

PARLIAMENT OF VICTORIA

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**Cemeteries and Crematoria Act 2003**

**Act No.**

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PARLIAMENT OF VICTORIA

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Initiated in Assembly 26 August 2003

A BILL

to provide for the management and operation of cemeteries and crematoria, to repeal the **Cemeteries Act 1958**, to amend the **Crimes Act 1958** and to consequentially amend other Acts and for other purposes.

**Cemeteries and Crematoria Act 2003**

**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1. Purposes**

The main purposes of this Act are—

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

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**2. Commencement**

This Act comes into operation on 1 July 2005.

**3. Definitions**

(1) In this Act—

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

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

(a) body parts; or

(b) cremated human remains;

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

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

"**cemetery trust**" means a cemetery trust established under Part 2;

"**cemetery trust fee**" means a fee or charge or scale of fees and charges set under section 39 and approved under section 40;

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

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

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**"cremated human remains"** means—

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

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

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

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

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

**"human remains"** means—

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

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

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

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

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

10  
"memorial" means a monument, tombstone, headstone, ledger, cenotaph, plaque or other method of memorialising a deceased person where that memorial is within a public cemetery;

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

15  
"municipal council" means a Council within the meaning of the **Local Government Act 1989**;

20  
"place of interment" means a grave, vault, mausoleum, niche wall or any other structure or plot used for the interment of human remains;

25  
"public grave" means a grave for multiple interments in which more than one person may be interred and in respect of which more than one person may be granted a right of interment that permits one interment only and no re-use of the grave by the holder of the right of interment;

30  
"registered medical practitioner" has the same meaning as it has in the **Medical Practice Act 1994**;

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

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"**Secretary**" means Secretary to the Department of Human Services;

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

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

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

- (2) If under the **Public Sector Management and Employment Act 1998** the name of the Department of Human Services is changed, a reference in the definition of "Secretary" in subsection (1) to that Department must, from the date that the name is changed, be treated as a reference to the Department by its new name.
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**PART 2—CEMETERIES AND CEMETERY TRUSTS**

**4. Establishment of public cemeteries**

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

**5. Establishment of cemetery trusts**

- (1) The Governor in Council, by order published in the Government Gazette, may establish a cemetery trust.
- (2) A cemetery trust—
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name; and

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(d) may acquire hold and dispose of real and personal property; and

(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

(3) The common seal of each cemetery trust must be kept as directed by the trust.

(4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

**6. Constitution and membership of cemetery trusts**

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

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

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

**7. Cemetery trusts do not represent the Crown**

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

**8. Management of public cemeteries**

(1) The Governor in Council, by order published in the Government Gazette—

(a) may appoint—

(i) a cemetery trust to manage one or more public cemeteries;

(ii) a municipal council to manage one or more public cemeteries;

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- (b) may cancel any appointment made under paragraph (a);
- (c) may change the name of a cemetery trust;
- (d) may abolish any cemetery trust and transfer all its assets and liabilities to another cemetery trust, a municipal council or to another person or body, including the State.

(2) An order made under this section—

- (a) may provide for the transfer of—
  - (i) assets and liabilities (whether contingent or otherwise);
  - (ii) duties and obligations in relation to staff;
  - (iii) duties and obligations under contracts or other arrangements;
  - (iv) records and registers; and
- (b) may make provision for any other matter which, in the opinion of the Governor in Council, is necessary or expedient for the effective operation of that order; and
- (c) may include savings, transitional or consequential provisions to facilitate the operation of the order.

(3) If the Governor in Council makes an order under this section, the order takes effect—

- (a) on the date the order is published in the Government Gazette; or
- (b) if a later date is specified in the order, on that later date.



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**9. Effect of order abolishing cemetery trust**

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

- (a) the cemetery trust is abolished; and
- (b) the cemetery trust, municipal council or other person or body to which the abolished cemetery trust's assets and liabilities are transferred becomes the successor in law to the abolished cemetery trust; and
- (c) unless a contrary intention appears, any reference to the abolished cemetery trust in any Act, subordinate instrument, certificate of title, agreement or other document is to be construed as a reference to the cemetery trust, municipal council or other person or body to which the abolished cemetery trust's assets and liabilities were transferred.

**10. Appointment of an administrator**

- (1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may appoint an administrator to manage a public cemetery.
- (2) The Minister may only make a recommendation referred to in sub-section (1) if, in his or her opinion—
  - (a) a public cemetery is being inefficiently or incompetently managed; or
  - (b) the appointment is necessary to protect the interests of the public.
- (3) On the appointment of an administrator—
  - (a) the members of the cemetery trust of the public cemetery cease to hold office; and

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(b) the administrator acquires all the functions, powers, immunities and duties of the members of the cemetery trust.

(4) The Governor in Council, by order published in the Government Gazette, may replace an administrator—

(a) with another administrator; or

(b) by declaring that the administration is to end and by appointing members to the cemetery trust in accordance with section 6.

(5) If the Governor in Council makes an order under sub-section (4), the administrator who is being replaced ceases to hold office—

(a) on the date the order is published in the Government Gazette; or

(b) if a later date is specified in the order, on that later date.

**11. Membership of cemetery trust not office of profit**

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

(a) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or

(b) make void the member's election to the Legislative Council or the Legislative Assembly; or

(c) prevent the member continuing to be a member of the Legislative Council or the Legislative Assembly; or

(d) subject the member of the Legislative Council or the Legislative Assembly to liability to a penalty under the **Constitution Act 1975**.

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**12. Functions of cemetery trusts**

- (1) The functions of a cemetery trust are—
- (a) to properly and efficiently manage and maintain each public cemetery for which it is responsible; and
  - (b) to carry out any other function conferred on a cemetery trust by or under this Act or any other Act.
- (2) In exercising its functions, a cemetery trust must have regard to—
- (a) its obligations in relation to funding of the perpetual maintenance of the public cemetery for which it is responsible; and
  - (b) the cultural and religious values of the community; and
  - (c) the heritage values (if any) of the public cemetery for which it is responsible.

