Western Australia

Cemeteries Act 1986

Compare between:

[05 Nov 2010, 02-i0-01] and [01 Dec 2010, 02-j0-05]

Western Australia

Cemeteries Act 1986

An Act to provide for the declaration and management of cemeteries, the establishment, constitution and functions of cemetery boards, the licensing of funeral directors, the regulation of burials, the repeal of the *Cemeteries Act 1897* and for connected purposes.

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Part I — Preliminary

1. Short title

This Act may be cited as the *Cemeteries Act 1986* [1].

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation [1].

3. Terms used in this Act

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

alleged offender means a person to whom an infringement notice has been given under section 63;

authorised person means a person authorised under section 64 to give infringement notices;

Board means a cemetery board established under section 7 or deemed to have been established under this Act and in relation to a cemetery means the Board responsible for the care, control and management of that cemetery;

burial, except in the definition of "funeral" and in sections 11, 12 and 43(2), includes the disposal of ashes of a dead body in a cemetery after cremation;

cemetery means land declared by the Governor to be a cemetery under section 4(1) or deemed to be a cemetery under this Act and so far as the context allows includes a disused burial ground and a closed cemetery;

dead body means the body of a human being who was born alive and also means the body of a child of not less than 28 weeks' gestation that was still born;

funeral means the burial or cremation of a dead body;

holder in relation to a grant of right of burial includes a person for the time being appearing to the Board to be the holder of that grant;

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infringement notice means a notice given under section 63;

licence means a funeral director's licence issued or deemed to have been issued under Part IV;

member means a member of a Board;

memorial includes headstone, plaque, tombstone, monumental work, inscription, kerbing, enclosure and any other fixture or thing commemorating a grave or the placement of ashes;

redevelopment area means a portion of land in a cemetery which is the subject of a redevelopment scheme or proposed redevelopment scheme under Division 4 of Part V;

right of burial means the right to use a specified area of a cemetery for burial.

(2) Notwithstanding the definition of "dead body" in subsection (1), a Board may in a particular case deem to be a dead body for the purposes of this Act the body of a child of not less than 20 weeks' gestation that was still born and where a Board so deems this Act shall apply accordingly.

[Section 3 amended by No. 14 of 1996 s. 4.]

Part II — Cemeteries

4. Declaration and closure of cemeteries

(1) The Governor may by order published in the *Gazette* declare land described in the order to be a cemetery for the purposes of and subject to this Act.

(2) The Governor may by order published in the *Gazette* declare a cemetery to be closed and direct that after a time specified in the order burials in the cemetery shall be discontinued wholly or subject to any exception or qualification set out in the order or in any further order made under this subsection.

5. Vesting of management of cemetery

(1) The Governor may by order published in the *Gazette* vest the care, control and management of a cemetery in a Board or a local government and may by further order, so published, transfer the care, control and management of a cemetery from a Board to a local government or from a local government to a Board.

(2) An order under subsection (1) transferring the care, control and management of a cemetery may include such transitional provisions as are necessary or desirable to effect or facilitate the transfer and in particular may include directions and other provisions for the transfer and vesting of assets and liabilities to enable effect to be given to the order.

[Section 5 amended by No. 14 of 1996 s. 4.]

6. Local governments to perform functions of a Board

Where an order is made or is deemed to have been made under section 5 vesting the care, control and management of a cemetery in a local government, the local government shall, subject to this Act and to any necessary modifications, perform and be subject to the duties imposed on Boards under this Act and may exercise the powers conferred on Boards under this

Act; and references in this Act to a Board or Boards shall be construed accordingly in relation to such a local government as the case may require.

[Section 6 amended by No. 14 of 1996 s. 4.]

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Part III — Establishment and constitution of Boards

7. Establishment of Boards

(1) The Governor may by order published in the *Gazette* establish a cemetery board to perform with respect to a cemetery, or to more than one cemetery, the functions conferred or imposed on Boards under this Act.

(2) A Board is a body corporate with perpetual succession and a common seal and is capable of —

(a) acquiring, holding and disposing of real and personal property;

(b) suing and being sued; and

(c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(3) An order under subsection (1) establishing a Board shall state the name by which the Board shall be known.

(4) The Governor may by order published in the *Gazette* amend the name by which a Board shall be known or dissolve a Board established or deemed to have been established under this section.

8. Constitution of Boards

(1) A Board shall comprise not less than 3 nor more than 7 persons appointed by the Minister.

(2) The provisions of Schedule 1 shall have effect with respect to the constitution and proceedings of a Board.

9. Remuneration and allowances of members

A member shall be paid such remuneration and travelling and other allowances as the Minister from time to time determines on the recommendation of the ~~Minister for~~ Public Sector ~~Management~~ [2]Commissioner.

[Section 9 amended by No. 39 of 2010 s. 89.]

10. Appointment of staff

(1) A Board may appoint such employees, either full time or part time, as it considers necessary to enable it to carry out its functions.

(2) A Board may engage under contract for services such professional and technical and other assistance as it considers necessary to enable it to carry out its functions.

(3) A Board may provide training, facilities and benefits for its employees.

