

Funerals Act 2006

Act No. 77/2006

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Victoria

No. 77 of 2006

Funerals Act 2006[†]

[Assented to 10 October 2006]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The main purposes of this Act are—

- (a) to provide for the regulation of the funeral industry; and
- (b) to regulate pre-paid funeral contracts; and
- (c) to establish a Funeral Industry Ministerial Advisory Council; and
- (d) to provide for Codes of Practice; and

(e) to repeal the **Funerals (Pre-Paid Money) Act 1993**.

2. Commencement

- (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 November 2007, it comes into operation on that day.

3. Definitions

In this Act—

"associate" of a person includes—

- (a) in the case of a person which is a body corporate, a related body corporate within the meaning of the Corporations Act; and
- (b) any body corporate of which the person is a director or in the management of which the person is concerned;

"basic funeral service" has the meaning given by section 20;

"coffin price list" means a list required by section 23;

"consideration" in relation to a contract includes—

- (a) a transfer or assignment of or a promise to transfer or assign money or an investment or an interest in an investment in favour of a party to the contract or an associate of that party; and
- (b) any administration fee or brokerage fee paid in respect of the contract;

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"Council" means the Funeral Industry Ministerial Advisory Council established under Part 2;

"Director" has the same meaning as it has in the **Fair Trading Act 1999**;

"disbursements" means money paid by a funeral provider for funeral goods and funeral services bought from a third party on behalf of a consumer;

"firm" means a partnership or other unincorporated body but does not include a trust;

"funeral goods" means products supplied to a consumer in connection with funeral services;

"funeral goods and services price list" means the list required by section 21;

"funeral provider" means any person carrying on the business of supplying funeral goods and funeral services to the public;

"funeral services" means—

- (a) services for the care and preparation of human bodies for burial, cremation or other final disposition;
- (b) the arrangement, supervision or conduct of a funeral ceremony or final disposition of human remains;

"GST" has the same meaning as it has in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth;

"inspector" means a person appointed under section 114 of the **Fair Trading Act 1999**;

"person" includes a firm;

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"pre-paid funeral contract" means an agreement or arrangement—

- (a) the purpose of which is or includes the payment of money or the giving of other valuable consideration for—
 - (i) the supply of funeral services (with or without the supply of funeral goods) by a party to the agreement or arrangement; or
 - (ii) the supply of funeral services (with or without the supply of funeral goods) to be arranged by a party to the agreement or arrangement; and
- (b) which is made before the death of the person in respect of whom the service is to be supplied;

"register of funeral providers" means the register established under Division 1 of Part 3;

"register of pre-paid funeral contracts" means the register established under Division 2 of Part 3;

"registration information" means the information that the Director is required to record under section 8;

"statement of funeral costs" means the statement required by section 24.

PART 2—FUNERAL INDUSTRY MINISTERIAL ADVISORY COUNCIL

4. Funeral Industry Ministerial Advisory Council

- (1) There is established a Funeral Industry Ministerial Advisory Council.
 - (2) The Council consists of 9 members appointed by the Minister of whom—
 - (a) 3 are to be funeral providers;
 - (b) 3 are to be persons—
 - (i) who are employed in the funeral industry; or
 - (ii) who represent persons employed in the funeral industry;
 - (c) 3 are to be persons—
 - (i) who are appointed to represent the interests of consumers; or
 - (ii) who work in the health industry.
 - (3) In appointing a person to be a member of the Council, the Minister must be satisfied that the person has appropriate knowledge, experience or skills relevant to the funeral industry.
 - (4) The Chairperson of the Council is to be appointed from among the members of the Council by the Minister.
 - (5) A member of the Council—
 - (a) holds office for the period, not exceeding 5 years, specified in the instrument of appointment and is eligible for re-appointment;
 - (b) is entitled to be paid any travelling and other allowances approved by the Minister;
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(c) is not in respect of the office of the member subject to the **Public Administration Act 2004**.

(6) The Minister may at any time—

(a) remove a member of the Council from office;

(b) fill a vacancy in the office of a member of the Council.

5. Functions of the Council

The functions of the Council are—

(a) to monitor the operation of this Act and the regulations;

(b) to monitor the provision of services by the funeral industry and developments in the funeral industry generally;

(c) to advise the Minister—

(i) in respect of matters relating to the provision of funeral services;

(ii) on any matter referred to the Council by the Minister;

(d) to make recommendations to the Minister—

(i) on matters affecting the operation of this Act and the regulations;

(ii) on matters relating to the provision of funeral services.

6. Meetings of the Council

(1) Meetings of the Council must be presided over by the Chairperson or if the Chairperson is absent the members present must elect one of their number to preside at the meeting.

(2) A majority of members of the Council for the time being in office constitute a quorum.

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- (3) Subject to the presence of a quorum, the Council may act despite any vacancy in its membership.
 - (4) The decision on any matter by the majority of the members of the Council present at any meeting is the decision of the Council.
 - (5) Subject to this Act, the Council may regulate its own procedure.
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PART 3—REGISTERS

Division 1—Register of Funeral Providers

7. Register of funeral providers

- (1) The Director must establish and maintain a register of funeral providers in accordance with this Division to record the details of persons who carry on the business of a funeral provider in Victoria.
- (2) The purpose of the register is to give members of the public access to a list of the funeral providers in Victoria.
- (3) The Director may keep the register of funeral providers in any form the Director thinks fit.

8. Contents of register of funeral providers

The Director must record in the register of funeral providers the following information in respect of each funeral provider in Victoria—

- (a) the name of the funeral provider;
- (b) the business address of the principal place of business of the funeral provider;
- (c) the postal address of the funeral provider;
- (d) the address of each place of business of the funeral provider in Victoria;
- (e) any other prescribed information.

9. Access to register

Any person, on application in accordance with the regulations (if any) and on payment of the prescribed fee (if any) may—

- (a) inspect the register of funeral providers; and
- (b) make a copy of, or take extracts from, the register of funeral providers.

10. Requirement to notify Director

- (1) A funeral provider must provide the Director with the registration information relating to that funeral provider—
 - (a) in the case of a funeral provider who is carrying on business as a funeral provider on the commencement of section 7 of this Act, within 3 months after that commencement; and
 - (b) in any other case, within 28 days of commencing business as a funeral provider.

Penalty: 10 penalty units.

- (2) A funeral provider must notify the Director of a change in any of the registration information relating to the funeral provider within 14 days of the change.

