

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1931.

A BILL

To provide for the regulation of the cremation of human remains; to provide for the licensing of and for the regulation and control of the erection and conducting of crematoria; to confer powers on trustees of land set apart and dedicated for cremation purposes; to amend the Public Health Act, 1902, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Cremation Act, Short title. 1931."

Cremation.

2. This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette. Commencement.

3. This Act is divided into Parts as follows :— Division into Parts.

PART I.—PRELIMINARY—*ss.* 1-5.

PART II.—REGULATION AND CONTROL OF CREMATORIA AND OF CREMATIONS—*ss.* 6-24.

PART III.—POWERS OF TRUSTEES OF LAND SET APART AND DEDICATED FOR CREMATION PURPOSES—*ss.* 25, 26.

PART IV.—MISCELLANEOUS—*ss.* 27-29.

4. (1) Sections 51A and 51B of the Public Health Act, 1902, are repealed. Repeal.

(2) Section four of the Necropolis (Amendment) Act, 1923, is repealed.

(3) All regulations made under the authority of section 51A of the Public Health Act, 1902, and in force at the commencement of this Act, shall remain in force until repealed or replaced by regulations made under this Act. Saving.

(4) A medical referee appointed by a cremation authority in pursuance of the regulations made under the sections of the Public Health Act, 1902, repealed by this Act, and holding such appointment at the commencement of this Act, shall be deemed to have been appointed a medical referee with the approval of the Minister in pursuance of this Act.

A medical practitioner appointed by a cremation authority in pursuance of regulation nine of such regulations, and holding such appointment at the commencement of this Act, shall be deemed to have been duly appointed in pursuance of this Act.

5. In this Act, unless the context or subject-matter otherwise indicates or requires,— Definitions.

“Cremation authority” means the person by whom a crematorium is being conducted.
“Crematorium”

- “Crematorium” means any building fitted with appliances for the purpose of burning human remains, and includes anything incidental or ancillary thereto.
- “Medical referee” means a medical referee appointed, or deemed to be appointed, under this Act.
- “Medical practitioner” means a legally qualified medical practitioner registered under the Medical Practitioners Act, 1912.
- “Prescribed” means prescribed by this Act or by any regulation made thereunder.

PART II.

REGULATION AND CONTROL OF CREMATORIA AND OF CREMATIONS.

6. (1) Subject to the conditions and provisions of this Act a crematorium may be established by any person, provided the site and plans of such crematorium be approved by the Minister for Health upon the recommendation of the Board of Health and the apparatus to be employed for cremation be also approved in like manner.

Crematoria may be established. cf. Cremation Act, 1891 (S. Aust.), s. 2.

(2) No crematorium shall be established nearer to any dwelling-house than two hundred yards except with the consent in writing of the owner of such house and any lessee or occupier thereof, nor within fifty yards of any public road.

Site of crematorium. cf. Cemeteries Act, 1928 (Vic.), s. 57; Cremation Act, 1902 (Eng.), s. 5.

7. (1) Application for approval of the site of a crematorium shall be made to the Minister for Health, and the following provisions shall apply in respect of any such application:—

Application for approval of site, &c.

(a) Notice of intention to apply for such approval shall be published by the applicant at the times and in the manner prescribed.

cf. Cemeteries Act, 1928 (Vic.), s. 59.

(b)

Cremation.

(b) Application shall be lodged with the Minister within such time after the publication of the notice as is prescribed, and shall be supported by—

(i) evidence that land described in the application has been set apart and dedicated as a site for a crematorium and that the applicant is the trustee of such land or a lessee thereof under a lease granted in pursuance of this Act; or

(ii) evidence that the applicant is the owner in fee simple of the land described in the application; or cf. Cemeteries Act, 1691 (S. Aust.), s. 3.

(iii) the consent in writing to the application by the owner in fee simple of the land; and

(iv) evidence of the publication of notice of intention to apply.

