

NECROPOLIS (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 4, 1973.

An Act to vest in the Crown the reversion expectant on the lease by trustees appointed by the Governor of land at the Necropolis set aside for the cremation of bodies; to enable the Minister to appoint a permanent joint committee of trustees for the Necropolis; to confer on the Minister certain powers and functions previously exercised and performed by the Governor; to increase certain penalties; for these and other purposes to amend the Necropolis Act 1901; and for purposes connected therewith. [Assented to, 21st March, 1973.]

BE

Necropolis (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 4, 1973
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 "Necropolis (Amendment) Act, 1973". Short title and commencement.

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

(3) The Necropolis Act 1901 is in this Act referred to as the Principal Act.

2. The Principal Act is amended—

Amendment of Principal Act.

(a) by inserting at the end of section 6 the following new subsection :— Sec. 6. (Interpretation.)

(2) With respect to the land described in the Second Schedule, a reference in this Act to the burial or interment of the dead shall, except to the extent that the context or subject-matter otherwise indicates or requires, be construed as including a reference to the cremation of dead bodies and the disposition of the ashes.

(b) (i) by omitting from section 8A (1) the words "in this section referred to as the subject land"; Sec. 8A. (Crematorium.)

(ii) by omitting section 8A (2), (3), (4) and (5);

(iii)

Necropolis (Amendment).

No. 4, 1973

(iii) by omitting from section 8A (6) the words "subject land" and by inserting instead the words "land described in the Second Schedule";

New sec.
8B.

(c) by inserting next after section 8A the following new section :—

Lease of
land in
Second
Schedule.

8B. (1) On and from the commencement of the Necropolis (Amendment) Act, 1973—

- (a) the persons who, immediately before that commencement, held office as trustees of the land described in the Second Schedule shall cease to hold that office;
- (b) the reversion expectant on lease dated 7th September, 1926, and made between the Honourable John Mildred Creed, Alexander Livingstone Kerr, Edward Beeby, Arthur Ernest Dent and Colin Percy Earle of the one part and The New South Wales Cremation Company Limited of the other part of the land described in the Second Schedule is vested in Her Majesty and, for the purposes of the Conveyancing Act, 1919, shall be deemed to have been so vested by a conveyance;
- (c) the powers, authorities, duties and functions conferred or imposed on the lessors by that lease may be exercised and performed by the Minister on behalf of Her Majesty;
- (d) a reference in that lease to expenses assessed from time to time by the committee appointed in that behalf in pursuance of subsection four of section 18A of the

Necropolis

Necropolis (Amendment).

Necropolis Act 1901, as amended by ^{No. 4, 1971}
the Necropolis (Amendment) Act, 1923,
shall be construed as a reference to the
contribution payable by the lessee under
section 51C of the Public Health Act, 1902;

- (e) the Minister may, in relation to the land described in the Second Schedule, exercise or perform a power or function (other than a power or function conferred by subsection (2) of section 18A, or by section 19 or 27) that would, if that land were vested in trustees under this Act, be powers or functions conferred by this Act on those trustees in relation to that land;
- (f) the rent payable under the lease referred to in paragraph (b) shall be paid by the lessee to the joint committee constituted by section 18B, to be expended for the purposes of section 18A.

(2) The Minister may, whenever the land described in the Second Schedule is not the subject of a lease, grant on behalf of Her Majesty a lease thereof on such terms and conditions as he thinks fit, being terms and conditions that will enable the lessee effectively to use the land for the erection and maintenance of, or for the maintenance of, a crematorium, chapel, columbarium and such other buildings as the lessee considers are necessary for the cremation of bodies of the dead and the care of the ashes of those bodies.

(3) The Minister may, by a lease granted under subsection (2), confer or impose on the lessee any or all of the powers, authorities, duties and functions conferred or imposed on trustees by this Act.

Necropolis (Amendment).

No. 4, 1973 3. The Principal Act is further amended—

Further amendment of Principal Act.