(4) Notwithstanding anything in this section, to the extent that there is in the case of a person who is appointed under subsection (1) to be an employee of a Board and who is a member of the Senior Executive Service within the meaning of the *Public Sector Management Act 1994* [3] an inconsistency between this Act and that Act that Act shall prevail.

[Section 10 amended by No. 113 of 1987 s. 32.]

Part IV — Burials and conduct of funerals

Division 1 — Burials of dead bodies

11. Burials to be in cemeteries or as authorised by Minister

(1) Subject to subsection (3), a person shall not bury or assist at the burial of a dead body in any place other than a cemetery that is not closed unless the burial is in accordance with the Minister's authorisation given under section 12 or is permitted under section 4(2).

Penalty: $1 000.

(2) A person who bears or assists in bearing or otherwise conveying a dead body or who directs or procures any such burial or officiates at the burial as a minister of religion, funeral director or otherwise shall be taken for the purposes of subsection (1) to assist at the burial.

(3) Regulations under this Act may prescribe areas of the State to which subsection (1) does not apply.

12. Minister may authorise burial

The Minister may authorise the burial of a dead body in a place other than a cemetery where —

(a) the burial is to take place on land that is reserved under the *Land Administration Act 1997* for the purpose of burials but is not a cemetery; or

(b) the Minister is satisfied that the burial is to take place in an area that is visibly set apart for and distinguishable as a burial place.

[Section 12 amended by No. 31 of 1997 s. 141.]

13. Delegation

(1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate

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to a specified person or to the person for the time being holding a specified office the function conferred on the Minister by section 12.

(2) An authorisation given for the purposes of section 12 by a delegate under subsection (1) has the same force and effect as if it had been given by the Minister.

(3) Where a person purports to perform a function as a delegate under subsection (1), it shall be presumed, unless the contrary is established, that the person is duly authorised by delegation under that subsection to perform the function.

(4) Where the Minister has delegated a function to a person the Minister may give directions to the delegate with respect to the performance of that function.

Division 2 — Conduct of funerals

14. Conduct of funerals

(1) Subject to subsection (2), a person shall not conduct a funeral at a cemetery unless that person is the holder of —

(a) a funeral director's licence issued under this Act in respect of that cemetery by the Board responsible for the care, control and management of that cemetery; or

(b) a permit issued under this Act in respect of a particular funeral at that cemetery by the Board responsible for the care, control and management of that cemetery.

Penalty: $1 000.

(2) Subsection (1) does not apply to the conduct of a funeral at a cemetery by or on behalf of the Board responsible for the care, control and management of that cemetery.

15. Ministers of religion and religious ceremonies

(1) A minister of religion of any denomination for which part of a cemetery is set apart shall at all reasonable times have free access to that part of the cemetery.

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(2) A Board shall not by local law or by-law or otherwise interfere directly or indirectly with the performance of any religious ceremony at a funeral, except in the case of a ceremony that is offensive having regard to the standards of decency and propriety that are generally acceptable in the community.

[Section 15 amended by No. 14 of 1996 s. 4.]

Division 3 — Licensing of funeral directors

16. Licences

A funeral director's licence —

(a) is valid for the conduct of funerals at the cemetery or cemeteries specified in the licence;

(b) is valid for such period not exceeding one year from the day on which the licence is issued as the Board determines, unless the licence is sooner suspended or cancelled; and

(c) is not transferable.

17. Applications for licences

(1) An application for a funeral director's licence in respect of a cemetery shall be made to the Board responsible for the care, control and management of the cemetery in the manner required by the Board and shall be lodged with the Board together with the appropriate fee.

(2) An applicant who satisfies the Board that the applicant —

(a) is of good repute and is fit to hold a funeral director's licence; and

(b) has suitable facilities and equipment for handling and storing dead bodies and conducting funerals,

shall be entitled to be issued with a funeral director's licence.

(3) The Board, or a person authorised by resolution of the Board for the purpose, may at any reasonable time inspect the facilities

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and equipment of an applicant for or the holder of a funeral director's licence and the applicant or holder shall take all reasonable steps to facilitate an inspection authorised by this subsection.

Penalty: $500.

18. Suspension and cancellation of licences

(1) A Board may, by notice in writing delivered to the holder of a licence, cancel or suspend the licence if —

(a) the licence was issued erroneously or in consequence of a false or fraudulent document, statement or representation;

(b) the fee for the licence is due and unpaid;

(c) the holder of the licence is convicted of an offence against this Act or any local law or by-law made under this Act; or

(d) the Board is no longer satisfied in relation to the holder of the licence with respect to the matters referred to in section 17(2).

(2) If a licence is cancelled or suspended under this section, the person to whom the licence was issued shall deliver the licence to the Board within such period as may be specified in the notice referred to in subsection (1).

Penalty: $500.

[Section 18 amended by No. 14 of 1996 s. 4.]

19. Application for review of decisions of Board

(1) Where a Board —

(a) refuses an application for a licence; or

(b) cancels or suspends a licence,

the Board shall notify in writing the applicant or the person to whom the licence was issued of its decision and of the reasons for that decision.

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(2) An aggrieved applicant or person whose licence has been cancelled or suspended may apply to the State Administrative Tribunal for a review of the decision of the Board.

