

# Funeral Funds Act 1979 No 106

[1979-106]



New South Wales

## Status Information

### Currency of version

Historical version for 14 December 2001 to 29 November 2004 (accessed 19 May 2024 at 3:47)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Funeral Funds Amendment Act 2003 No 61](#) (not commenced — to commence on 30.11.2004)
- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2004](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 19 November 2004

# Funeral Funds Act 1979 No 106



New South Wales

## Contents

<b>Long title</b> .....	9
<b>Part 1 Preliminary</b> .....	9
1 Name of Act .....	9
2 Commencement .....	9
3 (Repealed) .....	9
4 Definitions .....	9
5 Agreement to supply burial site a pre-arranged contract in certain cases .....	12
<b>Part 2 Administration</b> .....	12
6 Documents .....	12
7 (Repealed) .....	12
8 Inspectors .....	12
9 Delegation .....	13
10 (Repealed) .....	13
<b>Part 3 Funeral contribution funds</b> .....	13
<b>Division 1 Registration of funeral contribution funds</b> .....	13
11 Contributory funeral benefit business to be carried on only by companies registered under this Act .....	13
12 Application for registration to carry on contributory funeral benefit business .....	15
13 Requirements for registration .....	15
14 Registration of company to carry on contributory funeral benefit business .....	16
15 Alteration or addition to rules of funeral contribution fund .....	16

16 Cancellation of registration of funeral contribution fund .....	17
16A Payment of GST by funeral contribution fund.....	17
<b>Division 2 Provision of funeral services</b> .....	18
17 Tied arrangements with undertaker .....	18
18 Cash payment in certain cases if funeral service not carried out by undertaker designated by fund .....	18
19 Costs recoverable by undertaker where funeral service provided by fund .....	18
<b>Division 3 Management of funeral contribution funds</b> .....	19
20 Certain persons prohibited from managing etc affairs of funeral contribution funds .....	19
21 Limitations on certain management expenses .....	20
<b>Division 4 Investment and borrowing</b> .....	20
22 Investment of surplus funds etc .....	20
23 No borrowing except for temporary accommodation .....	21
<b>Division 5 Returns and registers</b> .....	21
24 Returns .....	21
25 Funeral contribution fund etc to provide information in certain cases.....	22
26 Registers.....	23
27 Documents to be available for inspection by contributors etc .....	24
<b>Division 6 Actuarial investigation</b> .....	24
28 Actuarial investigation of funeral contribution funds .....	24
29 Basis of valuations.....	25
30 Procedure where deficiency or surplus or where management expenses unduly high.....	25
<b>Division 7 Transfer and amalgamation of contributory funeral benefit business</b> .....	26
31 Transfer or amalgamation to be confirmed by Director-General.....	26
32 Schemes for transfer or amalgamation .....	26
33 Transfer by direction of Director-General.....	27
<b>Part 4 Pre-arranged funeral funds and pre-arranged contracts</b> .....	28

<b>Division 1 Registration of pre-arranged funeral funds</b>	28
34 Trustee under pre-arranged contract to be registered under this Act	28
35 Application for registration	29
36 Requirements for registration	29
37 Registration of pre-arranged funeral funds	29
38 Additional or substitute co-trustee	30
39 Cancellation of registration	30
<b>Division 2 Money etc, under pre-arranged contracts to be held in trust by pre-arranged funeral fund</b>	
	31
40 Payment of money etc under pre-arranged contract to pre-arranged funeral fund	31
41 Money etc paid under pre-arranged contract to be held in trust	32
42 Transfer of trust funds under pre-arranged contracts	32
42A Payment of GST under pre-arranged contracts	33
<b>Division 3 Administration of trust funds under pre-arranged contracts</b>	33
43 Pre-arranged funeral funds, trust accounts	33
44 Investment of trust funds under pre-arranged contracts	33
45 Common fund	34
46 Management expenses in administration of trust funds	34
47 Payment of trust funds where funeral service provided	35
48 Payment of trust funds where funeral service not required	35
49 Payment of trust funds where pre-arranged contract cancelled	35
<b>Division 4 Pre-arranged contracts</b>	36
50 Rise and fall clause not permitted	36
51 Description of certain funeral services specified in pre-arranged contract to contain prescribed particulars	
	36
52 Instalment protection clause	37
53 Costs recoverable by undertaker where funeral service to be supplied under pre-arranged contract	
	37
<b>Part 5 Supervision of funeral funds</b>	37

<b>Division 1 Inspections</b>	37
54 Powers of inspection	37
<b>Division 2 Inquiries</b>	38
55 Definitions	38
56 Power to hold inquiries	38
57 Procedure with respect to holding of inquiry	39
58 Report of Director-General	41
59 Further powers of Director-General after inquiry	42
60 Privileged communications	42
61 Expenses of inquiry	42
62 Concealing etc of records	43
<b>Division 3 Suspension of new business of funeral funds</b>	44
63 Direction to funeral contribution fund not to accept new contributors	44
64 Direction to pre-arranged funeral fund not to act as trustee of trust funds under new pre-arranged contracts	44
65 Revocation and variation of directions	44
66 Penalty for failure to comply with direction	44
<b>Division 4 Appointment of administrator of funeral fund</b>	44
67 Definitions	44
68 Appointment and powers of administrator of funeral contribution fund	45
69 Appointment and powers of administrator of pre-arranged funeral fund	47
70 Holding of meeting for appointment of directors of funeral contribution fund	48
71 Termination of appointment of administrator	49
72 Expenses of administration	49
73 Liability for losses incurred during administration	50
<b>Division 5 Winding up of funeral contribution funds</b>	50
74 Exclusion of Corporations Act 2001 of the Commonwealth	50
74A Application of certain winding up provisions of Corporations legislation	50
<b>Part 6 Appeals against decisions of Director-General</b>	52

