



Queensland

Funeral Benefit Business Act 1982

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Contents

		Page
Part 1	Preliminary	
1	Short title	5
2	Commencement	5
3	Relationship with Fair Trading Inspectors Act 2014	5
5	Definitions	5
Part 2	The registrar	
6	Registrar	9
6A	Delegation by registrar	9
Part 3	Existing agreements with corporations registered at commencement of this Act	
8	Application of pt 3	9
9	Funeral Benefit Trust Fund	10
11	Investment of moneys, allocation of interest and expenses etc. .	10
13	Annual report on operation of fund	11
14	Benefits trust funds	11
15	Payment of moneys into the fund	12
16	Payments from the fund in respect of benefits	12
17	Application of benefits trust fund and of the fund	13
18	Payments from the fund in special circumstances	14
19	Annual returns to be furnished by corporation	14
20	Quinquennial valuation	15
21	Where assets insufficient to meet liabilities	16
22	Where assets more than sufficient to meet liabilities	16
23	Corporation to change rules	17
Part 4	Existing agreements with corporations registered after the commencement of this Act	
24	Application of pt 4	19

Contents

25	Meaning of nominated property	19
32	Provisions to be contained in rules	19
36	Certificate of registration	21
38	Funeral benefit business trust fund account	21
39	Funeral benefit business trust fund	22
40	Investment of moneys	22
41	Application of funeral benefit business trust fund	24
42	Annual returns to be furnished by corporation	28
43	Quinquennial valuation	29
44	Where assets insufficient to meet liabilities	30
45	Where assets more than sufficient to meet liabilities	30
46	Corporation to change rules	31
47	Register of contributors	32
48	Receipts	33
Part 5	Sale of funeral benefit businesses and cancellation of registration provisions for part 3 and 4 corporations	
49	Definition for pt 5	34
50	Sale of funeral benefit business	34
51	Cancellation of registration at request of corporation	36
52	Cancellation of registration by QCAT	39
Part 6	General provisions for registered corporations for particular funeral benefit agreements	
58	Application of pt 6	43
59	Nominated office	43
60	Secretary	44
61	Provisions as to rules	44
62	Settlement of disputes between corporations and contributors etc.	46
63	Change of name of registered corporation	46
64	Audit by direction of registrar	47
65	Control and management of certain accounts of registered corporations 48	
66	How payments from accounts to be made	51
67	Compliance with requirements of registrar	52
68	Inspection of books by contributors etc.	52
70	Advertising	53
71	Falsification of entries etc.	54
72	False and misleading statements	54

Part 7	Agreements entered into after the commencement of the Second-hand Dealers and Pawnbrokers Act 2003	
73	Application of pt 7	55
74	Client care statement	55
75	Person must be given copy of agreement	56
76	Cooling-off period	56
77	Consequences of exercising rights in cooling-off period	56
78	Person to be advised that the person may enter into an agreement with an authorised investment manager	57
79	Application of Trusts Act 1973	57
80	Application of Trust Accounts Act 1973	58
Part 8	General provisions for funeral benefit businesses	
82	Proceedings for offences	58
83	Institution of proceedings	59
85	Matters relating to evidence and proof	59
86	Protection from liability	60
88	Regulation-making power	60
89	Approval of forms	61
Part 9	Transitional provisions for Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013	
90	Definitions for pt 9	61
91	Abolition of the board	62
92	Legal successor of the board	62
93	Claim given to board to be dealt with by registrar	62
94	References to the board	62
95	Proceeding not yet started by or against the board	62
96	Other things done by board	63

Funeral Benefit Business Act 1982

An Act to consolidate and amend the law relating to funeral benefit businesses and registration thereof and for connected purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Funeral Benefit Business Act 1982*.

2 Commencement

- (1) This section and section 1 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.
- (2) Except as provided by subsection (1), this Act shall commence on a day appointed by proclamation.

3 Relationship with Fair Trading Inspectors Act 2014

- (1) The *Fair Trading Inspectors Act 2014* (the *FTI Act*) enacts common provisions for this Act and particular other Acts about fair trading.
- (2) Unless this Act otherwise provides in relation to the FTI Act, the powers that an inspector has under that Act are in addition to and do not limit any powers the inspector has under this Act.

5 Definitions

In this Act—

actuary means—

- (a) a Fellow or Associate of the Institute of Actuaries (London); or
- (b) a Fellow or Associate of the Faculty of Actuaries (Edinburgh); or
- (c) a Fellow of the Institute of Actuaries of Australia; or
- (d) any other person possessing actuarial knowledge and experience satisfactory to the Governor in Council and approved of by the Governor in Council as being an actuary accordingly.

approved form means a form approved by the chief executive under section 89.

authorised accountant means—

- (a) a person registered as an auditor under part 9.2 of the Corporations Act; or
- (b) a member of CPA Australia who is entitled to use the letters ‘CPA’ or ‘FCPA’; or
- (c) a member of Chartered Accountants Australia and New Zealand who is entitled to use the letters ‘CA’ or ‘FCA’; or
- (d) a member of the Institute of Public Accountants who is entitled to use the letters ‘MIPA’ or ‘FIPA’; or
- (e) a person possessing qualifications in accountancy and approved by the chief executive.

authorised investment manager means an entity that carries on a business, regulated by Commonwealth or State legislation, of investing money for another person.

benefit means funeral benefit.

contributor means any person who makes a payment or makes periodical contributions in the form of payments, by whatever name known, to an entity in respect of funeral benefits provided or to be provided by the entity.

corporation—

- (a) generally, has the meaning given by the Corporations Act, but does not include an exempt body within the meaning of that Act; and
- (b) for part 5, see section 49.

court means the Supreme Court or a judge thereof.

FTI Act see section 3(1).

fund see section 9(1).

funeral benefit means the provision, for any contributor or other person for whom or on whose behalf a payment or contributions is or are made, of—

- (a) funeral, burial or cremation services with or without any other services or benefits connected therewith; or
- (b) the costs and expenses, or a part thereof, of such funeral, burial or cremation services including, in the case of the provision of connected services or benefits, the costs and expenses, or a part thereof, of such other services or benefits;

and, without limiting the generality of the foregoing, includes the provision for any contributor or other person as aforesaid of any 1 or more of the following or of the costs and expenses or a part of the costs and expenses thereof, that is to say—

- (c) the attendance of a funeral services consultant to assist with arrangements for burial or cremation and the preparation of associated documents;
- (d) the transportation of the body of the deceased by a funeral director;
- (e) mortuary facilities and the services of a funeral director and the funeral director's staff;
- (f) a casket supplied by a funeral director;
- (g) arrangements for burial or cremation including arrangements for the purchase of an interment site or interment rights or an inurnment site or inurnment rights;

- (h) a mobile graveside chapel;
- (i) a casket-lowering device;
- (j) the preparation of ashes awaiting inurnment and memorial arrangements;
- (k) any other service or benefit or thing prescribed by regulation to be a service or benefit or thing for the purpose of this paragraph (the contributor or other person being hereby thereunto authorised).

funeral benefit agreement means an agreement, for the supply of a funeral benefit, between a contributor and an entity.

funeral benefit business means business providing a funeral benefit, but does not include any case of the sale of an interment site or interment rights only or an inurnment site or inurnment rights only or of the opening or closing of any such site.

inspector means a person who holds office under the FTI Act as an inspector for this Act.

nominated property see section 25.

part 3 corporation means a corporation to which repealed section 7 applied.

part 4 corporation means a corporation, other than a part 3 corporation, registered under this Act immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139, to carry on a funeral benefit business.

Note—

The *Second-hand Dealers and Pawnbrokers Act 2003*, section 139 commenced on 1 December 2003.

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

registered corporation means a part 3 corporation or part 4 corporation.

registrar means the registrar of funeral benefit businesses under section 6.

repealed section 7 means section 7 as in force immediately before its repeal by the *Statute Law Revision Act 1995*, section 4, schedule 1 and to which, under section 5(3) and schedule 9 of that Act, the *Acts Interpretation Act 1954*, section 20A applies.

valuer means a registered valuer within the meaning of the *Valuers Registration Act 1992*.

Part 2 The registrar

6 Registrar

The chief executive is the registrar of funeral benefit businesses.

6A Delegation by registrar

The registrar may delegate the registrar's powers under this Act to an officer or employee of the department.

Part 3 Existing agreements with corporations registered at commencement of this Act

8 Application of pt 3

This part applies to a part 3 corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139.

Note—

The *Second-hand Dealers and Pawnbrokers Act 2003*, section 139 commenced on 1 December 2003.

9 Funeral Benefit Trust Fund

- (1) The Funeral Benefit Trust Fund (the *fund*) is continued in existence.
- (2) Accounts for the fund must be kept as part of the departmental accounts of the department.
- (3) However, amounts received for the fund must be deposited in a departmental financial-institution account of the department used only for amounts received for the fund.
- (4) The registrar must administer the fund.
- (5) In this section—

departmental accounts, of a department, means the accounts of the department under the *Financial Accountability Act 2009*, section 69.

departmental financial-institution account, of a department, means an account of the department kept under the *Financial Accountability Act 2009*, section 83.

