

FUNERAL FUNDS ACT, 1979, No. 106

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 106, 1979.

**An Act to control and regulate contributory and pre-arranged
funeral funds. [Assented to, 17th May, 1979.]**

Funeral Funds.

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 :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Funeral Funds Act, 1979". Short title.

2. (1) This section and section 1 shall commence on the date of assent to this Act. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :— Arrangement.

PART I.—PRELIMINARY—ss. 1–5.

PART II.—ADMINISTRATION—ss. 6–10.

PART III.—FUNERAL CONTRIBUTION FUNDS—ss. 11–33.

DIVISION 1.—Registration of Funeral Contribution Funds—ss. 11–16.

DIVISION 2.—Provision of Funeral Services—ss. 17–19.

DIVISION 3.—Management of Funeral Contribution Funds—ss. 20, 21.

DIVISION 4.—Investment and Borrowing—ss. 22, 23.

DIVISION 5.—Returns and Registers—ss. 24–27.

DIVISION 6.—Actuarial Investigation—ss. 28–30.

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DIVISION 7.—*Transfer and Amalgamation of Contributory Funeral Benefit Business—ss. 31–33.*

PART IV.—PRE-ARRANGED FUNERAL FUNDS AND PRE-ARRANGED CONTRACTS—*ss. 34–53.*

DIVISION 1.—*Registration of Pre-arranged Funeral Funds—ss. 34–39.*

DIVISION 2.—*Money, etc., under Pre-arranged Contracts to be held in Trust by Pre-arranged Funeral Fund—ss. 40–42.*

DIVISION 3.—*Administration of Trust Funds under Pre-arranged Contracts—ss. 43–49.*

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PART V.—SUPERVISION OF FUNERAL FUNDS—*ss. 54–74.*

DIVISION 1.—*Inspections—s. 54.*

DIVISION 2.—*Inquiries—ss. 55–62.*

DIVISION 3.—*Suspension of New Business of Funeral Funds—ss. 63–66.*

DIVISION 4.—*Appointment of Administrator of Funeral Fund—ss. 67–73.*

DIVISION 5.—*Winding Up of Funeral Contribution Funds—s. 74.*

PART VI.—APPEALS AGAINST DECISIONS OF REGISTRAR—*ss. 75–84.*

PART VII.—MISCELLANEOUS—*ss. 85–92.*

PART VIII.—EXISTING FUNERAL CONTRIBUTION FUNDS—*ss. 93–110.*

DIVISION 1.—*Preliminary—ss. 93–97.*

DIVISION 2.—*Provisions Applicable where Contributions to be Refunded—ss. 98–102.*

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DIVISION 3.—*Provisions Applicable where Business to be Transferred—ss. 103–110.*

PART IX.—EXISTING PRE-ARRANGED FUNERAL FUNDS AND PRE-ARRANGED CONTRACTS—ss. 111–123.

DIVISION 1.—*Preliminary—ss. 111–114.*

DIVISION 2.—*Cancellation of Existing Pre-arranged Contracts—ss. 115–119.*

DIVISION 3.—*Continuation of Existing Pre-arranged Contracts—ss. 120–123.*

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“actuary” means—

- (a) a Fellow of the Institute of Actuaries incorporated by Royal Charter on 29th July, 1884;
- (b) a Fellow of the Faculty of Actuaries in Scotland;
or
- (c) the holder of a prescribed qualification as an actuary,

who has practised as an actuary for a continuous period of not less than 5 years;

“bankers’ books” means—

- (a) books of a banker;
- (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a banker; and
- (c) securities or documents of title to securities in the possession or under the control of a banker whether by way of pledge or otherwise;

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“company” means a company incorporated, or deemed to be incorporated, pursuant to the Companies Act, 1961;

“contributor” means a person—

- (a) who makes or has made periodic contributions, or on whose behalf periodic contributions are or have been made, to a person carrying on contributory funeral benefit business; and
- (b) who is thereby entitled to be provided with a funeral benefit on his death;

“contributory funeral benefit business” means business in relation to a scheme or arrangement for the provision of funeral benefits to contributors;

“Deputy Registrar” means the Deputy Registrar of Funeral Funds under this Act;

“funeral benefit” means—

- (a) the supply of any funeral service, with or without the supply of goods connected with that service;
or
- (b) the payment of money, upon the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral of that person;

“funeral contribution fund” means a company for the time being registered under this Act to carry on contributory funeral benefit business;

“funeral fund” means a funeral contribution fund or a pre-arranged funeral fund;

“funeral service” includes burial service and cremation service;

“individual” means a natural person;

“inspector” means an inspector appointed under section 8;

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“pre-arranged contract” means an agreement whose purpose is or includes the payment of money (in a lump sum or by instalments) or the giving of other valuable consideration for the supply of a funeral service, with or without the supply of goods connected with that service, being an agreement made before the death of the person who is to be supplied with that service, and includes an agreement prescribed as a pre-arranged contract under section 5;

“pre-arranged funeral benefit business” means the business of supplying funeral services under pre-arranged contracts;

“pre-arranged funeral fund” means a corporation or a group of individuals that is for the time being registered under this Act to act as trustee or trustees of trust funds under pre-arranged contracts;

“Registrar” means the Registrar of Funeral Funds under this Act, and includes the Deputy Registrar when exercising or performing the powers, authorities, duties and functions of the Registrar;

“rules”, in relation to a company that carries on or proposes to carry on contributory funeral benefit business, means—

- (a) the memorandum of association of the company;
- (b) the articles of association (if any) of the company; and
- (c) any other rules of the company dealing with—
 - (i) a matter referred to in section 13 (1);
 - (ii) the payment of contributions; and
 - (iii) funeral benefits.

(2) For the purposes of this Act—

- (a) a person does not carry on contributory funeral benefit business by reason only that he contributes for funeral benefits; and

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(b) a person carries on contributory funeral benefit business if he accepts any contributions for funeral benefits, otherwise than in the capacity of an agent.

(3) For the purposes of this Act—

(a) a person does not carry on pre-arranged funeral benefit business by reason only that he pays any money or gives any other valuable consideration for the supply of any funeral service under a pre-arranged contract; and

(b) a person carries on pre-arranged funeral benefit business if he agrees to supply any funeral service under a pre-arranged contract.

(4) In this Act, a reference to the supply or provision of a **funeral benefit** to any person is a reference to the supply or provision of that benefit in connection with the death of that person.

(5) In this Act, the description of an Act as an Act of the Commonwealth means an Act of the Parliament of the Commonwealth and all amendments of that Act, whether by subsequent Acts of that Parliament or otherwise and any Act of that Parliament passed in substitution for that Act.

Agreement to supply burial site a pre-arranged contract in certain cases.

5. An agreement whose purpose is or includes the supply of a burial site is prescribed as a pre-arranged contract—

(a) if the agreement does not specify the site, either individually or as a site within a specified area;

(b) if, where the agreement so specifies the site, the person who agrees to supply the site does not, at the time the agreement is made, own, or have the power to assign the exclusive right to burial in, the site or area, as the case may be; or

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- (c) if, where the site is within an area specified in the agreement, the person who agrees to supply the site has, at the time the agreement is made, already entered into agreements for the supply of the number of sites contained in that area.

PART II.

ADMINISTRATION.

6. (1) There shall be a Registrar of Funeral Funds and an Registrar.
office of the Registrar.

(2) The Registrar shall be appointed by the Governor under and subject to the Public Service Act, 1902, and, until that appointment is made, the Registrar of Friendly Societies shall be the Registrar and the office of the Registrar of Friendly Societies shall be the office of the Registrar.

(3) All documents lodged under this Act with the Registrar shall be kept in the office of the Registrar.

(4) The Registrar shall have an official seal.

7. (1) There shall be a Deputy Registrar of Funeral Funds. Deputy
Registrar.

(2) The Deputy Registrar shall be appointed by the Governor under and subject to the Public Service Act, 1902, and, until that appointment is made, the Deputy Registrar of Friendly Societies shall be the Deputy Registrar.

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(3) The Deputy Registrar may exercise and perform the powers, authorities, duties and functions of the Registrar subject to such conditions and restrictions, if any, as the Registrar may impose—

- (a) generally;
- (b) in relation to any specified matter or class of matters;
or
- (c) in relation to all matters other than any specified matter or class of matters.

(4) No person shall be concerned to see or inquire whether, in the case of any dealing or transaction with the Deputy Registrar, any condition or restriction has been imposed on the exercise of the powers of the Deputy Registrar or to inquire as to his authority.

(5) All acts or things done or omitted by the Deputy Registrar in the administration of this Act shall be as valid and effectual, and shall have the same consequences, as if the acts or things had been done or omitted by the Registrar.

Inspectors. 8. (1) The Minister may appoint inspectors for the purposes of this Act.

(2) The Minister shall not appoint a person, other than a person appointed and employed under the Public Service Act, 1902, as an inspector under subsection (1) unless the person is appointed—

- (a) with the approval of the Public Service Board and on such terms and conditions as may be approved by that Board; and
- (b) for a term not exceeding 3 years.

(3) A person, other than a person appointed and employed under the Public Service Act, 1902, who is appointed as an inspector under subsection (1) is not, in his capacity as an inspector, an officer within the meaning of that Act but, if the terms and conditions on which he is appointed so provide, any

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specified provisions of that Act or the regulations thereunder, whether with or without specified modifications, apply to and in respect of him as if he were an employee within the meaning of that Act.

(4) An inspector shall be provided by the Registrar with a certificate of his authority as an inspector.

(5) An inspector, on exercising in any place a power conferred on him by or under this Act, shall, if so requested by a person apparently in charge of that place or of any work being performed there, produce the certificate of his authority as an inspector.

9. (1) The Registrar may, with the approval of the Minister ^{Delegation.} and by instrument in writing, delegate such of his powers, authorities, duties and functions (other than this power of delegation) as may be specified in the instrument of delegation to any officer or employee employed in his office.

(2) The Minister or the Registrar may, by instrument in writing, revoke any delegation under subsection (1) either wholly or in part.

(3) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions that have been delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(4) A power, authority, duty or function, the exercise or performance of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be performed or exercised by the delegate from time to time in accordance with the terms of the delegation.

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(5) Notwithstanding the making of any delegation under subsection (1), the Registrar may continue to exercise or perform all or any of the powers, authorities, duties or functions that have been delegated.

(6) Any act, omission or thing done, omitted or undergone by a delegate while acting pursuant to a delegation made under subsection (1) shall have the same force and effect as if the act, omission or thing had been done, omitted or undergone by the Registrar.

Report to
Parliament.

10. (1) The Registrar shall, as soon as practicable after 30th June in each year, prepare and submit to the Minister a report with respect to the operation of, and his activities under, this Act during the period of 12 months ending on that date.

(2) The Minister shall, as soon as practicable after he receives a report under subsection (1), cause the report or a copy of the report to be laid before both Houses of Parliament.

PART III.

FUNERAL CONTRIBUTION FUNDS.

DIVISION 1.—*Registration of Funeral Contribution Funds.*

Contributory funeral benefit business to be carried on only by companies registered under this Act.

11. (1) A person shall not carry on or advertise that he carries on or is willing to carry on any contributory funeral benefit business unless that person is—

- (a) a funeral contribution fund; or
- (b) exempt from the application of this section pursuant to subsection (3).

Penalty : \$2,000.

Daily penalty : \$200.

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(2) Without limiting the application of subsection (1), a person carries on contributory funeral benefit business if he undertakes to provide contributors with a funeral service in New South Wales.

(3) A person is exempt from the application of this section if—

- (a) that person is—
 - (i) a society registered under the Friendly Societies Act, 1912;
 - (ii) a medical or hospital benefits organisation registered or deemed to be registered under the National Health Act 1953 of the Commonwealth;
 - (iii) an insurance company registered under the Life Insurance Act 1945 of the Commonwealth;
 - (iv) the Labor Council of New South Wales; or
 - (v) a person for the time being declared by the Minister by order published in the Gazette to be a person exempt from the application of this section or a person belonging to a class of persons so declared; and
- (b) where that person is served with a notice under subsection (4), that person carries on contributory funeral benefit business in accordance with the terms and conditions specified in the notice.

(4) The Minister may, by a notice served on a person referred to in subsection (3) (a) (ii), (iii) or (iv), prohibit that person from carrying on contributory funeral benefit business except in accordance with the terms and conditions specified in the notice.

(5) This section does not apply to an existing funeral contribution fund within the meaning of Part VIII until—

- (a) in the case of such a fund to whom Division 2 of Part VIII applies—the prescribed day within the meaning of that Part in relation to the fund; and

Funeral Funds.

- (b) in the case of such a fund to whom Division 3 of Part VIII applies—the day on which the contributory funeral benefit business of the fund is transferred in accordance with that Division.

Application for registration to carry on contributory funeral benefit business.

12. (1) A company may apply to the Registrar to be registered under this Act to carry on contributory funeral benefit business.

(2) An application for registration made pursuant to subsection (1) shall—

- (a) be made in or to the effect of the form approved by the Registrar; and
- (b) be accompanied by—
 - (i) a written statement showing the reasons for believing that, if registered, the company would be able to carry on contributory funeral benefit business successfully;
 - (ii) a copy of the rules of the company; and
 - (iii) such other documents as may be prescribed.

