

Chapter 302.
Cemeteries Act 1955.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 302.

Cemeteries Act 1955.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Cemeteries Act 1955,

Being an Act to control and regulate cemeteries and burials.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**cemetery**” means an area reserved from lease or sale under any law for the purpose of a cemetery;

“**cemetery authority**”, in relation to a cemetery, means a cemetery authority appointed or constituted by Section 7 as the cemetery authority for that cemetery;

“**grave**” means a burial place formed in the ground by excavation;

“**monument**” includes a headstone, tombstone or tablet;

“**Registration Officer**” means a Registration Officer appointed under the *Civil Registration Act 1963*;

“**the regulations**” means any regulations made under this Act.

2. EXEMPTION.

(1) This section applies to a cemetery—

(a) in the area of a Local-level Government Council; and

(b) for the control of which there is in force a Local-level Government law.

(2) The Minister may, by notice in the National Gazette, exempt a cemetery to which this section applies from the provisions of this Act.

PART II. – CEMETERIES.**3. POWER TO ABOLISH OR CLOSE CEMETERIES.**

(1) The Minister may, by notice in the National Gazette, abolish or close against subsequent burials a cemetery or a portion of a cemetery.

(2) The holder of a right reserved under Section 13 to a burial allotment affected by a notice under Subsection (1) is entitled to an equivalent right in such other cemetery as the Minister directs.

4. TRANSFER OF REMAINS.

(1) Subject to Subsections (3) and (4), the Minister may, where he thinks it necessary, order the exhumation and the reburial—

- (a) in another cemetery; or
- (b) in another portion of the same cemetery,

of a body buried in a cemetery or a portion of a cemetery abolished under Section 3.

(2) Where an order is made under Subsection (1)—

- (a) the cost of exhumation and reburial shall be borne by the State; and
- (b) the cemetery authority at the place of reburial shall record the name of the person whose remains are exhumed and reburied, and the particulars of the date and place of reburial.

(3) Before making an order under Subsection (1), the Minister shall publish a notice in the National Gazette declaring his intention to make the order and requiring the next of kin of the person whose remains are affected by the order to state, within three months from the publication of the notice, whether or not he desires to undertake the exhumation and reburial of the remains.

(4) An order under Subsection (1) shall not be made until the expiration of a period of three months after the publication of the notice under Subsection (3).

5. PRIVATE BURIAL GROUNDS.

(1) The Minister may, by notice in the National Gazette, license—

- (a) the owner; or
- (b) with the consent of the owner, the lessee,

of land, not being land within the boundaries of an area declared under Section 6, to set apart and use a specified portion of the land for burials, subject to such conditions or limitations as the Minister thinks fit.

(2) Land the subject of a licence under Subsection (1) shall be deemed to be a cemetery for the purposes of Sections 3, 4, 19, 21 and 25.

6. PROHIBITED AREAS.

The Minister may, by notice in the National Gazette, declare an area described in the notice to be an area in which burial is prohibited.

7. CEMETERY AUTHORITIES.

(1) The Minister may, by notice in the National Gazette, appoint for a cemetery a cemetery authority which shall consist of not more than six persons of whom not more than two are officers.

(2) Until the Minister makes an appointment under Subsection (1), the Provincial Commissioner for the province in which a cemetery is situated is the cemetery authority for that cemetery.

8. FUNCTIONS OF CEMETERY AUTHORITY.

Subject to this Act, a cemetery authority appointed or constituted under Section 7 has the care, control and management of the cemetery for which it is appointed, and may provide undertaking services in connection with the cemetery.

9. STAFF OF CEMETERY.

Without limiting the generality of its functions under Section 8, a cemetery authority may enter into an agreement with the State for the secondment of a person employed by the State, and while so seconded that person shall perform the duties required of him by the cemetery authority.

10. BY-LAWS.

(1) A cemetery authority may make by-laws, not inconsistent with this Act—

- (a) in connection with the care, control and management of the cemetery; and
- (b) in connection with the provision of undertaking services in connection with the cemetery; and
- (c) regulating the form, size, construction and method of installation of monuments and ancillary works; and
- (d) prohibiting the erection of a monument or the placing of an inscription on a monument unless the monument or inscription has been approved by the cemetery authority; and
- (e) fixing fees for any matter within the scope of its functions.