11 Investment of moneys, allocation of interest and expenses etc.

- (1) Separate accounts must continue to be kept identifying amounts and securities held for the funeral benefit business of each corporation.
- (2) The accounts must identify payments made under this part into the fund from the benefits trust funds of the corporations.
- (4) Interest payable by the Treasury to the fund in respect of moneys not otherwise invested shall be at a rate determined from time to time by the Treasurer.
- (5) Interest earned by investments from moneys in the fund or paid by the Treasury shall be paid into the fund and allocated proportionately to the respective accounts of the corporations concerned.
- (6) Any expenses of administration of the fund shall be paid out of the fund and allocated proportionately as expenses among the respective accounts of the corporations concerned.

13 Annual report on operation of fund

The department's annual report for a financial year must include a report about the operation of this Act during the year.

14 Benefits trust funds

- (1) Each corporation shall maintain a trust fund (a 'benefits trust fund') in its name in a financial institution in the State in connection with the carrying on of funeral benefit business.

Maximum penalty—2 penalty units.

- (2) Each corporation shall pay into its benefits trust fund—

- (a) all contributions paid to the corporation; and
- (b) all moneys received from the fund; and
- (c) any other moneys required to be paid therein or credited thereto pursuant to any provision of this Act;

and moneys in the benefits trust fund shall be kept separate from any other moneys of the corporation and accounted for separately.

Maximum penalty—2 penalty units.

- (3) A corporation shall notify the registrar—

- (a) in respect of a benefits trust fund maintained by it at the commencement of this Act—within 14 days of being required in writing by the registrar to do so; or
- (b) in any case where it establishes a new benefits trust fund after the commencement of this Act—within 14 days of such establishment;

the following information, that is to say—

- (c) the name of the financial institution;
- (d) the identifying number of the account established in respect of the benefits trust fund;
- (e) the names of those persons authorised to operate the account established in respect of the benefits trust fund;

(f) such other information as may be prescribed.

Maximum penalty—2 penalty units.

- (4) An offence against subsection (1), (2) or (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1), (2) or (3)—1 penalty unit.

15 Payment of moneys into the fund

- (1) At the end of each calendar month, all moneys standing to the credit of the benefits trust fund of a corporation, save those received from the fund pursuant to section 16 and an amount representing the proportion of contributions referred to in section 17(1)(e), shall be transferred by the corporation to the fund.

Maximum penalty—2 penalty units.

- (2) Such moneys thereupon form part of the fund.
- (3) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

16 Payments from the fund in respect of benefits

- (1) There shall be paid from the fund the value of benefits provided by a corporation to contributors or other persons for whom or on whose behalf contributions are made as provided for in the rules relating to the funeral benefit business of the corporation.
- (2) The corporation shall make periodical claims on the fund for the value of the benefit or benefits provided to contributors and others, including refunds to contributors as hereinafter provided, according to the rules relating to the business, and upon receipt of the corporation's certificate in writing with

respect to such value of benefit or benefits provided, the registrar must pay out of the fund so much of such claims as the registrar certifies is correct for payment to the corporation.

- (3) Where the funeral of a contributor or other person for whom or on whose behalf contributions are made is conducted by a funeral director other than the corporation in question, the registrar must, upon application as prescribed, pay out of the fund, in the manner and to the persons prescribed, the surrender value of the benefit provided by the corporation.

17 Application of benefits trust fund and of the fund

- (1) Subject to this Act, the moneys standing to the credit of the benefits trust fund of a corporation, including moneys payable therein whether actually deposited at a financial institution or not, and the moneys in the account kept in the fund in respect of that corporation shall be applied in the manner hereinbefore provided only for or towards—
- (a) the provision of benefits for contributors or persons for whom or on whose behalf contributions have been made; and
 - (b) refunds to contributors; and
 - (c) expenses of administration of the fund as referred to in section 11; and
 - (d) payments as directed by the registrar; and
 - (e) provision for the proportion of contributions allowable to the corporation for or in connection with the arrangement and operation of the funeral benefit business as provided by the corporation's rules relating to the business; and
 - (f) provision for the proportion of contributions allowable to the corporation for or in connection with the carrying out of the services pursuant to the contracts entered into with contributors whether before or after the commencement of this Act;

and the moneys as aforesaid and securities standing to the credit of the corporation in the fund in respect of its funeral benefit business shall not be liable to be taken in execution under the order or process of any court at the instance of any creditor of the corporation.

- (2) Subsection (1) applies despite the Corporations Act.

18 Payments from the fund in special circumstances

Upon application made in writing for the payment from the fund of a benefit in respect of a funeral benefit business or a surrender value of contributions paid to any such business or a refund, in whole or in part, of contributions paid to any such business, the registrar, if satisfied—

- (a) that the application is made in good faith by the applicant; and
- (b) that a payment of the type applied for would, in the circumstances, be just;

may make to the applicant, or to such other person as to the registrar may seem proper, a payment from the fund of such amount as the registrar may deem just notwithstanding any provision of this Act or of the registered rules of the business concerned or of the contract under which the contributions were paid and notwithstanding that no provision of this Act or of such registered rules or of such contract authorises or envisages such a payment to any person or to the person to whom the registrar proposes to make payment.

19 Annual returns to be furnished by corporation

- (1) Within 4 months after the end of each financial year or within such extended period not exceeding 2 months as the registrar in a particular case determines (the registrar being hereby thereunto authorised), a corporation shall furnish to the registrar a return in the approved form containing such particulars as are prescribed and accompanied by the prescribed documents.

Maximum penalty—2 penalty units.

- (2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

20 **Quinquennial valuation**

- (1) Once at least in every 5 years the registrar shall, in relation to the funeral benefit business of a corporation, cause the assets thereof in the fund and the benefits trust fund, including moneys payable therein whether actually paid in or not, and the liabilities thereof required to be met from those funds, whether as benefits or otherwise, pursuant to this part to be valued by the State actuary.

- (2) The registrar may, after consultation with the State actuary, dispense with such a valuation for such period or periods as the registrar thinks fit in respect of a corporation where, having regard to the purposes or nature of the operations of the funeral benefit business carried on by it, the registrar deems such a valuation to be inapplicable or unnecessary for the period or periods in question.

- (3) A corporation shall make available to the registrar such information, data, books, accounts, documents and other writings as the registrar may require for the purposes of the valuation.

Maximum penalty—2 penalty units.

- (3A) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (3)—1 penalty unit.

- (4) On the completion of the valuation the State actuary shall send to the registrar for transmission to the corporation an abstract of the results of the valuation and a report thereon.

- (5) In sections 21 and 22, a reference to assets or to liabilities is a reference to assets or, as the case may be, liabilities as referred to in subsection (1).

21 Where assets insufficient to meet liabilities

If from the valuation it appears to the State actuary that the assets are insufficient to meet the liabilities, the State actuary shall inform the registrar who shall notify the corporation in writing, pointing out—

- (a) the apparent cause and the nature and extent of the deficiency; and
- (b) the nature and extent of the changes in respect of the funeral benefit business that will be necessary to ensure that the assets will be sufficient to meet the liabilities;

and, upon the recommendation of the State actuary, the registrar may direct the corporation to effect such changes or take such action in respect of the business as the registrar may specify.

22 Where assets more than sufficient to meet liabilities

- (1) If from the valuation it appears to the State actuary that the assets are more than sufficient to meet the liabilities, the State actuary shall inform the registrar who shall notify the corporation in writing, pointing out—

- (a) the apparent cause and the nature and extent of the surplus; and
- (b) the nature and extent of the changes in respect of the funeral benefit business that will be necessary to enable the surplus to be reduced or eliminated;

and, upon the recommendation of the State actuary, the registrar may direct the corporation to effect such changes or take such action in respect of the business as the registrar may specify.

- (2) Where the registrar is satisfied—

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- (a) that the corporation, consequent on a valuation or valuations (including a valuation or valuations made before the commencement of this Act) revealing a deficiency or deficiencies in the part of the fund referable to the corporation or in the corporation's benefits trust fund, including outstanding liabilities, has accepted payments of claims on the fund at amounts less than those to which the corporation would otherwise be entitled; and
 - (b) that the acceptance of such amounts less than those to which the corporation would otherwise be entitled has contributed, in whole or in part, to a surplus in the part of the fund referable to the corporation;

the registrar, before making the notification referred to in subsection (1) in relation to a subsequent valuation (whether made before or after the commencement of this Act) that reveals a surplus, may certify in writing, according as the registrar deems fit and proper in all the circumstances, that so much of such surplus as is required to pay, in whole or in part, the amounts (or in the case of the second or any succeeding such subsequent valuation, the balance of the amounts not theretofore paid pursuant to this subsection) not paid, by reason of the aforementioned acceptance, shall be paid to the corporation.

- (3) Upon receipt of a claim from the corporation and certifying an amount as being payable under subsection (2), the registrar must pay to the corporation the amount certified by the registrar as being payable.
- (4) The registrar shall not be bound to notify, as required by subsection (1), the corporation until the amount certified by the registrar as being payable has been paid to the corporation.