Requirements for registration.

13. (1) A company is not entitled to be registered to carry on contributory funeral benefit business unless, under the rules of the company—

- (a) contributory funeral benefit business and no other business is to be carried on by the company;
- (b) the income of the company is to be applied only for the provision of funeral benefits to contributors and to meet the management expenses of the company in carrying on contributory funeral benefit business;
- (c) the contributors to the company are prohibited from being members of the company;
- (d) the company is required to have not less than 3 and not more than 7 directors;

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- (e) the name of the company—
 - (i) includes the words “Funeral Contribution Fund”;
and
 - (ii) is not a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration;
- (f) the company is required to appoint an auditor and the person so appointed is required to be a person who may, under the Companies Act, 1961, be appointed as the auditor of a company other than an exempt proprietary company;
- (g) a funeral benefit that consists of the payment of money on the death of a contributor for the purpose of meeting the whole or part of the expenses of and incidental to the funeral of that person does not exceed \$1,000 or such greater sum as may be prescribed;
- (h) the company will be able to comply with such of the provisions of this Act as would be applicable to it; and
- (i) provision is made for such other matters as may be prescribed.

(2) The Minister shall cause a direction given by him under subsection (1) (e) (ii) to be published in the Gazette.

(3) The Registrar may prepare and publish in such manner as he thinks fit a model set of rules for a funeral contribution fund.

14. (1) On receipt of an application for registration from a company under section 12, the Registrar may, subject to subsection (2), register or refuse to register the company to carry on contributory funeral benefit business.

Registration
of company
to carry on
contributory
funeral
benefit
business.

Funeral Funds.

(2) The Registrar shall refuse to register a company to carry on contributory funeral benefit business if he is satisfied that—

- (a) the application for registration was not made in accordance with section 12;
- (b) the company will not be able to carry on contributory funeral benefit business successfully; or
- (c) the company is not entitled to be so registered under section 13.

Alteration
or addition
to rules
of funeral
contribu-
tion
fund.

15. (1) An alteration of or addition to the rules of a funeral contribution fund shall not have any force or effect until it is approved in writing by the Registrar.

(2) An application made to the Registrar for an approval under subsection (1) shall be accompanied by such documents as may be prescribed.

(3) The Registrar shall refuse to approve an alteration of or addition to the rules of a funeral contribution fund under subsection (1) if he is satisfied that the fund, by reason of the alteration or addition—

- (a) will not be able to carry on contributory funeral benefit business successfully; or
- (b) would be a company not entitled to be registered under section 13.

(4) Where a company is not entitled to be registered to carry on contributory funeral benefit business unless under its rules provision is made for a matter prescribed for the purposes of section 13 (1) (i), the Registrar may direct a funeral contribution fund that was so registered before that matter was prescribed, by notice served on the fund, to make, within such time as is specified in the notice, such alterations of or additions to its rules as are specified in the notice in order that provision is made for that matter.

Funeral Funds.

(5) A funeral contribution fund shall comply with a direction given to it under subsection (4).

Penalty for a contravention of this subsection : \$2,000.

16. (1) Where the Registrar has reason to believe that a funeral contribution fund has not commenced to carry on contributory funeral benefit business in New South Wales within 6 months after its registration, he may serve on the fund a notice requiring the fund to satisfy him, within 1 month after the date of service of the notice, that it is carrying on contributory funeral benefit business in New South Wales.

Cancel-
lation
of regis-
tration of
funeral
contribu-
tion
fund.

(2) If a funeral contribution fund on which a notice is served under subsection (1) does not, within the time specified in that subsection, satisfy the Registrar that it has commenced to carry on contributory funeral benefit business in New South Wales, the Registrar may cancel the registration of the fund by a further notice served on the fund.

(3) Where the whole of the contributory funeral benefit business of a funeral contribution fund is transferred to, or amalgamated with, the contributory funeral benefit business of any other funeral contribution fund or of a person exempt from the application of section 11, the registration of the firstmentioned fund shall be deemed to be cancelled.

(4) Where the registration of a funeral contribution fund is cancelled, or deemed to be cancelled, under this section, the Registrar shall notify the Corporate Affairs Commission accordingly.

DIVISION 2.—Provision of Funeral Services.

17. A funeral contribution fund that has undertaken to provide contributors with funeral services may, notwithstanding any law (other than this Act) to the contrary, enter into an agreement to have all or any number of those services carried out by the same person.

Tied
arrange-
ments
with
undertaker.

Funeral Funds.

Cash pay-
ment in
certain
cases if
funeral
service not
carried
out by
undertaker
designated
by fund.

18. (1) Where a funeral contribution fund does not provide a contributor with a funeral service which it has undertaken to provide, the legal personal representative of the contributor is entitled to be paid the prescribed cash payment by the fund to meet the whole or any part of the expenses of and incidental to the funeral of the contributor if—

- (a) the fund was unable or unwilling to provide the service;
- (b) the Registrar is satisfied that the service was not carried out by the undertaker designated by the fund for that purpose because the person who arranged for the service to be carried out did not know and had no reasonable means of ascertaining that the fund had undertaken to provide the service, and the Registrar notifies the fund accordingly; or
- (c) the service was not carried out by the undertaker designated by the fund for that purpose because the legal personal representative was unable or unwilling to pay for the cost of transporting the body of the contributor to the place at which the service was to be carried out by the undertaker so designated.

(2) For the purposes of subsection (1), the prescribed cash payment is—

- (a) except as provided in paragraph (b), the amount that the fund would have been required to pay if the service had been carried out by a person designated by the fund; or
- (b) where the rules of the fund so provide, the amount specified in those rules as the prescribed cash payment for the purposes of subsection (1).

Costs re-
coverable
by under-
taker where
funeral
service
provided
by fund.

19. (1) Where a funeral contribution fund undertakes to provide a contributor with a funeral service and on the death of the contributor a funeral service is carried out by an undertaker

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pursuant to an agreement with the fund, that undertaker is not entitled to recover in any court any charges for the service so carried out from any person other than the fund unless—

- (a) the service so carried out was different from or included a service additional to the service that the fund had undertaken to provide;
- (b) the person who agreed to the different or additional service had, before agreeing thereto, signed a statement to the effect that he was aware that the contributor was entitled to be provided without cost with the service that the fund had undertaken to provide but that he agreed to the different or additional service; and
- (c) the charges for the service so carried out are reduced by the amount that is equal to the cost of the service that the fund had undertaken to provide.

(2) A person shall not demand payment for any charge which he is not entitled to recover under subsection (1).

Penalty : \$1,000.

DIVISION 3.—Management of Funeral Contribution Funds.

20. (1) Subject to this section, a funeral contribution fund shall not enter into any contract, agreement, arrangement or understanding with a person by virtue of which the affairs, or any of the affairs, of the fund are managed, controlled or promoted by a corporation or by a person who is not employed by the fund to manage, control or promote those affairs as an officer of the fund under a contract of service.

Certain persons prohibited from managing, etc., affairs of funeral contribution funds.

Penalty : \$1,000.

(2) Any contract, agreement, arrangement or understanding entered into in contravention of subsection (1) shall be void.

Funeral Funds.

(3) Subject to this section, where at the time at which a company becomes a funeral contribution fund any contract, agreement, arrangement or understanding exists between the fund and another person which would, if the contract, agreement, arrangement or understanding had been entered into after that time, have been entered into in contravention of subsection (1), that contract, agreement, arrangement or understanding shall, notwithstanding any of its provisions to the contrary, be deemed to be terminated from that time.

(4) An offence against subsection (1) is not committed by reason only that a corporation or a person not employed by a funeral contribution fund as an officer of the fund under a contract of service acts on behalf of the fund as a banker, accountant, auditor, legal adviser, actuary, underwriter, advertising agent or collector of contributions or in any other prescribed capacity.

(5) An offence against subsection (1) is not committed by reason only that a person who is employed by a funeral contribution fund as an officer of the fund under a contract of service is also employed by another person under a contract of service.

**Limitations
on certain
management
expenses.**

21. (1) The regulations may fix a maximum amount that a funeral contribution fund may, if authorised by its rules to do so—

- (a) pay a director or other officer of the fund by way of remuneration for his services to the fund;
- (b) pay a person who collects contributions on behalf of the fund by way of commission for those collections; or
- (c) pay any person in connection with any other management expense of the fund.

Funeral Funds.

(2) Where a funeral contribution fund pays a person, in connection with a management expense of the fund, an amount which exceeds the maximum amount fixed under subsection (1) for or with respect to that expense—

- (a) the fund is guilty of an offence and liable to a penalty not exceeding \$1,000; and
- (b) the amount of the excess payment may be recovered in a court of competent jurisdiction by the fund as a debt due from the person to whom the payment was made.

DIVISION 4.—*Investment and Borrowing.*

22. (1) A funeral contribution fund may invest any of its funds that are not immediately required for the purpose of providing funeral benefits or meeting its management expenses in any manner—

Investment
of surplus
funds, etc.

- (a) for the time being authorised for the investment of trust funds; or
- (b) prescribed for the purposes of this paragraph.

(2) A funeral contribution fund shall open at and maintain with a bank or banks in New South Wales one or more current or deposit accounts in the name of the fund and shall—

- (a) forthwith after receiving any contributions, pay those contributions into that account or one of those accounts; **and**
- (b) keep any of its money not invested under subsection (1) in that account or one of those accounts.

Penalty : \$1,000.

23. A funeral contribution fund shall not borrow any money except that, for the temporary accommodation of the fund, the fund may obtain advances by overdraft of current account in any bank or banks to such extent as may, from time to time, be approved by the Registrar.

No borrow-
ing except
for
temporary
accommoda-
tion.

Penalty : \$1,000.

Funeral Funds.

DIVISION 5.—*Returns and Registers.*

Returns.

24. (1) A funeral contribution fund shall, in each year within 3 months after the last day of the fund's financial year, lodge with the Registrar a return containing the particulars specified in subsection (2) and accompanied by such documents as are specified in subsection (3).

(2) The particulars required to be contained in the return under subsection (1) are—

- (a) the address, as at the date of lodgment of the return, of the registered office of the funeral contribution fund;
- (b) all such particulars with respect to the persons who, as at the date of lodgment of the return, are directors of the fund and with respect to any person who, as at that date, is a manager or secretary of the fund as are required by section 134 of the Companies Act, 1961, to be contained in the register of directors, managers and secretaries of the fund;
- (c) the name and address of every person who, as at the date of lodgment of the return, is an auditor of the fund;
- (d) the name and address of every bank at which the fund, as at the date of lodgment of the return, maintains an account or keeps any of its money; and
- (e) such other particulars (if any) as are prescribed.

(3) The documents required to accompany the return under subsection (1) are—

- (a) a copy, certified by a director, or by the manager or secretary, of the funeral contribution fund to be a true copy of all accounts relating to the fund required by section 162 of the Companies Act, 1961, to be made out for or with respect to its financial year immediately preceding the date on which the return is required to be lodged with the Registrar under subsection (1);

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- (b) a copy of the statements required by section 162 of the Companies Act, 1961, to be attached to those accounts;
and
- (c) a copy of the auditor's report or reports required to be made by section 167 of the Companies Act, 1961, on those accounts.

(4) A funeral contribution fund shall, not later than 14 days after a change occurs in any particular referred to in subsection (2) in relation to the fund, lodge with the Registrar details in writing of the change.

Penalty : \$200.

25. (1) The Registrar may, by notice in writing served on a funeral contribution fund or on any officer or agent of any such fund, require the fund or that officer or agent to lodge with him, within such period as is specified in the notice—

Funeral contribution fund, etc., to provide information in certain cases.

- (a) such particulars as may be so specified with respect to—
 - (i) existing or former contributors to the fund; or
 - (ii) funeral benefits provided by the fund; or
- (b) such further particulars with respect to the fund or to any of its officers or agents or to its affairs as may be so specified.

(2) A funeral contribution fund on which, or an officer or agent of a funeral contribution fund on whom, a notice under subsection (1) has been served shall not neglect or fail to comply with a requirement contained in the notice when it is within the power of the fund or, as the case may be, the officer or agent to comply with that requirement.

Penalty : \$500.

Funeral Funds.

(3) Any information provided pursuant to a requirement contained in a notice served under subsection (1) shall not, if the person providing the information objected, at the time of providing it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any proceedings against that person for any offence, not being the offence of contravening subsection (2).

(4) Any requirement contained in a notice served under subsection (1) may be varied or revoked by a later notice served under that subsection.

Registers. **26.** (1) A funeral contribution fund shall keep a register of contributors to the fund and shall, within 7 days after the date on which a person becomes a contributor, enter in the register with respect to each such person—

- (a) the full name, address, date of birth and sex of that person;
- (b) the date on which that person became a contributor;
- (c) particulars of the benefits for which that person is contributing;
- (d) particulars of the rate of contributions payable by that person; and
- (e) such other particulars as may be prescribed.

(2) A funeral contribution fund shall enter in the register required to be kept under subsection (1)—

- (a) forthwith after any change in the rate of contributions payable by a contributor, particulars of the change and the date of the change;
- (b) forthwith after a person ceases to be a contributor to the fund, a statement to that effect and the date on which he ceased to be a contributor;

Funeral Funds.

