

Gold Coast City Council



Local Law No. 13

(Cemeteries) 2008

It is hereby certified that this is a true and correct copy of
Local Law No. 13 (Cemeteries) 2008 made, in accordance with the *Local Government Act 1993*, by
the Council of the City of Gold Coast
Joe McCabe
Acting Chief Executive Officer

Gold Coast City Council Local Law No. 13 (Cemeteries) 2008

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Gold Coast City Council Local Law No. 13 (Cemeteries) 2008

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 13 (Cemeteries) 2008*.

2 Object

The object of this local law is to—

- (a) provide for the proper management and control of a council cemetery; and
- (b) regulate the disturbance of human remains in the local government area; and
- (c) ensure that proper records are kept about the disposal of human remains within a council cemetery.

3 Definitions—the dictionary

The dictionary in the Schedule (Dictionary) of this local law defines particular words used in this local law.

Part 2 Management of council cemeteries

Division 1 Appointment of a sexton

4 Appointment of a sexton

- (1) The local government may, by a subordinate local law or a resolution of the local government appoint a person to be the sexton of a council cemetery.
- (2) The sexton of a council cemetery and any other person employed in a council cemetery must not receive any gratuity for the performance of their duties, unless authorised by the local government.

Division 2 Portions for religious denominations

5 Portions for religious denominations

- (1) The local government may set apart a portion of a council cemetery for the use and interment of the bodies of deceased members of a religious denomination or communion.
- (2) A portion of a council cemetery which is set apart pursuant to subsection (1) remains subject to the administration and control of the local government.
- (3) The local government may—
 - (a) amend the boundaries of a portion set apart pursuant to subsection (1); and
 - (b) undertake works within the portion.
- (4) The local government is not liable for any claim or compensation in respect of an activity carried out pursuant to subsection (3).

Division 3 Prohibited conduct

6 Prohibited conduct

A person, other than the local government, must not while in a council cemetery—

- (a) prepare a grave; or
- (b) subject to section 7(a) (Regulated Conduct) of this local law, carry on a business; or
- (c) take part in a meeting other than a meeting of a religious or commemorative character; or
- (d) disturb a funeral service which is being carried out in a council cemetery, whether by working in the neighbourhood of the funeral service or otherwise; or
- (e) discharge a firearm other than as part of a military funeral; or
- (f) interfere with flowers or other tokens placed upon a grave; or
- (g) engage in conduct which, in the opinion of an authorised person, is likely to give rise to—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or

- (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (v) harassment or disturbance of a person; or
 - (vi) interference with the reasonable use of the council cemetery; or
 - (vii) interruption or obstruction of the exercise of the powers of the local government or a sexton; or
 - (viii) offence to a person; or
 - (ix) an interruption of the exercise of a power under an agreement with the local government or a sexton; or
- (h) carry out an activity specified in a subordinate local law.

Maximum penalty—20 penalty units.

Division 4 Regulated conduct

7 Regulated conduct

A person must not, unless authorised by a permit—

- (a) carry on the business of—
 - (i) a stonemason; or
 - (ii) a funeral director.
- (b) interfere with a grave, vault, monument, tombstone, railing or any other structure, fitting or fixture on a council cemetery; or
- (c) conduct a burial within a council cemetery; or
- (d) permit an animal other than a guide dog to enter a council cemetery; or
- (e) undertake an activity in a council cemetery other than visiting a grave or attending a funeral; or
- (f) enter into or be in a council cemetery between the hours of 6.00pm and 6.00am; or
- (g) erect or install a building, structure or facility in, on, across or over a council cemetery; or
- (h) carry out an activity specified in a subordinate local law.

Maximum penalty—20 penalty units.

Division 5 Graves and vaults

8 Requirements for a grave

- (1) A person must not bury more than 3 bodies in a grave.

Maximum penalty for subsection (1)—200 penalty units.

- (2) A grave in a council cemetery must comply with the prescribed standards for a grave specified in a subordinate local law.

9 Requirements for a vault

- (1) A body interred in a vault must comply with the prescribed standards specified in a subordinate local law.

Division 6 Purchase of burial rights for a plot

10 Request to pre-purchase burial rights for a plot

- (1) A person may pre-purchase burial rights from the local government for a plot in a council cemetery.
- (2) A request to pre-purchase burial rights for a plot must be—
- (a) made in the prescribed form; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) such other information and materials as are requested by the local government or specified in a subordinate local law.

11 Grant of request to pre-purchase burial rights for a plot

- (1) The local government may grant a request to pre-purchase burial rights for a plot if satisfied that there is sufficient land available in the council cemetery.
- (2) If a request to pre-purchase burial rights for a plot is granted by the local government, the person may, at any time during their lifetime, provide a written notice to the local government nominating the persons whose bodies or ashes may be buried in the plot.
- (3) If no human remains (including cremated remains) are buried or interred in the plot within 60 years after the day the burial right is given, the local government may revoke the burial right.

