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CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995

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**TOWN OF PORT HEDLAND**

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**CEMETERY LOCAL LAW 2015**



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LOCAL GOVERNMENT ACT 1995**

TOWN OF PORT HEDLAND

**CEMETERY LOCAL LAW 2015**

Under the powers conferred by the *Cemeteries Act 1986* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Port Hedland resolved on 25 November 2015 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law is cited as the *Town of Port Hedland Cemetery Local Law 2015*.

**1.2 Commencement**

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

**1.3 Application**

This local law applies to the South Hedland Cemetery (Reserve No. 28672) located within the district.

**1.4 Repeal of local law**

The *Town of Port Hedland Local Law (Cemeteries)*, as published in the *Government Gazette* on 10 January 2000, is repealed.

**1.5 Purpose and effect**

(1) The purpose of this local law is to provide for the orderly management of those Cemeteries in accordance with established plans and to create offences for inappropriate behaviour within cemetery grounds.

(2) The effect of this local law is that all persons in the administration of the cemeteries, burying deceased in the cemeteries, or otherwise providing services to or making use of the cemeteries, are to comply with the provisions of this Local Law.

**1.6 Interpretation**

(1) In this local law unless the context otherwise requires—

**Act** means the *Cemeteries Act 1986*;

**Administrator** includes executor and any person who, by law or practice, has the right to apply for administration, and any person having the lawful custody of the body of a deceased person;

**animal** means any animal;

**ashes** means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn;

**assistance dog** has the same meaning as is given to that expression in the *Dog Act 1976*;

**authorised officer** means an employee of the Board authorised by the Board for the purposes of performing any function or exercising any power conferred upon an authorised officer by this local law;

**Board** means the Town of Port Hedland;

**burial** has the same meaning as is given to it in the Act;

**cemetery** means any one or any part of the public cemeteries in the district of the local government, which the Governor, by order, has placed under the care control and management of the local government;

**CEO** means the Chief Executive Officer of the local government;

**Commissioner of Police** means the Commissioner of Police for the time being appointed under the *Police Act 1892* and includes any person for the time being acting in that capacity in the absence of the Commissioner of Police.

**dead body** has the same meaning given to it in the Act;

**district** means the district of the local government;

**funeral** includes the burial of a dead body and all associated processions and ceremonials but does not include so much of the ceremonial that is solely a religious rite;

**funeral director** means a person holding a current funeral director's licence;

**funeral director's licence** means a licence issued by the Board in accordance with clause 4.2, which entitles the holder to conduct funerals at the cemeteries;

**grant** means a grant issued by the Board, of an exclusive right of burial in a grave;

**grave** means a specified area of the cemetery for burial;

**holder** in relation to a grant includes—

- (a) a person issued with a grant by the Board;
- (b) a person for the time being appearing to the Board to be the holder of a grant;

**local government** means the Town of Port Hedland;

**memorial** has the same meaning as given to it in the Act;

**military grave** means a grave eligible for commemoration by the Office of Australian War Graves;

**Minister** means the Minister for Local Government;

**monument** includes a tombstone, vault, enclosure or other approved form of memorial;

**monumental mason** means a person, firm or company holding a current monumental mason's licence;

**monumental mason's licence** means a licence issued by the Board;

**monumental work** when the term is used as an abstract noun shall include the erection, alteration or removal of or other working upon a monument on a grave;

**personal representative** means—

- (a) the administrator or executor of an estate of a deceased person;
- (b) the person who, by law of practice, has the right to apply for administration of the estate of the deceased person; or
- (c) a person having the lawful custody of a dead body;

**remains** means ashes or what remains of a dead body after burial;

**set fee** refers to fees and charges set by a resolution of the Board and published in the *Government Gazette* under section 53 of the Act;

**single funeral permit** means a permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct at the cemetery a funeral of a person named in the permit; and

**vehicle** has the same meaning as is given to that word in the *Road Traffic Act 1974*, as amended from time to time, and includes trail bikes, beach buggies and other recreational vehicles licensed or unlicensed, but excludes a wheel chair being used by a physically impaired person.

(2) Unless otherwise defined herein the terms and expressions used in this local law shall have the same meaning given to them in the Act.

