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## Hawke's Bay Crematorium Act 1944

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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**An Act to empower certain local authorities to unite in erecting and conducting a crematorium in the Provincial District of Hawke's Bay and to provide for the incorporation and powers of a Board in connection therewith**

**Preamble**

Whereas, for the purpose of making provision for the erection and control of a crematorium in the Provincial District of Hawke's Bay and for defraying the cost thereof, the local authorities mentioned in Schedule 1, considering it to be for the benefit and advantage of their respective districts, have entered into an agreement (a copy of which is set out in Schedule 2):

And whereas doubts have arisen as to the competence of the local authorities concerned under their existing statutory and other powers to enter into and become bound by the said agreement:

And whereas it is desirable that the said agreement should be ratified and carried into effect according to its tenor, and that a corporate body should be established which may conduct, control, manage, and maintain the crematorium referred to in the said agreement and in which lands acquired for the purpose may be vested.

## 1 Short Title

This Act may be cited as the Hawke's Bay Crematorium Act 1944.

## 2 Interpretation

In this Act, unless the context otherwise requires,—

**antecedent agreement** means the agreement a copy of which is set out in Schedule 2

**Board** means the Hawke's Bay Crematorium Board constituted under this Act

**contributing bodies** means the local authorities mentioned in Schedule 1 but does not include those local authorities which may have ceased to be parties to the agreement in Schedule 2 pursuant to the provisions of section 3A

**crematorium** means the crematorium erected or to be erected pursuant to the provisions of the antecedent agreement, and includes any other crematorium erected or maintained by the Board.

Section 2 **contributing bodies**: amended, on 7 July 1967, by section 2 of the Hawke's Bay Crematorium Amendment Act 1967 (1967 No 4 (L)).

## 3 Validating antecedent agreement

The antecedent agreement is hereby validated and confirmed, and the contributing bodies respectively shall be deemed always to have had full power and authority to enter into, become party to, carry out, and be bound by the antecedent agreement, and the same is hereby declared to be, and at all times to have been, valid and effectual and binding on all the parties thereto, and shall take effect according to its tenor.

### 3A Constitution of Board

- (1) Notwithstanding the provisions hereof it shall be lawful for the contributing bodies for the time being by unanimous agreement in writing made between them to agree that any 1 or more of them shall, as from a date to be fixed by such agreement, cease to be a contributing body and as from the said date any such body shall cease to be a contributing body accordingly.
- (2) The terms and conditions upon which any contributing body may cease to be such in accordance with subsection (1) shall be agreed upon between all the

contributing bodies and shall be embodied in writing which shall be executed by all the contributing bodies.

- (3) Subject to the provisions of any agreement entered into between the contributing bodies pursuant to this section, the remaining contributing bodies shall indemnify any contributing body, which shall have ceased its membership in accordance with this section, against all claims and demands made and enforceable against it in respect of matters in connection with the crematorium arising while that body was a contributing body under this Act.

Section 3A: inserted, on 7 July 1967, by section 3 of the Hawke's Bay Crematorium Amendment Act 1967 (1967 No 4 (L)).

#### **4 Authorising contributing bodies to borrow**

For the purpose of raising the moneys necessary to enable it to meet its financial obligations under paragraphs 3 and 4 of the antecedent agreement, each of the contributory bodies is hereby authorised and empowered by special order and without taking the steps prescribed by sections 9 to 13 of the Local Bodies' Loans Act 1926 to raise a special loan.

#### **5 Hawke's Bay Crematorium Board established**

- (1) There is hereby established a Board constituted as hereinafter provided.
- (2) The Board shall be a body corporate under the name of the Hawke's Bay Crematorium Board, with perpetual succession and a common seal, and shall be capable of holding and dealing with real and personal property and of doing and suffering all that bodies corporate may lawfully do and suffer.
- (3) The Board shall be deemed to be a local authority for the purposes of the Public Works Act 1928, the Income Tax Act 2007, the Local Bodies' Finance Act 1921–22, the Local Government Loans Board Act 1926.

Section 5(3): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 5(3): amended, on 29 September 1954, by section 7(3) of the Local Authorities (Members' Contracts) Act 1954 (1954 No 49).

#### **6 Constitution of the Board**

- (1) Each of the contributing bodies shall appoint one of its members to be a member of the Board as hereinafter provided. The Board shall consist of the members so appointed.
- (2) A notice in writing of the name of the member so appointed signed by the Clerk of the appointing contributory body and received by the Board shall for all purposes be accepted as sufficient evidence of the appointment of such member, until the contrary be proved.

Section 6(1): amended, on 7 July 1967, by section 4 of the Hawke's Bay Crematorium Amendment Act 1967 (1967 No 4 (L)).

**7 First members of Board**

The first members of the Board shall be appointed within 60 days after the passing of this Act, and shall hold office until the members first appointed under the next succeeding section come into office.

