

Funeral Funds Act 1979 No 106

[1979-106]



New South Wales

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Provisions in force

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

Notes—

- **See also**
[Regulatory and Other Legislation \(Amendments and Repeals\) Bill 2016](#)

Authorisation

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Funeral Funds Act 1979 No 106



New South Wales

An Act to control and regulate contributory and pre-paid 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 Objects

The objects of this Act are:

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

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.

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

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 Finance, Services and Innovation.

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) a company for the time being registered under section 14 to carry on contributory

funeral benefit business, or

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

funeral fund means a funeral contribution fund or a pre-paid 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.

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

pre-paid 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-paid contract under section 5.

pre-paid funeral benefit business means the business of supplying funeral services under pre-paid contracts.

pre-paid funeral fund means:

- (a) a person or a group of individuals that is for the time being registered under section 37 to act as trustee or trustees of trust funds under pre-paid contracts, or
- (b) a person for the time being registered under section 39B to act as trustee of trust funds under a pre-paid contract.

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.

Secretary means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department of Finance, Services and Innovation.

(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-paid 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-paid contract, and
- (b) a person carries on pre-paid funeral benefit business if the person agrees to supply any funeral service under a pre-paid 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-paid contract in certain cases

An agreement whose purpose is or includes the supply of a burial site is prescribed as a pre-paid 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 Secretary 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 employed under the [Government Sector Employment Act 2013](#), as an inspector under subsection (1) unless the person is appointed:
 - (a) with the approval of the Public Service Commissioner and on such terms and conditions as may be approved by the Commissioner, and
 - (b) for a term not exceeding 3 years.
- (3) A person, other than a person employed under the [Government Sector Employment Act 2013](#), who is appointed as an inspector under subsection (1) is not, in his or her capacity as an inspector, a Public Service employee 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 or rules under that Act, whether with or without specified modifications, apply to and in respect of the person as if the person were a Public Service 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 Secretary 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 Secretary may, with the approval of the Minister and by instrument in writing, delegate such of the Secretary'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 person employed in the Department.

- (2) The Minister or the Secretary 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 Secretary 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 Secretary.

10 Appointment of independent actuary

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

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 must not carry on or advertise that the person carries on or is willing to carry on any contributory funeral benefit business unless that person is a funeral

contribution fund.

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

(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)-(5) (Repealed)

12 Application for registration to carry on contributory funeral benefit business

(1) A company may apply to the Secretary 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 Secretary, 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) the company does not carry on pre-paid funeral benefit business,

(b) the income of the company derived from contributory funeral benefit business is to be applied only for the provision of funeral benefits to contributors and to meet the management expenses of the company in carrying on contributory funeral benefit business,

(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 directors,

(e) the name of the company is not a name, or a name of a kind, that the Minister has directed the Secretary 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) (Repealed)
 - (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) to be published in the Gazette.
 - (3) The Secretary may prepare and publish in such manner as the Secretary 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 Secretary may, subject to subsection (2), register or refuse to register the company to carry on contributory funeral benefit business.
- (2) The Secretary shall refuse to register a company to carry on contributory funeral benefit business if the Secretary 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, or
 - (d) the company is not fit to be registered having regard to the character and reputation of the directors and other officers of the company.

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 Secretary.
- (2) An application made to the Secretary for an approval under subsection (1) shall be accompanied by such documents as may be prescribed.
- (3) The Secretary shall refuse to approve an alteration of or addition to the rules of a funeral contribution fund under subsection (1) if the Secretary 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 Secretary 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) The Secretary may, by notice in writing served on a funeral contribution fund, cancel the fund's registration if:
- (a) the fund has not commenced to carry on contributory funeral benefit business in New South Wales within 6 months after its registration, or
 - (b) the fund is commenced to be wound up or is under official management, or
 - (c) the fund has entered into a compromise or scheme of arrangement with its creditors, or
 - (d) a receiver and manager has been appointed, whether by the Supreme Court or otherwise, in respect of the property of the fund, or
 - (e) the fund or any person involved in the management of the fund is convicted of an offence involving fraud or dishonesty or fails to comply with a provision of this Act or the regulations, or
 - (f) at the request of the fund, or
 - (g) any other ground prescribed by the regulations is established.
- (2) The cancellation of the registration of a funeral contribution fund under subsection (1) (paragraph (f) excepted) takes effect on the expiration of 28 days after the notice of the cancellation is served on the fund by the Secretary or, if an appeal is lodged against the cancellation under Part 6, on confirmation of the cancellation or the withdrawal of the appeal.
- (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 Secretary shall notify the Australian Securities and Investments 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 1A Registration of previously exempt persons carrying on business of funeral contribution funds

16B Application for registration

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

Maximum penalty: 50 penalty units.