**13. General powers of cemetery trusts**

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

**14. Powers in respect of more than one cemetery**

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

**15. Power to delegate**

- (1) Subject to sub-section (2), a cemetery trust may delegate to a member of the trust, the secretary of the trust (by whatever title called) or any other employee of the trust its powers or functions under this Act other than—
- (a) a power under section 26 (to make cemetery trust rules); or

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

**16. Immunity of members of cemetery trust**

- (1) A member of a cemetery trust is not personally liable for anything done or omitted to be done in good faith—
- (a) in the exercise of a power or the carrying out of a function under this Act or the regulations; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or

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the carrying out of a function under this Act  
or the regulations.

- (2) Any liability resulting from an act or omission  
that would, but for sub-section (1), attach to a  
member of the cemetery trust attaches instead to  
the cemetery trust.

**17. Staff and other assistance**

- (1) A cemetery trust may employ any persons it  
considers necessary for the purposes of carrying  
out its functions.
- (2) A cemetery trust may engage any professional,  
technical and other assistance it considers  
necessary for the purposes of carrying out its  
functions.

**18. Secretary may give directions to cemetery trusts**

- (1) The Secretary may give directions to a cemetery  
trust with respect to—
- (a) the manner in which the cemetery trust is to  
manage and maintain any public cemetery  
for which it is responsible; and
  - (b) the records to be kept by the cemetery trust;  
and
  - (c) the expenditure of funds of the cemetery  
trust; and
  - (d) the carrying out of any other function or the  
exercise of any other power of the cemetery  
trust under—
    - (i) this Act or any other Act; or
    - (ii) the regulations made under this Act  
(including the model rules) or  
regulations made under any other Act;  
or
    - (iii) cemetery trust rules.

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- (2) A direction given under this section—
- (a) must be in writing; and
  - (b) may apply to—
    - (i) an individual cemetery trust; or
    - (ii) a class of cemetery trusts; or
    - (iii) all cemetery trusts.
- (3) A cemetery trust must comply with a direction applying to it under this section.
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**PART 3—MANAGEMENT OF PUBLIC CEMETERIES**

**Division 1—General Management Powers**

**19. Power to carry out works in public cemetery**

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

**20. Setting aside areas**

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

**21. Establishment of a crematorium**

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

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

**22. Establishment of mausolea facilities**

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

**23. Secretary may revoke approvals**

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

**24. Interference with distribution of land**

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



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

**25. Model rules**

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

**26. Power to make cemetery trust rules**

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

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

**27. Approval and publication of cemetery trust rules**

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

**28. Governor in Council may revoke cemetery trust rules**

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

**Division 2—Powers in Respect of Land**

**29. Effect of Division**

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

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**30. Cemetery trust may purchase or acquire land for cemetery**

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

**31. Minister may acquire land**

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

**32. Land Acquisition and Compensation Act 1986 applies**

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

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

**33. Land purchased or acquired vests in Crown**

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

**34. Land permanently reserved**

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

**35. References to acquiring authority**

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

**36. Power to grant licences over cemetery land**

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

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

**37. Power of trusts to lease cemetery land**

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

**38. Registrar of Titles to amend Register**

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

**Division 3—Financial Powers**

**39. Power to fix fees and charges for services**

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

**40. Secretary to approve fees and charges**

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

**41. Secretary to publish notice of approval**

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



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**42. Secretary to publish fees and charges on the Internet**

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

**43. Fees and charges to increase by CPI**

- (1) This section only applies—
  - (a) to a cemetery trust fee which is \$50.00 or more; and
  - (b) if the increase in the CPI for the current March quarter in the relevant year is more than the CPI for the previous March quarter.
- (2) Not later than 1 June each year, the Secretary must declare that cemetery trust fees to which this section applies are, by force of this section, increased in accordance with this section.
- (3) A declaration under sub-section (2)—
  - (a) is to be made by notice published in the Government Gazette; and
  - (b) takes effect on 1 July in the year in which it is made; and
  - (c) applies to all cemetery trusts.

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

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

where—

"A" is the relevant cemetery trust fee as at 30 June in the relevant year; and

"B" is the CPI for the current March quarter in the relevant year; and

"C" is the CPI for the previous March quarter.

- (5) A cemetery trust fee increased in accordance with this section must be rounded to the nearest whole dollar, and in the case of 50 cents, be rounded up to the next dollar.

- (6) If the Australian Statistician changes the reference base for the All Groups Consumer Price Index number (for Melbourne), the new reference base is to be used after the change.

- (7) In this section—

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

"**CPI**" means the All Groups Consumer Price Index number (for Melbourne) published by the Australian Statistician;

"**relevant year**" means year in which a declaration under sub-section (2) is made.

#### **44. Waiver or reduction of fees or charges**

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

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**45. Investment powers**

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- (1) Subject to the direction of the Minister, a cemetery trust may invest its money in any manner it sees fit.
  - (2) The Minister may give written directions as to how a cemetery trust is to invest its money.
  - (3) A direction under sub-section (2) may—
    - (a) apply to—
      - (i) an individual cemetery trust; or
      - (ii) a class of cemetery trusts; or
      - (iii) all cemetery trusts.
    - (b) provide that any matter may be determined, approved or dispensed with by the Secretary or any employee or employees or class of employees employed under Part 3 of the **Public Sector Management and Employment Act 1998** in the Department of Human Services.

**46. Borrowing powers**

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

**47. Payments for private streets**

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

**Division 4—Accounts and Reports**

**48. Application of Division**

This Division does not apply to—

- (a) a cemetery trust to which the **Financial Management Act 1994** applies; or
- (b) a municipal council which is responsible under this Act for the management of a public cemetery.

**49. Cemetery trust to keep accounts and records**

- (1) A cemetery trust must keep proper accounts and records of its financial affairs.
- (2) The accounts and records required to be kept under sub-section (1) must contain the particulars required by the Secretary.
- (3) The financial year of a cemetery trust is the year ending 30 June.

**50. Auditing of accounts and records**

- (1) If directed to do so by the Secretary, a cemetery trust must have its accounts and records audited by a registered company auditor.
- (2) If a cemetery trust does not receive a direction under sub-section (1) in respect of a financial year, the cemetery trust must have its accounts and records—

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- (a) verified by a statutory declaration—
    - (i) by at least 3 members of the cemetery trust; or
    - (ii) if there are less than 3 members of the cemetery trust, by all members of that trust; or
  - (b) audited by a registered company auditor.

