

# Necropolis Act 1901 No 20 of 1902

[1902-20]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)

### Authorisation

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# Necropolis Act 1901 No 20 of 1902



New South Wales

An Act to consolidate the Acts relating to the establishment and regulation of the Necropolis.

## 1 Name of Act

This Act may be cited as the *Necropolis Act 1901*.

## 2 Repeal

The Acts mentioned in the First Schedule are to the extent therein expressed hereby repealed.

## 3 (Repealed)

## 4 Existing proclamation etc

All proclamations and notifications made under the authority of any of the Acts hereby repealed which have not been revoked or recalled at the time of the passing of this Act shall be deemed to have been made under this Act.

## 5 (Repealed)

## 6 Definitions

(1) In this Act unless the context or subject-matter otherwise indicates or requires:

**Joint Committee** means the Joint Committee of Necropolis Trustees constituted by section 20.

**Necropolis** means the lands which have been heretofore and shall be hereafter dedicated as a cemetery for burying the dead at Haslem's Creek and Rookwood.

**Regulation** means a regulation made under this Act.

**Trustees**, in relation to any portion of the Necropolis, means the persons holding office as trustees of the portion under Part 3B of the *Crown Lands Consolidation Act 1913*.

(2) With respect to the land described in the Second Schedule, a reference in this Act to the burial or interment of the dead shall, except to the extent that the context or

subject-matter otherwise indicates or requires, be construed as including a reference to the cremation of dead bodies and the disposition of the ashes.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **7 Lands already dedicated or set apart**

- (1) All lands at Haslem's Creek and Rookwood heretofore dedicated for the purpose of being used as cemetery under the name and designation of Necropolis shall continue to be so dedicated.
- (2) Every portion of any such lands heretofore set apart for any denomination and vested in trustees as a burial ground for the use of such denomination shall continue to be so set apart and be vested in the present trustees thereof and their successors.
- (3) Every portion of any such lands heretofore set apart and vested in trustees as a general cemetery to be used as a burial ground for burying the dead for whose burial none of the portions of land set apart for the use of denominations may be applicable shall continue to be so set apart and used and shall continue to be vested in the present trustees thereof and their successors subject to the provisions of section 9.

## **7A Application of [Crown Lands Consolidation Act 1913](#)**

- (1) The following land shall, for the purposes of the [Crown Lands Consolidation Act 1913](#), be deemed to have been dedicated for a public purpose under section 24 of that Act:
  - (a) the portions within the Necropolis set apart for the use of a particular denomination,
  - (b) the portions within the Necropolis set apart for use as a general cemetery,
  - (c) the portions within the Necropolis set apart for use in connection with a crematorium,
  - (d) the portions within the Necropolis set apart for conservation as an historic site.
- (2) This section applies to land set apart before or after the commencement of this section.

## **7B Land set apart for conservation as historic site**

- (1) The Minister may, by notification published in the Gazette, set apart portions within the Necropolis at Rookwood for conservation as an historic site.

- (2) If a body of trustees recommends to the Minister that land vested in the trustees under this Act be set apart for conservation as an historic site, the Minister may divest the land from the trustees under section 10A and set the land apart accordingly.

## **8 Lands hereafter dedicated may be set apart**

- (1) The Minister may by notification in the Gazette set apart as burial grounds for the use of any denominations whatsoever separate portions of any land at Rookwood hereafter reserved or dedicated for the interment of the dead.
- (2) The Minister may by notification in the Gazette set apart as a general cemetery separate portions of any land at Rookwood hereafter reserved or dedicated for the interment of the dead to be used as a burial ground for burying the dead for whose burial none of the portions of land set apart for the use of denominations may be applicable.

### **8A Crematorium**

- (1) The Governor may, by proclamation in the Gazette, set apart for use in connection with a crematorium, the land described in the Second Schedule.
- (2) Trustees of the land described in the Second Schedule shall not be appointed while the lease referred to in section 8B is in force.
- (3) In addition to their other powers, trustees of the land described in the Second Schedule shall have power:
  - (a) to erect and maintain a crematorium, chapel, columbarium and such other buildings as the trustees consider necessary for the cremation of bodies of the dead and the care of ashes, and
  - (b) to grant a lease of the land, on terms and conditions approved by the Minister, to enable the land to be used by the lessee in connection with a crematorium.
- (4) The lease may authorise the lessee to exercise any power of the trustees under subsection (3) (a) or section 24.
- (5) (Repealed)
- (6) The Governor may, by proclamation in the Gazette, set apart any portion of the Necropolis described in the proclamation as a road of access to the land described in the Second Schedule, and thereupon the land comprised in such road shall be divested from the control of any trustees in whom it may have been previously vested.