23 Corporation to change rules

- (1) Upon a direction being given by the registrar to a corporation pursuant to section 21 or 22, the corporation, if it be necessary, shall amend forthwith the registered rules of the funeral benefit business carried on by it and shall make such

other changes and take such action as may be necessary to give effect to such direction.

Maximum penalty—2 penalty units.

- (1A) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

- (2) Without limiting the types of changes that the registrar may direct to be effected under section 21 or 22 and without limiting the registrar's discretion in that regard, the registrar may direct changes in respect of all or any of the following matters notwithstanding any provision of this Act or any of the registered rules of the funeral benefit business concerned or the provisions of any contract entered into in respect of a benefit to be provided by or through that business, that is to say—
- (a) the contributions to be paid to such business;
 - (b) the benefits payable by such business;
 - (c) the basis on which or the method by which the surrender value of contributions paid to such business is computed;
 - (d) the proportion of contributions to be utilised as management expenses in such business;
 - (e) the manner of conducting such business;
 - (f) the payments to be made out of the fund in respect of such business.

Part 4 Existing agreements with corporations registered after the commencement of this Act

24 Application of pt 4

This part applies to a part 4 corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139.

Note—

The *Second-hand Dealers and Pawnbrokers Act 2003*, section 139 commenced on 1 December 2003.

25 Meaning of *nominated property*

Nominated property, for a part 4 corporation, means—

- (a) the property, if any, that was the corporation's nominated property for section 31 (the *repealed section*) as in force immediately before its repeal by the *Second-hand Dealers and Pawnbrokers Act 2003*; and
- (b) property nominated under section 44(d) as nominated property or additional nominated property that would be nominated property for the repealed section were it not repealed.

Note—

Section 31 was repealed by the *Second-hand Dealers and Pawnbrokers Act 2003* on 1 December 2003.

32 Provisions to be contained in rules

The rules relating to the funeral benefit business of a part 4 corporation must contain provisions in respect of the following matters, that is to say—

- (a) the terms under which persons may become contributors, the scale and nature of benefits to be provided and the fines and forfeitures that may be imposed on contributors;
- (b) a provision in respect of the proportion of contributions of contributors allowable to the corporation for or in connection with the management and operation of the business;
- (c) the extent to which benefits have effect or are available after contributions cease to be paid or, alternatively, the proportion of the amount of contributions already paid that will be refunded to a contributor who desires to discontinue further contributions;
- (d) a provision that a funeral benefit consisting of the payment of money on the death of a contributor or other person for whom or on whose behalf contributions have been made for the purpose of meeting the whole or part of the expenses of and incidental to the funeral of that contributor or other person shall not exceed \$1500 or such greater sum as may be prescribed from time to time, after discounting for any GST payable on any supply the payment relates to;
- (e) a surrender value of contributions of a contributor where contributions are up to date and a service to which the contributor is entitled in respect of those contributions is carried out by a funeral director other than the corporation;
- (f) the investment of the funds of the corporation that relate to its funeral benefit business (excluding moneys in or payable to the funeral benefit business trust fund account), the keeping of accounts and the audit of accounts by an authorised accountant at least once a year;
- (g) the manner of making, altering or rescinding rules;
- (h) the inspection of the books of the corporation by any contributor or a contributor's legal personal representative;

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- (i) such other matters as are prescribed.

36 Certificate of registration

- (1) A certificate of registration issued to a corporation shall be displayed by it in a conspicuous place at its place of business or, if it has more than 1 place of business, at its principal place of business.

Maximum penalty—2 penalty units.

- (2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

38 Funeral benefit business trust fund account

- (1) A corporation registered under this part shall maintain in its name in a financial institution in the State in respect of the carrying on of funeral benefit business an account called a funeral benefit business trust fund account.

Maximum penalty—2 penalty units.

- (2) The corporation shall pay into its funeral benefit business trust fund account—

- (a) all contributions paid to it subsequent to registration; and
- (c) interest, rents, dividends or other income or returns required to be paid into or credited to the account pursuant to section 40(3); and
- (d) any other moneys required to be paid into or credited to the account pursuant to any provision of this Act;

and moneys in the account shall be kept separate from any other moneys of the corporation and accounted for separately.

Maximum penalty—2 penalty units.

- (3) An offence against subsections (1) or (2) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1) or (2)—1 penalty unit.

39 Funeral benefit business trust fund

Moneys standing to the credit of the funeral benefit business trust fund account of a corporation (including moneys payable into the account whether actually deposited in a financial institution account or not), securities and property held consequent upon the investment of moneys pursuant to section 40 and, in an applicable case, nominated property of the corporation constitute the fund of the corporation, called the funeral benefit business trust fund.

40 Investment of moneys

- (1) Moneys standing to the credit of the funeral benefit business trust fund of a corporation may be invested by the corporation—
- (a) under the *Trusts Act 1973*, part 3; or
 - (b) in an investment approved by the Governor in Council; or
 - (c) in improving any nominated property or any land purchased by it pursuant to the provisions of this subsection; or
 - (d) in altering, demolishing or rebuilding any building forming part of nominated property or on land purchased by it pursuant to the provisions of this subsection.
- (1A) However, not more than 75% of moneys standing to the credit of the fund or such other percentage thereof as may from time to time be prescribed may be utilised for purposes referred to in subsection (1)(c) and (d).

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- (2) A corporation may from time to time vary any such investment.
 - (3) Subject to subsection (6), a corporation must pay any interest, rent, dividend or other income or return derived from the investment of moneys under this section or from nominated property, immediately on its receipt, into the funeral benefit business trust fund account.

Maximum penalty—2 penalty units.

- (3A) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

- (4) In any case where moneys have been invested pursuant to subsection (1) in any land or building and no interest, rent, dividend or other income or return is derived therefrom or in any case where no interest, rent, dividend or other income or return is derived from nominated property, interest at a rate determined by the registrar after consultation with the State actuary on the amount so invested or on the value of the nominated property as assessed by the State actuary shall be credited annually to the funeral benefit business trust fund account by the corporation.
- (5) In subsection (4), a reference to any land or building or nominated property from which no interest, rent, dividend or other income or return is derived includes a reference to a part of such land or building or nominated property from which no interest, rent, dividend or other income or return is derived although interest, rent, dividend or other income or return is derived from another part of such land or building or nominated property.
- (6) In any case where—
 - (a) moneys have been invested pursuant to subsection (1) in any land or building and interest, rent, dividend or other income or return is derived therefrom; or

- (b) interest, rent, dividend or other income or return is derived from nominated property;

at a rate or of an amount less than that determined by the registrar after consultation with the State actuary to be reasonable in the circumstances, interest, rent, dividend or other income or return that would be derived from any land, building or nominated property as aforesaid at the rate or of the amount so determined by the registrar to be reasonable in the circumstances shall be credited annually to the funeral benefit business trust fund account by the corporation in lieu of that actually derived.

41 Application of funeral benefit business trust fund

- (1) Subject to this Act, the funeral benefit business trust fund shall be held for and applied towards—
 - (a) the benefits provided by the corporation to contributors or other persons for whom or on whose behalf contributions have been made as provided for in the rules of the corporation, such benefits being payable pursuant to contracts entered into with contributors whether before or after the commencement of this Act;
 - (b) payments made pursuant to subsection (6);
 - (c) where the funeral, burial or cremation service or other service to be provided to the contributor or other person for whom or on whose behalf contributions have been made is provided by a funeral director or person other than the corporation in accordance with the contract in question, the payment of the surrender value of the contributions paid in respect of the business in accordance with subsection (6);
 - (d) provision for the proportion of contributions allowable to the corporation for or in connection with the management and operation of the business as provided by the corporation's rules relating to the business;
 - (e) provision for the proportion of contributions allowable to the corporation for or in connection with the carrying

out of the services pursuant to the contracts entered into with contributors whether before or after the commencement of this Act;

- (f) subject to subsection (2), payment of rates and taxes on and of moneys for maintenance and upkeep of any land or building in respect of which moneys have been invested pursuant to section 40 or any nominated property;

and, notwithstanding any other Act or law, the fund shall not be available for and shall not be applied, directly or indirectly, for any other purpose and, without limiting the generality of the foregoing, no part of the fund shall be liable to be taken in execution under the order or process of any court at the instance of any creditor of the corporation.

- (1A) Subsection (1) applies despite the Corporations Act.
- (2) Payment made pursuant to subsection (1)(f) in relation to any particular land or building or any particular nominated property shall not exceed the amount of interest, rents, dividends or other income or returns derived therefrom less an amount calculated as interest on the amount invested pursuant to section 40 in respect of such land or building or on the value of such nominated property as assessed by the State actuary, such interest being at a rate determined by the registrar after consultation with the State actuary.
- (3) If provision can not be made in accordance with this part sufficiently out of the funeral benefit business trust fund to meet the payment of rates and taxes on and of moneys for maintenance and upkeep of any land or building in respect of which moneys have been invested pursuant to section 40 or any nominated property, the deficiency shall be made good from other moneys of the corporation.
- (4) For the purpose of the application of or otherwise dealing with the funeral benefit business trust fund in accordance with this section or pursuant to any other provision of this Act, the corporation may convert into money any part of the fund not consisting of money with the consent of the registrar first had and obtained, which consent may be given subject to such

terms and conditions as to realisable amount and otherwise as the registrar thinks fit; and for the purpose of deciding whether or not the registrar will give consent and, if so, subject to what terms and conditions, the registrar may require the corporation to obtain the recommendation of an actuary and may consult with the State actuary.