[Section 19 amended by No. 55 of 2004 s. 102.]

Division 4 — Conduct of funerals by permit holders and Boards

20. Single funeral permits issued to persons other than funeral directors

(1) Subject to this section, a Board may issue a permit to any person, other than the holder of a funeral director's licence, for the conduct at a cemetery of a funeral of a person named in the permit.

(2) An application for a permit under this section shall be made in the manner required by the Board and lodged with the Board together with the appropriate fee.

(3) A permit issued under this section shall have effect subject to any conditions prescribed by local law or by-law and to any further conditions that may be attached by the Board in the particular case and set out in the permit.

[Section 20 amended by No. 14 of 1996 s. 4.]

21. Single funeral permits issued to funeral directors

(1) Subject to this section, a Board may issue a permit to a person who is the holder of a funeral director's licence issued by another Board for the conduct at a cemetery under the care, control and management of the firstmentioned Board of a funeral of a person named in the permit.

(2) An application for a permit under this section shall be made in the manner required by the Board and lodged with the Board together with the appropriate fee.

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(3) In determining an application made by a funeral director under this section, a Board is not required to inquire into the matters referred to in section 17(2).

22. Board may conduct funeral

A Board may conduct a funeral at a cemetery for the care, control and management of which it is responsible.

Part V — Management of cemeteries

Division 1 — Layout and management of cemeteries

23. Setting apart areas for religious denominations

A Board may set apart an area of a cemetery to be used only for burials of persons of a particular religious denomination and the Board may from time to time vary the boundaries of any area so set apart.

24. Management of cemeteries

(1) A Board shall —

(a) set aside areas of a cemetery for burials; and

(b) preserve and maintain a cemetery in a safe, clean and orderly condition.

(2) A Board may —

(a) set aside areas of a cemetery for and provide crematoria, chapels, parks, gardens, landscaping, buildings and other works for the effective operation of a cemetery;

(b) provide office accommodation for administration of the cemetery and other buildings and areas for the use and convenience of employees of the Board or persons visiting the cemetery; and

(c) acquire and dispose of plant, machinery, vehicles, equipment, fittings and other things which are necessary or convenient for the efficient operation of the cemetery.

Division 2 — Rights of burial

25. Grant of right of burial

(1) A Board may grant to a person for a term of 25 years the right of burial in a specified area of a cemetery and the right to place a memorial on that area.

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(2) Where the holder for the time being of a grant of a right of burial applies to the Board for the renewal of the grant the Board shall renew the grant for a further term of 25 years.

(3) A right of burial granted under this section shall be subject to such conditions as may be prescribed by local law or by-law.

(4) A right of burial granted under the *Cemeteries Act 1897* or renewed under subsection (2) may, if the Board and the holder for the time being of the grant agree, be renewed from time to time for a further term not exceeding 25 years in the case of any one renewal.

[Section 25 amended by No. 14 of 1996 s. 4.]

26. Transfer of right of burial

(1) A right of burial granted to a person under this Act may be assigned by the holder in his lifetime or bequeathed by will.

(2) An assignment of a right of burial shall have no effect until it is produced to the Board for registration and when so registered shall have priority over any other assignment that may subsequently be produced to the Board.

(3) The bequest of a right of burial shall have no effect until the probate of the will by which the right of burial passes is produced to the Board and the Board shall make an appropriate entry in the register upon which the bequest shall have priority over any assignment that may subsequently be produced to the Board.

27. Protection of right of burial

Before any burial is permitted to take place in a specified area which is the subject of a grant of right of burial, the Board must be satisfied that the holder of the right has consented or would not object to the burial taking place.

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28. Surrender of right of burial

The holder of a right of burial granted under this Act may surrender the right to the Board upon which all rights and obligations under the right shall terminate.

Division 3 — Control of memorials and other works

29. Control of memorials

A Board shall control the kinds of memorial permitted in a cemetery and may impose different requirements for different areas of a cemetery.

30. Permission for memorials

(1) A person who wishes to place or erect a memorial in a cemetery shall apply to the Board specifying the proposed location, design and materials of which the memorial is to be composed and the Board may approve or, if the Board considers the location to be incorrect or the proposed memorial to be inappropriate or indecorous or contrary to a local law or by-law, refuse the application.

(2) A person shall not place or assist in placing or erecting a memorial in a cemetery without the permission of the Board.

Penalty: $500.

(3) A person shall not alter or add to, or assist in the alteration of or addition to or removal of, a memorial in a cemetery without the permission of the Board.

Penalty: $500.

[Section 30 amended by No. 14 of 1996 s. 4.]

31. Removal or alteration of unauthorised memorial

(1) If a memorial in a cemetery is placed or erected or altered without the permission of the Board or, although placed, erected or altered with such permission, is placed, erected or altered

contrary to the local laws or by-laws or other requirements or conditions of the permission of the Board, the Board may give a written notice to the holder of the right of burial or other person who has caused the memorial to be so placed, erected or altered requiring that holder or other person within 28 days from receiving the notice to remove the memorial from the cemetery or to alter it in the manner specified in the notice to the satisfaction of the Board.