(2) A by-law made under this section has no force or effect until—

- (a) approved by the Head of State, acting on advice; and
- (b) published in the National Gazette.

(3) A person who contravenes or fails to comply with a provision of the by-laws is guilty of an offence.

Penalty: A fine not exceeding K50.00.

Default penalty: A fine not exceeding K2.00.

11. CEMETERIES TO BE APPORTIONED AND DIVIDED.

(1) Subject to Subsection (2), the cemetery authority may, in such manner as it thinks fit—

- (a) set apart portions of a cemetery for the burial of deceased persons according to their different religious denominations; and
- (b) divide a cemetery into—
 - (i) burial allotments of the prescribed dimensions; and
 - (ii) pathways affording proper access to the burial allotments.

(2) A burial allotment shall not be nearer than 3.657 m to an external boundary of the cemetery.

12. PLAN OF CEMETERY.

(1) The cemetery authority shall cause a plan of a cemetery to be prepared.

(2) Every burial allotment shall be shown on the plan and shall be identified with, and distinguished by, a number marked on the plan.

(3) The plan of a cemetery shall be kept—

- (a) where a cemetery authority is appointed under Section 7(1)—at a place appointed by the authority by notice in the National Gazette; and
- (b) in any other case—in the office of the Provincial Administrator of the province in which the cemetery is situated,

where it may be inspected on payment of the prescribed fee.

13. RIGHTS TO BURIAL ALLOTMENTS.

(1) On application by a person, the cemetery authority may reserve to the person during the prescribed period, and subject to the payment of the prescribed fees, the right to such number of burial allotments, for the burial of deceased persons within a cemetery, as the cemetery authority considers sufficient.

(2) Where a right has been reserved under Subsection (1), the cemetery authority shall issue a certificate in the prescribed form specifying—

- (a) the burial allotments the subject of the right; and
- (b) the class or classes of persons who may be buried in them.

(3) A right reserved under this section may be assigned with the consent of the cemetery authority and, on the death of the holder of the right, passes to the executors or administrators of the holder.

(4) Except with the consent of the holder, a burial shall not be made in a burial allotment that is the subject of a right reserved under this section.

(5) The cemetery authority shall keep a register of the rights reserved under this section, and shall enter in the register—

(a) the names of the persons for whom they were reserved; and

(b) particulars of assignments.

(6) A holder of a right reserved under this section may surrender it at any time, and on the surrender is discharged from all liability for fees not then accrued due and owing on the right.

14. EMERGENCY ALLOTMENTS.

The cemetery authority shall set aside such number of allotments in each cemetery as it thinks fit, to be used by it in cases of emergency.

15. RELIGIOUS CEREMONIES NOT TO BE INTERFERED WITH, AND MINISTERS OF RELIGION TO HAVE FREE ACCESS.

(1) The cemetery authority shall not, directly or indirectly, interfere with the performance of a religious ceremony for the burial of the dead according to the usage of the denomination to which the deceased belonged.

(2) The ministers of a denomination for which a portion of the cemetery has been specially set apart may—

(a) have free access to that portion at all reasonable times; and

(b) freely exercise their religious functions in that portion,

without disturbance by the cemetery authority or any other person.

16. MORTUARY CHAPELS MAY BE BUILT.

If the members of a religious denomination desire to build in a cemetery, at their own expense, a suitable mortuary church or chapel for the performance of the rites and ceremonies for the burial of the dead according to the usages of the denomination and the plans, specifications and elevations of the church or chapel are approved by the cemetery authority, the authority may permit the church or chapel to be built in such part of the cemetery as is specially set apart for that denomination, and the church or chapel may, subject to the provisions of any other law in relation to building, be built accordingly.