Penalty: 10 penalty units.

- (3) Information under this section must be provided in a manner and form approved by the Director.

11. Changes in registration information

- (1) The Director may send to a funeral provider a copy of the registration information in relation to that funeral provider and a written request that the funeral provider—
 - (a) confirm that that registration information is correct; or

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- (b) if the registration information is not correct, notify the Director of any change that is required to the registration information.
 - (2) Within 28 days of receiving a request under subsection (1), a funeral provider must respond to the request by—
 - (a) confirming that the registration information is correct; or
 - (b) if the registration information is not correct, notifying the Director of any change that is required to the registration information.

Penalty: 10 penalty units.

- (3) The Director may at any time amend, vary or remove an entry in the register of funeral providers.

Division 2—Register of Pre-Paid Funeral Contracts

12. Register of pre-paid funeral contracts

- (1) The Director may establish a register of pre-paid funeral contracts.
- (2) The purpose of the register of pre-paid funeral contracts is to enable information about the existence of a pre-paid funeral contract to be made available to affected persons.
- (3) The Director may keep the register of pre-paid funeral contracts in any form the Director thinks fit.

13. Contents of register of pre-paid funeral contracts

Subject to this Division, the Director may record in the register of pre-paid funeral contracts any information relating to a pre-paid funeral contract provided to the Director under this Division that the Director considers appropriate.

14. Access to register

- (1) Subject to this section, any person, on application in accordance with the regulations (if any) and on payment of the prescribed fee (if any) may—
 - (a) inspect the register of pre-paid funeral contracts; and
 - (b) make a copy of, or take extracts from, the register of pre-paid funeral contracts.
- (2) The Director may restrict access to the register of pre-paid funeral contracts in the circumstances determined by the Director.

15. Inclusion of pre-paid funeral contracts in register

- (1) A funeral provider may apply to the Director to record information relating to a pre-paid funeral contract in the register of pre-paid funeral contracts.
- (2) An application under sub-section (1) must—
 - (a) contain the prescribed information; and
 - (b) be accompanied by the prescribed fee.

16. Requirement to provide information to Director

- (1) A funeral provider must provide the Director, in accordance with the regulations, with the prescribed information relating to pre-paid funeral contracts.
Penalty: 60 penalty units.
- (2) For the purposes of sub-section (1), the prescribed information may include all or any of the following—
 - (a) information in relation to a prescribed class of pre-paid funeral contract;

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- (b) information in relation to pre-paid funeral contracts that have been terminated or fulfilled;
 - (c) information or reports in relation to pre-paid funeral contracts entered into—
 - (i) with a particular person; or
 - (ii) before or after a particular date specified by the Director; or
 - (iii) during a specified period or periods.

17. Application to remove contract from register

- (1) A purchaser under a pre-paid funeral contract may apply to the Director to remove the information relating to that contract from the register of pre-paid funeral contracts.
- (2) An application under this section must—
 - (a) be made in a form approved by the Director; and
 - (b) be accompanied by the prescribed fee.

18. Changes to information in register

- (1) The Director may write to a funeral provider who is a party to a pre-paid funeral contract and request that the funeral provider—
 - (a) confirm that the details recorded on the register of pre-paid funeral contracts are correct; or
 - (b) if the details recorded on the register of pre-paid funeral contracts are not correct, notify the Director of any change that is required to those details.

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- (2) Within 28 days of receiving a request under subsection (1), a funeral provider must respond to the request by—
- (a) confirming that the details recorded on the register of pre-paid funeral contracts are correct; or
 - (b) if the details recorded on the register of pre-paid funeral contracts are not correct, notifying the Director of any change that is required to those details.

Penalty: 10 penalty units.

- (3) The Director may at any time amend, vary or remove an entry in the register of pre-paid funeral contracts.

Division 3—General

19. False or misleading statements

- (1) A person must not give information or make a statement that is false or misleading by reason of the inclusion of any false or misleading matter or the omission of any material matter—
- (a) in any application or notice under this Part; or
 - (b) in the provision of details for inclusion in, or amendment of, the register of funeral providers or the register of pre-paid funeral contracts under this Part.

Penalty: 60 penalty units for a natural person or, in any other case, 120 penalty units.

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- (2) It is a defence to a prosecution for an offence against sub-section (1) if a person proves that, when the information was given or the statement made, the person—
- (a) believed on reasonable grounds—
 - (i) that the false matter was true; or
 - (ii) that the misleading matter was not misleading; or
 - (iii) in the case of an omission, that no material matter had been omitted; or
 - (b) in the case of an omission, did not know that the omitted matter was material.
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PART 4—FUNERAL SERVICES

20. Requirement to offer basic funeral service

- (1) A funeral provider must offer a basic funeral service for the disposition of human remains by burial or cremation in accordance with the regulations (if any).

Penalty: 60 penalty units.

- (2) In this section "**basic funeral service**" means the provision of—
- (a) prescribed funeral goods; and
 - (b) prescribed funeral services.

21. Requirement to produce funeral goods and services price list

- (1) A funeral provider must produce a clear and legible price list of all the funeral goods and funeral services it provides which complies with this section.

Penalty: 60 penalty units.

- (2) A funeral goods and services price list—
- (a) must include a description and total price of the funeral goods and funeral services offered by the funeral provider; and
 - (b) must include a list of any service fees that may be charged by the funeral provider; and
 - (c) must reflect the maximum price that a funeral provider charges for the funeral goods and funeral services; and

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- (d) in relation to the basic funeral service offered by the funeral provider, must contain—
 - (i) a description of what is included in that service; and
 - (ii) the total price of that service.
 - (3) A funeral goods and services price list must either—
 - (a) contain the full range, description and price of all coffins available for purchase; or
 - (b) include a price range for the coffins available for purchase and advise that a coffin price list is available.
 - (4) A funeral goods and services price list must contain the prescribed particulars (if any).
 - (5) A funeral goods and services price list must be in the prescribed form (if any).
 - (6) If a funeral provider offers packages of funeral goods and funeral services, the funeral goods and services price list must contain a description of the goods and services that are provided in each package and the total cost of the package.

22. Availability of funeral goods and services price list

A funeral provider must give a copy of the funeral provider's funeral goods and services price list to—

- (a) any person who asks in person about funeral goods or funeral services and their prices; and

(b) any other person on request.

Penalty: 60 penalty units.

