

Cemeteries and Crematoria Amendment Act 2009

No. 61 of 2009

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Victoria

Cemeteries and Crematoria Amendment Act 2009[†]

No. 61 of 2009

[Assented to 27 October 2009]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is to amend the **Cemeteries and Crematoria Act 2003** to further provide for the management and constitution of cemetery trusts and make other miscellaneous amendments to that Act.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
 - (2) If a provision referred to in subsection (1) does not come into operation before 1 July 2010, it comes into operation on that day.
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PART 2—CEMETERY TRUSTS

3 New section 2A inserted

After section 2 of the **Cemeteries and Crematoria Act 2003** insert—

"2A Objects

The objects of this Act are to ensure that—

- (a) human remains are treated with dignity and respect;
- (b) all Victorians have access to cemetery and crematoria services;
- (c) cemetery trusts operate effectively and efficiently in accordance with this Act."

See:
Act No.
80/2003.
Reprint No. 1
as at
1 February
2008
and
amending
Act Nos
46/2008 and
77/2008
LawToday:
www.
legislation.
vic.gov.au

4 Definitions

- (1) In section 3(1) of the **Cemeteries and Crematoria Act 2003**, insert the following definitions—

"Class A cemetery trust means a cemetery trust established as a Class A cemetery trust under Part 2 or Schedule 4 or converted under Schedule 3;

Class B cemetery trust means a cemetery trust other than a Class A cemetery trust;

community advisory committee means an advisory committee established by a Class A cemetery trust under section 18D;

community advisory committee guidelines means guidelines made by the Secretary under section 18G;

conversion order means an order made under section 9A;

governance committee means a governance committee established by a Class A cemetery trust under section 18B;

listed Class B cemetery trust means a Class B cemetery trust included on a list prepared by the Secretary under section 18K;".

- (2) In section 3(1) of the **Cemeteries and Crematoria Act 2003**, for the definition of **cemetery trust substitute**—

"cemetery trust means a cemetery trust established under Part 2 and includes a Class A cemetery trust and a Class B cemetery trust;".

5 Establishment of cemetery trusts

After section 5(1) of the **Cemeteries and Crematoria Act 2003** insert—

"(1A) An order under subsection (1)—

- (a) must specify whether the cemetery trust is a Class A cemetery trust or a Class B cemetery trust;
- (b) may make provision for any other matter which, in the opinion of the Governor in Council, is necessary or expedient for the effective operation of that order;
- (c) may include savings, transitional or consequential provisions to facilitate the operation of the order."

6 New section 5A inserted

After section 5 of the **Cemeteries and Crematoria Act 2003** insert—

"5A Conversion of certain regional cemetery trusts to Class A cemetery trusts

Schedule 3 has effect."

7 New section 5B inserted

Before section 6 of the **Cemeteries and Crematoria Act 2003** insert—

"5B Abolition of certain cemetery trusts and establishment of new Class A cemetery trusts

Schedule 4 has effect."

8 Constitution and membership of cemetery trusts

(1) For the heading to section 6 of the **Cemeteries and Crematoria Act 2003** substitute—

"Constitution and membership of Class B cemetery trusts".

(2) In section 6 of the **Cemeteries and Crematoria Act 2003**, for "cemetery trust" (wherever occurring) substitute "Class B cemetery trust".

9 New section 6A inserted

After section 6 of the **Cemeteries and Crematoria Act 2003** insert—

"6A Constitution and membership of Class A cemetery trusts

(1) A Class A cemetery trust consists of not less than 6 and not more than 9 members appointed by the Governor in Council on the recommendation of the Minister.

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- (2) In making a recommendation under subsection (1), the Minister must ensure that any appointment contributes to the Class A cemetery trust collectively having the skills and expertise required to perform its functions.
 - (3) Schedule 1A has effect with respect to the membership and procedure of a Class A cemetery trust."

10 New section 6B inserted

Before section 7 of the **Cemeteries and Crematoria Act 2003** insert—

"6B Cemetery trusts are Class B cemetery trusts unless order or Act otherwise specifies

On and from the commencement of section 10 of the **Cemeteries and Crematoria Amendment Act 2009**, a cemetery trust in existence at that commencement is taken to be a Class B cemetery trust unless this Act or any subsequent order made under this Act otherwise specifies."

11 Management of public cemeteries

(1) In section 8(1) of the **Cemeteries and Crematoria Act 2003**—

- (a) for "The Governor" **substitute** "On the recommendation of the Minister, the Governor";
 - (b) for paragraph (d) **substitute**—
"(d) may abolish a cemetery trust and transfer all its assets and liabilities to another cemetery trust, a municipal council or to another entity, including the State of Victoria;
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- (e) may abolish a cemetery trust.

Note

Section 5 provides for the establishment of cemetery trusts."

(2) After section 8(2)(a) of the **Cemeteries and Crematoria Act 2003** insert—

- "(ab) may apply to a single cemetery trust or multiple cemetery trusts; and
- (ac) may provide for—
- (i) the appointment of new members to a cemetery trust;
 - (ii) the removal of members from a cemetery trust; and"

12 Effect of order abolishing cemetery trust

In section 9 of the **Cemeteries and Crematoria Act 2003**—

- (a) in paragraph (a) after "abolished" **insert** "and its members go out of office";
- (b) in paragraph (b) for "the cemetery trust" **substitute** "in the case of an order under section 8(1)(d), the cemetery trust";
- (c) in paragraph (c) before "unless" **insert** "in the case of an order under section 8(1)(d),".

13 New section 9A inserted

After section 9 of the **Cemeteries and Crematoria Act 2003** insert—

"9A Conversion order—Class A cemetery trust or Class B cemetery trust

- (1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may convert—

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- (a) a Class A cemetery trust to a Class B cemetery trust;
 - (b) a Class B cemetery trust to a Class A cemetery trust.
- (2) The Minister must not recommend the making of a conversion order unless satisfied that the order is in the public interest having regard to—
- (a) the objects of this Act;
 - (b) the size or scale of the operations of the cemetery trust;
 - (c) the services provided, or to be provided, by the cemetery trust;
 - (d) the communities served, or to be served, by the cemetery trust;
 - (e) any other matters the Minister considers relevant.
- (3) A conversion order—
- (a) may apply to a single cemetery trust or multiple cemetery trusts;
 - (b) may change the name of a cemetery trust;
 - (c) may provide for—
 - (i) the appointment of new members to a cemetery trust;
 - (ii) the removal of members from a cemetery trust;
 - (d) may provide for the transfer of—
 - (i) assets and liabilities (whether contingent or otherwise);
 - (ii) duties and obligations in relation to staff;
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- (iii) duties and obligations under contracts or other arrangements;
 - (iv) records and registers;
 - (e) may make provision for any other matter which, in the opinion of the Governor in Council, is necessary or expedient for the effective operation of the order;
 - (f) may include savings, transitional or consequential provisions to facilitate the operation of the order.
- (4) A conversion order takes effect—
- (a) on the date the order is published in the Government Gazette; or
 - (b) if a later date is specified in the order, on that later date."

14 Appointment of an administrator

(1) For section 10(2) of the **Cemeteries and Crematoria Act 2003** substitute—

- "(2) The Minister may only make a recommendation referred to in subsection (1) in respect of a public cemetery managed by a Class B cemetery trust if, in his or her opinion—
- (a) the public cemetery is being inefficiently or incompetently managed; or
 - (b) the appointment is necessary to protect the interests of the public; or
 - (c) the Class B cemetery trust has failed to comply with a direction under section 18 or 50 and that failure justifies the appointment of an administrator; or

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- (d) after an audit under section 50 or an audit or investigation under section 51 has been conducted into the Class B cemetery trust, the outcome of that audit or investigation justifies the appointment of an administrator.
- (2A) The Minister may only make a recommendation referred to in subsection (1) in respect of a public cemetery managed by a Class A cemetery trust if, in his or her opinion—
- (a) the public cemetery is being inefficiently or incompetently managed; or
 - (b) the appointment is necessary to protect the interests of the public; or
 - (c) the Class A cemetery trust has failed significantly to meet its outcomes as specified in its annual plan; or
 - (d) the Class A cemetery trust has failed to comply with a direction under section 18 and that failure justifies the appointment of an administrator; or
 - (e) after an audit or an investigation has been conducted under section 51 into the Class A cemetery trust, the outcome of that audit or investigation justifies the appointment of an administrator."

15 Membership of cemetery trust not office of profit

In section 11 of the **Cemeteries and Crematoria Act 2003** for "cemetery trust" substitute "Class B cemetery trust".

16 Functions of cemetery trusts

- (1) In the heading to section 12 of the **Cemeteries and Crematoria Act 2003** for "cemetery trusts" substitute "Class B cemetery trusts".
- (2) In section 12 of the **Cemeteries and Crematoria Act 2003** for "cemetery trust" (wherever occurring) substitute "Class B cemetery trust".

