

THE SCHEDULE.

(Section 6.)

QUALIFICATIONS FOR INSPECTORS.

1. Ten years' experience in the building industry or in some trade or industry in which scaffolding, gear, or similar equipment or apparatus is commonly used.
2. Four years' experience, in a supervisory capacity, in such a trade or industry as is referred to in paragraph 1 of this schedule.
3. A sound knowledge of mathematics to the standard required in the examinations conducted by the Schools Board of Tasmania.
4. A thorough knowledge of the strengths of building materials and gear, and of the loads that those materials and gear may safely carry.
5. Ability to make good freehand sketches and working drawings.
6. Absence of any infirmity or disability that is likely to interfere with the efficient discharge of his duties or his ability to work at heights.

HOBART PUBLIC CEMETERY.

No. 53 of 1960.

AN ACT to provide for municipal control of the Hobart Public Cemetery and the adjacent crematory, to amend the *Cemeteries Act* 1865, and the *Hobart Corporation Act* 1947, and to repeal the *Cemeteries Act* 1947.

[5 December 1960.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I.

PRELIMINARY.

Short title and commencement.

1—(1) This Act may be cited as the *Hobart Public Cemetery Act* 1960.

(2) This Act, except Part II, shall commence on a date to be fixed by proclamation.

(3) Part II shall commence on a subsequent date to be fixed by proclamation.

2 The *Cemeteries Act* 1947 is repealed as from a date to be fixed by proclamation. Repeal.

3 In this Act, unless the contrary intention appears—

“corporation” means the Lord Mayor, Aldermen, and Citizens of the city of Hobart;

“trustees” means the trustees of the Hobart Public Cemetery at the commencement of Part II.

Interpreta-
tion.

PART II.

THE HOBART CORPORATION.

4 The *Hobart Corporation Act* 1947 is amended by inserting after Part XIX the following Part:—

“PART XIXA.

“BURIAL AND CREMATION.

“335A From the commencement of Part II of the *Hobart Public Cemetery Act* 1960—

Manage-
ment of
cemeteries and
crematories.

- (a) the corporation has the powers, duties, and authority of the trustees of a public cemetery under the *Cemeteries Act* 1865 and the *Cremation Act* 1934;
- (b) any references in any Act or instrument to the trustees of a public cemetery shall in respect of the city be construed as a reference to the corporation acting as trustee thereof;
- (c) all acts and proceedings of the corporation in the administration of the Acts mentioned in paragraph (a) may be done, performed, and taken in the name of the corporation and it is unnecessary to use or include any reference to its trusteeship therein;
- (d) the corporation may—
 - (i) provide seats, shelters, and conveniences for the use of the public; and
 - (ii) accept payment of such sums of money as it shall consider adequate and undertake in consideration thereof to repair and keep in repair and in good order and condition any grave, railing, tombstone, monument, or ground for any specified period or in perpetuity, in any cemetery or crematory whether open or closed under its control; and
- (e) the corporation may defray all costs and expenses at any time incurred in the administration of this Part out of the municipal fund.

Hobart
Cemetery
Board.

“ 335B—(1) The council may appoint a special committee of such persons appointed for such terms as it thinks fit, of whom not more than one may be an alderman, to manage and control its public cemeteries and crematories.

(2) A special committee appointed under this section shall be a body corporate with perpetual succession and a common seal by the name of the Hobart Cemetery Board.

(3) Upon the establishment of the Hobart Cemetery Board—

- (a) the lands of the corporation used for its public cemeteries and crematories as described in the resolution appointing the board vest in the board as tenant from year to year of the corporation;
- (b) such plant, equipment, and other chattels as the council determines vest in the Board;
- (c) the corporation may lend the Board such amounts for working capital as it thinks fit;
- (d) the Board shall pay the corporation such sums by way of rent and otherwise for the property vested in it under this section as the council may determine;
- (e) the Board shall have all the powers, duties, and authority of the corporation in respect of its public cemeteries and crematories; and
- (f) the Board shall, on behalf of the corporation and in accordance with any directions of the council, in its own name manage and control the public cemeteries and crematories of the corporation.