**51. Secretary may ask for investigation**

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

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- (a) to audit the accounts and records of a cemetery trust; or
  - (b) to conduct an investigation into the financial affairs of a cemetery trust.

**52. Report to Secretary on operations and accounts**

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

**Division 5—Management by Municipal Councils**

**53. Municipal council may manage public cemetery**

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

**54. Limits on power to delegate**

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

**55. Borrowing and investment powers of councils**

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

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

**56. Use of council funds**

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

**57. Report to Secretary**

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

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**58. Secretary may inspect accounts and records**

For the purpose of section 125 of the **Local Government Act 1989**, the Secretary or any person authorised by the Secretary is authorised to inspect the accounts and records of a municipal council.



**PART 4—CEMETERY RECORDS**

**59. Cemetery trust to keep records**

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

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

**60. Can the public inspect records?**

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

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

**61. Records as evidence**

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

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

**Division 1—Closure of Public Cemeteries**

**62. Order closing public cemetery**

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

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

**63. Effect of order closing public cemetery**

(1) On the making of an order under section 62—

- (a) the public cemetery or part of the public cemetery to which the order applies is closed; and
- (b) no further interments are permitted at the closed cemetery, regardless of whether there are any existing rights of interment in relation to the closed cemetery.

(2) Subject to this Act, the regulations, the model rules or the cemetery trust rules (if any), members of the public may visit a closed cemetery.

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

(1) The holder of an unexercised right of interment at a closed cemetery may request—

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- (a) a refund based on the cemetery trust fee payable for the same type of right of interment immediately before the closure of the cemetery, less the relevant cemetery trust fee for administration from the cemetery trust which is responsible for managing the closed cemetery; or
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- (b) the Secretary to direct the cemetery trust which is responsible for managing the closed cemetery to grant the holder a right of interment in another cemetery for which that cemetery trust is responsible either free of charge or at a reduced rate.

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(2) A request under sub-section (1) must be made in writing.

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(3) If the Secretary receives a request under sub-section (1)(b), the Secretary, in his or her absolute discretion, may direct a cemetery trust to grant to the person making the request a new right of interment in another cemetery for which that cemetery trust is responsible either free of charge or at a reduced rate.

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(4) A cemetery trust must comply with a direction under sub-section (3).

**Division 2—Historic Cemetery Parks**

**65. Definitions**

In this Division—

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

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**"eligible cemetery"** means—

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

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

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

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

- (1) A cemetery trust responsible for the management of an eligible cemetery may apply to the Minister for an approval to convert the cemetery or part of the cemetery to a historic cemetery park.
- (2) An application under sub-section (1) must include—
  - (a) a plan of the area proposed to be converted; and
  - (b) a conservation management plan of the area proposed to be converted; and
  - (c) details of the proposed conversion; and
  - (d) details of consultation undertaken with relevant agencies, holders of rights of interment and the public.

**67. Minister may approve conversion to historic cemetery park**

- (1) The Minister, after considering an application under section 66, may—

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- (a) approve the application; and
- (b) authorise the cemetery trust of the eligible cemetery to convert the cemetery to a historic cemetery park.

(2) An approval to convert must be in writing.

(3) An approval to convert may be granted subject to conditions relating to—

- (a) the disposition of any memorials or structures in the eligible cemetery; and
- (b) the maintenance of the area to be converted; and
- (c) any matters relating to heritage considerations; and
- (d) any other matters the Minister thinks necessary or convenient to provide for in the public interest.

(4) If an approval to convert has been given in respect of the whole or any part of an eligible cemetery, the cemetery trust responsible for the management of that cemetery must not permit any further interments in the area to which the approval to convert applies.

**68. Rights of interment cancelled**

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

**69. Cemetery trust to notify holders of rights of interment**

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

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

**70. Cemetery trust to prepare plan of existing places of interment**

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

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

**71. Cemetery trust may remove memorials**

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- (1) A cemetery trust may remove any memorials or other structures in the area to which an approval to convert applies.

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- (2) A cemetery trust may dispose of any memorial or other structure removed under sub-section (1) as it sees fit and must do so in a respectful and appropriate manner.

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

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

**Division 1—Rights of Interment Generally**

**73. Cemetery trust may grant right of interment**

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

**74. How long does a right of interment last?**

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

**75. What types of rights of interment can be granted?**

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

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

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**76. Right of interment may be allocated or unallocated**

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

**77. Entitlements of right of interment for interring human remains**

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

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(d) if the human remains are body parts, may remove those body parts from the place of interment.

(2) A holder of a right of interment for interring human remains in a public grave—

(a) may inter human remains in a public grave in the cemetery; and

(b) may place or alter a memorial on the public grave.

(3) The holder of a right of interment must obtain the approval of the cemetery trust before exercising any of the powers referred to in sub-section (1) or (2).

(4) On the application of a holder of a right of interment to exercise any of the powers referred to in sub-section (1)(c) or (d), the cemetery trust may—

(a) authorise the exercise of that power; and

(b) impose such terms and conditions on the exercise of that power as the cemetery trust thinks fit.

**78. Exercising a right of interment**

(1) A right of interment is exercised if, in accordance with this Act—

(a) human remains are interred at the place of interment to which the right of interment applies; or

(b) the holder of the right of interment creates a memorial at that place of interment.

(2) If a right of interment is held by more than one person, it may be exercised jointly and severally.

**Division 2—Transfer and Surrender**

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

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

**80. Transfer of right of interment must be recorded**

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

**81. Offence to receive certain consideration for right of interment**

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

- (a) in accordance with section 79(2); or

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- (b) as a refund from a cemetery trust under this Act.

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

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

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

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

- (1) The holder of an exercised right of interment who is the sole holder of that right of interment may surrender the right of interment to the cemetery trust which granted it.
- (2) On the surrender of a right of interment to a cemetery trust under sub-section (1)—
- (a) no refund is payable; and
- (b) the person surrendering the right of interment has no further entitlements or responsibilities under that right of interment.

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(3) If a right of interment is surrendered to a cemetery trust under this section, the cemetery trust may—

- (a) remove any memorial on the place of interment to which the surrendered right of interment applied; and
- (b) grant a right of interment for interring human remains in a public grave to the place of interment to which the surrendered right of interment applied.

