

# CEMETERIES ORDINANCE 1935-1936.<sup>(1)</sup>

## An Ordinance to control and regulate Cemeteries and Burials.

**B**E it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1932*, as follows:—

### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Cemeteries Ordinance 1935-1936*.<sup>(1)</sup> Short title.  
Amended by  
No. 3 of 1934,  
s. 50.
2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.<sup>(1)</sup> Commencement.
3. This Ordinance is divided into Parts, as follows:— Parts.
  - Part I.—Preliminary.
  - Part II.—Establishment, Care, and Control of Cemeteries.
  - Part III.—Burials.
  - Part IV.—Miscellaneous.
4. In this Ordinance, unless the contrary intention appears— Definitions.

“Administration land” includes all lands the right, title, estate, interest, control, or prerogatives of the Government in, over, or to which passed to the Commonwealth in the terms of the *Laws Repeal and Adopting Ordinance 1921-1935*,<sup>(2)</sup> and all lands vested in the Administration which have not been dedicated to any public

(1) The *Cemeteries Ordinance 1935-1936* comprises the *Cemeteries Ordinance 1935*, as amended by the other Ordinance referred to in the following Table:—

#### ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date of reservation by Administrator.	Date on which assent of Governor-General in Council published in <i>N.G. Gaz.</i>	Date on which came into operation.
<i>Cemeteries Ordinance 1935</i> (No. 45 of 1935)	..	31. 7. 1935	14. 12. 1935	2. 3. 1936 ( <i>N.G. Gaz.</i> of 15. 1. 1936)
<i>Cemeteries Ordinance 1936</i> (No. 20 of 1936)	26. 2. 1936(a)	..	..	2. 3. 1936 (Sec. 2, <i>Cemeteries Ordinance 1936</i> )

(a) Notified in *N.G. Gaz.* of 15. 6. 1936 as not disallowed by Governor-General in Council.

(2) Now the *Laws Repeal and Adopting Ordinance 1921-1939*.

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purpose and which have not been granted in fee simple or lawfully contracted to be so granted and which have not been leased or contracted to be leased under the *Land Ordinance 1922-1935*;<sup>(3)</sup>

“cemetery” means an area declared or deemed to be declared a cemetery under section five of this Ordinance;

“cemetery authority” in relation to a particular cemetery means the person in whom, for the time being, the care, control, and management of the cemetery is vested under section ten of this Ordinance;

“District Registrar” means “District Registrar” as defined by the *Registration of Births, Deaths, and Marriages Ordinance 1935*;<sup>(4)</sup>

“grave” means any burial place formed in the ground by excavation;

“monument” includes any headstone, tombstone, or tablet.

### PART II.—ESTABLISHMENT, CARE, AND CONTROL OF CEMETERIES.

Cemeteries.

5.—(1.) The Administrator may, by notice,<sup>(5)</sup> declare any area of Administration land described in the notice to be a cemetery and may reserve the whole or portion of the cemetery for the burial of one or more of the following classes:—

(a) Persons of European origin;

(b) Natives; and

(c) Persons not included within the classes mentioned in the last two preceding paragraphs.

(2.) Any area of Administration land<sup>(6)</sup> which at the commencement of this Ordinance is set apart for use, or used, as a burial ground, shall be deemed to be a cemetery declared under this section.

Power to abolish or close cemeteries.

6.—(1.) The Administrator may, by notice,<sup>(7)</sup> declare any cemetery or any portion of any cemetery to be abolished or to be closed against subsequent burials.

(3) Now the *Land Ordinance 1922-1941*.

(4) Now the *Registration of Births, Deaths, and Marriages Ordinance 1935-1941*.

(5) A Table containing particulars of lands declared to be cemeteries pursuant to Section 5 and setting out the classes of persons for whose burial the cemeteries are reserved is printed on p. 153. The notices containing the descriptions and boundaries of the reserved lands are printed immediately after the Table. A Table, containing particulars of persons appointed to be officers-in-charge of cemeteries, is printed in footnote (10) on p. 144.

(6) See Section 68 (10) of the *Land Ordinance 1922-1941*; and, as an example, Proclamation dated 9th August, 1934, published in *N.G. Gaz.* of 15th August, 1934, and printed below, title LAND. See also (sed quare) a notice (undated) published in *N.G. Gaz.* of 15th June, 1923, whereby the Commissioner for Native Affairs notified the closure of the Old Native Cemetery at Malaguna and the opening of the New Native Cemetery on the road to Matupi.

(7) Pursuant to Section 6, the Administrator, by notice dated 18th March, 1940, and published in *N.G. Gaz.* of 30th March, 1940, declared the “cemetery whose area is described in the Schedule hereto, to be closed against burials.

[Footnote continued on next page.]