Such proclamation may in like manner be varied or revoked.

### **8B Lease of land in Second Schedule**

- (1) On and from the commencement of the *Necropolis (Amendment) Act 1973*:

- (a) the persons who, immediately before that commencement, held office as trustees of the land described in Part 1 of the Second Schedule shall cease to hold that office,
  - (b) the reversion expectant on lease dated 7th September 1926 and made between the Honourable John Mildred Creed, Alexander Livingstone Kerr, Edward Beeby, Arthur Ernest Dent and Colin Percy Earle of the one part and The New South Wales Cremation Company Limited of the other part of the land described in Part 1 of the Second Schedule is vested in Her Majesty and, for the purposes of the [Conveyancing Act 1919](#), shall be deemed to have been so vested by a conveyance,
  - (c) the functions conferred or imposed on the lessors by that lease may be exercised by the Minister on behalf of the Crown,
  - (d) the Minister may, in relation to land to which that lease applies, exercise any functions that would, if that land were vested in trustees under this Act, be conferred on those trustees in relation to that land,
  - (e) the rent payable under that lease shall be paid by the lessee to the Joint Committee to be applied in the exercise of the Joint Committee's functions.
  - (f) (Repealed)
- (2) The Minister may, whenever the land described in the Second Schedule is not the subject of a lease, grant on behalf of Her Majesty a lease thereof on such terms and conditions as the Minister thinks fit, being terms and conditions that will enable the lessee effectively to use the land for the erection and maintenance of, or for the maintenance of, a crematorium, chapel, columbarium and such other buildings as the lessee considers are necessary for the cremation of bodies of the dead and the care of the ashes of those bodies.
- (3) The Minister may, by a lease granted under subsection (2), confer or impose on the lessee any or all of the functions conferred or imposed on trustees by this Act.

### **8C Extension of section 8B lease**

- (1) On the commencement of this section:
- (a) any lease of the whole or any part of land described in Part 2 of the Second Schedule and in force immediately before the commencement of this section is determined, and
  - (b) any part of the land described in the Second Schedule which is not already vested in the Crown vests in the Crown.
- (2) On and from the commencement of this section, the lease referred to in section 8B



shall be deemed to be a lease of the whole of the land described in the Second Schedule.

- (3) No compensation is payable to any person or body of persons in connection with the operation of this section.

#### **8D Amendment of section 8B lease**

- (1) On and from the commencement of this section, the lease referred to in section 8B shall (in addition to its other terms and conditions) be deemed to contain the terms and conditions specified in the Third Schedule.
- (2) The terms and conditions of that lease are of no effect to the extent that they are inconsistent with any additional terms or conditions which this section deems the lease to contain.

#### **9 Parts of land dedicated in 1887 and added to general cemetery may be set apart for denominations**

The Minister may by notification in the Gazette set apart as a burial ground or additional burial ground for the use of any denomination any portion not hitherto specifically vested in the trustees of any denomination out of a certain parcel of land dedicated as an additional area for cemetery purposes by notification in the Gazette of December second one thousand eight hundred and eighty-seven and containing five hundred and seventy-seven acres or thereabouts.

#### **10 Adjustment of boundaries**

On the application of the trustees of any portion of land, the Minister may adjust the boundaries thereof and for that purpose may vest any part of any portion of land in any such trustees whether already vested in any other body of trustees or not.

#### **10A Divesting of land with consent of trustees**

- (1) With the consent of the trustees concerned, the Minister may, by notification published in the Gazette, divest from the trustees the whole or any part of a portion of land vested in them under this Act.
- (2) On publication of the notification, the land is divested from the trustees and may be set apart as provided by this Act.

#### **11 Vesting of lands set apart**

- (1) Every separate portion of land hereafter set apart shall upon the issue of the notification in that behalf in the Gazette vest in the trustees of the denomination for which it is set apart and their successors or as the case may be in the trustees of the general cemetery of the Necropolis and their successors.

- (2) On the appointment of trustees of the land described in the Second Schedule, that land shall vest in those trustees and their successors.
- (3) Each portion of land set apart for conservation as an historic site shall, on publication of the relevant notification in the Gazette, vest in the trustees of land set apart for that purpose and their successors.

## **12 Nature of trusts**

- (1) Each body of trustees appointed for the purposes of this Act and their successors shall by virtue of this Act have vested in them and shall hold for ever the portion of land in respect of which they are appointed for a burial ground for burying the dead and the land so vested in them together with all erections thereon and the rights easements and appurtenances to the same belonging shall remain vested in the said trustees and their successors for ever upon the trusts and for the purposes and subject to the provisions of this Act.
- (2) Subject to this Act, the trustees of land set apart for conservation as an historic site:
  - (a) shall hold that land for the purpose of the conservation of historic sites on that land,
  - (b) may allow that land to be used as a burial ground for burying the dead, and
  - (c) shall hold that land subject to any right granted under section 24 (exclusive burial rights etc) and applicable to that land.