Note: The following provisions of the **Fair Trading Act 1999** may apply to any breach of a funeral provider's obligations under this Division—

section 8 (unconscionable conduct);

section 9 (misleading or deceptive conduct);

section 10 (misleading conduct in relation to goods);

section 11 (misleading conduct in relation to services);

section 12 (false representations in relation to goods and services);

section 19 (accepting payment without being able to supply as ordered).

23. Requirement to produce and provide coffin price list

If a funeral goods and services price list does not contain the full range, description and price of all coffins available for purchase, the funeral provider must give a copy of a clear and legible list containing a description and total price of each coffin that is available for purchase to—

(a) any person who asks in person about coffins and their prices; and

(b) to any other person on request.

Penalty: 60 penalty units.

24. Requirement to produce and provide statement of funeral costs

(1) Before entering into any agreement for the provision of funeral goods or funeral services, a funeral provider must provide the customer with a statement—

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- (a) setting out an itemised list of—
- (i) the cost of the funeral goods and funeral services selected by the customer; and
 - (ii) service fees; and
 - (iii) disbursements; or
- (b) if the proposal is a funeral package, an itemised list of each item provided in the package and the total cost of the package.

Penalty: 60 penalty units.

- (2) A funeral provider must ensure that each item on a statement of funeral costs (except disbursements) corresponds with an item on the funeral goods and services price list produced by the funeral provider.

Penalty: 60 penalty units.

- (3) Subject to sub-section (4), a funeral provider must ensure that a statement of funeral costs lists disbursements separately.

Penalty: 60 penalty units.

- (4) If a funeral provider does not know the cost of the disbursements at the time of providing the statement of funeral costs, the funeral provider must—

- (a) include on the statement a reasonable estimate of the cost of the disbursements; and
- (b) provide a further written statement of the actual disbursements with the final invoice.

Penalty: 60 penalty units.

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- (5) A statement of funeral costs must—
- (a) state that the funeral provider has a complaints handling procedure; and
 - (b) set out how a customer can make a complaint.

Penalty: 60 penalty units.

- (6) Sub-section (2) only applies in relation to a funeral goods and services price list required to be produced on or after the commencement of section 21.
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PART 5—PRE-PAID FUNERAL CONTRACTS

Division 1—Interpretation

25. Definition of funeral provider

In this Part "**funeral provider**" includes a person who carries on a business of arranging the supply of funeral services under pre-paid funeral contracts.

26. References relating to pre-paid funeral contracts

- (1) In this Part, a reference to money paid in respect of a pre-paid funeral contract includes a reference to money paid in respect of any investment the assignment or transfer of which, or the assignment or transfer of an interest in which, or the promise of the assignment or transfer of which, or the promise of the assignment or transfer of an interest in which forms the consideration or part of the consideration for the contract.
- (2) In this Part, a reference to money paid to a funeral provider includes a reference to money paid to or received by the funeral provider as agent for any person or to any agent or associate of the funeral provider.
- (3) In this Part, a reference to the supply of funeral services under a pre-paid funeral contract includes—
 - (a) a reference to the supply of funeral goods specified in the contract; and
 - (b) a reference to the supply of funeral services by arrangement under a pre-paid funeral contract.
- (4) In this Part, in the case of an agreement or arrangement under which funeral services are or were to be supplied or arranged to be supplied in

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respect of the first person to die of 2 or more named persons—

- (a) a reference to the death of the person in respect of whom a funeral or funeral service is or was to be supplied (however expressed) is a reference to the death of the first of those named persons to die; and
- (b) a reference to an investment or payment being made or having been made in the name of the person in respect of whom a funeral or funeral service is to be supplied (however expressed) is a reference to an investment or payment being made or having been made in the names of each of those named persons in the alternative.

Division 2—Pre-Paid Funeral Contracts

27. Funeral provider to provide information about investment

Before entering into a pre-paid funeral contract, a funeral provider must give each other party to the contract details in writing of—

- (a) the manner in which any money to be paid to the funeral provider by or on behalf of that party in respect of the contract is to be invested, including—
 - (i) the type of investment; and
 - (ii) the terms and conditions applying to that investment; and
 - (iii) any other prescribed information; and
- (b) any administration fee or brokerage fee payable in respect of the contract.

Penalty: 360 penalty units.

28. Pre-paid funeral contracts

- (1) A funeral provider must not enter into a pre-paid funeral contract unless that contract—
- (a) is in writing; and
 - (b) complies with sub-sections (2) and (4); and
 - (c) contains any other terms and conditions prescribed in respect of that class of contract.

Penalty: 600 penalty units.

- (2) The contract must specify—
- (a) the funeral services to be supplied under the contract; and
 - (b) any funeral goods to be supplied under the contract in connection with the funeral services; and
 - (c) the consideration to be paid or given in respect of the contract for the supply of those funeral services (including any funeral goods referred to in paragraph (b)); and
 - (d) that, subject to sub-section (3), any money paid to the funeral provider in respect of the contract by or on behalf of any other party to the contract is required to be—
 - (i) invested in a specified investment in accordance with sections 29(1) and 30; or
 - (ii) paid to the trustees of a cemetery in accordance with sections 29(2) and 30.
- (3) Sub-section (2)(d) does not apply to an administration fee or brokerage fee paid in respect of a pre-paid funeral contract.

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Part 5—Pre-Paid Funeral Contracts

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- (4) Without affecting the operation of sections 29 and 30, if the consideration or part of the consideration under the contract is an assignment or transfer or the promise of an assignment or transfer of an investment or an interest in an investment, the contract must specify the type of investment and must require the investment—
- (a) to be made or to have been made in the name of the person in respect of whom the funeral is to be supplied; and
 - (b) to be an investment of a kind referred to in section 29(1).
- (5) The funeral provider must give each other party to the contract a copy of the contract.
- Penalty: 120 penalty units.
- (6) Despite sub-section (1) a contract entered into in contravention of that sub-section is not void by reason only of the contravention.

29. Investment of money

- (1) Subject to sub-sections (2) and (3), a funeral provider must ensure that all money paid to the funeral provider in respect of a pre-paid funeral contract by or on behalf of any other party to the contract is invested in—
- (a) a funeral benefit fund established or deemed to be established under the Friendly Societies (Victoria) Code or by a body that is a friendly society for the purposes of the Life Insurance Act 1995 of the Commonwealth; or
 - (b) a policy issued by or other investment with a company registered under the Life Insurance Act 1945 of the Commonwealth under which there is a guaranteed payment on the death of a person and the amount of that payment is
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- specified at the time the investment is made;
or
- (c) a policy issued by or other investment with a company registered under the Life Insurance Act 1945 of the Commonwealth under which there is a guaranteed payment on the death of a person which consists of the premium paid for the investment—
 - (i) less any costs incurred in respect of the investment; and
 - (ii) plus any interest accruing in respect of the investment; or
 - (d) any other manner approved by the Minister, generally or in a particular case, by notice published in the Government Gazette.