- (5) Where the registrar is satisfied that any part of the funeral benefit business trust fund has been applied, directly or indirectly, for a purpose other than one specified in this section or one otherwise authorised by this Act, the registrar may direct in writing the corporation that or other person who so applied the part of the fund to restore the amount of money or the property or its value to the fund within the time notified in the writing.
- (5A) A corporation to which or other person to whom such a direction in writing is given shall comply with the terms thereof within the time specified therein.

Maximum penalty—6 penalty units.

- (6) Upon application made in writing to a corporation carrying on funeral benefit business for the payment from its funeral benefit business trust fund account of a benefit in respect of such business or a surrender value of contributions paid in respect of such business or a refund in whole or in part of contributions paid in respect of such business, the corporation, if satisfied—
- (a) that the application is made in good faith by the applicant; and
- (b) that a payment of the type applied for would in the circumstances be just;

may make to the applicant, or to such other person as to the corporation may seem proper, a payment from the funeral benefit business trust fund account of such amount as it may deem just notwithstanding any provision of this Act or of the registered rules of the funeral benefit business or of the contract under which the contributions were paid and notwithstanding that no provision of this Act or of such registered rules or of such contract authorises or envisages

such a payment to any person or to the person to whom the corporation proposes to make payment.

- (6A) Nothing, however, in subsection (6) authorises—
- (a) the payment, in a case where a service is provided, of an amount exceeding the amount applicable to that service; or
 - (b) the payment of the amount of a surrender value of contributions paid other than such an amount calculated in accordance with the registered rules.

- (7) A corporation registered to carry on funeral benefit business shall not, in connection with the carrying on of such business, borrow any money except that, for the temporary accommodation of the funeral benefit business trust fund account, it may obtain advances in such manner, to such extent and on such conditions as may be approved by the registrar.

Maximum penalty—2 penalty units.

- (8) Subject to this section, a corporation registered to carry on funeral benefit business shall not dispose of or mortgage, charge or otherwise encumber any property forming part of the funeral benefit business trust fund without the approval of the registrar first had and obtained.

Maximum penalty—2 penalty units.

- (8A) In determining whether he or she will grant approval as aforesaid, the registrar may require the corporation in question to obtain the recommendation of an actuary or authorised accountant or a valuer and may consult with the State actuary.
- (9) Notwithstanding any other provision of this Act, a corporation registered to carry on funeral benefit business may, with the approval of the registrar first had and obtained, apply moneys from the funeral benefit business trust fund account for a purpose other than a purpose specified in subsection (1) provided that it is a purpose in connection with the carrying out of such business.

- (9A) In determining whether he or she will grant approval as aforesaid, the registrar may require the corporation in question to obtain the recommendation of an actuary or authorised accountant or a valuer and may consult with the State actuary.
- (10) Subject to subsection (11), a transaction shall not be invalidated by reason only that it has been entered into in contravention of subsection (8), but nothing in this subsection affects the liability of a corporation or any other person to a penalty in respect of any such contravention.
- (11) The court may, on the application of the registrar, make an order invalidating a transaction entered into in contravention of subsection (8), but the court shall not make any such order if it is satisfied that the effect of the order (if made) would be to prejudice the rights of any person in respect of, or arising out of, the transaction which have been acquired in good faith and without knowledge of the contravention.
- (12) An offence against subsection (7) or (8) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (7) or (8)—1 penalty unit.

42 Annual returns to be furnished by corporation

- (1) Within 4 months after the end of each financial year or within such extended period not exceeding 2 months as the registrar in a particular case determines (the registrar being hereby thereunto authorised), a corporation shall furnish to the registrar a return in the approved form containing such particulars as are prescribed and accompanied by the prescribed documents.

Maximum penalty—2 penalty units.

- (2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

43 Quinquennial valuation

- (1) Once at least in every 5 years the registrar shall, in relation to the funeral benefit business of a corporation, cause the assets of the funeral benefit business trust fund and the liabilities required to be met therefrom, whether as benefits or otherwise, pursuant to this part to be valued by the State actuary.
- (2) The registrar may, on application by the corporation and after consultation with the State actuary, dispense with such a valuation for such period or periods as the registrar thinks fit in respect of a corporation where, having regard to the purposes or nature of the operations of the funeral benefit business carried on by it the registrar deems such a valuation to be inapplicable or unnecessary for the period or periods in question.
- (3) A corporation shall make available to the registrar such information, data, books, accounts, documents and other writings as the registrar may require for the purposes of the valuation.

Maximum penalty—2 penalty units.

- (3A) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (3)—1 penalty unit.

- (4) On the completion of the valuation the State actuary shall send to the registrar for transmission to the corporation an abstract of the results of the valuation and a report thereon.

44 Where assets insufficient to meet liabilities

If from the valuation it appears to the State actuary that the assets are insufficient to meet the liabilities, the State actuary shall state in the report—

- (a) the apparent cause and the nature and extent of the deficiency; and
- (b) the nature and extent of the changes in respect of the funeral benefit business that will be necessary to ensure that the assets will be sufficient to meet the liabilities;

and the registrar, upon the recommendation of the State actuary and, if the registrar thinks fit, after discussion with the corporation, may direct the corporation to do either or both of the following—

- (c) to effect such changes or take such action in respect of the business as the registrar may specify;
- (d) to pay into the funeral benefit business trust fund account an amount sufficient to make good the deficiency or to nominate as nominated property or additional nominated property, property having a value, determined by a valuer, of not less than the amount of the deficiency or to do both such things to the extent necessary to make good the deficiency.

45 Where assets more than sufficient to meet liabilities

- (1) If from the valuation it appears to the State actuary that the assets are more than sufficient to meet the liabilities, the State actuary shall state in the report—

- (a) the apparent cause and the nature and extent of the surplus; and
- (b) the nature and extent of the changes in respect of the funeral benefit business that will be necessary to enable the surplus to be reduced or eliminated;

and the registrar, upon the recommendation of the State actuary and, if the registrar thinks fit, after discussion with the

corporation, may direct the corporation to effect such changes or take such action in respect of the business as the registrar may specify.

46 Corporation to change rules

- (1) Upon a direction being given by the registrar to a corporation pursuant to section 44 or 45, the corporation, where required pursuant to the direction, shall amend forthwith the registered rules with respect to funeral benefit business carried on by it and shall make such other changes and take such action as necessary to give effect to such direction.

Maximum penalty—2 penalty units.

- (1A) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

- (2) Without limiting the types of changes that the registrar may direct to be effected under section 44 or 45 and without limiting the registrar's discretion in that regard, the registrar may direct changes in respect of all or any of the following matters notwithstanding any provision of this Act or any of the registered rules with respect to the funeral benefit business concerned or the provisions of any contract entered into in respect of a benefit to be provided by or through that business, that is to say—
- (a) the contributions to be paid to such business;
 - (b) the benefits payable or services supplied by such business;
 - (c) the basis on which or the method by which the surrender value of contributions paid to such business is computed;
 - (d) the proportion of contributions to be utilised as management expenses in such business;

- (e) the manner of conducting such business;
- (f) outgoings from the funeral benefit business trust fund in respect of such business.

47 Register of contributors

- (1) A corporation registered to carry on funeral benefit business shall keep a register of contributors and shall enter therein in respect of each contributor, whether he or she became a contributor prior to the commencement of this Act or becomes a contributor after such commencement—
- (a) the full name, address, date of birth and sex of that person; and
 - (b) the date on which that person became a contributor; and
 - (c) particulars of the benefits for which that person is contributing; and
 - (d) particulars of the rate of contributions payable by that person; and
 - (e) such other particulars as may be prescribed.

Maximum penalty—2 penalty units.

- (2) In a case where a person becomes a contributor after the commencement of this Act, the corporation shall enter in the register the matters referred to in subsection (1) within 7 days after the date on which the person becomes a contributor.

Maximum penalty—2 penalty units.

- (3) The corporation shall enter in the register—
- (a) forthwith after any change in the rate of contributions payable by a contributor, particulars of the change and the date of the change; and
 - (b) forthwith after a person ceases to be a contributor, a statement to that effect and the date on which the person ceased to be a contributor; and
 - (c) forthwith after a funeral benefit is paid or supplied in relation to which contributions have been made by a

contributor, a statement to that effect and the date on which the benefit was paid or supplied; and

- (d) forthwith after any change in the benefits for which a contributor is contributing, a statement to that effect and the date of the change; and
- (e) such other particulars as may be prescribed.

Maximum penalty—2 penalty units.