- (3) An application for registration made under subsection (2) must:
- (a) be made in the form approved by the Secretary, and
 - (b) be accompanied by:
 - (i) a written statement specifying whether the person is subject to any other prudential requirements with respect to the person's contributory funeral benefit business, and
 - (ii) such other information as the Secretary may require.
- (4) Despite any other provision of this Act, this section applies to an individual carrying on a business referred to in subsection (1).

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

business

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

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 Secretary 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 Secretary 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 Management expenses in administration of funeral contribution funds

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

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 authorised deposit-taking institutions 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 Secretary.

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 Secretary a return containing the particulars specified in subsection (2) and accompanied by such documents as are specified in subsection (3).
- (1A) The Secretary may exempt a funeral contribution fund from the requirement to lodge a return under subsection (1) if the Secretary is satisfied that the fund is subject to

adequate reporting requirements under a law of the Commonwealth.

(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 Secretary 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 Secretary,
- (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 Secretary 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 Secretary 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 Secretary, 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.

25A Annual report to be provided to contributors

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

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 Secretary 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 Secretary 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) The Secretary may waive the requirement for an investigation of a funeral

contribution fund to be made under subsection (1) if the Secretary is satisfied that, in all the circumstances, it would be unduly onerous or otherwise unwarranted to require the investigation.

(3) A funeral contribution fund must:

- (a) within 3 months after an investigation is made under subsection (1), lodge with the Secretary an abstract, prepared in the manner prescribed by the regulations and containing the particulars prescribed by the regulations, of the report by the actuary of the results of that investigation, and
- (b) if requested by notice in writing given by the Secretary, lodge with the Secretary (by the date specified in the notice) a copy of the report by the actuary of the results of the investigation.

Maximum penalty: 10 penalty units.

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 in assets or management expenses unduly high

- (1) If the Secretary is satisfied that, as a result of an actuarial investigation under section 28 or of an inquiry instituted by the Secretary:
 - (a) the assets of a funeral contribution fund are insufficient to meet its liabilities, or
 - (b) the rate of the management expenses of a funeral contribution fund is unduly high,the Secretary may, by notice served on the fund, give such directions to the fund as

the Secretary considers necessary in the circumstances.

- (2) The Secretary must not give a direction under subsection (1) without the approval of the Minister.
- (3) A funeral contribution fund must comply with a direction given to it under subsection (1).

Maximum penalty: 10 penalty units.

Division 7 Transfer and amalgamation of contributory funeral benefit business

31 Transfer or amalgamation to be confirmed by Secretary

- (1) 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 Secretary in accordance with section 32, or
 - (b) a direction of the Secretary in accordance with section 33.
- (2) The regulations may make provision for or with respect to guidelines to be used by the Secretary in deciding whether to confirm or refuse to confirm a scheme in accordance with section 32.

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

- (1) Subject to this section, the Secretary 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 Secretary, and
 - (b) at the same time, require the fund, within a period specified by the Secretary, to enter into an agreement, approved by the Secretary, to give effect to the transfer so directed.

- (2) The Secretary shall not give a direction under subsection (1) unless the Secretary is satisfied that the Secretary is entitled to make an application to wind up the funeral contribution fund concerned.
- (3) The Secretary 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-paid funeral funds and pre-paid contracts

Division 1 Registration of pre-paid 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-paid contract unless that person is:
 - (a) a company that is a pre-paid funeral fund, or
 - (b) an individual who is a member of a group of individuals that is a pre-paid funeral fund.
 - (c) (Repealed)

Maximum penalty: 20 penalty units.

Maximum daily penalty: 2 penalty units.

- (2)-(4) (Repealed)

35 Application for registration

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

36 Requirements for registration

- (1) A company or any group of individuals is not entitled to be registered to act as trustee

or trustees of trust funds under pre-paid contracts unless the company or the individuals, as the case may be:

- (a) does not or do not carry on pre-paid 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, and
 - (d) in the case of a company—the company, under the rules of the company, is required to have not less than 3 directors.
- (2) For the purposes of subsection (1) (a), a person does not carry on pre-paid 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 company or any group of individuals under section 35, the Secretary may, subject to subsection (2), register or refuse to register the company or group of individuals to act as trustee or trustees of trust funds under pre-paid contracts.
- (2) The Secretary shall refuse to register a company or any group of individuals to act as trustee or trustees of trust funds under pre-paid contracts if the Secretary is satisfied that:
- (a) the application for registration was not made in accordance with section 35,
 - (b) the company or group of individuals is not entitled to be so registered under section 36,
 - (ba) the company or group of individuals will not be able to carry on pre-paid funeral benefit business successfully,
 - (c) in the case of a company, the company is not fit to be so registered having regard to:
 - (i) the character and reputation of the directors and other officers of the company, 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-paid contracts in substitution for one of the members of a group of individuals that is a pre-paid 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 Secretary.

