

WESTERN AUSTRALIA.

CREMATION.

No. 22 of 1929.

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

No. 8 of 1935, assented to 5th October, 1935;

No. 80 of 1953,¹ assented to 18th January, 1954;

No. 35 of 1967, assented to 21st November, 1967;

No. 2 of 1968, assented to 26th September, 1968;

and reprinted pursuant to the Amendments Incorporation Act, 1938.²]

AN ACT to regulate Cremation.

[Assented to 11th December, 1929.]

BE it enacted by the King'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 *Cremation Act, 1929-1968*.

Short title.
Amended by
No. 2 of 1968,
s. 1.

¹ Came into operation on 6th September, 1954; see *Gazette* 20th August, 1954, p. 1429.

² Reference to the 1943 reprint, means the reprint contained in Vol. 2 of Reprinted Acts of the Parliament of Western Australia.

Interpre-
tation.
Amended by
No. 80 of
1953, s. 3
No. 2 of
1968, s. 2.

2. In this Act, subject to the context—

“administration” includes probate of the will and letters of administration of the estate of a deceased person;

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

“body”, “dead human body” or “human body” means the body of a deceased person and includes the body of an infant of not less than seven months gestation that was still-born;

“cemetery” means a public cemetery within the meaning of the Cemeteries Act, 1897, and a burial ground to which the Ordinance 4, Victoriae No 6,¹ or any other amendment thereof applies;

“Commissioner” means the Commissioner of Public Health;

“Coroner” means a person appointed to be a Coroner under the Coroners Act, 1920, and includes a deputy Coroner a Stipendiary Magistrate, a Justice authorised under section five of that Act to act as a Coroner and a person appointed a Coroner under the law of any State of the Commonwealth;

“crematorium” means any building, place, or premises designed for the purpose of the cremation of dead human bodies;

“licensed” means licensed under this Act, and

“licensees” means the holders of a license under this Act;

“medical practitioner” means a legally qualified medical practitioner registered under the Medical Act, 1894-1952.²

¹ Repealed by Act No. 68 of 1967.

² Now Medical Act, 1894-1968.

3. No person shall cremate or be party or privy to the cremation of any human body elsewhere than in a licensed crematorium.

Cremation
without
license
prohibited.

Provided that nothing in this section shall prevent the dead body of any person of Asiatic race being cremated in accordance with the religion to which the deceased belonged, subject, always, to such regulations as may be prescribed in regard thereto.

4. (1) The Governor may, subject to this Act, grant a license to use and conduct a specified crematorium to any of the following bodies, namely:—

Issue of
licenses.
Amended by
No. 8 of
1935, s. 2;
No. 80 of
1953, s. 4.

- (a) the trustees or controlling authority of any cemetery;
- (b) any association incorporated under the Associations Incorporation Act, 1895, established and constituted in connection with the cremation of dead human bodies, and holding a certificate under the hand of the Commissioner that such association is an association to which the provisions of this section may reasonably be extended.

(2) Applicants for a license under this Act must satisfy the Governor by statutory declaration or otherwise—

- (i) that they have sufficient authority to use the site or proposed site;
- (ii) that they have erected and provided on the site in accordance with the regulations and to the satisfaction of the Commissioner, such building, fittings, works, and apparatus as are necessary for the inoffensive, decent, and effective cremation of dead human bodies, or, in case the crematorium is not already established, that the Commissioner has approved of the plans and specifications of the proposed building, fittings, works, and apparatus;

- (iii) that notice of intention to apply for the license has been given by advertisement, at least once in each of the eight successive weeks immediately preceding the date of the application, in a public newspaper circulating in the city, town, or place within which the crematorium is erected or proposed to be erected, and that by such advertisement it was announced that objections to the granting of the license might be lodged with the Commissioner;
- (iv) that where an objection to the granting of the license has been lodged with the Commissioner, the Commissioner has over-ruled the objection.

(3) No license granted for or in respect of any crematorium not already established shall have any validity or effect unless and until the Commissioner shall certify (within one year from the granting of the license) that the necessary building, fittings, works, and apparatus have been erected and installed in accordance with the approved plans and specifications, and that the relative regulations have been complied with.

Portion of a cemetery may be set aside as a site for a crematorium.
 Added by No. 8 of 1935 as s. 4A, renumbered s. 5, in 1943 reprint.

5. (1) It shall be lawful for the trustees or controlling authority of any cemetery holding a license under section four of this Act to define and set aside any portion of such cemetery as a site for a crematorium.

