

Approved for Reprint, 19th October, 1970.

WESTERN AUSTRALIA.

CEMETERIES.

No. 23 of 1897.

(Affected by Acts Nos. 26 of 1932 and 113 of 1965.)

[As amended by Acts—

No. 25 of 1898; assented to 28th October, 1898;
No. 38 of 1899; assented to 16th December, 1899;
No. 42 of 1902; assented to 20th December, 1902;
No. 22 of 1911; assented to 16th February, 1911;
No. 28 of 1946; assented to 24th January, 1947;
No. 14 of 1955; assented to 1st November, 1955;
No. 73 of 1956; assented to 14th January, 1957;
No. 26 of 1957; assented to 26th October, 1957;
No. 15 of 1962; assented to 1st October, 1962;
No. 50 of 1964; assented to 4th December, 1964;
No. 19 of 1966; assented to 17th October, 1966;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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 the 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, 1897-1966*.

Short title.
Amended by
No. 19 of
1966, s. 1.

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 The Acts mentioned in the First Schedule hereto are repealed: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right acquired, liability (civil or criminal) incurred, order made, or proceeding instituted under any enactment hereby repealed.

Certain provisions of Act to apply to burial grounds under. [4 Vict. 6, s. 9.] Repealed and re-enacted by No. 15 of 1962, s. 2.

3. The provisions of sections seven, eight, nine, nineteen, thirty-five, thirty-six, thirty-seven, forty A, forty B and forty-one of this Act apply as well to and in respect of burial grounds vested in trustees under section nine of the Act passed in the fourth year of the reign of Her Majesty Queen Victoria and numbered six, and to the trustees of and burials in such burial grounds, as to public cemeteries under this Act, but except as regards those sections and except also to the extent mentioned in sections forty-one A, forty-one B and forty-one C of this Act, nothing in this Act applies to any burial ground so vested.

Interpretation.

4. In this Act—

Amended by No. 38 of 1899, s. 4; No. 15 of 1962, s. 3; No. 19 of 1966, s. 2.

“dead body” means the body of a human being who was born alive, and includes the body of an infant of not less than seven months gestation that was still born;

“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. Amended by No. 15 of 1962, s. 4.

5. The Governor may from time to time, by proclamation, appoint such place or places, hereinafter called public cemeteries, in each district, or with the consent of the owner thereof any alienated land, 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 or land to be closed for burials.

Prohibition of burial in closed cemetery. Amended by No. 15 of 1962, s. 5; No. 113 of 1965, s. 8.

6. (1) Subject to subsection (2) of this section, a person shall not, within fifty miles of a public cemetery that is not closed, bury or assist at the burial of any dead body in any place other than a public cemetery unless the approval of the Governor to that burial in such other place has been obtained.

Penalty: One hundred dollars.

(2) In any place that is situated outside the South-West Division of the State as constituted and defined by and under the Land Act, 1933, it shall not be an offence to bury a dead body in a place other than a public cemetery without the prior approval of the Governor having been obtained if approval to the burial is obtained from a justice of the peace prior to the burial taking place and approval of the burial is obtained from the Governor after the burial has taken place.

(3) A person shall not bury or assist at the burial in any place other than a public cemetery of the dead body of a person who dies within fifty miles of a public cemetery that is not closed unless the approval of the Governor to that burial in such other place is obtained.

Penalty: One hundred dollars.

(4) 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.

7. (1) No public cemetery or burial ground shall be established or opened in Western Australia except with the approval of the Governor.

Discontin-
tinuance of
cemeteries.
Repealed and
re-enacted
by No. 15 of
1962, s. 6.

(2) Where it appears 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, should be discontinued either wholly or subject to any exception or qualification, the Governor may by order published in the *Government Gazette* direct that after a time to be specified in the order, not being less than three months from the date of the publication thereof, burials in that cemetery or other burial ground or place of burial shall be discontinued wholly or subject to any exception or qualification mentioned in the same or any subsequent order.