17 New sections 12A and 12B inserted

After section 12 of the **Cemeteries and Crematoria Act 2003** insert—

"12A Functions of Class A cemetery trusts

- (1) The functions of a Class A cemetery trust are—
 - (a) to properly and efficiently manage and maintain each public cemetery for which it is responsible;
 - (b) to develop, in accordance with this Act, annual plans and strategic plans for the operation of the trust and to monitor compliance with those plans;
 - (c) to develop annual business plans, strategies and budgets to ensure the efficient and accountable provision of services under the Act and the long term viability of the cemetery trust;
 - (d) to establish and maintain effective systems to ensure that—
 - (i) the services provided by the cemetery trust meet the needs of the communities which it serves;and

- (ii) the views of those communities are taken into account;
 - (e) to oversee the organisational structure of the cemetery trust;
 - (f) to employ a chief executive officer (by whatever title called) for the effective operation and management of the cemetery trust and each public cemetery for which it is responsible;
 - (g) to monitor the performance of the chief executive officer;
 - (h) to ensure there are systems in place to enable effective and accountable risk management, financial management and records management of the cemetery trust;
 - (i) to provide leadership, assistance and advice as requested to listed Class B cemetery trusts;
 - (j) to establish committees in accordance with the Act and ensure those committees operate effectively;
 - (k) to ensure the Secretary is informed as soon as practicable of—
 - (i) any significant issues of public concern in relation to the cemetery trust, cemetery or crematoria services provided by that cemetery trust or the public cemeteries for which that cemetery trust is responsible; or
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- (ii) any significant risks that affect, or may affect, the cemetery trust or cemetery or crematoria services provided by that cemetery trust or the public cemeteries for which that cemetery trust is responsible;
 - (l) to develop or adopt a code of conduct for members of the cemetery trust and for staff of the trust;
 - (m) to ensure members of the cemetery trust receive adequate training to enable them to meet their obligations as members of the cemetery trust;
 - (n) to carry out any other function conferred on a Class A cemetery trust by or under this Act or any other Act.
- (2) In exercising its functions, a Class A cemetery trust must have regard to—
- (a) its obligations in relation to funding of the perpetual maintenance of the public cemetery for which it is responsible; and
 - (b) the cultural values and religious values (if any) of the community; and
 - (c) the heritage values (if any) of the public cemetery for which it is responsible; and
 - (d) the need to ensure that it uses its resources in an effective and efficient manner; and
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- (e) the need to ensure that public resources across the cemeteries and crematoria sector are used effectively and efficiently.

12B Application of Public Administration Act 2004—converted cemetery trusts

Without limiting the operation of Schedule 1A, the **Public Administration Act 2004** applies to a cemetery trust (whenever established) that is converted under this Act to a Class A cemetery trust and for that purpose, that Class A cemetery trust is a public entity, but not a small entity, within the meaning of that Act."

18 Staff and other assistance

After section 17(2) of the **Cemeteries and Crematoria Act 2003** insert—

- "(3) The terms and conditions of employment or engagement are as determined by the cemetery trust, subject to any guidelines or directions of the Secretary notified to the cemetery trust."

19 Secretary may give directions to cemetery trusts

(1) After section 18(1)(a) of the **Cemeteries and Crematoria Act 2003** insert —

- "(ab) the management, operation or governance of the cemetery trust in accordance with this Act; and
- (ac) any matter arising as a result of an audit under section 50 or an audit or investigation under section 51; and"

(2) After section 18(3) of the **Cemeteries and Crematoria Act 2003** insert—

- "(4) A direction given under this section must not—
- (a) refer to the cemetery services or crematoria services provided, or proposed to be provided, by a cemetery trust to a particular person; or
 - (b) refer to a decision made under the Act by a cemetery trust in relation to a particular person; or
 - (c) refer to a decision by a cemetery trust to employ or engage a particular person; or
 - (d) require the supply of goods or services to a cemetery trust by any particular person or other entity unless the supply is in accordance with a tender process."

20 New section 18A inserted

After section 18 of the **Cemeteries and Crematoria Act 2003** insert—

"18A Secretary to develop policies and plans for cemetery and crematoria sector

- (1) For the purposes of long term planning, the Secretary, from time to time, may cause to be developed and prepared policies and plans in relation to the provision of cemetery services and crematoria services.
- (2) Policies and plans under subsection (1) may—
 - (a) apply on a Statewide, regional or local basis; and

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- (b) apply to—
- (i) Class A cemetery trusts; or
 - (ii) Class B cemetery trusts; or
 - (iii) both Class A cemetery trusts and Class B cemetery trusts."

21 New Part 2A

After Part 2 of the **Cemeteries and Crematoria Act 2003** insert—

**"PART 2A—ADDITIONAL REQUIREMENTS
FOR CLASS A CEMETERY TRUSTS**

**18B Establishment and functions of
governance committees**

- (1) A Class A cemetery trust—
 - (a) must establish—
 - (i) a finance committee; and
 - (ii) an audit and risk committee; and
 - (b) may establish any other governance committee as it determines from time to time.
 - (2) A Class A cemetery trust must establish the governance committees referred to in subsection (1)(a) within 12 months of the Class A cemetery trust becoming a Class A cemetery trust.
 - (3) A governance committee—
 - (a) must consider any matters that are referred to it by the Class A cemetery trust; and
 - (b) may investigate and make any inquiries about any matter referred to it by the Class A cemetery trust; and
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- (c) must report back to the Class A cemetery trust as required by the cemetery trust; and
 - (d) must carry out any other functions conferred on a governance committee—
 - (i) under this Act or any other Act; or
 - (ii) by the Class A cemetery trust.
- (4) Subsection (1)(a)(ii) does not apply to a Class A cemetery trust to which an exemption under the **Financial Management Act 1994** with respect to governance committees applies.

18C Membership and procedure

- (1) The membership of any governance committee is to be determined by the Class A cemetery trust.
- (2) Subject to this Act or any other Act which imposes requirements in relation to governance committees, and except as otherwise determined by the Class A cemetery trust, the procedure of any governance committee is to be determined by the committee.

Note

There may be requirements under the **Financial Management Act 1994** and other legislation.

18D Community advisory committees

- (1) For the purpose of liaising with communities to which a Class A cemetery trust provides cemetery or crematoria services, a Class A cemetery trust—
 - (a) must appoint one community advisory committee; and

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- (b) may appoint any additional community advisory committees it considers appropriate.
- (2) A Class A cemetery trust must establish a community advisory committee referred to in subsection (1)(a) within 12 months of the Class A cemetery trust becoming a Class A cemetery trust.
- (3) A Class A cemetery trust must include in its report of operations under Part 7 of the **Financial Management Act 1994** a report on the activities of its community advisory committees.

18E Functions of community advisory committee

The functions of a community advisory committee are—

- (a) to consider any matters that are referred to it by the Class A cemetery trust which established it;
- (b) to report to the Class A cemetery trust on those matters;
- (c) to raise with the Class A cemetery trust any issues of concern or matters of interest to the community regarding the cemetery or crematoria services provided by the Class A cemetery trust;
- (d) to carry out any other functions conferred on it—
- (i) under this Act; or
 - (ii) by the community advisory committee guidelines; or
 - (iii) by the Class A cemetery trust.

18F Membership and procedure of community advisory committees

- (1) A community advisory committee consists of the persons appointed by the Class A cemetery trust, having regard to the community advisory committee guidelines.
- (2) In appointing a person to a community advisory committee, a Class A cemetery trust must give preference to a person who is not a funeral director or a stonemason or the holder of a similar position.
- (3) A community advisory committee may regulate its own proceedings subject to—
 - (a) this Act; and
 - (b) any directions of the Class A cemetery trust which established the community advisory committee; and
 - (c) the community advisory committee guidelines.

18G Community advisory committee guidelines

- (1) The Secretary must make guidelines for or with respect to community advisory committees, including but not limited to—
 - (a) the appointment of members of community advisory committees;
 - (b) the composition, roles and functions of community advisory committees;
 - (c) the procedure of community advisory committees;
 - (d) any other matter relating to the operation of community advisory committees.
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- (2) The Secretary must cause the community advisory committee guidelines—
 - (a) to be provided to each Class A cemetery trust; and
 - (b) to be published on the Internet.
- (3) The community advisory committee guidelines take effect on the date specified in the guidelines.

18H Annual meeting

- (1) A Class A cemetery trust must hold an annual meeting before 30 December in each calendar year.
- (2) An annual meeting is to be open to the public.
- (3) At an annual meeting, a Class A cemetery trust must—
 - (a) report to the public on the operation of that cemetery trust for the preceding financial year; and
 - (b) make the cemetery trust's most recent annual report available; and
 - (c) report to the public on the accounts of the cemetery trust; and
 - (d) report to the public on the activities of any community advisory committee of the cemetery trust.

18I Notice of annual meeting

- (1) A reasonable time before the date of the annual meeting of a Class A cemetery trust, the cemetery trust must publish a public notice in a newspaper circulating in the relevant area of the holding of the annual meeting of that Class A cemetery trust.
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- (2) A public notice published under subsection (1) must state—
- (a) the time, date and place of the annual meeting of the Class A cemetery trust; and
 - (b) that the annual meeting is open to the public.

18J Leadership role for Class B cemetery trusts

- (1) A Class A cemetery trust must provide leadership, assistance and advice in relation to operational and governance matters relating to cemeteries, as requested, to a listed Class B cemetery trust to which the Class A cemetery trust has been allocated.
- (2) Without limiting the matters on which a Class A cemetery trust may provide advice, a Class A cemetery trust may provide a listed Class B cemetery trust with assistance and advice about the following—
- (a) record keeping systems suited to the requirements of cemetery trusts;
 - (b) standard form documentation suitable for cemetery trust purposes;

Example

Standard form contracts of sale for graves and other places of interment, including niches for cremated remains.

- (c) tendering and contracting processes and requirements.