- (4) The person may relinquish the burial rights for the plot back to the local government for a price determined by the local government.
- (5) After the death of the person, the local government may permit a descendant or relative of the person, or the ashes of a descendant or relative¹, to be buried in the plot, if there is sufficient room for more than 1 person to be buried in the plot.

Division 7 Lawn cemetery

12 Power to set aside lawn cemetery

The local government may, from time to time, set apart a portion of a council cemetery as a lawn cemetery.

13 Request to install a memorial tablet in a lawn cemetery

- (1) A person may make a request to the local government for the local government to install a memorial tablet in a lawn cemetery.
- (2) A request to install a memorial tablet must be—
 - (a) made in the prescribed form; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) such other information and materials as are requested by the local government or specified in a subordinate local law.

14 Grant of request to install a memorial tablet in a lawn cemetery

- (1) The local government may grant a request to install a memorial tablet in a lawn cemetery if satisfied that the memorial tablet complies with the prescribed standards specified in a subordinate local law.
- (2) A person to whom a request for the installation of a memorial tablet has been granted retains—
 - (a) the property in the memorial tablet; and
 - (b) the responsibility for maintenance of the memorial tablet.

15 Prohibited conduct in lawn cemetery

A person must not, while in a lawn cemetery—

¹ A relative for an adult includes a person's spouse; meaning a husband or wife; or de facto partner, as defined in the *Acts Interpretation Act 1954*.

- (a) place a vase, receptacle, plant or other object on a grave, fence, vault, monument or other structure other than—
 - (i) a vase supplied by the local government, provided that the vase is placed in the vase hole on a memorial tablet; or
 - (ii) cut flowers which are placed in a vase supplied by the local government; or
- (b) attach a portrait or emblem to a memorial tablet if the portrait or emblem would extend more than 6 millimetres above the surface of the memorial tablet; or
- (c) attach any other item to a memorial tablet without the approval of an authorised person.

Maximum penalty—20 penalty units.

Division 8 Columbariums and gardens of remembrance

16 Power to set aside area for columbarium or garden of remembrance

The local government may, from time to time, set aside a portion of a council cemetery as—

- (a) a columbarium; or
- (b) a garden of remembrance.

17 Request to purchase a niche or install an inscription plate

- (1) A person may make a request to the local government—
 - (a) to purchase a niche in a columbarium; or
 - (b) for the local government to install an inscription plate—
 - (i) on a niche in a columbarium; or
 - (ii) in a garden of remembrance.
- (2) A request made pursuant to subsection (1) must be—
 - (a) made in the prescribed form; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) such other information and materials as are requested by the local government or specified in a subordinate local law.

18 Grant of request to purchase a niche or install an inscription plate

- (1) The local government may grant a request made pursuant to section 17(1) (Request to purchase a niche or install an inscription plate) of this local law if satisfied that—
 - (a) in the case of a request to purchase a niche, there is a niche available; and
 - (b) in the case of a request for the local government to install an inscription plate on a niche in a columbarium or a garden of remembrance, the inscription plate complies with the prescribed standards specified in a subordinate local law.
- (2) The local government is to maintain a niche in a columbarium for a period of 70 years from the date it is first used for the disposal of ashes, after which time—
 - (a) the local government may remove the niche and demolish the columbarium; and
 - (b) if the contents of the niche are not claimed by the descendants of the deceased person, the local government may bury the contents of the niche in a garden of remembrance; and
 - (c) the niche is to revert to the local government.
- (3) A person to whom a request for the installation of an inscription plate in a columbarium or garden of remembrance has been granted retains—
 - (a) the property in the inscription plate; and
 - (b) the responsibility for maintenance of the inscription plate.
- (4) If the ashes of a person are at any time removed from a niche by a representative of the deceased person, the niche reverts to the local government.

19 Prohibited conduct in respect of a columbarium or garden of remembrance

A person must not while in a columbarium or garden of remembrance—

- (a) deposit an urn containing ashes in a columbarium or a garden of remembrance on a council cemetery, unless the urn is approved by an authorised person; or
- (b) attach a portrait or emblem to an inscription plate if the portrait or emblem would extend more than 6 millimetres above the surface of the inscription plate; or
- (c) attach any other item to an inscription plate without the approval of an authorised person; or
- (d) place a vase, receptacle, plant or other object on a niche or inscription plate other than—

- (i) a vase supplied by the local government; or
- (ii) cut flowers which are placed in a vase supplied by the local government.

Maximum penalty—100 penalty units.

Division 9 Removal of memorials

20 Removal of memorials

- (1) The local government may remove or reposition a memorial in a council cemetery if it has become unsafe or has fallen into a state of disrepair.
- (2) If there is no immediate danger to the public, the local government must, before removing or repositioning a memorial, give members of the deceased's family whose identity and whereabouts are known to the local government, reasonable notice of its intention to remove or reposition the memorial.
- (3) The local government is not obliged to reinstate a memorial which is removed or repositioned.