(2) Where any portion of a cemetery has been defined and set aside as aforesaid, then, notwithstanding any Act or law to the contrary, the following provisions shall apply—

- (a) the portion of the cemetery so defined and set aside may be used only for the erection of a crematorium thereon, and for the burial of the ashes of dead human bodies cremated in such crematorium, and the trustees or controlling authority may prohibit the burial in such portion of the

cemetery aforesaid of any dead human bodies which have not been so cremated;

- (b) the trustees or controlling authority of the cemetery, instead of themselves using and conducting a crematorium in such portion of the cemetery, may grant a permit for such period, and upon and subject to such conditions as they may think fit, to any association holding a license under section four of this Act, to erect a crematorium upon the portion of the cemetery aforesaid, and to use and conduct such crematorium thereon, and to use such portion of the cemetery for the burial of the ashes of dead human bodies which have been cremated in such crematorium.

(3) Where the trustees or controlling authority of a cemetery have granted to an association a permit as provided for in subsection (2) of this section, such association shall, during the continuance of such permit, be deemed to be a trustee of that portion of the cemetery to which such permit applies, and, in relation thereto, to have all the rights, powers, and authorities of the trustees of a cemetery in accordance with the laws for the time being in force and relating to public cemeteries, and the portion of the cemetery to which such permit applies shall to all intents and purposes be deemed to be a public cemetery, save and except that only the ashes of the dead human bodies after cremation shall be buried therein, unless the association otherwise determines.

6. Where an association holding a license under section four of this Act is using and conducting a crematorium on land held by such association for the purpose, and which is not part of a public cemetery, it shall be lawful for the association to use such portions of the said land as it thinks fit for the burial of the ashes of dead human bodies after cremation, and, in relation to such land, the association shall have all the rights, powers, and

Site of a crematorium which is not included in a cemetery shall be deemed to be a cemetery for certain purposes. Added by No. 8 of 1935, s. 3, as s. 4B, renumbered s. 6 in 1943 reprint.

authorities of the trustees of a public cemetery in accordance with laws for the time being in force and relating to public cemeteries, and the said land shall to all intents and purposes be deemed to be a public cemetery, save and except that only the ashes of dead human bodies after cremation shall be buried therein, unless the association otherwise determines.

Disposal of ashes otherwise than by burial on a site of a crematorium.

Added by No. 8 of 1935, s. 3, as s.4C, renumbered s.7, in 1943 reprint.

Amended by No. 80 of 1953, s. 5; No. 35 of 1967, s. 2.

7. (1) Where any dead human body has been cremated in a crematorium, and the person who obtained the permit required by this Act for the cremation of such body desires to dispose of the ashes of such body after cremation otherwise than by burial upon the site of the crematorium, it shall be lawful for the trustees or controlling authority of the cemetery, or the association in whose crematorium the body was cremated, to deliver the said ashes to the said person for removal from the crematorium.

(2) Subject to subsection (1) of this section, the ashes of a dead human body after cremation shall not be removed from the crematorium in which such body was cremated, except for the purpose of burial in the site of the crematorium.

Appointment of medical referees.

No. 22 of 1929, s. 5.

Renumbered as s. 8 in 1943 reprint.

Repealed and re-enacted by No. 80 of 1953, s. 6.

8. (1) The Governor may from time to time—

(a) appoint for the purposes of this Act, one or more medical practitioners to be a medical referee;

(b) cancel an appointment so made.

(2) Where an application in the prescribed form for a permit for the cremation of a dead human body, is made by a person to a medical referee, if he is satisfied that the applicant is an administrator or other duly authorised person to hold the permit, he shall subject to the provisions of this Act, grant the permit.

(3) (a) An application for a permit may be made by—

- (i) an administrator;
- (ii) a person acting with the written authority of and on behalf of the administrator; or
- (iii) a person who satisfies a medical referee that no application for a permit is to be made by the administrator of the deceased person in respect of whom the application is made, and who shows to the medical referee a satisfactory reason why the application is not made by an administrator, and that he is a proper person to make the application.

(b) Where the application for a permit is not made by an administrator, the person making the application shall—

- (i) make a statutory declaration in the prescribed form setting out the grounds upon which he claims authority to make the application, and
- (ii) supply such further information with relation to the application as the medical referee may require.

(4) (a) A person who applies for a permit shall pay the prescribed fee to the medical referee issuing the permit.

(b) The medical referee is entitled to retain the prescribed fee for his own use.

(5) Where it appears to a medical referee that the death of the person in respect of whose body the application for the permit is made, whether the cause of death is shown on the death certificate of that person or not, is due to violence or unnatural causes, or if there are in his opinion suspicious circumstances surrounding the death, the medical referee shall refuse the application and report the refusal and the reason for the refusal to the Coroner residing nearest to the place where the body is lying.