- Sec. 8.
(Lands hereafter dedicated may be set apart:— For denominations.)
- (a) (i) by omitting from section 8 the word “Governor” wherever occurring and by inserting instead the word “Minister”;
- (ii) by omitting from section 8 the word “proclamation” wherever occurring and by inserting instead the word “notification”;
- Sec. 9.
(Parts of land dedicated in 1887 and added to general cemetery may be set apart for denominations.)
- (b) (i) by omitting from section 9 the word “Governor” and by inserting instead the word “Minister”;
- (ii) by omitting from section 9 the word “proclamation” and by inserting instead the word “notification”;
- Sec. 10.
(Adjustment of boundaries.)
- (c) by omitting from section 10 the word “Governor” and by inserting instead the word “Minister”;
- Sec. 11.
(Vesting of lands hereafter set apart.)
- (d) by omitting from section 11 the word “proclamation” and by inserting instead the word “notification”;
- Sec. 14.
(Appointment of denominational trustees.)
- (e) (i) by omitting from section 14 the word “Governor” wherever occurring and by inserting instead the word “Minister”;
- (ii) by omitting from section 14 the word “proclamation” wherever occurring and by inserting instead the word “notification”;
- Sec. 16.
(Trustees to lay out grounds.)
- (f) by omitting from section 16 the word “Governor” wherever occurring and by inserting instead the word “Minister”;

(g)

Necropolis (Amendment).

- (g) by omitting from section 17 (2) the word "Governor" and by inserting instead the word "Minister"; No. 4, 1973
Sec. 17.
(Trustees may fix fees and charges.)
- (h) by omitting from section 18A (4) the word "Governor" and by inserting instead the word "Minister"; Sec. 18A.
(Trustees funds may be expended within Necropolis.)
- (i) by omitting from section 23 (2) the word "Governor's" and by inserting instead the word "Minister's"; Sec. 23.
(Trustees may build mortuaries.)
- (j) by omitting from section 24 (1) the word "Governor" and by inserting instead the word "Minister". Sec. 24.
(Trustees may sell exclusive burial rights &c.)

4. The Principal Act is further amended—

- (a) (i) by omitting section 18A (2); Further amendment of Principal Act.
Sec. 18A.
(Trustees funds may be expended within Necropolis.)
- (ii) by omitting from section 18A (3) the words "Such committee" and by inserting instead the words "The committee constituted under section 18B";

- (b) by inserting next after section 18A the following new section:— New sec. 18B.

18B. (1) There shall be a joint committee for the purposes of this Act and of section 51c of the Public Health Act, 1902, consisting of one representative from each body of trustees appointed under this Act. Joint committee.

(2) The joint committee shall, at the commencement of the Necropolis (Amendment) Act, 1973, consist of the persons (other than the representative

*Necropolis (Amendment)*No. 4, 1973

representative of the trustees of the land described in the Second Schedule) who, immediately before that commencement, were members of the committee referred to in subsection (2) of section 18A as enacted immediately before that commencement.

(3) Where there was, immediately before the commencement of the Necropolis (Amendment) Act, 1973, a vacancy in the office of a member (other than the member who represented the trustees of the land described in the Second Schedule) of the committee so referred to or where, after that commencement, a vacancy occurs in the office of a member of the committee constituted by this section, the Minister may, by notification published in the Gazette, appoint to the vacant office a person nominated by the trustees who were represented by the person who vacated that office.

(4) A member of the committee vacates his office if he ceases to be a trustee appointed under this Act, or if he resigns his office as such a member, or if he is removed from office as such a member by the Minister.

(5) Where an additional body of trustees is appointed under this Act, a vacancy shall be deemed to have occurred in the office of a member of the committee representing those trustees.

(6) The Minister may, for any cause, remove a member of the committee from his office as such a member.

(7) Where a vacancy occurs in the office of a member of the committee and the trustees whom he represented fail, within a time allowed by

the

Necropolis (Amendment).

the Minister for the purpose, to nominate one of their number to fill the vacant office, the Minister may fill the vacant office by appointing thereto one of their number. No. 4, 1973

(8) For the purposes of this section, paragraph (a) of section 8B shall be deemed not to create a vacancy in the office of a member of the committee.