Division 10 Plan of council cemetery

21 Plan of council cemetery

The local government must maintain and keep available for public inspection—

- (a) a plan of a council cemetery, including the position of all of the graves in the council cemetery; and
- (b) a register of plots which have been reserved pursuant to section 10 (Request to pre-purchase burial rights for a plot) of this local law.

Part 3 Disturbance of remains

22 Disturbance of remains

A person must not disturb or interfere with human remains that have been buried or placed within or outside of a council cemetery unless—

- (a) authorised by a permit; or
- (b) in accordance with an order of a coroner or other lawful authority.

Maximum penalty—500 penalty units.

Part 4 Permits

23 Requirement for a permit

- (1) A person, other than the local government, must not undertake a prescribed activity unless authorised by a permit granted pursuant to section 25(1) (Grant of a permit) of this local law.

Maximum penalty for subsection (1)—50 penalty units.

- (2) A person must not—
- (a) exhibit a sign that indicates that a prescribed activity which does not comply with this local law does comply with this local law; or
- (b) in any manner or by any means indicate that a prescribed activity which does not comply with this local law does comply with this local law.

Maximum penalty for subsection (2)—50 penalty units.

- (3) Notwithstanding subsection (1), a permit is not required under this local law if a subordinate local law specifies that a permit is not required in respect of the undertaking of the prescribed activity.

24 Application for a permit

- (1) An application for a permit must be—
- (a) made by the person who will be undertaking the prescribed activity; and
- (b) made in the prescribed form; and
- (c) accompanied by—
- (i) the prescribed fee; and
- (ii) evidence that all approvals under the local government Acts required for the undertaking of the prescribed activity have been obtained; and
- (iii) full details of the undertaking of the prescribed activity including plans and specifications unless otherwise required by the local government; and
- (iv) such other information and materials as are requested by the local government or specified in a subordinate local law.
- (d) accompanied by the written consent of the owner of premises, if the application for a permit does not relate to a council cemetery and the applicant is not the owner of the premises on which the prescribed activity is to be undertaken.

- (2) The local government may waive a requirement of subsection (1)—
 - (a) in an emergency; or
 - (b) if there are special reasons for dispensing with the requirement; or
 - (c) in the circumstances specified in a subordinate local law.

25 Grant of a permit

- (1) The local government may grant a permit if satisfied that the operation of the prescribed activity—
 - (a) will not result in harm to human health or safety or personal injury; and
 - (b) will not result in property damage or a loss of amenity; and
 - (c) will not result in environmental harm or environmental nuisance; and
 - (d) will not result in a nuisance; and
 - (e) complies with the provisions of the local government Acts that regulate the undertaking of the prescribed activity; and
 - (f) complies with the assessment criteria; and
 - (g) complies with the prescribed criteria.
- (2) Before the local government decides an application for a permit, an authorised person may—
 - (a) inspect any premises, vehicle, equipment, animal, plant or thing to be involved in the undertaking of the prescribed activity; and
 - (b) measure, weigh, sample, test, photograph, videotape or otherwise examine anything that may be inspected; and
 - (c) request any further information and material which is required to assess the application.
- (3) For the purposes of determining whether the criteria specified in subsection (1) have been satisfied—
 - (a) the local government may have regard to the results of any periodic inspection, testing or monitoring program undertaken in respect of the undertaking of the prescribed activity; and
 - (b) the local government is not obliged to look beyond—
 - (i) any information or material submitted to the local government in respect of the application; and

- (ii) any other information held by the local government which is relevant to the application.

26 Term of a permit

- (1) A permit granted by the local government is for a term extending from the date of issue until the thirty-first day of the following August unless otherwise specified in the permit or a subordinate local law.
- (2) A permit expires at the end of the day specified in subsection (1).

27 Conditions of a permit

- (1) A permit may be granted by the local government on conditions the local government considers appropriate.
- (2) The conditions of a permit may require—
 - (a) the holder of the permit to take specified measures to—
 - (i) prevent harm to the human health or safety of persons who may be involved in or affected by the undertaking of the prescribed activity; and
 - (ii) prevent personal injury, property damage or a loss of amenity resulting from the undertaking of the prescribed activity; and
 - (iii) ensure that the undertaking of the prescribed activity does not cause environmental harm or environmental nuisance; and
 - (iv) ensure that there is compliance with the provisions of the local government Acts that regulate the undertaking of the prescribed activity; and
 - (v) ensure that the undertaking of the prescribed activity complies with the prescribed criteria; and
 - (vi) ensure that the undertaking of the prescribed activity complies with the assessment criteria; and
 - (b) the holder of the permit to notify the local government within a period specified in the permit that the holder of the permit is no longer undertaking the prescribed activity or is undertaking the prescribed activity other than in accordance with the permit; and
 - (c) the certification by a person specified by the local government of a vehicle, equipment, animal, plant or other thing involved in the operation of the prescribed activity; and
 - (d) the giving of a security or bond to secure compliance with the permit and the provisions of this local law; and