(2) If the holder of a right of burial or other person to whom a notice is given under subsection (1) refuses to or otherwise fails to comply with the terms of the notice, the Board may remove or alter the memorial and may recover from that holder of a right of burial or other person the costs of the removal or alteration as a debt in a court of competent jurisdiction.

[Section 31 amended by No. 14 of 1996 s. 4.]

32. Removal or alteration of memorial in disrepair

(1) If a memorial in a cemetery is, in the opinion of the Board, in need of repair or is in such a state of disrepair that repairs are not feasible, the Board may give a written notice to the holder of the relevant right of burial requiring that person within 28 days from receiving the notice to repair the memorial to the satisfaction of the Board or to remove the memorial from the cemetery, as the case may require and as specified in the notice.

(2) If the holder of a right of burial to whom a notice is given under subsection (1) refuses to or otherwise fails to comply with the terms of the notice, the Board may cause the memorial to be repaired or removed from the cemetery and may recover from that holder of a right of burial the costs of the removal or repair as a debt in a court of competent jurisdiction.

33. Preservation of graves, etc.

A Board may preserve graves, memorials and records which are, in the opinion of the Board, of historical significance.

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34. Permission for denominational chapel

If the members of a religious denomination desire, at their own expense, to build and maintain a chapel in a cemetery and the plans and specifications of the proposed chapel are approved by the Board, the Board may permit the chapel to be built in such part of the cemetery as the Board may determine.

Division 4 — Redevelopment schemes

35. Implementation of redevelopment scheme

(1) Subject to the prior approval of the Minister, a Board may, in accordance with and subject to this Division, implement a scheme for the redevelopment of a portion of the land within a cemetery which has been used for burials so that the land may be further used for one or more of the purposes of a cemetery provided for by this Act.

(2) A scheme of the kind referred to in subsection (1) is referred to in this Act as a redevelopment scheme.

36. Required action before implementation of redevelopment scheme

Before a Board implements a redevelopment scheme, the Board shall —

(a) prepare and make available for public inspection a plan of the redevelopment area showing the development proposed under the redevelopment scheme and indicating all existing burial plots within that area;

(b) take all reasonable steps to inform all holders of rights of burial in the redevelopment area of their right to object to the redevelopment scheme;

(c) not less than 12 months before the date proposed for the implementation of the redevelopment scheme, cause to be placed in a prominent position in the redevelopment area, a notice of the intention to redevelop the area

containing information as to where the plans of the redevelopment scheme may be inspected and stating that persons may make written submissions to the Board with respect to the redevelopment scheme; and

(d) not less than 3 months before the date proposed for the implementation of the redevelopment scheme, cause to be published at least once in a newspaper circulating in the district served by the cemetery a notice of intention to implement the redevelopment scheme containing information as to where the plans of the redevelopment scheme may be inspected and stating that persons may make written submissions to the Board with respect to the redevelopment scheme.

37. Submissions

(1) A Board shall give careful consideration to every submission received by the Board with respect to a proposed redevelopment scheme.

(2) A Board shall not proceed under a redevelopment scheme with the redevelopment of a specified area that is subject to a right of burial during the unexpired period of the right if the holder of the right objects.

(3) A Board may take into consideration any submissions with respect to the proposed redevelopment scheme received from any person and may modify the scheme accordingly.

(4) A Board shall forward a proposed redevelopment scheme and all submissions made thereon to the Board together with modifications to the scheme proposed by the Board (if any) to the Minister and the Minister may —

(a) approve the redevelopment scheme;

(b) approve the redevelopment scheme with such modifications as are directed by the Minister; or

(c) reject the redevelopment.

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38. Register concerning redevelopment area

(1) Before a Board implements a redevelopment scheme, the Board shall prepare a register of all burials within the redevelopment area, including details of the names and descriptions of the deceased persons and the location of the burial in every case and the details of all legible inscriptions on memorials and their location in the redevelopment area.

(2) A register prepared under subsection (1) shall be kept by the Board with the registers required to be kept under Division 5.

39. Memorials in redevelopment area

Where a Board redevelops a portion of the land within a cemetery the Board shall erect a memorial showing the names and such other details as the Board considers appropriate of deceased persons buried in the redevelopment area.

[Section 39 amended by No. 8 of 2009 s. 27.]

Division 5 — Registers

40. Board to maintain registers and plans

(1) A Board shall establish and maintain —

(a) a register containing details of all burials in the cemetery, including details of the names and descriptions of the deceased persons and details of the location of the burial in every case; and

(b) a register of all grants of right of burial in the cemetery, including details of the assignments or bequests of grants.

(2) A Board shall keep and maintain plans showing the location of all burials registered under subsection (1).

(3) A register maintained under this Act may be kept or prepared —

(a) by making entries in or on a bound or loose-leaf book; or

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(b) by recording or storing the particulars required by this Act to be entered in the register by means of a mechanical, electronic or other device, but so that the particulars so recorded or stored will remain in the form in which they were originally recorded or stored and will be capable of being reproduced in written form in the English language.