Penalty: 600 penalty units.

- (2) If a pre-paid funeral contract provides for the purchase of a right of burial or interment in a cemetery or for the payment of any other fees (including fees for cremation or preservation or disposition of ashes) to the trustees of a cemetery on behalf of the person in respect of whom the funeral is to be supplied, the funeral provider may arrange for money paid to the funeral provider in respect of that contract to be paid to the trustees of the cemetery for that purpose.
- (3) A funeral provider or an associate of a funeral provider holds any money paid to the funeral provider or associate in respect of a pre-paid funeral contract by or on behalf of any other party to the contract on trust for that other party until that money is paid or invested in accordance with sub-section (1) or (2).

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- (4) Sub-sections (1) and (3) do not apply to—
- (a) an administration fee or brokerage fee paid in respect of a pre-paid funeral contract; or
 - (b) an amount paid in respect of any GST payable on the supply to which a pre-paid funeral contract relates.

30. Procedure for investment

- (1) A funeral provider must ensure that an investment or payment under section 29(1) or (2) is made—
- (a) in the name of the person in respect of whom the funeral services are to be supplied; and
 - (b) in accordance with the contract.

Penalty: 600 penalty units.

- (2) A funeral provider must ensure that any investment or payment under section 29 is made—
- (a) if the money is paid to the funeral provider in cash, before the end of the third business day; and
 - (b) if the money is paid to the funeral provider otherwise than in cash, before the end of the seventh business day—

after the money is received by the funeral provider or by any agent or associate of the funeral provider.

Penalty: 600 penalty units.

- (3) Within 21 days after receipt of any money paid to a funeral provider under a pre-paid funeral contract by or on behalf of any other party to the contract, the funeral provider must give that other party copies of any documents—

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- (a) which relate to any payment or investment of that money under section 29; and
- (b) which are in a class of documents approved under sub-section (4).

Penalty: 120 penalty units.

- (4) The Minister may by notice published in the Government Gazette approve classes of documents for the purposes of this section.
- (5) If an investment is made under section 29(1)(b), 29(1)(c) or 29(1)(d), the funeral provider concerned must inform the investment body that the investment is made for the purpose of a funeral service to be supplied under a pre-paid funeral contract.

Penalty: 120 penalty units.

31. Consideration under contract

- (1) A funeral provider must not demand any consideration from any person for any funeral service supplied under a pre-paid funeral contract other than the consideration provided for in the contract.

Penalty: 360 penalty units.

- (2) Despite sub-section (1), a funeral provider may recover charges for a funeral service supplied in respect of a person if—
 - (a) the funeral service supplied was different from or included an additional service to the funeral service to be supplied under the pre-paid funeral contract; and

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- (b) the legal personal representative of the person in respect of whom the funeral is to be supplied has agreed to the different or additional service and before so agreeing, has signed a statement to the effect that he or she was aware that the funeral service specified in the pre-paid funeral contract could be supplied without further cost but that he or she agreed to a different or additional service; and
- (c) the charges for the funeral service so supplied are reduced by an amount equal to the value of the consideration (less any administration fee or brokerage fee) given under the contract for the original funeral service.

32. Funeral provider not to accept other money

- (1) A funeral provider or associate of a funeral provider must not accept any money payable to the funeral provider or an associate of the funeral provider under any investment specified in a pre-paid funeral contract unless the funeral service specified in the contract has been supplied in accordance with the contract or another service has been supplied in accordance with section 31(2).

Penalty: 360 penalty units.

- (2) A funeral provider or an associate of a funeral provider must not accept any commission or other payment from any person in respect of any investment made under section 29(1) or 29(2) or money held under section 29(3) other than the consideration payable to the funeral provider or associate in accordance with the pre-paid funeral contract.

Penalty: 360 penalty units.

33. Receipt

- (1) If money is paid to a funeral provider in respect of a pre-paid funeral contract by or on behalf of a party to that contract, the funeral provider must ensure that a receipt complying with subsection (2) is given to the person who made the payment—
 - (a) without delay, if the payment is made in cash; and
 - (b) before the end of the third business day after the payment is received if—
 - (i) the money is paid otherwise than in cash; and
 - (ii) the person requested a receipt at the time of making the payment.

Penalty: 10 penalty units.

- (2) A receipt must state—
 - (a) particulars sufficient to identify the person who made the payment; and
 - (b) the benefit to be provided under the contract; and
 - (c) the date of receipt of the money; and
 - (d) the amount paid.

Division 3—Termination of Pre-Paid Funeral Contracts

34. Definition of "funeral provider"

In this Division "**funeral provider**" includes any person who has ceased to carry on business as a funeral provider and, except in sections 35(1) and 35(2), also includes the legal personal representative of a funeral provider.

35. Termination of pre-paid funeral contract by purchaser

- (1) A party to a pre-paid funeral contract (other than a funeral provider) or the legal personal representative of that party may terminate that contract at any time before the death of the person in respect of whom a funeral is to be supplied under that contract if—
 - (a) the funeral provider fails to comply with section 28, 29 or 30; or
 - (b) the service will not be supplied because the funeral provider has ceased to carry on the business of supplying or arranging the supply of services of that kind; or
 - (c) he or she is otherwise entitled under the contract to terminate the contract.
 - (2) The legal personal representative of a person in respect of whom a funeral service is to be supplied under a pre-paid funeral contract may terminate the contract at any time on or after the death of the person and before the funeral service is supplied under that contract if—
 - (a) the funeral provider was unable or unwilling to supply or arrange the supply of the funeral service when it was required; or
 - (b) a funeral service had been supplied in respect of the person but was not supplied under that contract and section 31(2) does not apply to the provision of that funeral service; or
 - (c) the legal personal representative is otherwise entitled under the contract to terminate the contract.
 - (3) A contract may be terminated under subsection (1) or (2) by notice in writing served on the funeral provider.
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36. Termination of contract by funeral provider

If a funeral provider is entitled to do so under a pre-paid funeral contract, the funeral provider may terminate the contract by notice in writing served on—

- (a) each other party to the contract or that party's legal personal representative, if the contract is terminated before the death of the person in respect of whom the funeral is to be supplied under the contract; and
- (b) the legal personal representative of the person in respect of whom the funeral is to be supplied under the contract, if the contract is terminated on or after the death of that person.