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

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

**Division 3—Conversion of Limited Rights of Interment**

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

- (1) At least 12 months before the expiry of a right of interment for interring cremated human remains for 25 years, the cemetery trust responsible for the public cemetery to which the right of interment applies must take reasonable steps to notify the holder of that right of interment that the right of

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interment will expire at the end of 25 years after it was granted.

- (2) A notification under sub-section (1) must advise the holder of the right of interment that—
- (a) under section 87, the holder may request the cemetery trust to—
    - (i) extend the right of interment for a further 25 years; or
    - (ii) convert the right of interment to a perpetual right of interment; and
  - (b) if the right of interment is not extended or converted to a perpetual right of interment, the cemetery trust may—
    - (i) remove interred cremated human remains from their current place of interment; and
    - (ii) dispose of those cremated human remains within the cemetery grounds; and
    - (iii) remove any memorial relating to those cremated human remains.
- (3) A notification under sub-section (1) must be in writing.

**86. Cemetery trust may remove cremated human remains and memorial**

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

- (a) remove the interred cremated human remains from their current place of interment; and

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- (b) dispose of those cremated human remains within the cemetery grounds; and
- (c) remove any memorial relating to those cremated human remains.

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

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



**Division 4—Lift and Re-position Procedure**

**88. Application to carry out lift and re-position procedure**

- (1) For the purposes of the re-use of a place of interment by the holder of a right of interment, the holder of the right of interment may apply to the cemetery trust responsible for the public cemetery to which that right of interment applies for approval to carry out a lift and re-position procedure at the place of interment to which the right of interment applies.
- (2) An application under sub-section (1) must—
  - (a) be in writing; and
  - (b) be accompanied by the relevant cemetery trust fee.

**89. Cemetery trust may approve or refuse application**

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

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- (b) a lift and re-position procedure would be impractical or impossible because the place of interment cannot be sufficiently deepened; or
- (c) the physical state of the human remains in the place of interment; or
- (d) in the case of a mausoleum, the chamber is not able to accommodate additional human remains; or
- (e) religious, cultural, health or safety considerations.

(3) If the existing human remains interred in a place of interment are bodily remains, a cemetery trust must not approve the carrying out of a lift and re-position procedure unless those remains have been interred in that place of interment for least 10 years.

(4) An approval under this section must be in writing.

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

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

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- (2) Without limiting the manner in which a lift and reposition procedure is carried out, for the purposes of sub-section (1)(d), a person may remove human remains from any receptacle and place them in another receptacle.

**Division 5—Cancellation and Discontinuance**

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

- 10
- (1) A cemetery trust may cancel a right of interment in a public cemetery for which it is responsible if—
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- (a) the right of interment has never been exercised; and
- (b) the holder of the right of interment cannot be found after diligent inquiries.
- (2) A cemetery trust must not cancel a right of interment referred to in sub-section (1) until the end of at least 25 years after the original grant of the right of interment.
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- (3) At least 14 days before cancelling a right of interment, a cemetery trust must publish notice of its intention to do so in a daily or weekly newspaper circulating generally in the area in which the public cemetery to which the right of interment applies is located.
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**92. What happens if a right of interment is cancelled?**

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

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- (a) pay to that person a refund based on the current cemetery trust fee payable for the same type of right of interment less the relevant cemetery trust fee for administration; or
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- (b) grant to that person a right of interment in respect of another place of interment at the cemetery to be determined by the cemetery trust on the payment of the relevant cemetery trust fee fixed for the purposes of this paragraph.

**93. Order discontinuing granting rights of interment**

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

**94. Effect of order discontinuing granting rights of interment**

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On the making of an order under section 93—

- (a) a cemetery trust must not grant any new rights of interment in respect of the area of the public cemetery to which the order applies; and

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- (b) no further interments are permitted in the area of the public cemetery to which the order applies, unless the interment is pursuant to—
- (i) a right of interment which was granted before the making of the order; or
  - (ii) an exception, exemption or qualification specified in the relevant order.
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Part 7—Memorials, Places of Interment and Buildings for Ceremonies

**PART 7—MEMORIALS, PLACES OF INTERMENT AND  
BUILDINGS FOR CEREMONIES**

**Division 1—Memorials and Places of Interment**

**95. Offence to desecrate memorials**

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

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

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

**96. Offence to desecrate places of interment**

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

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

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

**Division 2—Cemetery Trust Approvals**

**97. Definition of "place of interment" limited**

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

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

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

**99. Cemetery trust may approve or refuse the application**

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

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



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**100. Cemetery trust may remove memorials or places of interment**

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

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**101. Approval for establishment or alteration of a building for ceremonies**

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- (1) A person who is a member or representative of any faith, religion or cultural group may apply to the cemetery trust responsible for the management of a public cemetery for approval to establish or alter a building for ceremonies in the public cemetery.

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- (2) An application must be accompanied by—
- (a) the relevant cemetery trust fee; and
  - (b) a plan or design of the building for ceremonies proposed to be established or altered.

**102. Cemetery trust may approve or refuse the application**

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

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- (2) An approval under this section may be granted subject to—
- (a) a condition that the building for ceremonies be erected or placed in the position determined by the cemetery trust; and
  - (b) any other terms and conditions which the cemetery trust thinks fit.
- (3) A cemetery trust may cancel an approval under this section if the terms and conditions of the approval have not been complied with.

**103. Cemetery trust may remove building for ceremonies**

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- (1) A cemetery trust may require a person to remove or alter a building for ceremonies in a public cemetery if that person—
- (a) has established or altered, or caused to be established or altered, the building for ceremonies without the approval of the cemetery trust under section 102; or
  - (b) has failed to comply with any term or condition to which the approval of the cemetery trust under section 102 was subject.
- (2) If a person to whom sub-section (1) applies fails or refuses to remove or alter the building for ceremonies, the cemetery trust may—
- (a) remove the building for ceremonies and dispose of it as it sees fit; or
  - (b) remedy the failure to comply.
- (3) A cemetery trust may recover the costs of taking action under sub-section (2) from the person referred to in sub-section (1) as a debt recoverable in a court of competent jurisdiction.