(c) forthwith after a contributor is supplied with a funeral benefit, a statement to that effect and the date on which the benefit was supplied; and

(d) such other particulars as may be prescribed.

(3) A funeral contribution fund shall not remove from the register required to be kept under subsection (1) any particulars relating to a person who has ceased to be a contributor to the fund until 12 months after the investigation under section 28 next following his so ceasing to be a contributor.

(4) A funeral contribution fund shall keep such other registers as may be prescribed.

(5) A register which is required to be kept by a funeral contribution fund under subsection (1) or (4) shall be kept at the registered office of the fund.

Penalty : \$200.

27. A funeral contribution fund shall, at all reasonable hours when its office is open for business, produce for inspection by any contributor or person having a pecuniary interest in the fund—

Documents to be available for inspection by contributors, etc.

(a) a copy of the last annual return of the fund under section 24;

(b) a copy of the last abstract furnished by the fund to the Registrar under section 28 (2);

(c) a copy of the last balance sheet and income and expenditure account of the fund, together with the report of the auditors thereon;

(d) a copy of the rules of the fund;

(e) a copy of this Act and the regulations; and

(f) in the case of a contributor, that part of the books of the fund that relates to the account of the contributor.

Penalty : \$200.

Funeral Funds.

 DIVISION 6.—*Actuarial Investigation.*

Actuarial
investiga-
tion of
funeral con-
tribution
funds.

28. (1) A funeral contribution fund shall—

- (a) at least once in each period of 3 years or such other period as may be prescribed; and
- (b) where the Registrar by notice served on the fund so directs, within the time specified in the notice,

cause an actuary to make an investigation of the financial position of the fund, including a valuation of its liabilities, and to furnish it with a report of the results of the investigation.

(2) A funeral contribution fund shall, within 3 months after an investigation is made pursuant to subsection (1), lodge with the Registrar an abstract, prepared in the prescribed manner and containing the prescribed particulars, of the report by the actuary of the results of that investigation.

Penalty : \$1,000.

Basis of
valuations.

29. (1) The basis of valuation adopted by an actuary in any valuation of the liabilities of a funeral contribution fund under section 28 shall be such as—

- (a) to place a proper value upon the liabilities of the fund, having regard to—
 - (i) the mortality experience among the persons who are contributors to the fund;
 - (ii) the average rate of interest from investments;
 - (iii) the expenses of management (including commission); and
 - (iv) where the fund undertakes to provide contributors with funeral services, the movement in the prices of those services; and
- (b) to ensure that no agreement to contribute to the fund is treated as an asset.

Funeral Funds.

(2) The value placed on the aggregate liabilities of a funeral contribution fund by reason of the adoption of any basis of valuation shall not be less than it would have been if it had been calculated on the prescribed minimum basis of valuation.

30. (1) Where the Registrar is satisfied that, as a result of an actuarial investigation under section 28 or of an inquiry instituted by him—

(a) the assets of a funeral contribution fund are insufficient or more than sufficient to meet its liabilities; or

(b) the rate of the management expenses of a funeral contribution fund in relation to the income derived from contributions is unduly high,

Procedure where deficiency or surplus or where management expenses unduly high.

the Registrar may, by notice served on the fund, give such directions to the fund, including directions to change the rates of contribution to, the benefits provided by, and the manner of conducting the business of, the fund, as the Registrar considers necessary in order to reduce the deficiency, surplus or management expenses, as the case may be.

(2) The Registrar shall not give any directions pursuant to subsection (1) without the approval of the Minister.

(3) A funeral contribution fund shall comply with a direction given to it under subsection (1).

Penalty : \$1,000.

Daily penalty : \$100.

Funeral Funds.

DIVISION 7.—*Transfer and Amalgamation of Contributory Funeral Benefit Business.*

Transfer or
amalgama-
tion
to be con-
firmed by
Registrar.

31. The contributory funeral benefit business of any funeral contribution fund shall not, either in whole or in part, be transferred to, or be amalgamated with the contributory funeral benefit business of, any other funeral contribution fund except in pursuance of—

- (a) a scheme confirmed by the Registrar in accordance with section 32; or
- (b) a direction of the Registrar in accordance with section 33.

Schemes
for trans-
fer or
amalgama-
tion.

32. (1) For the purposes of section 31 (a), a scheme shall set out the terms of the agreement or deed under which it is proposed to effect the transfer or amalgamation and shall contain such further provisions as are necessary for giving effect to the scheme.

(2) An application for confirmation by the Registrar of any scheme for transfer or amalgamation may be made by or on behalf of any funeral contribution fund concerned.

(3) The Registrar may require any funeral contribution fund that has applied for the confirmation of a scheme for transfer or amalgamation to—

- (a) lodge with the Registrar copies of any actuarial or other reports upon which the scheme was founded;
- (b) give notice of the application in such manner, at such times and in such newspapers as the Registrar may direct;
- (c) send to each contributor affected by the scheme—
 - (i) a copy of the scheme or a summary of the scheme; and
 - (ii) a report thereon approved by the Registrar; or

Funeral Funds.

(d) lodge with the Registrar a report on—

- (i) the interest of the directors or other officers of the funeral contribution funds concerned in the transfer or amalgamation; and
- (ii) the compensation or other consideration proposed to be paid to those directors or officers,

or to do any combination of those things.

(4) The Registrar may cause a report on any scheme to be made by the Government Actuary and, if he does so, shall cause a copy to be sent to each of the funeral contribution funds concerned.

(5) Where an application has been made for confirmation of a scheme under this section and the requirements (if any) of the Registrar under subsection (3) in relation to the scheme have been complied with, the Registrar may, after hearing any person whom he may consider likely to be affected by the scheme, confirm the scheme, either without modification, or subject to such modifications as the funeral contribution funds concerned agree to, or may, with the approval of the Minister, refuse to confirm the scheme.

(6) Where the Registrar refuses to confirm a scheme for transfer or amalgamation under subsection (5), he shall serve notice of that refusal on the funeral contribution fund that applied for that confirmation.

(7) A scheme does not have any force or effect until confirmed by the Registrar and, when confirmed, shall—

- (a) be binding on the funeral contribution funds concerned and the contributors to those funds; and
- (b) have effect notwithstanding anything in the rules of those funds.

Funeral Funds.

Transfer by
direction of
Registrar.

33. (1) Subject to this section, the Registrar may—

- (a) with the approval of the Minister, direct a funeral contribution fund to transfer its contributory funeral benefit business to another funeral contribution fund, or to a person exempt from the application of section 11, nominated by the Registrar; and
- (b) at the same time, require the fund, within a period specified by the Registrar, to enter into an agreement, approved by the Registrar, to give effect to the transfer so directed.

(2) The Registrar shall not give a direction under subsection (1) unless he is satisfied that he is entitled to make an application to wind up the funeral contribution fund concerned.

(3) The Registrar may, before a funeral contribution fund has transferred its contributory funeral benefit business pursuant to a direction under subsection (1) (a), revoke the direction.

(4) A funeral contribution fund shall comply with any direction or requirement given to it or made of it under subsection (1).

Penalty for a contravention of this subsection : \$1,000.

PART IV.

**PRE-ARRANGED FUNERAL FUNDS AND PRE-ARRANGED
CONTRACTS.**

DIVISION 1.—Registration of Pre-arranged Funeral Funds.

Trustee
under pre-
arranged
contract
to be
registered
under this
Act.

34. (1) A person shall not act as trustee of trust funds under a pre-arranged contract unless that person is—

- (a) a corporation that is a pre-arranged funeral fund;

Funeral Funds.

- (b) an individual who is a member of a group of individuals that is a pre-arranged funeral fund; or
- (c) exempt from the application of this section pursuant to subsection (2).

Penalty : \$2,000.

Daily penalty : \$200.

(2) A person is exempt from the application of this section if—

- (a) that person is a person for the time being declared by the Minister by order published in the Gazette to be a person exempt from the application of this section or a person belonging to a class of persons so declared; and
- (b) where that person is served with a notice under subsection (3), that person acts as trustee of trust funds under pre-arranged contracts in accordance with the terms and conditions specified in the notice.

(3) The Minister may, by a notice served on a person referred to in subsection (2) (a), prohibit that person from acting as trustee of trust funds under pre-arranged contracts except in accordance with the terms and conditions specified in the notice.

(4) This section does not apply in relation to an existing pre-arranged contract within the meaning of Part IX.

35. (1) A corporation or any group of 3 or more individuals may apply to the Registrar to be registered under this Act to act as the trustee or trustees of trust funds under pre-arranged contracts. Application for registration.

(2) An application for registration made pursuant to subsection (1) shall—

- (a) be made in or to the effect of the form approved by the Registrar; and
- (b) be accompanied by such documents as may be prescribed.

Funeral Funds.

Require-
ments for
registration.

36. (1) A corporation or any group of individuals is not entitled to be registered to act as trustee or trustees of trust funds under pre-arranged contracts unless the corporation or the individuals, as the case may be—

- (a) does not or do not carry on pre-arranged funeral benefit business;
- (b) will be able to comply with such of the provisions of this Act as would be applicable to it or them; and
- (c) possesses or possess such other qualifications as may be prescribed.

(2) For the purposes of subsection (1) (a), a person does not carry on pre-arranged funeral benefit business by reason only that he is a member or officer of a corporation that carries on that business.

Registration
of pre-
arranged
funeral
funds.

37. (1) On receipt of an application for registration from a corporation or any group of individuals under section 35, the Registrar may, subject to subsection (2), register or refuse to register the corporation or group of individuals to act as trustee or trustees of trust funds under pre-arranged contracts.

(2) The Registrar shall refuse to register a corporation or any group of individuals to act as trustee or trustees of trust funds under pre-arranged contracts if he is satisfied that—

- (a) the application for registration was not made in accordance with section 35;
- (b) the corporation or group of individuals is not entitled to be so registered under section 36;
- (c) in the case of a corporation, the corporation is not fit to be so registered having regard to—
 - (i) the character and reputation of the directors and other officers of the corporation; or
 - (ii) any matter prescribed for the purposes of this subparagraph; or

Funeral Funds.

- (d) in the case of any group of individuals, the group of individuals is not fit to be so registered having regard to—
- (i) the character and reputation of each of those individuals; or
 - (ii) any matter prescribed for the purposes of this subparagraph.

38. (1) An individual who is appointed to act as trustee of trust funds under pre-arranged contracts in substitution for one of the members of a group of individuals that is a pre-arranged funeral fund or in addition to the members of the group shall not act as such a trustee until his appointment is confirmed by the Registrar. Additional or substitute co-trustee.

Penalty : \$2,000.

Daily penalty : \$200.

(2) The Registrar shall refuse to confirm the appointment of an individual under subsection (1) if he is satisfied that any group of individuals which included that individual would not be registered under section 37.

(3) Where the Registrar confirms the appointment of an individual to act as trustee of trust funds under pre-arranged contracts in substitution for one of the members of a group of individuals that is a pre-arranged funeral fund or in addition to the members of the group, the individual and the remaining members of the group or, as the case may be, the members of the group shall be deemed to be registered under section 37 as a group.

(4) Where one or more members of a group of individuals that is a pre-arranged funeral fund ceases to be a trustee of trust funds under pre-arranged contracts, the remaining members of the group shall, subject to section 39 (1) (b) (iv), be deemed to be registered under section 37 as a group.

Funeral Funds.

Cancel-
lation of
registra-
tion.

39. (1) The Registrar may cancel the registration of a pre-arranged funeral fund—

(a) if, in the case of a corporation—

- (i) the fund is commenced to be wound up, is under official management or has ceased to act as trustee of trust funds under pre-arranged contracts;
- (ii) the fund has entered into a compromise or scheme of arrangement with its creditors;
- (iii) a receiver and manager has been appointed, whether by the Supreme Court or otherwise, in respect of the property of the fund; or
- (iv) the fund or any person concerned in the management of the fund is convicted of an offence involving fraud or dishonesty or fails to comply with a provision of this Act or the regulations;

(b) if, in the case of any group of individuals—

- (i) any of those individuals becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his estate or any part of his estate for their benefit;
- (ii) the individuals have ceased to act as trustees of trust funds under pre-arranged contracts;
- (iii) any of those individuals is convicted of an offence involving fraud or dishonesty or fails to comply with a provision of this Act or the regulations; or
- (iv) any of those individuals ceases to be a trustee and the number of remaining trustees is less than 3;

(c) at the request of the fund; or

Funeral Funds.

(d) on any prescribed ground.

(2) The cancellation of the registration of a pre-arranged funeral fund under subsection (1) (paragraph (c) excepted) takes effect upon the expiration of 28 days after notice of the cancellation is served on the fund by the Registrar or, where an appeal is lodged against the cancellation under Part VI, upon the confirmation of the cancellation or the withdrawal of the appeal.

DIVISION 2.—Money, etc., under Pre-arranged Contracts to be held in Trust by Pre-arranged Funeral Fund.

40. (1) A person shall not agree to supply any funeral service under a pre-arranged contract unless the money to be paid, or other valuable consideration to be given, under the contract is required to be paid or given to a pre-arranged funeral fund which has entered into an agreement with that person to act as trustee of that money or other valuable consideration.

Payment of money, etc., under pre-arranged contract to pre-arranged funeral fund.

Penalty : \$2,000.