- (e) the holder of the permit to take out specified insurance indemnifying a person who may suffer personal injury, loss or damage as a result of undertaking of the prescribed activity; and
 - (f) records to be kept at a place and for a time specified in the permit or a subordinate local law; and
 - (g) the holder of the permit to prepare, provide, undertake or comply with a periodic inspection, monitoring or management program in respect of the undertaking of the prescribed activity; and
 - (h) the number of persons involved in the undertaking of the prescribed activity not to exceed a number specified by the local government.
- (3) The local government may specify in a subordinate local law, the conditions that must be imposed in a permit or that will ordinarily be imposed in a permit for the undertaking of a prescribed activity.

28 Power to change the conditions of a permit

- (1) The local government may change a condition of a permit when²—
- (a) the holder of the permit agrees to the proposed change; or
 - (b) the change is urgently necessary to prevent—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (c) the change is necessary to ensure that the undertaking of the prescribed activity complies with the prescribed criteria.
- (2) If the local government is satisfied it is necessary to change a condition of a permit, the local government must—
- (a) give the holder of the permit a written notice stating—
 - (i) the proposed change and the reason for the change; and
 - (ii) that the holder of the permit may make written representations to the local government about the proposed change; and

² A change to a condition of a permit includes a change by omission, substitution, exception or addition (see section 36 (Meaning of commonly used words and expressions) of the *Acts Interpretation Act 1954*).

- (iii) the time (at least 15 business days after the written notice is given to the holder of the licence) within which the written representations may be made; and
 - (b) consider any representations made by the holder of the permit within the time stated in the written notice.
- (3) After considering any written representations made by the holder of the permit, the local government must give to the holder of the permit—
 - (a) if the local government is not satisfied the change is necessary - a written notice stating that it has decided not to change the condition; or
 - (b) if the local government is satisfied that the change is necessary - a written notice stating that it has decided to change the condition including details of the changed condition.
- (4) The changed condition takes effect from the day the notice was given to the holder of the permit—
 - (a) under subsection (2)(a), if no written representations are made by the holder of the permit within the time stated in the written notice; or
 - (b) under subsection (3)(b), if written representations are made by the holder of the permit within the time state in the written notice and the local government decides that the change is necessary.

29 Amendment, renewal or transfer of a permit

- (1) The holder of a permit may make an application to the local government to—
 - (a) amend the permit; or
 - (b) renew the permit; or
 - (c) transfer the permit to another person.
- (2) An application to amend, renew or transfer a permit must be—
 - (a) made by the holder of the permit; and
 - (b) made in the prescribed form; and
 - (c) accompanied by the prescribed fee and such other information as is requested by the local government; and
 - (d) accompanied by, in the case of a transfer of the permit—
 - (i) the written consent of the person to whom the permit will be transferred; and

- (ii) the written consent of the owner of the premises on which the prescribed activity is or is to be undertaken.
- (3) The local government may renew or transfer a permit—
 - (a) if the undertaking of the prescribed activity complies with the conditions of the permit and the provisions of this local law; and
 - (b) subject to such conditions the local government considers appropriate.
- (4) The local government may amend a permit—
 - (a) if the undertaking of the prescribed activity complies with the criteria specified in section 25(1) (Grant of a permit) of this local law; and
 - (b) subject to such conditions the local government considers appropriate.
- (5) The local government must not amend a permit that has been granted for a specific location if the amendment is to the location at which the prescribed activity is to be undertaken.
- (6) For the purposes of determining whether the criteria specified in subsections (3) and (4) have been satisfied, the local government is not obliged to look beyond—
 - (a) any information or materials submitted to the local government in respect of the application; and
 - (b) any other information held by the local government which is relevant to the application.

30 Cancellation of a permit

- (1) The local government may cancel a permit if—
 - (a) the holder of the permit agrees to the cancellation; or
 - (b) the cancellation is urgently necessary to prevent—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (c) the holder of the permit contravenes—
 - (i) this local law; or
 - (ii) a condition of a permit; or