(4) Subsections (3) and (4) of section seventy-eight and section seventy-nine apply to the Hobart Cemetery Board as if it were appointed under section seventy-eight.

(5) If no special committee is in existence under this section, this section does not affect the operation of section seventy-eight.

Borrowing
powers.

“ 335C—(1) The Hobart Cemetery Board may borrow on the security of the revenues of their cemetery, crematory, and columbarium, such moneys as they deem necessary for—

- (a) working capital;
- (b) the purchase of lands for use as a cemetery, crematory, or columbarium; and
- (c) building, altering, and extending cemetery buildings, crematories, and columbaria, either under the *Local Bodies Loans Act 1881* or on overdraft of current account,

or any one or more of those purposes.

(2) The *Local Bodies Loans Act 1881* applies to borrowing under this section as if—

- (a) the Board were a local body;
- (b) its revenues were rates; and
- (c) sections fifteen to nineteen were repealed.

“335D—(1) The Hobart Cemetery Board shall keep complete and accurate accounts of all moneys received and expended by it or on its behalf.

Finance.
No. 48 of
1947, ss. 7, 8,
11.

(2) All moneys received by or on behalf of the Board shall be paid into a bank and may be drawn out only by cheques signed by at least two persons of whom one shall be a member of the Board.

(3) Before the last day of August in every year, the Hobart Cemetery Board shall forward to the corporation and the corporation shall forward to the Auditor-General a complete statement of its accounts for the year ending on the preceding thirtieth day of June accompanied by proper vouchers in support thereof, and all such books, papers, and writings in the custody or power of the Board relating thereto, as the Auditor-General requires to be furnished to him.

(4) The Auditor-General shall make and deliver to the corporation a special report upon the accounts, or, if the accounts are found correct, the Auditor-General shall confirm and sign them in token of his allowance thereof.

(5) The statement of accounts shall be published in the *Gazette* by the Auditor-General as soon as may be after the accounts have been audited.

(6) All profits of the Hobart Cemetery Board are, subject to the retention of such reserves as the council determines, payable to, and all its losses are payable by, the corporation.

“335E—(1) The corporation may sell or otherwise dispose of any part of the lands held by it for its public cemeteries and crematories which is not required for the purposes of a cemetery, crematory, or columbarium.

Disposal of
land.
Ibid., s. 12.

(2) Notwithstanding anything contained in subsection (1) of this section, where in pursuance of the *Cemeteries Act* 1865 or of a by-law or regulation thereunder the exclusive right of burial or interment in a burial place has been, whether before or after the commencement of this Act, sold or granted to any person as a private or family burial place the corporation and the Hobart Cemetery Board shall not under the authority of that subsection sell or dispose of that part of their lands in which the burial place is situated unless they have first granted that person free of charge the like right of burial or interment in such other part of their lands as may be agreed upon between the persons and the corporation or the Hobart Cemetery Board, as the case may be, or in default of agreement as may be settled by arbitration in accordance with the provisions of the *Arbitration Act* 1892 and the provisions of that Act apply to the arbitration as if it were a submission under that Act.

(3) The cost of an arbitration under this section shall in every case be borne by the corporation or the Hobart Cemetery Board, as the case may be.”

Change of trustees.

5 On the commencement of this Part—

- (a) the trustees are discharged of their office;
- (b) all property, real and personal, of the trustees vests in the corporation by force of this Act and without other assurance; and
- (c) the corporation becomes liable to all debts, obligations, and liabilities of the trustees.

Employees.

6 For the purposes of contracts of employment with the trustees, the corporation shall be deemed at all times to have been the employer instead of the trustees.

PART III.

TASMANIAN CREMATIONS LIMITED.

Interpretation.

