

**LOCAL GOVERNMENT (CONTROL OF
CEMETERIES) AMENDMENT ACT.**

Act No. 52, 1966.

An Act to provide for the care, control and manage-
ment of cemeteries by councils; for this and other
purposes to amend the Local Government Act,
1919, and certain other Acts in certain respects;
and for purposes connected therewith. [Assented
to, 9th December, 1966.]

**Elizabeth II,
No. 52, 1966**

BE it enacted by the Queen's Most Excellent Majesty, by
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows:—

1. (1) This Act may be cited as the "Local Government
(Control of Cemeteries) Amendment Act, 1966".

Short title
and com-
mencement.

(2)

Local Government (Control of Cemeteries) Amendment Act.

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(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 41, 1919.

2. The Local Government Act, 1919, as amended by subsequent Acts, is amended—

Sec. 3.
(Division into Parts.)

(a) by omitting from the matter relating to Part XIX in section three the figures “452” and by inserting in lieu thereof the figures and letter “452L”;

Part XIX,
Division 1.

(b) by inserting next after the heading to Part XIX the following new heading :—

New heading.

DIVISION 1.—*General.*

Sec. 446.
(Provision for cemeteries.)

(c) by omitting subsections three and four of section four hundred and forty-six;

Part XIX.
New Division 2.

(d) by inserting at the end of Part XIX the following new Division :—

DIVISION 2.—*Control of cemeteries.*

Application of Division.

452A. Subject to paragraph (b) of subsection one of section 452E of this Act, this Division shall not apply to the cemeteries specified or referred to in Schedule Eleven.

Interpretation.

452B. (1) In this Division—

“Appointed day” means the day upon which the Local Government (Control of Cemeteries) Amendment Act, 1966, commences.

“Cemetery authority” means the person or body having the care, control and management, whether by virtue of ownership or otherwise, of a private cemetery.

“Private cemetery” means land, not being a public cemetery, that has been or is used for the burial of the dead.

“Public

“Public cemetery” means Crown land or other land of the Crown reserved, dedicated or acquired for the interment of the dead but does not include any such land reserved, dedicated or acquired for exclusive use by a particular religious denomination unless it adjoins or is adjacent to Crown land or other land of the Crown reserved, dedicated or acquired for use by another religious denomination, or by the public generally, for the interment of the dead.

(2) For the purposes of this Division, the expression “rules and regulations or by-laws” in subsection two of section twenty-four and subsection two of section twenty-eight of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, shall be deemed to include ordinances.

452c. (1) On and from the appointed day, the council of an area in which is situated a public cemetery (not being a public cemetery of which a council had the care, control and management immediately before the appointed day) shall be the trustee of the cemetery and, as trustee, shall be charged with the care, control and management thereof.

(2) Where any public cemetery is situated partly within two or more areas, it shall, for the purposes of this section, be deemed to be wholly situated within the area in which the greater part lies.

452D. Where, immediately before the appointed day, a council had the care, control and management of a public cemetery within or outside its area, the provisions of this Division (section 452G excepted) shall, without prejudice to anything done or suffered or commenced to be done or suffered by the council and without prejudice to the rights

of

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of any person, apply to and in respect of that council and cemetery as if the council had, on the appointed day, been charged as trustee with the care, control and management of the cemetery pursuant to this Division.

Care, etc.,
of excepted
cemeteries,
private
cemeteries
and certain
other
cemeteries.

452E. (1) The Minister may by notification published in the Gazette—

- (a) declare a specified private cemetery not to be a private cemetery for the purposes of this Division;
- (b) amend Schedule Eleven by omitting therefrom the name of any cemetery specified therein or by excepting any cemetery out of the description therein;
- (c) appoint a council as trustee of a private cemetery situated within its area and charge the council so appointed, as trustee, with the care, control and management thereof;
- (d) appoint a council as trustee of a public cemetery situated within its area but under the care, control and management of the council of another area and charge the council so appointed, as trustee, with the care, control and management thereof; or
- (e) appoint a council as trustee of a public cemetery not situated within an area and charge the council so appointed, as trustee, with the care, control and management thereof.

(2) A notification pursuant to subsection one of this section may be amended or revoked by a similar notification.

(3) A notification pursuant to subsection one or two of this section shall take effect upon the day of publication or on some later day specified in the notification.