## **13 Ministers may exercise their spiritual functions without hindrance**

Any recognised minister of the denomination for which any portion of the Necropolis is set apart shall at all times have free access and admission to such portion of the Necropolis and also to the general cemetery and shall freely exercise the minister's spiritual functions therein in connection with the burial of the dead without any hindrance or disturbance:

Provided that no such minister shall be entitled to receive any fee in respect of any service the minister so performs unless with the sanction of the trustees of that portion of the Necropolis within which the same is performed.

## **14 Appointment of trustees**

- (1) Trustees may be appointed in accordance with Part 3B of the [Crown Lands Consolidation Act 1913](#):
  - (a) for the land set apart for use of a particular denomination,
  - (b) for the land set apart for use as a general cemetery,
  - (c) for the land set apart for use in connection with a crematorium, and

(d) for the land set apart for conservation as an historic site.

(2) A person shall not be appointed as a trustee of land set apart for the use of a particular denomination unless the person is of that denomination.

### **15 Powers etc of trustees**

Each body of trustees shall have and may exercise the functions conferred or imposed by or under this Act and the *Crown Lands Consolidation Act 1913*.

### **16 (Repealed)**

### **17 Fees and charges**

(1) Each body of trustees may fix in respect of the portions of the Necropolis vested in them fees and charges for and in connection with the following matters:

(a) the interment of bodies and

(b) the exclusive right of burial either in perpetuity or for a limited period and

(c) the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period and

(d) the right of erecting or placing any monument gravestone tablet or monumental inscription.

(2) All such fees and charges shall be approved by the Minister and notified in the Gazette.

(3) A table showing such fees and charges shall be affixed and at all times continue in a conspicuous part of that portion of the Necropolis to which the same are applicable.

(4) The trustees of any portion of the Necropolis shall allow the interment of the dead body of any poor person in such portion free of any charge whatsoever.

### **18 Cremation fees and charges**

(1) The Minister may from time to time approve and notify in the Gazette maximum fees and charges payable in respect of the following matters on land described in the Second Schedule:

(a) the cremation of bodies,

(b) the interment or placement of ashes,

(c) the right of erecting or placing any monument, tablet or monumental inscription.

(2) The fees and charges payable shall not exceed the maximum so approved and notified.

- (3) The operator of a crematorium on land described in the Second Schedule shall display at all times in a conspicuous position at the crematorium a list of the maximum fees and charges applicable from time to time.
- (4) The operator of a crematorium on land described in the Second Schedule shall cremate the body of and allow the interment of the ashes of any poor person free of charge on that land.

**18A, 18B (Repealed)**

**19 Chaplain's stipend**

Each body of trustees is authorised to pay out of its funds the stipend of their chaplain or any minister officiating at the burial service for an interment within the portion of which they are trustees.

**20 Joint Committee of Necropolis Trustees**

- (1) There is constituted by this section a corporation under the corporate name of the "Joint Committee of Necropolis Trustees".
- (2) Section 38 of the *Interpretation Act 1897* applies in respect of that corporation as if this Act had been passed after the commencement of the *Interpretation (Amendment) Act 1969*.
- (3) The Joint Committee shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (4) The Joint Committee shall have and may exercise such other functions as may be prescribed.
- (5) The Joint Committee shall consist of:
  - (a) a member nominated by each body of trustees (except the Joint Committee itself) and appointed by the Minister, being in each case one of the trustees of the body of trustees making the nomination, and
  - (b) not more than 4 other members who shall be persons appointed by the Minister.
- (6) For the purpose of appointing a person to be a member (other than a person nominated by trustees), the Minister may appoint a person who holds a particular office or position to be a member by virtue of the person holding that office or position.
- (7) The Fourth Schedule has effect with respect to the members and the procedure of the Joint Committee.

### **20A General functions of Joint Committee**

- (1) The Joint Committee shall construct, care for, control and maintain fences, roads, paths, drains, plantings and other necessary works within the Necropolis.
- (2) The Minister may cause an inspection to be made of the Necropolis for the purpose of determining whether the Joint Committee is properly exercising its functions under this section.
- (3) If the Minister is satisfied that those functions are not being properly exercised, the Minister may give directions to the Joint Committee with respect to the proper exercise of those functions and the Joint Committee shall comply with those directions.

