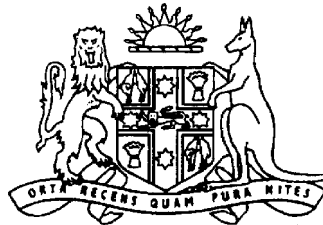


Passed by both Houses



New South Wales

Funeral Funds Amendment Bill 2003

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Funeral Funds Amendment Bill 2003

Act No , 2003

An Act to amend the *Funeral Funds Act 1979* to introduce certain reforms about the prudential management of funeral funds; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Funeral Funds Amendment Act 2003*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Funeral Funds Act 1979 No 106

The *Funeral Funds Act 1979* is amended as set out in Schedule 1.

4 Amendment of Funeral Funds Regulation 2001

The *Funeral Funds Regulation 2001* is amended as set out in Schedule 2.

Schedule 1 Amendment of Funeral Funds Act 1979

(Section 3)

[1] Whole Act (except to the extent to which its provisions are otherwise amended or repealed by this Act)

Omit “Pre-arranged” and “pre-arranged” wherever occurring.

Insert instead “Pre-paid” and “pre-paid”, respectively.

[2] Section 3

Insert after section 2:

3 Objects

The objects of this Act are:

- (a) to protect pre-payments made by consumers for funeral services through the registration of funeral funds, and
- (b) to ensure that funeral services agreed to be supplied under a pre-paid contract are supplied as agreed, and
- (c) to achieve accountability for money paid by a purchaser of funeral services that have an indefinite delivery date, and
- (d) to properly manage money paid and other valuable consideration given for funeral services in the long term to provide agreed benefits to the purchaser and the anticipated payment to the supplier of funeral services.

[3] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

authorised deposit-taking institution means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth.

officer, of a corporation, has the meaning given by the *Corporations Act 2001* of the Commonwealth.

[4] Section 4 (1)

Omit the definitions of *Department* and *Director-General*.

Insert instead:

Department means the Department of Commerce.

Director-General means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in the Department—the Director-General of the Department.

[5] Section 4 (1), definition of “funeral contribution fund”

Omit the definition. Insert instead:

funeral contribution fund means:

- (a) a company for the time being registered under section 14 to carry on contributory funeral benefit business, or
- (b) a person for the time being registered under section 16C to carry on contributory funeral benefit business.

[6] Section 8 Inspectors

Omit “*Public Service Act 1902*” wherever occurring.

Insert instead “*Public Sector Employment and Management Act 2002*”.

[7] Section 10

Insert after section 9:

10 Appointment of independent actuary

- (1) The Director-General may appoint an independent actuary to assist the Director-General in performing his or her functions under this Act.
- (2) Without limiting subsection (1), the Director-General may appoint an actuary:
 - (a) to provide advice in relation to the ability of an applicant for registration under this Act to carry on a funeral fund successfully and in compliance with the provisions of the Act that would be applicable to the applicant if registered, or
 - (b) to assist the Director-General in conducting an inquiry under Division 2 of Part 5 into the affairs, or such of the affairs as the Director-General determines, of a funeral fund.

[8] Section 11 Contributory funeral benefit business to be carried on only by companies registered under this Act

Omit section 11 (1). Insert instead:

- (1) A person must not carry on or advertise that the person carries on or is willing to carry on any contributory funeral benefit business unless that person is a funeral contribution fund.

Maximum penalty: 20 penalty units or, in the case of a continuing offence, 2 penalty units for each day the offence continues.

[9] Section 11 (3)–(5)

Omit the subsections.

[10] Section 13 Requirements for registration

Omit section 13 (1) (a) and (b). Insert instead:

- (a) the company does not carry on pre-paid funeral benefit business,
- (b) the income of the company derived from contributory funeral benefit business 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,

[11] Section 13 (1) (d)

Omit “and not more than 7”.

[12] Section 13 (1) (e)

Omit the paragraph. Insert instead:

- (e) the name of the company is not a name, or a name of a kind, that the Minister has directed the Director-General not to accept for registration,

[13] Section 13 (1) (g)

Omit the paragraph.

[14] Section 13 (2)

Omit “subsection (1) (e) (ii)”. Insert instead “subsection (1) (e)”.