37. When does termination take effect?

A pre-paid funeral contract is terminated on the service of a notice under section 35(3) or 36.

38. What must happen on termination?

- (1) On the termination of a contract under section 37 before the death of the person in respect of whom a funeral service was to be supplied under the contract—
 - (a) the funeral provider and any associate of a funeral provider must transfer or assign to the other party to the contract or that party's legal personal representative any interest the funeral provider or associate has in the consideration paid or given in respect of the contract by or on behalf of that party; and

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- (b) if any money paid to the funeral provider in respect of the contract by or on behalf of any other party to the contract has not been invested or paid out in accordance with section 29 or 30(1), the funeral provider must pay the amount of that money to that other party to the contract or that party's legal personal representative.

Penalty: 360 penalty units.

- (2) On the termination of a contract under section 37 on or after the death of the person in respect of whom a funeral service was to be supplied under the contract—
- (a) the funeral provider and any associate of a funeral provider must transfer or assign to the legal personal representative of the person in respect of whom a funeral service was to be supplied under the contract any interest the funeral provider or associate has in the consideration paid or given in respect of the contract; and
- (b) if any money paid to the funeral provider in respect of the contract by or on behalf of any other party to the contract has not been invested or paid out in accordance with section 29 or 30(1), the funeral provider is discharged from the trust created under section 29(3) and must pay the amount of that money to the legal personal representative of the person in respect of whom the funeral service was to be supplied under the contract.

Penalty: 360 penalty units.

- (3) Sub-sections (1) and (2) do not apply to an administration fee or brokerage fee paid in respect of a pre-paid funeral contract.

39. Winding up

If a funeral provider which is a body corporate is commenced to be wound up or a receiver or receiver and manager is appointed for a funeral provider which is a body corporate—

- (a) any pre-paid funeral contract to which the funeral provider was a party is deemed to have been terminated immediately before that commencement or appointment; and
- (b) any assignment or transfer to the funeral provider of any investment or any interest in an investment by any other party to the contract or any promise by any other party to the contract to assign or transfer an investment or any interest in an investment to the funeral provider is deemed to have been cancelled immediately before that commencement or appointment.

40. Legal personal representative of person may act

Under this Division—

- (a) a notice of termination can be given; and
- (b) an assignment, transfer or payment can be made—

by or to the legal personal representative of a person in respect of whom a funeral is to be supplied under a pre-paid funeral contract whether or not the person was a party to the contract.

41. Other termination rights not affected

Nothing in this Division affects any other rights (not inconsistent with this Division) that a person may have to terminate a pre-paid funeral contract.

Division 4—Register of Contracts

42. Register of contracts

A funeral provider must keep a register setting out—

- (a) details of—
 - (i) each person with whom the funeral provider has entered into a pre-paid funeral contract; and
 - (ii) each person in respect of whom a funeral is to be or may be supplied under that pre-paid funeral contract; and
- (b) details of the money or other valuable consideration paid or given to the funeral provider or an associate of the funeral provider in respect of each of those pre-paid funeral contracts; and
- (c) the manner in which money paid to the funeral provider in respect of each of those pre-paid funeral contracts has been invested or paid out under section 29(1) or 29(2); and
- (d) details of each funeral service supplied under each of those pre-paid funeral contracts; and
- (e) any other prescribed information.

Penalty: 60 penalty units.

Division 5—Accounts and Records

43. Keeping of records

A funeral provider must keep copies of the following documents for at least 3 years after the death of the person in respect of whom a funeral is to be supplied under a pre-paid funeral contract—

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- (a) the contract;
 - (b) any information given under section 27 in respect of the contract;
 - (c) any receipt given under section 33 in respect of the contract;
 - (d) any documents given under section 30(3) in respect of the contract;
 - (e) any other prescribed documents.

Penalty: 60 penalty units.

44. Accounts to be kept

- (1) A funeral provider must keep accounting and other records which correctly record and explain the transactions and financial position of the funeral provider's pre-paid funeral business and which comply with sub-section (2).

Penalty: 60 penalty units.

- (2) For the purposes of sub-section (1), the records must be kept—
 - (a) in writing in the English language; or
 - (b) in a manner that will enable the records to be readily converted into writing in the English language.

PART 6—CODE OF PRACTICE

45. Preparation of draft code of practice by the Director

The Director may, with the approval of the Minister, and must, if the Minister so directs, prepare for submission to the Minister a draft code of practice for funeral providers and persons employed or engaged by funeral providers to regulate—

- (a) fair trading in relation to the supply of funeral goods or funeral services; and
- (b) funeral practices, including the storage, handling and treatment of deceased bodies.

46. Consideration of draft code of practice prepared by other persons

If the Director is satisfied that funeral providers have, in consultation with other interested persons, agreed to abide by a particular code of practice in relation to the matters set out in sections 45(a) and 45(b), the Director may submit the code to the Minister for consideration together with any recommendations of the Director with respect to the code.

47. Prescribing codes of practice

The Minister may—

- (a) recommend to the Governor in Council that the Governor in Council make regulations prescribing a code of practice which—
 - (i) has been prepared and submitted to the Minister under section 45; or
 - (ii) has been submitted to the Minister under section 46; or

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- (b) recommend that the Governor in Council make regulations prescribing such a code of practice with the amendments made by the Minister.

48. Offence to breach code of practice

A person must comply with a code of practice prescribed under this Act.

Penalty: 20 penalty units.

PART 7—COMPLAINTS HANDLING

49. Procedure for dealing with complaints

- (1) A funeral provider must establish and maintain a procedure for dealing with customer complaints which complies with this section.

Penalty: 60 penalty units.

- (2) A complaints handling procedure under sub-section (1) must—

- (a) subject to paragraph (b), be in accordance with any guidelines issued by the Director under section 52(1) (if any); or
- (b) be in accordance with the prescribed complaints handling procedure (if any).

50. Written document of complaints handling procedure

- (1) A funeral provider must set out the complaints handling procedure referred to in section 49 in a written document which complies with sub-section (2).

Penalty: 60 penalty units.