17. GRAVES, VAULTS, ETC. TO BE KEPT IN REPAIR.

(1) The holder of a right reserved under Section 13 must—

- (a) keep in repair every grave, vault, monument, tombstone or enclosure in the part of the cemetery that is the subject of the right and, within 28 days after receiving written notice from the cemetery authority, execute any repairs required by the notice; and
- (b) on receiving written notice from the cemetery authority—
 - (i) that it is satisfied that noxious exhalations or evaporations are escaping from any such grave or vault; and
 - (ii) requiring him to cause the grave or vault to be opened for examination on a specified day (not being less than seven days from the delivery of the notice),

cause the grave or vault to be opened and, if so required by the cemetery authority, fill up the grave with charcoal, dry earth or other suitable material.

Penalty: A fine not exceeding K100.00.

(2) If a person fails to comply with a notice under Subsection (1), the cemetery authority may—

- (a) cause to be done the act or thing required by the notice to be done; and
- (b) recover the expense of so doing from the person as a debt.

18. MAINTENANCE OF MONUMENTS.

A person who places or erects a monument in a cemetery, and a holder of a right reserved under Section 13 to a burial allotment on which a monument is placed or erected, must maintain the monument in good order and repair.

Penalty: A fine not exceeding K100.00.

PART III. – BURIALS.

19. BURIALS IN PLACES OTHER THAN CEMETERIES PROHIBITED.

(1) Subject to Section 20, a person who, except in case of emergency, carries out a burial in a place other than a cemetery is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

(2) Where, in a case of emergency, a burial is carried out in a place other than a cemetery, the person carrying out the burial shall, immediately after the burial, forward to the Registration Officer–

- (a) information as to the name, sex and age of the person buried; and
- (b) particulars of–
 - (i) the date, place and manner of death; and
 - (ii) the date and place of burial; and
- (c) a statement of the reasons why the burial was not carried out in a cemetery.

(3) The Registration Officer shall notify a coroner immediately he receives information furnished under Subsection (2).

20. PERMISSION FOR BURIALS NOT IN CEMETERY OR CLOSED CEMETERY.

(1) A Provincial Administrator may, for special reasons that appear to him to justify or require it, give permission for the burial of a dead body in a place otherwise than a cemetery, or in a place or cemetery closed for burials.

(2) Permission under Subsection (1) may relate to–

- (a) a specified dead body or specified dead bodies; or
- (b) a class or classes of dead body; or
- (c) the burial of dead bodies in a specified area,

and may be given subject to such conditions as the Provincial Administrator thinks fit.

21. REQUISITES FOR BURIAL.

(1) A person who carries out a burial in a cemetery without the written consent of–

- (a) the Provincial Administrator of the province in which the cemetery is situated; or
- (b) an officer authorized for the purpose by the Minister by notice in the National Gazette,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(2) A Provincial Administrator or authorized officer shall not give his consent under Subsection (1) unless there is produced to him—

- (a) a certificate of a medical practitioner showing that death was due to natural causes; or
- (b) an order for burial signed by a coroner.

(3) Where it is alleged that the body awaiting burial is that of a stillborn child, the consent required by Subsection (1) shall be given only on production of a certificate that the child was born dead, signed by—

- (a) a medical practitioner who was in attendance at the birth; or
- (b) a magistrate or an officer of the Police Force who states in the certificate that he has inquired into the circumstances surrounding the birth.

(4) Notwithstanding this section, where it is impracticable to keep a body unburied until the consent required by this section has been obtained the body may be buried, but the person carrying out the burial must, immediately after the burial, forward to the Registration Officer—

- (a) information as to the name, sex and age of the person buried; and
- (b) particulars of—
 - (i) the date, place and manner of death; and
 - (ii) the date and place of burial; and
- (c) a statement of the reasons why the body was buried without the consent.

Penalty: A fine not exceeding K100.00.

22. PREPARATION AND CLOSING OF GRAVES.

(1) Where a consent under Section 21 has been given, the cemetery authority shall—

- (a) cause a grave to be prepared in the appropriate portion of the cemetery; and
- (b) when the burial has been completed—
 - (i) cause the grave to be closed; and
 - (ii) give notice, in the prescribed form, of the burial to the Registration Officer.

(2) Where a Provincial Administrator gives his consent to a burial in land the subject of a licence under Section 5, he shall give notice, in the prescribed form, of the burial to the Registration Officer.