**Division 3—Maintenance of Memorials, Places of Interment  
and Buildings for Ceremonies**

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

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

**105. What is meant by a safe and proper condition?**

Without limiting this Part—

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

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

- (1) If a cemetery trust believes that a memorial or place of interment is not in a safe and proper condition, the cemetery trust, by notice in writing, may require the holder of the right of interment in respect of that memorial or place of interment—
  - (a) to make the condition of the memorial or place of interment safe and proper; or
  - (b) to carry out the repairs specified in the notice.
- (2) Before giving a notice under sub-section (1) in respect of a place of interment, a cemetery trust may require the holder of the right of interment to open the place of interment for examination.
- (3) If the holder of the right of interment fails to open the place of interment when required under sub-section (2), the cemetery trust may open and examine the place of interment.
- (4) If the holder of the right of interment fails to comply with the notice under sub-section (1) within 14 days of its receipt, the cemetery trust may—
  - (a) repair the memorial or place of interment to which the notice relates; or
  - (b) with the consent of the Secretary, take down, remove and dispose of any memorial or place of interment.

**107. Powers of a cemetery trust—buildings for ceremonies**

- (1) If a cemetery trust believes that a building for ceremonies is not in a safe and proper condition, the cemetery trust, by notice in writing, may require the person responsible for the

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establishment or alteration of that building for ceremonies—

(a) to make the condition of the building for ceremonies safe and proper; or

(b) to carry out the repairs specified in the notice.

(2) If the person responsible for the establishment or alteration of that building for ceremonies fails to comply with the notice under sub-section (1) within 14 days of its receipt, the cemetery trust may—

(a) repair the building for ceremonies to which the notice relates; or

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

**108. Recovery of costs and expenses**

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

(a) opening and examining a place of interment;

(b) repairing a memorial, place of interment or building for ceremonies;

(c) taking down and removing any memorial, place of interment or building for ceremonies—

as a debt recoverable in a court of competent jurisdiction.

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

(1) If the cemetery trust believes that a memorial or place of interment is not in a safe and proper condition and the cemetery trust is unable to find the holder of the right of interment for that memorial or place of interment, the cemetery trust may—

(a) in the case of a place of interment—

(i) open and examine the place of interment; and

(ii) repair the place of interment; or

(b) in the case of a memorial—

(i) repair the memorial; or

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

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

(a) repair the building for ceremonies; or

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

**110. Cemetery trust may repair or maintain from other funds**

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

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- (a) obtains the consent of the Secretary to the maintenance, repair or restoration; and
- (b) uses funds other than cemetery trust funds for the maintenance, repair or restoration.

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

- (a) obtains the consent of the Secretary to the maintenance, repair or restoration; and
- (b) uses funds other than cemetery trust funds for the maintenance, repair or restoration.

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

(1) A cemetery trust may enter into an agreement with a holder of a right of interment in the public cemetery for which the cemetery trust is responsible to maintain a memorial or place of interment which the holder of the right of interment would otherwise be responsible to maintain.

(2) An agreement under sub-section (1)—

- (a) must be for a limited term not exceeding 10 years; and
- (b) may be renewed for a further term not exceeding 10 years.

**112. Cemetery trust may sell and supply memorials**

A cemetery trust may sell and supply memorials.

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**PART 8—INTERMENT OF BODILY REMAINS**

**Division 1—Interment Generally**

**113. Bodily remains interred for perpetuity**

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

**114. Unlawful interment**

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

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

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

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

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

**Division 2—Interment Authorisations**

**116. Application for interment authorisation**

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

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(3) An application for an interment authorisation must be accompanied by one of the following—

- (a) a notice under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996**; or
- (b) a certificate in the form prescribed under section 23 of the **Coroners Act 1985**; or
- (c) if the deceased died in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the deceased died; or
- (d) if the interment authorisation is for a still-born child—
  - (i) a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996**; or
  - (ii) if the still-birth occurred in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the still-birth occurred; or
- (e) a statutory declaration made by the person arranging the interment stating that, owing to special circumstances, it is not possible to produce the required documents referred to in paragraphs (a), (c) or (d) (as the case requires).

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

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**117. Offence to make false statement in application for interment authorisation**

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

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

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**118. Grant of interment authorisation**

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

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**119. Conditions on interment authorisation**

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

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**120. Offence to fail to comply with interment authorisation**

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

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

**Division 3—Interment Approvals**

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

- (1) A person who wishes bodily remains to be interred in a place other than a public cemetery may apply to the Secretary for an interment approval.
- (2) An application for an interment approval must be—
  - (a) in the prescribed form; and
  - (b) accompanied by the prescribed fee.
- (3) An application for an interment approval must be accompanied by one of the following—
  - (a) a notice under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996**; or
  - (b) a certificate in the form prescribed under section 23 of the **Coroners Act 1985**; or
  - (c) if the deceased died in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the deceased died; or
  - (d) if the interment approval is for a still-born child—
    - (i) a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996**; or
    - (ii) if the still-birth occurred in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice of

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still-birth under the **Births, Deaths and Marriages Registration Act 1996** from the jurisdiction where the still-birth occurred; or

- (e) a statutory declaration made by the person arranging the interment stating that, owing to special circumstances, it is not possible to produce the required documents referred to in paragraphs (a), (c) or (d) (as the case requires).

**122. Offence to make false statement in application for interment approval**

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

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

**123. Grant of interment approval**

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

**124. Conditions on interment approval**

- (1) An interment approval may be granted on such conditions as the Secretary thinks fit.
- (2) Without limiting sub-section (1), the conditions on an interment approval may include conditions relating to—
- (a) the minimum size of the land on which the interment is to take place; and

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- (b) the depth of the interment; and
- (c) the standards of construction for any monument or vault on the land on which the interment is to take place.

**125. Offence to fail to comply with interment approval**

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

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

**126. Notice of interment approval to Registrar of Titles**

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

**127. Secretary to notify Registrar of Titles to remove notice**

- (1) The Secretary may lodge with the Registrar of Titles a notice requesting the removal of any notice of interment approval recorded under section 126.