(c) The Minister shall give notice by advertisement in the Gazette and in a newspaper circulating in the district that such application has been lodged and that objections may be lodged with him on or before a date specified in the notice, and shall refer the application to the Board of Health for consideration.

(d) If the Board of Health recommends that the Minister should approve of the application the Minister, upon consideration of the application and of any objections received on or before the specified date, may, in his discretion, grant approval thereto subject to such conditions as he may think fit.

(2) Application for approval of the plans of, or of the apparatus to be used for cremation in any crematorium shall be made as prescribed. Every such application shall be referred to the Board of Health for consideration.

If the Board of Health recommends that the Minister should approve of an application he may, in his discretion, grant approval thereto subject to such conditions as he may think fit.

(3) The Minister may require security to be given for the performance of any conditions imposed in the grant of an approval under this section.

8. (1) Every crematorium shall be—

- (a) maintained in good working order;
- (b) provided with sufficient number of attendants; and
- (c) kept constantly in a cleanly and orderly condition:

Maintenance and inspection of crematoria.

Provided that a crematorium may be closed by order of the cremation authority, if not less than one month's notice be given by advertisement in two daily newspapers circulating in the locality, and by written notice fixed at the entrance of the crematorium.

(2) The cremation authority shall give notice in writing to the Minister for Health of the date upon which operations at a crematorium are to commence and of any closing of the crematorium.

(3) Every crematorium shall be open to inspection at any reasonable time by any person appointed for that purpose by the Minister for Health.

9. (1) No cremation of human remains shall take place except in a crematorium established in conformity with the provisions of this Act and in accordance with this Act and the regulations made thereunder.

Restrictions on cremation.

The crematorium established under the Necropolis Act, 1902, as amended by the Necropolis (Amendment) Act, 1923, shall be deemed to have been established in conformity with the provisions of this Act.

(2) It shall not be lawful to cremate human remains which have not been identified.

(3) No cremation shall take place unless—

- (a) the death of the deceased has been duly registered under the provisions of the Registration of Births, Deaths, and Marriages Act, 1899, as amended by subsequent Acts; or

(b)

- (b) the medical referee is satisfied that reasonable efforts to effect registration of the death have been made and that the failure to effect such registration is due solely to the fact that the registrar or assistant registrar of the district in which the death took place was not available within a reasonable time; or
- (c) a certificate has been given by a coroner in or to the effect of the form prescribed in that behalf.

(4) No cremation shall take place unless application therefor is made to the medical referee, and the particulars stated in the application are verified by statutory declaration.

The application shall be in or to the effect of the form prescribed.

The application shall be signed and the statutory declaration made by an executor or by the nearest surviving relative of the deceased, or, if made by any other person, shall show a satisfactory reason why the application is not made by an executor or by the nearest surviving relative.

10. Except as hereafter provided, no cremation shall take place unless— Conditions of cremation.

- (a) a primary certificate in or to the effect of the form prescribed in that behalf is given by a medical practitioner who has attended the deceased during his last illness, and who certifies definitely as to the cause of death, and a confirmatory medical certificate in or to the effect of the form prescribed in that behalf is given by another medical practitioner, who is qualified as prescribed in section twelve; or
- (b) a post-mortem examination is made by a medical practitioner expert in pathology, appointed by the cremation authority (or in case of emergency appointed by the medical referee), and a certificate is given by him in or to the effect of the form prescribed in that behalf; or
- (c) a certificate is given by a coroner in or to the effect of the form prescribed in that behalf.

No

No cremation shall take place except on the written authority of the medical referee given in or to the effect of the form prescribed in that behalf.

11. It shall be lawful for the medical referee if he has personally investigated the cause of death or if he has made the post-mortem examination to give a certificate in or to the effect of the appropriate form. Power of medical referee to issue certificates.

12. The confirmatory medical certificate if not given by the medical referee must be given by a medical practitioner of not less than three years' standing, who is neither a relative, partner, nor assistant of the medical practitioner furnishing the primary certificate, and who either— Confirmatory medical certificate.