(2) Without limiting the application of subsection (1), that subsection applies to a person who agrees to supply a funeral service in New South Wales under a pre-arranged contract, notwithstanding any provision to the contrary in that contract.

(3) A reference in subsection (1) to a pre-arranged funeral fund includes a reference to a person who is exempt from the application of section 34.

41. (1) Subject to this Act, any money or other valuable consideration paid or given to a person under a pre-arranged contract shall be held by that person in trust for the purposes for which it was paid or given.

Money, etc., paid under pre-arranged contract to be held in trust.

Funeral Funds.

(2) Except as otherwise provided in this Part, trust funds held under a pre-arranged contract are not available for payment of the debts of the person who holds those funds or of the person who entered into the contract or liable to be taken in execution under the order or process of a court.

Transfer
of trust
funds
under pre-
arranged
contracts.

42. (1) Trust funds under pre-arranged contracts that are held by a pre-arranged funeral fund shall not, either in whole or in part, be transferred to any other pre-arranged funeral fund except in pursuance of a scheme confirmed by the Registrar in accordance with subsection (4).

(2) For the purposes of subsection (1), a scheme shall set out the terms of the agreement or deed under which it is proposed to effect the transfer and shall contain such further provisions as are necessary for giving effect to the scheme.

(3) An application for confirmation by the Registrar of any scheme for transfer may be made by or on behalf of any pre-arranged funeral fund concerned.

(4) Where an application has been made for the confirmation of a scheme under subsection (1), the Registrar may confirm the scheme, either without modification, or subject to such modifications as the pre-arranged funeral funds concerned agree to, or may, with the approval of the Minister, refuse to confirm the scheme.

(5) Where the Registrar refuses to confirm a scheme for transfer under subsection (4), he shall serve notice of that refusal on the pre-arranged funeral fund that applied for that confirmation.

(6) A scheme for transfer does not have any force or effect until confirmed by the Registrar and, when confirmed, shall—

- (a) be binding on the pre-arranged funeral funds concerned and the parties to the pre-arranged contracts in respect of which the transfer is made; and
- (b) have effect notwithstanding any provision in those contracts.

Funeral Funds.

(7) The transfer of trust funds under pre-arranged contracts pursuant to this section does not affect the trusts upon which those trust funds are held.

*DIVISION 3.—Administration of Trust Funds under
Pre-arranged Contracts.*

43. (1) A pre-arranged funeral fund shall open and maintain with a bank or banks in New South Wales one or more current or deposit accounts designated as a trust account or, as the case may be, trust accounts. Pre-arranged
funeral
funds,
trust
accounts.

(2) A pre-arranged funeral fund shall—

- (a) forthwith after receiving any money under a pre-arranged contract, pay that money into the trust account or one of the trust accounts referred to in subsection (1); and
- (b) keep any of the money held by the fund under pre-arranged contracts and not invested under section 44 in that account or one of those accounts.

(3) Any valuable consideration (other than money) given to a pre-arranged funeral fund under a pre-arranged contract shall be deemed to be held upon trust for sale and, upon its sale, the fund shall pay the proceeds thereof into the trust account or one of the trust accounts referred to in subsection (1).

Penalty : \$1,000.

44. A pre-arranged funeral fund may invest any money paid to the fund under pre-arranged contracts in any manner— Investment
of trust
funds under
pre-arranged
contracts.

- (a) for the time being authorised for the investment of trust funds; or
- (b) prescribed for the purposes of this paragraph.

Funeral Funds.

Common
fund.

45. (1) Subject to this Part, balances to the credit of all current or deposit accounts in the books of a pre-arranged funeral fund kept by the fund in the capacity of trustee under pre-arranged contracts shall be one common fund and shall be available for investment as provided in section 44.

(2) Investments made from money forming part of the common fund shall not be made in the name of or on account of, nor shall they belong to, any particular trust.

(3) A pre-arranged funeral fund shall keep an account in the books of the fund showing at all times the current amount for the time being at credit in the common fund on account of each trust.

(4) Any profits or losses upon realisation of any investment in the common fund shall be credited or debited, as the case may require, to or against the common fund and be credited or debited proportionately to or against the several amounts constituting the common fund at the time of that realisation.

(5) A pre-arranged funeral fund may sell investments belonging to the common fund and withdraw any of the money belonging to the common fund only for any purpose of or relating to the exercise and performance of the powers, authorities, duties and functions of the fund in acting as trustee.

(6) Amounts withdrawn under subsection (5) shall, as from the date of the withdrawal, cease to have any claim for interest or otherwise from the common fund.

(7) If, for the purpose of providing for any withdrawal under subsection (5), any investment is realised, then, for the purpose of this section, that part of the money arising from that realisation which is equal to the amount of interest accrued on that investment shall be deemed to be income of the common fund and the balance shall be deemed to be capital.

Funeral Funds.

(8) At intervals of not more than 6 months, or such other intervals as may be prescribed, a pre-arranged funeral fund shall pay or allocate the income arising from the common fund proportionately to or among the trusts entitled to the income arising from the capital sums invested in the common fund according to the several sums so invested and the periods for which they are so invested.

46. A pre-arranged funeral fund shall be entitled—

- (a) to be reimbursed for any reasonable and necessary expenditure directly related to the administration of the trust funds held by the fund under a pre-arranged contract; and
- (b) to receive a commission, not exceeding the amount prescribed for the purposes of this paragraph, for the services of the fund in acting as trustee of those trust funds.

Management expenses in administration of trust funds.

47. Upon a pre-arranged funeral fund being satisfied that a funeral service that a person has agreed to supply under a pre-arranged contract has been supplied, the pre-arranged funeral fund shall pay that person the amount held in trust by the fund under the contract at the time of the payment.

Payment of trust funds where funeral service provided.

48. (1) Where a pre-arranged funeral fund has reasonable cause to believe that—

- (a) a funeral service that a person has agreed to supply under a pre-arranged contract is no longer required; and
- (b) the contract cannot be cancelled under section 49,

Payment of trust funds where funeral service not required.

the fund may, with the approval of the Registrar or an inspector, pay that person the amount held in trust by the fund under the contract at the time of the payment.

(2) A pre-arranged contract is not unenforceable by reason only that the trust funds under the contract have been paid under subsection (1).

Funeral Funds.

Payment
of trust
funds
where
pre-
arranged
contract
cancelled.

49. (1) At any time before a funeral service is supplied under a pre-arranged contract, the person who is to be supplied with that service or his legal personal representative may, if he is entitled to do so pursuant to subsection (2) or (3), cancel the contract by notice in writing served on the person who agreed to supply the service.

(2) The person who is to be supplied with a funeral service under a pre-arranged contract is entitled to cancel the contract if—

- (a) the Registrar is satisfied that the service will not be supplied because the person who agreed to supply the service has ceased to carry on the business of supplying services of that kind; or
- (b) he is otherwise entitled under the contract to cancel the contract.

(3) The legal personal representative of a person who is to be supplied with a funeral service under a pre-arranged contract is entitled to cancel the contract if—

- (a) the person who agreed to supply the service was unable or unwilling to supply the service when it was required;
- (b) the Registrar is satisfied that the service was not supplied pursuant to the contract because the person who arranged for the service to be carried out did not know or had no reasonable means of ascertaining that the contract existed; or
- (c) he is otherwise entitled under the contract to cancel the contract.

(4) The person who agreed to supply any funeral service under a pre-arranged contract may, if he is entitled to do so under the contract, cancel the contract by notice in writing served on the person who is to be supplied with the service.

Funeral Funds.

(5) Upon the cancellation of a pre-arranged contract under subsection (1), the person who cancelled the contract shall be entitled to be paid by the pre-arranged funeral fund concerned the amount held in trust under the contract at the time of the cancellation.

(6) Upon the cancellation of a pre-arranged contract under subsection (4), the person who is to be supplied with the funeral service under the contract shall be entitled to be paid by the pre-arranged funeral fund concerned the amount held in trust under the contract at the time of the cancellation.

DIVISION 4.—Pre-arranged Contracts.

50. (1) A person shall not agree to supply a funeral service under a pre-arranged contract if the contract provides that the specified sum of money payable, or other valuable consideration to be given, under the contract may be varied before or after the funeral service is carried out. Rise and fall clause not permitted.

Penalty : \$2,000.

(2) Any provision in a pre-arranged contract, whether entered into before or after the commencement of this section, under which the specified sum of money payable, or other valuable consideration to be given under the contract may be varied, shall be void.

51. (1) This section applies to any funeral service prescribed for the purposes of this section. Description of certain funeral services specified in pre-arranged contract to contain prescribed particulars.

Funeral Funds.

(2) A person shall not agree to supply under a pre-arranged contract any funeral service to which this section applies unless the description of the service in the contract contains the prescribed particulars in relation to the service.

Penalty : \$1,000.

(3) A pre-arranged contract is not unenforceable by reason only that the description of the funeral service to be supplied under the contract does not contain the prescribed particulars pursuant to subsection (2).

Instalment
protection
clause.

52. Where a pre-arranged contract provides that any money payable under the contract is to be paid by instalments, the contract may provide for the supply of the funeral service on the death of the person who is to be supplied with the service, notwithstanding that all the instalments have not been paid.

Costs
recover-
able by
under-
taker
where
funeral
service
to be
supplied
under
pre-
arranged
contract.

53. (1) A person who supplies a funeral service to any person with whom he has entered into a pre-arranged contract, is not entitled to recover in any court any charges for the service from any person other than the pre-arranged funeral fund or other person holding the trust funds under the contract unless—

- (a) the service so supplied was different from or included a service additional to the service that he had agreed to supply under the contract;
- (b) the person who agreed to the different or additional service had, before agreeing thereto, signed a statement to the effect that he was aware that the deceased was entitled to be supplied without cost with the service specified in the contract but that he agreed to the different or additional service; and
- (c) the charges for the service so supplied are reduced by the amount paid or to be paid to him from the trust funds under the pre-arranged contract.

Funeral Funds.

(2) A person shall not demand payment for any charge which he is not entitled to recover under subsection (1).

Penalty : \$1,000.

PART V.

SUPERVISION OF FUNERAL FUNDS.

DIVISION 1.—*Inspections.*

54. (1) For the purpose of—

- (a) ascertaining whether a person is contravening, or has contravened, this Act; or
- (b) ascertaining whether a person is an existing funeral contribution fund within the meaning of Part VIII or an existing pre-arranged funeral fund within the meaning of Part IX,

Powers of inspection.

the Registrar or any inspector may—

- (c) inspect or make copies of, or take extracts from—
 - (i) any records kept by that person with respect to any of the affairs of that person;
 - (ii) any bankers' books so far as they relate to the business carried on by that person; or
 - (iii) in the case of a corporation that is being wound up, any records kept by the liquidator of the corporation; or
- (d) enter at any reasonable time any place at which the Registrar or that inspector has reasonable grounds for believing that the person carries on business or that any such records or bankers' books, as the case may be, are kept.

Funeral Funds.

(2) For the purpose of and in connection with an inspection under subsection (1), the Registrar or any inspector may—

- (a) request any person employed or engaged at any place entered pursuant to that subsection to produce to the Registrar or inspector such records or, as the case may be, such bankers' books, relating to any of the affairs of the person as are in the custody or under the control of the person so employed or engaged;
- (b) examine with respect to matters under this Act any person employed or engaged at any place so entered;
and
- (c) make such examination and inquiries as he thinks necessary for any purpose referred to in subsection (1) (a) or (b).

DIVISION 2.—*Inquiries.*

Interpretation: Pt. V, Div. 2.

55. In this Division—

“funeral fund” includes an existing funeral contribution fund within the meaning of Part VIII and an existing pre-arranged funeral fund within the meaning of Part IX;

“specified person” means a person suspected or believed by the Registrar, on reasonable grounds, to be capable of giving information concerning any matter being inquired into pursuant to this Division.

Power to hold inquiries.

56. (1) Where the Registrar is of the opinion that to do so would be in the public interest or in the interest of any person who is a contributor or who has entered into a pre-arranged contract, he may hold an inquiry into the affairs of a funeral fund, including the operation and financial circumstances of the fund, or into such of those affairs as the Registrar may determine.

(2) Where the Registrar decides to hold an inquiry under this Division, he shall forthwith notify the funeral fund concerned in writing of that decision.

Funeral Funds.

57. (1) For the purposes of an inquiry under this Division, the Registrar may require a specified person—

Procedure
with respect
to holding
of inquiry.

- (a) to produce to the Registrar at a place specified by the Registrar such records relating to a matter to which the inquiry relates as are in the custody or under the control of that person;
- (b) to give to the Registrar all reasonable assistance in connection with the inquiry; and
- (c) to attend before the Registrar for examination on oath, and may administer an oath to that person.

(2) A requirement under subsection (1) shall be made by notice in writing that is served on the person concerned and that specifies a time within which the requirement is to be complied with.

(3) Where records are produced to the Registrar under this section, the Registrar may take possession of those records for such period as he thinks necessary for the purposes of the inquiry, and during that period he shall permit a person who would be entitled to inspect any one or more of those records if they were not in the possession of the Registrar to inspect at all reasonable times such of those records as that person would be so entitled to inspect.