41. Registers available for inspection

(1) A Board shall make all registers kept under this Act available for inspection by members of the public at times and places set by the Board and shall on request make available copies of extracts from any register.

(2) A Board may charge a fee for the inspection of a register or for providing an extract from or certified copy of an extract from a register.

42. Register to be evidence of burials

A register of burials maintained by a Board in accordance with this Act and every document purporting to be a copy of an extract from such a register and to be certified as a true copy of an extract by or on behalf of a Board shall be admissible in evidence in any court or before any person acting judicially and shall be evidence of a burial referred to in the register or copy.

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Part VI — Management of closed cemeteries

43. Vesting control of closed cemetery

(1) The Governor may, by order published in the *Gazette*, vest the care, control and management of a cemetery closed under the *Cemeteries Act 1897* or this Act, in a Board or other person.

(2) Every closed cemetery the care, control and management of which is vested in a Board under subsection (1) shall be deemed to be a cemetery for the purposes of this Act, but no burial may be permitted in the cemetery except in accordance with section 4(2) or with the written approval of the Minister under section 12.

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Part VII — Financial provisions

44. Application

(1) Sections 46, 48, 51 and 52 do not apply to a Board which is a statutory authority for the purposes of the *Financial Management Act 2006* and the *Auditor General Act 2006*.

(2) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of a Board which is a statutory authority for the purposes of those Acts.

(3) Notwithstanding section 6, the functions conferred or imposed on Boards by sections 46, 48, 49, 51 and 52 do not apply with respect to a local government in which the care, control and management of a cemetery is vested under section 5.

[Section 44 amended by No. 14 of 1996 s. 4; No. 77 of 2006 s. 17.]

45. Funds of a Board

The funds available to a Board to enable it to perform its functions under this Act are —

(a) moneys from time to time appropriated by Parliament for that purpose;

(b) moneys received by a Board by way of fees or charges;

(c) moneys borrowed by a Board under this Act; and

(d) moneys otherwise paid to or made available to a Board.

46. Establishment of accounts

A Board shall —

(a) do all things necessary to ensure that —

(i) all moneys received are properly brought to account;

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(ii) all payments by the Board are correctly made and properly authorised; and

(iii) adequate control is maintained over the assets of or in the custody of the Board and over the incurring of liabilities by it;

and

(b) cause to be kept proper accounts and records of its transactions and affairs in such manner as the Minister may from time to time direct.

47. Authorised expenditure

A Board may authorise funds to be expended for the performance of any of the functions of the Board under this Act or any other purpose approved by the Minister.

48. Estimates

If the Minister so directs, a Board shall cause annual estimates of its financial operations in respect of the performance of its functions under this Act to be —

(a) prepared under such headings and in such manner as the Minister directs; and

(b) submitted to the Minister not later than a date specified by the Minister.

49. Borrowing

A Board may borrow money for the performance of its functions under this Act by —

(a) obtaining advances from a bank on overdraft or on security of any of the Board's property, including fees or charges; or

(b) the issue of any securities approved by the Treasurer.

50. Banking and investment

(1) A Board may open and operate bank accounts.

(2) A Board may invest any moneys held by it as trust funds may be invested under Part III of the *Trustees Act 1962*.

[Section 50 amended by No. 1 of 1997 s. 18.]

51. Financial statements

(1) A Board shall cause to be prepared in respect of each financial year ending on 30 June financial statements, in such form as the Minister may from time to time approve, comprising —

(a) a statement of financial transactions of the Board for the financial year;

(b) a statement of the financial position of the Board at the end of the financial year; and

(c) such financial statements other than those referred to in paragraphs (a) and (b) as the Minister from time to time directs,

and shall forthwith submit those financial statements to the Auditor General for audit and to the Minister.

(2) The financial statements referred to in subsection (1) shall —

(a) present fairly the financial transactions of the Board for the financial year to which they relate; and

(b) present fairly the financial position of the Board at the end of the financial year.

52. Audit

On receiving the financial statements submitted to him under section 51, the Auditor General shall examine and audit the accounts and records of the financial transactions of the Board and shall —

(a) forthwith draw the attention of the Minister and the Board to any irregularity disclosed by that audit that is in the opinion of the Auditor General, of sufficient importance to justify him so doing; and

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(b) report to the Minister and to the Board on —

(i) whether or not in his opinion the financial statements are based on proper accounts and records;

(ii) whether or not in his opinion the financial statements are properly drawn up in accordance with the relevant generally accepted accounting standards so as to present fairly the financial transactions of the Board for the period under review and the financial position at the end of that period;

(iii) whether or not in his opinion the controls exercised by the Board are adequate to provide reasonable assurance that the receipt, expenditure and investment of moneys and the acquisition and disposal of assets have been lawful and proper; and

(iv) such other matters arising out of the financial statements as the Auditor General considers should be reported.

53. Fees and charges

(1) A Board may by resolution set fees and charges for any of the following purposes —

(a) issuing a funeral director's licence;

(b) issuing a single funeral permit;

(c) digging or opening a grave;

(d) a grant or renewal of a grant of a right of burial;

(e) permission to erect new or additional memorials and for supervising such work;

(f) cremation;

(g) conducting a funeral;

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(h) inspection of registers and issue of extracts or certified copies therefrom;

(i) registration of the assignment or bequest of a right of burial;

(j) exhumation;

(k) maintenance of graves;

(l) extraordinary services provided for funerals;

(m) disposal of ashes;

(n) the provision of memorials; and

(o) any other purpose necessary for the effective administration of this Act.