[15] Section 14 Registration of company to carry on contributory funeral benefit business

Insert at the end of section 14 (2):

, or

- (d) the company is not fit to be registered having regard to the character and reputation of the directors and other officers of the company.

[16] Section 16 Cancellation of registration of funeral contribution fund

Omit section 16 (1) and (2). Insert instead:

- (1) The Director-General may, by notice in writing served on a funeral contribution fund, cancel the fund's registration if:
 - (a) the fund has not commenced to carry on contributory funeral benefit business in New South Wales within 6 months after its registration, or
 - (b) the fund is commenced to be wound up or is under official management, or
 - (c) the fund has entered into a compromise or scheme of arrangement with its creditors, or
 - (d) a receiver and manager has been appointed, whether by the Supreme Court or otherwise, in respect of the property of the fund, or
 - (e) the fund or any person involved 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, or
 - (f) at the request of the fund, or
 - (g) any other ground prescribed by the regulations is established.
- (2) The cancellation of the registration of a funeral contribution fund under subsection (1) (paragraph (f) excepted) takes effect on the expiration of 28 days after the notice of the cancellation is served on the fund by the Director-General or, if an appeal is lodged against the cancellation under Part 6, on confirmation of the cancellation or the withdrawal of the appeal.

[17] Section 16 (4)

Omit “Corporate Affairs Commission”.

Insert instead “Australian Securities and Investments Commission”.

[18] Part 3, Division 1A

Insert after Division 1:

Division 1A Registration of previously exempt persons carrying on business of funeral contribution funds

16B Application for registration

- (1) This section applies to a person (whether an individual or a corporation) who, immediately before the commencement of this Division:
 - (a) carried on the business of a funeral contribution fund, and
 - (b) was exempt from the application of section 11 under section 11 (3) or from the application of section 94 under section 97A.
- (2) The person must, within 6 months after the commencement of this Division, apply to the Director-General to be registered under this Act to carry on a contributory funeral benefit business.

Maximum penalty: 50 penalty units.
- (3) An application for registration made under subsection (2) must:
 - (a) be made in the form approved by the Director-General, and
 - (b) be accompanied by:
 - (i) a written statement specifying whether the person is subject to any other prudential requirements with respect to the person’s contributory funeral benefit business, and
 - (ii) such other information as the Director-General may require.

- (4) Despite any other provision of this Act, this section applies to an individual carrying on a business referred to in subsection (1).

16C Registration of previously exempt person to carry on contributory funeral benefit business

- (1) On receipt of an application for registration from a person under section 16B, the Director-General may:
- (a) register the person to carry on contributory funeral benefit business, or
 - (b) register the person to carry on contributory funeral benefit business, subject to conditions, or
 - (c) refuse to register the person.
- (2) The Director-General may waive the whole or any part of a fee to be taken in the office of the Director-General for registration of such a person.
- (3) The Director-General may register a person to carry on contributory funeral benefit business even if the Director-General is satisfied of the matters referred to in section 14 (2) if the Director-General is satisfied that registration of the person subject to conditions would protect contributors to the fund.
- (4) Without limiting the conditions that may be imposed under subsection (1) on a registration, the conditions may include the following:
- (a) a requirement that the fund comply with specified reporting provisions, for example, by notifying the Director-General of any change in financial status and particulars of where contributions to the fund are held,
 - (b) a requirement that the fund must not accept after registration any new contributors to the fund.
- (5) The Director-General may exempt a person registered under this section from complying with such of the provisions of this Act or the regulations as the Director-General considers appropriate having regard to all of the circumstances in which the person carries on contributory funeral benefit business.

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- (6) If the Director-General refuses, under this section, to register a person to carry on contributory funeral benefit business, the person must, within the period directed by the Director-General, transfer any contributions held by the person to a funeral contribution fund.
- (7) Despite any other provision of this Act, the Director-General may, under this section, register an individual to carry on contributory funeral benefit business and the Act applies to that funeral contribution fund in the same way it applies to a funeral contribution fund that is a company, with any necessary changes.

[19] Section 21

Omit the section. Insert instead:

21 Management expenses in administration of funeral contribution funds

A funeral contribution fund is entitled to receive a commission for its services in acting as trustee of contributions received by it from or on behalf of a contributor.