### **20B Contributions to Joint Committee by trustees**

- (1) The Joint Committee may, from time to time, make an assessment of the amount it requires to enable it to exercise its functions under section 20A.
- (2) If the Minister approves in writing of the amount assessed, the Joint Committee may require each body of trustees (except the Joint Committee itself) by notice in writing to pay to the Joint Committee a proportion (determined in accordance with the regulations) of the amount assessed.
- (3) The regulations may:
  - (a) require different bodies of trustees to pay different proportions, and
  - (b) provide for the proportion to be calculated on the basis of the number of interments or cremations carried out or on any other basis.
- (4) Each body of trustees shall pay the required amount within 60 days after receiving notice from the Joint Committee to do so and the Joint Committee may recover any amount unpaid as a debt in a court of competent jurisdiction.
- (5) When no trustee holds office as trustee of the land described in the Second Schedule, a reference in this section to a body of trustees includes a reference to a person conducting a crematorium on that land.

### **20C Provision of services by Joint Committee**

- (1) The Joint Committee may enter into any agreement or arrangement with a body of trustees appointed for the purposes of this Act, for the provision of services to or by the trustees.
- (2) The services provided may include but are not limited to:
  - (a) grass-cutting and gravedigging services, and
  - (b) managerial services.

(3) Any such agreement or arrangement:

- (a) may make provision for the payment of charges for the services provided, and
- (b) shall not have any connection with or effect on the liability of trustees to make a payment under section 20B.

#### **20D Preparation of plans of management by Joint Committee**

- (1) If directed to do so by the Minister, the Joint Committee shall cause a plan of management to be prepared with respect to the whole or any part of land within the Necropolis.
- (2) Sections 37U and 37V (plans of management) of the [Crown Lands Consolidation Act 1913](#) apply to the plan of management as if it were a plan of management under those sections.
- (3) Those sections so apply as if a reference in them:
  - (a) to a reserve were a reference to land within the Necropolis, and
  - (b) to trustees included a reference to the Joint Committee.

#### **20E Financial assistance to trustees**

- (1) The Joint Committee may give financial assistance to a body of trustees appointed for the purposes of this Act, to be applied for the purpose or purposes specified by the Joint Committee.
- (2) For the purpose of giving that assistance, the Joint Committee may use any of its funds other than funds received under section 20B.

#### **20F Reports to Minister**

The Joint Committee shall prepare and furnish to the Minister such reports concerning its activities within the Necropolis as the Minister may from time to time require.

#### **21 Trustees may appoint chaplains**

- (1) Each body of trustees representing a particular denomination may appoint duly recognised ministers of such denomination as chaplains to perform the burial service within any portion of the Necropolis set apart for such denomination according to the rites of such denomination.
- (2) Each body of trustees representing a particular denomination may fix the remuneration to be paid to any chaplain or officiating minister of the denomination represented by such trustees whether by way of annual stipend or by fees or partly in the one way and partly in the other.

- (3) Where no chaplain is appointed the minister performing the burial service in respect of any dead body brought to such portion of the Necropolis to be buried shall be entitled to receive for every such interment the fees fixed as in section 17 provided by the trustees of the portion of the Necropolis within which such interment takes place.

## **22 Fee to minister officiating in general cemetery**

Any minister performing the burial service in respect of any interment in the general cemetery shall be entitled to receive the fees fixed as in section 17 provided by the trustees of the general cemetery.

## **23 Building of mortuaries by trustees**

- (1) Each body of trustees may build within the portion of the Necropolis vested in them a suitable mortuary church or chapel for the performance therein of the rites and ceremonies in the burial of the dead which may under the provisions of this Act be performed within such portion.
- (2) The said trustees may (subject to the Minister's approval of the specifications elevations and models of the proposed church or chapel being previously signified) borrow any money for such purpose and charge the fees and charges payable to and receivable by them under this Act with the repayment of such money with interest thereon.

## **24 Burial rights**

- (1) Each body of trustees may in respect of the portion of the Necropolis vested in them and under such restrictions and conditions as they think proper and the Minister has previously approved sell and grant:
  - (a) the exclusive right of burial either in perpetuity or for a limited period and also
  - (b) the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period and also
  - (c) the right of erecting and placing any monument gravestone tablet or monumental inscription.
- (2) Such exclusive rights as aforesaid whether granted in perpetuity or for a limited time shall be considered as the personal estate of the grantee and may be assigned in the grantee's lifetime or bequeathed by the grantee's will.
- (3) No body shall be buried in any place wherein any exclusive right of burial has been so granted except with the consent in writing of the owner for the time being of such exclusive right of burial.
- (4) Each body of trustees may revoke any exclusive rights of burial it, or any previous body of trustees for the portion concerned has granted if those rights are not

exercised within 60 years after they are granted.