- (2) The written document referred to in sub-section (1) must include the following information—

- (a) the name or position title of the person or persons to whom a customer may give notice of a complaint;
- (b) the contact details for the person or persons referred to in paragraph (a);
- (c) the times and places at which notice of a complaint may be given, which must not unreasonably restrict the ability of customers to give that notice;
- (d) details of the complaints handling procedure.
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51. Provision of procedures for dealing with complaints

A funeral provider must immediately provide a copy of the document setting out the complaints handling procedure to any customer who makes a complaint to the funeral provider.

Penalty: 60 penalty units.

52. Guidelines

- (1) The Director may issue guidelines for complaints handling procedures.
 - (2) Guidelines issued under sub-section (1) may include but are not limited to—
 - (a) the form of the complaints handling procedure document;
 - (b) how a funeral provider should manage complaints;
 - (c) the procedure to follow if a complaint cannot be resolved between a funeral provider and customer.
 - (3) The Director must ensure that guidelines issued under sub-section (1) are issued to all funeral providers included in the register of funeral providers.
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PART 8—ENFORCEMENT

Division 1—Powers of Director

53. Director may require information

- (1) The Director may require a person to give to the Director any information or documents that the Director reasonably considers necessary to determine whether that person or any other person—
 - (a) has complied with a provision of this Act; or
 - (b) is, or has been at any time, required by law to comply with a provision of this Act.
- (2) The Director must make a requirement under sub-section (1) in a written notice that—
 - (a) identifies the information or document; and
 - (b) specifies by when the requirement must be complied with; and
 - (c) specifies in what form the information or document is to be given to the Director.
- (3) A notice under sub-section (2) must—
 - (a) state that the requirement is made under this section; and
 - (b) include a copy of this section and section 71.
- (4) A person must comply with any requirement made by the Director under this section, unless the person has a reasonable excuse for not doing so.

Penalty: In the case of a natural person,
120 penalty units;
In any other case, 240 penalty units.

Division 2—Application of Fair Trading Act Provisions

54. Incorporation of provisions of Fair Trading Act 1999

- (1) Sections 143 and 144 and Division 2 of Part 11 (other than section 156) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act as if a reference in any of those provisions to that Act were a reference to this Act.
- (2) For the purposes of sub-section (1), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
 - (a) proceedings for an offence against a provision of this Act;
 - (b) proceedings on an application for an injunction under section 149, 149A or 150 of the **Fair Trading Act 1999** (as applied by sub-section (1)) against a person alleged to have contravened a provision of this Act;
 - (c) proceedings on an application for—
 - (i) an order under section 158; or
 - (ii) damages under section 159—of the **Fair Trading Act 1999** (as applied by sub-section (1)).
- (3) For the purposes of sub-section (1), section 155 of the **Fair Trading Act 1999** applies as if—
 - (a) in sub-section (1), the words "in relation to a contravention of a prescribed provision" were omitted; and
 - (b) sub-sections (4) and (5) were omitted.

Division 3—Powers of Inspectors

55. Production of identity card

An inspector must produce his or her identity card for inspection—

- (a) before exercising a power under this Act other than a requirement made by post; and
- (b) at any time during the exercise of a power under this Act, if asked to do so.

Penalty: 10 penalty units.

56. Searches to monitor compliance with this Act

(1) In this section—

"funeral provider" includes a person who carries on the business of arranging the supply of funeral services under pre-paid funeral contracts;

"relevant premises" means any premises—

- (a) on or from which it appears a funeral provider is operating; or
- (b) that an inspector believes on reasonable grounds contains—
 - (i) any record or account that is required to be kept by this Act; or
 - (ii) any document that indicates whether or not this Act has been complied with.

(2) An inspector may enter any relevant premises at any reasonable hour in the daytime and at any time that the premises are open for business and may—

- (a) inspect the premises and any thing on the premises; and

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- (b) search for any evidence of any contravention of this Act; and
 - (c) make copies of, or take extracts from, any document kept on the premises; and
 - (d) seize any thing on the premises if the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction; and
 - (e) use any assistants the inspector considers necessary to exercise the powers conferred by this section.
- (3) An inspector may exercise powers under this section only to the extent that it is reasonably necessary to do so for the purpose of determining compliance with this Act.
 - (4) An inspector must not continue to exercise any powers under this section if he or she fails to produce, on request, his or her identity card for inspection by the occupier of the premises.
 - (5) An inspector must not, under this section, enter premises which are a residence unless the occupier of those premises has consented in writing to the entry and the carrying out of a search.

57. Offence-related searches and seizures

- (1) An inspector may only exercise powers under this section if he or she has reasonable grounds for suspecting that there is on any premises a particular thing that may be evidence of the commission of an offence against this Act.
 - (2) Subject to sub-section (3), an inspector, with any assistants he or she considers necessary, may with the consent in writing of the occupier of the premises, enter the premises and search for a thing
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referred to in sub-section (1) without applying for a search warrant.

- (3) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector has—
- (a) produced his or her identity card for inspection; and
 - (b) informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and
 - (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- (4) If a thing referred to in sub-section (1) is found during a search under sub-section (2), the inspector may—
- (a) inspect any thing on the premises;
 - (b) inspect, and make copies of, or take extracts from, the thing;
 - (c) seize the thing if the inspector believes on reasonable grounds that it is necessary to seize it in order to prevent its concealment, loss or destruction.

58. Occupier to be given copy of consent

- (1) An occupier who consents in writing to the entry and search of the occupier's premises or residence under section 56 or 57 must be given a copy of the signed consent immediately.
- (2) In any proceeding, if a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

59. Search warrant

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence against this Act.
 - (2) If a magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence against this Act, the magistrate may issue a search warrant authorising an inspector named in the warrant and any assistants the inspector considers necessary—
 - (a) to enter the premises, or the part of the premises, named or described in the warrant; and
 - (b) to search for and seize any thing named or described in the warrant.
 - (3) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) the offence suspected;
 - (b) the premises to be searched;
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- (c) a description of the thing for which the search is to be made;
 - (d) any conditions to which the warrant is subject;
 - (e) whether entry is authorised to be made at any time or during stated hours;
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and must be in the form prescribed by the regulations under that Act.
- (5) Subject to any provision to the contrary in this Act, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

60. Announcement before entry

- (1) Before executing a search warrant, the inspector named in the warrant, or a person assisting the inspector, must—
- (a) announce that he or she is authorised by the warrant to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) The inspector or a person assisting the inspector need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.
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61. Copy of warrant to be given to occupier

If the occupier, or another person who apparently represents the occupier, is present at a premises when a search warrant is being executed, the inspector must—

- (a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

62. Receipt must be given for any thing seized

(1) An inspector must not seize a thing apparently in the possession or custody of a person unless the inspector makes out and tenders to the person a receipt for the thing seized that—

- (a) identifies the thing; and
- (b) states the name of the inspector and the reason why the thing is being seized.