(3) The Governor may from time to time postpone the time specified in an order under this section for the discontinuance of burials or otherwise vary the order, whether the time appointed for the discontinuance of burials or for other operation of that order has or has not arrived.

Justice may order disinterment of body buried contrary to the preceding sections. Amended by No. 15 of 1962, s. 7.

8. Any Justice of the Peace may cause any dead body buried contrary to the provisions of sections six and seven of this Act to be disinterred, and be buried in such place as he may think expedient in conformity with this Act.

Governor may permit burial not in cemetery. 52 Vict. 14, s. 3. Repealed and re-enacted by No. 15 of 1962, s. 8.

9. Notwithstanding anything in this Act to the contrary, the Governor may, for special reasons that appear to him to justify or require it, order or permit the burial of a dead body in a place other than a public cemetery appointed under this Act, or in a place or cemetery closed for burials under this Act.

Appointment or removal of, and vesting of land in, trustees. Repealed and re-enacted by No. 50 of 1964, s. 2.

10. (1) The Governor may appoint the council of a municipality constituted under the Local Government Act, 1960, to be the sole trustee, or appoint any three or more persons to be the trustees, of any public cemetery and may remove any trustee.

(2) The appointment, or removal, of a trustee or trustees shall be notified in the *Government Gazette*.

(3) Where three or more persons are appointed trustees, any number of them that is in excess of half their number shall constitute a quorum for the despatch of business.

(4) The Governor may, by deed of grant or Crown grant, as the case may require, vest land in the trustee or trustees, in its or their corporate name, assigned pursuant to section ten A of this Act, for the purpose of a public cemetery.

10A. The trustees of every public cemetery now or hereafter to be appointed under this Act, shall be a body corporate, with perpetual succession, under the name of the "Trustees of the Cemetery" (the word "Cemetery" being immediately preceded by the name or designation of the cemetery for which the trustees are appointed), and shall have a common seal, and may sue and be sued by such corporate name.

Incorporation of trustees of cemeteries. Added by No. 38 of 1899, s. 2 as amended by No. 26 of 1957, s. 5, Schedule Item 1.

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.

11A. (1) With the prior approval of the Governor, the trustees of a public cemetery may borrow money—

Power to borrow money. Added by No. 25 of 1898, s. 1 as amended by No. 26 of 1957, s. 5, Schedule Item 2. Repealed and re-enacted by No. 15 of 1962, s. 10.

- (a) by obtaining from a bank advances on overdraft of the current account of the trustees at that bank; or
- (b) on security of any property vested in them as such trustees and for the time being unused for the purposes of burial, and upon the fees received by them as such trustees for the purposes of this Act,

and may execute such liens, mortgages, charges or assurances as may be necessary in exercise of the powers conferred by this section.

(2) Where in accordance with the provisions of this section the trustees of a public cemetery borrow money, any security given by them as such trustees shall not involve any trustee in personal liability.

Trustees
to lay out
cemetery.
Amended by
No. 15 of
1962, s. 11;
No. 19 of
1966, s. 3.

12. (1) 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 provide either within or without the cemetery suitable office accommodation for administration of the cemetery, 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.

(2) Without prejudice to the generality of subsection (1) of this section, the trustees of a public cemetery may, in particular, provide a lawn or park section in the cemetery by setting apart and laying out a separate portion or portions of the land comprising that cemetery as lawn or lawn interspersed with trees, shrubs or garden plots in such manner as the trustees think fit.

(3) When a portion of the land comprising a public cemetery is set apart and laid out as a lawn or park section pursuant to subsection (2) of this section, a person shall not place therein—

- (a) any monument, tombstone or enclosure; or
- (b) any nameplate,

that does not comply with the by-laws.

(4) A person shall not bury a dead body or the ashes of a cremated body in any lawn or park section provided under subsection (2) of this section, unless the dead body or ashes are buried in a grave, vault or burial ground comprising a lot or lots therein in respect of which that person is the holder of a grant of an exclusive right of burial that permits him to do so.

