

Cemeteries (Amendment) Bill

EXPLANATORY MEMORANDUM

Outline

The aim of this Bill is to guarantee the liability of cemetery trusts.

In addition, a number of other minor amendments are proposed to improve the **Cemeteries Act 1958**.

CLAUSE NOTES

Clause 1 sets out the purposes of the Act.

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed.

Clause 3 defines the **Cemeteries Act 1958** as being the Principal Act.

Clause 4 extends the powers to make rules and regulations vested in the trustees of public cemeteries by section 9 of the Principal Act.

The aim of the amendment is to give trusts the ability to make regulations about behaviour in a cemetery, and, more particularly, the conditions to be complied with within a cemetery if a funeral is being conducted by a non-professional person.

Clause 5 inserts a new section 14A into the Principal Act. The new section is designed to guarantee the liability of members of a cemetery trust acting in good faith and without wilful disregard of their duties.

Clause 6 make several amendments to section 48 of the Principal Act.

The major change is to vest the function of granting exhumation licences in the Chief General Manager of the Department of Health. This function is currently vested in the Minister who must personally sign each exhumation licence. The proposed change will facilitate the administration of this section of the Act.

Proposed new sub-section (5) is designed to resolve a potential problem created by a legal opinion suggesting that the “remains of a body” as used in section 48 could include cremated remains.

If upheld, this would make it an offence for cemetery trusts to move ashes from, say, a memorial niche to a rose garden on the instructions of relatives, as often occurs.

The proposed new sub-section makes clear that the retrieval of ashes by trusts is excluded from the scope of the section.

Clause 7 inserts a new section 50A into the Principal Act.

The new section will give the Chief General Manager an ability to approve exemptions from regulations made under the Act.

This discretion could be used, for example, to enable a coffin to be buried in a grave at less than the prescribed depth at the “overlay” areas of the Melbourne General Cemetery provided that alternative safeguards to protect the public health can be instituted at the site.

Clause 8 makes a statute law revision type amendment to section 60c (2) of the Principal Act. It corrects an oversight when references in the section to the Health Commission of Victoria were changed to “Chief General Manager” by the **Health (Amendment) Act 1985**.

Clause 9 repeals the forms for an application to cremate a body contained in Schedules Two and Three to the Principal Act.

Associated amendments to sections 77, 78 and 92 anticipate the replacement of the current forms with less complex cremation certificates which will be developed in consultation with the industry and community interest groups following the enactment of the amending provisions.

Clause 10 revises the various penalties in the Principal Act, and expresses penalties as penalty units.