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LOCAL GOVERNMENT ACT 1995

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**MODEL LOCAL LAW  
(CEMETERIES) 1998**



## WESTERN AUSTRALIA

**MODEL LOCAL LAW  
(CEMETERIES) 1998**

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## CEMETERIES ACT 1986

**MODEL LOCAL LAW (CEMETERIES) 1998**

The following model local law was caused by the Governor in Executive Council to be prepared and published under section 56(1) of the Act.

Note: under section 56(1) of the Act, a Board under the Act may adopt the provisions of the model local law by reference with or without modification. If the Board is a local government they are to be adopted as a **local law**. If the Board is not a local government they are to be adopted as a **by-law**.

Note: under section 56(2) of the Act, a model local law has no effect except to the extent that it is adopted.

JOHN LYNCH, Executive Director  
Department of Local Government.

## CEMETERIES ACT 1986

*[insert name of Local Government or Board]*

*[insert name of Local Law or By-law]*

**PART 1—PRELIMINARY****1.1 Citation**

This *[insert "Local Law" or "By-law" as applicable]* may be cited as the *[insert name of Local Law or By-law]* *[insert year]*.

**1.2 Interpretation**

In this *[insert "Local Law" or "By-law" as applicable]* unless the context otherwise requires:

"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;

"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 *[insert Local Law" or "By-law" as applicable]*;

"CEO" means the chief executive officer for the time being, of the Board;

"Funeral Director" means a person holding a current funeral director's licence;

"Board" means the *[insert name of Local Government or Board]*;

"mausoleum" means a building or construction wholly above or partially above and below ground level, so constructed as to allow the deposition of dead bodies into a compartment in the wall or floor and being sealed from view;

"monumental mason" means a person holding a current monumental mason's licence;

"personal representative" means the administrator or executor of an estate of a deceased person;

"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.

"vault" means a below ground lined grave with one or more sealed compartments constructed to specifications approved from time to time by the Board.

**1.3 Repeal**

The following *[insert "Local Law" or "By-law" as applicable]* is repealed:—

*[Insert details of local law or by-law repealed]*

**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 cemetery.

### 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 Application for Cremation

A person who desires to hold a funeral within the cemetery shall, in the case of the cremation of a dead body:

- (a) make an application to the Board in the form determined by the Board from time to time; and
- (b) lodge with the application referred to in paragraph (a), a permit to cremate issued in accordance with the Cremation Act 1929.

#### 3.3 Applications to be Accompanied by Certificates etc

All applications referred to in clauses 3.1 and 3.2 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under clause 3.4, in respect of the body.

#### 3.4 Certificate of Identification

(1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, or crematorium within 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.

#### 3.5 Minimum Notice Required

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

### PART 4—FUNERAL DIRECTORS

#### 4.1 Funeral Director's Licence Expiry

A funeral director's licence shall expire on the 30th day of June in each year.

#### 4.2 Single Funeral Permits

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, or crematorium.

#### 4.3 Application Refusal

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 or crematorium, are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

### 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 or cremation of that dead body in accordance with Part 3 of this *[insert "Local Law" or "By-law" as applicable]*;
- (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 or cremation 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 or clause 3.2 shall pay the set fee for being late.

**5.3 Vehicle Entry Restricted**

(1) Subject to clause 5.3(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 cemetery.

(2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.

**5.4 Vehicle Access and Speed Limitations**

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 of 25km per hour.

**5.5 Offenders may be Expelled**

A person committing an offence under clause 5.4 may be expelled from the cemetery by the CEO or an authorised officer.

**5.6 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 or cremate that dead body but may cremate the dead body only when a permit to cremate has been obtained for that body under the Cremation Act 1929;
- 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 *[insert "Local Law" or "By-law" as applicable]*;
- g) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

*Division 2—Cremation***5.7 Metal Coffins Prohibited**

Metal or metal lined coffins shall not be accepted by the Board for cremation at the cemetery.

**5.8 Polyvinyls, etc, Prohibited**

The use of polyvinyl or its derivative, polyurethane, aerosol cans, other sealed containers, glass and/or other materials determined from time to time to be not appropriate to the cremation process by the Board, in or upon coffins presented for cremation at the cemetery is prohibited.

**5.9 Depositing the Coffin**

(1) The Funeral Director shall deposit the coffin for cremation upon the catafalque in the Crematorium chapel or at such other position within the cemetery as may be determined from time to time by the Board.

(2) Once the coffin has been deposited for cremation in accordance with sub-clause (1), all further services will be rendered by and be under the sole control of the Board.

**5.10 Removal of the Name Plate and Lead Strip**

The Board shall remove the name plate and lead strip from the coffin prior to cremation at a cemetery and the lead strip shall be placed in the container with the ashes.