Maximum penalty: 20 penalty units.

Maximum daily penalty: 2 penalty units.

- (2) The Secretary shall refuse to confirm the appointment of an individual under subsection (1) if the Secretary is satisfied that any group of individuals which included that individual would not be registered under section 37.
- (3) Where the Secretary confirms the appointment of an individual to act as trustee of trust funds under pre-paid contracts in substitution for one of the members of a group of individuals that is a pre-paid 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-paid funeral fund ceases to be a trustee of trust funds under pre-paid 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 Secretary may cancel the registration of a pre-paid 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-paid 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-paid 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-paid 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 Secretary 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 1A Registration of previously exempt pre-paid funeral funds

39A Application for registration of previously exempt trustees

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

Maximum penalty: 50 penalty units.

- (3) An application for registration made under subsection (2) must:
- (a) be made in the form approved by the Secretary, and
 - (b) be accompanied by:
 - (i) a written statement specifying whether the person is subject to any other

prudential requirements with respect to the person acting as trustee of trust funds under a pre-paid contract, and

(ii) such other information as the Secretary may require.

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

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

Division 2 Money etc, under pre-paid contracts to be held in trust by

pre-paid funeral fund

40 Payment of money and giving of consideration under pre-paid contract to pre-paid funeral fund

- (1) A person shall not agree to supply any funeral service under a pre-paid contract unless the money to be paid, or other valuable consideration to be given, under the contract is required to be paid or given (in accordance with the regulations, if any) to a pre-paid 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-paid contract, notwithstanding any provision to the contrary in that contract.
- (3) A reference in subsection (1) to a pre-paid funeral fund includes a reference to a person who is exempt from the application of section 34.

41 Money etc paid under pre-paid 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-paid 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-paid 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-paid contracts

- (1) Trust funds under pre-paid contracts that are held by a pre-paid funeral fund shall not, either in whole or in part, be transferred to any other pre-paid funeral fund except in pursuance of a scheme confirmed by the Secretary 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 Secretary of any scheme for transfer may be made by or on behalf of any pre-paid funeral fund concerned.
- (4) Where an application has been made for the confirmation of a scheme under subsection (1), the Secretary may confirm the scheme, either without modification, or subject to such modifications as the pre-paid funeral funds concerned agree to, or may, with the approval of the Minister, refuse to confirm the scheme.

- (5) Where the Secretary refuses to confirm a scheme for transfer under subsection (4), the Secretary shall serve notice of that refusal on the pre-paid funeral fund that applied for that confirmation.
- (6) A scheme for transfer does not have any force or effect until confirmed by the Secretary and, when confirmed, shall:
 - (a) be binding on the pre-paid funeral funds concerned and the parties to the pre-paid 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-paid contracts pursuant to this section does not affect the trusts upon which those trust funds are held.
- (8) The regulations may make provision for or with respect to guidelines to be used by the Secretary in deciding whether to confirm or refuse to confirm a scheme under this section.

42A Payment of GST under pre-paid 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-paid contract entered into on or after 1 December 1999 of GST payable on the supply of a funeral service under the pre-paid contract.

Division 3 Administration of trust funds under pre-paid contracts

43 Pre-paid funeral funds, trust accounts

- (1) A pre-paid funeral fund shall open and maintain with one or more authorised deposit-taking institutions one or more current or deposit accounts designated as a trust account or, as the case may be, trust accounts.
- (2) A pre-paid funeral fund shall:
 - (a) forthwith after receiving any money under a pre-paid 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-paid 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-paid funeral fund under a pre-paid 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-paid contracts

A pre-paid funeral fund may invest any money paid to the fund under pre-paid 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-paid funeral fund kept by the fund in the capacity of trustee under pre-paid 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-paid 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-paid 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-paid 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-paid funeral fund is entitled to receive a commission for its services in acting as trustee of funds held by it under a pre-paid contract.

47 Payment of trust funds where funeral service provided

Upon a pre-paid funeral fund being satisfied that a funeral service that a person has agreed to supply under a pre-paid contract has been supplied, the pre-paid 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-paid funeral fund has reasonable cause to believe that:

(a) a funeral service that a person has agreed to supply under a pre-paid contract is no longer required, and

(b) the contract cannot be cancelled under section 49,

the fund may, with the approval of the Secretary 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-paid 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-paid contract cancelled

(1) At any time before a funeral service is supplied under a pre-paid 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-paid contract is entitled to cancel the contract if:

