f) provide for the handling, transport and storage of human remains; and
- (g) 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
- (h) provide for the persons who may authorise interment, cremations and the memorialisation and handling of cremated remains; and

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- (i) provide for the appointment of medical personnel for the purpose of cremations, including their duties and obligations, the fees to be paid and the persons by whom the fees are to be paid, either generally or in particular cases; and
- (j) prescribe the notices, certificates and declarations to be given or made before –
  - (i) any interment may be permitted to take place; and
  - (ii) 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 cremated remains; 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
- (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 or the

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- handling of cremated remains that result from Aboriginal cremations; and
- (q) provide for a fine not exceeding 50 penalty units for a contravention of the regulations; and
  - (r) 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
  - (s) provide generally in respect of all matters incidental to, or connected with –
    - (i) the interment, or disposal, of human remains or cremated remains; or
    - (ii) cremations; or
    - (iii) a regulated 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 the 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.

**96. Savings and transitional provisions**

The savings and transitional provisions set out in Schedule 1 have effect.

**97. 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 Minister for Local Government; and
- (b) the department responsible to the Minister for Local Government in relation to the administration of this Act

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is the Department of Premier and Cabinet.

**98. Legislation repealed**

The legislation specified in Schedule 2 is repealed.

**SCHEDULE 1 – SAVINGS AND TRANSITIONAL  
PROVISIONS**

Section 96

**PART 1 – PRELIMINARY**

**1. Interpretation**

In this Schedule –

*commencement day* means the day on which  
section 3 of this Act commences;

*equivalent provision* means –

- (a) in relation to this Act, a provision  
in this Act that is substantially the  
same as a provision in the former  
Act; and
- (b) in relation to the former Act, a  
provision in the former Act that is  
substantially the same as a  
provision in this Act;

*former Act* means the *Burial and Cremation  
Act 2002*.

**2. Regulated businesses**

If, on and from the commencement day, a  
document, instrument or enactment refers to a  
prescribed business under the former Act, that  
reference is taken, on and from the

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commencement day, to refer to a regulated business under this Act.

**3. Burial and Cremation Regulations 2015**

The *Burial and Cremation Regulations 2015*, as in force immediately before the commencement day, remain in force on, and after, the commencement day on the same terms and conditions as if –

- (a) those regulations had been made under this Act; and
- (b) a reference in those regulations to –
  - (i) the former Act were a reference to this Act; or
  - (ii) a provision of the former Act were a reference to the equivalent provision of this Act.

**PART 2 – APPOINTMENTS AND ADMINISTRATION**

**1. Register**

If information is required to be kept by the Director of Local Government, or the regulator, under the former Act in respect of a prescribed business, cemetery or crematorium and, on and from the commencement day, the information is required to be kept by the regulator under this Act, that information so kept under the former

Act is taken to be kept under this Act by the regulator.

## **2. Authorised officers**

A person who, immediately before the commencement day, was authorised in writing as an authorised officer under the former Act is taken, on and from the commencement day, to be authorised in writing as an authorised officer under this Act.

## **3. Authorisations, directions, approvals and declarations**

- (1) An authorisation, direction or approval given or issued under a provision of the former Act by the Director of Public Health, the Director of Local Government or the regulator and in force immediately before the commencement day is taken, on and from the commencement day, to have been given under the equivalent provision of this Act on the same terms and conditions.
- (2) A declaration of the regulator under section 31A of the former Act that is in force immediately before the commencement day is taken, on and from the commencement day, to have been made under the equivalent provision of this Act on the same terms and conditions.

## **4. Exclusive rights of burial**

On and from the commencement day, an exclusive right of burial granted under the

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former Act that was not fulfilled under the former Act before the commencement day is taken to be an exclusive right of burial granted under this Act.

**PART 3 – APPROVALS AND PERMISSIONS**

**1. Approved forms**

If, on and from the commencement day, a provision of this Act requires an approved form and, immediately before the commencement day, the equivalent provision of the former Act required a form to be approved, the form so approved under the former Act is taken, on and from the commencement day, to be the approved form for the relevant provision of this Act.