(4)

(4) A notification pursuant to paragraph No. 52, 1966 (b), (c) or (d) of subsection one of this section shall not be made—

- (a) in the case of a notification pursuant to paragraph (b) of subsection one of this section, without the concurrence of the council and the trustees of the cemetery;
- (b) in the case of a notification pursuant to paragraph (c) of subsection one of this section, until the council and the cemetery authority have entered into an agreement, not inconsistent with this Act and the ordinances, setting forth the terms and conditions upon which it is proposed that the council should undertake the care, control and management of the cemetery; or
- (c) in the case of a notification pursuant to paragraph (d) of subsection one of this section, without the concurrence of the councils concerned.

(5) An agreement referred to in paragraph (b) of subsection four of this section shall not have any force or effect until the appropriate notification pursuant to paragraph (c) of subsection one of this section takes effect.

452F. (1) Where, after the appointed day, land is reserved or dedicated under any Act for use as a public cemetery, the council of the area within which the land is situated shall be the trustee of the cemetery and, as trustee, shall have the care, control and management thereof. Council to have care, etc., of certain cemeteries after appointed day.

(2) Where a notification is published pursuant to paragraph (b) of subsection one of section 452E of this Act, the council of the area within which is situated the cemetery referred to in the notification shall, on and from the day the notification

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notification takes effect, be the trustee of the cemetery and, as trustee, shall have the care, control and management thereof.

(3) Where any land or cemetery referred to in subsection one or two of this section is situated partly within two or more areas, it shall, for the purposes of this section, be deemed to be wholly situated within the area in which the greater part lies.

Transfer of
assets, etc.,
relating to
cemeteries.

452G. (1) In this section "former trustees" means—

- (a) in relation to a public cemetery, the trustees of the cemetery holding office immediately before the day on which a council is charged, pursuant to this Division, with the care, control and management of the cemetery; or
- (b) in relation to a private cemetery, the cemetery authority.

(2) Where a council is, pursuant to this Division, charged with the care, control and management of a cemetery (not being a cemetery referred to in section 452D or subsection one of section 452F of this Act) then, on and from the day on which the council is so charged, but subject to any agreement referred to in paragraph (b) of subsection four of section 452E of this Act—

- (a) the council shall, as trustee of the cemetery, be charged with its care, control and management;
- (b) the former trustees shall cease to have the care, control and management of the cemetery and the trust constituted by their appointment shall, to the extent that it relates to the care, control and management of the cemetery, be dissolved;

(c)

- (c) the powers, duties, rights and liabilities of No. 52, 1966 the former trustees in relation to the care, control and management of the cemetery shall be powers, duties, rights and liabilities of the council, as trustee of the cemetery;
- (d) the property of the former trustees relating to the care, control and management of the cemetery, including all moneys, books of account, registers, records and all documents and things relating to, or connected with, the operation of the cemetery, shall be delivered to, and become the property of, the council as trustee of the cemetery;
- (e) all moneys, or liquidated or unliquidated claims, which immediately before that day were payable to or recoverable by the former trustees in connection with the care, control and management of the cemetery shall be moneys, or liquidated or unliquidated claims payable to, or recoverable by, the council as trustee of the cemetery;
- (f) all suits, actions and proceedings pending immediately before that day at the suit of the former trustees of the public cemetery, in connection with the care, control and management of the cemetery, shall respectively be suits, actions and proceedings pending at the suit of the council as trustee of the cemetery;
- (g) all contracts, agreements and undertakings entered into with, and all securities lawfully given to, or by, the former trustees, in connection with the care, control and management of the cemetery, and in force immediately before that day, shall be deemed to be contracts, agreements and undertakings

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undertakings entered into with, and securities given to, or by, the council as trustee of the cemetery;

- (h) the council may, as trustee of the cemetery and in connection with its care, control and management, pursue the same remedies for the recovery of such moneys and claims, and for the prosecution of such suits, actions and proceedings as the former trustees might have done had they continued to have the care, control and management of the cemetery after that day;
- (i) the council may enforce and realise any security or charge, existing immediately before that day, in favour of the former trustees in connection with the care, control and management of the cemetery, as if such security or charge were a security or charge in favour of the council as trustee of the cemetery;
- (j) all debts due and moneys payable by, and all claims, liquidated or unliquidated, recoverable against, the former trustees in connection with the care, control and management of the cemetery shall be debts due and moneys payable by, and claims recoverable against, the council as trustee of the cemetery;
- (k) all liquidated and unliquidated claims in connection with the care, control and management of the cemetery for which the former trustees would, but for this Act, have been liable shall be liquidated and unliquidated claims for which the council, as trustee of the cemetery, shall be liable;

(1)

(1) all rules, regulations, by-laws or ordinances ^{No. 52, 1966} made under this or any other Act for the care, control and management of the cemetery, and in force and applicable to the cemetery immediately before that day shall, to the extent that they are not inconsistent with the provisions of this Division, remain in full force and effect but may be repealed, amended or varied by ordinances made under this Division and shall be read and construed as if any reference therein to the former trustees were a reference to the council;

(m) the right of any person under any certificate securing to that person, or his successors or assigns, the exclusive right of burial in the cemetery shall continue, and shall be a right enforceable against the council as trustee of the cemetery.