75 Appeal against refusal to register funeral contribution fund or to approve alteration etc of rules ..	52
76 Appeal against direction to transfer or refusal to confirm transfer or amalgamation in respect of funeral contribution fund .....	53
77 Appeal against refusal to register pre-arranged funeral fund or decision to cancel that registration etc .....	53
78 Appeal against refusal to confirm transfer in respect of pre-arranged funeral fund .....	54
79 Appeal against direction to suspend new business of funeral funds .....	54
80 Appeal against appointment of administrator of funeral fund .....	55
81 Time for making appeal .....	55
82 Failure of Director-General to act on application deemed refusal .....	56
83 Reasons for refusal to be given .....	56
84 Decision of Court final etc .....	56
<b>Part 7 Miscellaneous .....</b>	<b>56</b>
85 Offence to obstruct Director-General etc .....	56
86 Enlargement or abridgement of time .....	57
87 Giving of notice .....	57
88 Inspection of documents .....	57
89 Relationship with Corporations legislation .....	57
90 Offences by corporation .....	58
91 Offences generally .....	58
92 Regulations .....	59
<b>Part 8 Existing funeral contribution funds .....</b>	<b>59</b>
<b>Division 1 Preliminary .....</b>	<b>59</b>
93 Definitions .....	59
94 Existing funeral contribution fund to decide whether to transfer business to registered fund or refund contributions .....	60
95 This Part to apply despite agreement between contributors and existing funeral contribution fund void .....	61
96 Certain debts of existing funeral contribution fund to have priority .....	61
97 No stamp duty for transfers etc under this Part .....	61
<b>Division 1A Exemption of existing funeral contribution funds .....</b>	<b>61</b>

97A Exemption of existing funeral contribution funds .....	61
97B Exempted funds subject to certain terms and conditions.....	62

## **Division 2 Provisions applicable where contributions to be refunded .....63**

98 Application of Division .....	63
99 Cessation of business on prescribed day.....	63
100 Repayment fund to be established for purpose of refund of contributions.....	63
101 Amount to be paid by existing funeral contribution fund as refund of contributions.....	64
102 Distribution of repayment fund among contributors .....	65

## **Division 3 Provisions applicable where business to be transferred .....65**

103 Application of Division .....	65
104 Restriction on new contributors prior to transfer.....	65
105 Director-General may give directions for transfer of business.....	66
106 Transfer of contributions paid by contributors .....	66
107 Failure to transfer business in accordance with directions of Director-General .....	67
108 Interest payable on instalments .....	67
109 Failure to pay instalments .....	67
110 Existing fund to pay interest on borrowing by fund to which business is transferred in certain cases .....	68

## **Part 9 Existing pre-arranged funeral funds and pre-arranged contracts**

.....	68
-------	----

### **Division 1 Preliminary .....68**

111 Definitions .....	68
112 Person who agreed to supply funeral services under existing pre-arranged contracts to decide whether to cancel contracts or not .....	69
113 Certain debts to have priority.....	69
114 No stamp duty for transfers etc under this Part .....	69

### **Division 1A Exemption of existing pre-arranged funeral funds.....70**

114A Application of Division .....	70
114B Exemption of existing pre-arranged funeral funds .....	70
114C Exempted funds subject to certain conditions.....	70

**Division 2 Cancellation of existing pre-arranged contracts**..... 71

115 Application of Division ..... 71

116 Cancellation of existing pre-arranged contracts ..... 71

117 Repayment fund to be established for purpose of refund of subscriptions under cancelled contracts  
..... 71

118 Amount to be paid as refund of subscriptions ..... 72

119 Distribution of repayment fund among subscribers..... 73

**Division 3 Continuation of existing pre-arranged contracts**..... 74

120 Application of Division ..... 74

121 Directions relating to existing pre-arranged contracts ..... 74

122 Transfer of subscriptions to pre-arranged funeral fund..... 74

123 Failure to comply with directions of Director-General ..... 75



# Funeral Funds Act 1979 No 106



New South Wales

An Act to control and regulate contributory and pre-arranged funeral funds.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Funeral Funds Act 1979*.

### 2 Commencement

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

### 4 Definitions

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

**actuary** means:

- (a) a Fellow of the Institute of Actuaries incorporated by Royal Charter on 29 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 bank, building society or credit union,
- (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a bank, building society or credit

union, and

- (c) securities or documents of title to securities in the possession or under the control of a bank, building society or credit union whether by way of pledge or otherwise.

**company** means a company within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

**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 or her death.

**contributory funeral benefit business** means business in relation to a scheme or arrangement for the provision of funeral benefits to contributors.

**Department** means the Department of Fair Trading.

**Director-General** means the Director-General of the Department.

**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.

**GST** has the same meaning as in the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth.

**individual** means a natural person.

**inspector** means an inspector appointed under section 8.

**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.

**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 the person contributes for funeral benefits, and
- (b) a person carries on contributory funeral benefit business if the person 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 the person 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 the person 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.

(6) Notes included in this Act do not form part of this Act.

## **5 Agreement to supply burial site a pre-arranged contract in certain cases**

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
- (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 2 Administration**

### **6 Documents**

All documents lodged under this Act with the Director-General are to be kept in an office of the Department.

### **7 (Repealed)**

### **8 Inspectors**

- (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 or her capacity as an inspector, an officer within the meaning of that Act but, if the terms and conditions on which the person is appointed so provide, any specified provisions of that Act or the Regulations thereunder, whether with or without specified modifications, apply to and in respect of the person as if the person were an employee within the meaning of that Act.

- (3A) An investigator appointed under the [Fair Trading Act 1987](#) is taken to be an inspector for the purposes of this Act.
- (4) An inspector shall be provided by the Director-General with a certificate of his or her authority as an inspector.
- (5) An inspector, on exercising in any place a power conferred on the inspector 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 or her authority as an inspector.

## **9 Delegation**

- (1) The Director-General may, with the approval of the Minister and by instrument in writing, delegate such of the Director-General's powers, authorities, duties and functions under this Act (other than this power of delegation) as may be specified in the instrument of delegation to any officer or employee employed in the Department.
- (2) The Minister or the Director-General 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.
- (5) Notwithstanding the making of any delegation under subsection (1), the Director-General 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 Director-General.

## **10 (Repealed)**

## **Part 3 Funeral contribution funds**

### **Division 1 Registration of funeral contribution funds**

#### **11 Contributory funeral benefit business to be carried on only by companies registered**

**under this Act**

- (1) A person shall 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) a funeral contribution fund, or
  - (b) exempt from the application of this section pursuant to subsection (3).

Maximum penalty: 20 penalty units.

Maximum daily penalty: 2 penalty units.

- (2) Without limiting the application of subsection (1), a person carries on contributory funeral benefit business if the person 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 friendly society,
    - (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 8 until:
- (a) in the case of such a fund to whom Division 2 of Part 8 applies—the prescribed day within the meaning of that Part in relation to the fund, and
  - (b) in the case of such a fund to whom Division 3 of Part 8 applies—the day on which

the contributory funeral benefit business of the fund is transferred in accordance with that Division.

## **12 Application for registration to carry on contributory funeral benefit business**

- (1) A company may apply to the Director-General 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 Director-General, 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.