7 In this Part, unless the contrary intention appears—

“company” means Tasmanian Cremations Limited, a company incorporated under the *Companies Act 1920*;

“Financial Agreement” means the agreement made between the Commonwealth and the States and ratified by the *Financial Agreement Act 1927*, and includes that agreement as varied from time to time and any agreement made in substitution therefor;

“Loan Fund” mean the Loan Fund established under section six of the *Public Account Act 1957*;

“Minister” means the Minister administering the *Cemeteries Act 1865*;

“new director” means a person nominated under subsection (1) of section nine as a new director or a director appointed in his place;

“new shareholder” means a person nominated under subsection (1) of section nine as a new shareholder;

“old director” means a person who is a director of the company at the beginning of the fixed day;

“old shareholder” means a person who is a shareholder of the company at the beginning of the fixed day;

“the fixed day” means a day fixed by proclamation for the purposes of this Part.

Preliminary arrangements.

8—(1) A person authorized in writing by the Minister may at any reasonable time inspect and copy the register of members of the company.

(2) After the commencement of this Act no change may be made in the membership or shareholding of the company otherwise than by death or operation of law.

9—(1) The Minister shall before the fixed day give the company at its registered office a notice nominating the new shareholders and new directors.

Change over.
Cf. 12 & 13
Geo. 6, c. 72,
ss. 11, 12.

(2) On the fixed day—

(a) the members of the company at the beginning of that day shall cease to be members and—

(i) their shares in the company shall pass to the new shareholders as the Minister shall have specified in the notice under subsection (1) of this section in respect of the several shares issued by the company; and

(ii) they shall in lieu be entitled to compensation under section nineteen; and

(b) the old directors shall go out of office and the new directors shall become directors of the company in their places.

(3) Shares passing under this section vest in the new shareholders free of all trusts and encumbrances, and the new shareholders are in respect of the shares so vested in them entitled or subject, to the exclusion of the previous holders thereof, to all the rights, privileges, and advantages and to all liabilities and obligations arising from the holding of those shares, in all respects as if the shares had been duly transferred to the new shareholders in accordance with the enactments and rules of law (other than this Act) applicable thereto and everything necessary to make those rights, privileges, advantages, liabilities, and obligations fully effective had been duly done.

(4) Without prejudice to the provisions of subsection (3) of this section, all persons concerned with the keeping of the register of members of the company shall forthwith after the beginning of the fixed day register the new shareholders therein, and the company shall forthwith issue to the new shareholders the appropriate documents of title relating to the shares so vesting in them.

(5) Persons other than the old shareholders who are affected by the operation of subsection (3) of this section have the same rights, as nearly as possible, to the compensation to the old shareholders payable under section nineteen as they had in the shares.

10 The new shareholders shall—

Duties of new
shareholders.

(a) cause the business of the company to be carried on until such time as the corporation is in a position to take over the cremation of bodies and the storage of ashes at the company's crematorium;

- (b) when the corporation is in that position—
 - (i) cause the company's lease from the trustees to be surrendered in accordance with section eleven; and
 - (ii) put the company into voluntary liquidation;
- (c) not cause any of the profits of the company to be distributed among them; and
- (d) comply with any direction of the Minister in respect of their acts as members of the company.

Surrender
of company's
lease.

11—(1) The corporation shall accept the surrender of the company's lease and in consideration therefor covenant to pay the company the value of the buildings, structures, and other improvements comprised in the surrender determined, in default of agreement, as a disputed claim for compensation under the *Public Authorities' Land Acquisition Act 1949*, securing in such manner as the Minister may require, the payment thereof by equal instalments, together with interest at five and a half per cent on the balance outstanding, over such period as the Treasurer shall determine.

(2) The deed of surrender for the purposes of subsection (1) of this section shall provide—

- (a) for the assumption by the corporation of all the company's liabilities and obligations in respect of—
 - (i) cremations after the surrender;
 - (ii) contracts of service at the company's crematorium; and
 - (iii) storage of ashes at the company's columbarium; and
- (b) the exoneration of the company from all further liability in respect of the liabilities and obligations so assumed.

(3) A person has the same rights of action against the corporation in respect of a liability or obligation assumed by them as provided in subsection (2) of this section as he has against the company.

Disposal of
assets on
winding up.

12—(1) The property of the company which in the winding up would but for this section be distributed among the members shall belong to the Crown.