**8 Appointment of subsequent members**

The appointment of members of the Board shall take place in every year (excepting the year 1944) in which municipal general elections are held under the Municipal Corporations Act 1933, or any Act passed in substitution therefor, and within 60 days after the date in such year on which such elections are held.

**9 Term of office of appointed members**

- (1) Every member of the Board appointed under the last preceding section shall come into office on the first day of the month following his appointment, and shall, unless his office sooner becomes vacant, hold office until his successor comes into office.
- (2) Every member appointed to fill any vacancy pursuant to section 11 shall come into office on the day following that on which he is appointed, and shall hold office only for the residue of the term for which his predecessor was appointed.

**10 Vacancies**

- (1) The office of a member shall become vacant if he—
  - (a) dies; or
  - (b) resigns his office by writing under his hand delivered to the Secretary or Chairman of the Board, or is ousted of his office; or
  - (c) ceases from any cause to be a member of the local authority appointing him; or
  - (d) becomes of unsound mind; or
  - (e) becomes a bankrupt, or makes any composition with any of his creditors for less than 20 shillings in the pound, or makes an assignment of his estate for the benefit of his creditors; or
  - (f) is convicted of any offence punishable by imprisonment for a term of 2 years or more; or
  - (ff) is convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence; or
  - (g) is absent without leave from 4 consecutive meetings of the Board.
- (1A) In any case to which paragraph (f) of subsection (1) applies—
  - (a) the disqualification shall not take effect until the expiration of the time for appealing against the conviction and, in the event of an appeal against conviction, until the appeal is determined; and

- (b) the member concerned shall be deemed to have been granted leave of absence until the expiration of that time, and shall not be capable of acting as a member during the period of that leave of absence.
- (1B) In any case to which paragraph (ff) of subsection (1) applies—
  - (a) the disqualification shall not take effect until the expiration of the time for appealing against the conviction or the sentence and, in the event of an appeal against the conviction or against the sentence or both, until the appeal is determined; and
  - (b) the member concerned shall be deemed to have been granted leave of absence until the expiration of that time, and shall not be capable of acting as a member during the period of that leave of absence.
- (2) Any vacancy occurring under this section shall be deemed an extraordinary vacancy.

Section 10(1)(f): replaced, on 19 September 1975, by section 54(4) of the Criminal Justice Act 1954 (1954 No 50).

Section 10(1)(ff): inserted, on 19 September 1975, by section 54(4) of the Criminal Justice Act 1954 (1954 No 50).

Section 10(1A): inserted, on 19 September 1975, by section 54(4) of the Criminal Justice Act 1954 (1954 No 50).

Section 10(1B): inserted, on 19 September 1975, by section 54(4) of the Criminal Justice Act 1954 (1954 No 50).

## 11 How vacancies are filled

In the event of an extraordinary vacancy occurring, it may be filled by the local authority which appointed the member whose seat has been vacated.

## 12 Ouster of office

- (1) Upon proof in the first instance, by affidavit or otherwise, that any member of the Board is or has become incapable under this Act or any other Act of holding his office, any Magistrate's Court may grant a summons calling upon the person holding such office to show cause why he should not be adjudged to be ousted of the same.
- (2) If on the return of such summons it appears to the court, on affidavit or oral evidence on oath, that such person is incapable under this Act of holding the said office, the court may adjudge such person to be ousted of the same, and such person shall be ousted of such office accordingly.
- (3) In any such proceedings the Magistrate's Court may exercise all the powers and authorities which it may exercise in its ordinary jurisdiction in civil cases, and the procedure of such court shall, so far as applicable, apply generally to proceedings had under this section.
- (4) No question which may be tried under this section shall be tried in the Supreme Court; and no proceedings in the Magistrate's Court hereunder shall be removable into the Supreme Court by *certiorari* or otherwise.

### **13 Chairman of the Board**

- (1) The Board shall, at its first meeting after the members have been appointed under section 7, and thereafter at its first meeting after the members have been appointed under section 8, elect one of its members to be Chairman of the Board.
- (2) At every meeting for the election of Chairman the Secretary shall preside while the Chairman is being elected, or if there shall be no Secretary, then some person appointed by the Board not being a member of the Board shall so preside, and in case of an equality of votes shall determine the election by lot in such manner as the Board determines.
- (3) The Chairman shall come into office on his election and shall hold office until the election of his successor.
- (4) The Chairman may resign his office by writing under his hand delivered to the Secretary, and in such case, or in the case of his ceasing from any cause to be a member of the Board, his office shall become vacant, and the Secretary shall forthwith convene a meeting of the Board for the election of a fresh Chairman.
- (5) The Board may from time to time appoint one of its members to be Deputy Chairman for such period as the Board may think fit.