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

Division 3A Actuarial investigation

49A Actuarial investigation of pre-paid funeral funds

- (1) A pre-paid funeral fund must:
- (a) at least once in each period of 3 years or such other period as may be prescribed by the regulations, and
 - (b) where the Secretary by notice served on the fund so directs, within the period specified in the notice,
- cause an actuary to make an investigation of the financial position of the fund, including a valuation of its liabilities, and to furnish it with a report of the results of the investigation.
- (2) The Secretary may waive the requirement for an investigation of a pre-paid funeral fund to be made under subsection (1) if the Secretary is satisfied that, in all the circumstances, it would be unduly onerous or otherwise unwarranted to require the investigation.
- (3) A pre-paid funeral fund must:
- (a) within 3 months after an investigation is made under subsection (1), lodge with

the Secretary an abstract, prepared in the manner prescribed by the regulations and containing the particulars prescribed by the regulations, of the report by the actuary of the results of that investigation, and

- (b) if requested by notice in writing given by the Secretary, lodge with the Secretary (by the date specified in the notice) a copy of the report by the actuary of the results of the investigation.

Maximum penalty: 10 penalty units.

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

- (1) If the Secretary is satisfied that, as a result of an actuarial investigation under section 49A or of an inquiry instituted by the Secretary:
 - (a) the assets of a pre-paid funeral fund are insufficient to meet its liabilities, or
 - (b) the rate of the management expenses of a pre-paid funeral fund is unduly high,the Secretary may, by notice served on the fund, give such directions to the fund as the Secretary considers necessary in the circumstances.
- (2) The Secretary must not give a direction under subsection (1) without the approval of the Minister.
- (3) A pre-paid funeral fund must comply with a direction given to it under subsection (1).

Maximum penalty: 10 penalty units.

Division 3B Auditing

49C Independent auditor to prepare auditor's report

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

Maximum penalty: 10 penalty units.

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

Maximum penalty: 10 penalty units.

49D Qualifications as an independent auditor

- (1) A person is not qualified to be an auditor of a pre-paid funeral fund unless the person is a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth).
- (2) An auditor of a pre-paid funeral fund is not an independent auditor:
 - (a) if (otherwise than as an auditor) the person is an officer or employee of the fund,
or
 - (b) if the person is a partner, employer or employee of a person who is (otherwise than as an auditor) an officer or employee of the fund.
- (3) Appointment as the public officer of a pre-paid funeral fund for the purposes of any law relating to taxation does not in itself render a person unqualified to be an independent auditor of the fund.

49E Form and content of auditors' reports

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

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

49F Access to books

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

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

Division 3C Returns

49G Annual returns to be furnished

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

Maximum penalty: 10 penalty units.

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

49H Funds to provide information in certain cases

- (1) The Secretary may, by notice in writing served on a pre-paid funeral fund or on any officer or agent of the fund, require the fund or that officer or agent to lodge with the Secretary, within such period as is specified in the notice, any one or more of the following:

- (a) such particulars as may be so specified with respect to existing or former pre-paid contracts,
 - (b) such particulars as may be so specified with respect to payments by the fund of amounts held in trust by it,
 - (c) such further particulars with respect to the fund, or to any of its officers or agents or to its affairs, as may be so specified.
- (2) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty: 10 penalty units.

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

49I Public inspection of annual returns

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

- (a) must make available for inspection by the person any return lodged with the Secretary under section 49G, and
- (b) must provide the person with a copy of such return, or of such part of the return as the person specifies, certified under the Secretary's hand and seal to be a true copy.

Division 4 Pre-paid contracts

49J Cooling-off period

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

funeral service supplier in any way for ending the agreement.

(3) In this section:

funeral service supplier means a person who agrees to supply a funeral service under a pre-paid contract.

50 Rise and fall clause not permitted

(1) A person shall not agree to supply a funeral service under a pre-paid 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-paid 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-paid 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-paid 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-paid 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-paid 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-paid contract

(1) A person who supplies a funeral service to any person with whom the person has entered into a pre-paid contract, is not entitled to recover in any court any charges for the service from any person other than the pre-paid 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-paid 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-paid funeral fund within the meaning of Part 9,

the Secretary 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 Secretary 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

Secretary or any inspector may:

- (a) request any person employed or engaged at any place entered pursuant to that subsection to produce to the Secretary 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 Secretary 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-paid funeral fund within the meaning of Part 9.

specified person means a person suspected or believed by the Secretary, 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 Secretary 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-paid contract, the Secretary 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 Secretary may determine.
- (2) Where the Secretary decides to hold an inquiry under this Division, the Secretary 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 Secretary may require a specified person:
 - (a) to produce to the Secretary at a place specified by the Secretary 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 Secretary all reasonable assistance in connection with the inquiry, and