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(2.) The holder of a right reserved under section thirteen of this Ordinance to any burial allotment affected by a declaration under the last preceding sub-section shall be entitled to an equivalent right in such other cemetery as the Administrator directs.

7.—(1.) The Administrator may, where for any reason he deems it necessary, order the exhumation and the reburial, in any other cemetery or in any other portion of the same cemetery, of any body buried in any cemetery or any portion of any cemetery declared to be abolished under the last preceding section.

Transfer of remains from one cemetery to another.

(2.) Where any order is made under the last preceding sub-section, the cost of exhumation and reburial shall be borne by the Administration, and the cemetery authorities respectively at the places of exhumation and reburial shall record the names of the persons whose remains are so exhumed and reburied and the particulars of the date and place of reburial.

(3.) Before making an order under sub-section (1.) of this section, the Administrator shall publish in the *New Guinea Gazette* a notice declaring his intention to make the order and requiring the next of kin of the persons whose remains will be affected by the order to state, within three months from the publication of the notice, whether or not they desire to undertake the exhumation and reburial of the remains.

8.—(1.) The Administrator may, by notice,<sup>(8)</sup> license the owner or, with the consent of the owner, the lessee of any land not being land within the boundaries of any area prohibited under the next succeeding section, to set apart and use a specified portion of the land for burials, subject to such conditions or limitations as the Administrator may impose.

Private burial grounds.  
Sub-section (1.) amended by No. 20 of 1936, s. 3.

(2.) Any land the subject of a licence under the last preceding sub-section shall be deemed to be a cemetery for the purposes of sections six, fifteen, sixteen, and twenty of this Ordinance.

9. The Administrator may, by notice,<sup>(9)</sup> declare any area described in the notice to be an area in which burial is prohibited.

Prohibited areas.

(7).—continued.

THE SCHEDULE.

All that piece of land containing 3 ares more or less situated on Sohano Island in the District of Kieta commencing at a point distant 371 metres and bearing magnetic 151 degrees from the south western corner of Sohano Recreation Reserve and bounded thence on the east by a straight line bearing magnetic 164 degrees for 26 metres thence on the south by a straight line bearing magnetic 254 degrees for 40 metres thence on the west by a straight line bearing magnetic 344 degrees and thence on the north by a straight line bearing magnetic 74 degrees to the point of commencement by the said several dimensions all a little more or less."

(8) A Table containing particulars of notices made pursuant to Section 8 is printed on p. 159. The notices containing the descriptions and boundaries of the land set apart for burials are printed immediately after the Table.

(9) No notice has been published in *N.G. Gaz.*

## CEMETERIES—

Care, control, and management of cemeteries.

**10.—(1.)** The Administrator may, by notice,<sup>(10)</sup> appoint an officer of the Public Service of the Territory to be the officer-in-charge of a cemetery.

(2.) Subject to this Ordinance and the Regulations thereunder and to the control and authority of the Administrator or an officer appointed by him by notice, the officer-in-charge of a cemetery shall have the care, control, and management of the cemetery.

Cemeteries to be apportioned and divided.

**11.** Subject to any reservation made under section five of this Ordinance, the cemetery authority may, in such manner as he thinks fit,—

- (a) set apart portions of the cemetery for the burial of deceased persons according to their different religious denominations; and
- (b) divide the cemetery into burial allotments of the prescribed dimensions, and pathways affording proper access to the burial allotments:

Provided that no burial allotment shall be nearer to any external boundary of the cemetery than four metres.

Plan of cemetery.

**12.—(1.)** The cemetery authority shall cause a plan of the cemetery to be prepared.

(2.) Every burial allotment shall be shown on the plan and shall be identified with, and distinguished by, a number marked on the plan different from the number of any other burial allotment shown on the plan.

(3.) The plan of the cemetery shall be kept in the office of the cemetery authority where it may be inspected during office hours by any person upon payment of the prescribed fee.

(10) The Administrator, by the notices (particulars of which are set out in the following Table) made pursuant to Section 10 of this Ordinance, appointed the persons for the time being holding the offices set out in the fourth column of the Table to be the officers (a) in charge of the respective cemeteries set out in the third column of the Table:—

Date on which notice made.	Date on which published in <i>N.G. Gaz.</i>	Cemeteries.	Office.
7.3.1936	14.3.1936	Cemeteries within the Rabaul Botanic Reserve <sup>(b)</sup>	Director of Agriculture
10.2.1936	14.3.1936	Cemeteries in the District of New Britain other than those within the Rabaul Botanic Reserve <sup>(b)</sup>	District Officer, New Britain
10.2.1936	14.3.1936	Cemeteries in the District of New Ireland	District Officer, New Ireland
10.3.1936	14.3.1936	Cemeteries in the District of Manus	District Officer, Manus
10.3.1936	14.3.1936	Cemeteries in the District of Madang	District Officer, Madang
10.3.1936	14.3.1936	Cemeteries in the District of Morobe	District Officer, Morobe
10.3.1936	14.3.1936	Cemeteries in the District of Kieta	District Officer, Kieta
10.3.1936	14.3.1936	Cemeteries in the Sepik District	District Officer, Sepik

(a) Officers appointed pursuant to Section 10 are charged with the care, control and management of land declared to be a cemetery pursuant to Section 5 (1), or deemed to be a cemetery pursuant to Section 5 (2). Their appointments are not applicable to land set apart for burials pursuant to Section 8 (1).