- (a) is appointed for the purpose by the cremation authority; or
- (b) holds one of the following appointments:—
Medical Officer of Health, Government Medical Officer, Medical Referee under the Workers' Compensation Act, 1926-1929; or
- (c) holds an appointment as physician or surgeon at a public general hospital containing not less than ten beds.

13. (1) Every cremation authority shall appoint one or more medical referees. Medical referee.

(2) Each person so appointed shall be a medical practitioner of not less than three years' standing, and shall possess such experience and qualifications as are necessary for the exercise and discharge of the powers and duties conferred and imposed upon him by this Act or the regulations.

(3) The cremation authority, on making any such appointment, shall give notice of the name, address, and qualifications of the person so appointed to the Minister for Health.

(4) The appointment of a medical referee shall not have any force or effect unless the Minister for Health by notice published in the Gazette signifies his approval of the appointment.

(5)

(5) The Minister for Health may at any time after the prescribed notice in writing to the cremation authority and to the medical referee, cancel his approval of the appointment of such medical referee, and upon notification of such cancellation in the Gazette the appointment of such medical referee shall cease to have any force.

(6) The duties of the medical referee shall be as prescribed.

Duties of medical referee.

14. Sections nine and ten of this Act shall not apply to the cremation of the remains of a deceased person who has already been buried for not less than one year. Such remains may be cremated, subject to such conditions as the Board of Health may impose in the exhumation permit granted by it or otherwise; and any such cremation in which those conditions are not observed shall be deemed a contravention of this Act.

Non-application of certain provisions in particular circumstances.

15. In the case of any person dying of plague, cholera, smallpox, anthrax, glanders, or yellow fever on board ship, or in a temporary hospital provided by a council under the Local Government Act, 1919, or in an incorporated hospital or separate institution to which the Public Hospitals Act 1929, applies, or in a hospital controlled by a committee under any other Act, or in a Government institution, the medical referee, if satisfied as to the cause of death, may dispense with any of the requirements of sections nine and ten of this Act.

Power to dispense with certain requirements of Act.

This Act may also be temporarily suspended or modified in any district during an epidemic or for other sufficient reason by a proclamation issued by the Governor, on the recommendation of the Board of Health.

16. Notwithstanding sections nine and ten of this Act the medical referee may permit the cremation of the remains of a stillborn child if it be certified to be stillborn by a medical practitioner who was in attendance at the birth, or if the referee after such inquiries as he may think necessary is satisfied that it was stillborn, and that there is no reason for further examination.

Cremation of remains of stillborn child.

17.

Cremation.

17. The cremation authority may from time to time with the approval of the Governor, make and publish in the Gazette a scale of fees payable for the cremation of human remains and for the preservation or disposition of the ashes.

Fees.
cf. Cemeteries Act, 1928 (Vic.), s. 60.

18. (1) Where it appears to the Governor that cremation in any crematorium should be wholly discontinued, or should be discontinued subject to any exception or qualification, the Governor may by order published in the Gazette direct that after a time to be mentioned in such order not being less than three months from the date thereof, cremation in such crematorium shall be discontinued wholly or subject to any exceptions or qualifications mentioned in the same or in any subsequent order, and may in like manner from time to time postpone the time mentioned in such order for the discontinuance of cremation or otherwise vary or revoke any such order whether the time appointed for the discontinuance of cremation thereunder or other operation of such order has or has not arrived.

Discontinuance of cremation.
cf. *Ibid.* ss. 42, 61.

(2) If any person after the time mentioned in any such order cremates any human remains or assists in or suffers or permits the cremation of any human remains in any such crematorium within the limits in which cremation has by any such order been ordered to be discontinued, he shall be liable to a penalty of not more than *twenty* pounds.

Penalty for cremation contrary to provisions of order.
cf. Cemeteries Act, 1928 (Vic.), ss. 43, 61.