- (iii) a requirement of a compliance notice or a stop order; or
 - (d) the undertaking of the prescribed activity does not comply with—
 - (i) the provisions of the local government Acts that regulate the undertaking of the prescribed activity; or
 - (ii) the prescribed criteria; or
 - (e) the permit was granted on false, misleading or incomplete information; or
 - (f) changes in circumstances since the permit was granted make the continued operation of the permit inappropriate.
- (2) The local government may specify in a subordinate local law the changes in circumstances since a permit was granted that makes the continued operation of the permit inappropriate.
- (3) If the local government is satisfied it is necessary to cancel a permit, the local government must—
- (a) give the holder of the permit a written notice stating—
 - (i) the reason for the proposed cancellation; and
 - (ii) that the holder of the permit may make written representations to the local government about the proposed cancellation; and
 - (iii) the time (at least 15 business days after the written notice is given to the holder of the permit) within which written representations may be made; and
 - (b) consider any written representations made by the holder of the permit within the time stated in the written notice.
- (4) After considering any written representations made by the holder of the permit the local government must give to the holder of the permit—
- (a) if the local government is not satisfied that the cancellation is necessary - a written notice stating it has decided not to cancel the permit; or
 - (b) if the local government is satisfied that the cancellation is necessary - a written notice stating it has decided to cancel the permit.
- (5) Before the local government cancels a permit under subsection (4), the local government must consider the impact of the cancellation of the permit, other than a financial impact on the holder of the permit, on those persons who would be affected by the prescribed activity ceasing to be operated.
- (6) The cancellation of the permit takes effect from the day the written notice was given to the holder of the permit—

- (a) under subsection (3)(a), if no written representations are made by the holder of the permit within the time stated in the written notice; or
 - (b) under subsection (4)(b), if written representations are made by the holder of the permit within the time stated in the written notice and the local government decides that the cancellation is necessary.
- (7) If the local government has cancelled a permit, the holder of the permit must cease to undertake the prescribed activity immediately.

Maximum penalty for subsection (7)—50 penalty units.

31 General compliance provision

- (1) The holder of a permit must ensure that the conditions of the permit are complied with.

Maximum penalty for subsection (1)—50 penalty units.

- (2) The holder of a permit and any person undertaking a prescribed activity must ensure that the undertaking of the prescribed activity—
- (a) does not result in harm to human health or safety or personal injury; and
 - (b) does not result in property damage or a loss of amenity; and
 - (c) does not result in environmental harm or environmental nuisance; and
 - (d) does not result in a nuisance; and
 - (e) complies with the prescribed criteria.

Maximum penalty for subsection (2)—50 penalty units.

Part 5 Enforcement

32 Compliance notice

- (1) The local government may give a compliance notice to—
- (a) a person who contravenes this local law; and
 - (b) any person involved in the contravention of this local law pursuant to section 39 (Liability of third parties) of this local law; and
 - (c) the owner or occupier of the premises on which the prescribed activity is undertaken.
- (2) A compliance notice may require the person to whom it is given to—
- (a) stop the contravention, if the contravention is of a continuing or recurrent nature; and

- (b) perform work or otherwise take specified action to remedy the contravention (including the making of an application for a permit) within a time specified in the compliance notice, whether or not the contravention is of a continuing or recurrent nature; and
 - (c) perform work or otherwise take specified action within a time specified in the compliance notice to ensure compliance with section 31 (General compliance provision) of this local law.
- (3) A person to whom the compliance notice is given must comply with the compliance notice.

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

33 Stop order

- (1) The local government may, by written notice to the person operating a prescribed activity, require the person to cease to operate the prescribed activity within the time allowed in the written notice when—
- (a) a compliance notice is not complied with within the time allowed for compliance in the compliance notice; or
 - (b) the person does not hold a permit from the local government; or
 - (c) the undertaking of the prescribed activity is in the local government's opinion likely to give rise to—
 - (i) harm to human health or safety or personal injury;
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (d) the undertaking of the prescribed activity does not comply with—
 - (i) the provisions of the local government Acts that regulate the undertaking of the prescribed activity; or
 - (ii) the prescribed criteria relevant to the prescribed activity; or
 - (iii) the conditions of a permit.
- (2) Before the local government gives a notice under subsection (1) the local government must consider the impact of the stop order, other than a financial impact on the holder of the permit, on those persons who would be affected by the prescribed activity ceasing to be undertaken.
- (3) Subject to subsection (4), the person to whom a stop order is given must—

- (a) cease to operate the prescribed activity; and
- (b) comply with the stop order.

Maximum penalty for subsection (3)—200 penalty units.

- (4) The stop order ceases when the person to whom a stop order is given has complied with to the satisfaction of the local government—
 - (a) the requirements of this local law; and
 - (b) the prescribed criteria relevant to the prescribed activity; and
 - (c) the conditions of any relevant permit; and
 - (d) the requirements of any relevant compliance notice; and
 - (e) the requirements of the stop order.

34 Inspection of a prescribed activity

- (1) An authorised person may inspect the undertaking of a prescribed activity and any premises, vehicle, equipment, animal or thing involved in the undertaking of the prescribed activity to establish whether there is compliance with³—
 - (a) the requirements of this local law; and
 - (b) the prescribed criteria; and
 - (c) the conditions of a permit; and
 - (d) the requirements of a compliance notice; and
 - (e) the requirements of a stop order.
- (2) An authorised person may direct the person undertaking the prescribed activity to produce for inspection⁴—
 - (a) the permit granted by the local government; and
 - (b) any records that are required to be kept as a condition of the permit or as specified in a subordinate local law and may take copies of or extracts from those records; and

³ Parts 4 and 5 of Chapter 15 of the *Local Government Act 1993* empower an authorised person to enter a place to—

- (a) monitor compliance with a local government Act which is defined to include a local law; and
- (b) find out whether the conditions of an authorisation or notice have been complied with or to inspect work carried out under an authorisation or notice.