## PART 2—ADMINISTRATION

### 2.1 Powers and functions of CEO

Subject to any directions given by the Board, the CEO shall exercise all the powers and functions of the Board in respect of the cemeteries.

### 2.2 Grant of right of burial

The Board may issue to a person a grant of right of burial, for the term specified in the Act from time to time, upon—

- (a) written application by that person; and
- (b) payment of the set fee.

### 2.3 Rights of holder

(1) Subject to this local law, to the prior approval of the Board and to the terms and conditions (if any) imposed by the Board, a grant confers on a holder, during the term of the grant, an exclusive right—

- (a) to bury one or more dead bodies, or the ashes of one or more dead bodies, in a grave specified in the grant; and
- (b) to carry out monumental works on the grave specified in the grant.

(2) The Board, in its absolute discretion, may determine from time to time the number of dead bodies or ashes which may be placed in the grave.

(3) The Board or an authorised officer may request the holder to produce the grant before the exercise of any of the rights referred to in subclause (1) and the holder shall forthwith comply with that request.

**2.4 Transfer of right of burial**

A transfer of right of burial is dealt with in the Act.

**2.5 Protection of right of burial**

A protection of right of burial is dealt with in the Act.

**2.6 Surrender of right of burial**

A surrender of right of burial is dealt with in the Act.

**PART 3—APPLICATION FOR FUNERALS****3.1 Application for burial**

(1) A person may apply for approval to bury a dead body in the cemetery in the form determined by the Board from time to time.

(2) An application under subclause (1) is to be accompanied by the set fee.

**3.2 Applications to be accompanied by certificates etc**

All applications referred to in clause 3.1 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under clause 3.3, in respect of the body.

**3.3 Certificate of identification**

(1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the Board from time to time, unless—

- (a) in the opinion of the funeral director, the dead body is not in a fit state to be viewed; or
- (b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body.

(2) Where—

- (a) in the opinion of the funeral director, the dead body is not in a fit state to be viewed; or
- (b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body,

then the funeral director shall complete a certificate in the form determined by the Board from time to time.

**3.4 Minimum notice required**

All bookings to hold a funeral shall be made with the Board at least 2 working days prior to the time proposed for burial on the application, otherwise an extra charge may be made.

**3.5 Time for burials**

(1) Subject to subclause (2), a person shall only carry out a burial during the following days and hours—

- (a) Monday to Friday between 9:00 a.m. and 4:00 p.m.; or
- (b) Saturday 9:00 a.m. and 11:00 a.m.,

unless the Board has given written permission for an alternative date and time.

(2) A person shall not carry out a burial on a gazetted public holiday in the State of Western Australia.

**PART 4—FUNERAL DIRECTORS****4.1 Directing a funeral**

A person shall not direct a funeral within a cemetery or otherwise make use of the cemetery for any purpose connected with directing the funeral unless that person is—

- (a) the funeral director;
- (b) an employee of the funeral director; or
- (c) a holder of a single funeral permit.

**4.2 Funeral director's licence**

(1) The Board may, upon the receipt of an application in writing in the form determined by the Board and upon payment of a set fee, issue to an applicant a funeral director's licence authorising a holder to direct funerals within a cemetery at such times and on such days and subject to such conditions as the Board shall specify and in compliance with the provisions of this local law.

(2) If the application referred to in subclause (1) is approved by the Board, the Board shall issue to the applicant a licence in the form determined by the Board.

(3) A person who is the holder of a current funeral director's licence may apply for a new licence for the following year by lodging with the Board an application form and upon payment of the set fee.

**4.3 Application for a single funeral permit**

Every application for a single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

#### 4.4 Application may be refused

The Board may refuse an application for a single funeral permit if, in the opinion of the Board, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

#### 4.5 Review of decision

An aggrieved person whose licence has been cancelled or suspended under this part may appeal to the State Administrative Tribunal against a decision of the Board under this part and in the manner stated in section 19 of the Act.

### PART 5—FUNERALS

#### *Division 1—General*

#### 5.1 Requirements for funerals and coffins

A person shall not bring a dead body into the cemetery unless—

- (a) the Board has approved an application for the burial of that dead body in accordance with Part 3 of this local law;
- (b) it is enclosed in a coffin which in the opinion of the Board is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid; and
- (c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10 mm in height.

