

LOCAL LAW NO. 18 (LOCAL GOVERNMENT CEMETERIES) 2006

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PART 1—PRELIMINARY

Short title

1. This local law may be cited as *Local Law No. 18 (Local Government Cemeteries) 2003*.

Objects

2. The objects of this local law are to—
 - (a) empower the Local Government to establish public cemeteries; and
 - (b) provide for the proper management and control of public cemeteries under the control of the Local Government in the Local Government's area; and
 - (c) regulate the disposal of human remains in the Local Government controlled cemeteries; and
 - (d) ensure that proper records are kept about the disposal of human remains within Local Government controlled cemeteries.

Definitions—the dictionary

3. The dictionary in the schedule defines particular words used in this local law.

PART 2—LOCAL GOVERNMENT CEMETERIES

Division 1—Establishment of cemeteries

Establishment of cemeteries

4. (1) The Local Government may, subject to the *Integrated Planning Act 1997*, establish a cemetery on land under the Local Government's control.
(2) A cemetery may include—
 - a) a crematorium; or
 - b) a columbarium; or
 - c) a mausoleum or vault; or
 - d) a garden of remembrance; or
 - e) other structures and improvements the Local Government considers appropriate.

Division 2—Rights to burial sites etc.

Grant of burial rights etc.

5. The Local Government may enter into contracts giving rights to burial sites or other rights relating to the placement of human remains in a Local Government cemetery.

Private columbarium, mausoleums and vaults

6. (1) The Local Government may enter into a contract authorising a person to construct and maintain a private columbarium, mausoleum or vault in a Local Government cemetery.
- (2) A contract under this section does not dispense with the need for a development permit for the proposed structure under the *Integrated Planning Act 1997*.
- (3) A contract under this section must—
 - (a) provide for the maintenance and repair of the structure; and
 - (b) if the structure is not to be maintained by the Local Government under the terms of the contract—authorise the Local Government to demolish and remove the structure if it falls into disrepair.
- (4) If a party to a contract under this section dies, the Local Government must (subject to wishes the deceased had made known to the Local Government) allow relatives of the deceased whose identity and whereabouts are known to the Local Government a reasonable opportunity to take over the deceased's contractual rights and liabilities.

Division 3—Disposal of remains in Local Government cemetery**Disposal of human remains in Local Government cemetery**

7. (1) A person must not dispose of human remains in a Local Government cemetery unless the disposal of the remains is authorised by a licence under this Division.

Maximum penalty—200 penalty units.

- (2) A licence is required under this section even though the remains are to be placed in a private columbarium, mausoleum or vault.¹

Application for licence

8. (1) An application for a licence permitting disposal of human remains in a Local Government cemetery must—
 - (a) identify the burial site, niche or other place in which the remains are to be buried or placed; and
 - (b) state the nature of any funeral or memorial ceremony to be conducted in the cemetery and the time of the proposed ceremony.
- (2) An application for a licence permitting disposal of human remains in a Local Government cemetery must be accompanied by certified copies of other legal authorities that are required for the disposal of the remains.

¹ See division 2.

Grant of licence

9. The Local Government may grant a licence authorising the proposed disposal of human remains in a Local Government cemetery if satisfied that—
- (a) the proposal is consistent with rights that have been granted under this local law; and
 - (b) the proposal is consistent with the requirements laid down by subordinate local law.

Conditions of licence

10. (1) A licence for the disposal of human remains in a Local Government cemetery may be granted on conditions the Local Government considers appropriate.
- (2) The conditions of a licence may, for example—
- (a) regulate the opening of a grave site; and
 - (b) require an appropriate identifying plaque to be placed on or adjacent to the place of disposal until an appropriate memorial to the deceased is erected or installed; and
 - (c) regulate style and numbers of flower receptacles at grave sites.
- (3) The Local Government may, by subordinate local law, prescribe conditions that must be imposed in a licence or that will ordinarily be imposed in a licence.

Compliance with conditions of licence

11. An undertaker who arranges for the disposal of human remains in a Local Government cemetery must ensure that the conditions of the relevant licence are complied with.

Maximum penalty—200 penalty units.

Bringing of human remains into cemetery

12. A person must not bring human remains into a Local Government cemetery unless—
- (a) a licence has been issued for disposal of the human remains in the cemetery; and
 - (b) the remains are enclosed in a coffin or other form of container appropriate to the proposed form of disposal that complies with the requirements specified by subordinate local law.

