

CEMETERIES ORDINANCE 1952-1959.*

Amended 47/63 - 36/64.

✓ 46/66.
4/71

An Ordinance relating to the Establishment, Maintenance and Control of Cemeteries.

Short title and citation.
Short title amended:
No. 17, 1938, s. 4.

Commencement.

1. This Ordinance may be cited as the *Cemeteries Ordinance* 1952-1959.*2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.†

Repeal.

3. The Act number 19 of 1862, the "Cremation Act, 1891" and "The Cemeteries Act Amendment Act, 1897" of the State of South Australia cease to apply to the Territory.

Definitions.

Amended by N. 7, 1955, s. 3; and No. 22, 1959, s. 6 and First Schedule.

4. In this Ordinance, unless the contrary intention appears—

"Board" means a Board of Trustees of a public cemetery appointed under this Ordinance;

"burial ceremony" includes a ceremony at a burial or cremation;

"cemetery" includes a public cemetery and a private burial ground;

"legally qualified medical practitioner" means a person registered under the *Medical Practitioners Registration Ordinance* 1935-1945 and includes a medical practitioner registered under the law in force in a State or Territory of the Commonwealth;

"private burial ground" means land set apart for, or dedicated to, the purposes of a private burial ground under this Ordinance;

"public cemetery" means land set apart for, or dedicated to, the purposes of a public cemetery under this Ordinance;

* The *Cemeteries Ordinance* 1952-1959 comprises the *Cemeteries Ordinance* 1952 as amended. Particulars of the Principal Ordinance and of the amending Ordinances are set out in the following table:—

Ordinance.	Number and Year.	Date of Notification of Governor-General's Assent in <i>N.T. Govt. Gazette</i> .	Date of Assent by Administrator.	Date of Commencement.
<i>Cemeteries Ordinance</i> 1952	No. 18, 1952	2nd April, 1952
<i>Cemeteries Ordinance</i> 1955	No. 7, 1955	..	8th June, 1955	..
Administrator's Council Ordinance 1959	No. 22, 1959	..	7th July, 1959	..
				↑ See Note below

Note.—For particulars of commencement of this Ordinance see page 27.

† No date had been fixed up to 1st January, 1961.

“ the recognized head ”, in relation to a religious denomination or group of religious denominations, means the person for the time being recognized by the Administrator in Council as the head, in the Territory, of a religious denomination or group of religious denominations.

5—(1.) Subject to this section, the provisions of this Ordinance—

Application of Ordinance. Sub-section (1.) amended by No. 22, 1959, s. 6 and First Schedule.

- (a) apply only to such portions of the Territory as are specified by the Administrator in Council, by notice in the *Gazette*;
- (b) do not apply to the cemetery known as the Darwin Chinese Public Cemetery; and
- (c) do not apply to a cemetery or portion of a cemetery the control of which is exercised by the body known as the Imperial War Graves Commission.

(2.) Sections one to six (inclusive), fifteen, seventeen, eighteen, nineteen, twenty-two, twenty-five, twenty-six, thirty and thirty-six to forty (inclusive) of this Ordinance apply throughout the Territory.

6.—(1.) The Administrator may, by notice in the *Gazette*, set apart for, or dedicate to, the purposes of a public cemetery or a private burial ground, any unleased land belonging to the Commonwealth.

Establishment of cemeteries.

(2.) Land so set apart or dedicated shall be used only for the burial or cremation of bodies of deceased persons and for purposes incidental thereto.

7—(1.) The Administrator in Council may, by notice in the *Gazette*, set apart separate portions of the land comprising a public cemetery for the burial of deceased persons—

Provision of Public Cemeteries according to religious denominations, &c. Sub-section (1.) amended by No. 22, 1959, s. 6 and First Schedule.

- (a) of a religious denomination or group of religious denominations if requested to do so by the recognized head thereof;
- (b) who served in any war in which His Majesty is or has been engaged—
 - (i) in the Naval, Military or Air Forces of the Commonwealth or of any other part of the King's dominions; or

- (ii) in the Commonwealth, a Territory of the Commonwealth or in an area adjacent thereto, in the Armed Forces of a Power or Authority allied or associated with His Majesty;
- (c) who served in the Naval, Military or Air Forces of the Commonwealth or of any other part of the King's dominions and who do not come within the provisions of the last preceding paragraph;
- (d) of Asiatic nationality; or
- (e) who are aboriginals within the meaning of the *Aboriginals Ordinance 1918-1947*.

Amended by
No. 22, 1959,
s. 6 and
First
Schedule.

(2.) In setting apart portions of the land comprising a public cemetery for the burial of deceased persons of a religious denomination, the Administrator in Council shall have regard to the number of adherents, in the Territory, of that and other religious denominations and shall give preference to the religious denomination having the greatest number of adherents as shown by the last official census.

