

Camperdown Cemetery Act 1948 No 14

[1948-14]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Miscellaneous Acts (Local Court) Amendment Act 2007 No 94 (not commenced)

Authorisation

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Camperdown Cemetery Act 1948 No 14



New South Wales

An Act to dedicate part of the Camperdown Cemetery land as a public park and to provide for the appointment of trustees thereof; to vest the remainder of the land in the Church of England Property Trust Diocese of Sydney; to authorise the removal of human remains, headstones, grave enclosures, and other surface structures from parts of the land; to provide for the reinterment of such remains; to make provision for the erection of a parish hall on part of the land; to provide for the redesign and reconstruction of a cemetery area within part of the land; to provide for the payment of certain moneys to the Church of England Property Trust Diocese of Sydney; to repeal the *Camperdown Cemetery Trust Act of 1871*; and for purposes connected therewith.

1 Name of Act and commencement

- (1) This Act may be cited as the *Camperdown Cemetery Act 1948*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2 Definitions

- (1) In this Act **Church of England Property Trust Diocese of Sydney, Diocese** and **Synod** have the meanings ascribed to those expressions in the *Church of England Trust Property Act 1917*, as amended by subsequent Acts.
- (2) (Repealed)
- (3) On and from the commencement of the *Camperdown Cemetery (Amendment) Act 1977*, a reference in this Act to the Trust shall be construed as a reference to the council of the local government area within which the Camperdown Memorial Rest Park is for the time being situated.

3 Repeal

The Act thirty-fourth Victoria, intituled “An Act to enable the Bishop of Sydney to convey certain Land and Premises known as the Camperdown Cemetery to Trustees upon certain Trusts with power to erect a Church and Parsonage on portions of the said land”, in this Act referred to as the *Camperdown Cemetery Trust Act of 1871*, is hereby repealed.

4 Dedication of land in First Schedule as a public park

- (1) The land described in the First Schedule to this Act is hereby dedicated as a public park under the name of the "Camperdown Memorial Rest Park".
- (2) (Repealed)
- (3) The said park shall be maintained by the Trust as a rest park and garden area and, notwithstanding anything in any other Act, the Trust shall not use the said park or permit the same to be used for any other purpose.
- (4) Any estate or interest in the land described in the First Schedule to this Act which, immediately before the commencement of this Act, was vested in or held by the trustees appointed under the *Camperdown Cemetery Trust Act of 1871* or any other person is hereby divested, and the said trustees and all such other persons are hereby discharged from any duties, liabilities or obligations existing immediately before the commencement of this Act in respect of or in relation to the said land.
- (5) Any trusts, conditions, encumbrances or dedications affecting the said land immediately before the commencement of this Act are hereby revoked and annulled.
- (6) In respect of the land described in the First Schedule to this Act, the Minister shall, as soon as practicable after the commencement of this Act:
 - (a) cause to be compiled an index plan and register of the names of and other relevant information in respect of persons buried in the said land, so far as such names and information can be obtained.

Such plan and register shall be deposited with the trustees of the redesigned and reconstructed cemetery area referred to in section six of this Act and shall be maintained by the said trustees so as to be available for inspection by any interested person from time to time,

- (b) subject to the provisions of this section and of section ten of this Act, cause the remains of any person buried in an historic grave or in a grave for the perpetual care of which a capital sum has been paid to the trustees appointed under the *Camperdown Cemetery Trust Act of 1871*, together with the headstone, grave enclosure or other surface structure erected over the grave of such person, to be collected with due care and removed to the cemetery area referred to in section six of this Act, and shall cause any such remains so removed to be reverently reinterred and such headstone, grave enclosure or other surface structure to be re-erected,
 - (c) subject to the provisions of this section and of section ten of this Act, cause all other headstones, grave enclosures, and surface structures on the said land to be removed and disposed of at the discretion of the Minister:

Provided that all such headstones and other surface structures as are reasonably capable of being so placed and as are suitable for the purpose shall be placed on the land described in the Second Schedule to this Act along the brick or stone wall referred to in paragraph (d) of this subsection,

(d) cause a brick or stone wall at least seven feet high and suitably buttressed to be erected on the common boundary of the land described in the First Schedule to this Act and the land described in the Second Schedule to this Act.