18K Listed Class B cemetery trusts

- (1) The Secretary may prepare a list of Class B cemetery trusts which are eligible to receive leadership, assistance and advice from Class A cemetery trusts.
- (2) The Secretary—
 - (a) must specify in the list prepared under subsection (1) which Class A cemetery trust has the leadership, assistance and advice role in relation to which Class B cemetery trust;
 - (b) may amend the list as the Secretary considers appropriate by—
 - (i) adding, varying or deleting names of cemetery trusts from the list; or
 - (ii) allocating different Class B cemetery trusts to different Class A cemetery trusts.
- (3) The Secretary must cause the list prepared under subsection (1)—
 - (a) to be provided to each Class A cemetery trust; and
 - (b) to be published on the Internet.
- (4) The list prepared under subsection (1) takes effect on the date specified in the list.

18L Chief executive officer

- (1) A Class A cemetery trust must employ a person as the chief executive officer (by whatever title called) of the Class A cemetery trust.
 - (2) The chief executive officer holds office—
 - (a) for the period determined by the Class A cemetery trust; and
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- (b) subject to subsection (3), on the terms and conditions, including remuneration, determined by the Class A cemetery trust.
 - (3) The Secretary must approve the terms and conditions, including remuneration, of the chief executive officer of a Class A cemetery trust before a person is employed as chief executive officer.

18M Chief executive officer's functions

- (1) The chief executive officer of a Class A cemetery trust must—
 - (a) prepare material for the consideration and approval of the cemetery trust, including—
 - (i) draft annual plans;
 - (ii) draft strategic plans;
 - (iii) draft business plans and strategies;
 - (iv) budgets;
 - (b) manage the cemetery trust in accordance with any annual plans, strategic plans, business plans and strategies and budgets approved by the cemetery trust;
 - (c) provide the Class A cemetery trust with relevant and timely information to enable the cemetery trust to fulfil its functions and objectives efficiently and effectively;
 - (d) ensure the Class A cemetery trust's decisions are implemented efficiently and effectively;

- (e) inform the Class A cemetery trust of—
 - (i) any significant issues of public concern in relation to the cemetery trust, cemetery or crematoria services provided by that cemetery trust or the public cemeteries for which that cemetery trust is responsible; or
 - (ii) any significant risks that affect, or may affect, the cemetery trust, cemetery or crematoria services provided by that cemetery trust or the public cemeteries for which that cemetery trust is responsible;
- (f) ensure that the resources of the Class A cemetery trust are used effectively and efficiently.
- (2) In the exercise of his or her functions, the chief executive officer is subject to the direction of the Class A cemetery trust.

18N Annual plans

- (1) A Class A cemetery trust must prepare an annual plan for each financial year that specifies—
 - (a) the objectives, priorities and key performance outcomes to be met by the Class A cemetery trust during the relevant year; and
 - (b) the performance indicators or other measures against which the Class A cemetery trust's performance is to be assessed and monitored; and
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- (c) how and when the Class A cemetery trust is to report on its performance in relation to the specified objectives, priorities and key performance outcomes; and
 - (d) any other matters agreed to by the Minister and the Class A cemetery from time to time.
 - (2) An annual plan must be consistent with—
 - (a) the strategic plan of the Class A cemetery trust; and
 - (b) the guidelines made by the Secretary under section 18P, if any.
 - (3) A Class A cemetery trust must give a copy of the proposed annual plan to the Secretary on or before 30 September each year for the Secretary's approval.
 - (4) On the submission of a proposed annual plan under subsection (3), the Secretary may—
 - (a) approve the annual plan; or
 - (b) refer the annual plan back to the cemetery trust for amendment in accordance with any comments or directions the Secretary may give.
 - (5) If the Secretary refers an annual plan back to a Class A cemetery trust under subsection (4)(b), the Class A cemetery trust must—
 - (a) make the amendments required by the Secretary; and
 - (b) deliver the completed annual plan to the Secretary within 3 months after it was submitted to the Secretary under subsection (3).
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- (6) On receipt of a completed annual plan under subsection (5)(b), the Secretary—
- (a) may approve the annual plan; or
 - (b) if the Secretary requires further amendments—
 - (i) may refer the annual plan back to the Class A cemetery trust; and
 - (ii) this section applies to that second referral and any subsequent referral, with any necessary modifications.
- (7) A Class A cemetery trust must ensure that an approved annual plan for that cemetery trust is available to members of the public on request.

18O Strategic plans

- (1) A Class A cemetery trust must—
- (a) prepare a strategic plan for the management and operation of the cemetery trust and the public cemeteries for which it is responsible; and
 - (b) submit that strategic plan to the Secretary for approval.
- (2) A strategic plan developed by a Class A cemetery trust must be prepared—
- (a) at the direction of the Secretary; and
 - (b) at the time or times determined by the Secretary; and
 - (c) in accordance with any guidelines prepared by the Secretary under section 18P.
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- (3) The Secretary may—
 - (a) approve a strategic plan; or
 - (b) approve a strategic plan with amendments; or
 - (c) refuse to approve a strategic plan.
 - (4) A Class A cemetery trust must advise the Secretary if it wishes to exercise its functions in a manner inconsistent with its approved strategic plan.
 - (5) A Class A cemetery trust must ensure that an approved strategic plan for that cemetery trust is available to members of the public on request.

18P Annual plan and strategic plan guidelines

- (1) The Secretary may make guidelines for or with respect to—
 - (a) the content of annual plans;
 - (b) the content and timing of strategic plans for Class A cemetery trusts;
 - (c) any other matters relating to annual plans or strategic plans.
 - (2) The Secretary must cause the annual plan and strategic plan guidelines—
 - (a) to be provided to each Class A cemetery trust; and
 - (b) to be published on the Internet.
 - (3) The annual plan and strategic plan guidelines take effect on the date specified in the guidelines.
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18Q Payment of levy

- (1) For the purposes of assisting in defraying the costs of administering this Act, making improvements in cemetery trust governance and administration and the provision of services to the community, each Class A cemetery trust must pay an annual levy on its gross earnings as reported in the annual financial statements for that Class A cemetery trust for the previous financial year.
- (2) The annual levy payable under subsection (1) is—
 - (a) 3 per cent; or
 - (b) if any other amount is fixed for the purposes of this section by the Minister by notice published in the Government Gazette, that amount.
- (3) An amount fixed under subsection (2)(b) must not exceed 5 per cent.
- (4) The Minister must give each Class A cemetery trust a written notice setting out—
 - (a) the amount it is required to pay as levy in respect of a specified period; and
 - (b) the date by which the amount is required to be paid; and
 - (c) how the payment is to be made.
- (5) The Minister must ensure that all amounts paid as levy are paid into the Consolidated Fund.
- (6) The Minister must cause the following information to be included in the annual report of operations for the Department of Health under Part 7 of the **Financial**

Management Act 1994 for each financial year—

- (a) the total amount paid as levy in that financial year;
- (b) the total amount appropriated from the Consolidated Fund for the purposes of this Act for that financial year;
- (c) a summary of the matters on which money appropriated from the Consolidated Fund for the purposes of this Act was expended in that financial year and of the amounts expended for those matters.

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22 Schedule 1 amended

- (1) In the heading to Schedule 1 to the **Cemeteries and Crematoria Act 2003**, after "**OF**" insert "**CLASS B**".
- (2) In Schedule 1 to the **Cemeteries and Crematoria Act 2003**—
 - (a) in the heading to clause 1 after "**of**" insert "**Class B**";
 - (b) in clause 1 for "cemetery trust" (wherever occurring) **substitute** "Class B cemetery trust";
 - (c) in the heading to clause 2 after "**of**" insert "**Class B**";
 - (d) in clauses 2 and 3 for "cemetery trust" (wherever occurring) **substitute** "Class B cemetery trust";
 - (e) in the heading to clause 4 after "**of**" insert "**Class B**";

- (f) in clauses 4 and 5 for "cemetery trust" (wherever occurring) **substitute** "Class B cemetery trust";
- (g) in the heading to clause 6 after "**of**" **insert** "**Class B**";
- (h) in clause 6 for "cemetery trust" **substitute** "Class B cemetery trust";
- (i) in the heading to clause 7 after "**of**" **insert** "**Class B**";
- (j) in clause 7 for "cemetery trust" **substitute** "Class B cemetery trust";
- (k) in the heading to clause 8 after "**of**" **insert** "**Class B**";
- (l) in clause 8 for "cemetery trust" (wherever occurring) **substitute** "Class B cemetery trust";
- (m) in the heading to clause 9 after "**of**" **insert** "**Class B**";
- (n) in clause 9 for "cemetery trust" (wherever occurring) **substitute** "Class B cemetery trust".

23 New Schedule 1A inserted

After Schedule 1 to the **Cemeteries and Crematoria Act 2003** insert—

"SCHEDULE 1A

Section 6A(3)

MEMBERSHIP AND PROCEDURE OF CLASS A CEMETERY TRUSTS

1 Terms of appointment

- (1) A member of a Class A cemetery trust holds office for the period, not exceeding 3 years,

specified in the instrument of his or her appointment.

- (2) A member of a Class A cemetery trust is eligible for re-appointment.
- (3) A member of a Class A cemetery trust is appointed on the terms and conditions specified in the instrument of appointment.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

2 Chairperson of Class A cemetery trust

- (1) The Governor in Council, by instrument, must appoint one of the members of a Class A cemetery trust to be chairperson.
- (2) A person appointed as chairperson of a Class A cemetery trust—
 - (a) holds that office for the period not exceeding 3 years; and
 - (b) is eligible for re-appointment.
- (3) A person appointed as chairperson ceases to hold that office—
 - (a) on ceasing to be a member of the Class A cemetery trust; or
 - (b) on resigning as chairperson but remaining as a member; or
 - (c) on the expiry of his or her appointment as chairperson.