- (4) A corporation shall not remove from the register any particulars relating to a person who has ceased to be a contributor until 12 months after the valuation under section 43 next following the person so ceasing to be a contributor.

Maximum penalty—2 penalty units.

- (5) A corporation shall keep such other registers as may be prescribed.

Maximum penalty—2 penalty units.

- (6) A corporation required pursuant to subsection (1) or (5) to keep a register shall keep the register at its registered office in the State.

Maximum penalty—2 penalty units.

- (7) An offence against subsection (1), (2), (3), (4), (5) or (6) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1), (2), (3), (4), (5) or (6)—1 penalty unit.

48 Receipts

- (1) A receipt shall be issued by a corporation registered to carry on funeral benefit business in respect of a contribution or other amount payable under this Act into its funeral benefit business trust fund account and shall include in the particulars thereon such details as are prescribed.

Maximum penalty—2 penalty units.

- (2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

Part 5

Sale of funeral benefit businesses and cancellation of registration provisions for part 3 and 4 corporations

49 Definition for pt 5

In this part—

corporation means a part 3 corporation or a part 4 corporation.

50 Sale of funeral benefit business

- (1) A corporation may, subject to the prior approval of the registrar and subject to such conditions as the registrar may impose, sell, assign or dispose of any funeral benefit business carried on by it and all property vested in or held by it in relation to the business to another entity (*the assignee*).
- (2) Any purported sale, assignment or disposal without the prior approval of the registrar or without compliance with any conditions imposed by the registrar is void and renders registration in respect of the business liable to cancellation.
- (3) Upon the sale, assignment or disposal of the funeral benefit business, every contract entered into in respect of a benefit to be provided by or through the business that at the date of the sale, assignment or disposal has not been performed by the corporation shall continue to have full force and effect unless and until cancelled in accordance with the registered rules

relating to the business and the provisions of the contract (if any) notwithstanding that the contributor has not consented to the sale, assignment or disposal, and every such contract shall be read and construed as if the assignee were and had at all times been a party to the contract in place of the corporation.

- (4) The provisions of subsection (3) shall not be construed so as to prejudice any claim that the assignee or any contributor may have against the corporation in respect of a liability incurred by the corporation prior to the sale, assignment or disposal and which has not been discharged by the corporation at the date of sale, assignment or disposal.
- (5) Without limiting the generality of subsection (1), upon the sale, assignment or disposal of such funeral benefit business—
 - (a) the moneys and securities in the Funeral Benefit Trust Fund on account of the funeral benefit business of a part 3 corporation shall be moneys and securities in respect of the business as sold, assigned or disposed of to the assignee; and
 - (b) the moneys standing to the credit of the benefits trust fund, whether actually deposited in a financial institution account or not, of a part 3 corporation shall be moneys standing to the credit of the benefits trust fund or the funeral benefit business trust fund account, as the case may be, of the assignee; and
 - (c) the moneys or securities deposited with the Treasurer as referred to in section 8 shall be paid to the part 3 corporation that has sold, assigned or disposed of the business or dealt with as it shall in writing direct; and

Editor's note—

Section 8 (Security deposited with Treasurer) was repealed by the *Statute Law Revision Act 1995* No. 57 s 4 sch 1 and is a provision to which the *Acts Interpretation Act 1954* s 20A (Repeal does not end saving, transitional or validating effect etc.) applies.

- (d) the moneys standing to the credit of the funeral benefit business trust fund account, whether actually deposited

in a financial institution account or not, of a part 4 corporation shall be moneys standing to the credit of the funeral benefit business trust fund account of the assignee.

- (6) Upon the sale, assignment or disposal of such funeral benefit business, the registrar shall cancel the registration of the corporation so selling, assigning or disposing in respect of the business in question.
- (7) The registrar shall not give his or her approval to the sale, assignment or disposal of a funeral benefit business by a part 4 corporation unless the registrar is first satisfied that adequate provision has been made with respect to—
 - (a) nominated property, if it is necessary for the assignee to nominate property; and
 - (b) the transfer by the part 4 corporation to the assignee of investments made by the corporation, including investments in relation to land and buildings;

and for the purposes aforesaid, the registrar may consult with the State actuary.

51 Cancellation of registration at request of corporation

- (1) The registrar, at the request of a corporation, may, by signed writing, cancel the registration of the corporation to carry on funeral benefit business.
- (2) The request by the corporation for cancellation of registration shall be made in such manner as the registrar directs, either generally or in any particular case and, as from the date of the request, the corporation shall cease to carry on funeral benefit business and shall advertise that fact in the prescribed manner or, if not prescribed, as directed by the registrar.
- (3) The request shall be accompanied by a statement by the corporation showing in relation to the business—
 - (a) assets and liabilities, including contractual commitments, with respect to—

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- (i) the benefits trust fund of the corporation and the account of the Funeral Benefit Trust Fund applicable to the corporation in the case of a part 3 corporation; or
 - (ii) the funeral benefit business trust fund in the case of a part 4 corporation; and
 - (b) the number of contributors and the nature of their respective interests; and
 - (c) the intended appropriation, division or disposition of the net assets from the fund and the account of the fund referred to in paragraph (a)(i) or the fund referred to in paragraph (a)(ii), as the case may be, supported by a report by an actuary.
- (4) The registrar in considering the request for cancellation may consult with the State actuary and, if satisfied that the intended appropriation, division or disposition is fair and reasonable and that, having regard to all the circumstances, it is appropriate for the registrar to agree to the request of the corporation for cancellation of registration, shall require the corporation to notify in writing each contributor of—
- (a) the request to cancel registration; and
 - (b) the intended appropriation, division or disposition as it affects the contributor; and
 - (c) such other information as may be prescribed or as may be required to be notified by the registrar;
- and may, if the registrar thinks fit, cause notice of the request to cancel registration to be advertised at the expense of the corporation in the gazette and in some newspaper circulating in the locality in which the place of business or, if more than 1, the principal place of business of the corporation is situated.
- (5) If a contributor or any person for whom or on whose behalf contributions have been made or other person having any claim in respect of any of the funds as aforesaid applicable in his or her case lodges with the registrar an objection in writing in respect of any benefit or the intended appropriation, division or disposition within 3 months after receipt by him or

her of notification in writing pursuant to subsection (4) (proof of lodgement of such objection within the time stated being on the objector) or within 3 months after publication in the gazette or newspaper of the notice referred to in subsection (4), the registrar shall settle the matter or claim the subject of the objection in the manner provided by section 62, and the provisions of that section shall apply accordingly.

- (6) On the settlement of all matters or claims as referred to in subsection (5) or on the registrar being satisfied that no objections have been made, the registrar shall notify the corporation accordingly and the corporation shall appropriate, divide or dispose of the net assets referred to in subsection (3) as proposed in the statement referred to in that subsection as such proposals are varied by the settlement of matters or claims by the registrar.
- (7) The corporation for the purposes of subsection (6) may convert into money assets not consisting of money with the consent of the registrar first had and obtained, which consent may be given subject to such terms and conditions as to realisable amount and otherwise as the registrar thinks fit; and for the purpose of deciding whether or not the registrar will give consent and, if so, subject to what terms and conditions, the registrar may require the corporation to obtain the recommendation of an actuary or authorised accountant or the report of a valuer and may consult with the State actuary.
- (8) The registrar shall notify the corporation in the notification referred to in subsection (6) or in a separate notification of the effective date of cancellation of registration, and the registration of the corporation to carry on funeral benefit business shall be cancelled as at that date.
- (9) On cancellation of registration, the corporation's certificate of registration is void and the corporation shall surrender it to the registrar.

52 Cancellation of registration by QCAT

- (1) The registrar may apply to QCAT for cancellation of the registration of a corporation to carry on funeral benefit business—
 - (a) if within 1 month after being so directed, the corporation does not amend the registered rules of the business or make such other changes or take such action as directed by the registrar pursuant to section 21, 22, 23, 44, 45 or 46; or
 - (b) on the ground that—
 - (i) the registration has been obtained by fraud or mistake; or
 - (ii) there has been a purported sale, assignment or disposal by the corporation of the business without the prior approval of the registrar, contrary to section 50; or
 - (iii) the corporation, after notice from the registrar of contravention or failure to comply with any of the provisions of this Act or any of the provisions of the rules relating to the business, has contravened or failed to comply with the provisions the subject of the notice; or
 - (iv) the corporation has ceased to carry on the business.
- (2) An application shall not be made by the registrar without the prior approval in writing of the Minister.
- (2A) The making of an application by the registrar shall be sufficient evidence of the prior approval in writing of the Minister until the contrary is shown.
- (3) Where upon the application QCAT is satisfied that the registrar has established any matter or ground referred to in subsection (1) relied upon in the application as a matter or ground for cancellation, QCAT may by its order cancel the registration of the corporation to carry on funeral benefit business.

- (4) Upon service on the corporation of the originating proceeding in respect of the application, no act or thing shall be done by the corporation, any member of the governing body, by whatever name called, of the corporation or the secretary thereof in relation to—
- (a) the benefits trust fund of the corporation or the account of the Funeral Benefit Trust Fund applicable to the corporation in the case of a part 3 corporation; or
 - (b) the funeral benefit business trust fund in the case of a part 4 corporation;

without the prior approval in writing of the registrar.

