

LG306

CEMETERIES ACT 1986**METROPOLITAN CEMETERIES BOARD (AMENDMENT) BY-LAW 1995**

Under the powers conferred on it by the Cemeteries Act 1986, and any other enabling legislation, the Metropolitan Cemeteries Board resolved on 28 September 1995 to make and submit for the approval of the Lieutenant-Governor and deputy of the Governor this By-law.

Citation

1. This By-law may be cited as the *Metropolitan Cemeteries Board (Amendment) By-law 1995*.

Principal By-law

2. In this By-law the Metropolitan Cemeteries By-law published in the *Government Gazette* on 3 April 1992 is referred to as the principal By-law.

Clause 2 amended

3. Clause 2 of the principal By-law is amended by adding after Metropolitan Cemeteries Board "By-law"—
"1992".

Clause 3(1) amended

4. Clause 3(1) of the principal By-law is amended by—

(a) deleting—

"PART III RIGHTS OF BURIAL:

Division 1 Private Graves

Division 2 Public Graves"

and inserting—

"PART III RIGHTS OF BURIAL"; and.

(b) deleting, after the heading "PART VIII MONUMENTAL AND OTHER WORK"—

"Division 1 Monumental Work"

and inserting—

"Division 1 Permission for Monumental Work".

Clause 3(2) amended

5. Clause 3(2) of the principal By-law is amended by—

(a) deleting the definitions of—

(i) "crypt";

(ii) "Grant";

(iii) "Holder";

(iv) "private grave"; and

(v) "public grave".

(b) inserting, in its appropriate alphabetical sequence, each of the following definitions—

"grant" means a grant by the Board, under clause 7 or clause 9, of an exclusive right of burial in a grave;

"grave" means a specified area of a Cemetery for burial, including a compartment within a mausoleum or vault;

"holder", in relation to a grant, includes:

(a) a person issued with a grant by the Board under clause 7 or clause 9;

(b) a person for the time being appearing to the Board to be the holder of a grant; "

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

Reference to Division 1 of Part III deleted

6. After the reference in the principal By-law to "PART III-RIGHTS OF BURIAL", delete—
"Division 1—Private Graves".

Clause 7 substituted

7. Clause 7 of the principal By-law is deleted and the following inserted—

"Issue of a grant

7. Upon:

(a) the written application of a person; and

(b) payment of the set fee,

the Board may issue to that person a grant of right of burial for a term of 25 years."

Clause 8 substituted

8. Clause 8 of the principal By-law is deleted and the following inserted—

“Rights of a holder

8. (1) Subject to this By-law, to the prior approval of the Board and to the terms and conditions (if any) imposed by the Board, a grant confers on the 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 the 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 a grave.

(3) The Board or an Authorised Officer may request a holder to produce the grant before the exercise of any of the rights referred to in sub-clause (1) and the holder shall forthwith comply with that request.”

Clause 9 substituted

9. Clause 9 of the principal By-law is deleted and the following inserted—

“Renewal of a grant

9. (1) Where, at any time during the term of a grant issued under clause 7, the holder:

- (a) makes written application; and
- (b) pays the set fee,

the Board shall renew that grant for a further term of 25 years commencing on the initial expiry date of the grant.

(2) Where a grant has been renewed under sub-clause (1) and the holder, within 6 months before or after the expiry date of the grant:

- (a) makes written application; and
- (b) pays the set fee,

the Board may renew that grant for a further period not exceeding 25 years in the case of any one renewal.”

Clause 10 substituted

10. Clause 10 of the principal By-law is deleted and the following inserted—

“Replacement grant

10. Upon:

- (a) the written application of a holder; and
- (b) the production of evidence to the satisfaction of the Board, which may include a statutory declaration by the holder substantially in the form set out in the First Schedule,

the Board may issue a new grant to replace a grant which is lost or has been destroyed.”

Clause 11 substituted

11. Clause 11 of the principal By-law is deleted and the following inserted—

“Transfer of a grant

11. (1) A holder who wishes to assign a grant must produce to the Board for registration the document giving effect to the assignment.

(2) An assignment may be in the form set out in the Second Schedule.”

Clause 12 substituted

12. Clause 12 of the principal By-law is deleted and the following inserted—

“Exercising the rights of a holder

12. If the Board is satisfied, on the basis of written evidence, that the holder of a grant:

- (a) is unavailable;
- (b) is not immediately ascertainable; or
- (c) has died without bequeathing the grant by will,

then the Board may authorise, in writing:

- (d) the holder’s personal representative;
- (e) a person acting expressly on behalf of the holder’s personal representative; or
- (f) where no one described in paragraphs (d) or (e) is available or immediately ascertainable, any other person,

to exercise, subject to any conditions imposed by the Board, the rights conferred on the holder.”