3 Resignation and removal of members

- (1) A member of a Class A cemetery trust may resign the office of member by writing signed by the member and addressed to the Minister.

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- (2) The Governor in Council, on the recommendation of the Minister, may at any time remove a member of a Class A cemetery trust from office.

4 Vacancies in membership

If a member of a Class A cemetery trust dies, resigns or is removed from office, the Governor in Council, in accordance with this Act, may fill the vacant office.

5 Remuneration, fees and allowances of members

- (1) A member of a Class A cemetery trust is entitled to be paid any remuneration fixed for that member from time to time by the Governor in Council, whether—
- (a) in the member's instrument of appointment; or
 - (b) by order published in the Government Gazette.
- (2) A member of a Class A cemetery trust is entitled to receive reimbursement of reasonable expenses incurred in that office.
- (3) Any amounts paid to a member of a Class A cemetery trust as reimbursement for expenses incurred are to be paid from the funds of that trust.

6 Validity of decisions of cemetery trusts

- (1) An act or decision of a Class A cemetery trust is not invalid merely because of—
- (a) a defect or irregularity in, or in connection with, the appointment of a member; or

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- (b) a vacancy in the membership of the trust, including a vacancy arising from the failure to appoint an original member.
 - (2) Anything done by or in relation to a person purporting to act as chairperson or as a member is not invalid merely because—
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (c) the appointment had ceased to have effect.

7 Presiding at meetings of Class A cemetery trusts

The person who is to preside at a meeting of a cemetery trust is—

- (a) the chairperson, if he or she is present; or
- (b) if the chairperson is absent, a member elected to preside by the members of the Class A cemetery trust present at the meeting.

8 Proceedings of Class A cemetery trusts

- (1) Subject to subclause (2), meetings of a Class A cemetery trust are to be held at the times and places that the chairperson determines.
- (2) The chairperson of a Class A cemetery trust may at any time convene a meeting, but must do so when requested by at least 2 members of the cemetery trust.

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- (3) A Class A cemetery trust may permit its members to participate in a particular meeting by—
 - (a) telephone; or
 - (b) closed-circuit television; or
 - (c) any other means of communication.
 - (4) A member who participates in a meeting under a permission under subclause (3) is deemed to be present at the meeting.
 - (5) A majority of the members for the time being constitutes a quorum of a Class A cemetery trust.
 - (6) A question arising at a meeting—
 - (a) must be determined by a majority of votes of members present and voting on that question; and
 - (b) if the voting is equal, the person presiding has a casting vote as well as a deliberative vote.
 - (7) The person presiding must ensure that minutes are kept of each of its meetings.
 - (8) Subject to this clause, a Class A cemetery trust may regulate its own proceedings.

9 Disclosure of interest of Class A cemetery trust members

- (1) A member of a Class A cemetery trust who has a direct or indirect pecuniary interest in a contract or other matter being dealt with by the trust must disclose the nature of that interest at a meeting of the trust as soon as possible after becoming aware of the interest.
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- (2) A member of a Class A cemetery trust who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created in conflict with the member's duties as a member, must disclose that fact at a meeting of the trust as soon as possible after becoming aware of the potential conflict.
 - (3) The person presiding at a meeting at which a disclosure under this clause is made must cause that disclosure to be recorded in the minutes of the meeting.
 - (4) A person who has made a disclosure under this clause must not take any further part in the discussion of or vote on the contract or other matter to which the disclosure relates.
 - (5) If a member votes on a matter in contravention of subclause (4), his or her vote must be disallowed.

_____".

24 New Schedule 3 inserted

After Schedule 2 to the **Cemeteries and Crematoria Act 2003** insert—

"_____

SCHEDULE 3

Section 5A

REGIONAL CLASS A CEMETERY TRUSTS

1 Application of Schedule

This Schedule applies to—

- (a) The Ballarat General Cemeteries Trust;

- (b) The Bendigo Cemeteries Trust;
- (c) The Geelong Cemeteries Trust.

2 Conversion to Class A cemetery trusts

- (1) On the commencement of this Schedule, a cemetery trust to which this Schedule applies—
 - (a) is deemed, on and from that commencement, to be a Class A cemetery trust for the purposes of this Act—
 - (i) responsible for the management of the same public cemeteries for which the relevant cemetery trust was responsible immediately before that commencement; and
 - (ii) known by the same name as it was known immediately before that commencement;
 - (b) continues in existence as if established as a Class A cemetery trust under Part 2;
 - (c) is the same body after that commencement as it was before the commencement, despite the change of its status to a Class A cemetery trust or any change in membership of the cemetery trust.
 - (2) Subclause (1) does not affect any decision, matter or thing done or undertaken in accordance with this Act by a cemetery trust to which this Schedule applies immediately before the commencement of this Schedule.
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3 Trust members

- (1) On the commencement of this Schedule, a member of a cemetery trust to which this Schedule applies in office immediately before that commencement—
- (a) is deemed to be a member of the relevant cemetery trust converted by clause 2 for the same cemetery trust of which that person was a member immediately before that commencement as if appointed in accordance with section 6A; and

Example

A member of the Ballarat General Cemeteries Trust is a member of the Ballarat General Cemeteries Trust which has been converted to a Class A cemetery trust.

A member of the Bendigo Cemeteries Trust is a member of the Bendigo Cemeteries Trust which has been converted to a Class A cemetery trust.

A member of the Geelong Cemeteries Trust is a member of the Geelong Cemeteries Trust which has been converted to a Class A cemetery trust.

- (b) continues in office for a period of 3 years from the commencement of this Schedule as if appointed in accordance with section 6A; and
- (c) if any member of a cemetery trust to which this Schedule applies was, immediately before that commencement, a life member of a cemetery trust, ceases to be a life member and paragraph (b) applies to that person; and

- (d) in the case of a chairperson of a cemetery trust to which this Schedule applies, that person continues as chairperson of the relevant cemetery trust converted by clause 2 as if he or she had been appointed under clause 2 of Schedule 1A for the remainder of the period for which he or she was elected chairperson of the cemetery trust as constituted immediately before the commencement of this Schedule, provided that period does not exceed 3 years from the commencement of this Schedule.
- (2) The Minister, by instrument, may fix the remuneration payable to any member of a cemetery trust referred to in subclause (1) for the period of the person's appointment under subclause (1).
- (3) In fixing remuneration under subclause (2), the Minister must take into account any Government guidelines for the remuneration of members of public bodies.
- (4) Nothing in this clause prevents a person being eligible for reappointment as a member of a Class A cemetery trust or a Class B cemetery trust.

4 Property and staff

- (1) For the avoidance of doubt, on and from the commencement of this Schedule—
- (a) all property vested in a cemetery trust to which this Schedule applies immediately before that commencement (including all money standing immediately before that commencement to the credit of a fund
-

or account of a cemetery trust to which this Schedule applies and any other money belonging to the cemetery trust as at that commencement) and all rights and liabilities—

- (i) continue as the property, rights and liabilities of the relevant Class A cemetery trust converted by this Schedule; and
 - (ii) may be used or invested by the Class A cemetery trust converted by this Schedule in accordance with this Act; and
 - (b) a person employed immediately before the commencement of this Schedule by a cemetery trust to which this Schedule applies (including a chief executive officer of a cemetery trust to which this Schedule applies) continues to be employed by the relevant Class A cemetery trust converted by clause 2 subject to the same terms and conditions of employment.
- (2) Nothing in subclause (1)(b) prevents—
- (a) any of the terms and conditions of employment of a person referred to in subclause (1)(b) from being altered by or under any law, award or agreement with effect from any time after the commencement of this Schedule; or
 - (b) a person referred to in subclause (1)(b) from resigning or being dismissed at any time after the commencement of this Schedule in accordance with the then existing terms and conditions of

his or her employment by the relevant Class A cemetery trust.

5 Amendment of Register

The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Schedule.

6 Validity of things done under this Schedule

Nothing effected or to be effected by this Schedule or done or suffered under this Schedule—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or
- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or

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- (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or
 - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
 - (f) is to be regarded as frustrating any contract; or
 - (g) releases any surety or other obligee or obligor wholly or in part from any obligation."

25 New Schedule 4 inserted

At the end of the **Cemeteries and Crematoria Act 2003** insert—

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"SCHEDULE 4

Section 5B

ABOLITION OF CERTAIN CEMETERY TRUSTS AND ESTABLISHMENT OF NEW CLASS A CEMETERY TRUSTS

PART 1—PRELIMINARY

1 Definitions

In this Schedule—

appointed day means—

- (a) in relation to The Mildura Cemetery Trust, the appointed day

specified in an order made under clause 2 in respect of The Mildura Cemetery Trust;

- (b) in relation to The Greater Metropolitan Cemeteries Trust, the appointed day specified in an order made under clause 2 in respect of The Greater Metropolitan Cemeteries Trust;
- (c) in relation to The Southern Metropolitan Cemeteries Trust, the appointed day specified in an order made under clause 2 in respect of The Southern Metropolitan Cemeteries Trust;

former council managed cemetery trust means—

- (a) the old Mildura Cemetery Trust;
- (b) The Keilor Cemetery Trust;
- (c) The Preston Cemetery Trust;
- (d) Wyndham Cemeteries Trust;

former instrument means an instrument (including a legislative instrument other than this Act) subsisting immediately before the relevant appointed day—

- (a) to which the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires) was a party;
or