(5) In addition to any by-laws that the trustees of a public cemetery may make under section fourteen of this Act, the trustees may, with the approval of the Governor, make by-laws in respect of any lawn or park section that is provided under subsection (2) of this section—

- (a) prescribing the maximum size of monuments, tombstones, enclosures or number plates that may be placed therein;
- (b) prescribing the fees for the grant of an exclusive right of burial in a grave, vault or burial ground comprising a lot or lots therein, and providing for the maintenance of the lot or lots;
- (c) providing for the purchase by instalments of a grant of an exclusive right of burial in a grave, vault or burial ground comprising a lot or lots therein prior to the burial of a dead body or the ashes of a cremated body therein;
- (d) requiring an applicant for a grant of an exclusive right of burial who applies to the trustees to pay for the grant by instalments, to enter into a written agreement setting out the terms and conditions upon which the grant is made, undertaking the maintenance of the plot to which the grant relates for a specified term of years or in perpetuity, and requiring the applicant to provide such security for the due payment of the amount of those instalments in the event of the death of the applicant, as the trustees may require.

13. (1) Subject to any distribution made by the original deed of grant or conveyance, the trustees may, and at the request of the trustees or recognised head of any religious denomination shall, by an instrument in writing, set apart a portion of the cemetery for the burial of persons of the same religious denomination exclusively, and may vary from time to time the boundaries of any portion of the cemetery so set aside.

Division of
cemetery
according
to religious
denomina-
tions.
Repealed and
re-enacted by
No. 15 of
1962, s. 12.

(2) An instrument in writing mentioned in subsection (1) of this section shall be in or to the effect of the form in Schedule III to this Act, and may contain such other covenants and provisions as the parties to the instrument agree upon and the Minister approves.

(3) In the case of disagreement between the parties to such instrument, either party may appeal to the Minister, whose decision shall be final and binding upon the parties.

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.
Amended by
No. 42 of
1902, s. 3,
No. 15 of
1962, s. 13.

For directing the position and depth of graves, and the position and construction of vaults, the construction of 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 controlling the maintenance of graves and empowering the trustees to enter into agreements with holders of grants of exclusive right of burial to maintain graves at the expense of such holders;

For controlling, subject to the provisions of the Cremation Act, 1929 and the regulations made thereunder, any crematorium used and conducted by the trustees in connection with the cemetery;

For prescribing methods of disposal of the ashes of bodies cremated in a crematorium, and for the fees to be paid for the use of the crematorium and such disposal of ashes;

For convening meetings of themselves and transacting their business;

For undertaking funerals, and prescribing the charges to be made;

For the annual licensing of undertakers;

Prescribing the license fee to be paid;

Prohibiting any unlicensed undertaker from undertaking or conducting any funeral in the cemetery;

Regulating the charges of licensed undertakers for undertaking and conducting funerals;

Enabling the trustees to cancel an undertaker's license for breach of any by-law.

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*.

14A. The trustees of every public cemetery appointed under this Act, may, by the by-laws which they make under this Act, impose pecuniary penalties for the breach of such by-laws not exceeding forty dollars for each breach, and, in case of a continuing breach, not exceeding four dollars for every day during which such breach continues, and every such breach shall constitute an offence against this Act, and the penalty therefor may be recovered before a Court of summary jurisdiction.

Trustees by their by-laws may impose pecuniary penalties. Added by No. 38 of 1899, s. 3, as amended by No. 26 of 1957, s. 5. Schedule Item 4. Amended by No. 15 of 1962, s. 14; No. 113 of 1965, s. 8.

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

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.

15A. [*Added by No. 42 of 1902, s. 2. Repealed by No. 15 of 1962, s. 15.*]

Mortuary Chapels may be built by religious denominations.

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.