## **13 Requirements for registration**

- (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,
  - (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 Director-General 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 [Corporations Act 2001](#) of the Commonwealth, be appointed as the auditor of a 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 the Minister under subsection (1) (e) (ii) to be published in the Gazette.
- (3) The Director-General may prepare and publish in such manner as the Director-General thinks fit a model set of rules for a funeral contribution fund.

#### **14 Registration of company to carry on contributory funeral benefit business**

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

#### **15 Alteration or addition to rules of funeral contribution fund**

- (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 Director-General.
- (2) An application made to the Director-General for an approval under subsection (1) shall be accompanied by such documents as may be prescribed.
- (3) The Director-General shall refuse to approve an alteration of or addition to the rules of a funeral contribution fund under subsection (1) if the Director-General 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 Director-General 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.

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

Maximum penalty (subsection (5)): 20 penalty units.

## **16 Cancellation of registration of funeral contribution fund**

- (1) Where the Director-General 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, the Director-General may serve on the fund a notice requiring the fund to satisfy the Director-General, within 1 month after the date of service of the notice, that it is carrying on contributory funeral benefit business in New South Wales.
- (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 Director-General that it has commenced to carry on contributory funeral benefit business in New South Wales, the Director-General 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 Director-General shall notify the Corporate Affairs Commission accordingly.

### **16A Payment of GST by funeral contribution fund**

Nothing in this Part or in the rules of a company prevents a company from applying income of the company to the payment of GST payable on the supply by the company of funeral benefits.

## **Division 2 Provision of funeral services**

### **17 Tied arrangements with undertaker**

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.

### **18 Cash payment in certain cases if funeral service not carried out by undertaker designated by fund**

- (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 Director-General 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 Director-General 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).

### **19 Costs recoverable by undertaker where funeral service provided by fund**

- (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 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 the person was aware that the contributor was entitled to be provided without cost with the service that the fund had undertaken to provide but that the person 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 the person is not entitled to recover under subsection (1).

Maximum penalty: 10 penalty units.

### **Division 3 Management of funeral contribution funds**

#### **20 Certain persons prohibited from managing etc affairs of funeral contribution funds**

- (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.

Maximum penalty: 10 penalty units.

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

## **21 Limitations on certain management expenses**

- (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 the services of the director or officer 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.
- (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 10 penalty units, 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 Investment of surplus funds etc**

- (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:
  - (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 one or more banks, building societies or credit unions 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.

Maximum penalty: 10 penalty units.

### **23 No borrowing except for temporary accommodation**

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 one or more banks, building societies or credit unions to such extent as may, from time to time, be approved by the Director-General.

Maximum penalty: 10 penalty units.

## **Division 5 Returns and registers**

### **24 Returns**

- (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 Director-General 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 person who, as at the date of lodgment of the return, is an executive officer of the fund (within the meaning of the [Corporations Act 2001](#) of the Commonwealth) and with respect to any person who, as at that date, is a director or secretary of the fund in respect of whom the fund has lodged (or should have lodged) a notice under Part 2D.5 of that Act,
  - (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, building society and credit union 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 secretary of the funeral contribution fund, to be a true copy of an annual financial report relating to the fund required by Division 1 of the Commonwealth (as applying of its own force or under subsection (3A)) to be prepared for or with respect to its financial year immediately preceding the date on which the return is required to be lodged with the Director-General under subsection (1), and
  - (b) a copy of an auditor's report or reports required to be made by Division 3 of Part

2M.3 of the *Corporations Act 2001* of the Commonwealth on that financial report (as applying of its own force or under subsection (3A)).

(3A) An exempt fund is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Division 1 of Part 2M.3 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

(a) the provisions apply as if:

(i) sections 292 (2), 293 and 294 were omitted from that Part, and

(ii) section 296 (1) were omitted and the following subsection inserted instead:

“(1) The financial report for a financial year must comply with the accounting standards.”

(b) a reference to ASIC is to be read as a reference to the Director-General,

(c) such other modifications (within the meaning of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

(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 Director-General details in writing of the change.

(5) In this section, **exempt fund** means a funeral contribution fund that is a small proprietary company within the meaning of the *Corporations Act 2001* of the Commonwealth that is not required to prepare a financial report and director’s report under Division 1 of Part 2M.3 of the *Corporations Act 2001* of the Commonwealth.

Maximum penalty: 2 penalty units.

## **25 Funeral contribution fund etc to provide information in certain cases**

(1) The Director-General 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 the Director-General, within such period as is specified in the notice:

(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.

Maximum penalty: 5 penalty units.

(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 the person, 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.

## **26 Registers**

(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 the person ceased to be a contributor,
  - (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 the person's 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.

Maximum penalty: 2 penalty units.

## **27 Documents to be available for inspection by contributors etc**

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:

- (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 Director-General 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.

Maximum penalty: 2 penalty units.

## **Division 6 Actuarial investigation**

### **28 Actuarial investigation of funeral contribution funds**

- (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 Director-General 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 Director-General an abstract, prepared in the prescribed manner and containing the prescribed particulars, of the report by the actuary of the results of that investigation.

Maximum penalty: 10 penalty units.

## **29 Basis of valuations**

(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.

(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 Procedure where deficiency or surplus or where management expenses unduly high**

(1) Where 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 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,

the Director-General 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 Director-General considers necessary in order to reduce the deficiency, surplus or management expenses, as the case may be.

- (2) The Director-General 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).

Maximum penalty: 10 penalty units.

Maximum daily penalty: 1 penalty unit.

## **Division 7 Transfer and amalgamation of contributory funeral benefit business**

### **31 Transfer or amalgamation to be confirmed by Director-General**

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 Director-General in accordance with section 32, or
- (b) a direction of the Director-General in accordance with section 33.

### **32 Schemes for transfer or amalgamation**

- (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 Director-General of any scheme for transfer or amalgamation may be made by or on behalf of any funeral contribution fund concerned.
- (3) The Director-General may require any funeral contribution fund that has applied for the confirmation of a scheme for transfer or amalgamation to:
  - (a) lodge with the Director-General 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 Director-General 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 Director-General, or
- (d) lodge with the Director-General 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 Director-General may cause a report on any scheme to be made by the Government Actuary and, if the Director-General 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 Director-General under subsection (3) in relation to the scheme have been complied with, the Director-General may, after hearing any person whom the Director-General 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 Director-General refuses to confirm a scheme for transfer or amalgamation under subsection (5), the Director-General 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 Director-General 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.

### **33 Transfer by direction of Director-General**

- (1) Subject to this section, the Director-General 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 Director-General, and
  - (b) at the same time, require the fund, within a period specified by the Director-General, to enter into an agreement, approved by the Director-General, to give

effect to the transfer so directed.