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- (b) that was given to, or in favour of, the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires); or
 - (c) that refers to the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires); or
 - (d) under which—
 - (i) money is, or may become, payable to the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires); or
 - (ii) other property is to be, or may become liable to be, transferred to or by the old Mildura Cemetery Trust, a former southern cemetery trust or a former north west and eastern cemetery trust (as the case requires);

former north west and eastern cemetery trust means—

- (a) The Anderson's Creek Cemetery Trust;
- (b) The Keilor Cemetery Trust;
- (c) The Lilydale Cemeteries Trust;
- (d) The Preston Cemetery Trust;

- (e) The Templestowe Cemetery Trust;
- (f) The Trustees of the Altona Memorial Park;
- (g) The Trustees of the Fawkner Crematorium and Memorial Park;
- (h) Wyndham Cemeteries Trust;

former southern cemetery trust means—

- (a) The Cheltenham and Regional Cemeteries Trust;
- (b) The Trustees of the Necropolis, Spring Vale;

liabilities means all liabilities, duties and obligations, whether actual, contingent or prospective;

listed employee means an employee of the Brimbank City Council, the Darebin City Council, the Mildura Rural City Council or the Wyndham City Council who is eligible for inclusion on a list prepared under clause 15;

property means a legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

staff transfer date means a date fixed by the Secretary under clause 16;

The Greater Metropolitan Cemeteries Trust means the Class A cemetery trust established by clause 4;

The Keilor Cemetery Trust means the Keilor Cemetery Trust of which the Brimbank City Council or its councillors are the members;

The Mildura Cemetery Trust means the Class A cemetery trust established by clause 3;

the old Mildura Cemetery Trust means the Mildura Cemetery Trust of which the Mildura Rural City Council or its councillors are the members;

The Preston Cemetery Trust means the Preston Cemetery Trust of which the Darebin City Council or its councillors are the members;

The Southern Metropolitan Cemeteries Trust means the Class A cemetery trust established by clause 5;

transfer order means an order made under clause 10;

Wyndham Cemeteries Trust means the Wyndham Cemeteries Trust of which the Wyndham City Council or its councillors are the members.

2 Appointed days

- (1) The Governor in Council, by order published in the Government Gazette, may appoint a day as the appointed day in relation to The Mildura Cemetery Trust for the purposes of this Schedule.
- (2) The Governor in Council, by order published in the Government Gazette, may appoint a day as the appointed day in relation to The Greater Metropolitan Cemeteries Trust for the purposes of this Schedule.

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- (3) The Governor in Council, by order published in the Government Gazette, may appoint a day as the appointed day in relation to The Southern Metropolitan Cemeteries Trust for the purposes of this Schedule.

**PART 2—ESTABLISHMENT OF CLASS A
CEMETERY TRUSTS**

3 The Mildura Cemetery Trust

- (1) On the appointed day—
- (a) the old Mildura Cemetery Trust is abolished and its members go out of office; and
 - (b) The Mildura Cemetery Trust is established and is the successor in law of the old Mildura Cemetery Trust; and
 - (c) all property and rights of the old Mildura Cemetery Trust are, by virtue of this clause, vested in The Mildura Cemetery Trust; and
 - (d) all liabilities of the old Mildura Cemetery Trust are, by virtue of this clause, liabilities of The Mildura Cemetery Trust.
- (2) The Mildura Cemetery Trust—
- (a) is a Class A cemetery trust responsible for the management of the public cemeteries for which the old Mildura Cemetery Trust was responsible immediately before the appointed day; and
 - (b) is taken to have been established as a Class A cemetery trust under Part 2.
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4 The Greater Metropolitan Cemeteries Trust

- (1) On the appointed day—
- (a) the following cemetery trusts are abolished and the members go out of office—
 - (i) The Anderson's Creek Cemetery Trust;
 - (ii) The Keilor Cemetery Trust;
 - (iii) The Lilydale Cemeteries Trust;
 - (iv) The Preston Cemetery Trust;
 - (v) The Templestowe Cemetery Trust;
 - (vi) The Trustees of the Altona Memorial Park;
 - (vii) The Trustees of the Fawkner Crematorium and Memorial Park;
 - (viii) Wyndham Cemeteries Trust;
 - (b) The Greater Metropolitan Cemeteries Trust is established and is the successor in law to each of the cemetery trusts specified in paragraph (a); and
 - (c) all property and rights of each of the former north west and eastern cemetery trusts are, by virtue of this clause, vested in The Greater Metropolitan Cemeteries Trust; and
 - (d) all liabilities of each of the former north west and eastern cemetery trusts are, by virtue of this clause, liabilities of The Greater Metropolitan Cemeteries Trust.
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- (2) The Greater Metropolitan Cemeteries Trust—
- (a) is a Class A cemetery trust responsible for the management of the public cemeteries for which each of the former north west and eastern cemetery trusts was responsible immediately before the appointed day; and
 - (b) is taken to have been established as a Class A cemetery trust under Part 2.

5 The Southern Metropolitan Cemeteries Trust

- (1) On the appointed day—
- (a) The Cheltenham and Regional Cemeteries Trust is abolished and the members go out of office; and
 - (b) The Trustees of the Necropolis, Spring Vale is abolished and the members go out of office; and
 - (c) The Southern Metropolitan Cemeteries Trust is established and is the successor in law to each of the cemetery trusts specified in paragraphs (a) and (b); and
 - (d) all property and rights of each of the former southern cemetery trusts are, by virtue of this clause, vested in The Southern Metropolitan Cemeteries Trust; and
 - (e) all liabilities of each of the former southern cemetery trusts are, by virtue of this clause, liabilities of The Southern Metropolitan Cemeteries Trust.
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- (2) The Southern Metropolitan Cemeteries Trust—
- (a) is a Class A cemetery trust responsible for the management of the public cemeteries for which each of the former southern cemetery trusts was responsible immediately before the appointed day; and
 - (b) is taken to have been established as a Class A cemetery trust under Part 2.

6 Substitution of party to agreement

- (1) If, under clause 3, the rights and liabilities of the old Mildura Cemetery Trust under an agreement, including an oral agreement, vest in, or become rights and liabilities of, The Mildura Cemetery Trust—
- (a) on the appointed day, The Mildura Cemetery Trust becomes a party to the agreement in place of the old Mildura Cemetery Trust; and
 - (b) on and after the appointed day, the agreement has effect as if The Mildura Cemetery Trust had always been a party to the agreement.
- (2) If, under clause 4, the rights and liabilities of a former north west and eastern cemetery trust under an agreement, including an oral agreement, vest in, or become rights and liabilities of, The Greater Metropolitan Cemeteries Trust—
- (a) on the appointed day, The Greater Metropolitan Cemeteries Trust becomes a party to the agreement in place of the relevant former north west and eastern cemeteries trust; and
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- (b) on and after the appointed day, the agreement has effect as if The Greater Metropolitan Cemeteries Trust had always been a party to the agreement.
- (3) If, under clause 5, the rights and liabilities of a former southern cemetery trust under an agreement, including an oral agreement, vest in, or become rights and liabilities of, The Southern Metropolitan Cemeteries Trust—
 - (a) on the appointed day, The Southern Metropolitan Cemeteries Trust becomes a party to the agreement in place of the relevant former southern cemetery trust; and
 - (b) on and after the appointed day, the agreement has effect as if The Southern Metropolitan Cemeteries Trust had always been a party to the agreement.

7 Former instruments

Any former instrument continues to have effect according to its tenor on and after the relevant appointed day as if a reference in the instrument—

- (a) to the old Mildura Cemetery Trust were a reference to The Mildura Cemetery Trust;
 - (b) to a former north west and eastern cemetery trust were a reference to The Greater Metropolitan Cemeteries Trust;
 - (c) to a former southern cemetery trust were a reference to The Southern Metropolitan Cemeteries Trust.
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8 Proceedings

- (1) If, immediately before the appointed day, proceedings to which the old Mildura Cemetery Trust was a party were pending or existing in any court or tribunal, on and after the appointed day, The Mildura Cemetery Trust—
 - (a) is substituted for the old Mildura Cemetery Trust as a party to the proceedings; and
 - (b) has the same rights in the proceedings as the old Mildura Cemetery Trust had.
 - (2) If, immediately before the appointed day, proceedings to which a former north west and eastern cemetery trust was a party were pending or existing in any court or tribunal, on and after the appointed day, The Greater Metropolitan Cemeteries Trust—
 - (a) is substituted for the relevant former north west and eastern cemetery trust as a party to the proceedings; and
 - (b) has the same rights in the proceedings as the relevant former north west and eastern cemetery trust had.
 - (3) If, immediately before the appointed day, proceedings to which a former southern cemetery trust was a party were pending or existing in any court or tribunal, on and after the appointed day, The Southern Metropolitan Cemeteries Trust—
 - (a) is substituted for the relevant former southern cemetery trust as a party to the proceedings; and
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- (b) has the same rights in the proceedings as the relevant former southern cemetery trust had.

9 Interests in land

Without limiting Division 2 of Part 3 or this Schedule and despite anything to the contrary in any other Act or law (other than the **Charter of Human Rights and Responsibilities Act 2006**), subject to clause 10, if—

- (a) immediately before the appointed day the old Mildura Cemetery Trust is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after that day—
- (i) The Mildura Cemetery Trust is to be taken to be the registered proprietor of that interest in land; and
 - (ii) The Mildura Cemetery Trust has the same rights and remedies in respect of that interest as the old Mildura Cemetery Trust had;
- (b) immediately before the appointed day a former north west and eastern cemetery trust is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after that day—
- (i) The Greater Metropolitan Cemeteries Trust is to be taken to be the registered proprietor of that interest in land; and
 - (ii) The Greater Metropolitan Cemeteries Trust has the same rights and remedies in respect of that interest as the relevant former

north west and eastern cemetery trust had;

(c) immediately before the appointed day, a former southern cemetery trust is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after that day—

(i) The Southern Metropolitan Cemeteries Trust is to be taken to be the registered proprietor of that interest in land; and

(ii) The Southern Metropolitan Cemeteries Trust has the same rights and remedies in respect of that interest as the relevant former southern cemetery trust had.