⁴ Parts 4 and 5 of Chapter 15 of the *Local Government Act 1993* provide for these powers.

- (c) any vehicle, equipment, animal, plant or thing involved in the undertaking of the prescribed activity; and
 - (d) any inspection, monitoring or management program required to be kept as a condition of the permit or as a requirement of the prescribed criteria or as specified in a subordinate local law.
- (3) An authorised person may measure, weigh, sample, test, photograph, videotape or otherwise examine anything that may be inspected pursuant to subsection (1).⁵
- (4) The person operating the prescribed activity must comply with—
- (a) a direction of an authorised person pursuant to subsection (2); and
 - (b) the terms of a periodic inspection, monitoring or management program in respect of the undertaking of the prescribed activity specified in a subordinate local law.

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

35 Performance of work

- (1) A person committing an offence under this local law must make good any damage caused directly or indirectly by the commission of the offence.
- (2) The local government may perform work if a person has failed to perform work required to be performed by⁶—
- (a) subsection (1); or
 - (b) a compliance notice or stop order issued under this local law; or
 - (c) a condition of a permit; or
 - (d) any other provision of this local law.
- (3) The local government may dispose of any material of any nature removed by the local government pursuant to this section as it sees fit, and in accordance with the laws of the State.
- (4) An authorised person may perform the work that the local government is empowered to undertake pursuant to this section.
- (5) The Court may order a person found guilty of an offence under this local law to—
- (a) perform work required to be performed by—

⁵ Parts 4 and 5 of Chapter 15 of the *Local Government Act 1993* provide for these powers.

⁶ The exercise of this power is subject to section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*.

- (i) subsection (1); or
 - (ii) a compliance notice or a stop order issued under this local law; or
 - (iii) a condition of a permit; or
 - (iv) a provision of this local law; and
- (b) pay to the local government all costs incurred by the local government in performing the work pursuant to this section.

36 Power of entry and cost recovery

- (1) If the work to be carried out by the local government is on land of which the local government is not the owner or occupier, the local government may enter the land to perform the work—
- (a) under section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*, if the person who has failed to perform the work is the owner or occupier of the land; or
 - (b) section 1070 (Entry on land for local government purposes) of the *Local Government Act 1993*, if the entry is necessary for the exercise of the local government’s jurisdiction.⁷
- (2) If the person who failed to perform the work is the owner of the land, the amount properly and reasonably incurred by the local government to perform the work is recoverable (together with any interest) under section 1066 (Performing work for owner or occupier), section 1067 (Cost of work recoverable as a rate) and section 1068 (Cost of work a charge over land) of the *Local Government Act 1993*.
- (3) If the person who failed to perform the work is not the owner of the land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person in default together with interest on the same basis as applies to an owner of the land under section 1067 (Cost of work recoverable as a rate) of the *Local Government Act 1993*.⁸

Part 6 Administrative provisions

37 Executive officers must ensure the corporation complies with the local law

- (1) The executive officers of a corporation must ensure the corporation complies with this local law.

⁷ A magistrate may make an order for entry under section 1063 (Order for occupier who refuses entry) of the *Local Government Act 1993* if the occupier refuses to permit entry.

⁸ Section 1067(2) (Cost of work recoverable as a rate) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

- (2) If a corporation commits an offence against a provision of this local law, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this local law is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complied with the provision.

- (4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence – the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

- (5) This section applies so as not to limit or affect in any way the liability of a corporation to be proceeded against and punished for an offence committed by the corporation in contravention of this local law.

38 Owners and occupiers must ensure compliance with the local law

- (1) The owner and occupier of premises must ensure that a person who is operating a prescribed activity on the premises complies with this local law.

- (2) If a person who is operating a prescribed activity on the premises commits an offence against a provision of this local law, the owner and the occupier of the premises also commit an offence, namely, the offence of failing to ensure that the person who is operating the prescribed activity on the premises complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision.

- (3) Evidence that the person who is operating the prescribed activity on the premises has been convicted of an offence against a provision of this local law is evidence that the owner and the occupier of the premises committed the offence of failing to ensure that the person who is operating the prescribed activity on the premises complied with the provision.

- (4) However it is a defence for an owner or occupier to prove that—

- (a) reasonable diligence was exercised by that person to ensure that the person operating the prescribed activity on the premises complied with the provision; or

- (b) the non-compliance with a provision of this local law occurred without that person's knowledge or consent.

39 Liability of third parties

- (1) Any person involved in a contravention of this local law commits an offence.

Maximum penalty for subsection (1)—the penalty for which any person who committed the contravention would be liable.