Reference to Division 2 deleted

13. After clause 12 of the principal By-law, delete—
“*Division 2—Public Graves*”.

Clause 13 substituted

14. Clause 13 of the principal By-law is deleted and the following inserted—

“Burial without a grant

13. (1) Where a person who wishes to bury a dead body, or the ashes of a dead body, in a grave which is not the subject of a grant:

- (a) makes written application; and
- (b) pays the set fee,

the Board may authorise the burial of that body or ashes in a specified grave allocated for that purpose.

(2) Where a grave is allocated under sub-clause (1), the Board shall retain all rights and powers in respect of that grave, including the rights and powers to reopen the grave to:

- (a) disinter the remains buried in that grave and reinter them:
 - (i) in the same grave;
 - (ii) in another grave but within the Cemetery; or
 - (iii) elsewhere in accordance with the Act;
- (b) disinter and cremate the remains buried in that grave; or
- (c) bury other dead bodies.”

Clause 14 amended

15. In clause 14 of the principal By-law, delete sub-paragraphs (i) and (ii) of clause 14(1)(b) and insert—

- “(i) evidence to the satisfaction of the Board that the holder of the grant in respect of the grave in which the body is intended to be buried has consented to or would not object to the burial; or
- (ii) an application for a grant under clause 7; or
- (iii) an application for the allocation of a grave under clause 13.”

Clause 16 amended

16. In clause 16(b) of the principal By-law, delete “dig or reopen” and insert—
“prepare”.

Clause 34 amended

17. Clause 34(4) of the principal By-law is amended by deleting “within a family grave” and inserting—
“in a grave”.

Clause 37 substituted

18. Clause 37 of the principal By-law is deleted and the following inserted—

“Specification of graves

37. The Board may from time to time determine the specifications of graves.”

Clause 38 amended

19. Clause 38 of the principal By-law is amended by deleting, in sub-clause(2), “constuct” and inserting—
“construct”.

Heading to Division 1 of Part VIII amended

20. Part VIII of the principal By-law is amended by deleting the heading “*Division 1—Monumental Work*” and inserting—
“*Division 1—Permission for Monumental Work*”.

Clause 44 substituted

21. Clause 44 of the principal By-law is deleted and the following inserted—

“Carrying out Monumental Work

44. (1) Subject to sub-clause (2), a person shall not carry out monumental work on a grave:

- (a) unless the monumental work has first been approved by the Board;
 - (b) except in accordance with the plans and specifications approved by the Board;
- and

- (c) unless the set fee has been paid.
- (2) The Office of Australian War Graves:
 - (a) may, without the approval of the Board, carry out monumental work on a military grave; and
 - (b) is not required to pay the set fee for any monumental work that is carried out on a military grave."

Clause 45 substituted

22. Clause 45 of the principal By-law is deleted and the following inserted—

"Application to Carry out Monumental Work

45. (1) Upon:

- (a) the written application of a person in the form of the Twelfth Schedule and accompanied by the documents set out in sub-clause (2); and
- (b) payment of the set fee,

the Board may issue to that person a permit to carry out monumental work on the grave specified in the application on the days, at the times and subject to the conditions specified by the Board.

(2) An application referred to in sub-clause (1) shall be accompanied by:

- (a) the plans and specifications of the proposed monumental work, including precise details of all words, designs and pictures intended to be inscribed on or attached to the monumental work;
- (b) if the applicant is not the holder of the grant in respect of the grave on which the work is to be carried out, the written consent of the holder; and
- (c) the quoted cost of the proposed monumental work.

(3) The Board may refuse any application where it considers that the proposed monumental work is inappropriate."

Clause 49 substituted

23. Clause 49 of the principal By-law is deleted and the following inserted—

"Kerbing

49. (1) The Board may from time to time set aside any part of a Cemetery for graves that are not to be enclosed by kerbing.

(2) A person shall not enclose a grave with kerbing where the grave is situated:

- (a) in a lawn section of a Cemetery;
- (b) in a memorial plaque section of a Cemetery; or
- (c) in a part of a Cemetery set aside under sub-clause (1)."

Clause 50 substituted

24. Clause 50 of the principal By-law is deleted and the following inserted—

"Numbering on Graves

50. (1) A person shall not carry out monumental work on a grave unless the number of that grave is indelibly and legibly inscribed on the base of the headstone, or if this is not practicable, on the kerbing at the foot of the grave."

Clause 52 amended

25. Clause 52 of the principal By-law is amended by deleting, in clause 52(b), "aide" and inserting—

"aside".

Clause 70 amended

26. Clause 70 of the principal By-law is amended by deleting, in clause 70(1)(a), "25kph" and inserting—

"25 kilometres per hour".

Clause 80 substituted

27. Clause 80 of the principal By-law is deleted and the following inserted—

"Recording on film or videotape

80. (1) A person shall not, without the prior approval of the Board, record on film or videotape any image or sound within a Cemetery.

(2) A person shall not record on film or videotape a funeral, headstone or memorial within a Cemetery without the prior approval of the next of kin of the deceased person whose funeral, headstone or memorial is being recorded."