### **14 Committees**

- (1) The Board may from time to time appoint standing or special committees, and may delegate to such committees any matters for consideration or inquiry or management or regulation, and may delegate to any such committee any of the powers and duties by this Act conferred or imposed upon the Board, except the power to borrow money, to make a bylaw, to enter into a contract, or to institute an action.
- (2) Every committee to which any powers or duties are delegated as aforesaid may, without confirmation by the Board, exercise or perform the same in like manner and with the same effect as the Board itself could have exercised or performed the same.
- (3) Every such committee shall be subject in all things to the control of the Board, and shall carry out all directions, general or special, of the Board given in relation to such committee or its affairs.
- (4) The Board may from time to time discharge, alter, continue, or reconstitute any committee appointed by it.
- (5) Every committee shall, unless sooner discharged by the Board, be deemed to be discharged on the coming into office of the members appointed under section 8 next after the appointment of the committee.

*Proceedings of Board and committees***15 Chairman of meetings**

At every meeting of the Board the Chairman (if present), or in his absence the Deputy Chairman (if any), shall be the Chairman. If the Chairman and the Deputy Chairman (if any) are absent from any meeting of the Board, then such member as the members of the Board then present choose shall be Chairman of such Board meeting.

**16 Member not to vote where he has pecuniary interest**

*[Repealed]*

Section 16: repealed, on 24 October 1957, by section 2(3) of the Local Authorities (Members' Contracts) Amendment Act 1957 (1957 No 60).

**17 Quorum of Board and committees**

- (1) A quorum of the Board shall consist of not less than half of the members.
- (2) The Board may fix the quorum of any committee appointed by it, and in default of its so doing the committee may fix the quorum.
- (3) A meeting shall be duly constituted if a quorum is present thereat, whether voting or not.

Section 17(1): amended, on 7 July 1967, by section 5 of the Hawke's Bay Crematorium Amendment Act 1967 (1967 No 4 (L)).

**18 Questions to be decided by majority of votes**

All acts of the Board and of any committee, and all questions before the Board or any committee, may be done and decided at a meeting of the Board or committee by the majority of votes recorded by such members of the Board or committee as are present and vote at such meeting, the number of votes which such members are entitled to exercise being computed in accordance with the table set out in paragraph 6 of the antecedent agreement. In the case of an equality of votes, the Chairman of any meeting shall have a casting vote in addition to his deliberative votes.

**19 Proceedings not invalidated by irregularities, etc**

No act or proceeding of the Board or of any committee, or of any person acting as a member of the Board, shall be invalidated in consequence of there being a vacancy in the number of the Board at the time of such act or proceeding, or of the subsequent discovery that there was some defect in the appointment of any person so acting, or that he was incapable of being such member.

**20 Meetings**

- (1) The Board shall hold such ordinary meetings at such times and at such places as it from time to time appoints.

- (2) The Chairman or the Secretary shall give notice in writing to each of the members of the time and place appointed from time to time for holding ordinary meetings, and the members shall attend each such meeting without further notice thereof.

## **21 Allowances to members**

The Board shall pay to the Chairman and to each of its members travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Section 21: replaced, on 1 April 1952, by section 10(1) of the Fees and Travelling Allowances Act 1951 (1951 No 79).

## **22 Rules as to proceedings of Board or committees, etc**

The Board may, by resolution, subject to the provisions of this Act, make rules—

- (a) regulating the proceedings of the Board and any committee thereof respectively, and the right of persons to attend such meetings:
- (b) regulating the adjournment and postponement of meetings of the Board, and the manner in which resolutions may be revoked or altered:
- (c) prescribing the form and mode and time of service of notices of meetings:
- (d) regulating debates:
- (e) providing for the calling of special meetings and the notice to be given to members:
- (f) providing the notice to be given to members of extraordinary business to be transacted at any ordinary meeting:
- (g) directing minutes to be kept of all proceedings of the Board, and prescribing the mode of confirmation, inspection, and custody of the same:
- (h) providing for the custody of documents and the custody and use of the common seal, and prescribing the mode and form of attestation thereof:  
provided that no resolution made or passed under this paragraph shall affect any person acting in good faith, and taking or to take any estate, interest, or advantage under any document having or about to have the common seal affixed thereto:
- (i) directing notices to be given to the contributing bodies to ensure the due appointment of the members of the Board in pursuance of the provisions of this Act, and prescribing the form and mode and time of service of such notices:
- (j) prescribing the powers and duties of officers and servants:
- (k) prescribing forms of and in connection with any proceedings of the Board:

- (1) concerning anything incidental to any of the matters hereinbefore referred to.

### **23 Board may appoint officers and servants**

- (1) The Board may, by resolution, from time to time appoint fit persons to be Secretary, Treasurer, and all such other officers and servants as it thinks necessary for the purposes of carrying out its powers and functions under this Act, and may pay such persons such salaries, wages, and allowances out of the funds of the Board as it thinks fit.
- (2) One person may hold 2 or more of such offices.