- (4) A specified person shall not—
- (a) refuse or fail to comply with a requirement of the Registrar specified in a notice referred to in subsection (2) to the extent to which he is able to comply with it;
 - (b) in purported compliance with such a requirement provide information which is to his knowledge false or misleading in a material particular; or
 - (c) when appearing before the Registrar for examination pursuant to such a requirement—
 - (i) make a statement which is to his knowledge false or misleading in a material particular; or

Funeral Funds.

(ii) refuse or fail to take an oath.

Penalty : \$1,000.

(5) A duly qualified legal practitioner acting for a specified person may—

(a) attend an examination of that person; and

(b) with the permission of the Registrar—

(i) address the Registrar; and

(ii) examine that person,

in relation to matters in respect of which the Registrar has questioned that person.

(6) A specified person is not excused from answering a question put to him by the Registrar on the ground that the answer might tend to incriminate him but, where that person claims, before answering the question, that the answer might incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (4) or in relation to a charge of perjury in respect of that answer.

(7) A specified person who complies with a requirement of the Registrar under subsection (1) does not incur a liability to any person by reason only of that compliance.

(8) A specified person who is required to attend for examination under subsection (1) is entitled to such allowances and expenses (if any) as are prescribed, whether by reference to a scale of expenses for witnesses who attend before a court or otherwise.

(9) Where the Registrar is satisfied that a specified person has failed without lawful excuse to comply with a requirement of the Registrar to the extent to which that person is capable of complying with it, the Registrar may certify the failure in writing under his hand to the Supreme Court.

Funeral Funds.

(10) Where the Registrar gives a certificate under subsection (9), the Supreme Court may inquire into the case and, if it is satisfied that the specified person to whom the certificate relates has failed without lawful excuse to comply with a requirement of the Registrar to the extent to which he is capable of complying with it—

- (a) may order the specified person to comply with the requirement within such period as is fixed by the Supreme Court; or
- (b) may punish the specified person in the same way as if he had been guilty of contempt of the Supreme Court and, if it thinks fit, also make an order under paragraph (a).

(11) The Registrar shall cause notes of an examination made by him under this section to be recorded in writing and may require a specified person to sign the notes and, subject to this section, notes signed by that person may be used in evidence in any legal proceedings against that person.

(12) A copy of the notes signed by a specified person shall be provided by the Registrar, without charge, to that person on request made by that person in writing.

(13) Notes made pursuant to this section that relate to a question the answer to which a specified person has claimed might tend to incriminate him may not be used as evidence in criminal proceedings other than proceedings under subsection (4) or in relation to a charge of perjury in respect of that answer.

58. (1) When the Registrar has completed an inquiry under this Division, he shall prepare and give to the Minister a report of his findings and, subject to subsection (2), give a copy of the report to each person to whom, in the opinion of the Minister, the report ought to be given by reason that it relates to any of the affairs of that person to a material extent.

Report of Registrar.

Funeral Funds.

(2) Subject to subsection (3), the Registrar shall not give a copy of a report prepared under subsection (1) to a person if the Minister has informed the Registrar that he believes that—

- (a) legal proceedings that have been, or that in his opinion might be, instituted might be unduly prejudiced by giving the report to that person; or
- (b) there is a good reason for not divulging the contents of the report to that person.

(3) The court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report prepared under subsection (1) may order that a copy of the report be given to that person.

(4) The Minister may, if he is of the opinion that it is in the public interest to do so, cause the whole or any part of a report prepared under subsection (1) to be printed and published.

(5) If, from a report prepared under subsection (1) or from notes of an examination made under section 57, it appears to the Minister that an offence might have been committed by a person and that a prosecution for the offence ought to be instituted, the Minister shall cause a prosecution to be instituted and prosecuted.

(6) Where it appears to the Minister that a prosecution referred to in subsection (5) ought to be instituted, he may, by notice in writing given before or after the institution of the prosecution, require a person whom he suspects or believes on reasonable grounds to be capable of giving information concerning any matter to which the prosecution relates (not being a person who is or, in the opinion of the Minister, is likely to be a defendant in the proceedings or is or has been a duly qualified legal practitioner acting for such a person) to give all assistance in connection with the prosecution or proposed prosecution that that person is reasonably capable of giving.

Funeral Funds.

(7) Where a person to whom a notice has been given under subsection (6) fails to comply with a requirement specified in the notice, the Supreme Court may, on the application of the Minister, direct that person to comply with the requirement.

(8) If, from a report prepared under subsection (1), or from the notes of an examination made under section 57, the Minister is of the opinion that proceedings ought in the public interest to be brought by a funeral fund for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with the matters to which the inquiry relates or for the recovery of property of the fund, the Minister may cause proceedings to be brought accordingly in the name of the fund.

59. After completing an inquiry under this Division, the Registrar—

- (a) may retain the records of which he has taken possession under section 57 for such period as he considers to be necessary to enable a decision to be made as to whether or not legal proceedings ought to be instituted as a result of the inquiry;
- (b) may retain the records for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
- (c) may permit other persons to inspect the records while they are in his possession;
- (d) may permit the use of the records for the purposes of legal proceedings instituted as a result of the inquiry; and
- (e) shall permit a person who would be entitled to inspect any one or more of the records if they were not in the possession of the Registrar to inspect at all reasonable times such of those records as that person would be so entitled to inspect.

Further powers of Registrar after inquiry.

Funeral Funds.

Privileged
communi-
cations.

60. The Registrar shall not, for the purposes of an inquiry under this Division, require disclosure by a duly qualified legal practitioner of a privileged communication made to the practitioner in his capacity as such except as regards the name and address of his client.

Expenses
of
inquiry.

61. (1) Subject to this section, the expenses of and incidental to an inquiry under this Division (including the expenses incurred and payable by the Minister in proceedings brought by him in the name of a funeral fund under section 58 (8)) shall be paid out of money provided by Parliament for the purpose.

(2) The Minister may, with respect to an inquiry under this Division, give a direction—

- (a) that any funeral fund or specified person concerned in the inquiry, within such period (being not less than 7 days) as is specified in the direction, pay the whole or a part of the expenses of and incidental to the inquiry;
- (b) where expenses have been paid under subsection (1), that any funeral fund or specified person concerned in the inquiry, within such period (being not less than 7 days) as is specified in the direction, reimburse the Crown to the extent thereof; or
- (c) that any funeral fund or specified person concerned in the inquiry, within such period (being not less than 7 days) as is specified in the direction, reimburse the Crown in respect of the remuneration of any servant of the Crown concerned with the inquiry,

and serve the direction on that fund or person.

(3) A direction under subsection (2) may specify the amount of the expenses to be paid or reimbursed and the time or times and the manner in which the payment or reimbursement of the expenses shall be made.

Funeral Funds.

(4) If a funeral fund on which or a person on whom a direction has been served under subsection (2) fails to pay the amount specified in the direction in accordance with the direction, that amount shall be recoverable from that fund or person in a court of competent jurisdiction as a debt due to the Crown.

62. (1) A person shall not—

- (a) conceal, destroy, mutilate or alter a record relating to a matter to which an inquiry by the Registrar under this Division relates; or
- (b) send, attempt to send or conspire with another person to send such a record out of New South Wales.

Concealing,
etc., of
records.

Penalty : \$2,000 or imprisonment for 2 years or both.

(2) It is a defence to a prosecution under subsection (1) if the defendant proves that he did not act with intent to defeat the purposes of this Division or to delay or obstruct the holding of an inquiry under this Division.

DIVISION 3.—*Suspension of New Business of Funeral Funds.*

63. If the Registrar considers that it is desirable to do so in the interests of persons who are or may become contributors to a funeral contribution fund, he may, by notice in writing served on the fund, give to the fund a direction not to accept any new contributors.

Direction
to funeral
contribution
fund not to
accept new
contributors.

64. If the Registrar considers that it is desirable to do so in the interests of persons who have entered into pre-arranged contracts in respect of which a pre-arranged funeral fund acts as trustee, he may, by notice in writing served on the fund, give to the fund a direction not to act as trustee of trust funds under any pre-arranged contract entered into after the service of the notice.

Direction
to
pre-arranged
funeral fund
not to act as
trustee of
trust funds
under new
pre-arranged
contracts.

Funeral Funds.

Revocation
and
variation
of
directions.

65. (1) The Registrar may and, if required to do so by the Minister, shall revoke a direction under this Division and on so doing shall notify the funeral fund concerned in writing that the direction has been revoked.

(2) The Registrar may at any time vary a direction under this Division by notice in writing served on the funeral fund concerned.

Penalty for
failure to
comply with
direction.

66. A funeral fund shall, while a direction under this Division remains in force in respect of the fund, comply with the direction.

Penalty : \$1,000.

DIVISION 4.—*Appointment of Administrator of Funeral Fund.*

Interpreta-
tion: Pt. V,
Div. 4.

67. In this Division, except in so far as the context or subject-matter otherwise indicates or requires—

“administrator” means an administrator appointed and holding office under this Division;

“affairs” means—

- (a) in relation to a funeral contribution fund, all the affairs of the fund; or
- (b) in relation to a pre-arranged funeral fund, those affairs of the fund that relate to the powers, authorities, duties and functions of the fund as trustee of trust funds under pre-arranged contracts.

Funeral Funds.

68. (1) Subject to this Division and with the approval of the Minister, the Registrar may, by instrument in writing, appoint an administrator to administer the affairs of a funeral contribution fund if—

**Appoint-
ment
and powers
of adminis-
trator
of funeral
contribution
fund.**

- (a) the fund has failed to provide any funeral benefit it had agreed to provide and the Registrar has reason to believe that further failures of that kind will occur;
- (b) after being notified by the Registrar of any contravention of a provision of this Act, of the regulations or of the Companies Act, 1961, that is applicable to it, the fund has failed to remedy the contravention to the extent that it is capable of remedy, or has committed a further contravention of the provision; or
- (c) following an inquiry into the affairs of the fund under Division 2 or following an investigation under Part VIA of the Companies Act, 1961, the Registrar is of the opinion that, in the interests of—
 - (i) contributors to the fund; or
 - (ii) creditors of the fund,
 an administrator ought to be appointed to conduct the affairs of the fund.

(2) On the appointment of an administrator under subsection (1), the Registrar shall serve on the funeral contribution fund a copy of the instrument of the appointment and thereupon—

- (a) the affairs of the fund shall be administered by the administrator until his appointment is terminated under this Division;
- (b) the administrator shall assume and be responsible for the management of the fund and shall perform all of the duties and may perform any of the functions and exercise any of the powers of the directors of the fund;
- (c) the directors of the fund shall cease to hold office;
- (d) any delegation made by the directors shall cease to have effect; and

Funeral Funds.

- (e) all contracts of service and for the performance of services (including a contract with an undertaker for the supply of funeral services) entered into by or on behalf of the fund shall terminate.

(3) Subject to this Division, an administrator appointed **under this section—**

- (a) shall, as soon as practicable after his appointment as such, take into his custody or under his control all the property and things in action to which the funeral contribution fund is or appears to be entitled; and
- (b) shall, subject to and in accordance with any direction given to him by the Registrar, conduct the affairs of the fund in such manner as he thinks most economical and most beneficial to the interests of the creditors of the fund and of the contributors to the fund.

(4) While an administrator of a funeral contribution fund holds office as such, he shall be chairman of any meeting or adjourned meeting of the fund.

(5) Except as provided under section 70, a person shall not be appointed as a director of a funeral contribution fund while an administrator of the fund holds office as such.

(6) Notwithstanding the appointment of an administrator of a funeral contribution fund under this Division and for as long as the administrator holds office, the provisions of the Companies Act, 1961, relating to the appointment and re-appointment of auditors and the rights and duties of auditors shall continue to apply to and in relation to the fund, and in the application of those provisions to and in relation to the fund any reference in those provisions to the directors of the fund shall be construed as a reference to the administrator of the fund.

Funeral Funds.

69. (1) Subject to this Division and with the approval of the Minister, the Registrar may, by instrument in writing, appoint an administrator to administer the affairs of a pre-arranged funeral fund if—

Appoint-
ment and
powers of
admini-
strator
of pre-
arranged
funeral
fund.

- (a) the fund has failed to account for any money paid or other valuable consideration given to the fund under a pre-arranged contract;
- (b) after being notified by the Registrar of any contravention of a provision of this Act or of the regulations, the fund has failed to remedy the contravention to the extent that it is capable of remedy, or has committed a further contravention of the provision;
- (c) following an inquiry into the affairs of the fund under Division 2, the Registrar is of the opinion that, in the interests of the persons who have entered into pre-arranged contracts in respect of which the fund acts as trustee, an administrator ought to be appointed to conduct the affairs of the fund; or
- (d) the Registrar has cancelled the registration of the fund under section 39 and he is satisfied that the appointment of an administrator is necessary or desirable in order to protect the interests of persons who have entered into pre-arranged contracts in respect of which the fund acts as trustee.

(2) On the appointment of an administrator under subsection (1), the Registrar shall serve on the pre-arranged funeral fund a copy of the instrument of appointment and thereupon—

- (a) the affairs of the fund shall be administered by the administrator until his appointment is terminated under this Division;
- (b) the administrator shall be the trustee of trust funds paid or given to the fund under pre-arranged contracts entered into before the appointment and the fund shall cease to act as trustee of those trust funds; and

Act No. 106, 1979.*Funeral Funds.*

- (c) the administrator shall be the trustee of trust funds that are required to be paid or given to the fund under pre-arranged contracts entered into after the appointment.

