



Western Australia.

ANNO SEXAGESIMO PRIMO

VICTORIÆ REGINÆ.

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No. XXIII.

AN ACT for the Regulation of Cemeteries.

[Assented to, 23rd December, 1897.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. THIS Act may be cited as the Cemeteries Act, 1897.

Short title.

2. THE Acts mentioned in the First Schedule hereto are repealed:

Repeal.

Provided that such repeal shall not affect any right acquired, liability (civil or criminal) incurred, order made, or proceeding instituted under any enactment hereby repealed.

3. NOTHING in this Act shall apply to any burial ground vested in trustees under the ninth section of the Act passed in the fourth year of Her present Majesty, numbered Six.

Act not to apply to burial grounds under 4 Vict. 6, s. 9.

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Interpretation.

4. IN this Act—

“ Prescribed ” shall mean prescribed by by-laws or regulations made under this Act, and

“ Writing ” shall include print, and part writing and part print and “ written ” shall have a corresponding meaning.

Governor may by proclamation appoint cemeteries and close cemeteries.  
10 Vict. 12, s. 1.  
52 Vict. 14. s. 1.

5. THE Governor may from time to time, by proclamation, appoint such place or places, hereinafter called public cemeteries, in each district as he shall deem expedient to reserve for the burial of the dead, and may from time to time, by proclamation, declare any such place to be closed for burials.

Prohibition of burial in closed cemetery.  
10 Vict. 12, s. 2.

6. (1.) WHERE a public cemetery has been appointed as aforesaid, and is not closed as aforesaid, every person who, within ten miles from any such cemetery, shall assist at the burial of any dead body in any place other than a public cemetery, shall be liable to a fine of not more than Fifty pounds.

10 Vict. 12, s. 3.

(2.) Every person who, for the purpose of a burial forbidden by this Act, shall bear or assist in bearing, or otherwise conveying a dead body, or who shall direct or procure any such burial, or shall officiate thereat as a clergyman or minister of any persuasion, or as clerk shall be deemed to assist at such burial within the meaning of this Act.

Discontinuance of cemeteries.

7. NO public cemetery or burial ground shall be established or opened in Western Australia save with the approval of the Governor, and in case it shall appear to the Governor that burials in any cemetery, under any law relating to public cemeteries, or in any other burial ground or place of burial whatsoever, should be wholly discontinued or should be discontinued subject to any exception or qualification, the Governor may, by order to be published in the *Government Gazette*, direct that after a time to be mentioned in such order, not being less than three months from the date thereof, burials in such cemetery or burial place, ground or place of burial shall be discontinued wholly or subject to any exception or qualifications mentioned in the same or in any subsequent order, and may from time to time postpone the time mentioned in such order for the discontinuance of burials or otherwise vary any such order, whether the time appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived.

Justice may order disinterment of body buried contrary to the preceding sections.  
*Ibid.*, s. 4.

8. ANY Justice of the Peace may cause any dead body buried contrary to the last preceding section to be disinterred, and be buried in such place as he may think expedient in conformity with this Act.

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9. PROVIDED, nevertheless, that the Governor may, for special reasons which appear to him to justify or require it, give order or permission for the burial of any dead body in a place other than a public cemetery appointed as aforesaid, and in a place or public cemetery closed for burials as aforesaid.

Governor may permit burial not in cemetery.  
*Ibid.*, s. 5.  
52 Vict. 14, s. 3.

10. THE Governor may from time to time appoint, and from time to time remove, any number of persons, not less than three, to be trustees of any public cemetery, and may, by deed of grant, vest any lands and hereditaments in such trustees for a public cemetery, and two of such trustees shall be a quorum for transacting business.

Governor may appoint and remove trustees of a public cemetery and may vest cemetery in them.

Every such removal and appointment shall be notified in the *Government Gazette*, and upon the copy of the *Gazette* containing such notification being served upon the Registrar of Titles, the legal estate in the trust premises shall, without any further transfer or conveyance, vest in the new trustee or trustees, either solely or conjointly with any continuing trustee or trustees as the case may be.

11. THE majority in number present at any meeting of the said trustees shall decide and determine all questions and matters which may be discussed or considered at any meeting, and in case of an equal division upon any question or matter the chairman for the time being shall have a casting vote in addition to his own vote.

Questions to be decided by majority.