(2) If an inspector is unable to discover the identity of—

- (a) the lawful owner of a thing seized; or
- (b) the person from whose custody a thing is seized—

the inspector must leave the receipt with, or post it to, the owner of the premises from which the thing was seized.

63. Copies of certain seized things to be given

(1) Subject to sub-section (2), if an inspector seizes—

- (a) a document; or
- (b) a thing that can be readily copied; or

(c) a storage device containing information that can be readily copied—

the inspector must give a copy of the thing or information to—

(d) the owner; or

(e) person from whom the document, thing or device was seized—

as soon as is practicable after the seizure.

(2) Sub-section (1) does not apply—

(a) to any document, thing or device moved under section 64(2); or

(b) if the inspector is unable to discover the identity of the lawful owner or person from whom any document, thing or device is seized.

64. Use of equipment to examine or process things

(1) An inspector may bring on to any premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized.

(2) If—

(a) it is not practicable to examine or process the things at the premises; or

(b) the occupier of the premises consents in writing—

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.

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- (3) An inspector, or a person assisting the inspector, may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized, if the inspector or person assisting believes on reasonable grounds that—
- (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

65. Use or seizure of electronic equipment at premises

- (1) If—
- (a) a thing found at a premises is or includes a disk, tape or other information storage device; and
 - (b) equipment at the premises may be used with the disk, tape or other information storage device; and
 - (c) an inspector believes on reasonable grounds that the information stored on the disk, tape or other information storage device is relevant to determine whether this Act has been contravened—

the inspector or a person assisting the inspector may operate, or may require the occupier or an employee of the occupier to operate, the equipment to access the information.

- (2) If an inspector or a person assisting the inspector finds that a disk, tape or other information storage device at the premises contains information of the kind referred to in sub-section (1)(c), the inspector—

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- (a) may put the information in documentary form and seize the documents so produced; or
 - (b) may copy the information to another disk, tape or other information storage device and remove that disk, tape or other information storage device from the premises; or
 - (c) if it is not practicable to put the information in documentary form or to copy the information, may seize the disk, tape or other information storage device and the equipment that enables the information to be accessed.
- (3) An inspector or a person assisting an inspector must not operate or seize equipment for the purpose mentioned in this section unless the inspector or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

66. Compensation for damage caused during inspections

- (1) Subject to sub-section (2), the Minister must pay compensation for any damage caused by an inspector, or a person assisting an inspector, in exercising or purporting to exercise any power conferred by this Act.
 - (2) The Minister is not liable to pay compensation for any damage caused during any inspection that reveals that there has been a contravention of this Act.
 - (3) In determining the amount of compensation payable in relation to any damage caused to electronic equipment, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were
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available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

67. Return of seized things

- (1) If an inspector seizes a thing under this Act, the inspector must take reasonable steps to return the thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If a seized thing has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
 - (a) proceedings have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) a court makes an order under section 68 extending that period.

68. Court may extend period

- (1) An inspector may apply to the Magistrates' Court within 3 months after seizing a thing or, if an extension has been granted under this section, within that extended period, for an extension of the period during which the seized thing may be retained.
- (2) The Magistrates' Court may order the extension of the period during which a seized thing may be retained if satisfied that retention of the thing is necessary—
 - (a) for the purposes of an investigation into whether an offence has been committed; or
 - (b) to enable evidence of an offence to be obtained for the purposes of a prosecution.

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- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

69. Power of inspector to require information or documents

- (1) An inspector who—
- (a) exercises a power of entry under this Act; and
 - (b) produces his or her identity card for inspection by a person—
- may, to the extent that it is reasonably necessary to determine whether this Act has been contravened, require the person—
- (c) to give information to the inspector; and
 - (d) to produce documents to the inspector; and
 - (e) to give reasonable assistance to the inspector.
- (2) A person must not refuse or fail, without reasonable excuse, to comply with a requirement made under sub-section (1).

Penalty: 60 penalty units.

70. False or misleading information

A person must not, in response to a request or requirement under this Part—

- (a) give information that the person knows to be false or misleading in a material detail; or
- (b) produce a document that the person knows to be false or misleading in a material detail without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

71. Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite sub-section (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person.

72. Offence to hinder or obstruct inspector

A person must not, without reasonable excuse, hinder or obstruct an inspector who is exercising a power under this Part.

Penalty: 60 penalty units.

73. Entry to be reported to the Director

- (1) If an inspector exercises a power of entry under this Part, the inspector must report the exercise of the power to the Director within 7 days after the entry.
- (2) A report under sub-section (1) must include all relevant details of the entry including particulars of—
 - (a) the time and place of the entry; and
 - (b) the purpose of the entry; and
 - (c) the things done while on the premises, including details of things seized, samples taken, copies made and extracts taken; and
 - (d) the time of departure from the premises.

74. Register of exercise of powers of entry

The Director must keep a register containing the particulars of all matters reported to the Director under section 73.

75. Complaints

- (1) Any person may complain to the Director about the exercise of a power by an inspector under this Part.
- (2) The Director must—
 - (a) investigate any complaint made to the Director; and
 - (b) provide a written report to the complainant on the results of the investigation.

Division 4—Confidentiality

76. Disclosure of information

- (1) A person must not disclose any information that is obtained by him or her while exercising a power conferred by this Act.
Penalty: 60 penalty units.
 - (2) A person must not use any information that is obtained by him or her while exercising a power conferred by this Act to obtain directly or indirectly any pecuniary advantage for himself or herself or for any other person.
Penalty: 60 penalty units.
 - (3) Despite sub-section (1) or (2), a person may disclose or use such information if—
 - (a) the disclosure or use is made in the performance of a duty under, or in connection with, this Act; or
 - (b) the person has the consent of the person to whom the information relates; or
-

- (c) the disclosure or use is made in legal proceedings at the direction of a court; or
 - (d) the information is in the public domain at the time it is disclosed or used.
- (4) Sub-section (3) is not intended to interfere with any rights another person may have with regard to the disclosure or use of the information.