(3) Subject to this Division, an administrator appointed under this section—

- (a) shall, as soon as practicable after his appointment as such, take into his custody or under his control all the property and things in action that appear to be held in trust by the pre-arranged funeral fund under pre-arranged contracts; and
- (b) shall, subject to and in accordance with any direction given to him by the Registrar, conduct the affairs of the fund in such manner as he thinks most beneficial to the interests of the persons who have entered into pre-arranged contracts in respect of which he acts as trustee.

Holding
of meeting
for appoint-
ment of
directors of
funeral
contribution
fund.

70. (1) The Registrar may, at any time while an administrator of a funeral contribution fund is holding office as such, give to the administrator a direction requiring him to call a general meeting of the fund for the purpose of appointing new directors of the fund.

(2) Where a direction has been given under subsection (1) to the administrator of a funeral contribution fund, the administrator shall call a meeting of the fund by notice in writing given not less than 14 days before the meeting or, where the rules of the fund provide for more than 14 days' notice for the calling of extraordinary general meetings, by notice in writing given as if the meeting were an extraordinary general meeting.

(3) A meeting called under subsection (2) shall, notwithstanding that it is called by notice shorter than is required by that subsection, be deemed to be duly called if it is so agreed by a majority in number of the persons having a right to attend and vote at meetings of the funeral contribution fund.

Funeral Funds.

(4) So far as the rules of the funeral contribution fund do not make other provision in that behalf, notice of a meeting called under subsection (2) shall be served on every person having a right to vote at general meetings of the fund in the manner in which notices are required to be served by Table A of the Fourth Schedule to the Companies Act, 1961.

(5) The accidental omission to give notice of a meeting called under subsection (2) to, or the non-receipt of notice of a meeting by, any person shall not invalidate proceedings at the meeting.

(6) The persons present at a meeting called under subsection (2) and having a right to vote at that meeting shall appoint directors of the funeral contribution fund and immediately at the conclusion of that meeting the appointment of the administrator shall cease and the directors so appointed shall take office.

71. (1) An administrator shall be deemed to have vacated his office if—

- (a) he dies;
- (b) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration as administrator, or of his estate, for their benefit;
- (c) he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (d) he is convicted in New South Wales of a crime or an offence punishable by imprisonment for a term of 12 months or more, or he is convicted elsewhere than in New South Wales of a crime or an offence which, if committed in New South Wales, would be a crime or an offence so punishable;

Termination
of appoint-
ment of
adminis-
trator.

Funeral Funds.

- (e) he resigns his office by writing under his hand addressed to the Registrar; or
- (f) his appointment is revoked by the Registrar under subsection (2).

(2) The Registrar may and, if required to do so by the Minister, shall revoke the appointment of an administrator.

(3) Where the office of an administrator is deemed to have been vacated under subsection (1), the Registrar, by instrument in writing, may, with the approval of the Minister, appoint another person to fill the vacancy.

Expenses
of admini-
stration.

72. (1) The expenses of and incidental to the administration of the affairs of a funeral fund by an administrator are payable by the fund.

(2) The remuneration of an administrator who is not a servant of the Crown is an expense referred to in subsection (1) and shall be fixed by the Registrar.

(3) Where an administrator of a funeral fund is a servant of the Crown, the reimbursement of the Crown of an amount certified by the Registrar in respect of the remuneration of that servant is an expense referred to in subsection (1) and is recoverable from the fund in a court of competent jurisdiction as a debt due to the Crown.

Liability
for losses
incurred
during
admini-
stration.

73. (1) An administrator of a funeral fund is not liable for any loss incurred by that fund during his term of office unless the loss was attributable to—

- (a) his wilful misconduct;
- (b) his gross negligence;
- (c) his wilful failure to comply with any provision of this Act or the regulations; or

Funeral Funds.

- (d) in the case of the administration of a funeral contribution fund, his wilful failure to comply with any rules of the fund so far as those rules are applicable to the directors or the board of directors of the fund.

(2) Neither the Crown, the Minister nor the Registrar is liable for any loss incurred by a funeral fund during the term of office of an administrator, whether or not the administrator is so liable.

DIVISION 5.—*Winding Up of Funeral Contribution Funds.*

74. In its application to a funeral contribution fund, the Companies Act, 1961, shall be read as if—

- (a) after section 221 (1), the following subsection had been inserted :—

(1A) Without prejudice to the application of subsection (1) to a funeral contribution fund within the meaning of the Funeral Funds Act, 1979, such a fund may be wound up under an order of the Court on the application of the Registrar of Funeral Funds or on the application of the Registrar of Funeral Funds and one or more of the parties specified in that subsection.

- (b) the word “or” had been omitted from section 222 (1) (g) (ii) where lastly occurring;
- (c) the words “wound up.” had been omitted from section 222 (1) (h) and the words “wound up; or” had been inserted instead;
- (d) after section 222 (1) (h), the following paragraph had been inserted :—

- (i) in the case of a funeral contribution fund within the meaning of the Funeral Funds Act, 1979, the Registrar of Funeral Funds has, after holding an

Special provisions with respect to winding up of funeral contribution funds.

Funeral Funds.

inquiry under Division 2 of Part V of that Act, reported that he is of the opinion that the fund cannot pay its debts and should be wound up, or that it is in the interests of the public or of the creditors of the fund or of the contributors to the fund that the fund should be wound up.

- (e) after the words "Securities Industry Act, 1975," in section 292 (1) (f), the words "or pursuant to a direction given under section 61 (2) of the Funeral Funds Act, 1979," had been inserted;
 - (f) after the words "wound up," in section 292 (1A), the words "or a direction given under section 61 (2) of the Funeral Funds Act, 1979, is served on a funeral contribution fund that is being wound up," had been inserted;
 - (g) after the words "the order" in section 292 (1A), the words "or, as the case may be, the service of the direction" had been inserted;
 - (h) the words "wound up." had been omitted from section 315 (1) (c) (iii) and the words "wound up; or" had been inserted instead; and
 - (i) after section 315 (1) (c) (iii), the following subparagraph had been inserted :—
 - (iv) if the company is carrying on contributory funeral benefit business in contravention of the Funeral Funds Act, 1979.
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Funeral Funds.

PART VI.

APPEALS AGAINST DECISIONS OF REGISTRAR.

- 75.** (1) Where the Registrar—
- (a) refuses to register a company to carry on contributory funeral benefit business under section 14; or
 - (b) refuses to approve an alteration of or addition to the rules of a funeral contribution fund under section 15,
- an appeal against that refusal may be made to the Supreme Court by the company or fund concerned.
- (2) On hearing an appeal under subsection (1) the Supreme Court may make an order—
- (a) confirming the refusal of the Registrar; or
 - (b) directing the Registrar to register the company or approve the alteration of or the addition to the rules of the fund, as the case may be.
- 76.** (1) Where the Registrar—
- (a) refuses to confirm a scheme for transfer or amalgamation by a funeral contribution fund under section 32; or
 - (b) directs a funeral contribution fund to transfer its contributory funeral benefit business under section 33,
- an appeal against that refusal or direction, as the case may be, may be made to the Supreme Court by the fund.
- (2) On hearing an appeal under subsection (1) (a), the Supreme Court may make an order—
- (a) confirming the refusal of the Registrar; or
 - (b) directing the Registrar to confirm the scheme for transfer or amalgamation, either without modification or subject to such modifications as the Court considers appropriate.

Appeal against refusal to register funeral contribution fund or to approve alteration, etc., of rules.

Appeal against direction to transfer or refusal to confirm transfer or amalgamation in respect of funeral contribution fund.

Funeral Funds.

(3) On hearing an appeal under subsection (1) (b), the Supreme Court may make an order—

- (a) confirming the direction if it is satisfied that there are sufficient grounds to wind up the fund; or
- (b) revoking the direction if it is not so satisfied.

(4) Where a funeral contribution fund lodges an appeal under subsection (1) (b) the direction shall be deemed to be suspended until such time as the appeal is dealt with or withdrawn.

(5) Where the Supreme Court makes an order under subsection (2) or (3), it may make such other ancillary orders as it considers appropriate having regard to the circumstances of the case.

Appeal
against
refusal to
register
pre-arranged
funeral fund
or decision
to cancel
that
registration,
etc.

77. (1) Where the Registrar—

- (a) refuses under section 37 to register a corporation or any group of individuals to act as trustee or trustees of trust funds under pre-arranged contracts;
- (b) refuses under section 38 to confirm the appointment of an individual as a trustee; or
- (c) cancels the registration of a pre-arranged funeral fund under section 39 (subsection (1) (c) excepted),

an appeal against that refusal or cancellation may be made to the Supreme Court by the corporation, individuals, individual or fund concerned.

(2) On hearing an appeal under subsection (1) (a) or (b), the Supreme Court may make an order—

- (a) confirming the refusal of the Registrar; or
- (b) directing the Registrar to register the corporation or group of individuals or to confirm the appointment of the individual, as the case may be.

Funeral Funds.

(3) On hearing an appeal under subsection (1) (c), the Supreme Court may make an order—

- (a) confirming the cancellation by the Registrar; or
- (b) revoking the cancellation by the Registrar.

78. (1) Where the Registrar refuses to confirm a scheme for transfer by a pre-arranged funeral fund under section 42, an appeal against that refusal may be made to the Supreme Court by the fund.

Appeal against refusal to confirm transfer in respect of pre-arranged funeral fund.

(2) On hearing an appeal under subsection (1), the Supreme Court may make an order—

- (a) confirming the refusal of the Registrar; or
- (b) directing the Registrar to confirm the scheme for transfer, either without modification or subject to such modifications as the Court considers appropriate.

79. (1) Where the Registrar—

- (a) directs a funeral contribution fund not to accept any new contributors under section 63; or
- (b) directs a pre-arranged funeral fund not to act as trustee of trust funds under new pre-arranged contracts under section 64,

Appeal against direction to suspend new business of funeral funds.

an appeal against that direction may be made to the Supreme Court by the fund.

(2) On hearing an appeal under subsection (1), the Supreme Court may make an order—

- (a) confirming the direction of the Registrar if it is satisfied that the direction is in the interests of persons who are or may become contributors to the fund or, as the case may be, who have entered into pre-arranged contracts in respect of which the fund acts as trustee; or
- (b) revoking the direction of the Registrar if it is not so satisfied.

Funeral Funds.

Appeal
against
appointment
of admini-
strator of
funeral
fund.

80. (1) Where the Registrar appoints an administrator of a funeral fund under Division 4 of Part V, an appeal against that appointment may be made to the Supreme Court—

- (a) in the case of a funeral contribution fund, by a majority of the directors who have ceased to hold office; or
- (b) in the case of a pre-arranged funeral fund, by the fund.

(2) On hearing an appeal under subsection (1), the Supreme Court may make an order—

- (a) confirming the appointment of the administrator; or
- (b) revoking the appointment.

(3) An order made under subsection (2) revoking the appointment of an administrator of a funeral contribution fund does not take effect until the directors have resumed the management and control of the fund in accordance with directions given under subsection (5).

(4) Where the Supreme Court makes an order under subsection (2), it may make such other ancillary orders as it considers appropriate having regard to the circumstances of the case.

(5) Where the Supreme Court makes an order under subsection (2) revoking the appointment of an administrator of a funeral contribution fund, it may give such directions as it considers necessary for the resumption of the management and control of the fund by the persons who, immediately before the appointment of the administrator, were directors of the fund.

(6) An order made under subsection (2) revoking the appointment of an administrator does not affect the validity of the appointment or any thing done or omitted to be done by the administrator in the exercise or performance of his powers, authorities, duties or functions as such before the order takes effect.

Funeral Funds.

81. An appeal under this Part may be made only within 28 days after the person making the appeal is notified by the Registrar of the decision appealed against or within such extended period as the Supreme Court may allow.

Time for making appeal.

82. For the purposes of this Part, the Registrar shall be deemed to have refused—

Failure of Registrar to act on application deemed refusal.

- (a) to register a company to carry on contributory funeral benefit business;
- (b) to approve an alteration of or addition to the rules of a funeral contribution fund;
- (c) to confirm a scheme for transfer or amalgamation by a funeral contribution fund;
- (d) to register a corporation or any group of individuals to act as trustee or trustees of trust funds under pre-arranged contracts;
- (e) to confirm the appointment of an individual under section 38; or
- (f) to confirm a scheme for transfer by a pre-arranged funeral fund,

if he does not give a decision on an application duly made with respect thereto within 3 months after the application is made.

83. Where the Registrar refuses an application under this Act and an appeal may be made to the Supreme Court against that refusal by any person under this Part, the Registrar shall, if so required by that person, notify the person in writing of the grounds of his refusal.

Reasons for refusal to be given.

Funeral Funds.

Decision
of Court
final, etc.

84. The decision of the Supreme Court in respect of an appeal under this Part shall be final and conclusive and shall, where necessary, be given effect to by the Registrar.

PART VII.

MISCELLANEOUS.

Offence to
obstruct
Registrar,
etc.