(7) On application made in writing within a period of six months from the commencement of this Act by the representatives of any person buried in the land described in the First Schedule to this Act:

(a) where such person was buried not more than twenty years before such commencement, or

(b) where such person was buried more than twenty years before such commencement and the grave in which such person is buried has, in the opinion of the Minister, received regular care during the period of five years immediately preceding such commencement or had some substantial repairs made to it during the period of ten years immediately preceding such commencement,

the Minister shall cause the remains of such person, together with the headstone, grave enclosure or other surface structure erected over the grave of such person, to be collected with due care and removed to the cemetery area referred to in section six of this Act or to another cemetery selected at the discretion of the Minister, and shall cause any such remains so removed to be reverently reinterred and such headstone, grave enclosure or other surface structure to be re-erected.

(8) The Trust shall plant the land described in the First Schedule to this Act with trees, lawns and flowers and may do such other things as it considers necessary to effect the conversion of such land into a rest park and garden area.

4A Trustee of the Park

The Camperdown Memorial Rest Park Trust is dissolved and the council of the local government area within which the Camperdown Memorial Rest Park is for the time being situated shall be the sole trustee of that park.

4B Estate of Trust

The Trust shall, for all purposes of this Act and of any by-law made under section 4C, be deemed to hold an estate in fee simple in the land described in the First Schedule to this Act, but shall not be capable of alienating, charging or in any way disposing of such land, or any part thereof.

4C By-laws

- (1) The Governor may make by-laws:
 - (a) (Repealed)
 - (b) for the protection of shrubs, trees, and herbage growing upon the land described in the First Schedule to this Act,
 - (c) regulating the use and enjoyment of such land, and
 - (d) for the removal of trespassers and other persons causing annoyance or inconvenience upon such land.
- (2) The Governor may by such by-laws impose a penalty not exceeding ten pounds for any breach thereof.
- (3) Section 41 of the *Interpretation Act 1897*, applies in respect of a by-law made under this section as if this Act had been passed after the commencement of the *Interpretation (Amendment) Act 1969*.
- (4) A copy of such by-laws shall be posted in some conspicuous place in such land.

4D Aid of police may be called in if necessary

The Trust or any ranger or other officer appointed by it may call in the aid of the police for the removal, by force if necessary, of any person who is found committing a breach of any by-law, or who by disorderly or insulting conduct upon or in the immediate neighbourhood of the land described in the First Schedule to this Act, causes annoyance or inconvenience to persons being on the said land, or going to or coming from the same.

4E Legal proceedings

- (1) Proceedings for the recovery of any penalty imposed for the breach of any by-law made under section 4C, may be taken in a summary way before a Local Court nearest to the place where the breach of such by-law was committed.
- (2) The whole amount of all such penalties shall be paid to the Trust for the purposes of the trust upon which the land described in the First Schedule to this Act is held.
- (3) In any such proceedings, it shall be presumed that such by-laws were duly posted and published until the contrary be shown.

4F (Repealed)

5 Vesting of land in Second Schedule in Church of England Property Trust Diocese of Sydney

- (1) Subject to this Act the land described in the Second Schedule to this Act is hereby vested in the Church of England Property Trust Diocese of Sydney for an estate in fee

simple to hold the same subject to the same trusts and for the same purposes as those upon and for which the trustees appointed under the *Camperdown Cemetery Trust Act of 1871* held such land immediately before the commencement of this Act:

Provided that nothing contained in this subsection or in subsection four of section six of this Act shall revive any exclusive right of interment in such land divested by subsection two of this section.

- (2) Any estate or interest in the said land which, immediately before the commencement of this Act, was vested in or held by the trustees appointed under the *Camperdown Cemetery Trust Act of 1871* or any other person is hereby divested, and the said trustees and all such other persons are hereby discharged from any duties, liabilities or obligations existing immediately before the commencement of this Act in respect of or in relation to the said land.
- (3) The provisions of sections twenty-six and thirty-two of the *Church of England Trust Property Act 1917*, as amended by subsequent Acts, shall apply to so much of the land described in the Second Schedule to this Act as is not described in the notification in the Gazette referred to in subsection two of section six of this Act.

5A Power to fill in vaults

Notwithstanding anything contained in this Act, the Minister shall have power, on the recommendation of the Director-General of Public Health, to cause any vault in the land described in the Second Schedule to this Act to be filled in for the purpose of preventing such vault from giving off drainage which in the opinion of the Director-General of Public Health is detrimental to public health.