### **24 Security from officers handling money**

Before any officer entrusted by the Board with the custody or control of moneys by virtue of his office enters on the duties of his office, the Board shall take from him such sufficient security for the faithful execution of his duties as it thinks fit.

### **25 Acting officers**

During the absence from duty of any officer of the Board by reason of illness, leave of absence, or other cause, the duties and powers of such officer may be performed and exercised by an acting officer appointed by the Board, and any such appointment may be either general or for some occasion only.

### **26 Board may provide offices**

The Board may from time to time provide offices with fitting furniture for transacting its business and for the use of its officers.

### **27 Contracts of Board, how made**

- (1) Any contract which if made between private persons must be by deed shall, if made by the Board, be in writing under the seal of the Board.
- (2) Any contract which if made between private persons must be in writing signed by the parties to be charged therewith may, if made by the Board, be in writing signed on behalf of the Board by some person duly authorised in that behalf.
- (3) Any contract which if made between private persons may be made orally without writing may be similarly made by or on behalf of the Board, but no oral contract shall be made for any sum exceeding 20 pounds.

### **28 Functions of Board**

The primary functions of the Board shall be to conduct, control, and maintain the crematorium referred to in the antecedent agreement and any additions thereto or extension thereof and any other crematorium erected by the Board, and to do all such other acts, matters, and things as the Board may consider necessary or expedient for the proper and efficient functioning of the crematorium and any such other crematorium, and making provision for and regulating

the cremation in the Provincial District of Hawke's Bay of human remains and for the preservation of the ashes of the dead, and in connection therewith to observe and comply with the Cemeteries Act 1908 and all other relevant Acts.

## **29 Power to Hastings Borough Council to transfer certain land**

(1) The Hastings Borough Council is hereby empowered to transfer to the Board without consideration, and the Board is hereby authorised to acquire, the land referred to in paragraph 1 of the antecedent agreement, to be held by the Board for the purposes of its primary functions as herein set out.

(2) *[Repealed]*

Section 29(2): repealed, on 1 April 1968, by section 177(1) of the Rating Act 1967 (1967 No 123).

## **30 Powers of the Board in relation to crematorium**

(1) The Board shall have power to do all or any of the following things:

- (a) to maintain, preserve, manage, control, operate, improve, embellish, enlarge, and develop the crematorium and the lands for the time being vested in it as and in such manner as the Board shall think fit:
- (b) to expend moneys in any manner which in the opinion of the Board may be desirable for carrying out the purposes for which the Board is established, and for insuring any buildings, plant, and equipment against damage or destruction by fire and earthquake:
- (c) to provide within the Provincial District of Hawke's Bay any service or facility which the Board shall think fit for the purpose of either directly or indirectly assisting or aiding the Board in promoting its primary functions as herein set out:
- (d) to construct, erect, or install additions to the crematorium, its plant or equipment, to re-erect, reinstate, or repair any buildings, plant, or equipment destroyed or damaged by fire, earthquake, or other inevitable accident, and to construct, erect, or install such additional buildings, plant, or equipment as the Board may deem necessary or advantageous for the purposes of its primary functions aforesaid:
- (e) in respect of every cremation taking place at the crematorium or for any services rendered or the use of any facility, to assess, levy, and make the charges and fees set out in the scale enumerated in the Schedule of the antecedent agreement, and from time to time to alter, amend, or add to such scale as may be determined by the Board:
- (f) to sell any real or personal property belonging to the Board, except the land referred to in paragraph 1 of the antecedent agreement, and any building erected thereon:
- (g) to purchase or otherwise acquire or take on lease or bailment any real or personal property upon such terms as the Board shall think fit:

- (h) to let or lease, upon such terms as it shall think fit, any property which for the time being may be vested in the Board and not immediately required for any of its purposes:
- (i) to enter into any contracts or arrangements for the provision by any person or body of any services or facilities which the Board is authorised to provide:
- (j) to borrow moneys, on mortgage or otherwise, upon such terms as it shall think fit:
- (k) from time to time to invest any of its funds not immediately required in any manner in which trustees are authorised by law to invest trust funds:
- (l) to regulate its own procedure:
- (m) to pay the costs and expenses referred to in paragraphs 1 and 8 of the antecedent agreement:
- (n) from time to time to prepare and publish advertisements, pamphlets, and other publications containing information and matters of interest relative to the crematorium or to the cremation of human remains, and from time to time to effect, subsidise, or join with any person or body in effecting any purpose or object which, in the opinion of the Board, is calculated, directly or indirectly, to advertise the amenities or facilities of the crematorium or any other service or facility provided by the Board:
- (o) to make such bylaws as it deems necessary or desirable for all or any of the following purposes:
  - (i) maintaining, preserving, and embellishing the crematorium and any building erected or used by the Board for the cremation of human remains or for the preservation of the ashes of the dead or any other property of the Board:
  - (ii) protecting the crematorium and any such building or property from destruction or damage:
  - (iii) regulating the manner and method in which cremations shall be carried out and the conduct of persons attending at such cremations or using or visiting the crematorium grounds or other property of the Board:
  - (iv) regulating the extent to which the public may have access to the crematorium and to the garden and grounds belonging thereto or to any other property of the Board:
- (p) generally to execute and do all such matters and things as in the opinion of the Board may be necessary or desirable in connection with all or any of the primary functions of the Board, and in maintaining, repairing, altering, enlarging, operating, and using the crematorium and any buildings, plant, or equipment for the time being belonging to the Board, and in exercising and giving effect to all or any of the powers and authorities