Maximum penalty—200 penalty units.

Division 4—Erection and installation of memorials

Erection of memorials to deceased persons

13. A person must not erect or install a memorial to a deceased person in a Local

Government cemetery unless authorised by a licence under this Division.

Maximum penalty—200 penalty units.

Application for licence

14. (1) An application for a licence authorising the erection or installation of a memorial to a deceased person in a Local Government cemetery must—
- (a) identify the burial site or other place in which the memorial is to be erected or installed; and
 - (b) state the nature and dimensions of the proposed memorial.
- (2) If a development permit is required under the *Integrated Planning Act 1997* for the erection or installation of the proposed memorial, the application must be accompanied by a copy of the relevant permit.

Grant of licence

15. (1) The Local Government may grant a licence authorising the erection or installation of a memorial to a deceased person in a Local Government cemetery if satisfied that the licence may be granted consistently with the objects of this local law and the criteria laid down by subordinate local law.
- (2) A subordinate local law may specify criteria with which the erection or installation of a memorial must comply, or will ordinarily be expected to comply.

Conditions of licence

16. (1) A licence for the erection or installation of a memorial to a deceased person in a Local Government cemetery may be granted on conditions the Local Government considers appropriate.
- (2) The Local Government may, by subordinate local law, prescribe conditions that must be imposed in a licence or that will ordinarily be imposed in a licence.

Compliance with conditions of licence

17. A person who erects or installs a memorial to a deceased person in a Local Government cemetery must ensure that the conditions of the relevant licence are complied with.

Maximum penalty—200 penalty units.

Division 5—Maintenance of memorials

Maintenance and repair of memorials by family members

18. (1) A member of the family of a deceased person, or another person who has a proper interest in the maintenance of a memorial to a deceased person, may with the approval of the Local Government carry out maintenance or repair work on a

memorial.

- (2) The Local Government may give directions about how maintenance or repair work is to be carried out.

Examples—

The Local Government may, for example, give directions about—

- the addition of structural elements to the memorial;
- the planting, watering, mowing or maintenance of grass or other plants in the vicinity of the memorial and numbers of receptacles at the grave site;
- the use of fertilisers, pesticides or weedicides in the vicinity of the memorial;
- ensuring that the heritage value of the cemetery is not impaired by the maintenance or repair work.

- (3) A person must comply with a direction under this section.

Maximum penalty for subsection (3)—50 penalty units.

Maintenance contracts

19. The Local Government may enter into a contract (a “**maintenance contract**”) to maintain a memorial to a deceased person and keep it in good repair.

Maintenance and repair of memorials by Local Government

20. (1) The Local Government may carry out maintenance or repair work on a memorial.
- (2) The Local Government is not obliged to carry out maintenance or repair work on a memorial unless the Local Government is obliged to maintain the memorial under a maintenance contract.

Removal of memorials

21. (1) The Local Government may remove a memorial if it has become unsafe or has fallen into a state of disrepair.
- (2) If there is no immediate danger to the public, the Local Government must, before removing a memorial under this section, give members of the deceased’s family whose identity and whereabouts are known to the Local Government reasonable notice of its intention to remove the memorial.
- (3) The Local Government is not obliged to reinstate a memorial removed under this section unless the Local Government is obliged under a maintenance contract to maintain the memorial.

Division 6—Conduct in Local Government cemeteries

Animals

22. A person must not bring an animal into a Local Government cemetery unless the Local Government approves.

Maximum penalty—20 penalty units.

Interference with grave etc.

23. A person must not interfere with a grave, memorial, or with flowers or tokens on a grave or memorial unless the Local Government approves.

Maximum penalty—50 penalty units.

Interference with services

24. A person must not interrupt or interfere with a funeral or commemorative service lawfully conducted in a Local Government cemetery.

Maximum penalty—200 penalty units.

General power to regulate conduct

- 25 (1) The Local Government may, by subordinate local law, regulate, restrict or prohibit specified conduct in a Local Government cemetery.
- (2) A regulation, restriction or prohibition imposed by subordinate local law under this section must be notified on a public notice erected at or near the main public entrance to the cemetery.
- (3) A person must not contravene a regulation, restriction or prohibition imposed under this section.