Division 5—General

77. Limitation

Despite anything in any Act, proceedings for an offence against Part 5 of this Act may be brought within the period of 3 years after the commission of the alleged offence or, with the consent of the Director of Public Prosecutions, at any later time.

78. Actions by firms

Where this Act provides that a person, being a firm, is guilty of an offence, that reference to the person—

- (a) in the case of a partnership, is to be read as a reference to each member of the partnership; and
- (b) in the case of any other unincorporated body, is to be read as a reference to each member of the committee of management of the body.

79. Who may bring proceedings for an offence?

- (1) Proceedings for an offence against this Act may only be brought by—
 - (a) the Director; or
 - (b) a person authorised by the Director for the purposes of this section.

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- (2) In proceedings for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.
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PART 9—GENERAL

80. Service of documents

- (1) If, under this Act, a document or notice is required or permitted to be served on or given to a person, the document or notice, in addition to any other lawful method of service, may be served or given—
 - (a) if the person is a natural person, by giving it to or serving it personally on the person or by sending it by post to the person at the person's usual or last known place of residence or business; or
 - (b) if the person is a corporation, by leaving it at or sending it by post to the registered office of the corporation within the meaning of the Corporations Act.
- (2) If, under this Act, a document or notice is required or permitted to be served on or given to a firm, the document, in addition to any other lawful method of service, may be served or given by leaving it at or sending it by post to the principal place of business of the firm.

81. Delegation

The Director may, by instrument, delegate any of his or her powers under this Act (except a power under section 53 or this power of delegation) to any person employed under Part 3 of the **Public Administration Act 2004**.

82. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the items or disclosures to be included on a funeral goods and services price list;
 - (b) the form of a funeral goods and services price list;
 - (c) the items or disclosures to be included on a coffin price list;
 - (d) the form of a coffin price list;
 - (e) the items or disclosures to be included on a statement of funeral costs;
 - (f) the form of a statement of funeral costs;
 - (g) the funeral goods and funeral services to be provided in a basic funeral service;
 - (h) prescribing terms and conditions of pre-paid funeral contracts and classes of pre-paid funeral contracts;
 - (i) the information and reports to be given to the Director in respect of pre-paid funeral contracts;
 - (j) complaints handling procedures;
 - (k) forms;
 - (l) fees, including fees for any action required to be taken by the Director under the Act;
 - (m) codes of practice for the purposes of Part 6;
 - (n) prescribing penalties not exceeding 20 penalty units for a contravention of the regulations;

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- (o) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations under this Act—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as amended from time to time;
 - (d) may confer a discretionary authority or impose a duty on the Director;
 - (e) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Director;
 - (f) may provide in a specified case or class of cases for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
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PART 10—SAVINGS AND TRANSITIONAL PROVISIONS

83. Definitions

In this Part—

"commencement day" means the date of commencement of section 89;

"old Act" means the **Funerals (Pre-Paid Money) Act 1993**;

"pre-existing pre-paid funeral contract" means a pre-paid funeral contract (whether or not complying with Part 5)—

- (a) which was entered into before the commencement of section 22 of the **Funerals (Pre-Paid Money) Act 1993**; and
- (b) under which the funeral goods or funeral services have not been supplied—

but does not include a pre-paid funeral contract which has been terminated or held to be void, if the money or other valuable consideration paid or given under the contract has been repaid or returned in full.

84. General transitional provisions

- (1) This Part does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) This Part applies despite anything to the contrary in any other provision of this Act.

85. References to old Act

On and from the commencement day, unless the context otherwise requires, in any Act (other than this Act), or in any instrument made under any Act or in any other document of any kind, a reference to the old Act must be read as a reference to this Act to the extent that the reference applies to any period on or after the commencement day.

86. Application to pre-existing pre-paid funeral contracts

- (1) A pre-existing pre-paid funeral contract continues in force on and after the commencement day subject to this Part.
- (2) Subject to sub-section (3), this Act applies to a pre-existing pre-paid funeral contract in respect of any period on or after the commencement day.
- (3) Sections 27, 28, 30(1)(b), 30(2), 30(3), 30(4), 30(5) and 32 and Division 3 of Part 5 do not apply to a pre-existing pre-paid funeral contract.
- (4) Nothing in this Act affects the exercise of any right of termination contained in a pre-existing pre-paid funeral contract.

87. Existing pre-paid funeral contracts

- (1) Subject to sub-section (2), this Act applies to a pre-paid funeral contract entered into on or after the commencement of section 22 of the old Act and before the commencement day.
- (2) This Act does not apply to a pre-paid funeral contract referred to in sub-section (1) if the contract has been terminated or held to be void, if the money or other valuable consideration paid or given under the contract has been repaid or returned in full.

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Part 10—Savings and Transitional Provisions

s. 88

88. Register of contracts

A register kept by a person or body under section 11 of the old Act is deemed to form part of the register required to be kept by that person or body under Division 4 of Part 5 of this Act.

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Part 11—Repeal and Amendment

s. 89

PART 11—REPEAL AND AMENDMENT

89. Repeal of Funerals (Pre-Paid Money) Act 1993

The **Funerals (Pre-Paid Money) Act 1993** is
repealed.

See:
Act No.
33/1993.
Reprint No. 1
as at
17 May 2000
and
amending
Act Nos
17/2001,
44/2001 and
103/2004.
LawToday:
www.dms.
dpc.vic.
gov.au

90. Amendment of Fair Trading Act 1999

In Schedule 1 to the **Fair Trading Act 1999** for
"**Funerals (Pre-Paid Money) Act 1993**"
substitute "**Funerals Act 2006**".

See:
Act No.
16/1999.
Reprint No. 2
as at
30 August
2004
and
amending
Act Nos
103/2004,
108/2004,
18/2005,
91/2005,
98/2005 and
32/2006.
LawToday:
www.dms.
dpc.vic.
gov.au

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Endnotes

ENDNOTES

- † *Minister's second reading speech—*
Legislative Assembly: 10 August 2006
Legislative Council: 14 September 2006

The long title for the Bill for this Act was "to provide for the regulation of the funeral industry, to re-enact provisions relating to the regulation of pre-paid funeral contracts, to provide for Codes of Practice, to repeal the **Funerals (Pre-Paid Money) Act 1993**, to amend the **Fair Trading Act 1999** and for other purposes."

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