

No. 49 of 1986.

War Cemeteries and Graves Act 1986.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

War Cemeteries and Graves Act 1986,

Being an Act to—

- (a) incorporate the Commonwealth War Graves Commission; and
- (b) provide for the management of Commonwealth War Cemeteries, the war graves and the post-war graves; and
- (c) prescribe certain privileges and immunities to be accorded to the Commonwealth War Graves Commission and the Government of Australia,

and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**cemetery**” means a cemetery within the meaning of the *Cemeteries Act 1955*;

“**Commonwealth War Cemetery**” means any area of land declared under Section 2(1) to be a Commonwealth War Cemetery;

“**Commission**” means the Commonwealth War Graves Commission established by the Royal Charter dated 21 May 1917 and supplemented by the Royal Charter dated 8 June 1964;

“**Government of Australia**” means—

- (a) the Federal Government of Australia; or
- (b) its representative in Papua New Guinea;

“post-war graves” means the graves in a cemetery containing the remains of members of the Australian Armed Forces, other than those who fell in the wars of 1914 to 1921 and 1939 to 1947, who—

- (a) were awarded the Victoria Cross; or
- (b) died from service-related causes; or
- (c) were at the time of death receiving a disability pension under a scheme provided for that purpose by the Government of Australia;

“this Act” includes any regulations made under this Act;

“war cemetery” means a Commonwealth War Cemetery;

“war graves” means the graves in a Commonwealth War Cemetery or a cemetery containing the remains of Members of the Armed Forces of Commonwealth Countries who fell in the wars of 1914 to 1921 and 1939 to 1947.

2. DECLARATION OF WAR CEMETERIES.

(1) The Minister may, with the approval of the Minister responsible for land matters, by notice published in the National Gazette, declare an area of land described in the notice to be a Commonwealth War Cemetery.

(2) The land declared under Subsection (1) shall be deemed to have been reserved from lease or further lease in accordance with Section 49 of the *Land Act 1996*.

(3) Except as provided for in Subsection (4) and Section 8—

- (a) a Commonwealth War Cemetery is closed against subsequent burials; and
- (b) a body buried in a war grave shall not be exhumed or otherwise disturbed.

(4) The Commission may exhume or remove the remains of a member of the armed forces of the Commonwealth Countries who fell in the wars of 1914 to 1921 and 1939 to 1947 which was buried or discovered in a place other than in a Commonwealth War Cemetery and bury those remains in a Commonwealth War Cemetery.

Note The *Land Act* (Chapter 185) was repealed and replaced by the *Land Act 1996*.

3. CERTAIN PROVISIONS OF LAND ACT 1996 NOT TO APPLY.

Sections 50, 51 and 53 of the *Land Act 1996* do not apply to land the subject of a declaration under Section 2.

PART II. – INCORPORATION OF THE COMMONWEALTH WAR GRAVES COMMISSION.

4. INCORPORATION.

(1) The Commonwealth War Graves Commission—

- (a) is a body corporate under that name with perpetual succession; and
- (b) shall have a seal; and
- (c) may sue and be sued in its corporate name.

(2) All courts, Judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document, and shall presume that it was duly affixed.

5. FUNCTIONS OF THE COMMISSION.

The functions of the Commission are—

- (a) to be responsible, in accordance with its Charter, for the care and maintenance of war graves, memorials and monuments and such other functions as may be recognised by the Minister; and
- (b) to make recommendations to and advise the Minister on matters which may further its functions; and
- (c) generally to do such supplementary, incidental or consequential acts and things as are necessary or convenient for carrying out its functions.

6. POWERS OF THE COMMISSION.

For the purposes of its functions in accordance with this Act, the Commission has power—

- (a) to occupy and use free of charge land, building or structure in a war cemetery; and
- (b) to occupy and use free of charge such other land as may be determined by the Minister where the Minister is satisfied that the land will be used exclusively by the Commission for a purpose connected with the performance of the functions of the Commission; and
- (c) to enter into contracts; and
- (d) generally, to do all things necessary or convenient to be done, for or in connection with the performance of its functions.

7. AGENT OF THE COMMISSION.

The Commission may enter into agreement with the Government of Australia to be its agent for the purpose of the performance of any or all of its functions and the exercise of any or all of its powers, under this Act, by the Agent.