6 Redesign and reconstruction of cemetery area

- (1) The Minister shall have power to select any part of the land described in the Second Schedule to this Act and to redesign and reconstruct such part as a cemetery area.
- (2) As soon as practicable after the exercise of such power of selection, the Minister shall cause to be published in the Gazette a notification containing a description of the part of the said land so selected.
- (3) The Minister shall thereupon cause the land described in such notification to be redesigned and reconstructed as a cemetery area, and for that purpose may cause the remains of any person buried in the land described in the Second Schedule to this Act together with the headstone, grave enclosure or other surface structure erected over the grave of such person, to be collected with due care and removed to any other part of the said land or to another cemetery selected at the discretion of the Minister, and shall cause any such remains so removed to be reverently reinterred and such headstone, grave enclosure or other surface structure to be re-erected.
- (4)

- (a) As soon as practicable after completion of the redesigning and reconstruction of the cemetery area pursuant to this section the Standing Committee of the Synod of the Diocese of Sydney shall appoint trustees of such area. The trustees so appointed shall not exceed seven in number.

The persons first appointed as trustees shall include such of the persons who immediately before the commencement of this Act were trustees of the lands described in the First and Second Schedules to this Act as are living at the time of such appointment and prepared to accept appointment.

- (b) Such trustees shall have the care, control and management of such area and shall, subject to this Act, administer the same in accordance with the same trusts and for the same purposes as those upon and for which the land comprised in such area was held immediately before the commencement of this Act.
- (c) While such area is under the care, control and management of trustees appointed under this section the Church of England Property Trust Diocese of Sydney shall be discharged from any duty, obligation or liability arising out of or connected with the trusts and purposes upon and for which such area is held.
- (d) The Standing Committee of the Synod of the Diocese of Sydney may appoint a new trustee to fill any vacancy occurring for any reason among the trustees appointed pursuant to this subsection.

(5)

- (a) The Minister shall pay to the Church of England Property Trust Diocese of Sydney an amount of ten thousand pounds which shall be invested by the said Church of England Property Trust in any of the securities authorised by the [Trustee Act 1925](#), as amended by subsequent Acts.
- (b) The said Church of England Property Trust shall as soon as practicable after the first day of July in each year pay the interest arising from such investment during the period of twelve months immediately preceding (after deducting therefrom any expenses reasonably incurred by the said Church of England Property Trust in connection with such investment during that period) to the trustees of the said cemetery area who shall apply such interest to the permanent upkeep of such area.

7 Property (other than land) vested in trustees under Camperdown Cemetery Trust Act of 1871

- (1) All property (other than the land described in the First and Second Schedules to this Act) which immediately before the commencement of this Act was vested in the trustees appointed under the *Camperdown Cemetery Trust Act of 1871* (in this section referred to as the **cemetery trustees**) in their capacity as such trustees is hereby vested in the Church of England Property Trust Diocese of Sydney pending the

appointment of trustees pursuant to subsection four of section six of this Act. Until such appointment the said Church of England Property Trust may apply such property for the same purposes as the cemetery trustees might have done but for this Act.

- (2) The said Church of England Property Trust may enforce, realise or discharge any security or charge existing immediately before the commencement of this Act in favour of the cemetery trustees in respect of any moneys advanced by them and may pursue the same remedies for the recovery of any such moneys as the cemetery trustees might have done but for this Act.
- (3) Upon the appointment of trustees pursuant to subsection four of section six of this Act:
 - (a) the said property or the residue thereof shall vest in the trustees so appointed and shall be applied by them in furtherance of the trusts and purposes referred to in paragraph (b) of the said subsection, and
 - (b) without prejudice to anything done, prior to such appointment, by the said Church of England Property Trust under the powers conferred by subsection two of this section, such powers shall, as from such appointment, cease and determine in respect of the said Church of England Property Trust and shall be exercisable thereafter by the trustees so appointed.

8 (Repealed)

9 Exclusive rights to burial

Any person who immediately before the commencement of this Act was the holder of any exclusive right to burial within the land described in the First or Second Schedule to this Act may, within a period of one year from such commencement, apply in writing to the Minister to be granted a fresh exclusive right to burial and the Minister shall, as soon as practicable after any application has been so made, arrange for the provision to such person of a new burial site either in the cemetery area referred to in section six of this Act or in another cemetery selected at the discretion of the Minister.