Maximum penalty—6 penalty units.

- (5) Such approval may be given by the registrar in such manner as the registrar thinks fit including in respect of particular matters and in respect of general practices and procedures, and in considering matters in relation to approval, the registrar may consult with the State actuary.
- (6) Upon the making by QCAT of an order cancelling the registration of a corporation—
- (a) moneys and securities in the Funeral Benefit Trust Fund on account of the funeral benefit business of the corporation and moneys standing to the credit of the benefits trust fund, whether actually deposited in a financial institution account or not, of the corporation, where the corporation is a part 3 corporation; or
 - (b) moneys and all other property constituting the funeral benefit business trust fund of the corporation, where it is a part 4 corporation;

shall, without any transfer, assignment or conveyance or notice other than this Act, be divested from the corporation and vest in the registrar and, in relation thereto, all rights, powers, authorities, obligations and duties of the corporation shall be rights, powers, authorities, obligations and duties of the registrar.

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- (7) QCAT may adjourn the hearing of an application under this section on such terms and subject to such conditions as it thinks fit where it is satisfied that effect is to be given or may be given to the provisions of section 50.
 - (8) Where QCAT makes an order pursuant to subsection (3), it may make such supplementary or other orders as it thinks fit.
 - (9) In connection with the exercise and performance of the registrar's rights, powers, authorities, obligations and duties under this section where QCAT has made an order pursuant to subsection (3), the registrar may apply to QCAT for directions in relation to any particular matter arising out of such exercise or performance and QCAT may give such directions accordingly.
 - (10) The registrar of titles or other person required by any Act or law to make or enter any note or memorial on any instrument of title to land or other record relating to any right, title, estate or interest in land or other property on receiving notice thereof shall, upon the written request of the registrar in respect of any case where any right, title, estate or interest in land or other property vests in the registrar pursuant to this section, register the registrar for or with respect to the right, title, estate or interest in such land or other property, and for that purpose may make every entry, cancellation and correction in any register, record or book in his or her custody or under his or her control and do and execute such other acts, matters and things as shall to the registrar of titles appear necessary and proper.
 - (10A) As soon as practicable after such vesting as aforesaid, the registrar shall make the written request referred to.
 - (11) The registrar, after meeting from the fund any claims in respect of benefits accrued before cancellation of registration as aforesaid and after providing for the costs and expenses of getting in property in the fund and of converting into money property in the fund not consisting of money and of distributing moneys to contributors, shall distribute the moneys comprising the fund among contributors according to the amounts of their actuarial interests in the fund as

determined by the registrar after consultation with the State actuary.

(11A) For the purpose of making such determination, the registrar may obtain the report of an actuary or authorised accountant.

(11B) In subsections (11), (12) and (18)—

the fund means the moneys and securities referred to in subsection (6)(a) in the case of a part 3 corporation and the funeral benefit business trust fund referred to in subsection (6)(b) in the case of a part 4 corporation.

(12) For the purpose of compliance with subsection (11), the registrar may convert into money any part of the fund not consisting of money and shall obtain what appears to the registrar after due inquiry to be the best price obtainable therefor; and in connection with any such conversion into money the registrar shall consult with the State actuary and may obtain the report of a valuer.

(13) On the cancellation of registration of a corporation pursuant to this section, the corporation, the members of the governing body, by whatever name called, of the corporation and the secretary thereof shall do all such acts and things as the registrar requires it or them or any of them to do (the registrar being hereby thereunto authorised) in connection with the exercise or carrying out by the registrar of any of his or her rights, powers, authorities, obligations or duties under this section following such cancellation.

Maximum penalty—6 penalty units.

(14) The provisions of subsection (13) relating to the rights, powers and authorities of the registrar thereunder are additional to and not in diminution of rights, powers and authorities of the registrar otherwise given or conferred under this Act, which other rights, powers and authorities shall be had and may be exercised by the registrar in respect of the corporation and the members of the governing body and secretary as referred to in subsection (13) notwithstanding cancellation of registration.

- (15) On cancellation of registration of a corporation under this section—
- (a) the certificate of registration issued to it is void and it shall be surrendered by the corporation to the registrar; and
 - (b) the corporation shall cease to carry on funeral benefit business.
- (16) Cancellation of registration of a corporation operates without prejudice to any penal or other liability actually incurred by the corporation, which may be enforced against it as if such cancellation had not taken place.
- (18) Upon completion of the distribution of the fund, the registrar shall notify the corporation.

Part 6

General provisions for registered corporations for particular funeral benefit agreements

58 Application of pt 6

This part applies to a registered corporation in relation to funeral benefit agreements entered into by the corporation and in force immediately before the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139.

Note—

The *Second-hand Dealers and Pawnbrokers Act 2003*, section 139 commenced on 1 December 2003.

59 Nominated office

- (1) A registered corporation shall have a nominated office within the State to which all communications and notices may be addressed.

Maximum penalty—2 penalty units.

- (1A) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

- (2) The registered corporation shall by notification in the approved form notify the registrar of any change in the situation of the nominated office and pay the prescribed fee in respect thereof within 7 days of such change.

Maximum penalty—2 penalty units.

60 Secretary

- (1) A registered corporation shall have a nominee (the *secretary*) who is an individual living in the State.

Maximum penalty—2 penalty units.

- (1A) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

- (2) The registered corporation shall by notification in the approved form notify the registrar of any change in the office of secretary and pay the prescribed fee in respect thereof within 7 days of such change.

Maximum penalty—2 penalty units.

61 Provisions as to rules

- (1) A rule or an amendment of a rule in respect of funeral benefit business of a registered corporation is not valid unless it has been registered by the registrar, and an amendment of a rule containing any table of contributions or benefits or that in any way might affect the sufficiency of the contributions to

provide benefits shall not be registered by the registrar unless the State actuary first certifies that the contributions under the rules as amended are sufficient to provide the benefits or that the amendment improves or does not in any way prejudice the financial position of the benefits trust fund or the account kept in the Funeral Benefit Trust Fund in respect of the registered corporation or the financial position of the funeral benefit business trust fund, as the case may be.

- (2) The registrar, on being satisfied that a rule or an amendment of a rule is not contrary to the provisions of this Act, shall furnish to the corporation a written acknowledgement of registration of the rule or amendment; and such acknowledgement shall be conclusive evidence that the same is duly registered.
- (3) A copy of the rules relating to the funeral benefit business of a registered corporation shall be made available by the corporation to a person requiring the same on payment of the prescribed fee or, if a fee is not prescribed, on payment of a sum sufficient to cover the cost of printing such copy.

Maximum penalty—2 penalty units.

- (3A) An offence against subsection (3) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (3)—1 penalty unit.

- (4) A registered corporation desiring to amend its rules shall make an application in that respect to the registrar in the approved form, pay the prescribed fee and comply with such other requirements as are prescribed.
- (5) If the registrar refuses to register a rule or an amendment of a rule, the registrar must give the registered corporation a QCAT information notice for the decision (the *reviewable decision*).
- (6) A registered corporation refused registration of a rule or an amendment of a rule by the registrar may apply, as provided under the QCAT Act, to QCAT for a review of the reviewable decision.

62 Settlement of disputes between corporations and contributors etc.

- (1) If any dispute arises between a registered corporation and—
 - (a) any contributor to the registered corporation or his or her legal personal representative; or
 - (b) any person aggrieved who has ceased to be a contributor or his or her legal personal representative;

in respect of any claim made by the contributor, person aggrieved or legal personal representative, the registrar may settle such dispute and make such award as the registrar thinks proper, and such award shall be final and conclusive and binding upon the parties to the dispute.

- (2) An award may be enforced as if it were an arbitral award under the *Commercial Arbitration Act 2013*.
- (3) Where an award made by the registrar pursuant to this section contains a requirement to be complied with by the registered corporation, the registered corporation shall comply with such requirement within 14 days from the making of the award or within such longer period as is stipulated by the registrar in the award (the registrar being hereby thereunto authorised).

Maximum penalty—6 penalty units.

- (4) The liability of the registered corporation to penalty under subsection (3) does not affect its liability in any other respect.

63 Change of name of registered corporation

- (1) A registered corporation shall notify the registrar in writing of any change of its name as soon as practicable after such change is effected according to law.

Maximum penalty—2 penalty units.

- (2) The notification shall be accompanied by a certified copy of the certificate of the registration under the Corporations Act showing the change of name.

Maximum penalty—2 penalty units.

(3) Upon—

- (a) receipt of the notification and certified copy of certificate of the registration under the Corporations Act showing the change of name; and
- (b) the surrender to the registrar of the certificate of registration issued to the registered corporation in the former name to carry on funeral benefit business or, if such certificate is not available for surrender, the furnishing to the registrar of a statutory declaration of such unavailability and of the reason for unavailability; and
- (c) payment of the prescribed fee;

the registrar shall issue to the registered corporation a certificate of registration in its new name to carry on funeral benefit business.

