

T A S M A N I A



1865.

ANNO VICESIMO-NONO

VICTORIÆ REGINÆ,

No. 7.



AN ACT for the Establishment of Cemeteries.  
[15th September, 1865.]

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:—

**1** In referring to this Act it shall be sufficient to use the expression *Short Title.*  
*The Cemeteries Act, 1865.*

**2** The Governor in Council may, from time to time, appoint so many Trustees, not less than Three, as he may think fit for any Public Cemetery: Provided that no Minister of Religion shall be appointed a Trustee. *Governor in Council may appoint Trustees of Cemeteries.*

**3** The Governor in Council may, from time to time, as and when he thinks proper, remove from the said Trusts any Trustee of any such Cemetery, and also, upon the death, resignation, or removal of any Trustee appointed under this Act, may appoint another in his stead. *Power of Governor in Council to remove Trustees and appoint new Trustees.*

**4** Every such removal and appointment shall be published in the *Gazette*; and upon the publication thereof, without any further conveyance, the legal estate in all lands and hereditaments respectively held by any such Trustee in trust for the purposes aforesaid shall vest in such new Trustee or Trustees solely or conjointly with the continuing Trustee or Trustees, as the case may require. *Removal and appointment to be published in Gazette.*

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Power of Trustees to hold lands.

**5** The Trustees so appointed, and their successors to be appointed as hereinbefore mentioned, shall have power to hold any lands or hereditaments that may be conveyed to them by deed of grant from the Crown, or by any other sufficient deed of conveyance, in trust for the establishment or purpose of a Public Cemetery.

Trustees may purchase lands for purpose of constructing, &c. any Cemetery.

**6** The Trustees are hereby empowered, with the consent of the Governor in Council, to purchase and take, in the mode prescribed by *The Lands Clauses Act*, such lands as they deem necessary for the purpose of constructing, enlarging, altering, or improving any such Public Cemetery, or of making convenient approaches thereto, or of obtaining any materials for any such purpose, or as they may deem necessary for any other of the purposes of this Act; and, subject to the provisions of this Act, *The Lands Clauses Act* shall be incorporated with this Act, and for the purposes of their trust the Trustees shall be deemed to be the promoters of the undertaking.

Entry upon land.

**7** Whenever it is intended to take any land for any of the purposes of this Act, it shall be lawful for the Trustees, after Seven days' notice served upon the occupier, to enter upon any land and to stake out the same in such manner as the Trustees think necessary or expedient; and if any person wilfully pulls up, removes, or destroys the stakes or other marks used for the purpose aforesaid, every person so offending shall, for every such offence, incur a penalty not exceeding Fifty Pounds.

Renting land.

**8** It shall also be lawful for the Trustees to contract and agree with the persons interested in any land for the demise of such land for the purpose of obtaining materials from such land for the repair or construction of any Cemetery, or for any other of the purposes of this Act.

By consent of Governor Crown Land may be taken for purposes of Act.

**9** It shall be lawful for the Trustees to take and use any Crown Land for any of the purposes of this Act which the Governor may authorise to be taken and used for such purpose.

Trustees' power to enclose and ornament Cemetery.

**10** The Trustees of any such Cemetery shall have power to enclose any land so granted, conveyed, or taken as aforesaid with proper and sufficient walls, rails, fences, or palisades, and to erect suitable gates and entrances, and to lay out and ornament such Cemetery in such manner as may be most convenient and suitable for the Burial of the Dead, and to embellish the same with such walks, avenues, roads, and shrubs as may to them seem fitting and proper, and to preserve, maintain, and keep in a cleanly and orderly state and condition, and cause to be so maintained and kept, the whole of such Cemetery and its walls and fences, and all monuments, tombstones, enclosures, buildings, erections, walks, and shrubberies therein and belonging thereto; and the Trustees shall expend, subject to the directions of the Governor in Council, the moneys in their hands from time to time to be received by them under this Act in and about the matters aforesaid, and in the Burial of poor persons.

Trustees to make Rules and Regulations.

**11** The Trustees of any such Cemetery shall have power and authority to make such Rules and Regulations, and to do and perform, and cause to be done and performed, all such acts, matters, and things as may be necessary and proper for any of the purposes aforesaid, and for directing the positions of all graves and vaults to be made in the said Cemetery, the depths of the graves, and construction of coffins to be

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admitted into vaults, and the covering of vaults so as to prevent the escape of any noxious exhalation or evaporation in the said Cemetery, and for protecting the buildings, monuments, shrubberies, plantations, and enclosures therein and thereof from destruction or damage.

**12** No Rule or Regulation shall be in force until the same has been approved of by the Governor in Council and published in the *Gazette*. To be published in *Gazette*.

**13** The Trustees of any such Cemetery shall not be competent to proceed to business at any meeting unless there be at least Three of them present. Quorum of Trustees.

**14** The Trustees of any such Cemetery may adopt Rules for convening meetings, and such other Rules and Regulations as may be necessary for their own guidance and management. Trustees may adopt Rules for their guidance.