granted to or vested in the Board by this Act or incidental thereto respectively.

- (2) Any bylaws made by the Board shall be made by resolution of the Board and shall have the seal of the Board duly affixed thereto, and a notice stating the object or purport of the proposed bylaws shall be published in some newspaper circulating in the district in which the crematorium is situate once in each of the 4 weeks immediately preceding the day on which the bylaws are made.

### **31 Banking and withdrawal of Board moneys**

- (1) All moneys belonging to the Board amounting to 5 pounds and upwards shall, within 7 days after they have come to the hand of the proper officer of the Board, be paid into the account of the Board at such bank as the Board from time to time appoints.
- (2) No moneys shall be withdrawn from the bank except by authority of the Board and by cheque signed by any one member of the Board and countersigned by the Treasurer.

### **32 Board may establish an Imprest Account**

- (1) The Board may, pursuant to a resolution in that behalf, establish an Imprest Account, which shall be kept at such bank as the Board from time to time appoints.
- (2) The Imprest Account may be held jointly in the names of and be operated on by the Treasurer and one other person to be appointed in that behalf by the Board, or may, with the express approval in writing of the Audit Office, but not otherwise, be in the sole name of and be operated on by the Treasurer or other approved officer of the Board. Where the Imprest Account is held jointly in the names of the Treasurer and of one other person as aforesaid, such last-mentioned person shall be either a responsible officer of the Board or a member of the Board.
- (3) The Board shall from time to time by resolution fix the maximum amount that may be held at any time in the Imprest Account, not exceeding 75 pounds in any case where the Imprest Account may be operated on by 1 person acting alone, and not exceeding such amount as the Audit Office may approve in any other case.
- (4) Moneys in the Imprest Account shall be available only for the payment of wages and of emergency expenditure. A statement of all payments made from the Imprest Account shall be submitted to the Board for approval at its first ordinary meeting thereafter. The payment of moneys out of the Imprest Account for any purpose not hereby authorised shall be deemed to be the misappropriation of the funds of the Board.
- (5) The provisions of the last preceding section shall be read subject to the provisions of this section.

**33 Unauthorised expenditure**

The Board may in every financial year out of its funds expend for purposes not authorised by any Act or law for the time being in force any sum or sums not amounting in the whole to more than 1 per centum of the gross receipts of the Board for that year, nor in any case to more than 50 pounds.

**34 Accounts**

- (1) The Board shall keep full and correct accounts in such manner as may be prescribed by the Audit Office of all moneys received and expended by it, and such accounts shall be audited by the Audit Office, which for that purpose shall have and may exercise all such powers as it has under the Public Revenues Act 1926 in respect of public moneys and the audit of local authorities' accounts.
- (2) The Board shall, before the end of April in each year, cause the accounts of the Board for the past year ended 31 March then last past to be balanced, and also full and true statements and accounts of all the moneys received and expended by the Board during the past year and of the assets and liabilities of the Board at the end of the year, together with a profit and loss account for the year, to be prepared; and such statements and accounts, signed by the Chairman and the Treasurer of the Board, shall be submitted by the Chairman to the Audit Office and a copy thereof submitted to each of the contributing bodies. The net profits (if any) or the losses (if any) appearing in the said accounts shall be dealt with by the Board in accordance with paragraph 9 of the antecedent agreement.

**35 Extensions of time**

- (1) Where anything is omitted to be done or cannot be done at the time required by or under this Act, or is done after such time, or is otherwise irregularly done, or sufficient provision is not made by or under this Act, the Governor-General may, by Order in Council made at any time before or after the time within which such thing is required to be done, extend such time or may validate anything done after the time required or so irregularly done, or make other provisions for such case, as he thinks fit.
- (2) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	The maker must publish it in the <i>Gazette</i>	LA19 ss 73, 74(1)(a), Sch 1 cl 14
<b>Presentation</b>	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 35(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 35(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### **36 Service of summons, etc**

Any summons, writ, or other legal proceedings requiring to be served on the Board may be served by being left at the office of the Board or given personally to the Secretary or Chairman thereof.