Provision of homes for employees. Added by No. 28 of 1946, s. 2. Amended by No. 15 of 1962, s. 16. [Cf. No. 38 of 1919, s. 160 (202).]

16A. It shall be lawful for the trustees of a public cemetery—

- (a) to erect, on any land vested in the trustees and defined and set aside for the purpose by the trustees or on land acquired for the purpose, or purchase, take on lease or at a rental, or otherwise acquire houses to be leased to, and used as homes by, employees of the trustees, and maintain and make use of such houses and land for the purposes aforesaid as long as the trustees may deem expedient, with power to sell and dispose of the same when no longer required

for such purposes: Provided that no freehold estate in any such house or land shall be granted to any employee, and that the money required for the erection or purchase of any such house or the acquisition of any such land may, subject in every case to the approval of the Minister, be expended out of the ordinary revenue of the trustees or otherwise out of loan moneys raised for the purpose under this Act;

- (b) to sell or dispose of land vested in the trustees and defined and set aside for the purpose by the trustees, to The State Housing Commission constituted by the State Housing Act, 1946, for the purpose of the erection by such Commission of a dwelling house for use by employees of the trustees and at such rent and upon and subject to such terms and conditions as the Commission and the trustees may mutually agree;
- (c) to execute all such instruments and do all such acts, matters and things as may be necessary for carrying out the purposes mentioned in this section.

17. Upon receipt of the fees, according to the scale by or pursuant to 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.

Vaults,
graves,
monuments,
tombstones,
etc.
Amended by
No. 26 of
1957, s. 3.

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 of dead bodies or the ashes of bodies cremated, and they may grant, either in perpetuity or for a limited time, and subject to such conditions as may be prescribed, the exclusive 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.

Parts of a
cemetery
may be set
apart for
exclusive
burial
Amended by
No. 15 of
1962, s. 17.

Plan and book of reference to be kept and be open to inspection. Amended by No. 15 of 1962, s. 18; No. 113 of 1965, s. 8.

19. (1) 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.

Register of burials.

(2) 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 specify and distinguish in what parts of the cemetery the several bodies are buried, and shall be indexed so as to facilitate search.

(3) The register book shall be open to search at all reasonable hours on payment of a fee not exceeding ten cents, and such book, or a copy thereof or an extract therefrom, shall be received before all courts and persons as evidence of the burials entered therein.

Form of grant of exclusive right of burial. Second Schedule.

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.

Register of grants to be kept. Amended by No. 113 of 1965, s. 8.

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 twenty-five cents or other lower fee prescribed, and any grantee or his assignee may, at all reasonable times, peruse the register on payment of ten cents or other lower fee prescribed.

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.

(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.

(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.

(4) For every such registration the trustees may demand twenty-five cents 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 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.

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

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

Brick or stone graves to be water-tight. Amended by No. 113 of 1965, s. 8.

Cemeteries.

- (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 forty dollars, 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—

- (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.

- (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.

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

Penalty.

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.

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.

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.

29. (1) The Governor may direct that, out of any moneys appropriated by Parliament for the purpose, such sums of money as he may think fit shall be paid to the trustees of any cemetery for the establishment, maintenance, and management thereof.

Governor may direct money to be paid to trustees for salaries and for management of cemetery.
Amended by No. 42 of 1902, s. 4.

(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.

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

(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.

Trustees
to render
account
to be laid
before
Parliament.
Amended by
No. 15 of
1962, s. 19.

30. (1) 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 purposes of such expenditure.

(2) Every account kept pursuant to subsection (1) of this section shall contain a statement of the balance thereof and shall be duly audited and certified by the Auditor General or, if the trustee of the cemetery is the council of a municipality, by an inspector of the Government Department known as the Department of Local Government.

(3) A true copy of every such account, in abstract, shall be published in the *Government Gazette* within one month of the completion of the audit of the account.

Trustees to
receive fees.
Added by
No. 42 of
1902, s. 6,
as amended
by No. 73
of 1956, s. 2
and No. 26 of
1957, s. 5.
Schedule
Item 6.