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

Maximum penalty (subsection (4)): 10 penalty units.

## **Part 4 Pre-arranged funeral funds and pre-arranged contracts**

### **Division 1 Registration of pre-arranged funeral funds**

#### **34 Trustee under pre-arranged contract to be registered under this Act**

- (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,
  - (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).

Maximum penalty: 20 penalty units.

Maximum daily penalty: 2 penalty units.

- (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 9.

### **35 Application for registration**

- (1) A corporation or any group of 3 or more individuals may apply to the Director-General to be registered under this Act to act as the trustee or trustees of trust funds under pre-arranged contracts.
- (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 Director-General, and
  - (b) be accompanied by such documents as may be prescribed.

### **36 Requirements for registration**

- (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 the person is a member or officer of a corporation that carries on that business.

### **37 Registration of pre-arranged funeral funds**

- (1) On receipt of an application for registration from a corporation or any group of individuals under section 35, the Director-General 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 Director-General 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 the Director-General 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
- (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 Additional or substitute co-trustee**

- (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 or her appointment is confirmed by the Director-General.

Maximum penalty: 20 penalty units.

Maximum daily penalty: 2 penalty units.

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

### **39 Cancellation of registration**

- (1) The Director-General 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 or her creditors or makes an assignment of his or her estate or any part of his or her 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

(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 Director-General or, where an appeal is lodged against the cancellation under Part 6, 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 Payment of money etc under pre-arranged contract to pre-arranged funeral fund**

- (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.

Maximum penalty: 20 penalty units.

- (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 Money etc paid under pre-arranged contract to be held in trust**

- (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.
- (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.

#### **42 Transfer of trust funds under pre-arranged contracts**

- (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 Director-General 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 Director-General 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 Director-General 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 Director-General refuses to confirm a scheme for transfer under subsection (4), the Director-General 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 Director-General 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.

(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.

#### **42A Payment of GST under pre-arranged contracts**

Nothing in this Part:

(a) requires the payment into a trust fund or trust account, or

(b) prevents the payment from a trust fund or trust account,

in relation to a pre-arranged contract entered into on or after 1 December 1999 of GST payable on the supply of a funeral service under the pre-arranged contract.

### **Division 3 Administration of trust funds under pre-arranged contracts**

#### **43 Pre-arranged funeral funds, trust accounts**

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

Maximum penalty: 10 penalty units.

#### **44 Investment of trust funds under pre-arranged contracts**

A pre-arranged funeral fund may invest any money paid to the fund under pre-arranged contracts in any manner:

(a) for the time being authorised for the investment of trust funds, or

(b) prescribed for the purposes of this paragraph.

#### **45 Common fund**

- (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.
- (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 Management expenses in administration of trust funds**

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.

#### **47 Payment of trust funds where funeral service provided**

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.

#### **48 Payment of trust funds where funeral service not required**

- (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,the fund may, with the approval of the Director-General 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).

#### **49 Payment of trust funds where pre-arranged contract cancelled**

- (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 the person's legal personal representative may, if the person 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 Director-General 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) the person 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 Director-General 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) the legal personal representative 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 the person 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.
- (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 Rise and fall clause not permitted**

- (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.

Maximum penalty: 20 penalty units.

- (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 Description of certain funeral services specified in pre-arranged contract to contain prescribed particulars**

- (1) This section applies to any funeral service prescribed for the purposes of this section.
- (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.

Maximum penalty: 10 penalty units.

- (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).

## **52 Instalment protection clause**

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.

## **53 Costs recoverable by undertaker where funeral service to be supplied under pre-arranged contract**

- (1) A person who supplies a funeral service to any person with whom the person 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 the person 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 the person was aware that the deceased was entitled to be supplied without cost with the service specified in the contract but that the person 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 the person from the trust funds under the pre-arranged contract.
- (2) A person shall not demand payment for any charge which the person is not entitled to recover under subsection (1).

Maximum penalty: 10 penalty units.

# **Part 5 Supervision of funeral funds**

## **Division 1 Inspections**

### **54 Powers of inspection**

- (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 8 or an existing pre-arranged funeral fund within the meaning of Part 9,the Director-General 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 Director-General 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.
- (2) For the purpose of and in connection with an inspection under subsection (1), the Director-General or any inspector may:
- (a) request any person employed or engaged at any place entered pursuant to that subsection to produce to the Director-General 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 the Director-General or inspector thinks necessary for any purpose referred to in subsection (1) (a) or (b).

## Division 2 Inquiries

### 55 Definitions

In this Division:

**funeral fund** includes an existing funeral contribution fund within the meaning of Part 8 and an existing pre-arranged funeral fund within the meaning of Part 9.

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

### 56 Power to hold inquiries

- (1) Where the Director-General 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, the Director-General 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 Director-General may determine.
- (2) Where the Director-General decides to hold an inquiry under this Division, the

Director-General shall forthwith notify the funeral fund concerned in writing of that decision.

**57 Procedure with respect to holding of inquiry**

- (1) For the purposes of an inquiry under this Division, the Director-General may require a specified person:
  - (a) to produce to the Director-General at a place specified by the Director-General 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 Director-General all reasonable assistance in connection with the inquiry, and
  - (c) to attend before the Director-General 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 Director-General under this section, the Director-General may take possession of those records for such period as the Director-General thinks necessary for the purposes of the inquiry, and during that period the Director-General 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 Director-General 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 Director-General specified in a notice referred to in subsection (2) to the extent to which the person is able to comply with it,
  - (b) in purported compliance with such a requirement provide information which is to the person's knowledge false or misleading in a material particular, or
  - (c) when appearing before the Director-General for examination pursuant to such a requirement:
    - (i) make a statement which is to the person's knowledge false or misleading in a material particular, or
    - (ii) refuse or fail to take an oath.

Maximum penalty: 10 penalty units.