- (5) Before revoking any exclusive rights of burial under subsection (4), the body of trustees must cause notice of its intention to do so to be advertised in accordance with the regulations.
- (6) At any time before the expiry of the period for responding to the notice, the holder of the exclusive rights of burial concerned may enter into negotiations with the relevant body of trustees for:
  - (a) the sale of those rights to the trustees, or
  - (b) the retention of those rights.

#### **24A Compensation for revocation of exclusive rights of burial**

- (1) If the body of trustees revokes the exclusive rights of burial for a burial place, whether granted before or after the commencement of this section, the former holder of those rights is entitled:
  - (a) to be granted exclusive rights of burial:
    - (i) for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and
    - (ii) for an equivalent period to that for which the original exclusive rights of burial were granted, or
  - (b) to be paid by the trustees, by way of compensation, an amount equal to half of the fee payable (as provided by the trustees' current scale of fees) for the granting of exclusive rights of burial:
    - (i) for an alternative burial place in the same cemetery (and, if available, in the same general location) as the original burial place, and
    - (ii) for an equivalent period to that for which the original exclusive rights of burial were granted.
- (2) If there is no alternative burial place available, or if there is no applicable scale of fees, the amount of compensation referred to in subsection (1) (b) is to be ascertained in accordance with the regulations.
- (3) The body of trustees may elect whether the former holder of the revoked exclusive rights of burial is to be granted an alternative burial place or paid compensation.
- (4) Despite section 24 (2), if the former holder of the revoked exclusive rights of burial is granted exclusive rights of burial for an alternative burial place, any assignment of those rights is of no effect if made by the former holder within 5 years after the date on which they were granted.



- (5) The regulations may make provision for or with respect to the manner in which, and the time within which, an application for an entitlement under this section must be made.
- (6) A former holder of revoked exclusive rights of burial may apply to the Minister for a review of any election of the relevant body of trustees under this section.
- (7) The Minister's decision on such a review:
  - (a) is final, and
  - (b) is taken to be the decision of the relevant body of trustees, and
  - (c) is to be given effect to accordingly.
- (8) In this section, **former holder** of revoked exclusive rights of burial means the person who held those rights immediately before they were revoked.

## **25 Trustees may remove monuments etc**

Each body of trustees may in the portion of the Necropolis vested in them take down and remove any monument gravestone tablet or monumental inscription erected or placed contrary to the rules and conditions upon which permission to erect or place the same was granted or in case such rules or conditions or the regulations of that portion of the Necropolis have not been complied with.

## **26, 27 (Repealed)**

## **28 Penalty on persons committing nuisances**

Whosoever within the Necropolis

- (a) plays at any game or sport
- (b) discharges firearms save at a military funeral
- (c) wilfully and unlawfully disturbs any persons assembled in the Necropolis for the purpose of burying any body therein or
- (d) commits any nuisance

shall be liable to a penalty not exceeding 5 penalty units.

## **29 Penalty for injuring monuments**

Whosoever wantonly or wilfully does or causes to be done any damage to any monument vault tombstone building erection railing shrubbery tree plant flower token or tribute in the Necropolis shall be liable to a penalty not exceeding 10 penalty units.

### **30 Compensation for damage caused**

Whosoever does or causes to be done any injury to any such monument vault tombstone building erection railing shrubbery tree plant flower token or tribute whether wilfully wantonly or otherwise shall also be liable to pay damages and compensation therefor according to the amount of damage sustained either at the suit of the body of trustees in whom is vested that portion of the Necropolis wherein is situated the property so injured or of the persons entitled to such property.

### **31 Apprehension of offenders**

- (1) Whosoever is found committing any offence against this Act or any rules or regulations made thereunder and refuses being thereunto required by any person to give his or her name and place of abode may thereupon be apprehended by such person and taken to and detained at the nearest lockup until he or she can be taken before a justice of the peace to be dealt with as hereinafter mentioned.
- (2) Any justice of the peace sub-inspector or senior sergeant of police may liberate such person so apprehended on the person giving reasonable bail for his or her attendance before a justice of the peace to answer for the offence for which the person was apprehended.

### **32 Penalty for giving false name**

Whosoever being required as in the last preceding section provided to give his or her name and place of abode gives a false or fictitious name or place of abode shall for every such offence be liable to a penalty not exceeding 2 penalty units.

### **33 Recovery of penalties**

All penalties imposed by this Act and all penalties imposed by any rule or regulation which provides no mode of recovering the penalty thereby imposed may be recovered in a summary way according to the provisions of the Act or Acts for the time being regulating proceedings before justices of the peace.