10 Transfer order—former council managed cemetery trusts

(1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may allocate to a Class A cemetery trust established by this Schedule the property, rights and liabilities of a municipal council which constituted a former council managed cemetery trust primarily used for or related to a former council managed cemetery trust or used for or in connection with the provision of cemetery or crematoria services or the management of a public cemetery by the municipal council that are specified in the order.

(2) Without limiting subclause (1), a transfer order may allocate property, rights and liabilities by reference—

(a) to a public cemetery or other place; or

- (b) to a class or category of property, rights or liabilities; or
 - (c) to a combination of paragraphs (a) and (b).
- (3) The Minister must not recommend the making of a transfer order unless he or she is satisfied that the details of the property, rights or liabilities to be transferred have been agreed between a municipal council which constituted a former council managed cemetery trust and the Secretary or a new Class A cemetery trust established by this Schedule.

11 Effect of transfer order

- (1) If a transfer order is made, on the date specified in the order as the transfer date—
- (a) all property and rights of the municipal council specified in the order vest in the Class A cemetery trust established by this Schedule and specified in the transfer order; and
 - (b) all liabilities of the municipal council specified in the order become liabilities of the Class A cemetery trust established by this Schedule and specified in the transfer order; and
 - (c) the Class A cemetery trust established by this Schedule and specified in the order becomes the successor in law of the municipal council in relation to the property, rights and liabilities specified in the transfer order.
- (2) If, under a transfer order, the property, rights and liabilities of a municipal council under an agreement, including an oral agreement, vest in, or become property, rights and

liabilities of, a Class A cemetery trust established by this Schedule—

- (a) the Class A cemetery trust becomes, on the transfer date specified in the transfer order, a party to the agreement in place of the municipal council; and
 - (b) on and after the transfer date specified in the transfer order, the agreement has effect as if the Class A cemetery trust had always been a party to the agreement.
- (3) If, immediately before the transfer date specified in the transfer order, proceedings relating to the property, rights or liabilities specified in the transfer order to which a municipal council was a party, were pending or existing in any court or tribunal, on and after the transfer date specified in the transfer order, the Class A cemetery trust established by this Schedule and specified in the order—
- (a) is substituted for the municipal council as a party to the proceedings; and
 - (b) has the same rights in the proceedings as the municipal council had.
- (4) Without limiting this Schedule and despite anything to the contrary in any other Act or law (other than the **Charter of Human Rights and Responsibilities Act 2006**), if immediately before the transfer date specified in the transfer order, a municipal council is, in relation to the property, rights or liabilities specified in the transfer order, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that date—

- (a) the Class A cemetery trust established by this Schedule and specified in the order is to be taken to be the registered proprietor of that interest in land; and
 - (b) the Class A cemetery trust established by this Schedule and specified in the order has the same rights and remedies in respect of that interest as the municipal council had.
- (5) Any instrument relating to property, rights and liabilities of a municipal council that under a transfer order have vested in, or become property, rights and liabilities of a Class A cemetery trust established by this Schedule has effect and continues to have effect according to its tenor on and after the transfer date specified in the transfer order as if a reference in the instrument to the municipal council were a reference to the Class A cemetery trust specified in the transfer order.
- (6) More than one transfer order may be made under this clause.

12 Interim CEO

- (1) The Secretary, by instrument, may appoint a person to act as the interim chief executive officer of The Mildura Cemetery Trust.
 - (2) The Secretary, by instrument, may appoint a person to act as the interim chief executive officer of The Greater Metropolitan Cemeteries Trust.
 - (3) The Secretary, by instrument, may appoint a person to act as the interim chief executive officer of The Southern Metropolitan Cemeteries Trust.
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- (4) Subject to this Act, a person appointed to act as interim chief executive officer—
- (a) of The Mildura Cemetery Trust appointed under subclause (1) is taken to have been appointed by The Mildura Cemetery Trust;
 - (b) of The Greater Metropolitan Cemeteries Trust appointed under subclause (2) is taken to have been appointed by The Greater Metropolitan Cemeteries Trust;
 - (c) of The Southern Metropolitan Cemeteries Trust appointed under subclause (3) is taken to have been appointed by The Southern Metropolitan Cemeteries Trust.
- (5) An appointment under subclause (1), (2) or (3)—
- (a) is subject to the terms and conditions specified in the instrument of appointment; and
 - (b) is for the period specified in that instrument, not exceeding 6 months.

Note

See section 13 of the **Interpretation of Legislation Act 1984**.

- (6) The Secretary may reappoint an interim chief executive officer appointed under this clause provided the total period of the interim chief executive officer's appointment does not exceed 12 months.
 - (7) Nothing in this clause prevents a person appointed as an interim chief executive officer being employed by the relevant Class A cemetery trust in accordance with
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section 18L as a chief executive officer after his or her interim appointment expires.

13 Transfer of staff

- (1) A person who, immediately before the appointed day, was an employee of the old Mildura Cemetery Trust is to be taken as—
 - (a) having been employed by The Mildura Cemetery Trust with effect from that day; and
 - (b) having been employed by The Mildura Cemetery Trust on the same terms and conditions as those that applied to the person immediately before that day as an employee of the old Mildura Cemetery Trust; and
 - (c) having accrued an entitlement to benefits in connection with that employment by The Mildura Cemetery Trust that is equivalent to the entitlement that the person had accrued as an employee of the old Mildura Cemetery Trust immediately before that day.
- (2) A person who, immediately before the appointed day, was an employee of a former north west and eastern cemetery trust is to be taken as—
 - (a) having been employed by The Greater Metropolitan Cemeteries Trust with effect from that day; and
 - (b) having been employed by The Greater Metropolitan Cemeteries Trust on the same terms and conditions as those that applied to the person immediately before that day as an employee of the

relevant former north west and eastern cemetery trust; and

- (c) having accrued an entitlement to benefits in connection with that employment by The Greater Metropolitan Cemeteries Trust that is equivalent to the entitlement that the person had accrued as an employee of the relevant former north west and eastern cemetery trust immediately before that day.
- (3) A person who, immediately before the appointed day, was an employee of a former southern cemetery trust is to be taken as—
- (a) having been employed by The Southern Metropolitan Cemeteries Trust with effect from that day; and
 - (b) having been employed by The Southern Metropolitan Cemeteries Trust on the same terms and conditions as those that applied to the person immediately before that day as an employee of the relevant former southern cemetery trust; and
 - (c) having accrued an entitlement to benefits in connection with that employment by The Southern Metropolitan Cemeteries Trust that is equivalent to the entitlement that the person had accrued as an employee of the relevant former southern cemetery trust immediately before that day.

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- (4) The service of an employee transferred under this clause as an employee—
- (a) of The Mildura Cemetery Trust is to be taken for all purposes as having been continuous with the service of the employee, immediately before the appointed day, as an employee of the old Mildura Cemetery Trust;
 - (b) of The Greater Metropolitan Cemeteries Trust is to be taken for all purposes as having been continuous with the service of the employee, immediately before the appointed day, as an employee of the relevant former north west and eastern cemetery trust;
 - (c) of The Southern Metropolitan Cemeteries Trust is to be taken for all purposes as having been continuous with the service of the employee, immediately before the appointed day, as an employee of the relevant former southern cemetery trust.
- (5) The superannuation entitlements of an employee transferred under this clause are to be taken not to be affected by the transfer of the person under this clause.
- (6) An employee transferred under this clause is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the old Mildura Cemetery Trust, the relevant former southern cemetery trust or the relevant former north west and eastern cemetery trust, as the case requires, because of this clause.
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- (7) A certificate purporting to be signed by the chief executive officer of The Mildura Cemetery Trust, The Greater Metropolitan Cemeteries Trust or The Southern Metropolitan Cemeteries Trust, as the case requires, certifying that a person named in the certificate was, with effect from the relevant appointed day, employed by virtue of this clause by The Mildura Cemetery Trust, The Greater Metropolitan Cemeteries Trust or The Southern Metropolitan Cemeteries Trust (as the case requires)—
- (a) is admissible in evidence in any proceedings; and
 - (b) is conclusive proof of the matters stated in it.
- (8) This clause does not apply to the chief executive officer (by whatever title called) of—
- (a) the old Mildura Cemetery Trust;
 - (b) a former north west and eastern cemetery trust;
 - (c) a former southern cemetery trust.
- (9) This clause does not apply to a listed employee.

14 Future terms and conditions of staff

Nothing in clause 13 prevents—

- (a) any of the terms and conditions of employment of a person referred to in that clause from being altered by or under any law, award or agreement with effect from any time after the relevant appointed day; or

- (b) a person referred to in that clause from resigning or being dismissed at any time after the relevant appointed day in accordance with the then existing terms and conditions of his or her employment by The Mildura Cemetery Trust, The Greater Metropolitan Cemeteries Trust or The Southern Metropolitan Cemeteries Trust, as the case requires.