- (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 Director-General:
    - (i) address the Director-General, and
    - (ii) examine that person,in relation to matters in respect of which the Director-General has questioned that person.
- (6) A specified person is not excused from answering a question put to the person by the Director-General on the ground that the answer might tend to incriminate the person but, where that person claims, before answering the question, that the answer might incriminate the person, neither the question nor the answer is admissible in evidence against the person 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 Director-General 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 Director-General is satisfied that a specified person has failed without lawful excuse to comply with a requirement of the Director-General to the extent to which that person is capable of complying with it, the Director-General may certify the failure in writing under the Director-General's hand to the Supreme Court.
- (10) Where the Director-General 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 Director-General to the extent to which the person 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 the person had been guilty of contempt of the Supreme Court and, if it thinks fit, also make an order under paragraph (a).
- (11) The Director-General shall cause notes of an examination made by the Director-General 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 Director-General, 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 the person 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 Report of Director-General**

- (1) When the Director-General has completed an inquiry under this Division, the Director-General shall prepare and give to the Minister a report of the Director-General's 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.
- (2) Subject to subsection (3), the Director-General shall not give a copy of a report prepared under subsection (1) to a person if the Minister has informed the Director-General that the Minister believes that:
  - (a) legal proceedings that have been, or that in the Minister's 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 the Minister 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, the Minister may, by notice in writing given before or after the institution of the prosecution, require a person whom the Minister 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.

- (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 Further powers of Director-General after inquiry**

After completing an inquiry under this Division, the Director-General:

- (a) may retain the records of which the Director-General has taken possession under section 57 for such period as the Director-General 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 the Director-General 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 the Director-General's 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 Director-General to inspect at all reasonable times such of those records as that person would be so entitled to inspect.

## **60 Privileged communications**

The Director-General 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 or her capacity as such except as regards the name and address of his or her client.

## **61 Expenses of inquiry**

- (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 the Minister 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.
- (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 Concealing etc of records**

- (1) A person shall not:
- (a) conceal, destroy, mutilate or alter a record relating to a matter to which an inquiry by the Director-General 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.

Maximum penalty: 20 penalty units or imprisonment for 2 years or both.

- (2) It is a defence to a prosecution under subsection (1) if the defendant proves that the defendant 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 Direction to funeral contribution fund not to accept new contributors

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

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

If the Director-General 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, the Director-General 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.

### 65 Revocation and variation of directions

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

### 66 Penalty for failure to comply with direction

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

Maximum penalty: 10 penalty units.

## Division 4 Appointment of administrator of funeral fund

### 67 Definitions

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.

#### **68 Appointment and powers of administrator of funeral contribution fund**

- (1) Subject to this Division and with the approval of the Minister, the Director-General may, by instrument in writing, appoint an administrator to administer the affairs of a funeral contribution fund if:
  - (a) the fund has failed to provide any funeral benefit it had agreed to provide and the Director-General has reason to believe that further failures of that kind will occur,
  - (b) after being notified by the Director-General of any contravention of a provision of this Act, of the regulations or of the [Corporations Act 2001](#) of the Commonwealth 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 3 of the [Australian Investments and Securities Commission Act 2001](#) of the Commonwealth, the Director-General 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 Director-General 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 the administrator's 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
  - (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 the administrator's appointment as such, take into the custody or under the control of the administrator 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 the administrator by the Director-General, conduct the affairs of the fund in such manner as the administrator 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, the administrator shall be chairperson 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) An administrator of a funeral contribution fund appointed under this Division is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of the *Corporations Act 2001* of the Commonwealth relating to the appointment and re-appointment of auditors and the rights and duties of auditors, subject to the following modifications:
  - (a) any reference in those provisions to the directors of the fund is to be read as a reference to the administrator of the fund, and
  - (b) such other modifications (within the meaning of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (7) The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to Chapter 5 of that Act:
  - (a) the appointment of an administrator of a funeral contribution fund under this Division,

- (b) the exercise of any functions by such an administrator under this Division in relation to the fund.

**Note—**

Section 5F of the [Corporations Act 2001](#) of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

## **69 Appointment and powers of administrator of pre-arranged funeral fund**

- (1) Subject to this Division and with the approval of the Minister, the Director-General may, by instrument in writing, appoint an administrator to administer the affairs of a pre-arranged funeral fund if:
  - (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 Director-General 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 Director-General 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 Director-General has cancelled the registration of the fund under section 39 and the Director-General 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 Director-General 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 the administrator's 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
  - (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 the administrator's appointment as such, take into the custody or under the control of the administrator 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 the administrator by the Director-General, conduct the affairs of the fund in such manner as the administrator thinks most beneficial to the interests of the persons who have entered into pre-arranged contracts in respect of which the administrator acts as trustee.

## **70 Holding of meeting for appointment of directors of funeral contribution fund**

- (1) The Director-General may, at any time while an administrator of a funeral contribution fund is holding office as such, give to the administrator a direction requiring the administrator 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.
- (4) So far as the rules of the funeral contribution fund do not make other provisions 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 Part 2G.2 of the [Corporations Act 2001](#) of the Commonwealth.
- (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 person 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.



- (7) The appointment of a director in accordance with this section is declared to be an excluded matter for the purposes of section 5F of the [Corporations Act 2001](#) of the Commonwealth in relation to the provisions of Division 1 of Part 2D.3 of that Act.

**Note—**

Section 5F of the [Corporations Act 2001](#) of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

## **71 Termination of appointment of administrator**

- (1) An administrator vacates office as such if the administrator:
- (a) dies,
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration as administrator, or of his or her estate, for their benefit,
  - (c) 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 7 of that Act,
  - (d) is convicted in New South Wales of a crime or an offence punishable by imprisonment for a term of 12 months or more, or 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,
  - (e) resigns the office by instrument in writing addressed to the Director-General, or
  - (f) has his or her appointment revoked by the Director-General under subsection (2).
- (2) The Director-General 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 Director-General, by instrument in writing, may, with the approval of the Minister, appoint another person to fill the vacancy.

## **72 Expenses of administration**

- (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 Director-General.

- (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 Director-General 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.

### **73 Liability for losses incurred during administration**

- (1) An administrator of a funeral fund is not liable for any loss incurred by that fund during the administrator's term of office unless the loss was attributable to the administrator's:
  - (a) wilful misconduct,
  - (b) gross negligence,
  - (c) wilful failure to comply with any provision of this Act or the regulations, or
  - (d) in the case of the administration of a funeral contribution fund, 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 Director-General 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 Exclusion of [Corporations Act 2001](#) of the Commonwealth**

The winding up of a funeral contribution fund in accordance with the provisions of this Division is declared to be an excluded matter for the purposes of section 5F of the [Corporations Act 2001](#) of the Commonwealth in relation to the provisions of Chapter 5 of that Act.

#### **Note—**

Section 5F of the [Corporations Act 2001](#) of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

### **74A Application of certain winding up provisions of Corporations legislation**

- (1) The winding up of a funeral contribution fund is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the [Corporations \(Ancillary Provisions\) Act 2001](#) in relation to the provisions of Chapter 5 of the [Corporations Act 2001](#) of the Commonwealth, subject to the following modifications:
  - (a) section 461 is to be read as if the following paragraph were inserted after section

461 (1) (k):

“, or

(l) in the case of a funeral contribution fund within the meaning of the *Funeral Funds Act 1979* of New South Wales, the Director-General of the Department of Fair Trading has, after holding an inquiry under Division 2 of Part 5 of that Act, reported that the Director-General 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.”