**15** The majority in number present at any meeting of the said Trustees shall decide and determine all questions, matters, and things which may be discussed or considered at such meeting; and in case of an equality of votes the Chairman of such Meeting shall, in addition to his deliberative vote, have a casting vote. Questions to be decided by majority.

**16** The Trustees of any such Cemetery shall not by any Rule or Regulation, or any act, matter, or thing, at any time, interfere, directly or indirectly, with the performance of any Religious Ceremony in the Burial of the Dead according to the usage of the Communion to which the Minister performing the ceremony belongs, or with the original distribution of the said lands or hereditaments made or intended to be made by the deed of grant or other conveyance to and amongst separate and distinct Religious Denominations and Communions. Trustees not to interfere with Religious Ceremonies, or with the distribution of lands amongst separate Denominations.

**17** The Minister of any Denomination for which any portion of any such Cemetery is specially set apart may have free access and admission to such portion of the said Cemetery at all times as he thinks fit, and may freely exercise his Spiritual Functions therein in connection with the interment of the dead, without any hindrance or disturbance of the Trustees of the said Cemetery or any person whatsoever. Ministers of Religion to have free access, and may exercise their Spiritual Functions without hindrance.

**18** The Trustees of every such Cemetery may from time to time, with the consent of the Governor in Council, make and publish in the *Gazette* a Scale of Fees payable on any vault or grave being dug and made, and any monument or tombstone being erected or placed in any part of such Cemetery. Trustees to make and publish Scale of Fees.

**19** If such Scale of Fees has been made and published as aforesaid, the Trustees of any such Cemetery may permit any vault or grave to be dug or made in such Cemetery, and any monument or tombstone to be erected or placed in any part of any such Cemetery as they may think proper, upon payment to them, by the person desiring to dig and make such vault or grave, and to erect and place such monument or tombstone, of the fees named in the Scale aforesaid. Permission to make vaults and erect monuments.

**20** The Trustees of any such Cemetery may determine and fix the position of any monument which may be proposed to be erected according to the description, size, and character thereof, having reference to the general plan for ornamenting the said Cemetery in an appropriate manner. Trustees to fix position of monuments.

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Monuments, &c.  
to be kept up.

**21** Any person so digging or making such vault or grave, or erecting and placing such monument or tombstone in such Cemetery, and upon payment of the fees aforesaid, shall be entitled to have maintained and kept up such vault, grave, monument, or tombstone according to the terms of such permission, to and for the sole and separate use of such person and his representatives for ever.

Burial of poor  
persons.

**22** The Trustees of any such Cemetery, notwithstanding anything herein contained, may permit any poor person to be buried in such Cemetery free of any charge whatsoever.

Private vaults  
protected.

**23** Before any corpse is permitted to be interred in any vault, brick grave, or in any place of burial, the exclusive right of burial or interment wherein has been sold or granted by the said Trustees as a family or private burial place, the said Trustees, or any officer employed by them, may enquire, and they or he shall be entitled to have produced to them or him satisfactory evidence that the person for the time entitled as owner to the exclusive right of burial or interment in such vault, brick grave, or other burial place has consented, or would not object to, such interment taking place therein.

Trustees may  
remove monu-  
ments, &c.

**24** When any monument, cenotaph, tablet, or other erection has been erected or built contrary to the terms and conditions upon which permission to erect or construct the same was granted, or in case such terms and conditions, as well as the regulations of such Cemetery, may have not been complied with, the Trustees may take down and remove such monument, cenotaph, tablet, or other erection.

Trustees may  
allow Mortuary  
Churches to be  
erected.

**25** Where the members of any Religious Denomination desire at their own expense to erect and build in any such Cemetery a suitable Mortuary Church or Chapel for the performance of the rites and ceremonies in the Burial of the Dead according to the usages of such Denomination, if the plans, specifications, elevations, and models thereof, with lodges and other buildings and conveniences thereto, be first submitted for the approval of the Trustees of the said Cemetery and approved by them, the said Trustees may permit the same to be erected and built within such part of the said Cemetery as is specially set apart for that Denomination.

Governor in  
Council may  
direct money to be  
paid to Trustees  
for establishment  
of Cemeteries.

**26** The Governor in Council may direct such sums of money as he may think fit to be paid out of the funds to be hereafter provided by Parliament for the establishment of Cemeteries to the Trustees of any Cemetery, and to their successors, in trust for the establishment and management of such Cemetery.

Money to be either  
lent or paid.

**27** The Governor in Council may either cause such sum to be lent to such Trustees, to be repaid out of the fees as herein mentioned, or, when from the situation of the Cemetery or any other circumstance it seems improbable that such fees will be sufficient to repay any such loan, he may cause such sum to be paid to such Trustees in trust for the establishment and management of the Cemetery.

Security where  
the money is lent.

**28** In case any sum is so lent as aforesaid, the Governor in Council may require such security over the fees herein mentioned as may be expedient, but such security shall not involve any of the said Trustees in any personal liability.