12. THE trustees of any such cemetery shall have power to enclose the land so granted as aforesaid, with proper walls, rails, or fences, and to erect suitable gates and entrances, and to lay out and ornament such cemetery in such a manner as may be most suitable and convenient for the burial of the dead, and to embellish the same with such walks, avenues, roads, trees, and shrubs as may seem proper, and to maintain and keep in a cleanly and orderly state the whole of such cemetery, and all monuments, tombstones, enclosures, buildings, walks, trees, and shrubberies therein; and the trustees shall expend, subject to the directions of the Governor, the moneys from time to time received by them, under this Act, in the matters aforesaid, and in the burial of poor persons.

Trustees to lay out cemetery.

Victorian Cemeteries Act, 1893, s. 7.

13. SUBJECT to any distribution made by the original deed of grant, or conveyance, the trustees may specially set apart portions of the cemetery for the burial of persons of the different religious denominations respectively.

Division of cemetery according to religious denominations.

14. SUBJECT to this Act, the trustees of every public cemetery may make by-laws for any of the following purposes:—

Trustees may make by-laws.

For directing the position and depth of graves, and the position and construction of vaults, the construction of

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coffins to be admitted into vaults, and the covering of vaults and coffins so as to prevent any noxious exhalation or evaporation, and for protecting the monuments, tombstones, enclosures, buildings, walks, trees, and shrubberies ;

For the fees to be paid for permission to dig or open a grave, or to make or open a vault, or erect or place any monument, tombstone, or enclosure, or for the right of burial in any private grave, and for any other purpose necessary for carrying out this Act, and for the mode of recovering and enforcing payment of such fees ;

For convening meetings of themselves and transacting their business ;

And generally for the doing of all such acts and things as may be necessary or convenient for the purpose of the cemetery :

But no such by-law shall be in force until it is approved by the Governor, and published in the *Government Gazette*.

Religious ceremonies not to be interfered with, and ministers of religion to have free access.

*Ibid.*, ss. 14 and 15.

**15.** THE trustees of any cemetery shall not, by any by-law or rule, or by any act or thing, at any time interfere, directly or indirectly, with the performance of any religious ceremony in the burial of the dead according to the usage of the denomination to which the deceased belonged, and the ministers of any denomination, for which any portion of the cemetery has been specially set apart, may have free access to such portion at all reasonable times, and may freely exercise their religious functions therein without disturbance by the trustees or any person whomsoever.

Mortuary Chapels may be built by religious denominations.

*Ibid.*, s. 27.

**16.** IF the members of any religious denomination desire, at their own expense, to build in a cemetery a suitable mortuary church or chapel for the performance of the rites and ceremonies in the burial of the dead according to the usages of such denomination, and the plans, specifications, and elevations thereof are approved by the trustees, they may permit such church or chapel to be built in such part of the cemetery as shall be specially set apart for that denomination.

Vaults, graves, monuments, tombstones, etc.

*Ibid.*, s. 17.

**17.** UPON receipt of the fees, according to the scale by this Act prescribed, the trustees may permit any vault or grave to be made or dug in the cemetery, and any monument, tombstone, headstone, or enclosure to be placed or erected in any part thereof.

Parts of a cemetery may be set apart for exclusive burial.

**18.** THE trustees may set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein, and they may grant, either in perpetuity or for a limited time, and subject to such conditions as may be prescribed, the exclusive

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right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and may grant the right of placing any monument, tombstone, or enclosure in the cemetery.

10 & 11 Vict., c. 65  
(Imp.), s. 40.

**19.** THE trustees shall give a distinctive number to every burial place or grave, and shall cause a plan of the cemetery to be made on a scale large enough to show the situation and distinctive number of every such burial place or grave, and shall keep a book containing the distinctive numbers in numerical order, and the names and descriptions of the persons buried therein.

Plan and book of reference to be kept and be open to inspection.

*Ibid.*, s. 41.

**20.** THE grant of the exclusive right of burial in any part of the cemetery and the grant of the right of placing any monument, tombstone, or enclosure therein may be made in the form in the Second Schedule to this Act or to the like effect.

Form of grant of exclusive right of burial.

Second Schedule.

*Ibid.*, s. 42.

**21.** THE trustees shall keep a register of all such grants, and shall enter in the register within seven days after making any such grant a memorial of the date thereof, the consideration therefor, and the names and descriptions of the grantees thereof, and for such registration may demand Two shillings and sixpence or other lower fee prescribed, and any grantee or his assignee may, at all reasonable times, peruse the register on payment of One shilling or other lower fee prescribed.

Register of grants to be kept.

*Ibid.*, s. 43.

**22.** (1.) THE exclusive right of burial by this Act provided for, whether granted in perpetuity or for a limited time, shall be considered the personal estate of the grantee, and may be assigned by him in his lifetime or bequeathed by his will.

Rights of burial to be personal estate.

*Ibid.*, s. 44.