(b) section 462 is to be read as if section 462 (2) (e)–(h) and (2A) and (3) were omitted and the following subsection were inserted after section 462 (2):

“(2A) Without limiting the application of subsection (1) to a funeral contribution fund within the meaning of the *Funeral Funds Act 1979* of New South Wales, such a fund may be wound up under an order of the Court on the application of the Director-General of the Department of Fair Trading or on the application of the Director-General and one or more of the parties specified in the subsection.”

(c) section 553 is to be read as if it were amended to insert “or a direction given under section 61 (2) of the *Funeral Funds Act 1979* of New South Wales, is served on a funeral contribution fund” after “wound up” in section 553 (2),

(d) section 556 is to be read as if the following paragraph were inserted after section 556 (1) (h):

“(i) next, any amount that is payable pursuant to a direction given under section 61 (2) of the *Funeral Funds Act 1979* of New South Wales served on a funeral contribution fund that is being wound up.”

(e) section 583 is to be read as if the following subparagraph were inserted after section 583 (c) (iii):

“(iv) if the Part 5.7 body is carrying on a contributory funeral benefit business in contravention of the *Funeral Funds Act 1979* of New South Wales.”

(f) such other modifications (within the meaning of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:
  - (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

## **Part 6 Appeals against decisions of Director-General**

### **75 Appeal against refusal to register funeral contribution fund or to approve alteration etc of rules**

- (1) Where the Director-General:
  - (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 Director-General, or

- (b) directing the Director-General to register the company or approve the alteration of or the addition to the rules of the fund, as the case may be.

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

(1) Where the Director-General:

- (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 Director-General, or
- (b) directing the Director-General to confirm the scheme for transfer or amalgamation, either without modification or subject to such modifications as the Court considers appropriate.

(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.

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

(1) Where the Director-General:

- (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 Director-General, or

(b) directing the Director-General to register the corporation or group of individuals or to confirm the appointment of the individual, as the case may be.

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

(a) confirming the cancellation by the Director-General, or

(b) revoking the cancellation by the Director-General.

#### **78 Appeal against refusal to confirm transfer in respect of pre-arranged funeral fund**

(1) Where the Director-General 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.

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

(a) confirming the refusal of the Director-General, or

(b) directing the Director-General to confirm the scheme for transfer, either without modification or subject to such modifications as the Court considers appropriate.

#### **79 Appeal against direction to suspend new business of funeral funds**

(1) Where the Director-General:

(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,

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 Director-General 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 Director-General if it is not so satisfied.

## **80 Appeal against appointment of administrator of funeral fund**

- (1) Where the Director-General appoints an administrator of a funeral fund under Division 4 of Part 5, 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 the administrator's powers, authorities, duties or functions as such before the order takes effect.

## **81 Time for making appeal**

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

## **82 Failure of Director-General to act on application deemed refusal**

For the purposes of this Part, the Director-General shall be deemed to have refused:

- (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 the Director-General does not give a decision on an application duly made with respect thereto within 3 months after the application is made.

## **83 Reasons for refusal to be given**

Where the Director-General 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 Director-General shall, if so required by that person, notify the person in writing of the grounds of the Director-General's refusal.

## **84 Decision of Court final etc**

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 Director-General.

# **Part 7 Miscellaneous**

## **85 Offence to obstruct Director-General etc**

A person shall not:

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



Maximum penalty: 10 penalty units.

## **86 Enlargement or abridgement of time**

- (1) The Director-General 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 Director-General 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.

## **87 Giving of notice**

The Minister or Director-General 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.

## **88 Inspection of documents**

The Director-General shall, on being requested to do so by any person attending an office of the Department during the ordinary business hours of that office and on the payment by that person of the prescribed fee (if any):

- (a) make available for inspection any return or document lodged with the Director-General 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 the Director-General's hand to be a true copy.

## **89 Relationship with Corporations legislation**

- (1) The regulations may declare a matter (other than a declared matter) that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the [Corporations Act 2001](#) of the Commonwealth in relation to:
  - (a) the whole of the Corporations legislation to which Part 1.1A of the [Corporations Act 2001](#) of the Commonwealth applies, or
  - (b) a specified provision of that legislation, or
  - (c) that legislation other than a specified provision, or
  - (d) that legislation otherwise than to a specified extent.

### **Note—**

Section 5F of the [Corporations Act 2001](#) of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations

legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(2) In this section:

**declared matter** means a matter that is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth by another provision of this Act.

**matter** includes act, omission, body, person or thing.

## 90 Offences by corporation

- (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 the director or officer satisfies the court that:
  - (a) the corporation contravened the provision without the director's or officer's knowledge,
  - (b) the director or officer was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (c) the director or officer, 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.

## 91 Offences generally

- (1) All proceedings for offences against this Act or the regulations shall be disposed of summarily in a Local Court constituted by a 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.
- (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 10 penalty units and, in addition, in the case of a continuing offence, a daily penalty not exceeding 1 penalty unit.

- (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 Regulations**

- (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.
- (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 Director-General 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 2 penalty units 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,
  - (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 8 Existing funeral contribution funds**

### **Division 1 Preliminary**

#### **93 Definitions**

- (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 Director-General in accordance with section 94, or
- (b) where the existing fund is pursuant to this Part deemed to have notified the Director-General that the fund proposes to refund, in accordance with Division 2, contributions paid by contributors in connection with the fund's contributory funeral benefit business, the day on which the fund is deemed to have so notified the Director-General.

(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 or she has previously paid contributions has refused to accept any further contributions from him or her 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 the person ceased to accept contributions for funeral benefits at any time before that commencement and if, immediately before that commencement, the person had not, in the opinion of the Director-General:
  - (i) refunded contributions previously paid for funeral benefits to which the contributors were, when the person 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 Existing funeral contribution fund to decide whether to transfer business to registered fund or refund contributions**

- (1) An existing funeral contribution fund shall, within such period as may be specified by the Director-General by a notice served on that existing fund, notify the Director-General in writing that the fund 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.

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

#### **95 This Part to apply despite agreement between contributors and existing funeral contribution fund void**

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.

#### **96 Certain debts of existing funeral contribution fund to have priority**

In the winding up of an existing funeral contribution fund under the [Corporations Act 2001](#) of the Commonwealth (as applied to the winding up by section 74A), 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.