Maximum penalty for subsection (3)—50 penalty units.

Use of force to prevent contravention

26. An authorised person who finds a person committing or about to commit an offence against this division may use reasonable force to—
- (a) prevent the commission or further commission of the offence; or
- (b) remove the other person from the cemetery.

PART 3—CEMETERIES GENERALLY

Standards for disposal of human remains in cemeteries

27. (1) The Local Government may, by subordinate local law, prescribe standards for the disposal of human remains in Local Government cemeteries.

Examples—

The Local Government may for example—

- prescribe standards with which coffins must comply;
- prescribe minimum dimensions for graves;
- limit the number of bodies that may be buried in a single grave.

- (2) The Local Government must ensure that the standards are complied with.

Maximum penalty—200 penalty units.

- (3) However, an authorised person may, in an appropriate case, grant an exemption from the requirements of a standard prescribed under this section.

Records to be kept by the Local Government

28.(1) The Local Government must keep records of—

- (a) the names of all persons whose remains have been buried, cremated or placed in the cemetery; and
 - (b) the date of the disposal, and the form of the disposal, of the remains; and
 - (c) the place where the remains of each person have been buried or placed (but not if the remains are cremated remains that have been scattered in the cemetery); and
 - (d) any dealing with the remains after they have been buried or placed in the cemetery; and
 - (e) other information required by subordinate local law.
- (2) The records must be kept at an office on the grounds of the cemetery or another place approved by the Local Government for the purposes of this section.
- (3) The records must be kept available for inspection by members of the public at reasonable times.
- (4) The Local Government must ensure that the requirements of this section are complied with.

Maximum penalty for subsection (4)—50 penalty units.

PART 4—DISPOSAL OF HUMAN REMAINS OUTSIDE CEMETERIES

Requirement for licence

29.(1) A person must not dispose of human remains in the Local Government's area, but outside a cemetery, unless the disposal of the remains is authorised by a licence under this part.

Maximum penalty—200 penalty units.

- (2) However, a licence is not required for scattering cremated remains outside a cemetery.

Application for licence

30.(1) An application for a licence authorising disposal of human remains outside a cemetery must—

- (a) identify the burial site or other place in which the remains are to be buried or placed; and
- (b) state when and how the remains are to be disposed of; and

- (c) contain other information required by subordinate local law.
- (2) An application for a licence authorising disposal of human remains outside a cemetery must be accompanied by—
 - (a) certified copies of other legal authorities that are required for the disposal of the remains; and
 - (b) the written agreement of the owner of, and anyone else with a registered interest in, the land on which the remains are to be buried or placed to the disposal of the remains on the land.

Grant of licence

- 31.** The Local Government may grant a licence authorising the proposed disposal of human remains outside a cemetery if satisfied that—
- (a) the grant of the licence is justified by—
 - (i) a special family, personal or historical association between the deceased person and the place in which the remains are to be buried or placed; or
 - (ii) some other special reason; and
 - (b) the implementation of the proposal—
 - (i) will not create a risk to health or other nuisance; and
 - (ii) will not cause reasonable offence to others; and
 - (iii) is consistent with criteria laid down by subordinate local law.

Conditions of licence

- 32** (1) A licence for the disposal of human remains outside a cemetery may be granted on conditions the Local Government considers appropriate.
- (2) The conditions of a licence may, for example—
- (a) regulate the preparation of a grave and require the holder of the licence to allow an authorised person to inspect the grave before burial of human remains in the grave; and
 - (b) require the disposal of the human remains to take place at a particular time or within a particular period; and
 - (c) require the erection or installation of a memorial or marker to identify a site in which human remains have been buried.

Compliance with conditions of licence

33. An undertaker who arranges for the disposal of human remains outside a cemetery must ensure that the conditions of the relevant licence are complied with.

Maximum penalty—200 penalty units.

PART 5—MISCELLANEOUS

Division 1—Disturbance of remains

Disturbance of remains

- 34.(1)** A person must not disturb or interfere with human remains that have been buried or placed within or outside a cemetery under this local law unless the Local Government authorises the disturbance or interference with the remains.

Maximum penalty—500 penalty units.

- (2)** However, this section does not affect the exhumation or other disturbance or interference with human remains on the order of a coroner or other lawful authority.

Authorisation for disturbance or interference with remains

- 35.(1)** The Local Government may give an authorisation under this division on conditions the Local Government considers appropriate.