[20] Section 22 Investment of surplus funds etc

Omit “banks, building societies or credit unions in New South Wales” from section 22 (2).

Insert instead “authorised deposit-taking institutions”.

[21] Section 24 Returns

Insert after section 24 (1):

- (1A) The Director-General may exempt a funeral contribution fund from the requirement to lodge a return under subsection (1) if the Director-General is satisfied that the fund is subject to adequate reporting requirements under a law of the Commonwealth.

[22] Section 25A

Insert after section 25:

25A Annual report to be provided to contributors

- (1) A funeral contribution fund must, at least once annually or at such other times as are prescribed by the regulations, give to each contributor to the fund a report containing the particulars prescribed by the regulations.
- (2) A report may be given to a contributor personally or by post addressed to the last known place of residence or business of the contributor.

[23] Section 28 Actuarial investigation of funeral contribution funds

Omit section 28 (2). Insert instead:

- (2) The Director-General may waive the requirement for an investigation of a funeral contribution fund to be made under subsection (1) if the Director-General is satisfied that, in all the circumstances, it would be unduly onerous or otherwise unwarranted to require the investigation.
- (3) A funeral contribution fund must:
 - (a) within 3 months after an investigation is made under subsection (1), lodge with the Director-General an abstract, prepared in the manner prescribed by the regulations and containing the particulars prescribed by the regulations, of the report by the actuary of the results of that investigation, and
 - (b) if requested by notice in writing given by the Director-General, lodge with the Director-General (by the date specified in the notice) a copy of the report by the actuary of the results of the investigation.

Maximum penalty: 10 penalty units.

[24] Section 30

Omit the section. Insert instead:

30 Procedure where deficiency in assets or management expenses unduly high

- (1) If the Director-General is satisfied that, as a result of an actuarial investigation under section 28 or of an inquiry instituted by the Director-General:
 - (a) the assets of a funeral contribution fund are insufficient to meet its liabilities, or
 - (b) the rate of the management expenses of a funeral contribution fund is unduly high,the Director-General may, by notice served on the fund, give such directions to the fund as the Director-General considers necessary in the circumstances.
- (2) The Director-General must not give a direction under subsection (1) without the approval of the Minister.
- (3) A funeral contribution fund must comply with a direction given to it under subsection (1).

Maximum penalty: 10 penalty units.

[25] Section 31 Transfer or amalgamation to be confirmed by Director-General

Insert at the end of the section:

- (2) The regulations may make provision for or with respect to guidelines to be used by the Director-General in deciding whether to confirm or refuse to confirm a scheme in accordance with section 32.

[26] Section 32 Schemes for transfer or amalgamation

Omit “the Government Actuary” from section 32 (4).

Insert instead “an actuary”.

[27] Section 34 Trustee under pre-paid contract to be registered under this Act

Omit section 34 (1) (c).

[28] Section 34 (2)–(4)

Omit the subsections.

[29] Section 37 Registration of pre-paid funeral funds

Insert after section 37 (2) (b):

- (ba) the corporation or group of individuals will not be able to carry on pre-paid funeral benefit business successfully,

[30] Part 4, Division 1A

Insert after Division 1:

Division 1A Registration of previously exempt pre-paid funeral funds

39A Application for registration of previously exempt trustees

- (1) This section applies to a person (whether an individual or corporation) who, immediately before the commencement of this Division:
 - (a) acted as trustee of trust funds under a pre-paid contract, and
 - (b) was exempt from the application of section 34 under section 34 (2) or from the application of section 112 under section 114B.
- (2) The person must, within 6 months after the commencement of this Division, apply to the Director-General to be registered under this Act to act as trustee of trust funds under pre-paid contracts.

Maximum penalty: 50 penalty units.

- (3) An application for registration made under subsection (2) must:
 - (a) be made in the form approved by the Director-General, and
 - (b) be accompanied by:
 - (i) a written statement specifying whether the person is subject to any other prudential requirements with respect to the person acting as trustee of trust funds under a pre-paid contract, and

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- (ii) such other information as the Director-General may require.