#### **97 No stamp duty for transfers etc under this Part**

No deed or instrument whereby:

(a) any property is transferred to the Director-General 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 1A Exemption of existing funeral contribution funds**

#### **97A Exemption of existing funeral contribution funds**

(1) The Director-General may, by a notice served on an existing funeral contribution fund, exempt that fund from the operation of section 94.

(2) An existing funeral contribution fund may be exempted under subsection (1) from the operation of section 94 notwithstanding that a notice has not been served on that fund under section 94 (1).

- (3) An existing funeral contribution fund granted an exemption under subsection (1):
  - (a) shall not accept any new contributors, and
  - (b) shall carry on the contributory funeral benefit business of the fund in accordance with any directions given by the Minister under section 97B (1),so long as the exemption remains in force.
- (4) The Director-General may at any time revoke an exemption granted under subsection (1).

**97B Exempted funds subject to certain terms and conditions**

- (1) The Minister may, by a notice served on an existing funeral contribution fund who has been granted an exemption under section 97A (1), direct the fund to comply with such terms and conditions:
  - (a) as the Minister considers are necessary or desirable to safeguard the interests of the contributors to the fund, and
  - (b) as are specified in the notice.
- (2) The Minister may at any time vary, revoke, substitute or add to the terms and conditions specified in a notice served under subsection (1) by giving to the existing funeral contribution fund concerned a further direction under that subsection.
- (3) Without limiting the generality of subsection (1), the terms and conditions specified in a notice given to an existing funeral contribution fund under that subsection may:
  - (a) prohibit the alteration of, or addition to, the rules of the fund without the prior approval of the Director-General,
  - (b) require the making of such accounting and audit arrangements by the fund as the Director-General may request by notice given to the fund,
  - (c) require the fund to curtail the investment of money paid to the fund by contributors where the Director-General has given notice to the fund that the Director-General considers such investment is prejudicial to the interests of the contributors,
  - (d) require the furnishing of returns and financial information to the Director-General regarding contributors to the fund and the contributory funeral benefits business generally of the fund, and
  - (e) require the furnishing by the fund of any security the Director-General may request, by notice given to the fund, to safeguard payment of benefits to contributors to the fund.

- (4) Without limiting the generality of section 97A (4), the Minister may revoke an exemption granted to a fund under section 97A (1) if that fund fails to comply with a term or condition referred to in subsection (1).

## **Division 2 Provisions applicable where contributions to be refunded**

### **98 Application of Division**

This Division applies to and in respect of an existing funeral contribution fund who notifies the Director-General, or is deemed to have notified the Director-General, that the fund proposes to refund, in accordance with this Division, contributions paid by contributors in connection with the contributory funeral benefit business of the existing fund.

### **99 Cessation of business on prescribed day**

An existing funeral contribution fund shall not, after the 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.

Maximum penalty: 20 penalty units.

Maximum daily penalty: 2 penalty units.

### **100 Repayment fund to be established for purpose of refund of contributions**

- (1) The Director-General 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.
- (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 Director-General.
- (4) All money to the credit of a repayment fund established under subsection (1) shall be paid by the Director-General into an account in a bank, building society or credit union in New South Wales.

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

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

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



## **102 Distribution of repayment fund among contributors**

- (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 Director-General 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.
- (2) If the Director-General cannot, after due inquiry, ascertain the whereabouts of a person who is entitled to a payment of money from the repayment fund under subsection (1), the Director-General:
  - (a) is not required to make that payment, and
  - (b) may:
    - (i) make any distribution under that subsection without regard to any claim by that person,
    - (ii) pay the money to the Treasurer for the use of the public revenue, or
    - (iii) distribute part of the money under subparagraph (i) and pay part of the money to the Treasurer under subparagraph (ii).
- (3) Sections 9 and 10 of the [Unclaimed Moneys Act 1917](#) shall apply to money paid to the Treasurer under subsection (2) in the same way as they apply to unclaimed money within the meaning of that Act.

## **Division 3 Provisions applicable where business to be transferred**

### **103 Application of Division**

- (1) This Division applies to and in respect of an existing funeral contribution fund who notifies the Director-General that the fund proposes to transfer, in accordance with this Division, the fund's contributory funeral benefit business to a funeral contribution fund.
- (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.

### **104 Restriction on new contributors prior to transfer**

An existing funeral contribution fund shall not, after the prescribed day, accept contributions from persons who wish to become contributors in connection with the fund's contributory funeral benefit business unless the fund has obtained the approval of the Director-General in writing:

- (a) to the admission of persons as contributors in connection with that business, and

(b) to the rules under which the fund carries on that business in respect of those persons.

Maximum penalty: 20 penalty units.

Maximum daily penalty: 2 penalty units.

#### **105 Director-General may give directions for transfer of business**

- (1) The Director-General 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 the fund such directions as the Director-General considers appropriate for the transfer of the fund's contributory funeral benefit business to a funeral contribution fund which has agreed to accept the transfer.
- (2) The Director-General shall not give any directions to an existing funeral contribution fund under subsection (1) until the Director-General:
  - (a) has given the existing fund an opportunity to submit a scheme to the Director-General, within such time as the Director-General 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.
- (3) The Director-General shall, in exercising the Director-General's 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 Transfer of contributions paid by contributors**

- (1) The directions given to an existing funeral contribution fund by the Director-General 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 Director-General in accordance with this section as the appropriate transfer of contributions by that existing fund.
- (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 Director-General 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 Director-General considers it appropriate to do so, at such times and in such instalments after that business is transferred as the Director-General specifies in a direction under

section 105.

- (4) The Director-General 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.

#### **107 Failure to transfer business in accordance with directions of Director-General**

- (1) If an existing funeral contribution fund fails to transfer the fund's contributory funeral benefit business in accordance with the directions of the Director-General under section 105 (other than directions to pay any amount under section 106), the Director-General may, by notice in writing served on the existing fund, revoke the 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 Director-General that the fund proposes to refund, in accordance with Division 2, contributions paid by contributors in connection with that business.

#### **108 Interest payable on instalments**

- (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.

#### **109 Failure to pay instalments**

- (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.
- (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 10 penalty units.

#### **110 Existing fund to pay interest on borrowing by fund to which business is transferred in certain cases**

(1) Where the Director-General 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),

the Director-General 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 Director-General 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.

### **Part 9 Existing pre-arranged funeral funds and pre-arranged contracts**

#### **Division 1 Preliminary**

##### **111 Definitions**

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 Director-General in accordance with section 112, or
- (b) where the person is pursuant to this Part deemed to have notified the Director-General that the person proposes to cancel, in accordance with Division 2, pre-arranged contracts entered into by the person, the day on which the person is deemed to have so notified the Director-General.