(3.) In the last preceding sub-section the expression "religious denomination" does not include a group of religious denominations.

Board of
Trustees of
a Cemetery.

8.—(1.) The Administrator may, by notice in the *Gazette*, appoint a board of trustees to be a Board of Trustees of a public cemetery, for the purposes of this Ordinance.

(2.) A board of trustees of a cemetery shall be known by a name consisting of the words "Board of Trustees of" followed by the name of the cemetery.

(3.) A Board shall be a body corporate with perpetual succession and a common seal and shall be capable of suing and being sued.

(4.) All courts, judges and persons acting judicially shall take judicial notice of the seal of a Board affixed to a document and shall presume that it was duly affixed.

(5.) The exercise of the rights, powers, authorities or functions, or the performance of the duties or obligations, of a Board shall not be affected by reason only of there being a vacancy in the office of a member of that Board.

Constitution
of a Board.

9.—(1.) A Board shall consist of not less than five nor more than twelve persons.

(2.) The Administrator, by notice in the *Gazette*—

(a) may appoint a person to, or remove a member from, a Board; and

(b) may appoint a person to be a member of a Board in the place of a member who vacates his office.

(3.) Where a portion of a public cemetery has been set apart for the burial of deceased persons of a religious denomination, the recognized head thereof may nominate a person for appointment to the Board.

(4.) Where a portion of a public cemetery has been set apart for the burial of deceased persons of a group of religious denominations, the recognized head thereof may nominate a person for appointment to the Board.

(5.) Where a portion of a public cemetery has been set apart for the burial of deceased persons who are described in paragraph (b) or (c) of sub-section (1.) of section seven of this Ordinance, the sub-branch of the organization known as the Returned Sailors', Soldiers' and Airmen's Imperial League of Australia situated nearest to the cemetery may nominate a person for appointment to the Board.

(6.) The Administrator, in his absolute discretion, may appoint a person who is nominated pursuant to any of the three preceding sub-sections to be a member of the Board.

(7.) The Administrator shall, by notice in the *Gazette*, appoint one of the members of a Board to be Chairman of the Board.

10. A member of a Board is deemed to vacate his office— Vacation of Office.

- (a) if the Administrator removes him from a Board;
- (b) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or income for their benefit;
- (c) if he becomes of unsound mind;
- (d) if he resigns his office by writing under his hand addressed to the Administrator and the resignation is accepted by the Administrator; or
- (e) if he is absent, except on leave granted by a Board, from three consecutive meetings of that Board.

11.—(1.) A Board shall meet once in every six months and shall meet at such other times as, in the opinion of the Chairman, are necessary for the efficient conduct of its affairs. Meetings of Board.

(2.) The Chairman of a Board at any time may, and upon receipt of a written request signed by not less than three members of the Board shall, call a meeting of the Board.

(3.) The Chairman of a Board shall preside at all meetings of the Board at which he is present.

(4.) In the event of the absence of the Chairman from a meeting of a Board, the members present shall appoint one of their number to preside at that meeting.

(5.) At a meeting of a Board, three members shall constitute a quorum.

(6.) The member of a Board presiding at a meeting of a Board shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

Board may
del gate its
powers.

12.—(1.) A Board may, in relation to any particular matter or class of matters, or to any particular place, by writing under its seal, delegate to any person all or any of its powers or functions under this Ordinance (except this power of delegation), so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters, or to the place, specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power by the Board.

Powers of
a Board.

13. A Board shall have power—

- (a) to do anything necessary for the upkeep, maintenance, improvement and management of the public cemetery in respect of which it is appointed; and
- (b) to do anything incidental to any of the powers conferred by this Ordinance.

Board may
erect
Crematorium.
Sub-section (1.)
amended by
No. 22, 1959,
s. 6 and
First
Schedule.

14.—(1.) A Board may, subject to the approval of the Administrator in Council, erect and maintain a crematorium in a cemetery for the cremation of bodies of deceased persons.

(2.) A Board which maintains a crematorium shall appoint a person to be the person in charge of the crematorium.

Cremations.

15. A person shall not cremate the body of a deceased person, otherwise than in a crematorium maintained in accordance with the provisions of this Ordinance.

Penalty: Five hundred pounds or imprisonment for three years, or both.

Permit for
cremation.

16. Subject to this Ordinance a Board may grant a permit for the cremation of the body of a deceased person if it receives—

- (a) a certificate signed by two legally qualified medical practitioners, one of whom has attended the deceased in a professional capacity prior to death, stating that death was due to natural causes;
- (b) a certificate signed by a legally qualified medical practitioner stating that he has conducted a *post mortem* examination of the body of the deceased and that death was due to natural causes; or

- (c) a certificate signed by a coroner stating that he has held an inquest as to the cause of death of the deceased and that no further examination of the body is necessary.