### **34 Prosecutions by trustees**

- (1) Each body of trustees may prosecute all persons who do or cause to be done any damage to the buildings monuments tombstones shrubberies plantations enclosures flowers tokens and tributes in the portion of the Necropolis vested in them and the secretary or manager appointed by each body of trustees shall have power in respect of any offence committed within the limits of the portion of land vested in such trustees to prosecute as such secretary or manager for and on behalf of such body of trustees any person committing any offence under this Act or the [Crown Lands Consolidation Act 1913](#), or under any rules, by-laws or regulations made thereunder for or with respect to such portion.

(2) (Repealed)

### **35 Freedom to conduct religious ceremonies**

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

- (a) in that portion of the Necropolis set apart as a general cemetery or in or on the land described in the Second Schedule—according to the rites of any religious denomination, or
- (b) in that portion of the Necropolis set apart as a burial ground for the use of a religious denomination—in accordance with the rites of that denomination.

### **36 Delegation by Minister**

- (1) The Minister may delegate any of the Minister's functions under this Act (other than this power of delegation) to:
  - (a) a public servant, or
  - (b) a public or local authority, or
  - (c) an employee of a public or local authority, or
  - (d) a statutory officer.
- (2) A delegation under this section:
  - (a) shall be in writing,
  - (b) may be general or limited,
  - (c) may be revoked, wholly or partly, by the Minister, and
  - (d) is not revoked by reason only that the person who held the office of Minister when the delegation was made ceases to hold that office.
- (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions and limitations as are specified in the instrument of delegation or imposed by the regulations.
- (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Minister.
- (5) A delegation under this section does not prevent the exercise of a function by the Minister.
- (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate

under this section.

### 37 Regulations

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of the power conferred by subsection (1) the Governor may make regulations for and with respect to:
  - (a) the regulation or prohibition of the use of roads and paths under the care, control and management of the Joint Committee and of the traffic in or upon those roads and paths,
  - (b) any of the powers or duties conferred or imposed on the Joint Committee by or under this Act,
  - (b1) the accounts to be kept by trustees under this Act,
  - (c) protecting the buildings, monuments, shrubberies, plantations, enclosures, flowers, tokens and tributes in the Necropolis from destruction or damage,
  - (d) the general good order and government of the Necropolis.
- (3) The regulations may prescribe a penalty not exceeding 10 penalty units for any breach thereof.
- (4) A regulation may be of general or specially limited application according to time, place or circumstances and may be general or restricted to any class of subject-matter.

### 38 Savings and transitional provisions

The Fifth Schedule has effect.

## First Schedule

Reference to Act	Title or short title	Extent of repeal
11 Vic No 11	An Act for the establishment and regulation by Trustees of a General Cemetery near to the City of Sydney to be called "The Necropolis"	The whole Act.
31 Vic No 11	The " <i>Necropolis Act of 1867</i> "	The whole Act.
47 Vic No 11	The " <i>Necropolis Act Amendment Act of 1884</i> "	The whole Act.

## Second Schedule Crematorium site

(Section 8A)

### Part 1

All that piece or parcel of land containing an area of 4 acres, municipality of Lidcombe, parish of Liberty Plains, county of Cumberland: Commencing at a point bearing 118 degrees 1 minute and distant 52 9/10 links from the intersection of the south-eastern side of the reserve carrying pipe for water supply to Northern Suburbs with the eastern side of the railway line to Mortuary Station No 4, such intersection being distant 1,430 4/10 links from the most north-western corner of the General Cemetery area, thence on the north by a line bearing 98 degrees 56 minutes 50 seconds 787 1/2 links, on the east by a line bearing 188 degrees 56 minutes 50 seconds 492 8/10 links, on the south by a line bearing 278 degrees 56 minutes 50 seconds 860 1/2 links, and on the west by lines bearing 24 degrees 57 minutes 26 seconds 50 links, 23 degrees 16 minutes 19 seconds 50 links, 21 degrees 35 minutes 12 seconds 50 links, 19 degrees 54 minutes 5 seconds 50 links, 18 degrees 12 minutes 58 seconds 50 links, 16 degrees 31 minutes 51 seconds 50 links, 14 degrees 50 minutes 44 seconds 50 links, 13 degrees 9 minutes 37 seconds 50 links, 11 degrees 28 minutes 30 seconds 50 links, and 9 degrees 47 minutes 23 seconds 50 links to the point of commencement as shown on plan catalogued Ms 5,808 Sy., Department of Lands.

### Part 2

All the land comprising Lot 488 in Deposited Plan 48288, except the land described in Part 1 of this Schedule.