(2) A fee or charge set by a resolution under subsection (1) shall not come into effect until not less than 14 days' notice of the fee or charge has been given in the *Gazette*.

(3) Fees and charges set under this section shall be payable to the Board and recoverable as a debt in a court of competent jurisdiction.

(4) The Minister may, by order published in the *Gazette*, amend or revoke a fee or charge set by a Board under this section if the Minister considers the fee or charge to be unreasonable.

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Part VIII — Local laws, by-laws and regulations

[Heading amended by No. 14 of 1996 s. 4; No. 57 of 1997 s. 29(1).]

54. Procedure for local laws and by-laws

(1) A Board that is a local government may make local laws in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995* for the purposes specified in section 55.

(2) A Board that is not a local government may make by-laws for the purposes specified in section 55 and is to make them in accordance with subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995* as if the Board was a local government making local laws.

[Section 54 inserted by No. 14 of 1996 s. 4.]

55. Local laws and by-laws

(1) A Board may make local laws or by-laws, as the case may be, that are necessary or convenient for the purposes of this Act and in particular for any of the following purposes —

(a) prescribing types of memorials permitted in different areas of a cemetery;

(b) prescribing the location, dimensions and preparation of graves;

(c) prescribing specifications and materials for memorials;

(d) prescribing specifications and materials for coffins for burials and cremations;

(e) prescribing methods for the disposal of ashes of cremated bodies in a cemetery;

(f) prescribing requirements for the burial and covering of coffins;

(g) for the protection of memorials and the land and property of a Board;

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(h) regulating the grant of rights of burial;

(i) regulating the maintenance of areas for burials and empowering a Board to enter into an agreement with the holder of a right of burial for the maintenance of an area at the expense of such holder;

(j) regulating, subject to the provisions of the *Cremation Act 1929*, the operation of any crematorium used by a Board;

(k) convening and regulating meetings of a Board;

(l) for the conduct of funerals, including the conduct of funerals by a Board;

(m) prescribing the procedures of a Board with respect to applications for and issue of licences, permits and permissions;

(n) regulating the entry to and use of vehicles in a cemetery;

(o) regulating the manner of payment and the receipt of fees and charges;

(p) providing that contravention of a local law or by-law constitutes an offence and providing for penalties not exceeding a fine of $500 and if the offence is a continuing one to a further fine not exceeding $20 for every day or part of a day during which the offence has continued;

(q) prescribing offences for the purposes of sections 63 and 64 by setting out the offences or by reference to the provisions contravention of which constitutes the offences and in respect of each such offence prescribing the modified penalty, or different modified penalties according to the circumstances by which the offence is attended, applicable if the offence is dealt with under those sections, but so that no such modified penalty exceeds $50; and

(r) generally for the doing of all such acts and things as are or may be necessary or convenient for the effective administration of a cemetery.

[Section 55 amended by No. 14 of 1996 s. 4; No. 57 of 1997 s. 29(2).]

56. Model local laws

(1) The Governor may cause to be prepared and published in the *Gazette* model local laws the provisions of which a local law or by-law made under this Act may adopt by reference, with or without modification.

(2) Model local laws have no effect except to the extent that they are adopted.

(3) The Governor may, by notice published in the *Gazette*, amend a model local law published under this section.

(4) An amendment to a model local law does not affect any local law or by-law that adopted the model local law before the amendment but the amendment may be adopted by a further local law or by-law.

[Section 56 inserted by No. 14 of 1996 s. 4.]

56A. Governor may amend or repeal local laws or by-laws

(1) The Governor may make a local law to amend the text of, or repeal, a local law or by-law.

(2) Subsection (1) does not include the power to amend a local law or by-law to include in it a provision that bears no reasonable relationship to the local law or by-law as in force before the amendment.

(3) The Minister is to give a Board notice in writing of any local law that the Governor makes to amend the text of, or repeal, any of the Board's local laws or by-laws.

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(4) A local law made under this section is to be taken, for all purposes, to be a local law or by-law made by the Board which made the local law or by-law that is amended or repealed.

(5) Section 3.17 of the *Local Government Act 1995* does not apply in relation to local laws made under this Act.

[Section 56A inserted by No. 14 of 1996 s. 4.]

57. Regulations

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Extract from www.slp.wa.gov.au, see that website for further information

Part IX — Miscellaneous

58. Minister may order exhumation

The Minister may in writing order the exhumation of a body and the re-burial or disposal of the ashes after cremation of the body in accordance with this Act and may further order how and by whom the costs of the exhumation, re-burial or disposal shall be met.

59. Board may authorise exhumation and re-burial

A Board may in writing authorise the exhumation of a body buried in the cemetery and the re-burial or disposal of the ashes after cremation of the body in that cemetery.