17. A person knowing that he has, whether directly or indirectly, an interest ensuing upon the death of a deceased person—

Interested persons not to certify.

- (a) in the proceeds of a policy of insurance or assurance; or
- (b) in any real or personal property or the income therefrom, whether immediately or in expectancy,

shall not sign a certificate for the purposes of the last preceding section in respect of the body of that person.

Penalty: Two hundred pounds or imprisonment for one year, or both.

18.—(1.) A next of kin, whether of the age of twenty-one years or not, of a deceased person, may give notice to a Board objecting to the cremation of the body of the deceased.

Next of kin may object to cremation.

(2.) Upon receipt of a notice under the last preceding subsection, unless the deceased person has left an attested memorandum directing, or expressing the desire, that his body shall be cremated, the Board shall refuse to grant a permit for the cremation of that body or, if a permit has been granted, the Board shall forthwith revoke the permit and give notice thereof to the person in charge of the crematorium, by causing a written notice to be affixed to the door of the crematorium and by serving a copy on him.

19. The Crown Law Officer and Draftsman, Darwin, a Justice of the Peace or a police officer, having reasonable cause for so doing, may, by notice in writing affixed to the door of a crematorium and by notice served on the person in charge of the crematorium—

Officers may forbid cremation.

- (a) forbid the cremation of the body of a deceased person; and
- (b) order the removal of the body to such custody as the person giving the notice sees fit.

20. A person shall not cremate, or permit to be cremated, the body of a deceased person in a crematorium maintained under this Ordinance—

No cremation without permit or in contravention of notice.

- (a) unless a permit for the cremation of that body is produced to him and he has reasonable grounds for believing that the permit has not been revoked; or
- (b) if a notice has been given under the last preceding section.

Penalty: Five hundred pounds or imprisonment for three years, or both.

Burial must be in cemetery.

21. A person shall not bury the body of a deceased person elsewhere than in a cemetery.

Penalty: One hundred pounds.

Time for burials.

22. A person shall not bury the body of a deceased person during the time between sunset on any day and sunrise on the next succeeding day.

Penalty: Fifty pounds.

Manner of burial.

23. A person shall not bury the body of a deceased person otherwise than in the manner prescribed.

Penalty: Twenty pounds.

Place of burial.

24. A person shall not bury the body of a deceased person otherwise than in the place directed by the Board or a servant or agent of the Board.

Penalty: Twenty pounds.

Inspection of premises.

25. The Administrator may, in writing, authorize a person to enter and inspect a cemetery and the buildings, fittings, works, apparatus, graves, vaults and places of burials in that cemetery.

Interference with burial ceremonies.

26. Subject to this Ordinance, a person shall not, whether directly or indirectly, obstruct or hinder the performance of a burial ceremony in a cemetery.

Penalty: Fifty pounds.

Recognized head may object to certain matters.

27.—(1.) The recognized head of a religious denomination, or group of religious denominations, for the burial of deceased members of which a portion of a public cemetery has been set apart, may, by notice in writing to the Board, object to—

(a) the performance of a particular form of burial ceremony;

(b) the design of a monument, tombstone or headstone;

or

(c) the inscription on a monument, tombstone or headstone,

within that portion of the cemetery.

(2.) When notice is given under the last preceding subsection, the Board shall serve a notice by post on the person concerned in or responsible for the matter to which objection has been made—

(a) prohibiting the performance of the particular form of burial ceremony;

(b) prohibiting the placing, or ordering the removal, of a monument, tombstone or headstone; or

- (c) prohibiting the placing, or ordering the removal, of an inscription on a monument, tombstone or headstone,

as the case may be, within that portion of the cemetery.

28. A person shall not—

- (a) perform a particular form of burial ceremony;
- (b) place, or fail to remove, a monument, tombstone or headstone; or
- (c) place, or fail to remove, an inscription on a monument, tombstone or headstone,

Compliance with Board's order.

contrary to a notice under sub-section (2.) of the last preceding section.

Penalty: Fifty pounds.

29.—(1.) A Board may, on the application of a person, and on payment of the prescribed fee grant to that person an exclusive right of burial in a grave, vault or burial ground comprising one or more allotments in a public cemetery.

Burial allotments.

(2.) The Board shall permit the recognized head to state whether he has any objection, and if so the grounds therefor, to a grant being made if an allotment, in respect of which an application is made under the last preceding sub-section, is within a portion of a cemetery which has been set apart for the burial of deceased persons of a religious denomination or group of denominations.