(6) Where, except as provided in the last preceding subsection, a medical referee refuses to issue a permit, the applicant may appeal in the prescribed manner to the Commissioner, who may uphold the decision of the medical referee or direct in writing the medical referee to issue the permit to the applicant.

Permits.
Added by
No. 80 of
1953, s. 7.

8A. A medical referee shall not issue a permit for the cremation of the body of a deceased person—

- (a) unless a certificate in the prescribed form is given by a medical practitioner who was in attendance upon the deceased person at the time of his death and he is satisfied that the medical practitioner has made full enquiries as to the cause of death of the deceased person;
- (b) where the deceased person has left a written direction that his body is not to be cremated, except where the Commissioner orders the body to be cremated, pursuant to powers conferred upon him by the Health Act, 1911-1952;¹
- (c) unless he is satisfied that the applicant for the permit is entitled or authorised to make the application;
- (d) unless he is satisfied that the fact and cause of death of the deceased person are definitely ascertained;
- (e) where the permit is in the first instance refused by him under the provisions of subsection (5) of section eight of this Act, unless and until he receives from a Coroner a certificate in the prescribed form authorising him to grant the permit;
- (f) where the Coroner has signified his intention of holding an inquest on the body of the deceased person unless and until the Coroner gives a certificate in the prescribed form authorising him to grant the permit;

¹ Now Health Act, 1911-1970.

- (g) where the medical practitioner who gives the certificate referred to in paragraph (a) of this section is—
- (i) the parent, child, brother or sister of the deceased person or is the uncle, aunt, niece or nephew of the deceased person;
 - (ii) in partnership with the medical referee;
 - (iii) the medical referee to whom the application for the permit is made.

8B. Notwithstanding the provisions of section eight A of this Act where an application for a permit for the cremation of the remains of a still-born child is made to the medical referee he may issue the permit if—

Permit to
cremate
still-born
child.
Added by
No. 80 of
1953, s. 8.

- (a) a medical practitioner other than himself who was in attendance at the birth of the child certifies in writing that
 - (i) the remains are those of a still-born child;
 - (ii) the remains are not required to be submitted to post-mortem examination in accordance with the provisions of the Health Act, 1911-1952;¹ or
- (b) he is satisfied after making such enquiries as he considers necessary that
 - (i) the child, whose remains are the subject of the application, was in fact still-born;
 - (ii) there is in his opinion no reason for further examination and that the remains are not required to be submitted to post-mortem examination in accordance with the provisions of the Health Act, 1911-1952.¹

¹ Now Health Act, 1911-1970.

Permit to be sufficient authority to cremate body.
No. 22 of 1929, s. 6, renumbered s. 9 in 1943 reprint.

9. Subject to this Act a permit lawfully granted under this Act shall be sufficient authority for the cremation of the body referred to therein by any licensees, or any person employed by them, at the crematorium specified in their license.

Registrar not to issue permit improperly; and no person to cremate body without permit.
No. 22 of 1929, s. 7, renumbered s. 10 in 1943 reprint.
Amended by No. 80 of 1953, s. 9.

10. No medical referee shall issue any permit without having first received the proper certificate or certificates or otherwise in contravention of section eight, and no person shall cremate or permit the cremation of any human body without first having received the necessary permit.

Provision as to medical certificates in cases in which death occurred outside the State.
No. 22 of 1929, s. 8, renumbered s. 11 in 1943 reprint.
Amended by No. 80 of 1953, s. 10.

11. On any application for a permit to cremate the body of any person who has died outside the State, any medical practitioner who is shown to the satisfaction of the medical referee to have been, at the time of such death, in actual practice as a medical practitioner in the State or place where the death took place, and to have been qualified in accordance with the law of such State or place to engage in such practice, and to certify as to causes of deaths occurring in such State or place, shall be deemed to be a legally qualified medical practitioner within the meaning of section eight.

Interested persons not to give certificates.
No. 22 of 1929, s. 9, renumbered s. 12 in 1943 reprint.

12. No person who knows that, under the terms of any policy of life assurance, will, settlement, or statute or otherwise howsoever, he is entitled, or will become entitled, by reason or in consequence of the death of another person, to any real or personal property, shall give or sign any certificate concerning the death of such other person for any of the purposes of this Act.