(2) On and after the fixed day in any litigation by or against the company or its liquidator in respect of its property it or he shall be deemed to represent the Crown.

Death, &c., of
a new share-
holder.

13 If a new shareholder or any subsequent holder of his shares dies or becomes incapable of acting as a member of the company or would but for this section be divested of his shares by operation of law or otherwise, the Minister may, on his behalf and with effect from a day before the event giving rise to his power, execute a transfer of his shares to another person.

14 The company, its liquidator, the new shareholders, and their successors shall not be required to pay any fee, duty, or tax in respect of its or their acts as agents of the Crown under this Act.

Exemption
from fees,
duties, &c.

15—(1) Where—

- (a) the company has made or varied any agreement or lease on or after the first day of July 1959, and before the fixed day;
- (b) the agreement or lease remains unperformed or unexpired in whole or in part on the fixed day; and
- (c) the new directors are of the opinion that—
 - (i) the making or variation or that agreement or lease was not reasonably necessary for the purposes of the activities of the company; or
 - (ii) the agreement or lease was made or varied with an unreasonable lack of prudence on the part of the company,
 regard being had in either case to the circumstances at the time,

Disclaimer
of agreements
and leases.
12 & 13 Geo.
6, c. 72, s. 13.

the company, if the new directors so decide, shall, by notice in writing given to the other party to the agreement or lease at any time within six months after the fixed day, disclaim the agreement or lease.

(2) The other party may within two months after receiving a notice of disclaimer under subsection (1) of this section refer to arbitration the question whether or not the agreement or lease ought to be disclaimed under this section.

(3) If in an arbitration under this section the arbitrator is satisfied that the making of the variation of the agreement or lease was not reasonably necessary for the purposes of the activities of the company, or that the agreement or lease was made or varied with an unreasonable lack of prudence on the part of the company, regard being had in either case to the circumstances at the time, he shall confirm the notice, and if not so satisfied shall revoke it.

(4) If the arbitrator is satisfied of the matters mentioned in subsection (3) of this section but is also satisfied that the making or variation of the agreement or lease was a proper transaction made in the ordinary course of business, regard being had to the circumstances at the time, and was in no way connected with any provisions made by this Act or with any anticipation of the making of any such provision, he shall revoke the notice.

(5) For the purposes of subsection (1) of this section the parties shall be deemed to have agreed in writing to submit their difference to arbitration.

Company not
to dispose
of assets.

16 The company shall not, after the commencement of this Act, dispose of any asset or contract any liability otherwise than in the ordinary course of business, and the Minister may take such proceedings at law or in equity to restrain any such transaction or to secure or recover the assets of the company as he might take if the company had on the date of the commencement of this Act sold him the whole business and undertaking of the company as a going concern to be carried on by the company on behalf of the Minister until completion of the contract.

Shareholders'
representative.
Cf. *ibid.*, s. 17.

17—(1) Forthwith after the proclamation of the fixed day the company shall call a meeting of persons who were the members of the company when the proclamation was published in the *Gazette* for the purpose of electing a person to be called the shareholders' representative, whose duty it shall be to represent the interests of persons in connection with the determination of the amount of compensation payable in respect of their shares.

(2) A meeting for the purpose of subsection (1) of this section shall be held as if it were a general meeting of a company held in accordance with Table A in the fourth schedule to the *Companies Act 1959* and, if their shares have then vested in the new shareholders, as if each person entitled to attend were still the holder of the shares of which he has been divested by section nine.

(3) The Minister shall pay out of moneys to be provided by Parliament to the shareholders' representative such remuneration, whether by way of salary or fees, and such allowances and such expenses incurred by him in the exercise of his functions as may be determined by the Minister, and any sums paid by the Minister under this subsection shall be repaid to him by the company upon demand.

(4) The company shall make available to the shareholders' representative such facilities for the examination of and the making of extracts from and copies from books, accounts, and documents of the company, and such services of officers of the company as he may reasonably request for the purposes of his duties or, in the event of any question arising between the shareholders' representative and the company whether any request is reasonable, as may be directed by the Minister.