(c) to attend before the Secretary 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 Secretary under this section, the Secretary may take possession of those records for such period as the Secretary thinks necessary for the purposes of the inquiry, and during that period the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary:
 - (i) address the Secretary, and
 - (ii) examine that person,in relation to matters in respect of which the Secretary has questioned that person.
- (6) A specified person is not excused from answering a question put to the person by the Secretary 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 Secretary 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 Secretary is satisfied that a specified person has failed without lawful excuse to comply with a requirement of the Secretary to the extent to which that person is capable of complying with it, the Secretary may certify the failure in writing under the Secretary's hand to the Supreme Court.
- (10) Where the Secretary 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 Secretary 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 Secretary shall cause notes of an examination made by the Secretary 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 Secretary, 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 Secretary

- (1) When the Secretary has completed an inquiry under this Division, the Secretary shall prepare and give to the Minister a report of the Secretary'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 Secretary shall not give a copy of a report prepared under subsection (1) to a person if the Minister has informed the Secretary 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 Secretary after inquiry

After completing an inquiry under this Division, the Secretary:

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

60 Privileged communications

The Secretary 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 Secretary 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 Secretary 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 Secretary 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-paid funeral fund not to act as trustee of trust funds under new pre-paid contracts

If the Secretary considers that it is desirable to do so in the interests of persons who have entered into pre-paid contracts in respect of which a pre-paid funeral fund acts as trustee, the Secretary 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-paid contract entered into after the service of the notice.

65 Revocation and variation of directions

- (1) The Secretary 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 Secretary 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 3A Disciplinary measures

66A Notices to show cause

- (1) This section applies if the Secretary believes, on reasonable grounds, that:
 - (a) for a fund that is a funeral contribution fund:
 - (i) the fund is no longer able to carry on contributory funeral benefit business successfully, or
 - (ii) the fund no longer satisfies the requirements for registration specified in section 13, or
 - (iii) the fund is not fit to be registered having regard to the character and reputation of the directors and other officers of the company, or
 - (iv) the fund is not complying with the conditions, if any, of its registration, or
 - (b) for a fund that is a pre-paid funeral fund:
 - (i) the fund is no longer able to carry on pre-paid funeral benefit business successfully, or
 - (ii) the fund (not being a fund registered under section 39B) no longer meets the requirements for registration specified in section 36, or
 - (iii) if the fund is a corporation—the fund is no longer fit to be registered having regard to the character and reputation of the directors and other officers of the corporation or another matter prescribed for the purposes of section 37 (2) (c) (ii), or
 - (iv) if the fund is a group of individuals—the fund is no longer fit to be registered having regard to the character and reputation of each of those individuals or

another matter prescribed for the purposes of section 37 (2) (d) (ii), or

(v) the fund is not complying with the conditions, if any, of its registration.

- (2) The Secretary may, by notice in writing served on the fund, call on the fund to show cause, within a specified period, being not less than 14 days, why the fund should not, for the reasons specified in the notice, be dealt with in accordance with this Division.
- (3) The Secretary may conduct such inquiry or make such investigation in relation to the matters to which the notice relates and the submissions made, if any, and the evidence adduced, if any, by or on behalf of the fund in relation to those matters as the Secretary thinks fit.

66B Determination of disciplinary measures by the Secretary

- (1) If, after compliance with section 66A, the Secretary is satisfied that a ground referred to in section 66A (1) has been established, the Secretary may do one or more of the following:
 - (a) require the fund to comply within a specified time with a requirement specified by the Secretary,
 - (b) impose or vary a condition on the fund's registration,
 - (c) suspend the registration for a period not exceeding 12 months,
 - (d) disqualify the fund, or if the fund is a corporation, a director or other officer of the corporation, from being registered or being concerned in the direction, management or conduct of the business of carrying on contributory funeral benefit business or acting as a trustee of trust funds under a pre-paid contract, either permanently or for such period as the Secretary thinks fit,
 - (e) cancel the registration.
- (2) Where, under subsection (1), the Secretary requires a fund to comply with a requirement specified by the Secretary, the fund must comply with the requirement within the period specified by the Secretary under that subsection.
- (3) A fund or individual disqualified under subsection (1) (d) must not, while disqualified:
 - (a) be registered under this Act, or
 - (b) be concerned in the direction, management or conduct of a business for which this Act requires a person to be registered.

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-paid 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-paid contracts.

68 Appointment and powers of administrator of funeral contribution fund

- (1) Subject to this Division and with the approval of the Minister, the Secretary 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 Secretary has reason to believe that further failures of that kind will occur,
 - (b) after being notified by the Secretary 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 Secretary 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 Secretary 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 Secretary, 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-paid funeral fund

- (1) Subject to this Division and with the approval of the Minister, the Secretary may, by instrument in writing, appoint an administrator to administer the affairs of a pre-paid 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-paid contract,
 - (b) after being notified by the Secretary 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 Secretary is of the opinion that, in the interests of the persons who have entered into pre-paid 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 Secretary has cancelled the registration of the fund under section 39 and the Secretary 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-paid contracts in respect of which the fund acts as trustee.
- (2) On the appointment of an administrator under subsection (1), the Secretary shall serve on the pre-paid 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-paid 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-paid 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-paid funeral fund under pre-paid contracts, and
 - (b) shall, subject to and in accordance with any direction given to the administrator by the Secretary, 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-paid contracts in respect of which the administrator acts as trustee.