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

- (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 Director-General by a notice served on that person, notify the Director-General in writing that the person proposes either:
  - (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 Director-General in accordance with subsection (1) shall, for the purposes of this Part, be deemed to have notified the Director-General that the person proposes to cancel, in accordance with Division 2, existing pre-arranged contracts entered into by the person.

#### **113 Certain debts to have priority**

In the winding up of corporation under the [Corporations Act 2001](#) of the Commonwealth (as applied to the winding up by section 74A), 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.

#### **114 No stamp duty for transfers etc under this Part**

No deed or instrument whereby:

- (a) any property is transferred to the Director-General 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),
- shall be liable to stamp duty.

## **Division 1A Exemption of existing pre-arranged funeral funds**

### **114A Application of Division**

This Division applies to a person who has been served with a notice under section 112 (1) specifying a period in respect of the person for the purposes of that subsection.

### **114B Exemption of existing pre-arranged funeral funds**

- (1) The Director-General may, by a notice served on a person to whom this Division applies, exempt that person from the operation of section 112.
- (2) The Director-General may at any time revoke an exemption granted under subsection (1).
- (3) While an exemption granted to a person under subsection (1) remains in force:
  - (a) section 112 shall be deemed never to have applied in respect of existing pre-arranged contracts entered into by that person, and
  - (b) that person shall carry on the person's pre-arranged funeral benefit business in accordance with any directions given by the Minister under section 114C (1).
- (4) Upon the revocation of an exemption granted to a person under subsection (1), section 112 shall apply to that person as if the words "within 1 month after the commencement of section 34 or within such other" had been omitted from subsection (1) of that section and the words "within such" had been inserted instead.

### **114C Exempted funds subject to certain conditions**

- (1) The Minister may, by a notice served on a person granted an exemption under section 114B (1), direct that person to comply with such terms and conditions:
  - (a) as the Minister considers necessary or desirable to safeguard the interests of the other contracting parties to existing pre-arranged contracts entered into by that person, and
  - (b) as are specified in the notice.
- (2) The Minister may at any time vary, revoke, substitute or add to the terms and conditions specified in a notice served under subsection (1) by giving to that person a further direction under that subsection.
- (3) Without limiting the generality of subsection (1), the terms and conditions specified in a notice given to a person under that subsection may:

- (a) require the making of such accounting and audit arrangements by that person as the Director-General may request by notice given to the person,
  - (b) require that person to curtail the investment of money paid to the person under existing pre-arranged contracts where the Director-General has given notice to the person that the Director-General considers such investment is prejudicial to the interests of the other contracting parties to existing pre-arranged contracts entered into by that person, and
  - (c) require the furnishing of returns and financial information to the Director-General regarding existing pre-arranged contracts, and the funeral business relative to those contracts, entered into by that person.
- (4) Without limiting the generality of section 114B (2), the Minister may revoke an exemption granted to a person under section 114B (1) if that person fails to comply with a term or condition referred to in subsection (1).

## **Division 2 Cancellation of existing pre-arranged contracts**

### **115 Application of Division**

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

### **116 Cancellation of existing pre-arranged contracts**

- (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 or her 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.

Maximum penalty: 20 penalty units.

### **117 Repayment fund to be established for purpose of refund of subscriptions under**

**cancelled contracts**

- (1) The Director-General 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 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 Director-General.
- (4) All money to the credit of a repayment fund established under subsection (1) shall be paid by the Director-General into an account in a bank, building society or credit union in New South Wales.
- (5) Full and accurate accounts shall be kept by the Director-General in respect of a repayment fund established under subsection (1).

**118 Amount to be paid as refund of subscriptions**

- (1) A person to whom this Division applies shall pay to the Director-General for payment into the repayment fund established under section 117 (1) in respect of that person such amount as may be calculated by the Director-General in accordance with this section as the appropriate refund of subscriptions by that person.
- (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 Director-General in accordance with this section as the appropriate refund of subscriptions by a person to whom this Division applies shall be paid to the Director-General by such time as the Director-General may by notice served on that person direct or, where the Director-General considers it appropriate to do so, in such instalments and at such times as the Director-General so directs.
- (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 Director-General 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 Director-General.
- (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 Director-General, 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 Director-General 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 Director-General.
- (11) The appropriate refund of subscriptions of a person to whom this Division applies shall be reduced by any amount paid on the person's behalf under subsection (9) or recovered under subsection (10).

#### **119 Distribution of repayment fund among subscribers**

- (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 Director-General 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.
- (2) If the Director-General cannot, after due inquiry, ascertain the whereabouts of a person who is entitled to a payment of money from the repayment fund under subsection (1), the Director-General:
  - (a) is not required to make that payment, and
  - (b) may:

- (i) make any distribution under that subsection without regard to any claim by that person,
  - (ii) pay the money to the Treasurer for the use of the public revenue, or
  - (iii) distribute part of the money under subparagraph (i) and pay part of the money to the Treasurer under subparagraph (ii).
- (3) Sections 9 and 10 of the [Unclaimed Moneys Act 1917](#) shall apply to money paid to the Treasurer under subsection (2) in the same way as they apply to unclaimed money within the meaning of that Act.

### **Division 3 Continuation of existing pre-arranged contracts**

#### **120 Application of Division**

- (1) This Division applies to and in respect of a person who notifies the Director-General that the person does not propose to cancel existing pre-arranged contracts entered into by the person.
- (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 Directions relating to existing pre-arranged contracts**

- (1) The Director-General 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 Director-General considers necessary and desirable to ensure performance of those contracts.
- (2) The Director-General shall not give any directions to a person under subsection (1) until the Director-General has given the person an opportunity to submit a scheme to the Director-General, within such time as the Director-General may determine, in relation to the existing pre-arranged contracts entered into by the person.
- (3) The Director-General shall in exercising the powers under subsection (1) have regard to any scheme submitted by the person concerned.

#### **122 Transfer of subscriptions to pre-arranged funeral fund**

- (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 Director-General 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 Director-General 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 Director-General 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.

### **123 Failure to comply with directions of Director-General**

- (1) If a person to whom this Division applies fails to comply with any directions given to the person by the Director-General under section 121, including directions to pay any amount under section 122, the Director-General may, by notice in writing, revoke the directions.
- (2) Where directions given to a person are revoked under subsection (1), the person shall be deemed to have notified the Director-General that the person proposes to cancel existing pre-arranged contracts entered into by the person.