### **37 Notice to Board of impending actions**

*[Repealed]*

Section 37: repealed, on 1 January 1952, by section 35(2) of the Limitation Act 1950 (1950 No 65).

### **38 Members not personally liable for act or default of Board**

No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operations of the Board, and no officer of the Board shall be personally liable for any act or default done or omitted to be done in good faith in the course of his authorised duties.

### **39 Fines**

- (1) Every person guilty of a breach of any bylaw made by the Board shall be liable on conviction to a fine not exceeding 20 pounds; or where the breach is a continuing one, then to a fine not exceeding 5 pounds for every day or part of a day during which the breach continues.
- (2) All fines recovered in any proceedings in respect of breaches of bylaws made by the Board shall be paid into the Public Account to the credit of the Consolidated Fund and be subject to section 13 of the Finance Act 1927 (No 2).

Section 39(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **40 Evidence**

A copy of any resolution of the Board or any committee thereof, certified by the Chairman of the Board to be correct, shall, until the contrary is proved, be sufficient evidence of such resolution in any proceedings under this Act.

### **41 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for any purpose for which regulations are contemplated by this Act, and may make all such other regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 41(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## **Schedule 1**

The Hastings Borough Council; the Napier Borough Council; the Hawke's Bay County Council; the Waipawa County Council; the Waipukurau County Council; the Patangata County Council; the Dannevirke County Council; the Havelock North Town Board; the Taradale Town Board.

## Schedule 2

This Agreement is made this tenth day of February one thousand nine hundred and forty-four between the Mayor Councillors and Burgesses of the Borough of Hastings of the first part the Mayor Councillors and Burgesses of the Borough of Napier of the second part the Chairman Councillors and Inhabitants of the County of Hawke's Bay of the third part the Chairman Councillors and Inhabitants of the County of Waipawa of the fourth part the Havelock North Town Board of the fifth part the Chairman Councillors and Inhabitants of the County of Patangata of the sixth part the Chairman Councillors and Inhabitants of the County of Dannevirke of the seventh part the Chairman Councillors and Inhabitants of the County of Waipukurau of the eighth part and the Taradale Town Board of the ninth part all of the said parties being hereinafter collectively referred to as "the contracting parties" And whereas the respective districts under the administration and control of the contracting parties are all situated within the Provincial District of Hawke's Bay And whereas no crematorium has yet been established or erected within the said Provincial District and the contracting parties being satisfied that it would be for the benefit and advantage of their respective districts have agreed to join and assist in the erection conduct control and maintenance of a crematorium and to contribute to the cost thereof in manner hereinafter provided And whereas the contracting parties have also agreed that the said crematorium shall be located and erected on a site offered by the Borough of Hastings (being part of its cemetery lands situated in Orchard Road at Hastings) containing an area of one acre one rood thirty decimal five perches (1 acre 1 rood 30.5 perches) more or less being part of Lot Number 1 on Deposited Plan Number 3538 and being Lot Number 1 on a plan about to be deposited in the Land Transfer Office at Napier and part of the land comprised in certificate of title H.B. Volume 42 folio 149 Hawke's Bay Registry And whereas acting for and on behalf of all the contracting parties and by their direction and authority the Hastings Borough Council has caused proper plans and specifications to be prepared and has duly entered into and executed a contract with Harry William Abbott of Hastings contractor for the erection of the said crematorium on the said site at the contract price of five thousand and fifty-eight pounds ten shillings (£5058 : 10 : 0) such plans and specifications having first been approved by the Honourable the Minister of Health as required by section 2 of the Cemeteries Amendment Act 1922 And whereas by the like direction and authority the Hastings Borough Council has entered into a contract with J. F. Hargrave Limited of Wellington for the supply and installation of plant and equipment for the said crematorium at the contract price of one thousand eight hundred and forty-four pounds ten shillings (£1844 : 10 : 0) Now this agreement witnesseth and it is hereby mutually agreed by and between the contracting parties in manner following that is to say:—

1. The Hastings Borough Council shall cause a survey to be made of the above mentioned site and on the completion of such survey shall without consideration transfer the said site to the Crematorium Board to be constituted as hereinafter provided and the costs of such survey and transfer shall be borne by the said Board.