15 Listed employees

- (1) Before the relevant staff transfer date, the Secretary may prepare a list of employees of Brimbank City Council, Darebin City Council, Mildura Rural City Council or Wyndham City Council who are eligible to become employees of a new Class A cemetery trust established by this Schedule on that date.
 - (2) A person is eligible to be a listed employee if that person—
 - (a) is employed by a municipal council referred to in subclause (1) primarily for the purposes of a cemetery trust or any public cemetery for which it is responsible; and
 - (b) agrees to be transferred in accordance with this Schedule.
 - (3) The list may specify the listed employees—
 - (a) by name or position; or
 - (b) by class or category; or
 - (c) by reference to a municipal council, a cemetery trust, public cemetery or other place; or
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- (d) by any combination of paragraphs (a) to (c).
- (4) The list must specify the new Class A cemetery trust established by this Schedule which, on the staff transfer date, is to become the employer of each listed employee specified on the list.
- (5) Nothing in this clause prevents a person specified as a listed employee under this clause from resigning or being dismissed at any time before the relevant staff transfer date in accordance with the terms and conditions of his or her employment.

16 Staff transfer date

- (1) The Secretary, by notice published in the Government Gazette, may determine a date that is to be the staff transfer date for the purposes of transferring a listed employee or listed employees.
- (2) A staff transfer date must not be a date earlier than the appointed day in relation to the relevant Class A cemetery trust established by this Schedule.
- (3) The Secretary may give more than one notice under this clause.

17 Transfer of listed employees

- (1) A person who was a listed employee immediately before the relevant staff transfer date is to be taken as—
- (a) having been employed by the Class A cemetery trust established by this Schedule and specified in the list in respect of that listed employee with effect from the staff transfer date; and

- (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before the relevant staff transfer date, as an employee of the relevant municipal council; and
 - (c) having accrued an entitlement to benefits in connection with that employment with the Class A cemetery trust established by this Schedule and specified in the list in respect of that listed employee that is equivalent to the entitlement that the person had accrued as an employee of the relevant municipal council immediately before the relevant staff transfer date.
 - (2) The service of a listed employee transferred under this clause as an employee of the Class A cemetery trust established by this Schedule and specified in the list in respect of that listed employee is to be regarded for all purposes as having been continuous with the service of the transferred listed employee, immediately before the relevant staff transfer date, as an employee of the relevant municipal council.
 - (3) A listed employee transferred under this clause is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of a municipal council because of this Schedule.
 - (4) The superannuation entitlements of an employee transferred under this clause are to be taken not to be affected by the transfer of the person under this clause.
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- (5) A certificate purporting to be signed by the chief executive officer of the Class A cemetery trust established by this Schedule and specified in the list in respect of a listed employee certifying that a person named in the certificate was, with effect from the relevant staff transfer date, employed by virtue of this clause by the Class A cemetery trust named in the certificate—
- (a) is admissible in evidence in any proceedings; and
 - (b) is conclusive proof of the matters stated in it.

18 Future terms and conditions of transferred listed employees

Nothing in clause 17 prevents—

- (a) any of the terms and conditions of employment of a listed employee transferred under that clause from being altered by or under any law, award or agreement with effect from any time after the relevant staff transfer date; or
- (b) a listed employee transferred under that clause from resigning, or the termination of that employee's employment, at any time after the relevant staff transfer date in accordance with the then existing terms and conditions of his or her employment by the Class A cemetery trust to which that listed employee was transferred.

19 Cemetery trust fees

- (1) Any cemetery trust fees fixed by the old Mildura Cemetery Trust, a former north west and eastern cemetery trust or a former southern cemetery trust and in force immediately before the relevant appointed day, on and from the relevant appointed day, are taken to be cemetery trust fees fixed by—
 - (a) The Mildura Cemetery Trust, in the case of cemetery trust fees fixed by the old Mildura Cemetery Trust;
 - (b) The Greater Metropolitan Cemeteries Trust, in the case of cemetery trust fees fixed by a former north west and eastern cemetery trust;
 - (c) The Southern Metropolitan Cemeteries Trust, in the case of cemetery trust fees fixed by a former southern cemetery trust.
- (2) Cemetery trust fees to which this clause applies must be reviewed by the relevant Class A cemetery trust established by this Schedule within 2 years of the relevant appointed day for each Class A cemetery trust.

20 Construction of references

On and from the relevant appointed day, in any Act (other than this Act), or in any subordinate instrument made under any Act or in any other document of any kind, unless the context otherwise requires—

- (a) a reference to The Cheltenham and Regional Cemeteries Trust is to be construed as a reference to The
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Southern Metropolitan Cemeteries Trust;

- (b) a reference to The Trustees of the Necropolis, Spring Vale is to be construed as a reference to The Southern Metropolitan Cemeteries Trust;
 - (c) a reference to The Anderson's Creek Cemetery Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
 - (d) a reference to The Keilor Cemetery Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
 - (e) a reference to The Lilydale Cemeteries Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
 - (f) a reference to The Preston Cemetery Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
 - (g) a reference to The Templestowe Cemetery Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
 - (h) a reference to The Trustees of the Altona Memorial Park is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
 - (i) a reference to The Trustees of the Fawkner Crematorium and Memorial Park is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
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- (j) a reference to Wyndham Cemeteries Trust is to be construed as a reference to The Greater Metropolitan Cemeteries Trust;
- (k) a reference to the Mildura Cemetery Trust is to be construed as a reference to The Mildura Cemetery Trust established by this Schedule.

PART 3—GENERAL

21 Amendment of Register

The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Schedule.

22 Taxes

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Schedule or in respect of any act or transaction connected with or necessary to be done by reason of this Schedule, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with the transfer of property, rights or liabilities of a cemetery trust.

23 Validity of things done under this Schedule

Nothing effected or to be effected by this Schedule or done or suffered under this Schedule—

- (a) is to be regarded as placing any person in breach of contract or confidence or

as otherwise making any person guilty of a civil wrong; or

- (b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or
 - (c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
 - (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or
 - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
 - (f) is to be regarded as frustrating any contract; or
 - (g) releases any surety or other obligee or obligor wholly or in part from any obligation."
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PART 3—MISCELLANEOUS AMENDMENTS

26 Definitions

In section 3(1) of the **Cemeteries and Crematoria Act 2003**—

(a) **insert** the following definition—

"fees and charges guidelines means
guidelines made under section 42A;"

(b) for the definition of *cemetery trust fee substitute*—

"cemetery trust fee means a fee or charge or
scale of fees and charges set under
section 39 and either—

(a) approved under section 40; or

(b) exempt under section 40A from
approval under section 40;"

27 Establishment of public cemeteries

For section 4(4) of the **Cemeteries and Crematoria Act 2003** substitute—

"(4) The Governor in Council, by order published
in the Government Gazette, may—

(a) change the name of a public cemetery;

(b) include additional reserved Crown land
in a public cemetery;

(c) remove any land that has ceased to be
reserved for the purposes of a cemetery
from a public cemetery;

(d) amend or vary an order made under
subsection (1)".

28 Power to fix fees and charges

(1) After section 39(2)(a) of the **Cemeteries and Crematoria Act 2003** insert—

"(ab) the fees and charges guidelines, if any; and".

(2) In section 39(4) of the **Cemeteries and Crematoria Act 2003** after "section 40" insert
", unless they are exempt under section 40A".

29 Secretary to approve fees and charges

In section 40(2) of the **Cemeteries and Crematoria Act 2003** after "in part" insert
", unless they are exempt under section 40A".

30 New section 40A inserted

After section 40 of the **Cemeteries and Crematoria Act 2003** insert—

"40A Secretary may exempt certain fees and charges from approval

- (1) The Secretary may exempt specified fees and charges or scales of fees and charges from being approved under section 40 if, in the Secretary's opinion, there is no public benefit in those fees and charges being approved.
- (2) An exemption under subsection (1) may—
 - (a) specify individual fees and charges or scales of fees and charges which do not require approval under section 40;
 - (b) specify fees and charges or scales of fees and charges by class;
 - (c) be of general or limited application;
 - (d) differ according to differences in time, place or circumstance;

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- (e) apply to all cemetery trusts, specified cemetery trusts or specified classes of cemetery trusts;
 - (f) apply to all public cemeteries, specified public cemeteries or specified classes of public cemetery.
- (3) The Secretary—
- (a) must cause an exemption under subsection (1) to be published in the Government Gazette; and
 - (b) may publish the exemption under subsection (1) on the Internet.
- (4) An exemption under subsection (1) takes effect on the date of publication in the Government Gazette or such later date as is specified in the exemption."

31 New section 42A inserted

After section 42 of the **Cemeteries and Crematoria Act 2003** insert—

"42A Fees and charges guidelines

- (1) The Secretary may make guidelines for or with respect to fees and charges fixed by cemetery trusts for services.
 - (2) The guidelines may include, but are not limited to, processes and methodologies to be applied by a cemetery trust and matters it must take into account.
 - (3) The Secretary—
 - (a) must cause the fees and charges guidelines to be published in the Government Gazette; and
 - (b) may publish the fees and charges guidelines on the Internet.
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- (4) The fees and charges guidelines take effect on the date of publication in the Government Gazette or such later date as is specified in the guidelines."

32 Fees and charges to increase by CPI

- (1) In section 43 of the **Cemeteries and Crematoria Act 2003**—

- (a) for subsection (1)(b) **substitute**—

"(b) if the CPI for the December quarter of the financial year in which the declaration under subsection (2) is made is more than the CPI for the previous December quarter.";

- (b) in subsection (2) for "June" **substitute** "March".

- (2) After section 43(1) of the **Cemeteries and Crematoria Act 2003** **insert**—

"(1A) This section does not apply to a cemetery trust fee to which an exemption under section 40A applies."