(b) For the boundaries of the Rabaul Botanic Reserve, see Regulation 5 of the *Rabaul Botanic Reserve Regulations 1929*, printed below, title LAND.

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**13.**—(1.) Upon the application of any person, the cemetery authority may, for the burial of deceased persons other than natives within a cemetery, reserve to the person during the prescribed period and subject to the payment of the prescribed fees, the right to such number of burial allotments as the cemetery authority thinks sufficient.

Rights to burial allotments.

(2.) Where a right has been reserved under the last preceding sub-section, the cemetery authority shall issue a certificate in the prescribed form specifying the burial allotments the subject of the right and the class or classes which may be buried in them.

(3.) A right reserved under this section shall at any time before expiry be assignable with the consent of the cemetery authority; and, upon the death of the holder of the right, it shall pass to the executors or administrators of the holder.

(4.) A burial shall not be made in any burial allotment which is the subject of a right reserved under this section except with the consent of the holder or his executors or administrators.

(5.) The cemetery authority shall keep a register of the rights reserved under this section and shall enter in the register the names of the persons for whom they were reserved and the particulars of any assignments afterwards duly made.

(6.) Any holder of a right reserved under this section may surrender it at any time and shall be discharged from all liability for any fees not then accrued due and owing upon the right.

**PART III.—BURIALS.**

**14.** The provisions of this Part shall not apply to the burial of natives.

Non-application of Part to native burials.

**15.**—(1.) Any person who, except in cases of emergency, carries out any burial in any place other than a cemetery, shall be guilty of an offence.

Burials in places other than cemeteries prohibited.

Penalty: One hundred pounds or imprisonment for six months.

(2.) Where in any case of emergency a burial is carried out in any place other than a cemetery, the person carrying out the burial shall, immediately after the burial, forward to the District Registrar information as to the name, sex, and age of the person buried, together with particulars of the date, place, and manner of death and the date and place of burial and a statement of the reasons why the burial was not carried out in a cemetery.

(3.) The District Registrar, on receipt of information under the last preceding sub-section, shall notify a coroner.

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Requisites  
for burial.

**16.**—(1.) A burial shall not be carried out in any cemetery without the written consent of the cemetery authority, who shall not give his consent unless there is produced to him—

- (a) a certificate of a District Registrar that the death has been registered;
- (b) a certificate of a legally qualified medical practitioner showing that death was due to natural causes; or
- (c) a warrant or order to bury signed by a coroner.

(2.) Where it is alleged that the body awaiting burial is that of a stillborn child, the consent of the cemetery authority shall be given only on production to him of a certificate that the child was born dead, which certificate shall be signed by either—

- (a) a legally qualified medical practitioner who was in attendance at the birth; or
- (b) a justice of the peace or a European member of the New Guinea Police Force, who shall state in the certificate that he has inquired into the circumstances surrounding the birth.

(3.) The cemetery authority for the purpose of consenting to a burial in any land the subject of a licence under section eight of this Ordinance shall be a District Officer or the cemetery authority of the cemetery which is nearest to the land.

(4.) Notwithstanding the provisions of this section, where it is impracticable to keep a body unburied until the consent required by this section can be obtained, the body may be buried, but the person carrying out the burial shall, immediately after the burial, forward to the District Registrar, information as to the name, sex, and age of the person buried, together with particulars of the date, place, and manner of death and the date and place of burial and a statement of the reasons why the body was buried without the consent of the cemetery authority.

Preparation  
and closing  
of graves.

**17.**—(1.) Where, under the last preceding section, the cemetery authority gives his consent to a burial other than a burial in any land the subject of a licence under section eight of this Ordinance, he shall—

- (a) cause a grave to be prepared in the appropriate portion of the cemetery; and
- (b) when the burial has been completed—
  - (i) cause the grave to be closed; and
  - (ii) notify the District Registrar of the burial in the prescribed form.

(2.) Where any person referred to in sub-section (3.) of the last preceding section gives his consent to a burial in any land the subject of a licence under section eight of this Ordinance, he shall notify the District Registrar of the burial in the prescribed form.

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**18.** Where a burial is carried out in any land the subject of a licence under section eight of this Ordinance, the licensee shall— Burial in private burial ground.