39B Registration of previously exempt person to act as trustee of funds under pre-paid contracts

- (1) On receipt of an application for registration from a person under section 39A, the Director-General may:
 - (a) register the person to act as trustee of trust funds under a pre-paid contract, or
 - (b) register the person to act as trustee of trust funds under a pre-paid contract, subject to conditions, or
 - (c) refuse to register the person.
- (2) The Director-General may waive the whole or any part of a fee to be taken in the office of the Director-General for registration of such a person.
- (3) The Director-General may register a person to act as trustee of trust funds under a pre-paid contract even if the Director-General is satisfied of the matters referred to in section 37 (2) (a) or (b) if the Director-General is satisfied that registration of the person subject to conditions would protect persons on whose behalf that person would hold trust funds.
- (4) Without limiting the conditions that may be imposed under subsection (1) on a registration, the conditions may include the following:
 - (a) a requirement that the trustee comply with specified reporting provisions, for example, by notifying the Director-General of any change in financial status and particulars of where trust funds are held,
 - (b) a requirement that the trustee must not accept any new trust funds after registration.
- (5) The Director-General may exempt a person registered under this section from complying with such of the provisions of this Act or the regulations as the Director-General considers appropriate having regard to all of the circumstances in which the person acts as trustee of trust funds under a pre-paid contract.

- (6) If the Director-General refuses, under this section, to register a person to act as trustee of trust funds under a pre-paid contract, the person must, within the period directed by the Director-General, transfer any trust funds held by the person to a pre-paid funeral fund.

[31] Section 40 Payment of money and giving of consideration under pre-paid contract to pre-paid funeral fund

Insert “(in accordance with the regulations, if any)” after “paid or given” in section 40 (1).

[32] Section 42 Transfer of trust funds under pre-paid contracts

Insert at the end of the section:

- (8) The regulations may make provision for or with respect to guidelines to be used by the Director-General in deciding whether to confirm or refuse to confirm a scheme under this section.

[33] Section 43 Pre-paid funeral funds, trust accounts

Omit “banks, building societies or credit unions in New South Wales” from section 43 (1).

Insert instead “authorised deposit-taking institutions”.

[34] Section 46

Omit the section. Insert instead:

46 Management expenses in administration of trust funds

A pre-paid funeral fund is entitled to receive a commission for its services in acting as trustee of funds held by it under a pre-paid contract.

[35] Part 4, Divisions 3A–3C

Insert after Division 3:

Division 3A Actuarial investigation

49A Actuarial investigation of pre-paid funeral funds

- (1) A pre-paid funeral fund must:
 - (a) at least once in each period of 3 years or such other period as may be prescribed by the regulations, and
 - (b) where the Director-General by notice served on the fund so directs, within the period 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) The Director-General may waive the requirement for an investigation of a pre-paid funeral fund to be made under subsection (1) if the Director-General is satisfied that, in all the circumstances, it would be unduly onerous or otherwise unwarranted to require the investigation.
- (3) A pre-paid funeral fund must:
 - (a) within 3 months after an investigation is made under subsection (1), lodge with the Director-General an abstract, prepared in the manner prescribed by the regulations and containing the particulars prescribed by the regulations, of the report by the actuary of the results of that investigation, and
 - (b) if requested by notice in writing given by the Director-General, lodge with the Director-General (by the date specified in the notice) a copy of the report by the actuary of the results of the investigation.

Maximum penalty: 10 penalty units.

49B Procedure where deficiency in assets or management expenses unduly high

- (1) If the Director-General is satisfied that, as a result of an actuarial investigation under section 49A or of an inquiry instituted by the Director-General:

- (a) the assets of a pre-paid funeral fund are insufficient to meet its liabilities, or
 - (b) the rate of the management expenses of a pre-paid funeral fund is unduly high,
- the Director-General may, by notice served on the fund, give such directions to the fund as the Director-General considers necessary in the circumstances.
- (2) The Director-General must not give a direction under subsection (1) without the approval of the Minister.
 - (3) A pre-paid funeral fund must comply with a direction given to it under subsection (1).
- Maximum penalty: 10 penalty units.

Division 3B Auditing

49C Independent auditor to prepare auditor's report

- (1) A pre-paid funeral fund must cause an independent auditor:
 - (a) to audit the records that the fund is required to keep under any law, including the accounts of the fund, and
 - (b) to furnish it with a report of that audit within 3 months after the last day of the fund's financial year.