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

- (1) The Secretary 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 mentally incapacitated person,
 - (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 Secretary, or
 - (f) has his or her appointment revoked by the Secretary under subsection (2).
- (2) The Secretary 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 Secretary, 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 Secretary.
- (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 Secretary 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 Secretary 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 Secretary within the meaning of that Act has, after holding an inquiry under Division 2 of Part 5 of that Act, reported that the Secretary 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 Secretary within the meaning of that Act or on the application of the Secretary 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 Secretary

75 Appeal against refusal to register funeral contribution fund or to approve alteration or addition of rules

- (1) Where the Secretary:
- (a) refuses to register a company to carry on contributory funeral benefit business under section 14 or a person to carry on contributory funeral benefit business under section 16B, or
 - (b) refuses to approve an alteration of or addition to the rules of a funeral contribution

fund under section 15, or

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

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 Secretary, or

(b) directing the Secretary to register the person, approve the alteration of or the addition to the rules of the fund or exempt the person from the provision of this Act or the regulations, as the case may be.

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

(1) A person who is registered to carry on contributory funeral benefit business subject to conditions may appeal to the Supreme Court against the imposition of the conditions.

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

(a) confirming the registration of the person subject to the conditions imposed by the Secretary or imposing other conditions that the Court considers appropriate, or

(b) directing the Secretary to register the person without conditions.

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

(1) If the Secretary cancels the registration of a funeral contribution fund under section 16 (subsection (1) (f) excepted), an appeal against the cancellation may be made to the Supreme Court by the fund concerned.

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

(a) confirming the cancellation by the Secretary, or

(b) revoking the cancellation by the Secretary.

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

(1) Where the Secretary:

(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 Secretary, or
 - (b) directing the Secretary 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 Secretary:
 - (a) refuses under section 37 or section 39B to register a person to act as trustee or trustees of trust funds under pre-paid contracts,
 - (b) refuses under section 38 to confirm the appointment of an individual as a trustee, or
 - (ba) refuses under section 39B (5) to exempt a person registered under that section from complying with a provision of this Act or the regulations, or
 - (c) cancels the registration of a pre-paid 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 person 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 Secretary, or
- (b) directing the Secretary to register the person or to confirm the appointment of the individual, as the case may be.

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

- (a) confirming the refusal of the Secretary, or
- (b) directing the Secretary to exempt the person from complying with the provision of this Act or the regulations.

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

- (a) confirming the cancellation by the Secretary, or
- (b) revoking the cancellation by the Secretary.

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

(1) A person who is registered to act as a trustee of trust funds under a pre-paid contract may appeal to the Supreme Court against the imposition of conditions on the registration.

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

- (a) confirming the registration of the person subject to the conditions imposed by the Secretary or other conditions the Court considers appropriate, or
- (b) directing the Secretary to register the person without conditions.

78 Appeal against refusal to confirm transfer in respect of pre-paid funeral fund

(1) Where the Secretary refuses to confirm a scheme for transfer by a pre-paid 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 Secretary, or
- (b) directing the Secretary 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 Secretary:

- (a) directs a funeral contribution fund not to accept any new contributors under section 63, or
- (b) directs a pre-paid funeral fund not to act as trustee of trust funds under new pre-paid 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 Secretary 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-paid contracts in respect of which the fund acts as trustee, or
- (b) revoking the direction of the Secretary if it is not so satisfied.

79A Appeal against imposition of disciplinary measures

(1) This section applies if the Secretary:

- (a) imposes a requirement on a fund under section 66B (1) (a), or
- (b) imposes or varies a condition on a fund's registration under section 66B (1) (b), or
- (c) suspends a fund's registration under section 66B (1) (c), or
- (d) disqualifies a fund or individual from being registered or being concerned in the direction, management or conduct of the business of carrying on contributory funeral benefit business or acting as a trustee of trust funds under a pre-paid contract under section 66B (1) (d), or
- (e) cancels a fund's registration under section 66B (1) (e).

(2) An appeal against the imposition or variation of that requirement or condition, or the suspension, disqualification or cancellation, may be made to the Supreme Court by the fund or individual concerned.

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

- (a) confirming the Secretary's decision to impose or vary the requirement or condition, suspend the registration, disqualify the fund or individual or cancel the registration, or take another disciplinary measure the Court considers appropriate, or
- (b) revoke the requirement, condition, suspension, disqualification or cancellation.