First Schedule substituted

28. The First Schedule to the principal By-law is deleted and the following inserted—

“

First Schedule

CEMETERIES ACT 1986

METROPOLITAN CEMETERIES BOARD BY-LAW

Declaration of Ownership of Missing Grant of Right of Burial

I, (a)

of (b)

do solemnly and sincerely declare as follows:

1. I am the person described as (c)
in the grant of Right of Burial numbered
issued by the Metropolitan Cemeteries Board on

2. (d)

3. I have not transferred any of my rights under that grant to any person.

And I make this solemn declaration by virtue of section 106 of the Evidence Act 1906.

Declared at in the State of Western Australia
this day of 19 before me:

- (a) Full name of declarant.
- (b) Address and occupation of declarant.
- (c) State whether grantee or assignee.
- (d) Set out the circumstances leading to loss or destruction of grant, and if lost, action taken by declarant to ascertain whereabouts of grant.

”

Second Schedule substituted

29. The Second Schedule of the principal By-law is deleted and the following inserted—

Second Schedule

CEMETERIES ACT 1986

METROPOLITAN CEMETERIES BOARD BY-LAW

Assignment of Grant of Right of Burial

To the Metropolitan Cemeteries Board

I,

of

being the holder of a grant of right of burial numbered

and issued by the Metropolitan Cemeteries Board on

in respect of the Cemetery for good and

valuable consideration assign all my rights under that grant

to

(Full name)

of

(address)

Dated this day of 19

.....
Signature of person assigning grant

.....
Signature of person to whom grant is assigned

.....
Signature of witness

Registered by the Board on the day of

..... 19

.....
Authorised Officer

Sixth Schedule substituted

30. The Sixth Schedule of the principal By-law is deleted and the following inserted—

Sixth Schedule

CEMETERIES ACT 1986**METROPOLITAN CEMETERIES BOARD BY-LAW**

Certificate Dispensing With Identification

I,
 of
 the funeral director engaged to arrange the funeral of the body of
 certify that—

- (a) the body has not been identified because:
 * in my opinion, the body is not in a fit state to be viewed
 * after reasonable effort I have been unable to have an identification made;
 and
 (b) the body is in a coffin bearing the name plate/inscription marked:

Dated this day of 19

Signed:

Endorsed by the applicant for the funeral:
 (Full name)

Signed:
 (Signature)

(* delete if inapplicable.)

Fifteenth Schedule amended

31. The Fifteenth Schedule of the principal By-law is amended by—

- (a) In Item No.1, under the heading “Nature of Offence”, deleting “Removal” and inserting—
 “Non-removal”; and
 (b) In Item No.12, under the heading “Nature of Offence”, deleting “No” and inserting—
 “Unauthorised”.

Sixteenth Schedule amended

32. The Sixteenth Schedule of the principal By-law is amended by—

- (a) Under the heading “METROPOLITAN CEMETERIES BOARD BY-LAW”, deleting “Infringement Notice” and inserting—
 “Infringement Notice
 Part 1” ; and
 (b) inserting at the end of that notice the following—
 “Infringement Notice
 Part 2

To:
 (Name)

.....
 (Address)

It is alleged that at am/pm on
 day of 19 at

You committed the offence indicated below by an ‘X’ in breach of the Metropolitan Cemeteries Board By-law clause number

Authorised Officer

Offence

- ☐ Animal at large
☒ Entry out of hours
☒ Swimming or fishing
☒ Disobeying lawful signs
☒ Unauthorised filming
☐ Unauthorised camping
☒ Non-removal of rubbish
☒ Unauthorised removal of materials

Penalty \$

Offence

- ☐ Excessive Speed in vehicle
☐ Unauthorised vehicle use
☐ Unauthorised removal of property
☐ Unauthorised advertising or trading
☐ Dumping rubbish
☐ Committing a nuisance
☐ Unauthorised fireworks/firearms
☐ Unauthorised lighting of fires
☐ Other offence

I
 (Name)
 of
 (Address)
 tender herewith the sum of (insert amount)
 in settlement of the penalty for the above offence.

 (Insert "Cash", "Cheque", "Postal Order", "Money Order")
 being the penalty for such an offence.
 Dated Signature
 * Please register Notes or Cash otherwise mail is at sender's risk

The By-law was adopted by members of the Metropolitan Cemeteries Board at a duly convened meeting of the Board held on 28th day of September 1995.
 Given under the Common Seal of the Metropolitan Cemeteries Board by authority of the Board.

F. H. CAVANOUGH, Chairman.
 P. D. MACLEAN, General Manager.

Recommended—

PAUL. D. OMODEI, Minister for Local Government.

Approved by Lieutenant-Governor and deputy of the Governor in Executive Council this 16th day of January 1996.

J. E. A. PRITCHARD, Clerk of the Council.
