

# CEMETERIES AND CREMATORIA AMENDMENT BILL 2009

## TABLING OF STATEMENT OF COMPATIBILITY AND SECOND READING SPEECH

### Tabling of Statement of Compatibility

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I table a statement of compatibility for the Cemeteries and Crematoria Amendment Bill 2009.

### Second Reading Speech

I move that this bill be now read a second time.

In the past year, the Government has overseen major amendments to existing health legislation such as the Public Health and Wellbeing Act, and the passage of new legislation including the Cancer Amendment Act, and the Human Services (Complex Needs) Act. This legislation continues this Government's commitment to ensuring that our public institutions continue to reflect the changing needs of the Victorian community.

This bill seeks to make amendments to the *Cemeteries and Crematoria Act 2003*. This legislation will enable a series of changes to Victoria's cemetery sector which will ensure that this sector meets the expectations of the Victorian community into the future.

Burial and memorial grounds are all regarded as special places by our community. These sites are monuments to our collective history, and provide an important role in helping us to respond to loss individually.

Victoria's religious and secular burial and memorial sites are public cemeteries which are managed by over 500 cemetery trusts under the *Cemeteries and Crematoria Act 2003*.

There has been a proud tradition of volunteerism in the cemeteries sector for over 150 years.

Today, Victoria's cemetery trusts range from small rural trusts that may perform one or two burials a year to large multi-million dollar enterprises which manage substantial investment funds.

Currently all Victorian cemetery trusts are governed by volunteers. All trusts have the same statutory governance framework, regardless of the size and scale of their operations.

While volunteer trust members have served our community very well, this "one size fits all" model of cemetery trust governance is no longer appropriate.

This bill is designed to ensure that cemetery and crematoria services are well placed to meet the needs of our community and future generations of Victorians. Its purpose is to improve the governance and accountability of cemetery trusts, focussing especially on the large entities that report to parliament under the *Financial Management Act 1994*, and to make some housekeeping changes to improve the administration of the *Cemeteries and Crematoria Act 2003*.

The bill creates two classes of cemetery trusts. These are described as Class A trusts and Class B trusts.

Class A trusts will have the enhanced statutory functions and accountabilities set out in the bill.

The overwhelming majority of trusts will be Class B trusts. These trusts will continue to be governed by volunteers and the statutory framework applicable to them will be essentially unchanged. However, the bill provides enhanced powers for the Secretary of the Department of Human Services to commission audits of cemetery trusts. These powers will apply to Class A and Class B trusts alike.

Class A trusts will comprise between 6 and 9 members (including the chairperson), selected for their skills and expertise and appointed by the Governor in Council.

These members will receive payment in accordance with government guidelines for the remuneration of members of public bodies.

These trusts will have a statutory role of providing assistance and guidance on request to Class B trusts in their designated “catchments”. This will formalise the role that is currently played by the larger trusts in relation to the smaller trusts in their areas.

The bill requires Class A trusts to establish community advisory committees. The bill gives the Secretary of the department the capacity to make guidelines about the membership, composition and procedure of these committees.

The intent is that community advisory committees will reflect the perspectives of the diverse communities served by cemetery trusts (for example, local area knowledge, religious, cultural and heritage perspectives) rather than the views of service providers in the funeral industry. Accordingly the bill requires the trusts, in making appointments to these committees, to give preference to individuals who are not stonemasons or funeral directors.

Class A trusts must prepare and submit annual plans and strategic plans to the Secretary of the department. These provisions are designed to ensure that the planning undertaken by Class A trusts is broadly aligned to the planning proposed to be undertaken by the government for the provision of cemetery and crematoria services.

### **Mechanisms for the establishment of Class A trusts**

The bill will establish three new Class A trusts. These new entities will be the successors in law of certain existing cemetery trusts which are being re-organised.

Secondly, the bill will convert the existing Bendigo, Ballarat and Geelong cemetery trusts into Class A trusts, without making changes to the structure or composition of those legal entities. These trusts will continue to be the same bodies, despite their conversion into Class A trusts under the bill. However, these trusts will have the enhanced duties and accountabilities that are applicable to members of Class

A trusts generally. The members of these trusts who hold office immediately before the conversion will continue to hold that office for a three-year period. Subsequent appointments will be made under the provisions of the bill applicable to all Class A trusts.