**5.11 Removal of Metal Fittings**

The Board may remove any metal or other fittings on coffins presented for cremation at the cemetery which in the opinion of the Board could impede the cremation or cause damage to the cremation equipment.

*Division 3—Placement of Ashes***5.12 Disposal of Ashes**

(1) The 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:

- Niche Wall
- Memorial Wall
- Garden of Remembrance
- Ground Niche
- Memorial Rose, Tree or Shrub
- Family Shrub
- Memorial Desk
- Granite Seat
- Family Grave
- Book of Remembrance
- Scattering to the Winds
- Memorial Gardens
- Other memorials approved by the Board.

(2) Subject to sub-clauses (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 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.

### **5.13 Availability of Ashes**

Subject to compliance with clause 5.12 and upon the payment of the set fee, the ashes of a deceased person that have not been placed within the cemetery will be made available to the personal representative of the deceased person during the normal office hours of the Board after the expiration of twenty four (24) hours after the completion of the cremation at the cemetery.

### **5.14 Ashes held by the Board**

(1) If at the expiration of six (6) months from the date of cremation at a cemetery:

- (a) the ashes of the deceased person have not been claimed; or
- (b) no arrangements have been made for the placement of the ashes of a deceased person by the personal representative, then the Board may dispose of the ashes in the cemetery by any of the methods listed in clause 5.12.

(2) If prior to the expiration of six (6) months from the date of cremation the personal representative of the deceased person requests the Board to store the ashes of the deceased person, and pays to the Board the set fee monthly in advance for such storage, the Board shall store the ashes in safe custody.

(3) Notwithstanding sub-clause (2), should the personal representative default in the payment of the fee referred to in sub-clause (2), the Board may dispose of the ashes in the cemetery by any of the methods listed in clause 5.12.

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

(2) The permission of the authorised officer in sub-clause (1) (a) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

### **6.2 Mausoleum, etc**

(1) A person other than the Board shall not construct a brick grave, crypt, vault or mausoleum within the cemetery.

(2) A person may request the Board to construct a vault or mausoleum within the cemetery which vault or mausoleum shall at all times remain the property of the Board.

(3) An application under subclause (2) shall be in writing and shall be accompanied by payment of the set fee.

(4) A person shall not place a dead body in a mausoleum except:—

- (a) in a closed coffin; and
- (b) in a soundly constructed chamber; and
- (c) in accordance with sub-clause (5).

(5) The number of burials in a chamber must not exceed the number for which the chamber was designed.

## **PART 7—MEMORIALS AND OTHER WORK**

### *Division 1—General*

#### **7.1 Application for Monumental Work**

A 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 8.00am and 6.00pm on weekdays, and 8.00am 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 6pm 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, other than as a temporary marker and with 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 Australian War Graves**

Notwithstanding anything in this *[insert "Local Law" or "By-law" as applicable]* 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.

**7.12 Placing of Glass Domes and Vases**

A person shall not place glass domes, vases or other grave ornaments:

- (a) outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40 (2) of the Act; or
- (b) on the lawn in an area set aside by the Board as a lawn or a memorial plaque section.

*Division 2—Lawn Section*

**7.13 Specification of Monuments**

(1) All monuments in the lawn section of a cemetery shall:

- (a) be made of natural stone; and
- (b) be placed upon a base of natural stone; and
- (c) comply with the following specifications:
  - (i) the overall height of the monument above the original surface of the grave shall not exceed 1.05m;
  - (ii) the height of the base of the monument above the original surface of the grave shall not be less than 150mm nor more than 450mm;
  - (iii) the width of the base of the monument shall not exceed 1.20m;
  - (iv) the depth of the base of the monument shall not exceed 300mm; and
- (d) have foundations extending to the bottom of the grave unless concrete beam foundations are provided by the Board.

(2) An admiralty bronze memorial plaque may be attached to a monument erected or being erected in the lawn section of the cemetery.

(3) A person shall not display any trade names or marks upon any monument erected within the lawn section of the cemetery.

**7.14 Headstones**

In the lawn section of the cemetery, that part of a headstone above its base shall not extend horizontally beyond that base.

*Division 3—Memorial Plaque Section*

**7.15 Requirements of a Memorial Plaque**

(1) All memorial plaques placed in a memorial plaque section of the cemetery shall:

- (a) be made of admiralty bronze or any other material approved by the Board; and
- (b) not be less than the dimensions 380mm x 280mm, nor more than 560mm x 305mm; and

- (2) All memorial plaques made of admiralty bronze shall:
- (a) not exceed 20mm in thickness; and
  - (b) be placed upon a base mounting approved by the Board.
- (3) All memorial plaques made of stone shall:
- (a) not exceed 50mm in thickness placed upon a base mounting approved by the Board; or
  - (b) not be less than 100mm in thickness if it is not to be placed upon a base mounting.