30A. Every trustee may receive a fee for his attendance at every ordinary meeting of trustees of such amount as the regulations prescribe.

Such fees may be paid out of any moneys at the disposal of the trustees.

The yearly abstract of accounts rendered pursuant to section thirty of this Act shall state the fees paid to each trustee.

Trustees to
transmit
account
verified to
Minister
with report
on cemetery,
etc.
Amended by
No. 38 of
1899, s. 4;
No. 15 of
1962, s. 20.

31. Before the thirtieth day of September in every year the trustees shall, unless exempted from so doing by the provisions of section thirty-four B of this Act, transmit to the Minister 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.

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 expended in the management, laying out, or improvement of the cemetery, or the burial of poor persons during the ensuing year.

Governor to direct appropriation of moneys. Amended by No. 42 of 1902, s. 5.

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.

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

34. Upon the failure of the trustees of any cemetery to make and transmit such account and abstract in accordance with the requirements of sections thirty and thirty-one of this Act, every trustee of the cemetery shall be liable, on conviction, to a fine not exceeding One hundred dollars.

Penalty for not transmitting account. Amended by No. 15 of 1962, s. 21; No. 113 of 1963, s. 8.

34A. In this Act "Year" means the financial year beginning on the first day of July and ending on the thirtieth day of June.

Interpretation. Added by No. 22 of 1911, s. 2, as amended by No. 26 of 1957, s. 5. Schedule Item 14.

Sections 31, 32, 33, and 34 not to apply to trustees of un subsidised cemeteries.

Added by No. 22 of 1911, s. 3, as amended by No. 26 of 1957, s. 5. Schedule Item 15.

Amended by No. 15 of 1962, s. 22.

34B. If during any year the trustees of any cemetery shall receive no loan, subsidy or subvention (except fees for burials) from the Government of the State of Western Australia, then, during the ensuing year, sections thirty-one, thirty-two, thirty-three and thirty-four of this Act shall not apply to such trustees, and they may, at any time after the completion of the audit of the account required to be kept by section thirty of this Act, determine the amount which, during such ensuing year, shall be applied, out of moneys in their hands as shown by the said account,—

- (a) To the management, laying out or improvement of the cemetery and the burial of poor persons;
- (b) In payment to the reserve fund referred to in section thirty-four E of this Act; and
- (c) In payment to the council of any municipality of such contribution (if any) towards the cost of making and maintaining roads in the neighbourhood of the cemetery as the trustees shall in their absolute discretion judge reasonable;

and every amount so determined shall be applied accordingly.

34C. [*Added by No. 22 of 1911, s. 4. Repealed by No. 15 of 1962, s. 23.*]

34D. [*Added by No. 22 of 1911, s. 5. Repealed by No. 15 of 1962, s. 23.*]

Reserve fund. Added by No. 22 of 1911, s. 6 as amended by No. 26 of 1957, s. 5. Schedule Item 18.

34E. (1) The trustees of any cemetery may establish a reserve fund, which shall consist of such amounts as are from time to time applied in payment to the fund in accordance with the provisions of section thirty-four B of this Act.

(2) The said fund may be invested on any securities on which trustees are entitled to invest trust moneys.

[See W.A., 64 Vict., No. 17, s. 5.]

(3) Such fund and the income thereof shall be applicable for the general benefit of the cemetery as the trustees may, in their discretion, from time to time determine; but no part of such fund or income shall be applied to any purpose which has not previously been specially approved by the Governor.

34F. Sections thirty-four A, thirty-four B and thirty-four E of this Act have effect as if they had formed part of this Act as originally enacted.

Sections
34A, 34B
and 34E
retro-
spective.
Added by
No. 26 of
1957, s. 5,
Schedule
Item 19.

Amended by
No. 15 of
1962, s. 24.