Maximum penalty: 10 penalty units.

- (2) A pre-paid funeral fund must, within 7 days of receiving a report under subsection (1) (b), lodge with the Director-General:
 - (a) a copy of the report, and
 - (b) a copy of every financial statement on which the report is based, together with every explanatory note that forms part of such a statement.

Maximum penalty: 10 penalty units.

49D Qualifications as an independent auditor

- (1) A person is not qualified to be an auditor of a pre-paid funeral fund unless the person is a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth).

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- (2) An auditor of a pre-paid funeral fund is not an independent auditor:
 - (a) if (otherwise than as an auditor) the person is an officer or employee of the fund, or
 - (b) if the person is a partner, employer or employee of a person who is (otherwise than as an auditor) an officer or employee of the fund.
 - (3) Appointment as the public officer of a pre-paid funeral fund for the purposes of any law relating to taxation does not in itself render a person unqualified to be an independent auditor of the fund.

49E Form and content of auditors' reports

An auditor's report on a pre-paid funeral fund must include statements by the auditor as to the following:

- (a) whether the auditor has obtained all the information and explanations which, to the best of the auditor's knowledge and belief, were necessary for the purposes of the audit,
- (b) whether the financial statements on which the auditor based the report are in agreement with the fund's books of account and returns,
- (c) whether, in the auditor's opinion, proper books of account have been kept by the fund,
- (d) whether, in the auditor's opinion and to the best of the auditor's knowledge and according to the explanations given to the auditor, the accounts give the information required by or under this Act in the manner so required and disclose a true and fair view of the state of the trust accounts as at the end of the fund's financial year,
- (e) whether, in the auditor's opinion, the records that the fund is required to keep by or under this Act have been properly kept,
- (f) whether the requirements of the law relating to the administration of trust funds, including the requirements of this Act and any regulations, have been observed,
- (g) any matter prescribed by the regulations.

49F Access to books

An auditor of a pre-paid funeral fund is entitled:

- (a) to be given access at all times to the books, accounts, vouchers, securities and documents of the fund, and
- (b) to be given by the fund such information and explanations as the auditor thinks necessary for the performance of his or her duties.

Division 3C Returns

49G Annual returns to be furnished

- (1) Within 3 months after the last day of a pre-paid funeral fund's financial year, or within such further time as the Director-General may allow, the fund must lodge with the Director-General a return specifying the following:
 - (a) the number of pre-paid contracts in respect of which the fund held money or other valuable consideration, as at the first day of that year,
 - (b) the number of pre-paid contracts in respect of which the fund commenced holding money or other valuable consideration during that year,
 - (c) the number of pre-paid contracts in respect of which the fund ceased holding money or other valuable consideration during that year, separately specified according to whether it ceased to hold that money or consideration pursuant to section 47 or pursuant to section 48,
 - (d) the number of pre-paid contracts that were cancelled pursuant to section 49 during that year (being contracts in respect of which the fund was holding money or other valuable consideration when they were cancelled),
 - (e) the number of pre-paid contracts in respect of which the fund held money or other valuable consideration, as at the last day of that year.

Maximum penalty: 10 penalty units.

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- (2) The Director-General may exempt a pre-paid funeral fund from the requirement to lodge a return under subsection (1) if the Director-General is satisfied that the fund is subject to adequate reporting requirements under a law of the Commonwealth.

49H Funds to provide information in certain cases

- (1) The Director-General may, by notice in writing served on a pre-paid funeral fund or on any officer or agent of the fund, require the fund or that officer or agent to lodge with the Director-General, within such period as is specified in the notice, any one or more of the following:
- (a) such particulars as may be so specified with respect to existing or former pre-paid contracts,
 - (b) such particulars as may be so specified with respect to payments by the fund of amounts held in trust by it,
 - (c) 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 person must not, without reasonable excuse, fail to comply with a requirement under this section.
- Maximum penalty: 10 penalty units.

- (3) Information provided by a person in response to a requirement under this section is not admissible in evidence in any proceedings for an offence taken against that person, other than the offence of contravening subsection (2), so long as the person providing the information objected to doing so, at the time of providing it, on the ground that it might tend to incriminate the person.