80 Appeal against appointment of administrator of funeral fund

- (1) Where the Secretary 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-paid 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 Secretary of the decision appealed against or within such extended period as the Supreme Court may allow.

82 Failure of Secretary to act on application deemed refusal

- (1) For the purposes of this Part, the Secretary shall be deemed to have refused:
 - (a) to register a company to carry on contributory funeral benefit business (other than on application under section 16B),

- (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-paid contracts (other than on application under section 39A),
- (e) to confirm the appointment of an individual under section 38, or
- (f) to confirm a scheme for transfer by a pre-paid funeral fund,

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

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

83 Reasons for refusal to be given

Where the Secretary 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 Secretary shall, if so required by that person, notify the person in writing of the grounds of the Secretary'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 Secretary.

Part 7 Miscellaneous

85 Offence to obstruct Secretary etc

A person shall not:

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

Maximum penalty: 10 penalty units.

85A False or misleading statements

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

Maximum penalty: 10 penalty units.

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

Maximum penalty: 10 penalty units.

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

Maximum penalty: 10 penalty units.

- (4) If an omission makes a document required for the purposes of this Act or lodged with the Secretary misleading in a material respect, a person who made or authorised the omission is guilty of an offence unless it is proved that the person had taken reasonable precautions aimed at avoiding the making or authorising of omissions that would make such a document false or misleading.

Maximum penalty: 10 penalty units.

86 Enlargement or abridgement of time

- (1) The Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary'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 Liability of directors etc for offences by corporation—accessory to the commission of the offences

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:

- (a) a corporation commits a corporate offence, and
- (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person:
 - (i) aids, abets, counsels or procures the commission of the corporate offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
 - (iii) conspires with others to effect the commission of the corporate offence, or
 - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

91 Offences generally

- (1) All proceedings for offences against this Act or the regulations shall be disposed of summarily in the Local Court.
- (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-paid 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 Secretary for any matter or thing to be done in that office,
 - (c) the control of advertisements relating to contributory or pre-paid funeral benefit business, and
 - (d) the accounts and registers to be kept by pre-paid funeral funds, the audit of those accounts and the returns to be furnished by pre-paid funeral funds, and
 - (e) the transfer of contributions made by a contributor from one funeral contribution fund to another such fund, and
 - (f) the transfer of trust funds from one pre-paid funeral fund to another such fund, and
 - (g) the transfer of a contract from one funeral director to another funeral director, and
 - (h) the requirements for actuarial investigations of pre-paid funeral funds, and
 - (i) the information that must be provided to a consumer before a pre-paid contract is entered into, and
 - (j) without limiting paragraph (i), information that must be provided to a consumer about the funeral services that will be provided under a pre-paid contract, including information about the funeral services that are not covered by the contract, and
 - (k) the information that must be provided with a pre-paid contract, including information relating to cancellation of the contract under section 49.

- (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 Secretary in accordance with section 94, or
 - (b) where the existing fund is pursuant to this Part deemed to have notified the Secretary 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 Secretary.
- (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 Secretary:
 - (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 Secretary by a notice served on that existing fund, notify the Secretary 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 Secretary in accordance with that subsection shall, for the purposes of this Part, be deemed to have notified the Secretary 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 Secretary 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

97A, 97B (Repealed)

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 Secretary, or is deemed to have notified the Secretary, 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 Secretary 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 Secretary.
- (4) All money to the credit of a repayment fund established under subsection (1) shall be paid by the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary in accordance with this section as the appropriate refund of contributions by an existing funeral contribution fund shall be paid to the Secretary by such time as the Secretary may by notice served on that existing fund direct or, where the Secretary considers it appropriate to do so, in such instalments and at such times as the Secretary 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 Secretary 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 Secretary.

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 Secretary 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 Secretary 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 Secretary:
 - (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) The *Unclaimed Money Act 1995* applies to money paid to the Treasurer under subsection (2) in the same way as it applies 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 Secretary 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 Secretary 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 Secretary may give directions for transfer of business

- (1) The Secretary 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 Secretary 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 Secretary shall not give any directions to an existing funeral contribution fund under subsection (1) until the Secretary:
 - (a) has given the existing fund an opportunity to submit a scheme to the Secretary, within such time as the Secretary may determine, for the transfer of the contributory funeral benefit business of that existing fund, and
 - (b) has obtained a report from an actuary on the proposed transfer.
- (3) The Secretary shall, in exercising the Secretary's powers under subsection (1), have regard to any scheme submitted by the existing funeral contribution fund concerned and the report of the actuary.