2. The Hastings Borough Council shall cause the work of and incidental to the erection of the said crematorium to be proceeded with and completed in accordance with the said plans and specifications.
3. That the whole actual cost of and incidental to the erection and completion of the said crematorium (including therein the installation of the said plant and equipment, and the preparation and laying out of the grounds and all architect's fees) shall be borne by the contracting parties in the following shares or proportions, namely:—

By the Borough of Hastings	Twenty-six per centum
By the Borough of Napier	Twenty-six per centum
By the County of Hawke's Bay	Twenty-six per centum
By the County of Waipawa	Six per centum
By the Havelock North Town Board	Five per centum
By the County of Patangata	Four per centum
By the County of Dannevirke	Three per centum
By the County of Waipukurau	Two per centum
By the Taradale Town Board	Two per centum
4. The Hawke's Bay County Council shall in the first instance provide and advance the amount required to meet in full the cost referred to in the last preceding clause and shall pay the same by such progress instalments as shall from time to time be certified by the architects to be due and payable And each of the several other contracting parties hereto shall forthwith upon demand by the Hawke's Bay County Council either pay to the said Hawke's Bay County Council its share or percentage of each of the said progress payments made by it as provided by clause 3 hereof or make arrangements with the said Hawke's Bay County Council for the payment of the same in equal annual instalments extending over a period of not more than five (5) years together with interest on the amount for the time being outstanding at current bank rates on overdraft accounts calculated from the date of every such demand and payable yearly.
5. The Hastings Borough Council shall promote and use its best endeavours to procure the passing in the next convenient session of Parliament of a Bill with such clauses as may be necessary to ratify this agreement and to carry the same into effect and such other clauses as may be deemed advisable for the purpose of establishing and constituting a Crematorium Board to control and manage the said crematorium and defining the Board's powers and functions and the other contracting parties shall so far as the Hastings Borough Council may reasonably require aid and assist in obtaining the said intended Act and in furtherance of this object shall by themselves their officers and servants support the Bill by evidence or otherwise if need be.
6. When duly constituted the said Board shall consist of nine (9) members comprising one representative to be appointed by each of the contracting parties and on all matters to be decided by the said Board by a majority of votes the

number of votes which the members thereof shall be entitled to exercise shall be computed in accordance with the following table, namely:—

Representative of the Hastings Borough	26 votes
Representative of the Napier Borough	26 votes
Representative of the Hawke's Bay County	26 votes
Representative of the Waipawa County	6 votes
Representative of the Havelock North Town Board	5 votes
Representative of the Patangata County	4 votes
Representative of the Dannevirke County	3 votes
Representative of the Waipukurau County	2 votes
Representative of the Taradale Town Board	2 votes

7. Until the said Crematorium Board shall have been duly constituted the Hastings Borough Council shall free of charge control and manage the said crematorium and all matters pertaining thereto and in so doing shall comply with and administer the provisions of the Cremation Regulations 1939 and all other relative regulations and generally do and perform all such other acts matters and things as may be necessary for the proper and efficient functioning of the said crematorium And also after the said Crematorium Board shall have been duly constituted the Hastings Borough Council shall without charge to the said Board and subject to its direction continue to do and perform such acts matters and things relating to the administration and affairs of the said crematorium as the said Board may from time to time require Provided however that the said Hastings Borough Council shall not be obliged to comply with the terms of this clause beyond a period of two (2) years calculated from the date of this agreement.
8. That all costs incurred or paid by the Hastings Borough Council of and incidental to the preparation and completion of this agreement and the promotion and passing of the said local Bill and all out-of-pocket expenses incurred preliminary thereto and also during the period in which the affairs of the said crematorium are being administered by the Hastings Borough Council as aforesaid shall be refunded or paid by the said Crematorium Board.
9. The said Crematorium Board shall before the end of April in each year cause the accounts of the said Board for the past year ended the thirty-first day of March then last past to be balanced and also full and true statements and accounts of all the moneys received and expended by the Board during the past year and all the assets and liabilities of the said Board at the end of the year to be prepared and a copy thereof submitted to each of the contracting parties. The net profits (if any) appearing in the said accounts to have been earned by the said Board shall be divisible among the contracting parties in the same shares or proportions as the contracting parties shall have contributed to the cost of the said crematorium and the losses (if any) appearing in the said accounts to have been made by the said Board shall in the like shares or proportions be borne by the contracting parties. The distribution of any such profits and the contribution to any such losses shall be made at such time or

times and in such manner as may be determined by the said Crematorium Board.

10. The charges and fees payable in respect of every cremation taking place at the said crematorium shall be levied and assessed by the said Board in accordance with the table enumerated in the Schedule hereto with power to the said Board to alter or add to the said Schedule as the said Board may from time to time determine.
11. If any question difference or dispute shall arise with reference to this agreement or to its construction or as to anything herein contained or as to anything not fully provided for or as to the rights or liabilities of any of the contracting parties hereunder the same shall be referred to two arbitrators one to be appointed by each party in difference or to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them and every such reference shall be deemed an arbitration under the Arbitration Act 1908 and be subject to the provisions as to arbitration contained in the said Act or any statutory modification or re-enactment thereof and this agreement shall accordingly be deemed to be a submission within the meaning of the said Act.
12. The obligations hereunder on the part of each of the contracting parties are intended and shall be deemed to apply to its own acts and deeds only and shall not extend to the acts and deeds herein expressed to be done or performed by any of the other contracting parties.