49I Public inspection of annual returns

On being requested to do so by a person attending the Director-General's office during the ordinary business hours of that office, and on the payment by the person of the appropriate fee, the Director-General:

- (a) must make available for inspection by the person any return lodged with the Director-General under section 49G, and

- (b) must provide the person with a copy of such return, or of such part of the return as the person specifies, certified under the Director-General's hand and seal to be a true copy.

[36] Section 49J

Insert after the heading to Division 4 of Part 4:

49J Cooling-off period

- (1) A person who enters into a pre-paid contract with a pre-paid funeral fund may, by notice in writing given to the fund within the period after entry into the contract prescribed by the regulations, end the agreement.
- (2) If a person ends a pre-paid contract under subsection (1):
 - (a) the pre-paid funeral fund must refund to the person the amount the person has paid to it under the agreement, less any amounts prescribed by the regulations, and
 - (b) the person is not (despite anything to the contrary in the contract) liable to the pre-paid funeral fund in any way for ending the agreement.

[37] Part 5, Division 3A

Insert after Division 3:

Division 3A Disciplinary measures

66A Notices to show cause

- (1) This section applies if the Director-General believes, on reasonable grounds, that:
 - (a) for a fund that is a funeral contribution fund:
 - (i) the fund is no longer able to carry on contributory funeral benefit business successfully, or
 - (ii) the fund no longer satisfies the requirements for registration specified in section 13, or
 - (iii) the fund is not fit to be registered having regard to the character and reputation of the directors and other officers of the company, or
 - (iv) the fund is not complying with the conditions, if any, of its registration, or

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- (b) for a fund that is a pre-paid funeral fund:
 - (i) the fund is no longer able to carry on pre-paid funeral benefit business successfully, or
 - (ii) the fund no longer meets the requirements for registration specified in section 36, or
 - (iii) if the fund is a corporation—the fund is no longer fit to be registered having regard to the character and reputation of the directors and other officers of the corporation or another matter prescribed for the purposes of section 37 (2) (c) (ii), or
 - (iv) if the fund is a group of individuals—the fund is no longer fit to be registered having regard to the character and reputation of each of those individuals or another matter prescribed for the purposes of section 37 (2) (d) (ii), or
 - (v) the fund is not complying with the conditions, if any, of its registration.
 - (2) The Director-General may, by notice in writing served on the fund, call on the fund to show cause, within a specified period, being not less than 14 days, why the fund should not, for the reasons specified in the notice, be dealt with in accordance with this Division.
 - (3) The Director-General may conduct such inquiry or make such investigation in relation to the matters to which the notice relates and the submissions made, if any, and the evidence adduced, if any, by or on behalf of the fund in relation to those matters as the Director-General thinks fit.

66B Determination of disciplinary measures by the Director-General

- (1) If, after compliance with section 66A, the Director-General is satisfied that a ground referred to in section 66A (1) has been established, the Director-General may do one or more of the following:
 - (a) require the fund to comply within a specified time with a requirement specified by the Director-General,
 - (b) impose or vary a condition on the fund's registration,
 - (c) suspend the registration for a period not exceeding 12 months,

- (d) disqualify the fund, or if the fund is a company or corporation, a director or other officer of the company or corporation, from being registered or being concerned in the direction, management or conduct of the business of carrying on contributory funeral benefit business or acting as a trustee of trust funds under a pre-paid contract, either permanently or for such period as the Director-General thinks fit,
- (e) cancel the registration.
- (2) Where, under subsection (1), the Director-General requires a fund to comply with a requirement specified by the Director-General, the fund must comply with the requirement within the period specified by the Director-General under that subsection.
- (3) A fund or individual disqualified under subsection (1) (d) must not, while disqualified:
 - (a) be registered under this Act, or
 - (b) be concerned in the direction, management or conduct of a business for which this Act requires a person to be registered.

[38] Section 74A Application of certain winding up provisions of Corporations legislation

Omit “of the Department of Fair Trading” wherever occurring.

Insert instead “within the meaning of that Act”.

[39] Section 75 Appeal against refusal to register funeral contribution fund or to approve alteration or addition of rules

Insert “or a person to carry on contributory funeral benefit business under section 16B” after “section 14” in section 75 (1) (a).