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**29** The Trustees of every Cemetery shall keep a full and particular account of all sums of money received and expended by them, and an abstract of such account made up from the day of their first appointment to the Thirty-first day of *December* in the first year, and from the First day of *January* to the Thirty-first day of *December* both inclusive in each subsequent year.

Trustees to keep account, and abstract of moneys received and expended.

**30** The Trustees of every Cemetery shall transmit such account and abstract, verified respectively by a declaration to be made under the Act of Council of the 8th *William* the 4th, No. 2, by Three at least of such Trustees, to the Colonial Secretary on or before the First day of *March* in every year, and every such abstract shall be published in the *Gazette*.

Accounts to be verified and transmitted to the Colonial Secretary.

**31** The Trustees of every Cemetery shall transmit with such account and abstract a statement of the condition of such Cemetery as to repairs, order, and ornament, and a suggestion as to the alterations necessary or expedient in the ensuing year in such repairs, order, and ornament, and an estimate of the expense which may probably be incurred in effecting the same.

Statement of condition of Cemetery to be transmitted with account.

**32** The Governor in Council, upon examination of the said accounts, statements, suggestions, and estimates, shall direct the manner in which the balance of moneys in the hands of such Trustees shall be appropriated, and shall, if any sum so lent or advanced as aforesaid be unpaid, determine the proportion, if any, to be applied in payment of such sum, and the amount to be expended in the laying out or improvement of such Cemetery in the ensuing year.

Governor in Council to direct appropriation of moneys.

**33** Every such direction shall be published in the *Gazette*, and thereupon the Trustees shall pay such proportion as aforesaid into the Colonial Treasury; and if no such sum has been lent, or if lent has been paid off, the balance, if any, in the hands of the Trustees shall be expended in the improvement of such Cemetery, and the interment of poor persons.

Directions to be published in *Gazette*.

**34** If any such Trustee refuses or omits without reasonable excuse to make and transmit such account and abstract as aforesaid, he shall, on conviction before any Two Justices, forfeit and pay for every such offence a sum not exceeding Ten Pounds.

Penalty if Trustees neglect to transmit account, &c.

**35** If any such Trustee wilfully makes a false statement in any declaration made as aforesaid in any material matter in such account as aforesaid, he shall be deemed guilty of a Misdemeanor, and punished accordingly.

Trustee making false statement liable to penalty.

**36** The Trustees of any Cemetery shall have power to prosecute all persons who may at any time do, or cause to be done, any damage to any building, monument, tombstone, shrubbery, plantation, or enclosures of the said Cemetery.

Trustees to prosecute for damage.

**37** If any person wantonly or wilfully destroys, or does or causes to be done any damage to any monument, vault, tombstone, building, erection, railing, fence, shrubbery, tree, or plant in any Cemetery, he shall, on conviction thereof before any two or more Justices, upon any complaint thereof made by the said Trustees, or by any officer or servant employed by them in the said Cemetery, or by any person to whom the burial place may belong, be liable

Malicious injuries to monuments, &c. a misdemeanor.

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for every such offence to a penalty not exceeding Twenty Pounds, or, at the discretion of such Justices, to imprisonment for any period not exceeding Three months with or without hard labour.

Injuries to monuments, &c.

**38** If any person does, or causes to be done, any injury to any such monument, vault, tombstone, building, erection, railing, shrubbery, tree, or plant, he shall be liable to a penalty of not more than Five Pounds, and to pay to the Trustees a reasonable sum of money by way of damages and compensation therefor.

Trustee may seize and detain any person committing offence against this Act.

**39** It shall be lawful for any Trustee, or for any officer or servant of the Trustees, and for all such persons as he shall call to his assistance, to seize and detain any person who commits, or is found in the act of committing, an offence against this Act, and whose name and place of abode are unknown to such Trustee, officer, or servant, and to convey such person before some Justice without other warrant or authority than this Act; and in case such person refuse to satisfy the Justice as to his name and place of abode, such Justice is hereby empowered and required either to proceed immediately to the hearing and determining the complaint in the same manner as if heard by summons before Two or more Justices, or to order such person to be detained in custody until he shall be brought before Two or more Justices to be dealt with in the ordinary course.

Appropriation of penalties.

**40** One moiety of the money arising from any penalty or forfeiture imposed by this Act when recovered shall be paid to the Trustees of the Cemetery in respect whereof such penalty or forfeiture may have been imposed for the uses of such Cemetery, and the other moiety to the use of the informer or person prosecuting.

Summary procedure.

**41** All proceedings under this Act shall be had and taken, and all penalties and sums of money recoverable under this Act shall be recovered before any Two Justices of the Peace in the mode prescribed by *The Magistrates Summary Procedure Act*; and any such proceeding in pursuance of this Act shall not be quashed for want of form, nor be removed by *Certiorari* or other process into the Supreme Court; and any person aggrieved by any judgment, conviction, or order made as aforesaid may appeal against the same in the mode prescribed by *The Appeals' Regulation Act*.

19 Vict. No. 8.

No *Certiorari*.

Appeal.

19 Vict. No. 10.

Commencement of Act.

**42** This Act shall come into operation on the First day of *October*, 1865.