

Western Australia

## **Cremation Act 1929**

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## Cremation Act 1929

### An Act to regulate Cremation.

#### 1. Short title

This Act may be cited as the *Cremation Act 1929*<sup>1</sup>.

#### 2. Interpretation

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;

“**Board**” has the meaning given to it in section 3 of the *Cemeteries Act 1986*;

“**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 7 months gestation that was still-born;

“**cemetery**” means land declared by the Governor to be a cemetery, under the *Cemeteries Act 1986* and so far as the context allows, includes a disused burial ground and a closed cemetery;

“**coroner**” means a coroner within the meaning of the *Coroners Act 1996* or within the meaning of any other law of another State or Territory;

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

“**Executive Director**” means the Executive Director, Public Health and Scientific Support Services of the department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“**licensed**” means licensed under this Act, and

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

“**medical practitioner**” means a legally qualified medical practitioner registered under the *Medical Act 1894*.

[Section 2 amended by No. 80 of 1953 s. 3; No. 2 of 1968 s. 2; No. 28 of 1984 s. 11; No. 103 of 1986 s. 2; No. 2 of 1996 s. 61.]

**3. Cremation without licence prohibited**

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

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. Issue of licences**

- (1) The Governor may, subject to this Act, grant a licence to use and conduct a specified crematorium to any of the following bodies, namely: —
  - (a) the Board or controlling authority of any cemetery;
  - (b) any association incorporated under the *Associations Incorporation Act 1895*<sup>2</sup>, established and constituted in connection with the cremation of dead human bodies, and holding a certificate under the hand of the Executive Director that such association is an association to which the provisions of this section may reasonably be extended.

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- (2) Applicants for a licence 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 Executive Director, 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 Executive Director has approved of the plans and specifications of the proposed building, fittings, works, and apparatus;
  - (iii) that notice of intention to apply for the licence has been given by advertisement, at least once in each of the 8 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 licence might be lodged with the Executive Director;
  - (iv) that where an objection to the granting of the licence has been lodged with the Executive Director, the Executive Director has over-ruled the objection.
- (3) No licence granted for or in respect of any crematorium not already established shall have any validity or effect unless and until the Executive Director shall certify (within one year from the granting of the licence) 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.

*[Section 4 amended by No. 8 of 1935 s. 2; No. 80 of 1953 s. 4; No. 28 of 1984 s. 13; No. 103 of 1986 s. 5.]*

**5. Portion of a cemetery may be set aside as a site for a crematorium**

- (1) It shall be lawful for the Board or controlling authority of any cemetery holding a licence under section 4 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 Board 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 Board 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 licence under section 4, 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 Board or controlling authority of a cemetery have granted to an association a permit as provided for in subsection (2), 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.

*[Section 5 amended by No. 103 of 1986 s. 5.]*

**6. Site of a crematorium which is not included in a cemetery shall be deemed to be a cemetery for certain purposes**

Where an association holding a licence under section 4 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 authorities of the Board 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.

*[Section 6 amended by No. 103 of 1986 s. 5.]*

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

- (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 Board 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), 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.

*[Section 7 amended by No. 80 of 1953 s. 5; No. 35 of 1967 s. 2; No. 10 of 1983 s. 5.]*

**8. Appointment of medical referees**

- (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 apply to the State Administrative Tribunal for a review of the decision of the medical referee.

*[Section 8 inserted by No. 80 of 1953 s. 6; amended by No. 28 of 1984 s. 13; No. 55 of 2004 s. 212.]*

#### **8A. Permits**

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

- (a) unless a certificate of cause of death has been provided under section 44 of the *Births, Deaths and Marriages Registration Act 1998* in relation to the deceased person;
- (aa) where the deceased person died in a place outside the State, unless a certificate of cause of death has been provided under the law of the place in relation to the deceased person;
- (b) where the deceased person has left a written direction that his body is not to be cremated, except where the Executive Director orders the body to be cremated,

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pursuant to powers conferred upon him by the *Health Act 1911*;

- (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 section 8(5), 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 to investigate the death of the deceased person unless and until the Coroner gives a certificate in the prescribed form authorising him to grant the permit;
- (g) where the medical practitioner who gives the certificate referred to in paragraph (a) 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.

*[Section 8A inserted by No. 80 of 1953 s. 7; amended by No. 28 of 1984 s. 13; No. 2 of 1996 s. 61; No. 40 of 1998 s. 9(a).]*

**8B. Permit to cremate still-born child**

Notwithstanding the provisions of section 8A 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 —

- (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*;

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*.