Examples—

The Local Government may authorise the removal of the remains from 1 cemetery to another to comply with the wishes of the relatives of the deceased.

The Local Government may authorise the opening of a grave and the burial of another in the same grave in compliance with the expressed wishes of both or all deceased persons who have been or are to be buried in the grave.

- (2)** A person to whom an authorisation is given under this local law must comply with the conditions of the authorisation.

Maximum penalty for subsection (2)—500 penalty units.

Division 2—Removal of remains

Power to direct removal of remains

- 36.(1)** If human remains are buried or placed on land² without the authorisation required under this local law, or contrary to the conditions of an authorisation under this local law, the Local Government may, by notice in writing given to the owner of the land (a “**compliance notice**”), require the owner to have the remains removed to a cemetery within a specified period.

- (2)** A person must comply with a notice under this section.

Maximum penalty for subsection (2)—200 penalty units.

Local Government’s power to have work carried out

37. If—

- (a) the Local Government considers it inappropriate to issue a compliance notice

² It should be noted that when human remains are discovered, the police are to be informed under section 12 of the *Coroners Act 1958*. If the remains are identified as Aboriginal remains or of historical significance, the police will notify the Environmental Protection Agency.

under this division; or

- (b) a person fails to have the remains removed to a cemetery as required by a compliance notice;

the Local Government may itself remove the remains and dispose of them in a cemetery.

Powers of entry and cost recovery

- 38.(1)** The Local Government may enter land to carry out the work under section 1066 of the Act.
- (2)** If a compliance notice has been issued against the owner of the land, and the owner has failed to have the remains removed as required by the compliance notice, the amount properly and reasonably incurred by the Local Government in carrying out the work is recoverable from the owner (together with interest) under sections 1066, 1067 and 1068 of the Act.

Division 3—Power of direction

Compliance by undertakers with directions by authorised persons

- 39.** An undertaker must comply with directions given orally or in writing by an authorised person about—
 - (a) the preparation of a grave for the burial of human remains; or
 - (b) other matters affecting the disposal of human remains.

Maximum penalty—200 penalty units.

Division 4—Consistency with Queensland Heritage Act 1992

Consistency with *Queensland Heritage Act 1992*

- 40.** The powers given under this local law must be exercised in a way that is consistent with the *Queensland Heritage Act 1992*.

PART 6—AUTHORISED PERSONS

Appointment

- 41.(1)** The Local Government may appoint any of the following persons as authorised persons for this local law—
 - (a) employees of the Local Government;
 - (b) other persons who are eligible for appointment as authorised persons under Chapter 15, part 5 of the Act³.
- (2)** An appointment of a person as an authorised person under this part must state the provisions for which the person is appointed as an authorised person.

³ Chapter 15, Part 5 (Enforcement of Local Government Acts).

- (3) The Local Government may appoint a person as an authorised person under this part only if—
- (a) the Local Government considers the person has the necessary expertise or experience for the appointment; or
 - (b) the person has satisfactorily finished training approved by the Local Government for the appointment.

Limitation on authorised person’s powers

42. An authorised person’s powers may be limited in the person’s instrument of appointment.

Authorised person’s appointment conditions

- 43.(1) An authorised person holds office on the conditions stated in the instrument of appointment.
- (2) An authorised person—
- (a) if the instrument provides for a term of appointment—ceases holding office at the end of the term; and
 - (b) may resign by signed notice of resignation given to the Local Government; and
 - (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the “**main office**”).
- (3) However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) under subsection (2)(b) if a term of the authorised person’s employment to the main office requires the authorised person to hold the secondary office.

Authorised person’s identity card

- 44.(1) The Local Government must give each authorised person an identity card.
- (2) The identity card must—
- (a) contain a recent photograph of the authorised person; and
 - (b) be signed by the authorised person; and
 - (c) identify the person as an authorised person for the Local Government; and
 - (d) include an expiry date.
- (3) A person who ceases to be an authorised person must return the person’s identity card to the Local Government within 21 days after the person ceases to be an authorised person.

Maximum penalty—10 penalty units.

- (4) This section does not prevent the giving of a single identity card to a person for this part and for other purposes.

