

LEGISLATIVE COUNCIL

Read 1° 25 March 1986

(Brought in by the Honourable D. R. White)

A BILL

to validate certain rights of burial at the Melbourne General Cemetery, to amend the *Cemeteries Act 1958* and for other purposes.

Cemeteries (Amendment) Act 1986

The Parliament of Victoria enacts as follows:

Purpose.

1. The purpose of this Act is—
 - 5 (a) to validate rights of burial purportedly granted at Melbourne General Cemetery in areas overlaying existing graves; and
 - (b) to make certain other amendments to the *Cemeteries Act 1958*.

Commencement.

- 10 2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act.

3. In this Act, the *Cemeteries Act 1958* is called the Principal Act.

No. 6217.
Reprinted to No.
9660.
Subsequently
amended by Nos
9902, 10224,
10244, 10257
and 10262.

New section 46A.

4. After section 46 of the Principal Act insert—

Overlay grave sites at Melbourne General Cemetery.

'46A. (1) A right of burial or interment granted in respect of a lower strata site at the Melbourne General Cemetery existing immediately before the relevant date is, on that date, cancelled. 5

(2) A right, benefit, privilege, obligation, duty or liability with respect to a lower strata site existing immediately before the relevant date is, on that date, wholly extinguished and no claim, action or suit may be commenced or enforced, on or after that date, concerning a lower strata site. 10

(3) A right of burial or interment in an upper strata site at the Melbourne General Cemetery existing or purporting to exist immediately before the relevant date and any exercise of such a right is, on that date, validated and confers upon the holder for the time being the right to exercise the right of burial or interment in that site subject to and in accordance with this Act, regulations under this Act and any other law. 15

(4) If a right referred to in sub-section (3) existing or purporting to exist immediately before the relevant date cannot, in the opinion of The Trustees of The Necropolis, Spring Vale, be exercised or fully exercised at the Melbourne General Cemetery— 20

(a) The Trustees of The Necropolis, Spring Vale, must—

(i) provide to the holder for the time being of the right a list of other cemeteries chosen by the trustees, with the consent of the trustees of the other cemeteries, in which a right of burial may be given to the holder in substitution for the first-mentioned right; and 25

(ii) specify a date on or before which an election may be made under paragraph (b); and 30

(b) the holder may, on or before that date, elect to accept, in substitution for the first-mentioned right, a right of burial at one of the cemeteries named in the list chosen by the holder; and

(c) the trustees of the cemetery chosen by the holder must grant to the holder for the time of the first-mentioned right, a right of burial at the cemetery; and 35

(d) upon the grant of the right referred to in paragraph (c) or, if the holder has not made an election under paragraph (b) before the specified date, on that date, the first-mentioned right, insofar as it cannot, in the opinion of The Trustees of The Necropolis, Spring Vale, be exercised at the Melbourne General Cemetery, is wholly extinguished and no claim, action or suit concerning the first-mentioned right, insofar 40

as it is extinguished, may be commenced or enforced on or after the date of the grant or the specified date, as the case may be.

5 (5) The trustees of the Melbourne General Cemetery must not, on or after the relevant date, grant or purport to grant a right of burial or interment in respect of an upper strata site at the Melbourne General Cemetery.

(6) In this section—

10 “**Book of plans**” means the book of plans entitled “Melbourne General Cemetery Overlay Areas Plans” sealed by The Trustees of The Necropolis, Spring Vale on 21 March 1986 and lodged in the Central Plan Office.

15 “**Lower strata site**” means a grave or place of burial located within an area delineated by a coloured boundary on the plans numbered 1 to 25 in the book of plans.

“**Relevant date**” means the date of commencement of section 4 of the *Cemeteries (Amendment) Act 1986*.

20 “**Upper strata site**” means a grave or place of burial located within an area delineated by a coloured boundary on the plans numbered T1 to T24 in the book of plans.’

New section 85c.

5. After section 85B of the Principal Act insert—

The Trustees may become trustees of other cemeteries.

25 “85c. (1) The Governor in Council, by proclamation published in the *Government Gazette*, may fix a day on which The Trustees of The Necropolis, Spring Vale, are to become and be the trustees of any other cemetery named in the proclamation and if, immediately before that day, there are trustees of that other cemetery, those trustees shall go out of office on that day.

30 (2) If The Trustees of The Necropolis, Spring Vale, become trustees of another cemetery under sub-section (1)—

(a) their duties as trustees of the other cemetery are in addition to and do not in any way derogate from their duties as the Trustees of The Necropolis, Spring Vale; and

35 (b) they may administer the other cemetery and the Necropolis, Spring Vale, in all respects as if they were different parts of the Necropolis, Spring Vale; and

40 (c) they may expend the property, funds and income of any cemetery of which they are trustees towards the costs of developing, preserving or maintaining any other cemetery of which they are trustees.”

New section 87A.

6. In Division 2 of Part III. of the Principal Act after section 87 insert—

Trustees may become trustees of other cemeteries.

“87A. (1) The Governor in Council, by proclamation published in the *Government Gazette*, may fix a day on which the trustees of the Fawkner Crematorium and Memorial Park are to become and be the trustees of any other cemetery named in the proclamation and if, immediately before that day there are trustees of that other cemetery, those trustees shall go out of office on that day.

(2) If the trustees of the Fawkner Crematorium and Memorial Park become trustees of another cemetery under sub-section (1)—

- (a) their duties as trustees of the other cemetery are in addition to and do not in any way derogate from their duties as trustees of the Fawkner Crematorium and Memorial Park; and
- (b) they may administer the other cemetery and the Fawkner Crematorium and Memorial Park in all respects as if they were different parts of the Fawkner Crematorium and Memorial Park; and
- (c) they may expend the property, funds and income of any cemetery of which they are trustees towards the costs of developing, preserving or maintaining any other cemetery of which they are trustees.”.

Coburg Cemetery may be converted to Pioneer Memorial Park.

7. In the Fourth Schedule to the Principal Act, after “Oakleigh Public Cemetery” insert “Coburg Public Cemetery”.

Minor amendment.

8. The Principal Act is amended as follows:

- (a) In section 1, omit all words and expressions after “*Government Gazette*”;
- (b) In section 2, sub-section (2) is repealed.