*[Section 8B inserted by No. 80 of 1953 s. 8.]*

**9. Permit to be sufficient authority to cremate body**

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 licence.

**10. Medical referee not to issue permit improperly; and no person to cremate body without permit**

No medical referee shall issue any permit without having first received the proper certificate or certificates or otherwise in contravention of section 8, and no person shall cremate or permit the cremation of any human body without first having received the necessary permit.

*[Section 10 amended by No. 80 of 1953 s. 9.]*

**[11. Repealed by No. 40 of 1998 s. 9(b).]**

**12. Interested persons not to give certificates**

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. Cremation not permitted if objected to by husband, widow, or next of kin, unless directed by will or other writing signed by deceased**

- (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 a person who was married to, or in a de facto relationship with, the deceased immediately before the death of the deceased, or any person who is next of kin of the deceased 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.
- (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.

*[Section 13 amended by No. 10 of 1998 s. 25; No. 3 of 2002 s. 33.]*

**14. Attorney General or magistrate may forbid cremation**

The Attorney General or any coroner 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.

*[Section 14 amended by No. 59 of 2004 s. 141.]*

## **15. Offences**

- (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 \$400 or to imprisonment for not exceeding one year.
- (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 licensee at or in the vicinity of the crematorium of such licensee, 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.

*[Section 15 amended by No. 113 of 1965 s. 8.]*

## **16. Revocation of licences**

The Governor may by order revoke any licence —

- (a) if any of the licensees shall have been convicted of any offence against this Act and sentenced to imprisonment, or fined \$100 or more;
- (b) if the crematorium shall have become unfit for the inoffensive, decent, and effective cremation of bodies,

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and a certificate to that effect shall have been signed by the Executive Director;

- (c) if the licensees have lost the right to occupy the site of the crematorium;

and thereupon the licence shall become null and void: Provided that no order revoking any licence on the ground mentioned in paragraph (a) or (b) shall be made more than 3 months after the date of the conviction or of the Executive Director's certificate, as the case may be.

*[Section 16 amended by No. 113 of 1965 s. 8; No. 28 of 1984 ss. 12 & 13.]*

**17. Regulations**

- (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 to and approved by the Executive Director, and providing for all such buildings, fittings, works and apparatus to be erected, completed and maintained to the satisfaction of the Executive Director, 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 Executive Director;
  - (b) prescribing the form of licences, 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 Board or controlling authority of any cemetery power to obtain and exercise licences under this Act, and providing for the devolution of licences 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 licences;
  - (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 \$20 in respect of any contravention of any of the regulations.

*[Section 17 amended by No. 80 of 1953 s. 11; No. 113 of 1965 s. 8; No. 28 of 1984 s. 13; No. 103 of 1986 s. 5.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Cremation Act 1929* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Cremation Act 1929</i>	22 of 1929	11 Dec 1929	11 Dec 1929
<i>Cremation Act Amendment Act 1935</i>	8 of 1935	5 Oct 1935	5 Oct 1935
<i>Cremation Act Amendment Act 1953</i>	80 of 1953	18 Jan 1954	6 Sep 1954 (see s. 2 and <i>Gazette</i> 20 Aug 1954 p. 1429)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s 4 to 9: 14 Feb 1966 (see s. 2(2)); balance on assent
<i>Cremation Act Amendment Act 1967</i>	35 of 1967	21 Nov 1967	21 Nov 1967
<i>Cremation Act Amendment Act 1968</i>	2 of 1968	26 Sep 1968	26 Sep 1968
<i>Health Legislation Amendment Act 1984, Part IV</i>	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Cremation Amendment Act 1986</i>	103 of 1986	12 Dec 1986	1 Jul 1987 (see s. 3 and <i>Gazette</i> 12 Jun 1987 p. 2319)
<i>Coroners Act 1996, section 61</i>	2 of 1996	24 May 1996	7 Apr 1997 (see s. 2 and <i>Gazette</i> 18 Mar 1997 p. 1529)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 25</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998, section 9</i>	40 of 1998	30 Oct 1998	14 Apr 1999 (see s. 2 and <i>Gazette</i> 9 Apr 1999 p. 1433.)
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 6</i>	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p.4693)

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 32 <sup>4</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)

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<sup>2</sup> Repealed by the *Associations Incorporation Act 1987* (No. 59 of 1987).

<sup>3</sup> Footnote no longer applicable.

<sup>4</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.