(5) Upon any vacancy in the office of shareholders' representative a meeting shall forthwith be called by the company as provided in subsection (2) of this section, and for that purpose all persons who were holders of shares immediately before the fixed day shall be deemed to have continued to hold them.

Duty to
furnish in-
formation.

18 For the purposes of enabling the company to carry on its undertaking or to enjoy any right, privilege, or immunity of the company, the new directors shall be deemed, for the purposes of the *Evidence Act 1910*, to have been appointed by the Governor by commission by letters patent to enquire into any matter relevant to the first-mentioned purposes.

19—(1) The total amount of compensation payable under section nine shall be determined as a disputed claim for compensation under the *Public Authorities' Land Acquisition Act 1949*, which for that purpose is incorporated in this section. Compensation.

(2) For the purposes of this section the shareholders' representative—

- (a) shall make the claim for compensation on behalf of all persons interested therein; and
- (b) may call meetings of the old shareholders and their personal representatives.

20—(1) The Treasurer may issue and apply out of the Loan Fund (which, to the necessary extent, is appropriated accordingly) the amount of the compensation determined under section nineteen. Appropriation of Loan Fund.

(2) The receipt of the shareholders' representative shall be a sufficient discharge to the Treasurer for the payment of money under this section.

21 For the purposes of this Act, the Treasurer may arrange for the borrowing, in accordance with the Financial Agreement, of any sum of money required for the purposes of section twenty. Borrowing of moneys.

PART IV.

AMENDMENT OF THE CEMETERIES ACT 1865.

22 After section thirty-nine of the *Cemeteries Act 1865* the following section is inserted:—

“**40**—(1) The trustees of a public cemetery may sell or otherwise dispose of any part of that cemetery which is not required for the purposes of this Act. Land not required may be sold. 11 Geo. VI No. 48, s. 12.

“(2) Notwithstanding anything contained in subsection (1) of this section, where in pursuance of this Act the exclusive right of burial or interment in a burial place in a public cemetery has been, whether before or after the commencement of this section, sold or granted to a person as a private or family burial place, the trustees shall not under the authority of that subsection sell or dispose of that part of the cemetery in which the burial place is situated unless they have first granted to that person free of charge the like right of burial or interment in such other part of the cemetery or of some other cemetery under their control as may be agreed upon between that person and the trustees or in default of agreement as may be settled by arbitration in accordance with the provisions of the *Arbitration Act 1892*, and the provisions of that Act apply to the arbitration as if it were a submission under that Act.

“(3) The cost of an arbitration under this section shall be borne by the trustees.”

LOAN FUND APPROPRIATION (No. 2).

No. 54 of 1960.

AN ACT to authorize the issue and application of moneys from the Loan Fund, and to provide for matters incidental thereto.

[5 December 1960.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title.

1 This Act may be cited as the *Loan Fund Appropriation Act (No. 2)* 1960.

Interpretation.

2 In this Act, unless the contrary intention appears—

“Financial Agreement” means the agreement made between the Commonwealth and the States and ratified by the *Financial Agreement Act 1927*, and includes that agreement as varied from time to time and any agreement made in substitution therefor;

“Loan Fund” means the Loan Fund established under section six of the *Public Account Act 1957*.

Appropriation of Loan Fund.

3 For the purposes of this Act, the Treasurer may issue out of the Loan Fund (which, to the necessary extent, is appropriated accordingly) the sum of £1,019,750.

Power of Treasurer to borrow moneys.

4 For the purposes of this Act, the Treasurer may arrange for the borrowing on behalf of the State, in accordance with the Financial Agreement, of any sums of money not exceeding £1,019,750.

Authority for carrying out of works and purposes.

5—(1) The public works and purposes that are specified in the schedule may be executed and carried out by the Minister administering the Act or Department under or for the purposes of which those works and purposes are respectively required to be executed and carried out.

(2) The sum to be expended pursuant to this Act for any work or purpose that is specified in the schedule shall not exceed the sum set forth in the schedule in respect of that work or purpose.