13. (1) Notwithstanding anything hereinbefore contained, no person shall cremate, or apply for or grant any permit for the cremation of, the body of any deceased person if he knows that the husband, widow, or any person who is next of kin of the deceased, and is over the age of fourteen years, has objected in writing to the body being cremated, unless the deceased shall, by his will or any codicil or any memorandum or writing signed by him and attested, have directed or expressed a desire that his body is to be cremated.

Cremation not permitted if objected to by husband, widow, or next of kin, unless directed by will or other writing signed by deceased.
No. 22 of 1929, s. 10, renumbered s. 13 in 1943 reprint.

(2) It shall be the duty of the administrator of a deceased person to use all reasonable endeavours to have the direction or desire contained or expressed in such will, codicil, memorandum, or writing carried into effect.

Directions of deceased to be given effect to.

14. The Attorney General or any stipendiary magistrate may, in any case in which there shall appear to be reasonable cause for preventing the cremation of the body or any part of the body of any deceased person, issue an order in writing under his hand forbidding the cremation of such body, either absolutely or until the viscera or any other organs have been removed from the body and lodged or deposited in such place and custody as may be specified in the order, and any such order shall be binding on every person to whose knowledge it shall come, and no such person shall do any act in contravention thereof.

Attorney General or magistrate may forbid cremation.
No. 22 of 1929, s. 11, renumbered s. 14 in 1943 reprint.

15. (1) Any person contravening by act or omission any provision of this Act shall be deemed to have committed an offence, and shall be liable on summary conviction to a fine not exceeding four hundred dollars or to imprisonment for not exceeding one year.

Offences.
No. 22 of 1929, s. 12, renumbered s. 15 in 1943 reprint.
Amended by No. 113 of 1963, s. 3.

(2) Any attempt to commit an offence against this Act shall be an offence punishable as if the offence had been committed.

(3) Any person who is party or privy to any offence may be proceeded against and shall be punishable as if he had committed the offence.

(4) If any offence against this Act is committed by any employee or agent of any licensees at or in the vicinity of the crematorium of such licensees, then each of the licensees, as well as such employee or agent, shall be guilty of the offence, but it shall be a defence for such licensee to prove that no act or neglect on his part facilitated or was contributory to the commission of the offence.

(5) This section does not apply to offences against the regulations.

16. The Governor may by order revoke any license—

- (a) if any of the licensees shall have been convicted of any offence against this Act and sentenced to imprisonment, or fined one hundred dollars or more;
- (b) if the crematorium shall have become unfit for the inoffensive, decent, and effective cremation of bodies, and a certificate to that effect shall have been signed by the Commissioner;
- (c) if the licensees have lost the right to occupy the site of the crematorium;

and thereupon the license shall become null and void: Provided that no order revoking any license on the ground mentioned in paragraph (a) or (b) shall be made more than three months after the date of the conviction or of the Commissioner's certificate, as the case may be.

17. (1) The Governor may make regulations for—

- (a) to approve of sites for the erection of any crematorium, and requiring that proper plans and specifications of all buildings, fittings, works and apparatus to be used for a crematorium shall be first submitted

Revocation
of licenses.
No. 22 of
1929, s. 13,
renumbered
s. 16 in
1943 reprint.
Amended by
No. 113 of
1965, s. 8.

Regulations.
No. 22 of
1929, s. 14,
renumbered
s. 17 in
1943 reprint.
Amended by
No. 80 of
1953, s. 11;
No. 113 of
1965, s. 8.

to and approved by the Commissioner, and providing for all such buildings, fittings, works and apparatus to be erected, completed and maintained to the satisfaction of the Commissioner, and to prohibit the erection on any site not approved as aforesaid, or the use of any such buildings, fittings, works or apparatus not erected or completed or maintained to the satisfaction of the Commissioner;

- (b) prescribing the form of licenses, permits, and other documents to be issued under this Act, and in what manner and form applications therefor shall be made;
- (c) conferring on the trustees or controlling authority of any cemetery power to obtain and exercise licenses under this Act, and providing for the devolution of licenses on the successors in office of the licensees;
- (d) the granting of authority in such manner at such specified times or places, or the withholding of any such authority to exercise any rites or ceremonies recognised by or peculiar to any race or sect or community in connection with cremation;
- (e) prescribing the maximum fees and charges which shall be chargeable by licensees for services performed by them by virtue of their licenses;
- (e1) prescribing the duties and obligations of medical referees and the fees to be paid to them for a permit for the cremation of a dead human body;
- (f) prescribing and ordering any other matter or thing whatsoever which it may be necessary or convenient to prescribe or order for the purpose of carrying this Act into effect or achieving the objects thereof.

(2) The regulations may prescribe penalties not exceeding twenty dollars in respect of any contravention of any of the regulations.