(3) The direction given by paragraph (d) of subsection two of this section, relating to the delivery to the council of any property of the former trustees relating to the care, control and management of the cemetery, shall be deemed to have been given to any person having the control or custody of any such property.

(4) Notwithstanding anything contained in subsections three and four of section six hundred and fifty-four of this Act, the provisions of that section shall apply to and in respect of any difference arising between a council and the former trustees as to whether or not a cemetery is a public cemetery as if the difference were a difference between two councils.

452H. (1) Nothing in this Division shall affect the setting apart, before the appointed day, of any portion of a public cemetery for the burial of the dead of a particular religious denomination.

Portions of cemetery set aside for use by religious denominations.

(2)

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(2) Any recognised minister of a religious denomination shall at all times have free access and admission to any portion of a public cemetery set apart, whether before or after the appointed day, for the burial of the dead of his denomination and to any portion of a public cemetery set apart as a general or undenominational burial ground and shall have the right, without any hindrance or disturbance, therein to exercise his spiritual functions in connection with the burial of the dead.

Appoint-
ment, etc., of
trustee not
affected by
other Acts.

452I. The provisions of any Act, other than this Act, relating to the appointment or removal, or the powers, authorities, duties and functions, of trustees of Crown lands or other lands of the Crown to which this Division applies shall not apply to or in respect of any land of which a council has the care, control and management pursuant to this Division.

Transfer of
employees.

452J. The provisions of section 20C of this Act shall apply, mutatis mutandis, to and in respect of all persons who, immediately before the day upon which a council is charged pursuant to this Division with the care, control and management of a public cemetery, were full-time employees of the trustees (not being a council) of that cemetery, engaged, as such employees, solely and continuously on work in or in connection with that cemetery and shall so apply as if, before that day, the cemetery had been a work of a council that, in consequence of the constitution of a new area, had on that day been transferred to the council so charged.

Saving.

452K. The provisions of this Division and of any agreement referred to in paragraph (b) of subsection four of section 452E of this Act shall have effect notwithstanding the terms of any trust or condition affecting any land to which this Division applies and nothing done pursuant to this Division or any such agreement shall be deemed to be a breach of the terms of any such trust or condition.

452L.

452L. (1) Ordinances may be made for carrying this Division into effect, and in particular for or with respect to—

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Ordinances.

- (a) the care, control and management, generally, of cemeteries, the care, control and management of which is vested in councils pursuant to this Division, or any part thereof;
- (b) the fixing of fees and charges to be applicable in any such cemetery.

(2) Without limiting the generality of subsection one of this section the ordinances may provide that a council may by resolution fix a schedule of fees and charges, not exceeding a maximum laid down in the ordinance, in respect of any cemetery of which that council has the care, control and management pursuant to this Division and may fix different fees and charges in respect of different cemeteries within its area.

- (e) by inserting next after Schedule Ten the following new Schedule :—

New
Schedule
Eleven.

SCHEDULE ELEVEN.

Balgowlah Cemetery	Liverpool Cemetery
Botany Cemetery	Mona Vale (Turimetta
Bunnerong Cemetery	General) Cemetery
Field of Mars Cemetery	Northern Suburbs Cemetery
French's Forest Cemetery	Woronora Cemetery
Gore Hill Cemetery	Sandgate Cemetery (New-
Lithgow Cemetery	castle)

and any public cemetery situated wholly or partly within that part of the County of Cumberland bounded by lines commencing on the foreshore of the South Pacific Ocean on Narrabeen Beach, at the easterly prolongation of the northern boundary of portion 14, parish of South Colah; and bounded thence by that prolongation and boundary westerly to the north-western corner of that portion; by a line south-westerly to the north-western corner of portion 296, parish of St. John; by a line south-easterly to the south-western corner of portion

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—

portion 902, parish of Sutherland; by the southern boundary of that portion and its prolongation easterly to the foreshore of the South Pacific Ocean; and by that foreshore generally northerly to the point of commencement.

Repeal.

3. Subclause (b) of clause nine of ordinance sixty-eight is hereby repealed.