Production of identity card

- 45.(1)** An authorised person may exercise a power in relation to someone else (the “**other person**”) only if the authorised person—
- (a) first produces his or her identity card for the other person’s inspection; or
 - (b) has the identity card displayed so it is clearly visible to the other person.
- (2)** However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person’s inspection at the first reasonable opportunity.

Offence

- 46.** A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

Protection from liability

- 47.(1)** This section applies to—
- (a) an authorised person; and
 - (b) a person acting under the direction of an authorised person.
- (2)** The person does not incur civil liability for an act done or omission made honestly and without negligence under this local law.
- (3)** A liability that would, apart from this section, attach to the person attaches instead to the Local Government.

PART 7—REVIEW**Reviewable decisions**

- 48.** A decision of the Local Government or an authorised person under this local law is reviewable (a “**reviewable decision**”) unless it is—
- (a) a decision made by resolution of the Local Government; or
 - (b) a decision made on an earlier application for review.

Application for review

- 49.(1)** A person who is aggrieved by a reviewable decision may apply to the Local Government for a review of the decision.
- (2)** An application for review of a reviewable decision must—
- (a) be in writing; and
 - (b) state the reasons why the applicant considers the decision should be reviewed; and
 - (c) be lodged at the office of the Local Government within 14 days after the day on which notice of the decision was given to the applicant or within a further period allowed by the Local Government (before or after the end of that period).

Carrying out review

- 50.(1)** The Local Government must either—
- (a) carry out a review at a meeting of the Local Government; or
 - (b) have the review carried out by an authorised person.
- (2)** An authorised person who carries out a review under subsection (1)(b) must not be the original decision maker and must be a person who is no less senior than the original decision maker.

Decision on review

- 51.(1)** On completing a review, the Local Government may confirm, vary or reverse the decision under review.
- (2)** The Local Government must give the applicant written notice of the result of the review.
- (3)** If the Local Government does not decide an application for review within 28 days after receiving the application, the Local Government is taken to have confirmed the decision under review.

PART 8—MISCELLANEOUS**Defence of reasonable excuse**

- 52.** If a person is charged with an offence involving a contravention of a provision of this local law, it is a defence to prove that the person had a reasonable and lawful excuse for the contravention.

Subordinate local laws

- 53.** The Local Government may make subordinate local laws about—
- 1) the establishment of a cemetery authority to manage a Local Government cemetery; or
 - 2) management policies for a Local Government cemetery; or
 - 3) requirements for the disposal of human remains in a Local Government cemetery;⁴ or
 - 4) requirements for coffins or other containers for human remains brought into Local Government cemeteries;⁵ or
 - 5) conditions that must, or will ordinarily, be imposed in a licence to erect or install a memorial to a deceased person in a Local Government cemetery;⁶ or
 - 6) other matters about which this local law specifically allows for the making of subordinate local laws.

⁴ See section 12.

⁵ See section 12(b).

⁶ See section 16(2).

SCHEDULE

DICTIONARY

“**authorised person**” means a person appointed as an authorised person for this local law.

“**cemetery**” means a place for the disposal of human remains.

“**disposal**” of human remains includes—

- (a) burial (including burial at sea); and
- (b) cremation; and
- (c) placing the remains in a columbarium, mausoleum or vault.

“**family**” of a deceased person includes—

- (a) a spouse of the deceased; and
- (b) a guardian of the deceased; and
- (c) brothers and sisters of the deceased, or of a spouse of the deceased; and
- (d) ascendants and descendants of the deceased, or of a spouse of the deceased.

“**human remains**” means the body or part of the body of a deceased person but does not include a part of the body of a deceased person lawfully removed for transplantation, scientific examination or instruction in anatomy or any other branch of medicine.

“**Local Government cemetery**” means a public cemetery administered by the Local Government under this local law.

“**memorial**” includes—

- (a) a headstone; and
- (b) an inscribed plaque or commemorative plate; and
- (c) monumental, ornamental or other structures erected on a grave site; and
- (d) anything else erected or placed in a cemetery to mark the site where human remains have been buried or placed, or to commemorate a deceased person.

“**operate**” a cemetery means to dispose, or permit the disposal, of human remains in the cemetery.

“**reviewable decision**” see section 48.

“**the Act**” means the *Local Government Act 1993*.

“**undertaker**” means a person who carries on the business of disposing of human remains and, if a person who carries on that business is not engaged in a particular case, includes the person who actually undertakes the disposal of the human remains.