#### 5.2 Funeral processions

The time fixed by the Board for any burial shall be the time at which the funeral procession is to arrive at the cemetery gates, and, if not punctually observed, then the applicant who applied to hold the funeral under clause 3.1 shall pay the set fee for being late.

#### 5.3 Vehicle access and speed limitations

- (1) Subject to subclause (2), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the interment area.
- (2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.
- (3) Vehicles shall proceed within the cemetery by the constructed roadway or other areas designated for the use of vehicles and shall not exceed the speed indicated by signs.

#### 5.4 Offenders may be ordered to leave

A person committing an offence under clause 5.3(3) may be ordered to leave the cemetery by the CEO or an authorised officer.

#### 5.5 Conduct of funeral by Board

When conducting a funeral under section 22 of the Act the Board may—

- (a) require a written request for it to conduct a funeral to be lodged with it;
- (b) in its absolute discretion, charge any person requesting it to conduct a funeral the set fee for the conduct of that funeral by it;
- (c) where no fee or a reduced fee has been charged by it for the conduct of the funeral, determine the manner in which the funeral shall be conducted;
- (d) bury a dead body within cemeteries under the delegation of the Board and in conjunction with the Act;
- (e) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
- (f) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law; and
- (g) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

#### *Division 2—Placement of Ashes*

#### 5.6 Disposal of Ashes

(1) A personal representative of a deceased person whose body has been cremated may apply, in an application under clause 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee the Board may grant permission for the ashes to be disposed of by one of the following methods—

- (a) niche wall;
- (b) scattering to the winds; or
- (c) other memorials approved by the Board.

(2) Subject to subclauses (3) and (4), a person shall not place the ashes of a deceased person in the cemetery.

(3) An authorised officer may place the ashes of a deceased person in a cemetery in accordance with the Board's approval provided—

- (a) the person requesting the placement of the ashes has the permission of the Board; and
- (b) the ashes are placed within an area set aside for that purpose by the Board.

(4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the Board approval, provided the person requesting the placement of the ashes has the written permission of the Board and the approval of the holder of the right of burial of the grave.

## PART 6—BURIALS

### 6.1 Depth of graves

(1) A person shall not bury a coffin within the cemetery so that the distance from the top of the coffin to the original surface of the ground is—

- (a) subject to paragraph (b), less than 750 mm, unless that person has the permission of an authorised officer; or
- (b) in any circumstances less than 600 mm.

(2) The permission of the authorised officer in subclause (1)(b) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

(3) Every grave prepared by the Board shall be dug at least 1.8m deep and shall not exceed 2.3m in depth, unless otherwise determined by the Board.

### 6.2 Re-opening a grave

If for the purpose of re-opening a grave in the cemetery, the Board finds it necessary to remove plants, grass, shrubs or other like matter from the grave, then the person ordering the re-opening of that grave shall bear the cost of the removal and any necessary reinstatement.

### 6.3 Exhumation of a coffin

(1) Subject to subclause (2), a person shall not exhume a coffin in the cemetery for the purposes of re-burial within 12 months after the date of its interment.

(2) Subclause (1) shall not apply where the exhumation is ordered or authorised pursuant to the Act.

(3) Subject to subclause (1) and (2) prior to any other exhumation, the holder of a grant must have applied in writing to the Board requesting the exhumation and the Board has authorised the exhumation.

### 6.4 Opening of coffin

A person shall not open a coffin in the cemetery unless—

- (a) the coffin is opened for the purposes of the exhumation of a dead body; or
- (b) that person has produced to the Board an order signed by the Commissioner of Police and the Board has approved the opening of that coffin.

## PART 7—MEMORIALS AND OTHER WORK

### *Division 1—General*

#### 7.1 Application for monumental work

The Board may require the written consent of the holder of the right of burial of the grave to accompany an application under section 30 of the Act.

#### 7.2 Placement of monumental work

Every memorial shall be placed on proper and substantial foundations.

#### 7.3 Removal of rubbish

All refuse, rubbish or surplus material remaining after memorial works are completed under a permit issued under section 30 of the Act shall be immediately removed from the cemetery by the person carrying out the same.

#### 7.4 Operation of work

All material required in the erection and completion of any work shall, as far as possible, be prepared before being taken to the cemetery, and all materials required by tradesmen shall be admitted at such entrance as the CEO or an authorised officer shall direct.