23. BURIAL IN PRIVATE BURIAL GROUND.

Where a burial is carried out in land the subject of a licence under Section 5, the licensee must—

- (a) cause a grave to be prepared; and
- (b) when the burial has been completed—
 - (i) cause the grave to be closed; and
 - (ii) give notice, in the prescribed form, of the burial to the Registration Officer.

Penalty: A fine not exceeding K100.00.

24. DEPTH OF GRAVE.

(1) A grave must not—

- (a) be less than 2.1336 m in depth; or
- (b) have more than two bodies buried in it; or
- (c) have less than 1.219 m from the upper surface of a coffin to the natural surface of the land surrounding the grave.

(2) When a grave is opened to receive a second body, the excavation must be made so as to leave undisturbed a layer of earth not less than 304.8 mm in thickness above the upper surface of the coffin already in the grave.

Penalty: A fine not exceeding K100.00.

25. TIME OF BURIAL.

A burial in a cemetery must not be carried out between 6 p.m. and 6 a.m.

Penalty: A fine not exceeding K100.00.

26. BURIAL FEES.

(1) The prescribed burial fees are payable to the cemetery authority for a burial in a cemetery.

(2) The Provincial Administrator or officer giving consent to a burial under Section 21 may require the prescribed fees to be paid to the cemetery authority before he gives consent, unless the application for consent is made by or on behalf of the Commissioner of Police.

(3) The cemetery authority may recommend the remission of burial fees where it is satisfied that the estate of a deceased person has insufficient means to pay the prescribed burial fees, and the State may remit those fees accordingly.

27. REGISTER OF BURIALS.

(1) The cemetery authority, or the licensee under Section 5, shall keep a register of burials in which shall be entered particulars of every burial in the cemetery, or in the land the subject of the licence, as the case may be.

(2) The particulars to be entered under Subsection (1) include—

- (a) the date of the burial; and
- (b) the name, sex and age of the deceased; and
- (c) the number of the grave; and
- (d) the portion of the cemetery in which the grave is situated.

(3) Any person may search the register of burials at all reasonable hours, on payment of the prescribed fee.

PART IV. – MISCELLANEOUS.

28. SPECIAL CARE OF GRAVES.

The cemetery authority shall cause special care and attention to be given to the maintenance of graves in respect of which the prescribed maintenance fees have been paid.

29. EXHUMATION.

(1) The Minister may order or authorize the exhumation of a body and may, subject to such conditions as he thinks proper, delegate the power to do so to a Provincial Administrator, to be exercised by him within the province administered by him.

(2) Subject to any law relating to coroners, a coroner may order the exhumation of a body buried within a province in which he has jurisdiction.

(3) The power to order or authorize exhumation of a body under this section includes the power to order or authorize reburial of the body.

(4) Where, for any reason other than for the purpose of an inquest or for the purpose of a reburial under Section 4, the exhumation of a body is ordered or authorized, the person obtaining the order or authority shall pay the prescribed fees for exhumation and reburial.

(5) Except as provided in this section and in Section 4, or in any other law, a person who exhumes a body is guilty of an offence.

Penalty: A fine not exceeding K100.00.

30. PARTICULAR OFFENCES.

A person who, within a cemetery—

- (a) sells or buys any thing; or
- (b) distributes a handbill, card, circular or advertisement; or
- (c) takes part in a meeting other than a meeting of a religious or commemorative character; or
- (d) disturbs a funeral service at a grave whether by working or playing in the neighbourhood or otherwise; or
- (e) except at a military funeral—discharges a firearm; or
- (f) wantonly damages or disturbs a monument, flower or token placed or erected on a grave; or
- (g) commits a riot, breach of the peace or nuisance or otherwise offends against decency or decorum,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

31. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters providing for and in relation to—

- (a) the forms to be used in connection with this Act; and
- (b) the granting of licences and the management of land the subject of a licence under Section 5; and
- (c) the period for which rights may be reserved under Section 13; and
- (d) the fees to be charged for the performance of the several acts, matters and things provided for in this Act (other than any act, matter or thing for which fees may be fixed under Section 10 by a cemetery authority appointed under or constituted by Section 7); and
- (e) the imposition of penalties of fines not exceeding K100.00 for offences against the regulations.

Office of Legislative Counsel, PNG