In witness whereof this agreement has been executed by or on behalf of the parties hereto the day and year first before written.

### **The Schedule above referred to**

For the purposes of this Schedule—

“Crematorium district” means and includes the areas situated within the boundaries of the districts of the contracting parties:

“Award holidays” means and includes Sundays, Good Fridays, Anzac Days, Christmas Days, New Year’s Days, and all days which by the terms of any industrial award or agreement are deemed to be holidays, or on which wages in excess of ordinary rates are required to be paid:

“Ordinary days” mean all days other than those included in the expression “award holidays”.

### **Scale of charges**

<b>Particulars</b>	<b>Charges</b>					
	<b>Residents within crematorium district</b>			<b>Residents outside crematorium district</b>		
	<b>(£)</b>	<b>(s)</b>	<b>(d)</b>	<b>(£)</b>	<b>(s)</b>	<b>(d)</b>
(a) Cremation of adults and children 12 years of age and over—						

Particulars	Charges					
	Residents within crematorium district			Residents outside crematorium district		
	(£)	(s)	(d)	(£)	(s)	(d)
On ordinary days	5	5	0	6	6	0
On award holidays	6	6	0	7	7	0
(b) Cremation of children 6 years of age and under 12 years—						
On ordinary days	2	10	0	3	0	6
On award holidays	3	11	0	4	1	6
(c) Cremation of children under 6 years of age—						
On ordinary days	2	0	0	2	10	6
On award holidays	3	1	0	3	11	6
<b>Particulars</b>		<b>£</b>	<b>s</b>	<b>d</b>		
Medical referee's certificate		0	10	6		
Crematorium niches		3	3	0		
Disposal of Ashes: Subject to the provisions of the Cremation Regulations 1939 and any amendments thereof, ashes may be disposed of in any of the following ways, namely:—						
(1)	By being placed in the niches provided for that purpose					
(2)	By being removed by relatives					
(3)	By being dispersed by the Crematorium Board to the four winds of Heaven					
(4)	By being deposited in rose beds or around flowering shrubs or memorial trees provided or planted in the Crematorium grounds—					
Preparation of ashes and supply of plain urn		1	5	0		
Preparation and dispersal of ashes to four winds of Heaven		No charge				
Memorial trees and shrubs—						
Roses or approved shrubs		From 3	3	0		

The common seal of the Mayor Councillors and Burgesses of the Borough of Hastings was hereunto affixed in the presence of

[Seal]

A I Rainbow, Mayor.  
N C Harding, Town Clerk.

The common seal of the Mayor Councillors and Burgesses of the Borough of Napier was hereunto affixed in the presence of

[Seal]

T W Hercock, Mayor.  
F R Watters, Town Clerk.

The common seal of the Chairman Councillors and Inhabitants of the County of Hawke's Bay was hereunto affixed in the presence of

[Seal]

R Harding, Chairman.  
W J O'Connell, County Clerk.

The common seal of the Chairman Councillors and Inhabitants of the County of Wai-pawa was hereunto affixed in the presence of

[Seal]

Norman M Paulsen, Chairman.  
Frank Holt, County Clerk.

The common seal of the Havelock North Town Board was hereunto affixed in the presence of

[Seal]

H R von Dadelszen, Chairman.  
W H Anderson, Clerk.

The common seal of the Chairman Councillors and Inhabitants of the County of Patangata was hereunto affixed in the presence of

[Seal]

C Pattison, Chairman.  
M J Cleary Taylor, County Clerk.

The common seal of the Chairman Councillors and Inhabitants of the County of Dannevirke was hereunto affixed in the presence of

[Seal]

A H Hansen, Chairman.  
D L Crooks, County Clerk.

The common seal of the Chairman Councillors and Inhabitants of the County of Waipukurau was hereunto affixed in the presence of

[Seal]

L M Moncton, Chairman.  
R B Price, County Clerk.

The common seal of the Taradale Town Board was hereunto affixed in the presence of

[Seal]

Jno Williamson, Chairman.  
W G Jarvis, Clerk.

## Notes

### **1** *General*

This is a consolidation of the Hawke's Bay Crematorium Act 1944 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Criminal Procedure Act 2011 (2011 No 81): section 413

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Rating Act 1967 (1967 No 123): section 177(1)

Hawke's Bay Crematorium Amendment Act 1967 (1967 No 4)

Local Authorities (Members' Contracts) Amendment Act 1957 (1957 No 60): section 2(3)

Criminal Justice Act 1954 (1954 No 50): section 54(4)

Local Authorities (Members' Contracts) Act 1954 (1954 No 49): section 7(3)

Fees and Travelling Allowances Act 1951 (1951 No 79): section 10(1)

Limitation Act 1950 (1950 No 65): section 35(2)