[40] Section 75 (1) (c)

Insert after section 75 (1) (b):

, or

- (c) refuses under section 16C (5) to exempt a person registered under that section from complying with a provision of this Act or the regulations,

[41] Section 75 (2) (b)

Omit “company or approve the alteration of or the addition to the rules of the fund”.

Insert instead “person, approve the alteration of or the addition to the rules of the fund or exempt the person from the provision of this Act or the regulations”.

[42] Sections 75A and 75B

Insert after section 75:

75A Appeal against decision to impose conditions on registration of funeral contribution fund

- (1) A person who is registered to carry on contributory funeral benefit business subject to conditions may appeal to the Supreme Court against the imposition of the conditions.
- (2) On hearing an appeal under subsection (1), the Supreme Court may make an order:
 - (a) confirming the registration of the person subject to the conditions imposed by the Director-General or imposing other conditions that the Court considers appropriate, or
 - (b) directing the Director-General to register the person without conditions.

75B Appeal against decision to cancel registration of funeral contribution fund

- (1) If the Director-General cancels the registration of a funeral contribution fund under section 16 (subsection (1) (f) excepted), an appeal against the cancellation may be made to the Supreme Court by the fund concerned.
- (2) On hearing an appeal under subsection (1), the Supreme Court may make an order:
 - (a) confirming the cancellation by the Director-General, or
 - (b) revoking the cancellation by the Director-General.

[43] Section 77 Appeal against refusal to register pre-paid funeral fund or decision to cancel that registration

Insert “or section 39B” after “section 37” in section 77 (1) (a).

[44] Section 77 (1) (ba)

Insert after section 77 (1) (b):

- (ba) refuses under section 39B (5) to exempt a person registered under that section from complying with a provision of this Act or the regulations, or

[45] Section 77 (2A)

Insert after section 77 (2):

- (2A) On hearing an appeal under subsection (1) (ba), the Supreme Court may make an order:
 - (a) confirming the refusal of the Director-General, or
 - (b) directing the Director-General to exempt the person from complying with the provision of this Act or the regulations.

[46] Section 77A

Insert after section 77:

77A Appeal against decision to impose conditions on registration of pre-paid funeral funds

- (1) A person who is registered to act as a trustee of trust funds under a pre-paid contract may appeal to the Supreme Court against the imposition of conditions on the registration.
- (2) On hearing an appeal under subsection (1), the Supreme Court may make an order:
 - (a) confirming the registration of the person subject to the conditions imposed by the Director-General or other conditions the Court considers appropriate, or
 - (b) directing the Director-General to register the person without conditions.

[47] Section 79A

Insert after section 79:

79A Appeal against imposition of disciplinary measures

- (1) This section applies if the Director-General:

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- (a) imposes a requirement on a fund under section 66B (1) (a), or
 - (b) imposes or varies a condition on a fund's registration under section 66B (1) (b), or
 - (c) suspends a fund's registration under section 66B (1) (c), or
 - (d) disqualifies a fund or individual from being registered or being concerned in the direction, management or conduct of the business of carrying on contributory funeral benefit business or acting as a trustee of trust funds under a pre-paid contract under section 66B (1) (d), or
 - (e) cancels a fund's registration under section 66B (1) (e).
- (2) An appeal against the imposition or variation of that requirement or condition, or the suspension, disqualification or cancellation, may be made to the Supreme Court by the fund or individual concerned.
 - (3) On hearing an appeal under subsection (2), the Supreme Court may make an order:
 - (a) confirming the Director-General's decision to impose or vary the requirement or condition, suspend the registration, disqualify the fund or individual or cancel the registration, or take another disciplinary measure the Court considers appropriate, or
 - (b) revoke the requirement, condition, suspension, disqualification or cancellation.

[48] Section 82 Failure of Director-General to act on application deemed refusal

Insert "(other than on application under section 16B)" after "business" in section 82 (a).

[49] Section 82 (d)

Insert "(other than on application under section 39A)" after "contracts".

[50] Section 82 (2)

Insert at the end of section 82:

- (2) For the purposes of this Part, the Director-General is deemed to have refused an application under section 16B or 39A if the Director-General does not give a decision on an application made under that section within 6 months after the application is made.