106 Transfer of contributions paid by contributors

- (1) The directions given to an existing funeral contribution fund by the Secretary 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 Secretary 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 Secretary 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 Secretary considers it appropriate to do so, at such times and in such instalments after that business is transferred as the Secretary specifies in a direction under section 105.
- (4) The Secretary 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 Secretary

- (1) If an existing funeral contribution fund fails to transfer the fund's contributory funeral benefit business in accordance with the directions of the Secretary under section 105 (other than directions to pay any amount under section 106), the Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary 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-paid funeral funds and pre-paid 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-paid contract means a pre-paid 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-paid 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-paid funeral fund means a person to whom any money or other valuable consideration under an existing pre-paid 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-paid 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-paid contract, means:

- (a) except as provided in paragraph (b), the day on which the person notifies the Secretary in accordance with section 112, or
- (b) where the person is pursuant to this Part deemed to have notified the Secretary that the person proposes to cancel, in accordance with Division 2, pre-paid contracts entered into by the person, the day on which the person is deemed to have so notified the Secretary.

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

- (1) A person who agreed to supply funeral services under existing pre-paid contracts shall, within 1 month after the commencement of section 34 or within such other period as may be specified by the Secretary by a notice served on that person, notify the Secretary 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 Secretary in accordance with subsection (1) shall, for the purposes of this Part, be deemed to have notified the Secretary that the person proposes to cancel, in accordance with Division 2, existing pre-paid 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 Secretary or to a pre-paid 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

114A-114C (Repealed)

Division 2 Cancellation of existing pre-paid contracts

115 Application of Division

- (1) This Division applies to and in respect of any person who notifies the Secretary, or is deemed to have notified the Secretary, that the person proposes to cancel existing pre-paid contracts entered into by the person.
- (2) In this Division, **existing pre-paid 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-paid contracts

- (1) Any existing pre-paid 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-paid 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-paid 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 Secretary 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 Secretary.
- (4) All money to the credit of a repayment fund established under subsection (1) shall be paid by the Secretary 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 Secretary 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 Secretary for payment into the repayment fund established under section 117 (1) in respect of that person such amount as may be calculated by the Secretary 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-paid 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 Secretary in accordance with this section as the appropriate refund of subscriptions by a person to whom this Division applies shall be paid to the Secretary by such time as the Secretary may by notice served on that person direct or, where the Secretary considers it appropriate to do so, in such instalments and at such times as the Secretary 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 Secretary 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 Secretary.
- (9) An existing pre-paid 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-paid contract which is cancelled under this Division shall, forthwith after that cancellation, pay to the Secretary, 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-paid funeral fund fails to pay the Secretary 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 Secretary.
- (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 Secretary 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 Secretary 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 Secretary:
 - (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) The *Unclaimed Money Act 1995* applies to money paid to the Treasurer under subsection (2) in the same way as it applies to unclaimed money within the meaning of that Act.

Division 3 Continuation of existing pre-paid contracts

120 Application of Division

- (1) This Division applies to and in respect of a person who notifies the Secretary that the person does not propose to cancel existing pre-paid contracts entered into by the person.
- (2) Where directions in respect of existing pre-paid 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-paid contracts

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

122 Transfer of subscriptions to pre-paid 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-paid funeral fund of such amount as may be calculated by the Secretary 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-paid 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-paid 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 Secretary 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-paid funeral fund to which it is payable at such time or in such instalments and at such times as the Secretary 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-paid funeral fund under any existing pre-paid contract entered into by that person.

123 Failure to comply with directions of Secretary

- (1) If a person to whom this Division applies fails to comply with any directions given to the person by the Secretary under section 121, including directions to pay any amount under section 122, the Secretary 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 Secretary that the person proposes to cancel existing pre-paid contracts entered into by the person.

Part 10 Savings and transitional provisions

124 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - Funeral Funds Amendment Act 2003*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

125 Contributory funeral benefit business

- (1) This section applies to a person who, immediately before the commencement of this section:
 - (a) carried on the business of a funeral contribution fund, and
 - (b) was exempt from the application of section 11 pursuant to section 11 (3) or from the application of section 94 pursuant to section 97A, and
 - (c) within 6 months after that commencement, applies to the Director-General to be registered under this Act to carry on contributory funeral benefit business.
- (2) The person does not commit an offence against section 11 if the person continues to carry on the business of a funeral contribution fund during the period starting on the commencement of this section and ending on the day the Director-General makes a decision under section 16C about the person's application.

126 Pre-paid funeral funds

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

127 Registration of corporations

An amendment made to Part 4 by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2004](#) does not apply:

- (a) to a corporation registered under section 37 before the commencement of that amendment, and
- (b) in respect of an application for registration by a corporation that applied to the Director-General under section 36 but had not been registered under section 37 before the commencement of that amendment.

128 Requirements for registration

For the purposes of section 66A (1) (b) (ii), a corporation referred to in section 127 (a) or (b) meets the requirements for registration specified in section 36 if it meets the requirements for registration specified in section 36 as in force immediately before the commencement of the amendment made to section 36 by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2004*.