85. A person shall not—

- (a) refuse or intentionally delay the admission to any place of the Registrar or an inspector in the exercise by him of his powers under this Act;
- (b) intentionally obstruct the Registrar or an inspector in the exercise by him of any such power;
- (c) fail to comply with a request of the Registrar or an inspector made under any such power; or
- (d) conceal any person from the Registrar or an inspector or prevent any person from appearing before or being examined by the Registrar or an inspector or attempt so to conceal or prevent any person.

Penalty : \$1,000.

Enlarge-
ment or
abridge-
ment of
time.

86. (1) The Registrar may enlarge or abridge any time for doing any act required to be done by a funeral fund upon such terms (if any) as the Registrar may determine.

(2) Subsection (1) does not limit the operation of section 81 of the Supreme Court Act, 1970, or the operation of any rules of the Supreme Court relating to the enlargement or abridgement of time.

Funeral Funds.

87. The Minister or Registrar may, for the purposes of this Act, give a person notice of any matter or thing by serving written notice of that matter or thing on that person, personally or by post. Giving
of
notice.

88. The Registrar shall, on being requested to do so by any person attending his office during the ordinary business hours of that office and on the payment by that person of the prescribed fee (if any)— Inspection
of
documents,
etc.

- (a) make available for inspection any return or document lodged with him under section 24; and
- (b) provide that person with a copy of any such return or document, or of such part of the return or document as the person specifies, certified under his hand and seal to be a true copy.

89. In any proceedings before any court or before any persons having by law or consent of parties authority to hear, receive and examine evidence— Evidence.

- (a) no proof shall be required (until evidence is given to the contrary) of the appointment of the Registrar, the Deputy Registrar or any inspector;
- (b) judicial notice shall be taken of the official seal of the Registrar that has been affixed to any instrument or document and, until evidence is given to the contrary, the official seal shall be presumed to have been properly affixed;
- (c) a copy of, or an extract from, a return or document lodged with the Registrar under this Act and purporting to be signed by him and to be certified by him as such shall be admissible in evidence and, until the contrary is proved, be evidence of the contents of the return or document or, as the case may be, of the part extracted therefrom; and

Funeral Funds.

- (d) a copy of a report by the Registrar of his findings after an inquiry under Division 2 of Part V and purporting to be certified by him as such shall be admissible in evidence.

Offences
by cor-
poration.

90. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each officer concerned with the management of the corporation, shall be deemed to have contravened the same provision unless he satisfies the court that—

- (a) the corporation contravened the provision without his knowledge;
- (b) he was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) he, being in such a position, used all due diligence to prevent the contravention of the provision by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against that provision is actually committed.

Offences
generally.

91. (1) All proceedings for offences against this Act or the regulations shall be disposed of summarily in a court of petty sessions held before a stipendiary magistrate sitting alone.

(2) A reference in this Act or the regulations to a daily penalty in relation to an offence is a reference to the additional penalty that may be imposed for each day the offence continues.

Funeral Funds.

(3) A person who contravenes, whether by act or omission, a provision of this Act is, if no other penalty is provided therefor, liable to a penalty not exceeding \$1,000 and, in addition, in the case of a continuing offence, a daily penalty not exceeding \$100.

(4) Where a pre-arranged funeral fund which is comprised of a group of individuals contravenes, whether by act or omission, a provision of this Act, each of those individuals shall be deemed to have contravened that provision.

92. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) the issue of certificates of registration;
- (b) the fees to be taken in the office of the Registrar for any matter or thing to be done in that office;
- (c) the control of advertisements relating to contributory or pre-arranged funeral benefit business; and
- (d) the accounts and registers to be kept by pre-arranged funeral funds, the audit of those accounts and the returns to be furnished by pre-arranged funeral funds.

(3) A regulation may impose a penalty not exceeding \$200 for any contravention thereof.

(4) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;

Funeral Funds.

- (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

PART VIII.

EXISTING FUNERAL CONTRIBUTION FUNDS.

DIVISION 1.—*Preliminary.*

Inter-
pretation:
Pt. VIII.

93. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“existing funeral contribution fund” means a person who is carrying on contributory funeral benefit business immediately before the commencement of section 11, but does not include a funeral contribution fund;

“funeral contribution fund” includes a person exempt from the application of section 11;

“prescribed day”, in relation to an existing funeral contribution fund, means—

- (a) except as provided in paragraph (b), the day on which the existing fund notifies the Registrar in accordance with section 94; or
- (b) where the existing fund is pursuant to this Part deemed to have notified the Registrar that he proposes to refund, in accordance with Division 2, contributions paid by contributors in connection with his contributory funeral benefit business, the day on which he is deemed to have so notified the Registrar.

Funeral Funds.

(2) For the purposes of this Part—

- (a) a person does not cease to be a contributor by reason only that the person to whom he has previously paid his contributions has refused to accept any further contributions from him before or after the commencement of section 11; and
- (b) a person carries on contributory funeral benefit business immediately before the commencement of section 11 if he ceased to accept contributions for funeral benefits at any time before that commencement and if, immediately before that commencement, he had not, in the opinion of the Registrar—
 - (i) refunded contributions previously paid for funeral benefits to which the contributors were, when he ceased to accept contributions, entitled on their death; or
 - (ii) made reasonable arrangements for the provision of funeral benefits to the persons so entitled.

(3) For the purposes of section 101 (2), 102 (1) or 106 (2), the amount of contributions paid by a person referred to in that subsection shall be reduced by the cost of any service provided to a person on whose behalf those contributions were paid.

94. (1) An existing funeral contribution fund shall, within such period as may be specified by the Registrar by a notice served on that existing fund, notify the Registrar in writing that he proposes either—

- (a) to refund, in accordance with Division 2, contributions paid by contributors in connection with the contributory funeral benefit business of the existing fund; or
- (b) to transfer, in accordance with Division 3, that business to a funeral contribution fund.

Existing funeral contribution fund to decide whether to transfer business to registered fund or refund contributions.

Funeral Funds.

(2) An existing funeral contribution fund who is served with a notice under subsection (1) but who fails to notify the Registrar in accordance with that subsection shall, for the purposes of this Part, be deemed to have notified the Registrar that he proposes to refund, in accordance with Division 2, contributions paid by contributors in connection with the contributory funeral benefit business of the existing fund.

This Part to apply notwithstanding agreement between contributors and existing funeral contribution fund void.

95. The provisions of this Part apply to and in respect of an existing funeral contribution fund notwithstanding that the purported agreement between the existing fund and the contributors under which the contributory funeral benefit business of the existing fund is carried on is void at law.

Certain debts of existing funeral contribution fund to have priority.

96. In the winding up of an existing funeral contribution fund under the Companies Act, 1961, a debt referred to in section 101 (8), 109 (1) or 110 (2) shall, if it is unsecured, be paid in priority to all other unsecured debts of the existing fund.

No stamp duty for transfers, etc., under this Part.

97. No deed or instrument whereby—

- (a) any property is transferred to the Registrar or to a funeral contribution fund in accordance with this Part; or
- (b) any security is obtained and held in accordance with section 101 (7) or 106 (4),

shall be liable to stamp duty.

DIVISION 2.—*Provisions Applicable where Contributions to be Refunded.*

Application of Division.

98. This Division applies to and in respect of an existing funeral contribution fund who notifies the Registrar, or is deemed to have notified the Registrar, that he proposes to refund, in

Funeral Funds.

accordance with this Division, contributions paid by contributors in connection with the contributory funeral benefit business of the existing fund.

99. An existing funeral contribution fund shall not, after the prescribed day—

Cessation
of
business
on
prescribed
day.

- (a) accept further contributions from contributors in connection with the contributory funeral benefit business of the existing fund;
- (b) accept contributions from persons wishing to become contributors in connection with that business; or
- (c) provide any funeral benefit in connection with that business to a contributor who dies after that day.

Penalty : \$2,000.

Daily penalty : \$200.

100. (1) The Registrar shall establish a repayment fund in respect of each existing funeral contribution fund as soon as practicable after the prescribed day in relation to that existing fund.

Repay-
ment
fund to be
estab-
lished for
purpose
of refund
of contri-
butions.

(2) There shall be paid into a repayment fund established under subsection (1) in respect of an existing funeral contribution fund the amount required by section 101 to be paid by the existing fund as the appropriate refund of contributions and there shall be paid out of that repayment fund such amounts as are required by section 102 to be distributed among contributors.

(3) A repayment fund established under subsection (1) shall be under the direction, control and management of the Registrar.

(4) All money to the credit of a repayment fund established under subsection (1) shall be paid by the Registrar into an account in a bank in New South Wales.

Funeral Funds.

(5) Full and accurate accounts shall be kept by the Registrar in respect of a repayment fund established under subsection (1).

Amount to be paid by existing funeral contribution fund as refund of contributions.

101. (1) An existing funeral contribution fund shall pay to the Registrar for payment into the repayment fund established under section 100 (1) in respect of that existing fund such amount as may be calculated by the Registrar in accordance with this section as the appropriate refund of contributions by that existing fund.

(2) Subject to this Division, the appropriate refund of contributions by an existing funeral contribution fund shall be 75 per cent of the total amount of all contributions paid by persons who are contributors in connection with the contributory funeral benefit business of that existing fund immediately before the prescribed day in relation to that existing fund.

(3) An amount calculated by the Registrar in accordance with this section as the appropriate refund of contributions by an existing funeral contribution fund shall be paid to the Registrar by such time as the Registrar may by notice served on that existing fund direct or, where the Registrar considers it appropriate to do so, in such instalments and at such times as the Registrar so directs.

(4) Where the appropriate refund of contributions by an existing funeral contribution fund is paid by instalments under subsection (3), the amount of each instalment shall be increased by a sum calculated at the prescribed rate.

(5) Any calculation under subsection (4) shall be made in respect of each day that has elapsed between the prescribed day in respect of the existing funeral contribution fund making the payment and the date of payment.

Funeral Funds.

(6) Any increase of an instalment under subsection (4) shall be deemed to be part of the appropriate refund of contributions to which the instalment relates.

(7) The Registrar may obtain and hold securities for the payment by instalments under subsection (3) of the appropriate refund of contributions by an existing funeral contribution fund.

(8) Where the amount of the appropriate refund of contributions by an existing funeral contribution fund or an instalment of that amount, as the case may be, is not paid by the time directed under subsection (3), that amount, including any increase of that amount under subsection (4) but not including any instalment of that amount already paid, may be recovered in any court of competent jurisdiction as a debt due by the existing fund to the Registrar.

102. (1) All money standing to the credit of a repayment fund established under section 100 (1) shall from time to time be distributed by the Registrar among the contributors in respect of whom it was paid into the repayment fund in the same proportion as the amount of contributions paid by those contributors. Distribution of repayment fund among contributors.

(2) If the Registrar cannot, after due inquiry, ascertain the whereabouts of a contributor who is entitled to a payment under subsection (1), the Registrar—

- (a) is not required to make that payment; and
- (b) may make any distribution under that subsection without regard to any claim by that contributor.

DIVISION 3.—Provisions Applicable where Business to be Transferred.

103. (1) This Division applies to and in respect of an existing funeral contribution fund who notifies the Registrar that he proposes to transfer, in accordance with this Division, his contributory funeral benefit business to a funeral contribution fund. Application of Division.

Funeral Funds.

(2) Where directions for the transfer of the contributory funeral benefit business of an existing funeral contribution fund to whom this Division applies are revoked under section 107 (1), this Division ceases to apply to and in respect of that existing fund.

Restriction
on new
contributors
prior to
transfer.

104. An existing funeral contribution fund shall not, after the prescribed day, accept contributions from persons who wish to become contributors in connection with his contributory funeral benefit business unless he has obtained the approval of the Registrar in writing—

- (a) to the admission of persons as contributors in connection with that business; and
- (b) to the rules under which he carries on that business in respect of those persons.

Penalty : \$2,000.

Daily penalty : \$200.

Registrar
may give
directions
for transfer
of business.

105. (1) The Registrar shall, as soon as practicable after the prescribed day in relation to an existing funeral contribution fund, by notice in writing served on that existing fund give him such directions as the Registrar considers appropriate for the transfer of his contributory funeral benefit business to a funeral contribution fund which has agreed to accept the transfer.

(2) The Registrar shall not give any directions to an existing funeral contribution fund under subsection (1) until the Registrar—

- (a) has given the existing fund an opportunity to submit a scheme to the Registrar, within such time as the Registrar may determine, for the transfer of the contributory funeral benefit business of that existing fund; and
- (b) has obtained a report from the Government Actuary on the proposed transfer.

Funeral Funds.

(3) The Registrar shall, in exercising his powers under subsection (1), have regard to any scheme submitted by the existing funeral contribution fund concerned and the report of the Government Actuary.

106. (1) The directions given to an existing funeral contribution fund by the Registrar under section 105 shall include directions for the payment by the existing fund to the funeral contribution fund to which the contributory funeral benefit business of that existing fund is to be transferred of such amount as may be calculated by the Registrar in accordance with this section as the appropriate transfer of contributions by that existing fund.

Transfer
of contri-
butions
paid by
contri-
butors.

(2) Subject to this Division, the appropriate transfer of contributions by an existing funeral contribution fund shall be 75 per cent of the total amount of all contributions paid by persons who are contributors in connection with the contributory funeral benefit business of that existing fund immediately before the day on which the business is transferred.