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

**Division 1—Cremation Generally**

**128. Interment of cremated human remains**

Subject to this Act, cremated human remains—

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

**129. Unlawful cremation**

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

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

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

**130. Offence to cremate without cremation authorisation**

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

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



**Division 2—Cremation Authorisation**

**131. Application for cremation authorisation**

- (1) A person who wishes bodily remains to be cremated in a crematorium at a public cemetery may apply to the cemetery trust responsible for that public cemetery for a cremation authorisation.
- (2) An application for a cremation authorisation must be in the prescribed form.
- (3) An application for a cremation authorisation must be accompanied by any of the following—
  - (a) both—
    - (i) a certificate of a registered medical practitioner authorising cremation in the prescribed form; and
    - (ii) a notice as required under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996**; or
  - (b) a certificate in the form prescribed under section 23 of the **Coroners Act 1985** certifying that cremation is permitted; or
  - (c) if the deceased person died in another State or Territory of the Commonwealth or overseas, an authority to cremate under the hand of the Coroner or other person permitted by the law of the jurisdiction where the deceased died to authorise cremation; or
  - (d) if the cremation authorisation is for a still-born child—
    - (i) a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996**; or

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

- (e) a cremation approval.

**132. Offence to make false statement in application for cremation authorisation**

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

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

**133. Grant of cremation authorisation**

- (1) A cemetery trust must not grant a cremation authorisation unless the trust is satisfied that the requirements of this Division have been met in relation to that application.
- (2) If section 139 applies, a cemetery trust must not grant a cremation authorisation without a certificate in the form prescribed under section 23 of the **Coroners Act 1985** certifying that cremation is permitted.

**Division 3—Approvals by Secretary**

**134. Secretary may grant cremation approval**

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

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

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

- (1) A person who wishes bodily remains to be cremated at a place other than a crematorium in a public cemetery may apply to the Secretary for an approval to cremate bodily remains in a place other than a crematorium in a public cemetery.
- (2) Subject to section 136(2), an application for an approval to cremate bodily remains at a place other than a crematorium in a public cemetery must be accompanied by any of the following—
- (a) both—
    - (i) a certificate of a registered medical practitioner authorising cremation in the prescribed form; and
    - (ii) a notice as required under section 37(2) of the **Births, Deaths and Marriages Registration Act 1996**; or
  - (b) a certificate in the form prescribed under section 23 of the **Coroners Act 1985** certifying that cremation is permitted; or
  - (c) if the deceased person died in another State or Territory of the Commonwealth or overseas, an authority to cremate under the hand of the Coroner or other person permitted by the law of the jurisdiction where the deceased died to authorise cremation; or

(d) if the cremation authorisation is for a still-born child—

(i) a notice of still-birth under the **Births, Deaths and Marriages Registration Act 1996**; or

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

**136. Approval by Secretary**

(1) The Secretary may grant an approval to cremate bodily remains at a place other than a crematorium in a public cemetery.

(2) The Secretary may grant an approval under this section without the application under section 135 being accompanied by the relevant documents referred to in section 135(2) if the Secretary is satisfied that, owing to special circumstances, it is not possible to produce any of those documents.

(3) An approval under this section must—

(a) be in writing; and

(b) be signed by the Secretary.

**137. Offence to make false statement in application to Secretary**

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

(a) a cremation approval; or

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

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

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

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

**139. Refusal to sign certificate of registered medical practitioner authorising cremation**

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

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

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

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

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

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

Penalty: 20 penalty units.

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Part 10—Interment and Cremation of Deceased Poor Persons

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

**142. Prescribed person may apply for order**

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

**143. Magistrates' Court may make order**

- (1) The Magistrates' Court may make an order requiring a cemetery trust—
  - (a) to either—
    - (i) cremate the bodily remains of a deceased poor person and inter those cremated human remains free of charge in the public cemetery for which it is responsible; or
    - (ii) to inter the bodily remains of a deceased poor person free of charge in the public cemetery for which it is responsible; and
  - (b) to place a plaque on the place of interment of the deceased poor person setting out the name, date of birth and date of death of the deceased poor person (if known) if it appears that the relatives or friends of that person are unable to provide a plaque or other memorial.
- (2) The Magistrates' Court must not make an order under this Part unless satisfied that—
  - (a) the deceased person died without sufficient means to pay interment or cremation expenses; and
  - (b) the deceased person's relatives and friends are unable to pay the interment or cremation expenses.

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**144. Order to generally specify cremation**

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

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

**145. Trust must comply with order**

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



**PART 11—OTHER DISPOSITION OF HUMAN REMAINS**

**Division 1—Disposal Other Than by Interment or  
Cremation**

**146. Disposal by methods other than interment or  
cremation**

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

**147. Secretary may grant approval**

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

**148. Secretary may vary or revoke approval**

- (1) The Secretary may—
  - (a) revoke an approval granted under section 147;
  - (b) vary an approval granted under section 147;

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(c) vary any terms and conditions specified in the approval granted under section 147.

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

**149. Cemetery trust to cease using method if approval revoked**

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

**Division 2—Interment or Cremation of Body Parts**

**150. Interment or cremation of body parts**

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

**151. Application for interment or cremation of body parts**

(1) A person who wishes body parts to be interred or cremated in a public cemetery may apply to the cemetery trust responsible for that public cemetery for an authority under section 150.

(2) An application under sub-section (1) must contain the prescribed information from a prescribed person.

(3) For the purposes of sub-section (2), "**prescribed person**" means—

(a) a registered medical practitioner who treated the person to whom the body part belonged; or

(b) a registered medical practitioner of the hospital where the person to whom the body part belonged was treated; or

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

**152. Grant of authorisation**

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

**153. Offence to inter body parts in public cemetery without authority**

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

Penalty: 20 penalty units.

**PART 12—EXHUMATION AND REMOVAL**

**154. Part does not apply to exhumation under Coroners Act**

Nothing in this Part applies to an exhumation conducted under the **Coroners Act 1985**.

**155. Offence to exhume other than in accordance with this Act**

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

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

**156. Application to Secretary for exhumation licence**

- (1) A person may apply to the Secretary for an exhumation licence to exhume or remove human remains from any place of interment.
- (2) An application for an exhumation licence—
  - (a) must be in the prescribed form; and
  - (b) must be lodged with the Secretary at least 7 days before the proposed exhumation or removal; and
  - (c) must be accompanied by the prescribed fee.