*Division 4—Licensing of Monumental Masons*

**7.16 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 sub-clause (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this *[insert "Local Law" or "By-law" as applicable]* and such conditions as the Board shall specify upon the issue of that licence.

**7.17 Expiry Date, Non-Transferability**

A monumental mason's licence:

- (a) shall, subject to clause 7.20, be valid from the date specified therein until the 30th day of June next following; and
- (b) is not transferable.

**7.18 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 7.16 or does so as the employee of a person who holds such a licence; or
- (b) is authorised by the Board to do so.

**7.19 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 *[insert "Local Law" or "By-law" as applicable]*, the Act and any other written law which may affect the carrying out of monumental works.

**7.20 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 *[insert "Local Law" or "By-law" as applicable]*, the Act 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.
- (3) An aggrieved person whose licence has been terminated under subclause (1) may appeal to a Local Court against a decision of Board under this clause in the manner stated in section 19 (3) of the Act.

**PART 8—GENERAL**

**8.1 Animals**

Subject to clause 8.2, a person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than with the approval of the CEO or an authorised officer.

**8.2 Guide Dogs**

Clause 8.1 shall not apply to a hearing impaired person or a person who is blind or partially blind and is accompanied by a hearing or guide dog.

**8.3 Damaging and Removing of Objects**

Subject to clause 8.4, 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.

**8.4 Withered Flowers**

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.

**8.5 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;

- (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.

### 8.6 Advertising

A person shall not carry on or advertise 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.

### 8.7 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.

### 8.8 Removal from the Cemetery

Any person failing to comply with any provisions of this *[insert "Local Law" or "By-law" as applicable]* 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 addition to any penalty provided by this *[insert "Local Law" or "By-law" as applicable]* be ordered to leave the cemetery by the Board, the CEO or an authorised officer.

## PART 9—OFFENCES AND MODIFIED PENALTIES

### 9.1 General

A person who commits a breach of any provisions of this *[insert "Local Law" or "By-law" as applicable]* commits an offence and shall on conviction be liable to a penalty not exceeding \$500.00 and if the offence is a continuing one to a further penalty not exceeding \$20.00 for every day or part of a day during which the offence has continued.

### 9.2 Modified Penalties

- (1) The offences specified in the First Schedule 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 First Schedule is set out in the fourth column of the First Schedule.
- (3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in the Second Schedule.
- (4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in the Third Schedule.

### First Schedule

Cemeteries Act, 1986

*[insert name of Local Government or Board]*

*[insert name of Local Law or By-law]*

#### Modified Penalties

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.4	Excessive speed	\$50.00
2	5.4	Unauthorised use—driving of vehicles	\$50.00
3	7.3	Placing and removal of rubbish and surplus materials	\$50.00
4	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50.00
5	8.1	Animal at large	\$50.00
6	8.5	Dumping of Rubbish	\$50.00
7	8.6	Unauthorised advertising, and/or trading	\$50.00
8	8.7	Disobeying sign or lawful direction	\$50.00

### Second Schedule

Cemeteries Act, 1986

*[insert name of Local Government or Board]*

*[insert name of Local Law or By-law]*

#### Infringement Notice

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

It is alleged that at \_\_\_\_\_ : \_\_\_\_\_ hours on \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_

you committed the offence indicated below by an (x) in breach of clause ..... of the **[insert name of Local Law or By-law]**

\_\_\_\_\_  
(Authorised Person)

Offence

- Animal at large
- Dumping rubbish
- Excessive speed in vehicle
- Leaving uncompleted works in an untidy or unsafe condition
- Non removal of rubbish
- Unauthorised advertising or trading
- Unauthorised vehicle use
- Disobeying sign or lawful direction

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 **[insert name of Local Government or Board]** at **[insert address of Local Government or Board]** between the hours of 9am to 4.30pm Monday to Friday.

Please make cheques payable to **[insert name of Local Government or Board]**. Payments by mail should be addressed to:

The Chief Executive Officer  
**[insert name of Local Government or Board]**  
**[insert address of Local Government or Board]**

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.

**Third Schedule**

Cemeteries Act, 1986

**[insert name of Local Government or Board]**

**[insert name of Local Law or By-law]**

Withdrawal of Infringement Notice

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

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

To (1) \_\_\_\_\_

Infringement Notice No \_\_\_\_\_ dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_ for the alleged offence of (2)

Penalty (3) \$ \_\_\_\_\_ 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 Person)