64 Audit by direction of registrar

- (1) Without prejudice to any other action or remedy that may be taken under this Act by the registrar, where—
 - (a) a registered corporation fails to furnish to the registrar a return in the approved form containing such particulars as are prescribed and accompanied by the prescribed documents as referred to in section 19 or 42, as the case requires, within the period required thereby; or
 - (b) the registrar is not satisfied with the manner in which the annual audit with respect to the receipts and payments, funds, securities, properties and effects of a registered corporation has been made; or
 - (c) the registrar considers that, by reason of any information disclosed in the return or accompanying documents as aforesaid, it is desirable that an audit should be made under the provisions of this section;

the registrar may notify the registered corporation that he or she requires an audit with respect to the receipts and payments, funds, securities, properties and effects of the

funeral benefit business of the corporation during the period specified by the registrar to be made by an authorised accountant appointed by the registrar; and thereupon the registered corporation shall cause the audit to be made in accordance with the notification.

- (2) The cost of an audit by an authorised accountant appointed by the registrar shall be paid by the registered corporation, and in default of payment by it the registrar, if the Minister approves, shall pay such cost and may recover it from the corporation in any court of competent jurisdiction as for a debt.
- (3) The authorised accountant shall—
 - (a) have access to all information, data, books, papers, deeds, documents and accounts; and
 - (b) examine the general statement of the receipts and payments, funds, securities, properties and effects, and verify the same, as far as it may be so verified, with a certificate of a financial institution (which certificate the authorised accountant is empowered to obtain) and the accounts and vouchers relating thereto and by examining the securities held;

and upon completion of the audit shall make and forward a report of the audit to the registrar.

65 Control and management of certain accounts of registered corporations

- (1) In this section—

officer means any member of the governing body, by whatever name called, of the registered corporation, the secretary or other officer or employee thereof, any agent thereof or person having for the time being apparent charge or control of an office or part of the funeral benefit business of the registered corporation.

the account means the benefits trust fund or the funeral benefit business trust fund account of a registered corporation, as the case requires, including any moneys payable thereto

whether actually deposited in a financial institution account or not.

- (2) Where it appears to the registrar that an officer has or may have misappropriated, is misappropriating or is likely to misappropriate moneys of the account or where action to cancel the registration of a registered corporation to carry on funeral benefit business is initiated under this Act, the registrar may serve notice in writing on the registered corporation or any member of the governing body, by whatever name called, of the registered corporation or the secretary thereof and on the manager or other principal officer of the financial institution where the account is kept that no moneys shall thenceforth be drawn from the account without the registrar's approval.
- (3) A notice served under subsection (2) shall be signed by the registrar and shall state that the registrar requires the account specified therein to be operated under the registrar's control, and a copy of the notice shall be served on every person authorised to operate, alone or jointly with another or others, on the account.
- (3A) When serving the notice mentioned in subsection (2), the registrar must also give the registered corporation, member of the governing body or the secretary being served a QCAT information notice for the decision to serve the notice.
- (4) Upon service of a notice on the manager or other principal officer of the financial institution and until that notice ceases to be effective, no payment shall be made by the financial institution on any cheque or other instrument drawn on the account unless it bears (as well as the signatures of persons authorised to operate on the account) the signature of the registrar or of a person authorised in writing in that respect by the registrar (the registrar being hereby thereunto authorised).
- (5) If more persons than 1 authorised to operate on the account specified in the notice are unwilling or unable from any cause to operate thereon in conjunction with the registrar or person authorised by the registrar as aforesaid, the registrar or

authorised person (with the consent in writing of the registrar) may thereupon operate on the account alone.

- (6) A statutory declaration by the registrar or authorised person under the *Oaths Act 1867* to the effect that persons authorised to operate on the account in question are unwilling or unable from any cause to operate thereon in conjunction with the registrar or authorised person is sufficient evidence to the manager or other principal officer of the financial institution of that fact.
- (7) Upon service of the notice on the registered corporation or any member of the governing body or the secretary of the corporation and until that notice ceases to be effective, a person authorised to sign cheques or other instruments on behalf of the registered corporation in respect of the account shall not so sign any cheque or other instrument drawn on the account unless it has first been signed by the registrar or person thereunto authorised by the registrar.
- (8) If the registered corporation, a member of the governing body thereof, the secretary thereof, a person authorised to sign cheques or other instruments on behalf of the registered corporation in respect of the account or the manager or other principal officer of the financial institution where the account is kept knowingly contravenes or fails to comply with any provision of this section, it, he or she is guilty of an offence against this Act.

Maximum penalty—20 penalty units.

- (9) A registered corporation, the account of which is the subject of the service of a notice by the registrar pursuant to this section, may apply, as provided under the QCAT Act, to QCAT for a review of the registrar's decision to serve the notice (the *reviewable decision*).
- (12) A notice served under subsection (2) shall cease to be effective—
 - (a) if the registrar rescinds it (the registrar being hereby thereunto authorised)—on the date on which it is so rescinded; or

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- (b) if QCAT on reviewing the reviewable decision makes an order rescinding it—on the date specified by QCAT as that on which the notice is rescinded or, if no such date is specified, on the date of the order.
- (13) Where a notice ceases to be effective, the registrar shall, as soon as practicable thereafter, serve on each person on whom it or a copy thereof has been served a further notice in writing that the notice has ceased to be effective.
- (14) A notice or further notice authorised or required by this section to be served on any person may be so served—
- (a) by delivering it to the person; or
- (b) by sending it by post to the person at the person’s usual place of abode or business or at the person’s place of abode or business last known to the registrar.
- (15) The financial institution where the account in question is kept and the manager or other principal officer of that financial institution do not incur any civil liability to any person for dishonouring or refusing or failing to make payment in respect of a cheque or other instrument that is drawn on the account in relation to which the registrar has served a notice under subsection (2) and not signed by the registrar or a person thereunto authorised by the registrar, if such dishonour or refusal or failure to make payment occurs before the manager or other principal officer served with the notice is served by the registrar with a further notice as referred to in subsection (13).
- (16) Nothing contained in this section operates in derogation of the provisions of section 52(4).

66 How payments from accounts to be made

A registered corporation shall not draw against or cause any payment to be made from its benefits trust fund or funeral benefit business trust fund account, as the case may be, save by or on its cheque, crossed and marked across its face with the words ‘not negotiable’.

Maximum penalty—2 penalty units.

67 Compliance with requirements of registrar

- (1) A registered corporation shall—
 - (a) furnish to the registrar such information as the registrar may require with respect to the funeral benefit business carried on by it; and
 - (b) comply with the requirements of the registrar in relation to the books and forms of account kept or to be kept and the entries made or to be made therein, and the manner in which such entries are made or to be made therein.

Maximum penalty—2 penalty units.

- (2) An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—1 penalty unit.

68 Inspection of books by contributors etc.

- (1) Without prejudice to the exercise of any other power or authority under this Act—
 - (a) the registrar, an inspector, the State actuary and, with the approval of the registrar, any contributor shall be permitted by a registered corporation to inspect the books of the corporation at all reasonable hours at its registered office or at the place where they are kept within the State; and
 - (b) the registrar may require that any officer of a registered corporation advise him or her of the whereabouts of any information, data, books, documents or securities required by the registrar for inspection where the whereabouts are known to such officer; and
 - (c) the registrar may require the production, within the time specified by him or her, of any information, data, books,

documents or securities nominated by the registrar at his or her office or at any other place nominated by the registrar for inspection and examination by the registrar or any other person authorised under his or her hand; and

- (d) the registrar may require the manager or other principal officer of a financial institution or other like institution with which a registered corporation has deposited any moneys, whether in the benefits trust fund or the funeral benefit business trust fund account, as the case may be, or in any other account of the corporation, to disclose every such account to the registrar and to permit the registrar to make and take away with the registrar an extract from any book relating to or a copy of any such account.
- (2) Any person howsoever named or described required to do any act or thing or upon whom an obligation is cast under subsection (1) shall do that act or thing or carry out that obligation as required or obliged thereunder.

Maximum penalty—10 penalty units.

- (3) In subsection (1)(b)—
officer has the meaning that is assigned to it in section 65(1).

70 Advertising

- (1) A registered corporation shall not advertise in relation to funeral benefit business unless it has obtained the prior approval in writing of the registrar who is hereby authorised to approve of any advertisement by a registered corporation on such terms and conditions as the registrar thinks fit.
- (2) A registered corporation that—
- (a) so advertises without obtaining the prior approval in writing of the registrar; or
 - (b) fails to comply with any term or condition imposed by the registrar with respect to approval of an advertisement pursuant to this section;

is guilty of an offence against this Act.

Maximum penalty—4 penalty units.

- (3) For the purpose of this section—

advertisement includes any method of conveying information to the public whether in writing or pictorially or otherwise, including by any circular, leaflet, newspaper, publication or other document, by any placard, poster or sign or by any public announcement made by means of producing or transmitting light or sound; and any derivative of that term has a corresponding meaning.