#### 7.5 Removal of sand, soil or loam

No sand, earth or other material shall be taken from any part of the cemetery for use in the erection of any memorial or work except with the written approval of the Board.

#### 7.6 Hours of work

Persons shall not be permitted to carry out memorial or other work on graves within the cemetery other than during the hours of 8.00 a.m. and 6.00 p.m. on weekdays, and 8.00 a.m. and noon on Saturdays, without the written permission of the Board.

**7.7 Unfinished work**

Should any work by masons or others be not completed before 6:00 p.m. on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

**7.8 Use of wood**

No wooden fence, railing, cross or other wooden erection shall be allowed on or around any grave without the prior approval of the Board.

**7.9 Plants and trees**

No trees or shrubs shall be planted on any grave or within the cemetery except such as shall be approved by the CEO.

**7.10 Supervision**

All workers, whether employed by the Board or by any other person, shall at all times whilst within the boundaries of the cemetery be subject to the supervision of the CEO or an authorised officer and shall obey such directions as the CEO or an authorised officer may give.

**7.11 Minor maintenance and repair works**

Persons shall be permitted to carry out minor maintenance and repair works, not of a structural nature, such as cleaning, touch up painting, etc on graves, without seeking the approval of the Board.

**7.12 Australian war graves**

Notwithstanding anything in this local law to the contrary, the Office of Australian War Graves—

- (a) may place a memorial on a military grave; and
- (b) is not required to pay the set fee for any memorial that is placed upon a military grave.

**7.13 Placing of glass domes and vases**

A person shall not place glass domes, vases or other grave ornaments outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40(2) of the Act.

*Division 2—Memorial Plaque Section***7.14 Requirements of a memorial plaque**

All memorials, placed in a memorial plaque section of the cemetery set aside by the Board, shall be approved by the Board.

*Division 3—Licensing of Monumental Masons***7.15 Monumental mason's licence**

(1) The Board may, upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.

(2) A licence issued under subclause (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this local law and such conditions as the Board shall specify upon the issue of that licence.

**7.16 Expiry date, non-transferability**

A monumental mason's licence—

- (a) shall, subject to clause 7.19, be valid from the date specified therein until 30 June the next following year; and
- (b) is not transferable.

**7.17 Carrying out monumental work**

A person shall not carry out monumental work within the cemetery unless that person—

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.15 or does so as the employee of a person who holds such a licence;
- (b) is authorised by the Board to do so; or
- (c) has received from the Board permission to do so during a funeral service.

**7.18 Responsibilities of the holder of a monumental mason's licence**

The holder of a monumental mason's licence shall be responsible for the compliance by every person purporting to be authorised to carry out monumental works within the cemetery pursuant to that licence with all the requirements and conditions of the licence, this local law, and any other written law which may affect the carrying out of monumental works.

**7.19 Cancellation of a monumental mason's licence**

(1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds—

- (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this local law, or any other written law which may affect the carrying out of monumental works;

- (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or
  - (c) that the holder of the licence has purported to transfer the licence issued to that holder.
- (2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.

## PART 8—GENERAL

### 8.1 Animals and assistance dogs

A person shall not bring an animal into, or permit an animal to enter or remain in the cemetery, other than an 'assistance animal' as defined under section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth), or with the approval of the CEO or an authorised officer.

### 8.2 Damaging and removing of objects

Subject to clause 8.3(3), a person shall not damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the Board without the permission of the Board.

### 8.3 Flowers

- (1) All flowers must be placed in vases or receptacles.
- (2) No person shall plant trees, shrubs or plants in the cemetery without the prior approval of the Board.
- (3) A person may remove withered flowers from a grave or memorial and these are to be placed in a receptacle provided by the Board for that purpose.

### 8.4 Littering and vandalism

A person shall not—

- (a) break or cause to be broken any glass, ceramic or other material in or upon the cemetery; or
- (b) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in or upon the cemetery other than in a receptacle provided for that purpose.

### 8.5 Advertising

A person shall not advertise or carry on any trade, business or profession within the cemetery without the prior written approval of the Board which consent may be granted subject to such conditions as the Board thinks fit.

### 8.6 Obeying signs and directions

A person shall obey all signs displayed, marked, placed or erected by the Board within the cemetery and any other lawful direction by the CEO or an authorised officer.