(3) An amount calculated by the Registrar in accordance with this section as the appropriate transfer of contributions by an existing funeral contribution fund shall be paid to the funeral contribution fund to which the business of that existing fund is to be transferred at the time that the business is transferred or, where the Registrar considers it appropriate to do so, at such times and in such instalments after that business is transferred as the Registrar specifies in a direction under section 105.

(4) The Registrar may require a funeral contribution fund to which any contributory funeral benefit business is to be transferred under this Division to obtain and hold securities for the payment by instalments under subsection (3) of the appropriate transfer of contributions by an existing funeral contribution fund.

Funeral Funds.

Failure to transfer business in accordance with directions of Registrar.

107. (1) If an existing funeral contribution fund fails to transfer his contributory funeral benefit business in accordance with the directions of the Registrar under section 105 (other than directions to pay any amount under section 106), the Registrar may, by notice in writing served on the existing fund, revoke his directions for the transfer.

(2) Where directions for the transfer of the contributory funeral benefit business of an existing funeral contribution fund are revoked under subsection (1), the existing fund shall be deemed to have notified the Registrar that he proposes to refund, in accordance with Division 2, contributions paid by contributors in connection with that business.

Interest payable on instalments.

108. (1) Where the appropriate transfer of contributions by an existing funeral contribution fund is paid by instalments under section 106 (3), the amount of each instalment shall be increased by a sum calculated at the prescribed rate.

(2) Any calculation under subsection (1) shall be made in respect of each day that has elapsed between the day that the contributory funeral benefit business of the existing funeral contribution fund is transferred under this Division and the date of payment.

(3) Any increase of an instalment under subsection (1) shall be deemed to be part of the appropriate transfer of contributions to which the instalment relates.

Failure to pay instalments.

109. (1) Where the amount of the appropriate transfer of contributions by an existing funeral contribution fund or an instalment of that amount is not paid to the funeral contribution fund to which the contributory funeral benefit business of that existing fund is transferred, that amount, including any increase of that amount under section 108 (1) but not including any instalment of that amount already paid, may be recovered in any court of competent jurisdiction as a debt due by the existing fund to the fund to which it is to be paid.

Funeral Funds.

(2) An existing funeral contribution fund, or a director or other officer of a funeral contribution fund—

- (a) who fails to take all reasonable steps to ensure that the payment of an amount or instalment referred to in subsection (1) is made; or
- (b) whose wilful act or omission results in that amount or instalment not being paid or recovered,

is guilty of an offence and liable to a penalty not exceeding \$1,000.

110. (1) Where the Registrar is satisfied that—

- (a) a funeral contribution fund to which the contributory funeral benefit business of an existing funeral contribution fund is transferred in accordance with this Division has borrowed money; and
- (b) the borrowing is necessary to meet a deficiency caused by the fact that the appropriate transfer of contributions by that existing fund is being made by instalments under section 106 (3),

Existing fund to pay interest on borrowing by fund to which his business is transferred in certain cases.

the Registrar may, by notice in writing served on that existing fund, direct the existing fund to pay the funeral contribution fund the amount paid by that funeral contribution fund as interest on that borrowing.

(2) Any amount that the Registrar directs to be paid under subsection (1) may be recovered in a court of competent jurisdiction as a debt due by the existing funeral contribution fund on whom the direction is served to the funeral contribution fund to which the amount is required to be paid.

Funeral Funds.

PART IX.

EXISTING PRE-ARRANGED FUNERAL FUNDS AND
PRE-ARRANGED CONTRACTS.DIVISION 1.—*Preliminary.*

Interpre-
tation:
Pt. IX.

111. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“existing pre-arranged contract” means a pre-arranged contract—

- (a) entered into before the commencement of section 34; and
- (b) under which a funeral service has not been supplied,

but does not include a pre-arranged contract which has been cancelled, or held to be void, if the money or other valuable consideration paid or given under the contract has been repaid or returned;

“existing pre-arranged funeral fund” means a person to whom any money or other valuable consideration under an existing pre-arranged contract has been paid or given or to whom any such money or consideration has been transferred, but does not include a person who has paid or given any such money or consideration to some other person pursuant to an agreement whereby that money or consideration is held in trust for the purposes for which it was paid or given;

“pre-arranged funeral fund” includes a person exempt from the application of section 34;

“prescribed day”, in relation to a person who has agreed to supply any funeral service under an existing pre-arranged contract, means—

- (a) except as provided in paragraph (b), the day on which the person notifies the Registrar in accordance with section 112; or

Funeral Funds.

- (b) where the person is pursuant to this Part deemed to have notified the Registrar that he proposes to cancel, in accordance with Division 2, pre-arranged contracts entered into by him, the day on which he is deemed to have so notified the Registrar.

112. (1) A person who agreed to supply funeral services under existing pre-arranged contracts shall, within 1 month after the commencement of section 34 or within such other period as may be specified by the Registrar by a notice served on that person, notify the Registrar in writing that he proposes either—

Person who agreed to supply funeral services under existing pre-arranged contracts to decide whether to cancel contracts or not.

- (a) to cancel those contracts in accordance with Division 2; or
(b) not to cancel those contracts and to comply with the requirements of Division 3 in respect of those contracts.

(2) A person who fails to notify the Registrar in accordance with subsection (1) shall, for the purposes of this Part, be deemed to have notified the Registrar that he proposes to cancel, in accordance with Division 2, existing pre-arranged contracts entered into by him.

113. In the winding up of a corporation under the Companies Act, 1961, a debt referred to in section 118 (8) or (10) shall, if it is unsecured, be paid in priority to all other unsecured debts of the corporation.

Certain debts to have priority.

114. No deed or instrument whereby—

- (a) any property is transferred to the Registrar or to a pre-arranged funeral fund in accordance with this Part; or
(b) any security is obtained and held in accordance with section 118 (7),

No stamp duty for transfers, etc., under this Part.

shall be liable to stamp duty.

Funeral Funds.

DIVISION 2.—*Cancellation of Existing Pre-arranged Contracts.*

Application
of Division.

115. (1) This Division applies to and in respect of any person who notifies the Registrar, or is deemed to have notified the Registrar, that he proposes to cancel existing pre-arranged contracts entered into by him.

(2) In this Division, “existing pre-arranged contract” does not include a contract under which a funeral service is supplied after the commencement of section 34 and before the contract is cancelled in accordance with this Division.

Cancellation
of existing
pre-arranged
contracts.

116. (1) Any existing pre-arranged contract entered into by a person to whom this Division applies shall, on and from the prescribed day, be deemed to be cancelled and the person who paid any money or gave any other valuable consideration under the contract shall be entitled to the payments authorised to be made to him under section 119.

(2) A person shall not, after the prescribed day—

- (a) accept any instalment under an existing pre-arranged contract that is deemed to be cancelled under subsection (1); or
- (b) repay any money or return any other valuable consideration paid or given under an existing pre-arranged contract except in accordance with this Part.

Penalty : \$2,000.

Repayment
fund to be
established
for purpose
of refund of
subscriptions
under
cancelled
contracts.

117. (1) The Registrar shall establish a repayment fund in respect of each person to whom this Division applies as soon as practicable after the prescribed day in relation to that person.

(2) There shall be paid into a repayment fund established under subsection (1) in respect of a person to whom this Division applies the amount required by section 118 to be paid

Funeral Funds.

by or on behalf of the person as the appropriate refund of subscriptions and there shall be paid out of that repayment fund such amounts as are required by section 119 to be paid.

(3) A repayment fund established under subsection (1) shall be under the direction, control and management of the Registrar.

(4) All money to the credit of a repayment fund established under subsection (1) shall be paid by the Registrar into an account in a bank in New South Wales.

(5) Full and accurate accounts shall be kept by the Registrar in respect of a repayment fund established under subsection (1).

118. (1) A person to whom this Division applies shall pay to the Registrar for payment into the repayment fund established under section 117 (1) in respect of that person such amount as may be calculated by the Registrar in accordance with this section as the appropriate refund of subscriptions by that person. Amount to be paid as refund of subscriptions.

(2) Subject to this Division, the appropriate refund of subscriptions by a person to whom this Division applies shall be the sum of the amount of all money paid under existing pre-arranged contracts entered into by that person and of an amount equal to the value of all other valuable consideration given to that person under those contracts.

(3) An amount calculated by the Registrar in accordance with this section as the appropriate refund of subscriptions by a person to whom this Division applies shall be paid to the Registrar by such time as the Registrar may by notice served on that person direct or, where the Registrar considers it appropriate to do so, in such instalments and at such times as the Registrar so directs.

Funeral Funds.

(4) Where the appropriate refund of subscriptions by a person to whom this Division applies is paid by instalments under subsection (3), the amount of each instalment shall be increased by a sum calculated at the prescribed rate.

(5) Any calculation under subsection (4) shall be made in respect of each day that has elapsed between the prescribed day in respect of the person making the payment and the date of payment.

(6) Any increase of an instalment under subsection (4) shall be deemed to be part of the appropriate refund of subscriptions to which the instalment relates.

(7) The Registrar may obtain and hold securities for the payment by instalments under subsection (3) of the appropriate refund of subscriptions by a person to whom this Division applies.

(8) Where the amount of the appropriate refund of subscriptions by a person to whom this Division applies or an instalment of that amount, as the case may be, is not paid by the time directed under subsection (3), that amount, including any increase of that amount under subsection (4) but not including any instalment of that amount already paid, may be recovered in any court of competent jurisdiction as a debt due by the person to the Registrar.

(9) An existing pre-arranged funeral fund (not being a person to whom this Division applies) who has been paid any money or given any other valuable consideration under an existing pre-arranged contract which is cancelled under this Division shall, forthwith after that cancellation, pay to the Registrar, to be applied under subsection (11) on behalf of the person who entered into the contract, the amount of money paid and an amount equal to the value of any other valuable consideration given under the contract.

(10) Where an existing pre-arranged funeral fund fails to pay the Registrar an amount required to be paid by the fund under subsection (9), that amount may be recovered in any court of competent jurisdiction as a debt due by the fund to the Registrar.

Funeral Funds.

(11) The appropriate refund of subscriptions of a person to whom this Division applies shall be reduced by any amount paid on his behalf under subsection (9) or recovered under subsection (10).

119. (1) All money standing to the credit of a repayment fund established under section 117 (1) shall from time to time be distributed by the Registrar among the persons who paid money or gave any other valuable consideration under the cancelled contracts in respect of which that repayment fund was established in the same proportion as the amount of money paid by those persons or the value of the other valuable consideration given by those persons. Distribution of repayment fund among subscribers.

(2) If the Registrar cannot, after due inquiry, ascertain the whereabouts of a person who is entitled to a payment under subsection (1), the Registrar—

- (a) is not required to make that payment; and
- (b) may make any distribution under that subsection without regard to any claim by that person.

DIVISION 3.—Continuation of Existing Pre-arranged Contracts.

120. (1) This Division applies to and in respect of a person who notifies the Registrar that he does not propose to cancel existing pre-arranged contracts entered into by him. Application of Division.

(2) Where directions in respect of existing pre-arranged contracts entered into by a person to whom this Division applies are revoked under section 123 (1), this Division ceases to apply to and in respect of that person.

121. (1) The Registrar shall, as soon as practicable after the prescribed day in relation to a person to whom this Division applies by notice in writing served on that person, give such directions in respect of existing pre-arranged contracts entered into by that person as the Registrar considers necessary and desirable to ensure performance of those contracts. Directions relating to existing pre-arranged contracts.

Funeral Funds.

(2) The Registrar shall not give any directions to a person under subsection (1) until he has given the person an opportunity to submit a scheme to the Registrar, within such time as the Registrar may determine, in relation to the existing pre-arranged contracts entered into by the person.

(3) The Registrar shall in exercising his powers under subsection (1) have regard to any scheme submitted by the person concerned.

Transfer of
subscriptions
to pre-
arranged
funeral
fund.

122. (1) The directions given under section 121 to a person to whom this Division applies shall include directions for the payment by the person to a pre-arranged funeral fund of such amount as may be calculated by the Registrar in accordance with this section as the appropriate transfer of subscriptions by the person.

(2) Section 41 applies to any money transferred to a pre-arranged funeral fund pursuant to a direction referred to in subsection (1).

(3) Subject to this Division, the appropriate transfer of subscriptions by a person to whom this Division applies shall be the sum of the amount of all money paid under existing pre-arranged contracts entered into by that person and of an amount equal to the value of all other valuable consideration given to that person under those contracts.

(4) An amount calculated by the Registrar in accordance with this section as the appropriate transfer of subscriptions by a person to whom this Division applies shall be paid to the pre-arranged funeral fund to which it is payable at such time or in such instalments and at such times as the Registrar specifies in a direction under section 121.

(5) The appropriate transfer of subscriptions of a person to whom this Division applies shall be reduced by any amount held in trust by a pre-arranged funeral fund under any existing pre-arranged contract entered into by that person.

Funeral Funds.

123. (1) If a person to whom this Division applies fails to comply with any directions given to him by the Registrar under section 121, including directions to pay any amount under section 122, the Registrar may, by notice in writing, revoke his directions. Failure to comply with directions of Registrar.

(2) Where directions given to a person are revoked under subsection (1), the person shall be deemed to have notified the Registrar that he proposes to cancel existing pre-arranged contracts entered into by him.