## Third Schedule Additional terms and conditions of section 8B lease

(Section 8D)

### 1 Notice of cessation or reduction of operations

- (1) The lessee shall give the lessor at least 12 months' notice in writing of a proposed cessation or substantial reduction in the extent of the activities carried on by the lessee in connection with the operation of a crematorium on the land.
- (2) The lessor may, in a particular case, waive the requirement for notice under this clause.

### 2 Determination of lease for cessation or reduction of activities

- (1) If:
  - (a) there is a cessation or reduction in the extent of the activities carried on by the lessee in connection with the operation of a crematorium on the land,
  - (b) the lessor is satisfied that the cessation or reduction is due to any act by the

lessee or a related body corporate of the lessee (within the meaning of the *Corporations Act 2001* of the Commonwealth),

- (c) the lessor has given the lessee notice in writing that the cessation or reduction is not acceptable, and
- (d) within 30 days after that notice is given the lessee has not remedied the matter to the satisfaction of the lessor,

the lessor may by notice in writing to the lessee direct that the lease is determined.

- (2) On service of the notice on the lessee, the lease is determined.

### **3 Subleasing**

The lessee shall not sublease or otherwise part with possession of the whole or any part of the land, except with the written consent of the lessor.

### **4 Rent**

- (1) The rent payable by the lessee is payable on 1 August in each year.
- (2) The amount of rent payable on 1 August in a year is the amount which is the greater of the following:
  - (a) 10 per cent (or such other proportion as may be agreed on by the lessor and the lessee) of the value of the land as at 1 July immediately preceding that 1 August,
  - (b) 5 per cent of the imputed revenue of the lessee during the period of 12 months ending on 1 July immediately preceding that 1 August.
- (3) The imputed revenue of the lessee during a period is the total of:
  - (a) the actual revenue derived by the lessee during the period from its operations on the land, and
  - (b) any additional revenue (not taken into account under paragraph (a)) which the lessee would have derived during the period from its operations on the land had the lessee been paid at full value for the services it provided during the period in the course of those operations.
- (4) The services provided by the lessee include permitting other persons to use the land, or the buildings and other facilities on the land, for any purpose.
- (5) A reference to revenue is a reference to gross revenue, without deduction of any tax, charge, cost or other expense chargeable to revenue.

### **5 Calculation of rent—value of land**

- (1) For the purpose of ascertaining the rent payable, the value of the land shall be

determined in accordance with this clause.

- (2) The value of the land at a particular time is the value determined by the Valuer-General (appointed under the [Valuation of Land Act 1916](#)) in accordance with subclause (3) and notified to the lessor most recently before that time.
- (3) The value of the land is the capital sum which the fee-simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a seller in good faith would require, assuming that:
  - (a) the land were to continue to be used in connection with a crematorium,
  - (b) the land were to be sold as 1 parcel, and
  - (c) the improvements, other than land improvements (within the meaning of the [Valuation of Land Act 1916](#)), made or acquired by the lessee had not been made.
- (4) The lessor shall forward a copy of any such valuation of the Valuer-General to the lessee as soon as practicable after the lessor receives it.

#### **6 Statement of imputed revenue**

- (1) The lessee shall, within 30 days after 1 July in each year, furnish to the lessor a statement as to the imputed revenue of the lessee during the period of 12 months ending on that 1 July.
- (2) The statement shall be certified as correct by a person registered as a public accountant under the [Public Accountants Registration Act 1945](#).
- (3) The lessee shall permit the lessor, and any person appointed by the lessor for the purpose, to inspect and take copies of or extracts from such of the financial records of the lessee as may be necessary to enable the lessor to ascertain the imputed revenue of the lessee during a period.

#### **7 Set off of rent paid in advance**

- (1) If, before the date of assent to the [Necropolis \(Amendment\) Act 1986](#), the lessee has paid rent in advance, the lessee is entitled to set off against any rent payable after that commencement the appropriate proportion of rent paid in advance.
- (2) The appropriate proportion is the amount certified by the lessor as being the proportion of the rent paid in advance attributable to the period commencing on 1 August immediately following the date of assent to the [Necropolis \(Amendment\) Act 1986](#).

#### **8 Reassessment of rent**

- (1) If the lessor is of the opinion that the amount taken into account as the imputed revenue of the lessee for the purpose of determining the rent payable by the lessee is

less than the correct amount, the lessor may notify the lessee in writing of the amount which the lessor calculates is the correct amount.

- (2) Within 30 days after being notified, the lessee shall pay as rent the amount by which the rent actually paid by the lessee is less than the rent which would have been payable had the amount notified by the lessor been taken into account as the imputed revenue of the lessee.

