

**CEMETERIES.**

11° Elizabeth II., No. XV.

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**No. 15 of 1962.**

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**AN ACT to amend the Cemeteries Act, 1897-1957.**

[Assented to 1st October, 1962.]

**B**E 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:—

Short title  
and citation.

1. (1) This Act may be cited as the *Cemeteries Act Amendment Act, 1962.*

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Acts.  
Approved for  
reprint,  
7th July,  
1958.

(2) In this Act the Cemeteries Act, 1897-1957, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Cemeteries Act, 1897-1962.

2. Section three of the principal Act is repealed and re-enacted with amendments as follows:— S. 3 repealed and re-enacted.

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.

3. Section four of the principal Act is amended by adding after the passage, "In this Act—" in line one the following interpretation— S. 4 amended.

"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; .

4. Section five of the principal Act is amended— S. 5 amended.

(a) by inserting after the word, "district" in line three, the passage, " , or with the consent of the owner thereof any alienated land,"; and

(b) by inserting after the word, "place" in the last line, the words, "or land".

5. Section six of the principal Act is amended— S. 6 amended.

(a) by repealing and re-enacting subsection (1) with amendments as follows:—

(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: Fifty pounds. ;

(b) by adding after subsection (1) the following subsections:—

(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: Fifty pounds. ; and

(c) by substituting for the subsection designation, “(2)” in line one of subsection (2), the subsection designation, “(4)”.

S. 7 repealed  
and  
re-enacted.

6. Section seven of the principal Act is repealed and re-enacted as follows:—

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

(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.

7. Section eight of the principal Act is amended by substituting for the words, "last preceding section" in line two, the words, "provisions of sections six and seven of this Act". S. 8 amended.

8. Section nine of the principal Act is repealed and re-enacted with amendments as follows:— S. 9 repealed and re-enacted.

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.

9. Section ten of the principal Act is amended by substituting for the word, "trustee" in line three, the word, "trustees". S. 10 amended.

S. 11A  
repealed and  
re-enacted.

10. Section eleven A of the principal Act is repealed and re-enacted with amendments as follows:—

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

- (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.

S. 12  
amended.

11. Section twelve of the principal Act is amended by inserting immediately after the word, “entrances” in line four, the passage, “, and to provide either within or without the cemetery suitable office accommodation for administration of the cemetery”.

S. 13 repealed  
and  
re-enacted.

12. Section thirteen of the principal Act is repealed and re-enacted with amendments as follows:—

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.

(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.

13. Section fourteen of the principal Act is amended by adding after the passage, "such fees;" in line nineteen the following paragraphs:— S. 14  
amended.

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; .

14. Section fourteen A of the principal Act is amended— S. 14A  
amended.

(a) by substituting for the word, "Five" in line five, the word, "twenty"; and

- (b) by substituting for the words, "One pound" in line six, the words, "two pounds".

S. 15A  
repealed.

15. Section fifteen A of the principal Act is repealed.

S. 16A  
amended.

16. Section sixteen A of the principal Act is amended—

- (a) by substituting for the passage, "the Workers' Homes Board as constituted by the Workers' Homes Act, 1911-1941" in lines three, four and five of paragraph (b), the passage, "The State Housing Commission constituted by the State Housing Act, 1946"; and

- (b) by substituting for the word, "Board" where it occurs in line six and again in line ten of paragraph (b), the word, "Commission" in each case.

S. 18  
amended.

17. Section eighteen of the principal Act is amended by inserting after the word, "therein" in line three, the words, "of dead bodies or the ashes of bodies cremated".

S. 19  
amended.

18. Section nineteen of the principal Act is amended—

- (a) by inserting immediately after the section number, "19." in line one, the subsection designation, "(1)";

- (b) by adding thereto the following subsections—

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 one shilling, 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.

19. Section thirty of the principal Act is <sup>S. 30</sup> amended—  
amended—

- (a) by inserting immediately after the section number, "30." in line one, the subsection designation, "(1)"; and
- (b) by substituting for the passage commencing with the word, "Every" in line nine down to and including the word, "Parliament" in the last line the following subsections:—

(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.



S. 31  
amended.

20. Section thirty-one of the principal Act is amended by inserting after the word, "shall" in line two, the passage, ", unless exempted from so doing by the provisions of section thirty-four B of this Act,".

S. 34  
amended.

21. Section thirty-four of the principal Act is amended by substituting for the passage, "as aforesaid, and verified as aforesaid" in line three, the words, "in accordance with the requirements of sections thirty and thirty-one of this Act".

S. 34B  
amended.

22. Section thirty-four B of the principal Act is amended by substituting for the words, "any Road Board or Municipal Council" in lines one and two of paragraph (c), the words, "the council of any municipality".

Ss. 34C and  
34D repealed.

23. Sections thirty-four C and thirty-four D of the principal Act are repealed.

S. 34F  
amended.

24. Section thirty-four F of the principal Act is amended by deleting the passage, ", thirty-four C, thirty-four D" in lines one and two.

S. 38  
repealed.

25. Section thirty-eight of the principal Act is repealed.

S. 39  
amended.

26. Section thirty-nine of the principal Act is amended by inserting after the word, "relatives" in line three, the words, "cannot be found or".

S. 39A added.

27. The principal Act is amended by adding after section thirty-nine a section as follows:—

Offences  
generally.

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.

(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 fifty pounds; and
- (b) where the offence is a continuing offence, to a penalty of two pounds for each day during which the offence continues.

28. Section forty-one of the principal Act is amended—

S. 41  
amended.

- (a) by inserting after the word, “elsewhere” in line four, the words, “or cremated”; and
- (b) by inserting after the word, “family” in line five, the passage, “, or for any other reason which the Governor may deem adequate”.

29. Section forty-one A of the principal Act is amended by substituting for the words, “Her late Majesty” in line five, the words, “the reign of Her Majesty Queen Victoria”.

S. 41A  
amended.