35. Every person who wantonly or wilfully destroys or injures, or attempts to so destroy or so injure or causes to be so destroyed or so injured, any building, vault, monument, tombstone, enclosure, fence, tree, shrub, or other thing whether of the same kind as, or a different kind from the foregoing things, 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 forty dollars, 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.

Malicious
injury to
vaults,
monuments,
etc.

Amended by
No. 14 of
1955, s. 2;
No. 113 of
1965, s. 8.

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.

Compensa-
tion to be
paid for
injury
whether
malicious
or not.

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

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

Amended by
No. 38 of
1899, s. 4.

of committing an offence against this Act, and whose name and place of abode shall be unknown to such trustee, officer, or servant, and 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.

38. [*Repealed by No. 15 of 1962, S.25.*]

Burial of
poor
persons.
Amended by
No. 15 of
1962, s. 26;
No. 50 of
1964, s. 3.

39. (1) A Justice of the Peace, upon being satisfied that any person deceased was poor, and that his relatives cannot be found or are unable to pay the charges of burial, may make an order directing him to be buried in any cemetery free of charge.

(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.

(3) Where a person is not buried within a reasonable period after his death and the circumstances are not such as would warrant the making of an order and the burial of the deceased person under the preceding provisions of this section, the council of the municipal district within which the dead body is to be found may cause it to be buried, by advancing all reasonable expenses of the burial (not limited to fees payable under this Act) and may, thereupon, recover those expenses, in any court of competent jurisdiction, from the person upon whom the duty touching the burial is imposed by law.

(4) The exercise by a council of the powers conferred on it by subsection (3) of this section does not excuse a person for the neglect to perform any duty imposed upon him by law, or undertaken by him, touching the burial of the dead body.

See s. 214
The Criminal
Code.

39A. (1) A person who does not do a thing which by or under this Act he is required or directed to do, and a person who does or attempts to do a thing which by or under this Act he is prohibited from doing, commits an offence against this Act.

Offences
generally.

Added by
No. 15 of
1962, s. 27.

Amended by
No. 113 of
1965, s. 8.

(2) A person who commits an offence against this Act is liable to the penalty expressly mentioned as the punishment for the offence, but where a penalty is not expressly mentioned, is liable—

General
penalty.

- (a) where the offence is not a continuing offence, to a maximum penalty of one hundred dollars; and
- (b) where the offence is a continuing offence, to a penalty of four dollars for each day during which the offence continues.

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

Summary
prosecution
of offenders.

40A. The trustees may, by order in writing, permit the exhumation of any body buried in the cemetery, for the purpose of burial in another part of the cemetery.

Trustees
may order
exhumation
and
re-burial
of bodies.

Added by
No. 42 of
1902, s. 7,
as amended
by No. 26
of 1957, s. 5,
Schedule
Item 7.

40B. Any justice of the peace may, in the case of any sudden, violent, or apparently unnatural death, by warrant under his hand in the form of warrant to exhume a body for the purposes of an inquest, prescribed by the Coroners Act, 1920, order the disinterment of any body.

Warrant for
disinter-
ment under
19 Vict.,
No. 10.

Added by
No. 42 of
1902, s. 8,
as amended
by No. 26
of 1957, s. 5,
Schedule
Item 8.

Governor may order exhumation of corpse.

Amended by No. 15 of 1962, s. 28.

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 or cremated in accordance with the wishes of the deceased or of his family, or for any other reason which the Governor may deem adequate; and such exhumation shall take place accordingly.

Disused burial grounds may be vested in trustees under this Act.

Added by No. 42 of 1902, s. 9, as amended by No. 26 of 1957, s. 5.

Schedule Item 9.

Amended by No. 15 of 1962, s. 29.

41A. Notwithstanding anything contained in this Act to the contrary, the Governor may, with the consent of the trustees, if any, of any disused burial ground appointed under an Act passed in the fourth year of the reign of Her Majesty Queen Victoria and numbered six, by Order in Council vest any such disused burial ground in the trustees of any public cemetery appointed under this Act.