(2.) Every such assignment shall be produced to the trustees, who shall enter in the register a memorial thereof in like manner as of the original grant, and, until registration, such assignment shall have no effect, and when so registered shall have priority over every assignment subsequently produced, though of earlier date.

Assignments thereof to be registered.

*Ibid.*, s. 46.

(3.) The probate of every will by which the exclusive right of burial passes shall be produced to the trustees, who shall enter in the register a memorial thereof, and, in case there be any specific disposition of such right of burial, shall make an entry thereof, and until registration such bequest shall have no effect, and when registered shall have priority over every other assignment subsequently produced.

Registration of probates of wills making gifts thereof.

*Ibid.*, s. 47.

(4.) For every such registration the trustees may demand Two shillings and sixpence or other lower fee prescribed.

**23.** A PERSON desiring to place or erect any monument, tombstone, or enclosure in any part of the cemetery shall, before

Plan of vault, etc., to be submitted to the trustees.

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Victorian Cemeteries Act, 1890, s. 18.

obtaining permission so to do, submit a plan of such monument, tombstone, or enclosure, and specifying the materials of which it is to be composed, to the trustees, who, if the same is in any way inappropriate or unbecoming, may withhold their permission, and no alterations or additions thereto shall be made, either by inscription or otherwise, without the consent of the trustees first had and obtained.

Brick or stone graves to be water-tight.

**24.** EVERY person who has the exclusive right of burial in a grave or vault in a cemetery shall, at his own expense,—

*Ibid.*, s. 19.

(1.) Cause such grave if lined with brick or stone, and such vault if made of brick or stone, to be made and kept water-tight.

Coffins therein to be air-tight and water-tight.

(2.) Cause every coffin deposited in a grave lined, or in a vault made, as aforesaid to be built in and covered with a substantial slab of stone, and be made and kept air-tight and water-tight, and any space surrounding such coffin to be filled in with charcoal, dry earth, or other suitable material.

Penalty.

If, for seven days after receiving a notice in writing from the trustees requiring compliance with this section, such person shall fail so to comply, he shall be liable, on conviction, to a fine not exceeding Twenty pounds, and the trustees may cause to be done the act or thing required, and may recover the expense thereof from such person in a summary way before two Justices in Petty Sessions.

Grave, vaults, etc., to be kept in repair.

**25.** EVERY person who has the exclusive right of burial in a grave or vault in a cemetery shall—

*Ibid.*, s. 21.

(1.) Keep in repair every grave, vault, monument, tombstone, or enclosure, in the part of the cemetery which is the subject of such exclusive right, and, within twenty-eight days after receiving notice in writing from the trustees, shall execute the repairs required in that behalf by such notice.

Noxious exhalations or evaporations from vaults or graves.

*Ibid.*, s. 20.

(2.) Upon receiving notice in writing from the trustees that they believe that noxious exhalations or evaporations are escaping from such grave or vault, and requiring him to cause such grave or vault to be opened for examination on a specified day, not less than seven days from the delivery of such notice, shall cause the same to be opened accordingly, and, if required by the trustees, shall fill up the same with charcoal, dry earth, or other suitable material.

Penalty.

If such person fails to comply with any such notice, the trustees may cause to be done the act or thing required and by such person

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omitted to be done, and may recover the expense thereof from such person in a summary way before two Justices in Petty Sessions.

**26.** BEFORE any dead body shall be buried in any part of a cemetery which is the subject of a grant of exclusive right of burial as aforesaid, the trustees shall be entitled to satisfactory evidence that the person entitled under such grant has consented, or would not object to such burial taking place therein.

Right of exclusive burial protected.

*Ibid.*, s. 24.

**27.** THE person entitled to such exclusive right as aforesaid, on producing to the trustees satisfactory evidence thereof, may deliver up his grant to be cancelled, or if the grant be proved to be lost may release to the trustees his rights thereunder, and thenceforth such person shall not be entitled to any rights, and shall be exempt from all liabilities under such grant or this Act.

Power to relinquish right of burial.

*Ibid.*, s. 25, altered in form.

**28.** WHEN any monument, tombstone, or enclosure has been placed or erected contrary to the terms and conditions on which permission for the same was granted, or such terms and conditions and the by-laws of the cemetery have not been complied with, the trustees may remove such monument, tombstone, or enclosure.

Monuments, etc., if not within permission, may be removed.

*Ibid.*, s. 26, altered in form.

**29.** (1.) THE Governor may, by warrant under his hand, direct such sum of money as he may think fit to be paid out of any sums appropriated by the Parliament for the establishment of cemeteries to the trustees of any cemetery, by way of salary, not exceeding at the rate of One hundred pounds per annum for each trustee, and such sum as the Governor may think fit in trust for the establishment and management of the cemetery.