### **9 Determination of lease by lessee**

- (1) The lessee may, by notice in writing to the lessor, request that the lease be determined.
- (2) If, during the period of 12 months after the request is made, the lessee complies with the terms and conditions of the lease, the lease is determined at the end of that 12 months period.

### **10 Determination of lease—compensation**

If the lease is determined by reason of the operation of a provision of the lease, no compensation is payable to any person in connection with the determination.

## **Fourth Schedule Provisions relating to the members and the procedure of the Joint Committee**

(Section 20)

### **1 Definition**

In the Schedule:

**member** means a member of the Joint Committee.

### **2 (Repealed)**

### **3 Acting members**

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be the member.
- (2) The Minister may remove any person from any office to which the person was appointed under this clause.
- (3) For the purposes of this clause, a vacancy in the office of a member shall be deemed to be an absence from office of the member.



#### **4 Term of office**

Subject to this Schedule, a member shall hold office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

#### **5 Filling of vacancy in office of member**

- (1) If the office of any member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.
- (2) If an additional body of trustees is appointed for the purposes of this Act, a vacancy shall be deemed to have occurred in the office of a member of the Joint Committee nominated by those trustees.
- (3) If the office of a member nominated by a body of trustees becomes vacant and the trustees concerned fail within the time allowed by the Minister to nominate a person to fill the vacancy, the Minister may appoint any person to fill the vacancy.

#### **6 Casual vacancies**

- (1) A member shall be deemed to have vacated office if the member:
  - (a) dies,
  - (b) being a member nominated by a body of trustees, ceases to hold office as one of those trustees,
  - (c) absents himself or herself from 4 consecutive meetings of the Joint Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings,
  - (d) 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 for their benefit,
  - (e) becomes a temporary patient or a continued treatment patient within the meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*,
  - (f) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable,

(g) resigns the office by instrument in writing addressed to the Minister, or

(h) (Repealed)

(i) is removed from office by the Minister under subclause (2).

(2) The Minister may remove a member from office.

## **7 General procedure at meetings**

The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Joint Committee.

## **8 Quorum**

The quorum for a meeting of the members is the number of members ascertained by dividing the total number of members by 2 and adding 1 to the quotient (any fractional remainder being disregarded).

## **9 Presiding member**

(1) A member elected as chairperson for the meeting by the members present at a meeting shall preside at a meeting of the Joint Committee.

(2) The member presiding at any meeting of the Joint Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **10 Voting**

A decision supported by a majority of the votes cast at a meeting of the Joint Committee at which a quorum is present shall be the decision of the Joint Committee.

## **11 Minutes**

The Joint Committee shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Joint Committee.

# **Fifth Schedule Savings and transitional provisions**

(Section 38)

## **1A Regulations**

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

*Cemeteries Legislation Amendment (Unused Burial Rights) Act 2001*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

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

#### **1 Former trustees**

On the commencement of Schedule 2 to the *Necropolis (Amendment) Act 1986*, any trustee holding office under this Act immediately before that commencement ceases to hold that office but is eligible, if otherwise qualified, to be re-appointed as trustee for the purposes of this Act.

#### **2 Transfer of assets etc of trustees**

Section 37VV (2) of the *Crown Lands Consolidation Act 1913* operates in respect of the appointment under that Act of trustees of land within the Necropolis as if, immediately before the appointment, the land had been a reserve within the meaning of Part 3B of that Act.

#### **3 Abolition of previous joint committee**

The joint committee constituted under this Act immediately before the commencement of Schedule 2 to the *Necropolis (Amendment) Act 1986* is, on that commencement, abolished.

#### **4 Transfer of assets etc of Joint Committee**

Section 37VV (2) of the *Crown Lands Consolidation Act 1913* applies to and in respect of the Joint Committee as if a reference in that section:

- (a) to the operative time were a reference to the commencement of Schedule 2 to the *Necropolis (Amendment) Act 1986*,
- (b) to the prior time were a reference to the time immediately before that commencement,
- (c) to the former controllers were a reference to the Joint Committee abolished by clause 3,
- (d) to the present controllers were a reference to the Joint Committee constituted under section 20 as in force after the commencement of Schedule 2 to the *Necropolis (Amendment) Act 1986*,

- (e) to a reserve were a reference to the Necropolis,
- (f) to the care, control and management, or the operation, of a reserve, were a reference to the exercise of functions in relation to the Necropolis under this Act, and
- (g) to subsection (1) of that section were a reference to this Act.

#### **5 Regulations—delegations by Minister**

A regulation made for the purposes of section 36 and in force immediately before the commencement of Schedule 2 to the *Necropolis (Amendment) Act 1986* shall, on that commencement, be deemed to have been made for the purposes of that section as substituted by that Act.