[51] Section 85A

Insert after section 85:

85A False or misleading statements

- (1) A person who, in a document required for the purposes of this Act or lodged with the Director-General, makes, or authorises the making of, a statement knowing it to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) A person who, from a document required for the purposes of this Act or lodged with the Director-General, omits, or authorises the omission of, anything knowing that the omission makes the document misleading in a material particular is guilty of an offence.

Maximum penalty: 10 penalty units.

- (3) A person who, in a document required for the purposes of this Act or lodged with the Director-General, makes, or authorises the making of, a statement that is false or misleading in a material particular is guilty of an offence unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of false or misleading statements in such a document.

Maximum penalty: 10 penalty units.

- (4) If an omission makes a document required for the purposes of this Act or lodged with the Director-General misleading in a material respect, a person who made or authorised the omission is guilty of an offence unless it is proved that the

person had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make such a document false or misleading.

Maximum penalty: 10 penalty units.

[52] Section 92 Regulations

Insert at the end of section 92 (2) (d):

, and

- (e) the transfer of contributions made by a contributor from one funeral contribution fund to another such fund, and
- (f) the transfer of trust funds from one pre-paid funeral fund to another such fund, and
- (g) the transfer of a contract from one funeral director to another funeral director, and
- (h) the requirements for actuarial investigations of pre-paid funeral funds, and
- (i) the information that must be provided to a consumer before a pre-paid contract is entered into, and
- (j) without limiting paragraph (i), information that must be provided to a consumer about the funeral services that will be provided under a pre-paid contract, including information about the funeral services that are not covered by the contract, and
- (k) the information that must be provided with a pre-paid contract, including information relating to cancellation of the contract under section 49.

[53] Part 8, Division 1A

Omit the Division.

[54] Section 105 Director-General may give directions for transfer of business

Omit “the Government Actuary” from section 105 (2) (b).

Insert instead “an actuary”.

[55] Section 105 (3)

Omit “Government Actuary”. Insert instead “actuary”.

[56] Part 9, Division 1A

Omit the Division.

[57] Part 10

Insert after Part 9:

Part 10 Savings and transitional provisions

124 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Funeral Funds Amendment Act 2003

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

125 Contributory funeral benefit business

- (1) This section applies to a person who, immediately before the commencement of this section:
 - (a) carried on the business of a funeral contribution fund, and
 - (b) was exempt from the application of section 11 pursuant to section 11 (3) or from the application of section 94 pursuant to section 97A, and
 - (c) within 6 months after that commencement, applies to the Director-General to be registered under this Act to carry on contributory funeral benefit business.

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- (2) The person does not commit an offence against section 11 if the person continues to carry on the business of a funeral contribution fund during the period starting on the commencement of this section and ending on the day the Director-General makes a decision under section 16C about the person's application.

126 Pre-paid funeral funds

- (1) This section applies to a person who, immediately before the commencement of this section:
- (a) acted as trustee of trust funds under a pre-arranged contract, and
 - (b) was exempt from the application of section 34 pursuant to section 34 (2) or from the application of section 112 pursuant to section 114B, and
 - (c) within 6 months after that commencement, applies to the Director-General to be registered under this Act to act as trustee of trust funds under pre-paid contracts.
- (2) The person does not commit an offence against section 34 if the person continues to act as the trustee of trust funds under a pre-paid contract during the period starting on the commencement of this section and ending on the day the Director-General makes a decision under section 39B about the person's application.

Schedule 2 Amendment of Funeral Funds Regulation 2001

(Section 4)

[1] Whole Regulation (except clauses 14 and 17–22)

Omit “pre-arranged” wherever occurring. Insert instead “pre-paid”.

[2] Clause 8 Limitations on certain management expenses (section 21)

Omit the clause.

[3] Part 3, heading

Omit “Pre-arranged”. Insert instead “Pre-paid”.

[4] Clause 14 Maximum commission chargeable (section 46)

Omit the clause.

[5] Clauses 17–23

Omit the clauses.

[6] Clause 24 Fees

Omit “clause 21” from the table to the clause.

Insert instead “section 49G (1) of the Act”.

[7] Clause 24, table

Omit “clause 17 (2)”. Insert instead “section 49C (2) of the Act”.