Governor may direct money to be paid to trustees for salaries and for management of cemetery.

*Ibid.*, ss. 28, 29, and 30, altered and abridged.

(2.) The Governor may either direct such sum to be lent to the trustees, to be repaid out of the fees receivable by them, or, if it seems improbable that such fees will be sufficient to repay such loan, he may cause such sum to be paid to the trustees upon trust as aforesaid without requiring it to be repaid.

Either as loan or gift.

(3.) If, upon making such a loan as aforesaid, the Governor requires the same to be secured upon the fees receivable by the trustees, such security shall not involve any trustee in personal liability.

And, if loan, it may be secured on burial fees.

**30.** THE trustees of every cemetery shall keep a full and particular account of all sums of money received and expended by them, and in each year between the first day of July and the thirtieth day of September shall cause to be prepared for the year ending the thirtieth day of June preceding, under the distinct heads of receipt and expenditure, an abstract of such account showing the

Trustees to render account to be laid before Parliament.

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purposes of such expenditure. Every such account shall contain a statement of the balance thereof, and shall be duly audited and certified by the Auditor General, and a true copy thereof, in abstract, shall be published in the *Government Gazette* on or before the thirty-first day of December in the year in which it was prepared, and shall be presented to Parliament.

Trustees to transmit account verified to Colonial Treasurer with report on cemetery, etc.

*Ibid.*, ss. 32 and 33.

**31.** BEFORE the thirtieth day of September in every year the trustees shall transmit to the Colonial Treasurer a copy of such account and abstract, verified respectively by a statutory declaration made by at least two of the trustees, and a statement of the condition of the cemetery as to repairs, order, and ornament, and a suggestion as to the alterations or additions necessary or expedient for the ensuing year in such repairs, order, and ornament, and an estimate of the expense of effecting the same.

Governor to direct appropriation of moneys.

*Ibid.*, s. 34

**32.** UPON examination of the said accounts, statements, suggestions, and estimates, the Governor shall direct the manner in which the balance of the moneys in the hands of the trustees shall be appropriated; and, if any such sum so lent or advanced as aforesaid be unpaid, shall determine the proportion (if any) to be applied in payment of such sum and the amount to be allowed as salary to the trustees, and the amount to be expended in the management, laying out, or improvement of the cemetery, or the burial of poor persons during the ensuing year.

Governor's direction to be published in *Gazette*.

*Ibid.*, s. 35.

**33.** EVERY such direction shall be published in the *Government Gazette*, and thereupon the trustees shall pay such proportion as aforesaid (if any) to the credit of the Consolidated Revenue Fund, and shall apply the balance as directed.

Penalty for not transmitting account.

*Ibid.*, s. 36.

**34.** UPON the failure of the trustees of any cemetery to make and transmit such account and abstract as aforesaid, and verified as aforesaid, every trustee of the cemetery shall be liable, on conviction, to a fine not exceeding Fifty pounds.

Malicious injury to vaults, monuments, etc.

*Ibid.*, ss. 39, 38.

**35.** EVERY person who wantonly or wilfully destroys or injures, or causes to be destroyed or injured, any building, vault, monument, tombstone, enclosure, fence, tree, shrub, or other thing affixed to, or growing in, any cemetery, or who wilfully defaces or obliterates, or attempts to deface or obliterate, any monumental device or inscription in any cemetery, shall be liable, on conviction, to a fine not exceeding Twenty pounds, or to imprisonment for not more than three months with or without hard labour, and the trustees of the cemetery may prosecute for any such offence.



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**36.** EVERY person who, whether wantonly or wilfully or not, does or causes to be done any injury such as is mentioned in the last preceding section, whether convicted of the same or not, shall be liable in damages, which may be recovered by the trustees of the cemetery or by the person who has suffered the injury.

Compensation to be paid for injury whether malicious or not.

*Ibid.*, s. 40.

**37.** ANY trustee and any of the officers or servants of the trustees, and all such persons as they or any of them may call to assist, may seize and detain any person who shall commit or be in the act of committing an offence against this Act, and whose name and place of abode shall be unknown to such trustee, officer, or servant, and to convey such person before some Justice of the Peace without other warrant or authority than this Act; and if such person refuse to satisfy such Justice as to his name and place of abode, such Justice is hereby empowered and required either to proceed immediately to hear and determine the complaint in the same manner as if heard by summons before two or more Justices, or to order such person to be detained in custody until he shall be brought before two or more Justices to be dealt with in the ordinary course.