- (2) For the purposes of subsection (1), a person involved in a contravention of this local law is any person who—

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by a threat or a promise or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with another person to effect the contravention; or
- (e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

40 Attempts to commit offences

- (1) A person who attempts to commit an offence under this local law commits an offence.

Maximum penalty for subsection (1)—half the maximum penalty for committing the offence.

- (2) The provisions of the *Criminal Code* (relevant to attempts to commit offences) apply to the attempt.

41 Defences

It is a defence to any breach or non-compliance of any provision contained in this local law if a person has a lawful excuse or defence.

Example—

It is a defence to any breach or non-compliance of any provision contained in this local law if a person was not criminally responsible in accordance with Chapter 5 of the *Criminal Code*.

Part 7 Subordinate local laws

42 Subordinate local laws

The local government may specify in a subordinate local law—

- (a) the assessment criteria for deciding an application for a permit for the undertaking of a prescribed activity pursuant to Schedule 2 (Dictionary) of this local law; and
- (b) a thing as a structure pursuant to the Schedule (Dictionary) of this local law; and
- (c) prescribed criteria pursuant to the Schedule (Dictionary) of this local law; and
- (d) the person to be appointed as sexton of a council cemetery; and
- (e) an activity which is prohibited conduct pursuant to section 6(h) (Prohibited conduct) of this local law; and
- (f) an activity which is regulated conduct pursuant to section 7(h) (Regulated conduct) of this local law; and
- (g) the prescribed standards for a grave pursuant to section 8(2) (Requirements for a grave) of this local law; and
- (h) the prescribed standards for a body interred in a vault pursuant to section 9 (Requirements for a vault) of this local law; and
- (i) the information that must accompany a request to reserve a plot pursuant to section 10(2)(b)(ii) (Request to reserve a plot) of this local law; and
- (j) the information that must accompany a request to install a memorial tablet in a lawn cemetery pursuant to section 13(2)(b)(ii) (Request to install a memorial tablet in a lawn cemetery) of this local law; and
- (k) the prescribed standards for a memorial tablet pursuant to section 14(1) (Grant of request to install a memorial tablet in a lawn cemetery) of this local law; and
- (l) the information that must accompany a request to purchase a niche or install an inscription plate pursuant to section 17(2)(b)(ii) (Request to purchase a niche or install an inscription plate) of this local law; and
- (m) the prescribed standards for an inscription plate pursuant to section 18(1)(b) (Grant of a request to purchase a niche or install an inscription plate) of this local law; and
- (n) a prescribed activity in respect of the operation of which a person is not required to hold a permit pursuant to section 23(3) (Requirement for a permit) of this local law; and
- (o) the information that must accompany an application for a permit pursuant to section 24(1)(c)(iv) (Application for a permit) of this local law; and

- (p) the circumstances in which the local government may waive the requirements of section 24 (Application for a permit) of this local law pursuant to section 24(2)(c) (Application for a permit) of this local law; and
- (q) the term of the permit pursuant to section 26(1) (Term of a permit) of this local law; and
- (r) the records that must be kept, the place at which those records must be kept and the period for which those records must be kept pursuant to section 27(2)(f) (Conditions of a permit) of this local law; and
- (s) the conditions that must be imposed in a permit or that will ordinarily be imposed in a permit pursuant to section 27(3) (Conditions of a permit) of this local law; and
- (t) the changes in circumstances since a permit was granted that make the continued operation of the permit inappropriate pursuant to section 30(2) (Cancellation of a permit) of this local law; and
- (u) the records that are required to be kept pursuant to section 34(2)(b) (Inspection of a prescribed activity) of this local law; and
- (v) the terms of a periodic inspection, monitoring or management program in respect of the operation of a prescribed activity pursuant to sections 34(2)(d) and 34(4)(b) (Inspection of a prescribed activity) of this local law; and
- (w) such other matters as are provided for in this local law.

Schedule Dictionary

section 3

advertisement has the meaning given in *Local Law No. 16 (Licensing) 2008*.

advertising includes the use of any fixed or moveable device, design, writing, structure, erection, publication, placard, signboard or sign of any kind whatsoever for the sale or exposing for sale of a good, a service or a vehicle.

animal has the meaning given in *Local Law No. 12 (Keeping and Control of Animals) Law*.

approval means a consent, permit, licence, authorisation, registration, membership or approval under a local government Act or a local law and includes all the conditions of a consent, permit, licence, authorisation, registration, membership or approval.

assessment criteria means the criteria specified in a subordinate local law for deciding an application for a permit for the undertaking of a prescribed activity.

authorised person means a person authorised by the local government pursuant to *Local Law No. 3 (Administration) 2008* to exercise the powers of an authorised person under this local law.⁹

building has the meaning given in the *Building Act 1975*.

burial rights means a right of burial in a burial place.

business means the supply of goods or services and includes—

- (a) the display of a good; and
- (b) the sale of a good or service; and
- (c) engaging in any trade or business; and
- (d) distributing a business advertising publication; and
- (e) touting; and
- (f) advertising a good or service; and
- (g) a fete, market or stall; and

⁹ Section 21 (Appointments) of *Local Law No. 3 (Administration) 2008* provides for the local government to appoint a person to a position provided for under a local law and authorises a person appointed by the local government to a position provided for under a local law to exercise the powers attaching to that position under the local law unless otherwise stated in the appointment.