The bill also enables the establishment of further Class A trusts and the conversion of Class B trusts into Class A trusts (and vice versa), in the future. Conversion can occur where, in the opinion of the responsible minister, it is in the public interest, having regard to matters such as the size or scale of the operations of a cemetery trust and the communities served by the trust.

This recognises that, over time, changes within the sector may make it desirable for further cemetery trusts to be subject to the enhanced duties and accountabilities applicable to Class A trusts under the bill.

### **Re-organisation of certain cemetery trusts**

The bill will facilitate efficient organisational change to ten cemetery trusts in the metropolitan area that currently report to parliament under the *Financial Management Act 1994*.

It will also facilitate the efficient transfer of responsibility for the Mildura and Murray Pines public cemeteries from the Mildura Regional Shire Council to a newly created Mildura Cemetery Trust.

The bill provides for the creation of two new metropolitan Class A trusts and the transfer of the property, rights and liabilities and staff of the ten cemetery trusts to these new entities.

The Greater Metropolitan Cemetery Trust will be the successor in law of the following cemetery trusts, responsible for the public cemeteries that are currently managed by them:

The Trustees of the Altona Memorial Park

The Trustees of the Fawkner Crematorium and Memorial Park

The Keilor Cemetery Trust

The Preston Cemetery Trust  
Wyndham Cemeteries Trust  
The Anderson's Creek Cemetery Trust  
The Lilydale Cemeteries Trust, and  
The Templestowe Cemetery Trust.

The Southern Metropolitan Cemetery Trust will be the successor in law of the Cheltenham and Regional Cemeteries Trust and The Trustees of the Necropolis Springvale.

The result will be two large metropolitan cemetery trusts that are comparatively equal in economic size and scale. The remaining Class B (volunteer-governed) metropolitan cemetery trusts will continue to operate alongside these new major trusts.

Some of the metropolitan public cemeteries that are subject to change are currently managed by municipal councils. Separate cemetery trusts exist to govern these council-managed public cemeteries. For example, the Keilor Cemetery Trust is a separate legal entity established under the Cemeteries (Incorporation of Trusts) Regulations 1995, for which the Brimbank City Council constitutes the trust members.

However, despite the existence of separate cemetery trusts to govern council-managed cemeteries, there may be cases where, in practice, staff or equipment are shared between the cemetery and the council. Accordingly, the bill provides a mechanism to facilitate the transfer of specifically identified property, rights, liabilities and staff of councils to the new successor trusts by agreement. In these circumstances the new trusts will become the successors in law in respect of the property, rights and liabilities that are transferred to them under the bill.

## **Levy**

The bill also provides for an annual levy to be payable by Class A trusts of 3% of their gross annual earnings for the previous financial year. The bill enables the

levy rate to be varied if required in the future, up to a maximum of 5% of gross annual earnings.

The levy is an essential measure to provide a sustainable source of funds to enable improvements in cemeteries governance and administration, and support for cemetery trusts. The Auditor-General and the State Services Authority have identified the need for improvements in their recent reports regarding cemeteries governance.

More than 500 cemetery trusts in Victoria will remain governed by volunteers. The government recognises that these trusts will only be able to meet today's expectations of governance and accountability if they receive appropriate assistance and support. The levy is intended to enable practical assistance to be provided to cemetery trusts on an ongoing basis for matters such as governance training, improvements in records management and data systems, development of standard documentation, and guidance on trust rule making in consultation with local communities.

The levy is also intended to provide a sustainable source of funds to assist small trusts, especially those in rural Victoria, to maintain their cemeteries. These funds will assist small trusts to purchase equipment, construct storage sheds and facilities for cemetery visitors, and to undertake other improvements or works required for safety purposes.

### **Administrative changes**

The bill also makes some administrative changes to the *Cemeteries and Crematoria Act 2003* to improve its functionality. For example, it enables the re-opening of cemeteries or parts of cemeteries that have been closed under this Act or its predecessor legislation. This power was in the *Cemeteries Act 1958* but did not transmit to the current Act.

Finally I would like to pay tribute to the tremendous efforts of all of the volunteers in the cemeteries sector throughout Victoria who give their time and effort to govern these entities and support their local communities.

I would particularly like to thank the members of the ten metropolitan trusts that are subject to change, and the Mildura Cemetery Trust, for the valuable service they have given to their communities over many years in their capacity as trust members.

I commend the bill to the house.