(3.) The Board shall permit the sub-branch of the organization known as the Returned Sailors', Soldiers' and Airmen's Imperial League of Australia situated nearest to the cemetery to state whether it has any objection, and if so the grounds therefor, to a grant being made if an allotment, in respect of which an application is made under sub-section (1.) of this section, is within a portion of a cemetery which has been set apart for the burial of deceased persons who are described in paragraph (b) or (c) of sub-section (1.) of section seven of this Ordinance.

30. Subject to this Ordinance, a minister of religion may exercise his spiritual functions in connexion with a burial ceremony without hindrance by or from any person.

Ministers of religion may exercise spiritual functions.

31. A Board may employ such caretakers and other servants upon such conditions and at such wages as it deems reasonable, for the purpose of carrying out, and giving effect to, the provisions of this Ordinance.

Employment of staff.

32.—(1.) There shall be paid to a Board such sums of money as are, from time to time, appropriated by the Parliament for the purposes of this Ordinance.

Maintenance of cemeteries.

(2.) A Board shall, subject to the control of the Administrator, expend monies received by it under this Ordinance in laying out, ornamenting, preserving, maintaining and keeping the cemetery in a clean and orderly condition and in a manner appropriate to a cemetery.

Accounts.

Substituted by
No. 7, 1955,
s. 4.

33. A Board shall keep accounts, in respect of all moneys received and expended by it, in such form and manner as is approved by the Administrator.

Audit.

Substituted by
N. 7, 1955,
s. 5.

34. The accounts of a Board shall be subject to audit by the Auditor-General for the Commonwealth.

Annual Report.

Substituted by
No. 7, 1955,
s. 6.

35.—(1.) A Board shall, as soon as practicable after the last day of February in each year, prepare and furnish to the Administrator a report on the operations of the Board during the year ended on that date, together with a copy of its accounts in respect of that year.

(2.) A Board shall furnish to the Administrator such other reports, and such documents and information, relating to the operations of the Board as the Administrator requires.

**Closing of
cemeteries.**

36. The Administrator may, by notice in the *Gazette*, order that from and including a date specified in that notice, being not less than three calendar months after the date thereof, burials or cremations, or both, in a cemetery be wholly discontinued or discontinued subject to such exceptions as are notified in that notice.

**No burial in
restricted
cemetery.**

37. A person shall not bury the body of a deceased person in a cemetery contrary to the provisions of a notice under the last preceding section.

Penalty: One hundred pounds.

**Appointment
of curators.**

38. The Administrator may appoint a person to be the curator of a public cemetery which is situated within a portion of the Territory to which the provisions of this Ordinance, other than the provisions set forth in sub-section (2.) of section five of this Ordinance, do not apply.

**Elsley
Memorial
Cemetery.**

39.—(1.) The Administrator may, by notice in the *Gazette*, set apart for, and dedicate to, the purposes of a private burial ground, to be known as the Elsley Memorial Cemetery, that piece of land described in the Schedule to this Ordinance.

(2.) The Administrator may, for the purposes of this section, by notice in the *Gazette*, appoint a person to be Curator of the Elsley Memorial Cemetery.

(3.) A Curator appointed under this section shall supervise the cemetery and shall not permit the body of any deceased person to be buried therein, without the consent of the Administrator being first obtained.

40. The Administrator may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular for— Regulations.

- (a) the use and management of cemeteries;
- (b) regulating and controlling the digging, making and maintenance of graves, vaults and places of burial in cemeteries and fixing the position thereof;
- (c) prescribing the manner of burial and the conditions under which graves, vaults and places of burial in cemeteries may be re-opened;
- (d) prescribing the powers, duties and remuneration of curators;
- (e) regulating and controlling the erection and maintenance of monuments, tombstones, headstones and other structures;
- (f) regulating the receipt and control of monies paid, contributed or donated to Boards;
- (g) prescribing fees for exclusive rights of burial;
- (h) regulating fees and charges in respect of a service or facility provided under this Ordinance;
- (i) protecting buildings, fittings, works, apparatus, monuments, tombstones, headstones and enclosures within cemeteries;
- (j) regulating the use of crematoria;
- (k) regulating the duties of caretakers and servants of Boards;
- (l) regulating the proceedings of Boards; and
- (m) prescribing penalties not exceeding Fifty pounds for an offence against the regulations.

THE SCHEDULE.

Section 39

DESCRIPTION OF LAND KNOWN AS ELSEY MEMORIAL CEMETERY.

Commencing at a point 3,100 links true north from the centre of Old Elsey Station Homestead, Northern Territory; thence east at right angles for 300 links; thence true north at right angles for 700 links; thence west at right angles for 600 links; thence south at right angles for 700 links; thence east at right angles to the point of commencement and comprising an area of 4 acres and 32 perches or thereabouts.