- (h) the exhibition of an advertisement; and
- (i) the exhibition of a sign.

business advertising publication has the meaning given in *Local Law No. 5 (Distribution of Business Advertising Publications and Touting) 2008*.

compliance notice means the written notice given pursuant to section 32 (Compliance notice) of this local law.

corporation means a corporation as defined in the *Corporations Act 2001 (Cth)* and includes an association as defined in the *Associations Incorporations Act 1981*.

council cemetery means a reserve or other land under the control of the local government which is used as a cemetery.

Court means the court of law which has jurisdiction to deal with offences under this local law.

direction means a written or oral direction given by an authorised person pursuant to this local law.

environmental harm has the meaning given in the *Environmental Protection Act 1994*.

environmental nuisance has the meaning given in the *Environmental Protection Act 1994*.

executive officer of a corporation means a person who is concerned with, or takes part in, the corporation's management whether or not the person is a director or the person's position is given the name of executive officer.

exhibit includes in relation to a sign the painting, writing, drawing, depiction, making, erection, affixing, putting up, operation or transport of a sign.

guide dog has the meaning given in *Subordinate Local Law No. 12 (Keeping and Control of Animals) 2007*.

human remains means a human being who is deceased and includes part of a human being who is deceased, but does not include cremated human remains.

interference includes any damage, destruction, tampering, removal, alteration, defacement, change, or inappropriate use and **interfere** has the corresponding meaning.

knowledge includes actual or constructive knowledge.

land has the meaning given in the *Integrated Planning Act 1997*.

lawn cemetery means that part of a council cemetery set aside as a lawn cemetery pursuant to section 12 (Power to set aside lawn cemetery) of this local law.

local law includes any subordinate local laws and all approvals granted pursuant to this local law.

nuisance has the meaning given in *Local Law No. 8 (Public Health, Safety and Amenity) 2008*.

occupier of premises means the person who has the control or management of the premises and includes a person in charge of the operation of the prescribed activity on the premises.

operating a prescribed activity includes carrying out, providing, performing, undertaking or otherwise engaging in any activity in respect of the prescribed activity.

owner of premises means the person for the time being entitled to receive the rent for the premises or would be entitled to receive the rent for if it were let to a tenant at a rent.

permit means a permit which has been granted pursuant to section 25 (Grant of a permit) of this local law or amended, renewed or transferred pursuant to section 29 (Amendment, renewal or transfer of a permit) of this local law which—

- (a) has not expired pursuant to section 26(2) (Term of a permit) of this local law; and
- (b) has not been cancelled pursuant to section 30 (Cancellation of a permit) of this local law.

perform work has the meaning given in the *Local Government Act 1993* and includes—

- (a) work required to be performed pursuant to a compliance notice, a stop order or a condition of a permit; and
- (b) without limiting paragraph (a), seizing and removing a thing.

plant means any tree, bush, shrub, grass, fungi, algae or other thing terrestrial or aquatic including all natural parts of it or things naturally produced of, by or from it.

prescribed activity means an activity regulated by section 7 (Regulated conduct) of this local law.

prescribed criteria means the criteria specified in a subordinate local law with which the undertaking of a prescribed activity must comply.

publicise means to draw to the attention of, make known, advertise or promote and **publicises** has the corresponding meaning.

sale includes—

- (a) to sell; or
- (b) sell for resale; or
- (c) intend for sale; or
- (d) offer or expose for sale; or
- (e) agree or attempt to sell; or

- (f) receive, keep or have in possession for sale; or
- (g) cause or permit to be sold or offered or exposed for sale; or
- (h) send, forward for sale or deliver for sale; or
- (i) provide a sample; or
- (j) barter; or
- (k) auction; or
- (l) supply or have available for supply; or
- (m) already sold or supplied; or
- (n) provide for analysis; or
- (o) authorise, direct, cause, suffer or permit any of the above acts.

sexton means a person appointed by the local government to act as the sexton of a council cemetery.

sign means a device that publicises a matter.

stop order means the written notice given pursuant to section 33(1) (Stop order) of this local law which has not ceased pursuant to section 33(4) (Stop order) of this local law.

structure has the meaning given in the *Local Government Act 1993* and includes a structure as defined in the *Building Act 1975* and any other thing specified in a subordinate local law.

tout has the meaning given in *Local Law No. 5 (Distribution of Business Advertising Publications and Touting) 2008*.

vehicle has the meaning given in the *Transport Operations (Road Use Management) Act 1995* and includes anything specified as a vehicle in a subordinate local law.