- (c) (i) by inserting in section 19 after the word "abstract" the words "verified by a statutory declaration of the secretary or manager to the trustees,"; Sec. 19.
(Trustees to forward accounts yearly to Minister for Lands.)
- (ii) by omitting section 19 (2).

5. The Principal Act is further amended—

- (a) by omitting section 18A (6); Further amendment of Principal Act.
Sec. 18A.
(Trustees funds may be expended within Necropolis.)
- (b) (i) by omitting from section 26 (1) the words "and regulations"; Sec. 26.
(Trustees may exercise certain powers.)
- (ii) by omitting section 26 (1) (a), (c), (e), (f) and (g);
- (iii) by omitting section 26 (2);
- (iv) by omitting section 26 (3);

(8)

(c)

Necropolis (Amendment).

No. 4, 1973

New secs.
35, 36 and
37.Freedom to
conduct
religious
ceremonies.

(c) by inserting next after section 34 the following new sections :—

35. Nothing in this Act shall be construed as authorising the direct or indirect interference with the performance of any religious ceremony in the burial or cremation of the dead—

(a) in that portion of the Necropolis set apart as a general cemetery or in or on the land described in the Second Schedule—according to the rites of any religious denomination; or

(b) in that portion of the Necropolis set apart as a burial ground for the use of a religious denomination—in accordance with the rites of that denomination.

Delegation
by Minister.

36. (1) Subject to this section the Minister may by instrument in writing delegate to the holder of any prescribed office the exercise or performance of such of the powers (other than this power of delegation), authorities, duties and functions conferred or imposed upon the Minister by or under this Act or the regulations as may be prescribed in relation to the holder of that office and may in like manner revoke wholly or in part any such delegation or any such delegation made by a predecessor in office.

(2) Any power, authority, duty or function the exercise or performance of which has been delegated under this section to the holder of a prescribed office may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the person for the time being holding or acting in that office whether or not the Minister who made the delegation holds office at the time of that exercise or performance.

(3)

Necropolis (Amendment).

(3) A delegation made under this section No. 4, 1973 may be made subject to such conditions or such limitations as to the exercise or performance of any of the prescribed powers, authorities, duties or functions delegated or as to time or circumstances as may be specified in the instrument of delegation.

(4) Where any prescribed power, authority, duty or function is exercised or performed by the holder of a prescribed office in relation to whom that power, authority, duty or function is prescribed and the exercise or performance of the power, authority, duty or function is evidenced in writing, signed by the holder of, or person for the time being acting in, that office in the name of the Minister or in his own name on behalf of the Minister, the power, authority, duty or function shall be deemed to have been exercised or performed by the Minister, whether or not an instrument delegating the exercise or performance of the power, authority, duty or function to that holder was, when the power, authority, duty or function was exercised or performed, in force and whether or not any conditions or limitations referred to in subsection (3) were observed by the person exercising or performing the power, authority, duty or function.

(5) Notwithstanding any delegation made under this section the Minister may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

(6) A regulation under subsection (1) relating to the powers, authorities, duties or functions that may be delegated to the holder of a prescribed office may describe any power, authority, duty or function in general or particular terms and may so describe the power, authority,

duty

Necropolis (Amendment).

No. 4, 1973

duty or function that its exercise or performance by the holder of the prescribed office in relation to whom it is prescribed shall be subject to such conditions or limitations as may be specified in the regulation.

Regulations.

37. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the power conferred by subsection (1) the Governor may make regulations for and with respect to—

- (a) the regulation or prohibition of the use of roads and paths under the care, control and management of the joint committee and of the traffic in or upon those roads and paths;
- (b) any of the powers or duties conferred or imposed on the joint committee by or under this Act;
- (c) protecting the buildings, monuments, shrubberies, plantations and enclosures in the Necropolis from destruction or damage;
- (d) the general good order and government of the Necropolis.

(3) The regulations may prescribe a penalty not exceeding \$200 for any breach thereof.

(4) A regulation may be of general or specially limited application according to time, place or circumstances and may be general or restricted to any class of subject-matter.

Necropolis (Amendment).

6. The Principal Act is further amended—

No. 4, 1973

Further
amendment
of Principal
Act.