19. Any person who cremates or destroys by fire any human remains otherwise than in accordance with this Act and the regulations shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to a penalty of not more than *five hundred* pounds or to imprisonment with or without hard labour for a term of not more than *five* years.

Penalty on cremation otherwise than in accordance with Act.
cf. *Ibid.* s. 71.

20. The Attorney-General or any stipendiary or police magistrate or coroner may, in any case, when there shall appear to be reasonable cause for doing so, by order in writing under his hand addressed to the person in charge of any crematorium, forbid the cremation of any human remains after death specified in such writing

Attorney-General or magistrate may forbid cremation.
cf. Cremation Act, 1891 (S. Aust.), s. 8.

writing, either absolutely or until the viscera or any other organs have been removed from the body and lodged in such manner and custody as he may require; and if any person in charge of any crematorium shall, in contravention of such order, cremate or permit the cremation of the remains, he shall be guilty of a misdemeanour and may be fined in any sum not exceeding *five hundred* pounds or be imprisoned (with or without such fine) for any term not exceeding *three* years.

21. It shall not be lawful, except as hereinafter mentioned, to cremate the remains of any deceased person if such person has left a written direction to the contrary, or if his widow or any of his next of kin, whether under or above the age of twenty-one years, or his executors or any of them shall in the prescribed manner object thereto; but in all cases where a deceased person shall have left an attested memorandum directing that his remains shall be cremated, it shall be the duty of his executor or administrator to carry out his directions.

Relatives, &c., may object to cremation in cases where not directed by deceased person.
cf. Cremation Act, 1891 (S. Aust.), s. 6.

22. Notwithstanding any law or usage to the contrary it shall be lawful to cremate the remains of any prisoner dying in gaol whose consent has been given in writing where the right or duty of disposing of such remains devolves upon the gaol authorities.

Bodies of prisoners may be cremated.
cf. Cemeteries Act, 1928 (Vic.), s. 66.

23. (1) A cremation authority may make such rules and by-laws not inconsistent with this Act and do and perform and cause to be done and performed all such acts, matters, and things as may be necessary and proper for the control and management of the crematorium or for the purpose of conducting cremations, and protecting the crematorium and all buildings, shrubberies, plantations, and enclosures used in connection therewith from destruction or damage.

Cremation authority may make rules or by-laws.
cf. *Ibid.* s. 8.

All rules and by-laws shall—

- (a) be approved by the Governor, and after approval be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in the rules or by-laws; and

(c)

- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not then within fourteen sitting days after the commencement of the next session.

(2) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules or by-laws have been laid before such House disallowing any rule or by-law or part thereof, such rule or by-law or part shall thereupon cease to have effect.

24. Any person who is guilty of a breach of any rules and by-laws made under this Act shall, on an information being laid against him by the cremation authority or any person appointed by the cremation authority in that behalf, be liable to a penalty for every such offence of not more than *five* pounds.

Penalty for breach of rules or by-laws.

cf. Cemeteries Act, 1928 (Vic.), s. 10.

PART III.

POWERS OF TRUSTEES OF LAND SET APART AND DEDICATED FOR CREMATION PURPOSES.

25. The trustees of any land set apart and dedicated for cremation purposes under any Act relating to the disposal of lands of the Crown, may, subject to this Act—

Powers of trustees.

- (a) erect, maintain, and conduct a crematorium, chapel, columbarium, and such other buildings as they may consider necessary for the cremation of human remains and the care of the ashes of the said remains;
- (b) enclose the buildings with a suitable fence or wall and improve, layout, and adorn the area so enclosed, and construct and maintain an approach thereto;
- (c) act as a cremation authority under this Act;
- (d) lease such land in accordance with this Act.

26.

26. (1) Any trustees of land so set apart and dedicated for cremation purposes may apply in writing to the Minister for Lands on a full statement to him of the facts relating to any proposed lease, for his consent thereto in writing. Leases by trustees. cf. Act No. 68, 1902, s. 6.