**2. Exemptions by regulator**

If, immediately before the commencement day, an exemption is in force under section 3A of the former Act that exempts a person from compliance with a requirement of the former Act, that exemption is taken, on and from the commencement day, to be an exemption issued on the same terms and conditions under section 10 of this Act that exempts the person from compliance with the equivalent provision of this Act.

**3. Aboriginal cremations**

In this Act, an approval given under section 40 of the former Act that has not been revoked or withdrawn is taken, on and from the commencement day, to be an approval given under section 28 of this Act on the same terms and conditions.

**4. Interments other than in cemeteries**

In this Act –

- (a) a reference to an interment permitted under section 29 of this Act is taken to include an interment permitted under section 41 of the former Act; and
- (b) a permission given under section 41 of the former Act that has not been revoked or withdrawn is taken, on and from the commencement day, to be a permission given under section 29 of this Act on the same terms and conditions.

**5. Approvals of senior next of kin**

- (1) If, immediately before the commencement day, a person had been approved under the former Act as the senior next of kin in relation to the human remains of a deceased person, the person is taken, on and from the commencement day, to be approved as the senior next of kin for that deceased person under this Act on the same terms and conditions.

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- (2) For the avoidance of doubt, subclause (1) applies despite the fact that the person who approved the person as the senior next of kin for a deceased person under the former Act is not the person who is required under this Act to approve a senior next of kin for the deceased person.

**6. Approvals as cemetery manager**

- (1) On and from the commencement day, the following persons are taken to be a cemetery manager approved under this Act in respect of the relevant cemetery:
- (a) a person approved, or taken to be approved, under the former Act as the cemetery manager for the cemetery;
  - (b) a person recorded in the register, kept by the regulator under the former Act, as the cemetery manager for the cemetery;
  - (c) a person taken under the former Act to be the cemetery manager in respect of the cemetery.
- (2) Despite subclause (1), a person referred to in that subclause is not taken to be a cemetery manager approved under this Act if there is an order in force under section 11 or 50 of the former Act in respect of the person.
- (3) If an application has been made under section 11A of the former Act and the application has not been determined before the commencement day, the application is taken on the

commencement day to be an application under section 32.

- (4) If, on the commencement day, there is no person who can be taken to be a cemetery manager for a cemetery under subclause (1) on and from the commencement day, the regulator may require a person to apply under this Act to be approved as the cemetery manager for the cemetery.

## **7. Approvals as crematorium manager**

- (1) On and from the commencement day, the following persons are taken to be a crematorium manager approved under this Act in respect of the relevant crematorium:
- (a) a person recorded in the register, kept by the regulator under the former Act, as the crematorium manager for the crematorium;
  - (b) a person taken under the former Act to be the crematorium manager in respect of the crematorium.
- (2) Despite subclause (1), a person referred to in that subclause is not taken to be a crematorium manager approved under this Act if there is an order in force under section 11 or 50 of the former Act in respect of the person.
- (3) If, in the calendar month immediately before the commencement day, a person has notified the Director of Local Government under section 9 of

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the former Act of the person's intention to manage a crematorium –

- (a) the former Act applies to the notice, on and from the commencement day, until –
    - (i) if an objection is lodged in respect of the notification under section 10 of the former Act, the objection has been heard in accordance with the former Act; or
    - (ii) if no objection is lodged in respect of the notification under section 10 of the former Act, the 22nd day after the day on which the Director of Local Government received the notice; and
  - (b) after the expiry of the period referred to in paragraph (a), if the person is not prohibited under section 11 of the former Act from managing the crematorium, the person is taken to be approved under this Act as the crematorium manager in respect of the crematorium.
- (4) If, on the commencement day, there is no person who can be taken to be a crematorium manager for a crematorium under subclause (1), on and from the commencement day the regulator may require a person to apply under this Act to be approved as the crematorium manager for the crematorium.