- (a) by omitting from section 28 the words "ten dollars" and by inserting instead the figures "\$100"; Sec. 28. (Penalty on persons committing nuisances.)
- (b) by omitting from section 29 the words "forty dollars" and by inserting instead the figures "\$200"; Sec. 29. (Penalty for injuring monuments.)
- (c) by omitting from section 32 the words "twenty dollars" and by inserting instead the figures "\$40". Sec. 32. (Penalty for giving false name.)

7. (1) A person who, otherwise than as a trustee of the land described in the Second Schedule to the Principal Act, held office under the Principal Act immediately before the commencement of this Act as trustee of a portion of land shall continue in that office after that commencement as if he had been appointed as a trustee of that portion of the land under section 14 of the Principal Act, as amended by this Act. Savings.

(2) A regulation made by the joint committee under section 18A (6), or a rule or regulation made by trustees under section 26, of the Principal Act shall, to the extent to which it was in force immediately before the commencement of this Act, continue in force after that commencement as if this Act had not been enacted but, except to the extent that it was made under section 26 (1) (b), (d) or (h) of the Principal Act, may be repealed by a regulation made under section 37 of the Principal Act, as amended by this Act.

(3)

Necropolis (Amendment).

No. 4, 1973

(3) Where—

(a) before the commencement of this Act—

(i) the Governor exercised a power by proclamation, being a power that is required or authorised by the Principal Act, as amended by this Act, to be exercised by the Minister by notification; or

(ii) the Governor performed a function that is required or authorised by that Act, as so amended, to be performed by the Minister; and

(b) the exercise of the power or performance of the function by the Governor continued to have force and effect immediately before that commencement,

that exercise of the power or performance of the function shall continue after that commencement to have force and effect as if it had been duly exercised or performed by the Minister after that commencement.

(4) The amendment by this Act of section 18A of the Principal Act does not affect the validity of, or obligation to pay, any levy duly made before the commencement of this Act by the joint committee constituted under that section of the Principal Act or the obligation imposed by or under any Act to pay an amount based on the amount of such a levy but where, immediately before that commencement, an amount was due and unpaid under the Principal Act in respect of such a levy, it shall be due and payable after that commencement to the joint committee constituted under section 18B of the Principal Act, as amended by this Act.

Transitional
provision.

8. (1) In this section “the trustees” means the persons who, immediately before the commencement of this Act, were trustees of the land described in the Second Schedule to the Principal Act.

(2)

Necropolis (Amendment).

(2) The Minister shall, after the commencement of this Act, be entitled to take into his possession or under his control, and to dispose of or deal with as he thinks fit, any property (other than the land described in the Second Schedule to the Principal Act) that, immediately before that commencement, was vested in the trustees and any property that the trustees were, immediately before that commencement, entitled to take into, or keep in, their possession or to take or keep under their control. No. 4, 1973

(3) The Minister may, in respect of any property referred to in subsection (2), exercise or perform, or cause to be exercised or performed by any person nominated by him for the purpose, any power, authority, duty or function that the trustees could, immediately before that commencement, have exercised or performed in relation to that property.

(4) Any legal proceeding that the trustees could, immediately before the commencement of this Act, have instituted or continued may be instituted or continued after that commencement by the Minister or by some person nominated by him for the purpose.

(5) The Minister may, by notice in writing given to any person, require that person to transfer to the Minister within a time specified in the notice, possession or control of any property referred to in subsection (2) that is in the possession or under the control of that person.

(6) The Minister may, by notice in writing given to a person who was one of the trustees, require that person within a time specified in the notice to furnish to the Minister information so specified that is information relating to the administration of property that was vested in the trustees, or to the proceedings or accounts of the trustees.

(7)

Necropolis (Amendment).

No. 4, 1973

(7) A person who fails to comply, within the time specified in a notice under subsection (5) or (6), with a requirement so specified is liable on summary conviction to a penalty not exceeding \$200.

Effect of
Act No. 4,
1897.

9. Nothing in section 7 or 8 limits any saving in the Interpretation Act, 1897.

POLICE