60. Power to lease or take a lease of land or buildings

For any of the purposes of this Act, a Board may let or lease land or all or part of any building and may acquire a tenancy or lease of land or all or part of any building.

61. Provision of housing

A Board may —

(a) erect, purchase, take on lease or tenancy or otherwise acquire land, houses or other dwelling units for the accommodation of employees of the Board;

(b) require employees to pay a rental for the occupation of accommodation and deduct amounts of rental from the remuneration payable to employees; and

(c) sell or otherwise dispose of land, houses or dwelling units no longer required for providing accommodation for employees.

62. Wilful damage to memorials, etc.

A person who wilfully and unlawfully destroys or damages any memorial or any property in a cemetery commits an offence.

Penalty: $1 000.

[Section 62 amended by No. 50 of 2003 s. 43(2).]

Extract from www.slp.wa.gov.au, see that website for further information

63. Infringement notice

(1) An authorised person who has reason to believe that a person has committed an offence against a local law or by-law with respect to a cemetery that is prescribed to be an offence that may be dealt with under this section may, at or within 30 days after the time the offence is believed to have been committed, give to that person a notice in the prescribed form informing him that if he does not wish to be prosecuted for the alleged offence in a court he may, within 21 days after the giving of the notice, pay to a person specified in the notice, not being the person giving the notice, the amount of money specified in the notice as being the modified penalty for that offence.

(2) A person given an infringement notice may decline to be dealt with under this section and, if the modified penalty is not paid within the period specified in the notice, or within such further time as may, whether before or after the expiry of that period, be allowed by a prescribed person, the person given the notice is deemed to have declined to be dealt with under this section.

(3) An infringement notice may, whether or not the modified penalty has been paid, be withdrawn, at any time within 28 days after the giving of the notice, by the sending of a notice, in the prescribed form, signed by a prescribed person, to the alleged offender advising the alleged offender that the infringement notice has been withdrawn, and, in that event, the amount of any modified penalty that has been paid shall be refunded.

(4) Where a modified penalty has been paid pursuant to an infringement notice and the notice has not been withdrawn as provided by subsection (3) proceedings shall not be brought against any person with respect to the offence alleged in the notice.

[Section 63 amended by No. 14 of 1996 s. 4; No. 84 of 2004 s. 80.]

Extract from www.slp.wa.gov.au, see that website for further information

64. Authorised persons

(1) An employee of a Board may be authorised in writing signed by the chairman of the Board to give infringement notices.

(2) A Board shall issue to each authorised person a certificate in the prescribed form which he shall produce whenever required to do so by a person to whom he has given, or is about to give, an infringement notice.

65. Name to be given

(1) A member or an employee of a Board who finds a person committing an offence, or who on reasonable grounds suspects a person of having committed an offence, against this Act may require the alleged offender to provide true and complete details of his name and residential address.

(2) A person who fails or refuses to provide true and complete details of his name and residential address on being required to do so under subsection (1) commits an offence and is liable to a fine of $500.

66. Repeal

The *Cemeteries Act 1897* is repealed.

67. Transitional and savings

(1) Schedule 2 has effect.

(2) Except as otherwise provided in Schedule 2, nothing in that schedule affects any saving provided for by the *Interpretation Act 1984*.

Extract from www.slp.wa.gov.au, see that website for further information

Schedule 1 — Constitution and procedure of Boards

[s. 8]

[Heading amended by No. 19 of 2010 s. 4.]

1. Term of office

Except as otherwise provided by this Act, a member shall hold office for such term not exceeding 5 years as is specified in his instrument of appointment, and may from time to time be reappointed.

2. Vacating office

The office of a member becomes vacant if —

(a) he resigns his office in writing signed by him and delivered to the Minister; or

(b) he is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(c) he is removed from the office by written notice signed by the Minister and delivered to the member; or

(d) he is absent, except on leave granted by the Board, from 3 consecutive meetings of the Board of which he has had notice.

[Clause 2 amended by No. 18 of 2009 s. 14.]

3. Chairman

The Minister may appoint one of the members of the Board to be chairman or may direct the members to appoint one of their members to be chairman.

4. Meetings

(1) At a meeting of the Board the chairman shall preside but where the chairman is absent from a meeting, the members present shall appoint one of them to preside at that meeting.

(2) At any meeting of the Board, the chairman or other member presiding shall have a deliberative vote and in the case of an equality of votes shall also have a casting vote.

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(3) A Board shall cause accurate minutes to be kept of the proceedings at its meetings.

5. Quorum

At any meeting of the Board a majority of the members constitute a quorum.

6. Resolution may be passed without meeting

A resolution in writing signed or assented to by letter, telegram or telex by each member shall be as valid and effectual as if it had been passed at a meeting of the Board.

7. Leave of absence

A Board may grant leave of absence to a member on such terms and conditions as it thinks fit.

8. Board to determine own procedures

Subject to this Act and to local laws or by-laws made under this Act, a Board shall determine its own procedures.

[Clause 8 amended by No. 14 of 1996 s. 4.]

Extract from www.slp.wa.gov.au, see that website for further information

Schedule 2 — Transitional and savings provisions

[s. 67]

[Heading amended by No. 19 of 2010 s. 4.]