- (3) For sections 43(4) and 43(5) of the **Cemeteries and Crematoria Act 2003** **substitute**—

- (4) A cemetery trust fee to which this section applies is increased by an amount calculated in accordance with the following formula—

$$A \times \frac{B}{C}$$

where—

"A" is the relevant cemetery trust fee as at 1 February in the financial year in which the declaration under subsection (2) is made; and

"B" is the CPI for the December quarter in the financial year in which the declaration under subsection (2) is made; and

"C" is the CPI for the previous December quarter.

- (5) A cemetery trust fee increased in accordance with this section must be rounded to the nearest 5 dollar unit.

Example

A CPI adjusted fee of \$1923 is rounded to \$1925.
A CPI adjusted fee of \$1922 is rounded to \$1920.

- (4) In section 43(7) of the **Cemeteries and Crematoria Act 2003**—

- (a) for "Statistician;" **substitute** "Statistician."; and
(b) the definition of *relevant year* is **repealed**.

33 Application of Division

Section 48(a) of the **Cemeteries and Crematoria Act 2003** is **repealed**.

34 Accounts and records

In section 49(2) of the **Cemeteries and Crematoria Act 2003** for "The" **substitute** "In the case of a Class B cemetery trust that is not a cemetery trust to which the **Financial Management Act 1994** applies, the".

35 Auditing

- (1) In section 50 of the **Cemeteries and Crematoria Act 2003** for "a cemetery trust" (where twice occurring) **substitute** "a Class B cemetery trust".

- (2) After section 50(2) of the **Cemeteries and Crematoria Act 2003** **insert**—

"(3) A Class B cemetery trust must comply with a direction given under this section."

36 Secretary may ask for investigation

In section 51 of the **Cemeteries and Crematoria Act 2003**—

- (a) for "ask" **substitute** "request";
- (b) in paragraph (b) for "trust." **substitute** "trust; or";
- (c) after paragraph (b) **insert**—
 - "(c) to conduct a performance audit of a cemetery trust—
 - (i) to determine whether the trust is complying with the Act; or
 - (ii) to investigate any aspect of the trust's governance, management or operations."

37 New sections 51A to 51E inserted

After section 51 of the **Cemeteries and Crematoria Act 2003** **insert**—

"51A Secretary to determine terms of reference and other matters

- (1) Before any audit or investigation is conducted under section 51, the Secretary must—
 - (a) determine the terms of reference of the audit or investigation, including any particular objectives or issues to be addressed;
 - (b) determine the reporting requirements, including when a final report of the audit or investigation is to be given to the Secretary;

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- (c) specify in writing to a person requested to conduct the audit or investigation under section 51—
 - (i) the terms of reference for the audit or investigation; and
 - (ii) the reporting requirements.
 - (2) The Secretary must notify a cemetery trust which is to be audited or investigated under section 51 of—
 - (a) the terms of reference for the audit or investigation; and
 - (b) the name of the person requested to conduct the audit or investigation.

51B Auditor's authority

- (1) The Secretary must issue to a person requested to conduct an audit or investigation under section 51 written evidence of that person's authority to conduct that audit or investigation.
- (2) A person requested by the Secretary to conduct an audit or investigation under section 51 must produce his or her authorisation for inspection if asked to do so during the exercise of a power under this Division.

51C Powers of auditors

- (1) A person conducting an audit or investigation of a cemetery trust under section 51 may, at any reasonable time, enter any premises of the cemetery trust (other than residential premises) for the purposes of the audit or investigation and may—

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- (a) inspect any records of the cemetery trust;
 - (b) copy or make extracts of any relevant records of the cemetery trust;
 - (c) ask questions of any person—
 - (i) employed or engaged by the cemetery trust (whether in a paid or honorary capacity); or
 - (ii) who is a member of the cemetery trust.
- (2) A person referred to in subsection (1)(c) must cooperate with a person conducting an audit or investigation of a cemetery trust under section 51, to the extent that the person is capable of doing so.
- (3) Without limiting subsection (2), a person conducting the audit or investigation who enters any premises of a cemetery trust under this section may direct a person referred to in subsection (1)(c)(i) or (ii) to—
- (a) produce a document or part of a document that is in the person's possession or control;
 - (b) operate equipment to access information from that equipment;
 - (c) answer any questions put by the person conducting the audit or investigation.

51D Report to Secretary

A person conducting an audit or investigation under section 51 must report to the Secretary in accordance with any requirement under section 51A(1)(b).

51E Confidentiality requirements

- (1) Except to the extent necessary to perform any official duties or to perform or exercise any power or function under this Act or any other Act, a person who is, or at any time has been, a person conducting an audit or investigation under section 51 must not, either directly or indirectly—
- (a) make a record of, or divulge or communicate to any person, any information that is, or was acquired by the person by reason of being, or having been, a person conducting an audit or investigation under section 51; or
 - (b) make use of any such information for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 100 penalty units.

- (2) Subsection (1) does not preclude a person from—
- (a) producing a document to a court in the course of criminal proceedings; or
 - (b) divulging or communicating to a court in the course of any criminal proceedings any matter or thing coming under the notice of the person in the performance of official duties or in the performance or exercise of a power referred to in subsection (1); or
 - (c) producing a document or divulging or communicating information that is expressly authorised or permitted by any Act to be produced, divulged or communicated; or
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- (d) producing a document or divulging or communicating information with the prior consent of—
- (i) the person to whom it relates; or
 - (ii) if that person has died, with the consent of the senior available next of kin of that person.
- (3) In this section, *court* includes any board, tribunal or person authorised to receive evidence."

38 New section 52A inserted

After section 52 of the **Cemeteries and Crematoria Act 2003** insert—

"52A Class A cemetery trust—operational report

A Class A cemetery trust must include in its report of operations under Part 7 of the **Financial Management Act 1994** particulars relating to the operation of the public cemetery and any crematorium in the public cemetery for which the Class A cemetery trust is responsible."

39 New sections 64A and 64B inserted

In Division 1 of Part 5 of the **Cemeteries and Crematoria Act 2003**, after section 64 insert—

"64A Order reopening closed cemetery

- (1) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may reopen a closed cemetery or part of a closed cemetery.
- (2) The Minister must not make a recommendation under subsection (1) unless he or she is satisfied that it is in the public

interest to reopen the closed cemetery or part of the closed cemetery.

- (3) An order under subsection (1) may be made in respect of—
 - (a) a public cemetery or part of a public cemetery closed under section 62; or
 - (b) a cemetery, burial ground or place of burial discontinued under section 44 of the **Cemeteries Act 1958**, as in force immediately before its repeal or under any corresponding previous enactment.
- (4) An order under subsection (1) may be subject to any conditions that the Governor in Council thinks fit.
- (5) An order under subsection (1) must not be made in respect of a historic cemetery park.

64B Effect of order reopening a closed cemetery

On the making of an order under section 64A—

- (a) the closed cemetery or closed part of the public cemetery to which the order applies is reopened; and
 - (b) the cemetery trust responsible for managing the closed cemetery or closed part of the cemetery becomes the cemetery trust responsible for managing the reopened public cemetery or reopened part of the cemetery; and
 - (c) the reopened public cemetery or reopened part of the cemetery is a public cemetery or part of a public cemetery for the purposes of this Act; and
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- (d) subject to the order under section 64A, this Act, the regulations, the model rules or the cemetery trust rules (if any), the cemetery trust may permit interments at the reopened public cemetery or reopened part of the public cemetery."

40 Surrender to cemetery trust of unexercised right of interment by sole holder

In section 82(2)(a) of the **Cemeteries and Crematoria Act 2003** after "for administration" insert "and any maintenance costs".

41 Surrender to cemetery trust of exercised right of interment by sole holder

- (1) For section 83(2) of the **Cemeteries and Crematoria Act 2003** substitute—

"(2) On the surrender of a right of interment to a cemetery trust under subsection (1)—

- (a) subject to subsection (2A), the cemetery trust must pay to the holder a refund based on the current cemetery trust fee payable for the same type of right of interment less—

(i) the relevant cemetery trust fee for administration and any maintenance costs; and

(ii) the restoration costs, if any; and

- (b) the person surrendering the right of interment has no further entitlements or responsibilities under that right of interment.

(2A) No refund is payable to a person surrendering a right of interment to a cemetery trust under subsection (1) if, at the time of the surrender, human remains are

interred at the place of interment to which the surrendered right of interment applied."

(2) For section 83(3)(b) of the **Cemeteries and Crematoria Act 2003** substitute—

"(b) if there are no human remains interred in the place of interment to which the surrendered right of interment applied, grant a right of interment in respect of the place of interment to which the surrendered right of interment applied—

(i) for interring human remains in a public grave; or

(ii) for interring human remains in that place of interment."

42 Application to carry out lift and re-position procedure

(1) In section 88(1) of the **Cemeteries and Crematoria Act 2003** after "holder of the right of interment" **insert** ", or a person acting on behalf of that holder,".

(2) After section 88(2)(a) of the **Cemeteries and Crematoria Act 2003** **insert**—

"(ab) in the case of an application made by a person acting on behalf of a holder of a right of interment, include a written authorisation from that holder for the person to act on the holder's behalf; and".

43 Statute law revision

In section 58 of the **Cemeteries and Crematoria Act 2003** for "section 125" **substitute** "section 140".

PART 4—GENERAL

44 Repeal of amending Act

This Act is **repealed** on 1 July 2011.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 29 July 2009

Legislative Council: 3 September 2009

The long title for the Bill for this Act was "A Bill for an Act to amend the **Cemeteries and Crematoria Act 2003** to further provide for the management and constitution of cemetery trusts and make other miscellaneous amendments to that Act and for other purposes."