**157. Grant of exhumation licence**

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

**158. Exhumation licence required to move remains to another location**

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

**159. Offence to fail to comply with exhumation licence**

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

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

**PART 13—ENFORCEMENT**

**Division 1—Enforcement Powers**

**160. Appointment of authorised officers**

- (1) The Secretary, by instrument, may appoint as an authorised officer any employee or employees or class of employees employed under Part 3 of the **Public Sector Management and Employment Act 1998**.
- (2) The Secretary is an authorised officer for the purposes of this Act.

**161. Identity card**

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

**162. Offence not to produce identity card**

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

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

Penalty: 10 penalty units.

**163. Powers of entry and inspection**

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

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

(5) For the purposes of this section, "**specified person**" means—

- (a) a member of a cemetery trust; and
- (b) an employee of a cemetery trust or other person referred to in section 17; and
- (c) a volunteer engaged in volunteer work for the cemetery trust.

**164. Retention and return of seized documents or equipment**

(1) If an authorised officer seizes any document or equipment under section 163, he or she must—

- (a) give notice of the seizure to—
  - (i) the person apparently in charge of the document or equipment; or
  - (ii) an occupier of the place; and
- (b) return the document or equipment to that person or the place within 2 business days after seizing it, unless the document or equipment is brought before the Magistrates' Court within that period.

(2) Section 78 of the **Magistrates' Court Act 1989** applies to any document or equipment brought before the Magistrates' Court under this section as if it were brought before that Court under that section 78.

**165. Search warrants**

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



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- (2) If a magistrate is satisfied, by the evidence on oath or by affidavit of the authorised officer or the member of the police force (as the case requires), that there are reasonable grounds for believing that an offence against this Act or the regulations has been committed, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an authorised officer or a member of the police force named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
- (a) to enter the premises or place specified in the warrant, if necessary by force; and
  - (b) to do all or any of the following—
    - (i) search for;
    - (ii) seize;
    - (iii) secure against interference;
    - (iv) examine and inspect;
    - (v) make copies of or take extracts from—  
a thing or things of a particular kind named or described in the warrant and which the authorised officer or the member of the police force believes, on reasonable grounds, to be connected with the commission of an offence against this Act or the regulations.
- (3) A search warrant issued under this section must state—
- (a) the purpose for which the search is required; and
  - (b) any conditions to which the warrant is subject; and

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(c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

(d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

**166. Announcement before entry**

(1) On executing a search warrant, the person executing it—

(a) must announce that he or she is authorised by the warrant to enter the premises or place; and

(b) if the authorised officer or the member of the police force has been unable to obtain unforced entry, must give any person at the premises or place an opportunity to allow entry to the premises or place.

(2) An authorised officer or a member of the police force need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the premises or place is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated.

**167. Details of warrant to be given to occupier**

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

**168. Copies of seized documents**

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

**169. Refusal or failure to comply with requirement**

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

Penalty: 60 penalty units.

**170. Offence to hinder or obstruct authorised officer**

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

Penalty: 60 penalty units.

**171. Offence to give false or misleading information**

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

Penalty: 60 penalty units.

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

Penalty: 60 penalty units.

**172. Protection against self-incrimination**

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

**173. Offence to impersonate authorised officer**

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

Penalty: 60 penalty units.

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**174. Who may prosecute?**

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

**175. Extended period to prosecute certain offences**

Despite section 26 of the **Magistrates' Court Act 1989**, proceedings for an offence against section 81 may be commenced within the period of 3 years after the commission of the alleged offence.

**Division 2—Offences**

**176. Offence to dispose of falsely identified bodily remains**

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

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

**177. Indictable offences**

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

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**178. Offences by bodies corporate**

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

**PART 14—GENERAL**

**179. Review by VCAT**

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

**180. Regulations and model rules**

- 25
- (1) The Governor in Council may make regulations for or with respect to—
- 30
- (a) prescribing model rules for or with respect to the general care, protection and management of public cemeteries and crematoria;
- (b) fees for the purposes of this Act;
- (c) forms for the purposes of this Act;

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



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(c) may leave any matter or thing to be from time to time determined, approved or dispensed with by the Secretary or a cemetery trust.

(d) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method, formulated, issued, prescribed or published by any other person, whether—

(i) wholly or partially or as amended by the regulations or model rules; or

(ii) as formulated, issued, prescribed or published at the time the regulations or model rules are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time.

(3) Regulations made under this Act may exempt specified cemeteries or crematoria or any class of cemeteries or crematoria from complying with all or any of the regulations.

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Part 15—Repeals, Transitional Provisions and Consequential Amendments

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

**181. Cemeteries Act 1958 repealed**

The **Cemeteries Act 1958** is repealed.

**182. Section 32 of National Parks Act 1975 substituted**

For section 32 of the **National Parks Act 1975**  
**substitute—**

**"32. Port Campbell National Park**

Despite anything to the contrary in the  
**Cemeteries and Crematoria Act 2003—**

- (a) the Secretary is responsible for the management of the Loch Ard Public Cemetery and the Cape Otway Public Cemetery; and
- (b) in relation to each of those cemeteries, the Secretary may exercise the functions and powers of a cemetery trust within the meaning of that Act; and
- (c) the provisions of that Act, so far as applicable, apply to those cemeteries with any necessary modifications."

**183. Amendment to the Summary Offences Act 1966**

For clause 5 of Schedule 1 to the **Summary  
Offences Act 1966 substitute—**

- "5. Land held or managed by a cemetery trust of a public cemetery to which the **Cemeteries and Crematoria Act 2003** applies."

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**184. Amendment to Magistrates' Court Act 1989**

After item 40 of Schedule 4 to the **Magistrates' Court Act 1989** insert—

**"41. Unlawful interment**

An offence under section 114 of the **Cemeteries and Crematoria Act 2003**.

**42. Offence to inter bodily remains in public cemetery without interment authorisation**

An offence under section 115 of the **Cemeteries and Crematoria Act 2003**.

**42A. Unlawful cremation**

An offence under section 129 of the **Cemeteries and Crematoria Act 2003**.

**42B. Offence to cremate without cremation authorisation**

An offence under section 130 of the **Cemeteries and Crematoria Act 2003**.

**42C. Offence to make false statement in application for cremation authorisation**

An offence under section 132 of the **Cemeteries and Crematoria Act 2003**.