1. Terms used in this Schedule

In this Schedule —

commencement day means the day fixed under section 2 as the day on which this Act comes into operation;

repealed Act means the *Cemeteries Act 1897*.

2. Existing public cemeteries deemed cemeteries

Places appointed as public cemeteries by proclamation of the Governor under section 5 of the repealed Act and disused burial grounds deemed to be cemeteries by reason of section 41B of the repealed Act shall on the commencement day be deemed to be cemeteries for the purposes of and subject to this Act.

3. Management by local government authority

Where immediately before the commencement day a local government authority is the sole trustee of a public cemetery (having been so appointed under section 10 of the repealed Act), the care, control and management of the cemetery shall on the commencement day be deemed by order under section 5 to have been vested in the local government authority for the purposes of and subject to this Act.

4. Trustees to become Board members

Where immediately before the commencement day persons (other than a local government authority) are the trustees of a public cemetery (having been so appointed under section 10 of the repealed Act) —

(a) the care, control and management of the cemetery shall on the commencement day be deemed to have been vested by order under section 5 in a Board for the purposes of and subject to this Act;

(b) the body corporate incorporated under section 10A of the repealed Act shall on the commencement day continue as a

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body corporate and be deemed from that day to have been established as a cemetery board by order under section 7 for the purposes of and subject to this Act under the name of the " Cemetery Board" (the word "Cemetery" being preceded by the name of the cemetery for which the trustees were appointed); and

(c) the trustees holding office immediately before the commencement day shall be deemed to have been appointed to be members of the Board for a term of 12 months beginning on the commencement day.

5. Existing funeral directors' licences

(1) Where immediately before the commencement day a person holds a funeral director's licence valid in respect of a public cemetery and issued to the person under by-laws made under the repealed Act by the trustee or trustees of that cemetery, the licence shall be deemed to be a funeral director's licence issued to that person under section 17 and valid for the conduct of funerals at the cemetery or cemeteries specified in the licence.

(2) A funeral director's licence deemed to have been issued by virtue of subclause (1) shall be valid, unless it is sooner suspended or cancelled under section 18, for the term for which it was issued, except that it shall not in any case be valid for a term longer than 12 months from the commencement day.

6. Grants of right of burial

Nothing in this Act shall affect a right of burial in a cemetery granted under the repealed Act, except that in the case of such a right granted in perpetuity or for an indefinite term or for a term extending more than 25 years after the commencement day, the right shall be varied by virtue of this clause so that the right expires on a day 25 years after the commencement day.

7. Registers

The registers of burials and grants of right of burial kept under sections 19 and 21 of the repealed Act shall be deemed to form part of the registers required to be kept under section 40(1)(a) and (b) respectively.

Extract from www.slp.wa.gov.au, see that website for further information

8. Fees and charges

Where immediately before the commencement day fees and charges are prescribed in respect of a cemetery by by-laws made under the repealed Act, the fees and charges shall on the commencement day be deemed to be set by resolution by the Board under and subject to section 53.

9. Saving

All acts, matters and things that immediately before the commencement day were in existence or in operation under the repealed Act shall, in so far as is consistent with this Act, subsist and enure as if at the time they originated or were done this Act had been in operation and they had originated or been done thereunder.

Extract from www.slp.wa.gov.au, see that website for further information

Notes

[1] This is a compilation of the *Cemeteries Act 1986* and includes the amendments made by the other written laws referred to in the following table ~~[1a], [5]~~. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Cemeteries Act 1986	102 of 1986	12 Dec 1986	1 Jul 1987 (see s. 2 and *Gazette* 12 Jun 1987 p. 2319)
Acts Amendment (Public Service) Act 1987 s. 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and *Gazette* 16 Mar 1988 p. 813)
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Trustees Amendment Act 1997 s. 18	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and *Gazette* 10 Jun 1997 p. 2661)
Acts Amendment (Land Administration) Act 1997 s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and *Gazette* 27 Mar 1998 p. 1765)
Statutes (Repeals and Minor Amendments) Act 1997 s. 29	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Reprint of the *Cemeteries Act 1986* as at 3 Apr 2002 (includes amendments listed above)			
Sentencing Legislation Amendment and Repeal Act 2003 s. 43	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 17 [4]	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53))
Financial Legislation Amendment and Repeal Act 2006 s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)

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Short title	Number and year	Assent	Commencement
Reprint 2: The *Cemeteries Act 1986* as at 25 May 2007 (includes amendments listed above)			
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 27	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Acts Amendment (Bankruptcy) Act 2009 s. 14	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Standardisation of Formatting Act 2010 s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341)

[1a] On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
Public Sector Reform Act 2010 s. 89[6]	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)

[2] Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was changed under the *Reprints Act 1984* s. 7(5)(a).

[2] Footnote no longer applicable.

[3] Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Act 1984* s. 7(3)(g).

[4] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

[5] The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 8 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

[6] On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

89. Various references to "Minister for Public Sector Management" amended

(1) This section amends the Acts listed in the Table.

(2) In the provisions listed in the Table delete "Minister for Public Sector Management" and insert:

Public Sector Commissioner

Table

Cemeteries Act 1986	s. 9