### 8.7 Removal from the cemetery

Any person failing to comply with any provisions of this local law or behaving in a manner that in the opinion of the Board, the CEO or an authorised officer is inappropriate in the cemetery may in the addition to any penalty provided by this local law, be ordered to leave the cemetery by the Board, the CEO or an authorised officer.

### 8.8 Fireworks or firearms

- (1) A person shall not bring or discharge any fireworks within the cemetery.
- (2) A person, except a police officer, shall not bring or discharge any firearms within the cemetery.

## PART 9—OFFENCES AND MODIFIED PENALTIES

### 9.1 General

A person who commits a breach of any provisions of this local law commits an offence and shall on conviction be liable to a penalty not exceeding \$500 and if the offence is a continuing one to a further penalty not exceeding \$20 for every day or part of a day during which the offence has continued.

### 9.2 Modified penalties

- (1) The offences specified in Schedule 1 are offences which may be dealt with under section 63 of the Act.
- (2) The modified penalty payable in respect of an offence specified in the Schedule 1 is set out in the column 4 of the Schedule 1.
- (3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in Schedule 2.
- (4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in Schedule 3.

**Schedule 1—Prescribed offences  
MODIFIED PENALTIES**

[cl. 9.2(1) and (2)]

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.3(3)	Exceeding speed limit	\$50
2	5.3(3)	Not driving on constructed vehicle roadways	\$50
3	7.3	Not removing rubbish and surplus materials	\$50
4	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50
5	8.1	Animal within cemetery	\$50
6	8.4	Littering and vandalism	\$50
7	8.5	Unauthorised advertising or trading	\$50
8	8.6	Disobeying sign or lawful direction	\$50
9		All other offences not specified	\$50

**Schedule 2—Form 1  
INFRINGEMENT NOTICE**

[cl. 9.2(3)]

TO: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

It is alleged that at \_\_\_\_\_:\_\_\_\_\_ hours on \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_\_ at \_\_\_\_\_

you committed the offence indicated below by an (x) in breach of clause ..... of the *Town of Port Hedland Cemetery Local Law 2015*.

\_\_\_\_\_  
(Authorised Officer)

**Offence**

- Animal within cemetery (cl. 8.1)
- Not removing rubbish and surplus materials (cl. 7.3)
- Exceeding speed limit (cl. 5.3(3))
- Leaving uncompleted works in an untidy or unsafe condition (cl. 7.7)
- Littering and vandalism (cl. 8.4)
- Unauthorised advertising or trading (cl. 8.5)
- Not driving on constructed vehicle areas (cl. 5.3(3))
- Disobeying sign or lawful direction (cl. 8.6)
- Other Offence \_\_\_\_\_

\$ \_\_\_\_\_

You may dispose of this matter—

By payment of the penalty as shown within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date) to the Chief Executive Officer of the Town of Port Hedland at Port Hedland Civic Centre, McGregor Street, Port Hedland between the hours of 8:00 a.m. to 4.00 p.m. Monday to Friday.

Please make cheques payable to the Town of Port Hedland. Payments by mail should be addressed to—

The Chief Executive Officer  
Town of Port Hedland  
PO Box 41  
PORT HEDLAND WA 6721

If the penalty is not paid within the time specified, then a complaint of the alleged offence may be made and heard and determined by a court.

**Schedule 3—Form 2**  
**WITHDRAWAL OF INFRINGEMENT NOTICE**

[cl. 9.2(4)]

No. \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

To <sup>[1]</sup> \_\_\_\_\_Infringement Notice No \_\_\_\_\_ dated \_\_\_\_/\_\_\_\_/\_\_\_\_ for the alleged offence of <sup>[2]</sup>Penalty <sup>[3]</sup> \$ \_\_\_\_\_ is withdrawn.

(Delete whichever does not apply)

\* No further action will be taken.

\* It is proposed to institute court proceedings for the alleged offence.

[1] Insert name and address of alleged offender.

[2] Insert short particulars of offence alleged.

[3] Insert amount of penalty prescribed.

\_\_\_\_\_  
(Authorised Officer)

Dated 30 November 2015.

The Common Seal of the Town of Port Hedland was affixed by authority of a resolution of the Council in the presence of—

K. HOWLETT, Mayor.  
M. OSBORNE, Chief Executive Officer.