8. POWER TO ABOLISH A WAR CEMETERY.

(1) Where the Minister is satisfied that for reasons of overriding public necessity it is necessary to do so, he may—

- (a) after consultation with the Commission, order that—
 - (i) a part of a war cemetery be abolished; and
 - (ii) a body buried in that part of the war cemetery be exhumed and buried in another part of the same war cemetery; or
- (b) with the consent of the Commission order that—
 - (i) a war cemetery or part of a war cemetery be abolished; and
 - (ii) a body buried in that war cemetery or part of that war cemetery be exhumed and buried in another war cemetery.

(2) Where an order is made under Subsection (1)(a) or (b), the cost of exhumation and reburial shall be borne by the State.

PART III. – POST-WAR GRAVES.

9. MANAGEMENT OF POST-WAR GRAVES.

The Minister may enter into an arrangement with the Government of Australia, for the management and maintenance of post-war graves, on such terms and conditions as are specified in the arrangement.

10. EXEMPTIONS.

The exemptions specified under Part IV apply with the necessary modifications to the Government of Australia, the income of a person employed by it and any vehicle, plant or equipment imported for the purposes of its functions under this Part.

PART IV. – EXEMPTIONS FROM PAYMENT OF CERTAIN TAXES.**11. EXEMPTION FROM INCOME TAX.**

The salary and emoluments received from the Commission by a person who is a resident of Papua New Guinea within the meaning of the *Income Tax Act 1959*, are not, to the extent to which they are for services rendered for the purposes of the Commission in Papua New Guinea, exempt from taxation unless the person is not a Papua New Guinea citizen and came to Papua New Guinea solely for the purposes of performing the duties and functions of the Commission.

12. EXEMPTION FOR EQUIPMENT OF THE COMMISSION.

The Commission shall be exempt from the payment of import duty and import levy in respect of–

- (a) vehicles; and
- (b) materials, plant and equipment,

that are imported or purchased for the purpose of performing its functions under this Act.

13. EXEMPTIONS FROM DUES AND TAXES.

The Commission is exempt from such–

- (a) national dues and taxes; and
- (b) subject to Section 84 of the *Organic Law on Provincial Governments and Local-level Governments*, provincial or local level government dues and taxes,

in respect of any premises of the Commission.

14. EXEMPTIONS OF AGENT OF THE COMMISSION.

The exemptions accorded to the Commission under this Part apply to the agent of the Commission in respect of–

- (a) the salary and emoluments received from the agent by a person who–
 - (i) is not a resident of Papua New Guinea within the meaning of the *Income Tax Act 1959*; and
 - (ii) is not a citizen of Papua New Guinea and entered Papua New Guinea solely for the purposes of performing the duties of the agent,

to the extent to which they are for services rendered by the agent in accordance with the agreement referred to in Section 7; and

- (b) any vehicle, plant and equipment imported or purchased by the agent to enable it to carry out the duties and functions required under the agreement referred to in Section 7; and
- (c) any premises of the agent in a war cemetery and used exclusively for the purpose of the performance of its duties and functions required under the agreement referred to in Section 7.

PART V. – MISCELLANEOUS PROVISIONS.

15. STAFF.

The Commission may appoint and employ staff on such terms and conditions as the Commission considers necessary, for the proper and efficient carrying out of its functions.

16. BY-LAWS.

(1) The Commission may make By-laws not inconsistent with this Act, in connection with the care, control and management of graves and memorials in a war cemetery.

(2) A By-law made under this section has no force or effect until–

(a) approved by the Head of State, acting on advice; and

(b) a notice of the making of the By-law is published in the National Gazette.

(3) A person shall not contravene or fail to comply with a provision of the By-law.

Penalty: A fine not exceeding K20.00.

17. REGULATIONS.

The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

PART VI. – TRANSITIONAL.

18. VESTING OF PROPERTY.

(1) All property, vested in a body established by virtue of Section 50 of the *Land Act 1996* to control and regulate the burial of armed forces of Commonwealth countries shall, at the commencement of this Act, vest in the Commission.

(2) A person employed by a body referred to under Subsection (1) shall, at the commencement of this Act, be deemed to be a person appointed or employed by the Commission in accordance with Section 15.

(3) A reference to an act, matter or thing done in relation to or by the body referred to in Subsections (1) and (2) shall, at the commencement of this Act, be deemed to be a reference to an act, matter or thing done in relation to or by the Commission.

Office of Legislative Counsel, PNG