Trustees, etc., may seize and detain transient offenders.

*Ibid.*, s. 41.

**38.** ALL burials within any cemetery under any law for the time being in force relating to public cemeteries shall be registered in a book to be provided and kept by the trustees for that purpose, and the entries shall distinguish in what parts of the cemetery the several bodies are buried, and shall be indexed so as to facilitate search. The register book shall be open to search at all reasonable hours on payment of a fee not exceeding One shilling, and such book, or a copy thereof, or extract therefrom, shall be received before all courts and persons as evidence of the burials entered therein.

Register of burials.

*Ibid.*, s. 48.

**39.** (1.) A JUSTICE of the Peace, upon being satisfied that any person deceased was poor, and that his relatives are unable to pay the charges of burial, may make an order directing him to be buried in any cemetery free of charge.

Burial of poor persons.

*Ibid.*, s. 49.

(2.) The trustees of any cemetery may, and, upon an order signed by a Justice of the Peace, shall permit the dead body of any poor person to be buried in such cemetery free of charge; and, if such person shall be known to have belonged to a religious denomination, he shall be buried in the portion of the cemetery (if any) set apart for such denomination.

**40.** ALL fees due under this Act may be recovered and all offenders against this Act may be prosecuted before a Resident Magistrate or two Justices of the Peace in Petty Sessions.

Summary prosecution of offenders.

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Governor may order  
exhumation of  
corpse.

**41.** THE Governor may order the exhumation of any corpse for the purpose of examination or identification, or for the purpose of its being buried elsewhere in accordance with the wishes of the deceased or of his family ; and such exhumation shall take place accordingly.

Regulations.

**42.** THE Governor may, from time to time, make, repeal, and alter regulations for carrying this Act into effect.

By-laws and regu-  
lations to be gazetted  
and laid before  
Parliament.

**43.** ALL by-laws and regulations made under the authority of this Act shall be published in the *Government Gazette*, and shall be laid before both Houses of Parliament within fourteen days after such publication if Parliament be then sitting, and, if Parliament be not then sitting, within fourteen days after its next meeting ; and all such by-laws and regulations, when so published, shall have the force of law and shall continue in force until repealed and altered as aforesaid, or disallowed by both Houses of Parliament.

Incorporation of parts  
of Shortening Ordi-  
nance.

**44.** SECTIONS A and C of the Schedule to the Shortening Ordinance, 1853, shall be incorporated with and taken to form part of this Act to all intents and purposes, and in as full and ample a manner as if the said sections had been introduced and fully set forth in this Act.

In the name and on behalf of the Queen I hereby assent  
to this Act.

GERARD SMITH, Governor.

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### Schedule I.

Section 2.

An Ordinance to provide for the establishment of proper places for the burial of the dead (10 Vict., No. 12).

The Cemetery Closure Act, 1888 (52 Vict., No. 14).

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### Schedule II.

Section 20.

#### *Form of Grant of Right of Burial.*

By virtue of the Cemeteries Act, 1897, we, the undersigned trustees of the Cemetery, in consideration of \_\_\_\_\_ pounds \_\_\_\_\_ shillings paid to us by A.B. of \_\_\_\_\_, hereby grant to the said A.B. the exclusive right of \*burial in [*here describe the ground so as to identify the same, and, if a place of exclusive burial, add "numbered \_\_\_\_\_ on the plan of the Cemetery made in pursuance of the said Act"*] to hold the same to the said A.B. in perpetuity [*or for the period agreed upon*] for the purpose of burial [*or as the case may be*].

Sec 11 and 12 Vict., c. 65 (Imp.) Schedule.

\* Or "of burying bodies," or "of building a vault," or "of placing a monument or tombstone," or as the case may be.

Given under our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ 189 .

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#### *Form of Assignment of Right of Burial.*

I, A.B., of \_\_\_\_\_ in consideration of \_\_\_\_\_ pounds \_\_\_\_\_ shillings paid to me by C.D., of \_\_\_\_\_, do hereby assign unto the said C.D. the exclusive right of burial in [*here describe the place*] and numbered \_\_\_\_\_ on the plan of the \_\_\_\_\_ Cemetery, made in pursuance of the Cemeteries Act, 1897, which was granted to me [*or to E.F., late of \_\_\_\_\_, deceased, of whose will I am executor, or as the case may be*] in perpetuity [*or as the case may be*] by a deed of grant bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 189 , and all my estate and interest therein To Hold the same unto the said C.D. in perpetuity [*or, as the case may be, for the remainder of the period for which the same was granted*] subject to the conditions on which I held the same immediately before the execution hereof.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 189 .