- (a) cause a grave to be prepared; and
- (b) when the burial has been completed—
  - (i) cause the grave to be closed; and
  - (ii) notify the District Registrar of the burial in the prescribed form.

**19.—(1.)** Not more than two bodies shall be buried in any one grave, and the upper surface of a coffin shall not be less than one hundred and twenty centimetres below the natural surface of the land surrounding the grave. Limitation of burials in one grave.

(2.) When any grave is opened to receive a second body, the excavation shall be made so as to leave undisturbed a layer of earth not less than thirty centimetres in thickness above the upper surface of the coffin already in the grave.

**20.** A burial in a cemetery shall not be carried out between the hours of six o'clock in the evening and six o'clock in the morning. Time of burial.

**21.—(1.)** For every burial in a cemetery, the prescribed burial fees shall be payable to the cemetery authority. Burial fees.

(2.) The cemetery authority may require payment of the prescribed burial fees before he gives his consent to the burial, unless the application for the consent is made by or on behalf of the Superintendent of Police.

(3.) Where the cemetery authority is satisfied that the estate of a deceased person has insufficient means to pay the prescribed burial fees, he may recommend their remission and the Administrator may remit them accordingly.

**22.—(1.)** The cemetery authority, or the licensee under section eight of this Ordinance, shall keep a register of burials in which he shall cause to be entered particulars of every burial as it occurs. Register of burials.

(2.) The particulars shall include the date of the burial, the name, sex, and age of the deceased, the number of the grave, and the portion of the cemetery in which it is situated.

(3.) Any person, upon paying the prescribed fee, shall be entitled to search the register of burials at all reasonable hours.

**PART IV.—MISCELLANEOUS.**

**23.** The cemetery authority shall cause special care and attention to be given to the maintenance of graves in respect of which the prescribed maintenance fees have been paid. Special care of graves.

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### Erection of monuments.

**24.**—(1.) A monument shall not be placed or erected in any portion of a cemetery without the written approval of the cemetery authority.

(2.) The approval of the cemetery authority shall not be given unless the application for approval is accompanied by—

- (a) a drawing or sketch showing the design and dimensions of the monument;
- (b) a description of the materials to be used;
- (c) the inscription to be marked on the monument; and
- (d) the prescribed fee.

(3.) Any monument placed or erected in contravention of this section may be removed by the cemetery authority at the expense of the person who placed or erected it.

### Maintenance of monuments.

**25.**—Any person who places or erects a monument in any cemetery, and any holder of a right reserved under section thirteen of this Ordinance to any burial allotment upon which a monument is placed or erected, shall maintain the monument in good order and repair.

### Exhumations.

**26.**—(1.) The Administrator may order or authorize the exhumation of any body and may, subject to such conditions as he thinks fit, delegate this power to a District Officer administering a District to be exercised by him within the District which he is appointed to administer.

(2.) Subject to any law relating to coroners, a coroner may order the exhumation of any body buried within a District in which he has jurisdiction.

(3.) The power to order or authorize exhumation of a body under this section shall include the power to order or authorize reburial of the body.

(4.) Where, for any reason other than for the purpose of an inquest or for the purpose of the reburial referred to in section seven of this Ordinance, the exhumation of a body is ordered or authorized, the person obtaining the order or authority shall pay the prescribed fees for exhumation and reburial.

(5.) Except as provided in this section and in section seven of this Ordinance, a person shall not exhume any body.

### Particular offences.

**27.** A person shall not within any cemetery—

- (a) sell or buy any article or thing;
- (b) distribute any handbill, card, circular, or advertisement;
- (c) take part in any meeting other than of a religious or commemorative character;

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- (d) disturb any funeral service at any grave whether by working or playing in the neighbourhood or otherwise;
- (e) discharge any firearm except at a military funeral;
- (f) wantonly damage or disturb any monument, flower, or token placed or erected upon any grave; or
- (g) commit any riot, breach of the peace, or nuisance or otherwise offend against decency or decorum.

**28.** Any person who commits an offence against, or contravenes any provision of, this Ordinance, shall, where no other penalty is provided, be liable in respect of the offence or contravention to a penalty not exceeding Fifty pounds. Penalties.

**29.** The Administrator in Council may make regulations,<sup>(11)</sup> not inconsistent with this Ordinance, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular prescribing matters providing for and in relation to— Power to make regulations.

- (a) the forms to be used in connexion with this Ordinance;
- (b) the period for which rights may be reserved under section thirteen of this Ordinance;
- (c) the fees to be charged for the performance of the several acts, matters, and things provided for in this Ordinance; and
- (d) the imposition of penalties not exceeding Fifty pounds for breaches of the Regulations.

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(11) See the *Cemeteries Regulations 1935*, printed on p. 150.