71 Falsification of entries etc.

A person shall not—

- (a) wilfully make or order or allow to be made any entry or erasure in or omission from an account book, balance sheet or a contribution or collecting book or card or any return or document required to be made, kept, sent, produced or delivered for the purposes of this Act with intent to falsify the same or to evade compliance with this Act; or
- (b) wilfully apply any moneys the property of or held by a registered corporation contrary to this Act.

Maximum penalty—4 penalty units.

72 False and misleading statements

A person shall not, for the purpose of inducing another person to enter into a contract or an arrangement with a registered corporation, make a statement that the person knows to be false in a material particular or that is misleading, in relation to—

- (a) the conditions of entering into a contract or an arrangement with the registered corporation; or
- (b) the services or benefits that will be provided by the registered corporation; or

- (c) the terms and conditions under which services or benefits may be obtained from the registered corporation.

Maximum penalty—6 penalty units.

Part 7 **Agreements entered into after the commencement of the Second-hand Dealers and Pawnbrokers Act 2003**

73 **Application of pt 7**

This part applies if a person enters, or proposes to enter, into a funeral benefit agreement with an entity after the commencement of the *Second-hand Dealers and Pawnbrokers Act 2003*, section 139.

Note—

The *Second-hand Dealers and Pawnbrokers Act 2003*, section 139 commenced on 1 December 2003.

74 **Client care statement**

- (1) Before entering into the funeral benefit agreement with the person, the entity must give the person a clear and legible written statement (a *client care statement*) in the approved form.

Maximum penalty—134 penalty units.

- (2) After giving the person the client care statement and before entering into the agreement with the person, the entity must—
- (a) explain the contents of the client care statement to the person; and
 - (b) obtain a written acknowledgement from the person that the person has received and understands the client care statement.

Maximum penalty—134 penalty units.

- (3) The client care statement may be in the form of a separate document or a part of the funeral benefit agreement entered into with the person.

75 Person must be given copy of agreement

Immediately after entering into a funeral benefit agreement with a person, the entity must—

- (a) if the client care statement is not part of the funeral benefit agreement—give the person a clear and legible copy of the agreement signed by the person and the entity; or
- (b) if the client care statement is part of the funeral benefit agreement—sign the copy of the agreement given to the person.

Maximum penalty—134 penalty units.

76 Cooling-off period

Within 30 clear days after the entity gives the person the signed copy of the funeral benefit agreement, the person may, by signed notice given to the entity, end the agreement.

77 Consequences of exercising rights in cooling-off period

- (1) If the person ends a funeral benefit agreement under section 76—
 - (a) the entity is entitled to the amount prescribed under a regulation or, if no amount is prescribed, \$50; and
 - (b) the entity must refund to the person the whole of the amount the person has paid to the entity under the agreement, other than an amount the entity is entitled to under paragraph (a); and
 - (c) subject to paragraph (a), the person is not liable to the entity in any way for ending the agreement.

- (2) The entity must refund the amount mentioned in subsection (1)(b) within 7 days after receiving the person's notice.

Maximum penalty—134 penalty units.

- (3) Subsection (1)(c) has effect despite anything to the contrary in the contract.

78 **Person to be advised that the person may enter into an agreement with an authorised investment manager**

- (1) Subsection (2) applies to an entity other than an authorised investment manager.
- (2) Before the entity enters into a funeral benefit agreement with a person, the entity must advise the person that the person may instead enter into a funeral benefit agreement with an authorised investment manager.

Maximum penalty—134 penalty units.

79 **Application of Trusts Act 1973**

- (1) This section applies to an entity other than—
 - (a) an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth); or
 - (b) a company registered under the *Life Insurance Act 1995* (Cwlth).
- (2) The nominated Trusts Act provisions apply to payments made by a contributor to the entity under a funeral benefit agreement as if the entity were a trustee, and the payments were trust property, within the meaning of the *Trusts Act 1973*.
- (3) In this section—

nominated Trusts Act provisions mean the following provisions of the *Trusts Act 1973*—

 - (a) part 1;

- (b) part 2, other than sections 17 and 18;
- (c) part 3, other than sections 28, 30 and 30A;
- (d) part 4, other than sections 32 to 48, 53 and 57;
- (e) part 5;
- (f) part 6, other than sections 66, 67, 73 to 75, and 78;
- (g) part 7, other than sections 84, 86 to 89, 93 and 95;
- (h) part 9, other than sections 110, 112 and 113.

80 Application of Trust Accounts Act 1973

- (1) If a payment is made by or on behalf of a contributor to an entity under a funeral benefit agreement—
 - (a) the entity is a trustee under the *Trust Accounts Act 1973*; and
 - (b) the payment is trust moneys within the meaning of the *Trust Accounts Act 1973*.
- (2) Subsection (1)(a) does not apply to—
 - (a) an authorised deposit-taking institution under the *Banking Act 1959* (Cwlth); or
 - (b) a company registered under the *Life Insurance Act 1995* (Cwlth).

Note—

See the *Trust Accounts Act 1973*, section 4AA.

Part 8 General provisions for funeral benefit businesses

82 Proceedings for offences

A proceeding for an offence against this Act must start—

- (a) within 1 year from the commission of the offence; or

- (b) within 6 months from when the offence comes to the complainant's knowledge, but within 2 years from the commission of the offence;

whichever is the later.

83 Institution of proceedings

Proceedings for an offence against this Act may be instituted by the registrar or by a person authorised in writing by the registrar to institute the proceedings.

85 Matters relating to evidence and proof

In any proceeding under or for the purposes of this Act—

- (a) it shall not be necessary to prove the appointment of the registrar, an inspector or the State actuary; and
- (b) a signature purporting to be that of a person in any capacity referred to in paragraph (a) shall be taken to be the signature it purports to be until the contrary is proved; and
- (c) a return, report, notice or other document purporting to be duly signed and forwarded to the registrar by the secretary or public officer of a registered corporation and otherwise in conformity with this Act may be received as evidence of any matters stated in such return, report, notice or other document; and
- (d) the onus of proving that any return, report, notice or document required to be sent or given to the registrar has been so sent or given or that any return, report, notice or document has been compiled or made as required by this Act shall, where the proceeding is in respect of a failure to send or give or compile or make the return, report, notice or document, lie on the registered corporation or officer, secretary or other person against which or whom such failure is alleged; and

[s 86]

- (e) a certificate purporting to be signed by the registrar certifying that a person named therein is a person possessing actuarial knowledge and experience satisfactory to the Governor in Council and is approved of by the Governor in Council as being an actuary accordingly shall, upon its production, be admissible as evidence of the matters contained in the certificate.

86 Protection from liability

- (1) This section applies to—
 - (a) the registrar; and
 - (b) a person acting under the registrar’s authorisation; and
 - (c) an inspector; and
 - (d) the State actuary.
- (2) The person does not incur civil liability for an act or omission done honestly and without negligence under this Act.
- (3) A liability that would, apart from this section, attach to the person attaches instead to the State.

88 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made with respect to any of the following matters—
 - (a) the functions and duties of the registrar;
 - (b) the inspection of documents kept by the registrar;
 - (c) the payment by registered corporations of proportions of contributions received into benefits trust funds and funeral benefit business trust fund accounts and the transfer of amounts from benefits trust funds to the fund;
 - (d) the conduct of the administration of the fund;

- (e) the maximum number of contracts a registered corporation may enter into for a single person;
- (f) the matters for which fees are payable under this Act, the amount of the fees, the persons who are liable to pay fees, when the fees are payable, and the recovery of unpaid amounts of fees;
- (g) prescribing offences for contraventions of a regulation and fixing a maximum penalty of not more than 1 penalty unit for a contravention;
- (h) advertising by registered corporations about the funeral benefit business.

89 Approval of forms

The chief executive may approve forms for use under this Act.

Part 9 Transitional provisions for Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013

90 Definitions for pt 9

In this part—

board means the Board of Trustees established under former section 9(2).

body corporate means the body corporate named ‘Trustees of the Funeral Benefit Trust Fund’ and continued in existence by former section 9(4).

commencement means the commencement of this section.

former, in relation to a provision, means the provision as in force before the commencement.

91 Abolition of the board

- (1) At the commencement—
 - (a) the trustees of the board stop being members of the board; and
 - (b) the board is abolished; and
 - (c) the body corporate ceases to exist.
- (2) No compensation is payable to a member of the board because of subsection (1).

92 Legal successor of the board

The State is the successor in law of the board.

93 Claim given to board to be dealt with by registrar

- (1) This section applies if, before the commencement, the board received a claim on the fund or other application under this Act, and the claim or application has not been finalised before the commencement.
- (2) The registrar may deal with the claim or application under this Act as in force after the commencement.

94 References to the board

A reference in an Act or other document to the board is, if the context permits, taken to be a reference to the registrar.

95 Proceeding not yet started by or against the board

- (1) This section applies if, immediately before the commencement, a proceeding could have been started by or against the board.
- (2) The proceeding may be started by or against the State.

96 Other things done by board

- (1) This section applies to anything done by the board under this Act that, after the commencement, could be done by the registrar.
- (2) The thing done by the board—
 - (a) continues to have effect; and
 - (b) from the commencement, is taken to have been done by the registrar.