10 Removal and reinterment of human remains by representatives

At any time before the expiration of six months from the commencement of this Act or during such further period or periods as the Minister may in any case allow, the representatives of any person buried in the land described in the First or Second Schedule to this Act may, at their own expense, remove the headstone, grave enclosure or other surface structure erected over the grave of such person or may, at their own expense, and with the permission of the Director-General of Public Health, remove to such cemetery as they desire the remains of such person:

Provided that any such representatives shall give to the Minister not less than twenty-eight days' notice of their intention.

11 Carrying out of works by Government Departments and persons authorised by Minister

The Minister may arrange with the Minister of any Government Department or with any person for the carrying out by such department or person of any work required or authorised by or under this Act to be carried out by the Minister.

12 Financial provisions

All moneys required by the Minister for the purpose of carrying out or giving effect to this Act shall be paid out of moneys provided by Parliament for the purpose.

13 Protection from claims for compensation

Except where otherwise in this Act expressly provided, no compensation shall be made or be payable to any person in respect of the divesting of any estate or interest by this Act or in respect of the performance of any act authorised by this Act.

14 Alteration of register book

The Registrar-General is authorised to make such entries with respect to the register book under the *Real Property Act 1900*, and any certificate of title therein and duplicate thereof as may be advisable to give effect to this Act.

First Schedule

All that piece or parcel of land containing 8 acres 14 perches be the same more or less situated in the Parish of Petersham, County of Cumberland, City of Sydney, commencing at the junction of the south-eastern side of Federation Street with the south-western side of Church Street and bounded thence, on the north-east, by Church Street bearing 160 degrees 34 minutes 40 seconds 210 feet 8½ inches and thence 160 degrees 23 minutes 49 feet 4¾ inches, on the south-east by a line bearing 250 degrees 0 minutes 15 seconds 571 feet 9¼ inches, again on the north-east by a line bearing 160 degrees 20 minutes 357 feet 11 inches, generally on the north-west by lines bearing 70 degrees 5 minutes 37 feet 1 inch, 160 degrees 5 minutes 31 feet 4¾ inches, 70 degrees 5 minutes 33 feet 5½ inches, 340 degrees 5 minutes 31 feet 4¾ inches and thence 70 degrees 5 minutes 368 feet 9¾ inches, again on the north-east by a line bearing 159 degrees 37 minutes, 103 feet 4 inches to Lennox Street, again on the south-east by Lennox Street bearing 249 degrees 41 minutes 653 feet 8¾ inches, on the south-west by the north-eastern boundaries of lots 11 to 31 both inclusive in Deposited Plan 7 in all bearing 340 degrees 01 minute 698 feet 10¼ inches, and thence by lines bearing 70 degrees 28 minutes 1 foot ¾ inches and thence 340 degrees 01 minute 33 feet 2½ inches to Federation Street aforesaid, and again on the north-west by Federation Street bearing 70 degrees 28 minutes 788 feet 6½ inches to the point of commencement.

Second Schedule

All that piece or parcel of land containing 4 acres 3 roods 5¾ perches be the same more or less situated in the Parish of Petersham, County of Cumberland, City of Sydney, commencing on the south-western side of Church Street, at the most easterly corner of the area 8 acres 14 perches described in the First Schedule to this Act and bounded thence on the north-east by Church Street bearing 160 degrees 23 minutes 378 feet 9¾ inches, generally on the south-east by lines bearing 250 degrees 3 minutes 131 feet 11 inches, 339 degrees 37 minutes 20 feet 1½ inches, 250 degrees 5 minutes 368

feet $9\frac{3}{4}$ inches 160 degrees 5 minutes 31 feet $4\frac{3}{4}$ inches, 250 degrees 5 minutes 33 feet $5\frac{1}{2}$ inches, 340 degrees 5 minutes 31 feet $4\frac{3}{4}$ inches and thence 250 degrees 5 minutes 37 feet 1 inch on the south-west by a line bearing 340 degrees 20 minutes 357 feet 11 inches and on the north-west by a line bearing 70 degrees 15 seconds 571 feet $9\frac{1}{4}$ inches to the point of commencement.