**8. Persons approved to carry on prescribed businesses**

- (1) On and from the commencement day, a person who is shown in the register maintained under section 48 of the former Act as the manager, or person responsible for the management, of a prescribed business is taken to be the person approved under this Act to carry on the prescribed business as a regulated business.
- (2) Despite subclause (1), a person referred to in that subclause is not taken to be approved to carry on a regulated business under this Act if there is an order in force under section 45 or 50 of the former Act in respect of the person.
- (3) If, in the calendar month immediately before the commencement day, a person has notified the Director of Local Government under section 44 of the former Act of the person's intention to carry on a prescribed business –
  - (a) the former Act applies to the notice, on and from the commencement day, until –
    - (i) if an objection is lodged in respect of the notification under that section, the objection has been heard in accordance with the former Act; or
    - (ii) if no objection is lodged in respect of the notification under that section, the 22nd day after the day on which the Director of Local Government received the notice; and

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- (b) after the expiry of the period referred to in paragraph (a), if the person is not prohibited under section 45 of the former Act from carrying on a prescribed business, the person is taken to be approved under this Act to carry on the prescribed business as a regulated business.
- (4) If, on the commencement day, there is no person shown in the register maintained under section 48 of the former Act in respect of a regulated business as required under subclause (1), the regulator may require a person to apply under this Act to be approved to carry on the regulated business.

**9. Applications and approvals, &c., relating to new cemetery**

- (1) An application under the former Act to establish a cemetery that has not been determined on the commencement day, is taken, on and from that day, to be an application under the equivalent provision of this Act to establish a cemetery.
- (2) An approval issued under the former Act to establish a cemetery is taken, on and from the commencement day, to be an approval issued in respect of the cemetery under the equivalent provision of this Act and on the same terms and conditions.

**10. Applications and approvals, &c., relating to sale of cemeteries**

- (1) If, immediately before the commencement day, a person, including the regulator, has acted under a provision of Part 2B of the former Act in respect of the sale of a cemetery, that person is taken, on and from the commencement day, to have acted under the equivalent provision of this Act in respect of the sale of that cemetery.
- (2) If, immediately before the commencement day, a document has been provided, published, granted or issued under a provision of Part 2B of the former Act in respect of the sale of a cemetery, that document is taken, on and from the commencement day, to have been provided, published, granted or issued under the equivalent provision of this Act in respect of the sale of that cemetery.
- (3) An implied term taken to be imposed on a contract for the sale of all, or any portion, of a cemetery under section 27Q of the former Act is taken, on and from the commencement day, to be an implied term imposed on the contract under the equivalent provision in this Act.

**11. Applications and approvals, &c., relating to closure of cemeteries**

- (1) If, immediately before the commencement day, a notice is in force under section 28 of the former Act in respect of the closure of a cemetery and that notice has not been withdrawn or revoked, the notice is taken, on and from the

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commencement day, to have been given under equivalent provision of this Act in respect of the closure of that cemetery.

- (2) If, immediately before the commencement day, a person, including the regulator, has acted under a provision of Part 3 of the former Act in respect of the closure of a cemetery, that person is taken, on and from the commencement day, to have acted under the equivalent provision of this Act in respect of the closure of that cemetery.
- (3) If, immediately before the commencement day, a document has been provided, published, granted or issued under a provision of Part 3 of the former Act in respect of the closure of a cemetery, that document is taken, on and from the commencement day, to have been provided, published, granted or issued under the equivalent provision of this Act in respect of the closure of that cemetery.

**12. Applications and approvals, &c., relating to reduction of certain time frames**

- (1) An application under section 51A of the former Act to reduce a time frame that has not been determined on the commencement day, is taken, on and from the commencement day, to be an application under the equivalent provision of this Act to reduce that time frame.
- (2) An approval of an application under section 51A of the former Act is taken, on and from the commencement day, to be an approval under the

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equivalent provision of this Act and on the same terms and conditions.

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**SCHEDULE 2 – LEGISLATION REPEALED**

Section 98

*Burial and Cremation Act 2002* (No. 4 of 2002)

*Burial and Cremation Amendment Act 2018* (No. 40 of 2018)

*[Second reading presentation speech made in:–  
House of Assembly on 15 October 2019  
Legislative Council on 21 November 2019]*