(2) The said Minister may in any case give his consent either as to the whole or as to part of any lands in respect of which any application is made, and may at any time withdraw his consent, either wholly or partially, or vary the terms and conditions thereof, if he can do so without prejudice to the rights of third parties. cf. Ibid. s. 7 (1).

The said Minister shall report to Parliament any consent given by him under this section.

(3) The said Minister may give his consent either generally by authorising the lease of such lands subject to such conditions, restrictions, reservations, and covenants, and in such manner and within such time, as he may think desirable, or by approving of particular contracts of lease. cf. Ibid. s. 7 (2).

(4) After obtaining the written consent hereinbefore mentioned, and not otherwise, the trustees may lease the lands in respect of which such consent was given, according to the terms of such consent: cf. Ibid. s. 8.

Provided that where the said Minister has given his consent generally, as in this section provided, no land shall be leased in pursuance of such consent, unless in each case the rent reserved has been submitted to and approved of by him.

(5) The proceeds of any lease under this Act shall be held by the trustees, after payment of costs and expenses, for the general purposes of the trust, and shall be invested or applied as the said Minister directs. cf. Ibid. s. 11.

(6) Every lease under this Act shall contain covenants by the lessee—

(a) to lodge with the Minister for Health within the time prescribed in that behalf, plans and specifications of the crematorium and other buildings, and of any other works proposed to be erected or performed upon the land;

(b)

- (b) to commence and complete such buildings and works within a time to be specified in the lease; and
 - (c) not to use the land for any purpose other than for the cremation of human remains and the disposal of the ashes;
- and shall also contain a condition of re-entry on breach of any of such covenants.

PART IV.

MISCELLANEOUS.

27. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect, and in particular and without limiting the generality of the foregoing may make regulations—

Regulations.
cf. Act No.
30, 1902,
s. 51A.

- (a) prescribing the time and manner of publishing notice of intention to apply for permission to establish a crematorium and the time within which such an application shall be lodged;
- (b) providing for the inspection of crematoria or of any buildings used in connection therewith;
- (c) prescribing in what cases and under what conditions the cremation of bodies of the dead may take place;
- (d) directing the disposition or interment of the ashes;
- (e) prescribing the forms of the notices, certificates, and declarations to be given or made before any cremation is permitted to take place;
- (f) providing for the registration of cremations which have taken place.

(2)

- (2) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of such publication or from a later date to be specified in the regulations; and
 - (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof such regulation or part thereof shall thereupon cease to have effect.

(4) All statutory provisions relating to the destruction or falsification of registers of burials and the admissibility of extracts therefrom as evidence in courts or otherwise shall apply to the registers of cremations directed by the regulations to be kept.

28. (1) Every person who contravenes any such regulation as aforesaid, or knowingly assists in carrying out or procures the cremation of any human remains except in accordance with the Act or the regulations shall (in addition to any liability or penalty which he may otherwise incur) be liable on summary conviction to a penalty not exceeding *fifty* pounds.

Penalties.
cf. Act No.
30, 1902,
s. 51b.

(2) Every person who shall wilfully make any false declaration or representation, or sign or utter any false certificate, with a view to procuring the cremation of any human remains shall (in addition to any penalty or liability which he may otherwise incur) be liable on summary conviction to imprisonment, with or without hard labour, not exceeding *two* years.

(3) Every person who, with intent to conceal the commission or impede the prosecution for any offence, procures or attempts to procure the cremation of any human remains, or, with such intent, makes any declaration or gives any certificate prescribed by regulations made

made under the authority of this Act, shall be liable upon conviction on indictment to penal servitude for a term not exceeding *five* years.

29. The Local Government Act, 1919, is amended by omitting subsection two of section four hundred and forty-seven and by inserting in lieu thereof the following new subsection :—

Amendment
of Act No. 41,
1919, s. 447.
(Cremato-
ries.)

(2) The powers conferred by this section and by section four hundred and forty-eight shall be exercised subject to the provisions of the Cremation Act, 1931, and the regulations made thereunder.