Disused burial grounds so vested to be deemed a cemetery.

Added by No. 42 of 1902, s. 10, as amended by No. 26 of 1957, s. 5.

Schedule Item 10.

41B. Every disused burial ground vested in trustees under the provisions of section forty-one A of this Act shall be deemed a cemetery within the meaning of this Act, but no burial shall be permitted therein without the order of the Governor in each case.

Moneys may be appropriated and applied for upkeep of disused cemeteries.

Added by No. 42 of 1902, s. 11 as amended by No. 26 of 1957, s. 5.

Schedule Item 11.

41C. The Governor may direct that out of any moneys appropriated by Parliament for the purpose, such sum as to the Governor may seem fit may be paid to the trustees for the upkeep and repair of any disused burial ground vested in them under the provisions of section forty-one A of this Act.

Regulations.

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

By laws and regulations 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.

44. Sections A and C of the Second Schedule to the Interpretation Act, 1918, 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.

Incorporation of parts of Interpretation Act, 1918. Amended by No. 26 of 1957, s. 4.

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).

SCHEDULE II.

Section 20. Amended by No. 113 of 1965, s. 8.

FORM OF GRANT OF RIGHT OF BURIAL.

By virtue of the Cemeteries Act, 1897, we, the undersigned trustees of the _____ Cemetery, in consideration of _____ dollars _____ cents 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*].

See 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 _____ 19 _____.

FORM OF ASSIGNMENT OF RIGHT OF BURIAL.

I, A.B., of _____ in consideration of _____ dollars _____ cents 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 _____, 19 _____, 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 _____ 19 _____

SCHEDULE III.

FORM OF INSTRUMENT SETTING APART PORTION OF
CEMETERY FOR BURIAL OF PERSONS OF SAME
RELIGIOUS DENOMINATION.

THIS INDENTURE, made the _____ day
of _____ 19 _____ between (e.g. the Trustees of the
Karrakatta Cemetery) incorporated under the Cemeteries
Act, 1897, as amended (hereinafter called "the Trustees"),
of the one part, and (e.g. The Perth Diocesan Trustees,
incorporated by Act 52 Victoriae No. 2 as amended by Act
No. 34 of 1918) hereinafter called _____ of the
other part:

WHEREAS the Trustees are trustees of the public
cemetery at _____ and as such have
vested in them _____ Location _____

AND WHEREAS (the parties of the other part) have
applied to the Trustees to specially set apart, a portion of
the said cemetery for the burial of persons who belong to
and are members of (e.g. the Church of England in Western
Australia) which the Trustees have agreed to do subject
to the covenants and other matters hereinafter mentioned:

NOW THIS INDENTURE WITNESSETH that the
Trustees do hereby irrevocably set apart for the burial of
persons who belong to and are members of (e.g. the Church
of England in Western Australia) ALL THAT piece of land
coloured _____ in the diagram indorsed on these presents,
being a portion of the public cemetery at
Location _____, together with full right of way for
all purposes to and from such land.

AND THE TRUSTEES, so far as they lawfully can and
may, covenant with the said (the parties of the other part)
not to permit any person to perform or take part in any
religious ceremony in the burial of the dead in the said
portion of land set apart by these presents unless such
person is at such time a member of _____ and
duly authorised by (the Trustees or the recognised head of
the religious denomination) to officiate at such a ceremony.

AND the said (the parties of the other part) covenant
with the Trustees not to use the portion of land so set apart
except for the purposes and in the manner authorised by
the said Act as amended.

Section 15A.
Added by
No. 26 of
1957, s. 5.
Schedule
Item 12.

AND IT IS HEREBY DECLARED that nothing herein contained shall prejudice or affect the right of the said (the parties of the other part) to build on the said portion of land a suitable mortuary, church or chapel subject to the conditions and permission prescribed by the said Act as amended.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their common seals the day and year first before written.

The Common seal of etc }
was affixed etc. }