**42D. Offence to make false statement in application for approval for cremation by Secretary**

An offence under section 137 of the **Cemeteries and Crematoria Act 2003**.

**42E. Offence to make false statement in certificate of registered medical practitioner authorising cremation**

An offence under section 140 of the **Cemeteries and Crematoria Act 2003**.

**42F. Offence to exhume other than in accordance with Cemeteries and Crematoria Act 2003**

An offence under section 155 of the **Cemeteries and Crematoria Act 2003**.

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**42G. Offence to dispose of falsely identified bodily remains**

An offence under section 176 of the **Cemeteries and Crematoria Act 2003**."

**185. New section inserted into the Crimes Act 1958**

After section 34A of the **Crimes Act 1958**  
**insert—**

**"(5) Corpses**

**34B. Offence to interfere with corpse of a human being**

- (1) A person must not intentionally—
- (a) interfere sexually or commit an indecent act with a corpse of a human being; or
  - (b) unlawfully remove body parts from a corpse of a human being—

whether that corpse is in a public cemetery within the meaning of the **Cemeteries and Crematoria Act 2003** or at any other place.

Penalty: Level 6 (5 years maximum).

- (2) Sub-section (1) does not apply to—
- (a) any person who is engaged in the preparation of a corpse of a human being for the purposes of interment or cremation within the meaning of the **Cemeteries and Crematoria Act 2003**; or
  - (b) any other lawful interference with a corpse of a human being, including a lawful interference for the purposes of a medical, scientific or hygienic procedure."

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**186. Transitional provisions**

Schedule 2 has effect.

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**SCHEDULES**

**SCHEDULE 1**

**MEMBERSHIP AND PROCEDURE OF CEMETERY TRUSTS**

**1. Terms of appointment of cemetery trust members**

- (1) A member of a cemetery trust holds office for the period, not exceeding 5 years, specified in the instrument of his or her appointment.
- (2) A member of a cemetery trust is eligible for re-appointment.
- (3) The instrument of appointment of a member of a cemetery trust may specify terms and conditions of appointment.
- (4) The **Public Sector Management and Employment Act 1998** (except in accordance with Part 7 of that Act) does not apply to a member in respect of the office of member.

**2. Chairperson of cemetery trust**

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

**3. Resignation and removal of members**

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

**4. Vacancies in membership of cemetery trusts**

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

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**5. Fees and allowances of members**

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

**6. Validity of decisions of cemetery trusts**

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

**7. Presiding at meetings of cemetery trusts**

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

**8. Proceedings of cemetery trusts**

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

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

**9. Disclosure of interest of cemetery trust members**

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



SCHEDULE 2

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TRANSITIONAL PROVISIONS

1. General transitional provisions

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

2. Superseded references

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

- (a) a reference to the **Cemeteries Act 1958** is deemed to be a reference to the **Cemeteries and Crematoria Act 2003**; and
- (b) a reference to a cemetery trust appointed under the **Cemeteries Act 1958** or to trustees of a public cemetery is deemed to be a reference to a cemetery trust established under Part 2; and
- (c) subject to clause 9, a reference to rules and regulations made by a cemetery trust under the **Cemeteries Act 1958** is deemed to be a reference to—
  - (i) the model rules; or
  - (ii) if a cemetery trust makes cemetery trust rules, those cemetery trust rules—

so far as the reference relates to any period on or after 1 July 2005 and unless the context otherwise requires.

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**3. Cemetery trusts**

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- (1) On 1 July 2005, a cemetery trust responsible for a public cemetery under the **Cemeteries Act 1958** in existence immediately before that date—
    - (a) is deemed to be a cemetery trust established under Part 2 responsible for the management of the same public cemetery and known by the same name; and
    - (b) continues in existence as if established under Part 2.
  - (2) On 1 July 2005, all money standing immediately before that date to the credit of a fund or account of a cemetery trust under the **Cemeteries Act 1958** and any other money belonging to the cemetery trust as at that date may, after that date, be used or invested by a cemetery trust in accordance with this Act.
  - (3) On 1 July 2005, the trustees or members of a cemetery trust in office under the **Cemeteries Act 1958** immediately before that date—
    - (a) are deemed to be the members of the cemetery trust continued in existence by sub-clause (1) appointed in accordance with section 6; and
    - (b) continue in office for the remainder of their original terms as if appointed under this Act.
  - (4) Despite sub-clause (3), a cemetery trust is to operate with the number of members it had immediately before 1 July 2005 until—
    - (a) if there were less than 3 trustees immediately before 1 July 2005, the Governor in Council appoints new members in accordance with this Act; or
    - (b) if there were more than 11 trustees immediately before 1 July 2005, the number of initial members falls to 11.

**4. Public cemeteries and crematoria**

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- (1) On 1 July 2005, a public cemetery in existence immediately before that date is deemed to be a public cemetery established in accordance with Part 2 with the same name as it had before that date.
  - (2) On 1 July 2005, a crematorium in existence immediately before that date is deemed to be a crematorium established under section 21.

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- (3) On 1 July 2005, any mausoleum established by a cemetery trust under the **Cemeteries Act 1958** in existence immediately before that date is deemed to be a mausoleum facility established under section 22.

**5. Rights of interment**

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

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**6. Interment authorisations and approvals**

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

**7. Cremation authorisations and approvals**

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

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**8. Registers and records**

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

**9. Trustees rules and regulations**

On 1 July 2005—

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

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

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

**11. Existing fees or charges or scales of fees and charges**

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

**12. Administrators appointed under Cemeteries Act 1958**

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

**13. Borrowings under Cemeteries Act 1958**

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

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**14. Existing borrowings approved by Treasurer**

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

**15. Permits to erect monuments and dig graves**

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

**16. Erecting monuments**

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

**17. Noxious exhalations or evaporations**

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

**18. Repair of memorials**

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

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**19. Money lent or paid and securities**

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

**20. Accounts and abstracts**

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

**21. Exhumation licences**

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

**22. Overlay sites at Melbourne General Cemetery**

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

**23. Mortuary churches or chapels**

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

**24. Pioneer memorial parks**

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

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

**25. Third Schedule certificate**

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



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Endnotes

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**ENDNOTES**

By Authority. Government Printer for the State of Victoria.

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