

ACT 563
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ACT 563

MORTUARIES AND FUNERAL FACILITIES ACT, 1998(1)

AN ACT to establish a Board to control and regulate facilities connected with the storage and disposal of human remains, register practitioners and to provide for related matters.

Establishment and Functions of the Board

1. Establishment of the Board

(1) There is established by this Act a body corporate to be known as the National Board for Mortuaries and Funeral Facilities.

(2) The Board shall have perpetual succession, a common seal and may sue and be sued in its own name.

(3) The Board may for the performance of its functions, acquire and hold movable or immovable property and may enter into a contract or any other transaction.

2. Object and functions of the Board

(1) The object of the Board is to control and regulate facilities connected with the storage and disposal of human remains.

- (2) For the purpose of subsection (1) of this section, the Board shall
- (a) regulate facilities under this Act;
 - (b) approve and register practitioners;
 - (c) determine basic specifications of equipment for facilities;
 - (d) ensure in the public interest the provision of the highest standard of service by practitioners;
 - (e) regulate the siting of facilities in the country;
 - (f) issue licences;
 - (g) categorise the various facilities for handling human remains and classify them in accordance with their storage capacity;
 - (h) establish, develop, and maintain ethics for practitioners;
 - (i) approve or set courses of study and examinations for the qualification of applicants for registration in collaboration with such educational institutions as it may determine;
 - (j) promote public education activities with respect to this Act;
 - (k) supervise and monitor activities of the district committees under this Act;
 - (l) act as mediator of complaints between consumers and practitioners;
 - (m) determine and approve fees payable under this Act by practitioner and licensees;
 - (n) control and monitor the standard of service for storage and disposal of human remains in government institutions and advise the Minister accordingly; and
 - (o) perform any other functions as are ancillary to the object of the Board.
- (3) The Board may delegate its functions under this Act.

3. Composition of the governing body

- (1) The governing body of the Board is a Council consisting of
- (a) the chairman who is a pathologist,
 - (b) one anatomic pathologist working in a government institution who shall be the Registrar,
 - (c) one representative each of the following, nominated by the body concerned
 - (i) the Ministry of Interior,
 - (ii) the Criminal Investigation Department of the Police Service,
 - (iii) the Registry of Births and Deaths,
 - (iv) the Attorney-General's Department,
 - (v) the Environmental Protection Agency,
 - (d) one coroner nominated by the Chief Justice,
 - (e) three representatives of practitioners under this Act, and
 - (f) two other persons nominated by the Minister to represent consumer interest at least one of whom is a woman.

(2) The members of the Council shall be appointed by the President in accordance with article 70 of the Constitution.

4. Tenure of office of members of the Council

(1) Members of the Council shall hold office for a term of four years and are eligible for re-appointment.

(2) A member of the Council may resign from office in writing addressed to the President through the Minister.

(3) Where the office of a member of the Council becomes vacant before the expiration of his term of office for any reason, the chairman shall inform the Minister who shall notify the President of the vacancy and the President shall, acting on the advice of the nominating authority where applicable and in consultation with the Council of State, appoint another person to hold office for the unexpired portion of his term of office.

(4) The President may in writing remove a member for stated reasons.

(5) A member of the Council shall be paid the allowances determined by the Board with the approval of the Minister for Finance.

(6) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause shall cease to be a member.

5. Meetings of the Council

(1) The Council shall meet at least once every three months for the transaction of business at the times and places determined by the chairman.

(2) The chairman shall preside at the meetings of the Board and in the absence of the chairman a person elected by the membership of the Council present from among their number shall preside.

(3) The chairman shall at the request in writing of not less than one-third of the membership of the Council, convene an extraordinary meeting of the Council at the place and time determined by the Council.

(4) A decision of the Council shall be by the majority of the members present and voting and in the event of equality of votes, the chairman or person presiding shall have a casting vote.

(5) The quorum for a meeting is seven members of the Council.

(6) The Council may co-opt a person to attend any of its meetings, but the person shall not vote on a matter for decision by the Council.

(7) The proceedings of the Council shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8) A member of the Council who has an interest in a contract or any other transaction proposed to be entered into with the Board or an application before the Board shall disclose in writing to the Council the nature of the interest and is disqualified from participating in any deliberations of the Council in respect of the contract, application or other transaction.

(9) A member who infringes subsection (8) ceases to be a member of the Council.

(10) Subject to the provisions of this section the Council shall regulate the procedure for its meetings.

6. Appointment of committees

The Council may for the performance of its functions appoint committees consisting of members of the Council or non-members or both to perform any of its functions as it may determine, except that a committee composed entirely of non-members may only advise the Council.

7. Minister to give directives

The Minister may issue directives in writing to the Council on matters of policy and the Council shall give effect to the policies.

Decentralised Management of Facilities

8. Composition of district committee

- (1) There shall be established in each district a district mortuary and funeral facilities committee.
- (2) A district committee shall consist of
 - (a) the district director of health services as the chairman,
 - (b) the district coroner,
 - (c) the district police commander,
 - (d) two representatives of the District Assembly,
 - (e) the district representative of the Registrar for Births and Deaths,
 - (f) the district town and country planning officer,
 - (g) one representative of practitioners in the district registered under this Act nominated by the District Chief Executive, and
 - (h) one female citizen nominated by the District Chief Executive to represent consumer interests.
- (3) The members of a district committee shall be appointed by the Board.

9. Functions of a district committee

- (1) A district committee shall, in the respective district,
 - (a) receive and consider applications for licences under this Act;
 - (b) renew licences under this Act;
 - (c) recommend to the Council the siting of facilities and hold public hearings on the issue where necessary;
 - (d) inspect and monitor facilities;
 - (e) submit a report of a contravention of a provision of this Act to the Council within fourteen days of becoming aware of the contravention;
 - (f) carry out temporary closure of facilities and report the closure to the Council;
 - (g) submit to the Council the reports it shall direct; and
 - (h) perform any other functions for the purposes of this Act determined by the Council.

(2) A district committee in the performance of its functions shall collaborate with the sub-committee of the District Assembly.

(3) The provisions of sections 4 and 5 shall apply with the necessary modifications to a district committee.

10. Petitions from district committees

(1) A person aggrieved by a decision or action of a district committee may submit a petition to the Board.

(2) The provisions of this section are without prejudice to any right of action to obtain redress from the courts.

Registration of Practitioners

11. Registration of practitioners

A person shall not operate in a facility as a practitioner unless that person is registered under this Act.

12. Application for registration

A person seeking registration to practise in a facility shall apply in the prescribed form to the registrar of the Board through the relevant district committee.

13. Qualification of practitioners

(1) Where the Council is satisfied that the applicant has adequate relevant training and qualification it shall direct the registrar to record the name of the applicant in the register of practitioners.

(2) The registrar shall issue the applicant with a certificate of registration on the payment by the applicant of the prescribed fee.

(3) A person issued with a certificate under subsection (2) is a practitioner for the purposes of this Act.

(4) Registration under this Act is in addition to registration required under any other law in force in respect of the practice.

(5) The certificate of registration shall expire on the 31st day of December in the year of issue.

(6) The certificate may be renewed subject to this Act.

14. Register of practitioners

(1) The registrar shall record in the Register of Practitioners the names of practitioners registered under this Act.

(2) The Council shall determine the registration fee to be paid by practitioners.

15. Cancellation of registration

(1) A certificate of a practitioner shall be cancelled by the Council on the recommendations of the registrar where the practitioner

- (a) has been convicted of an offence under this Act or the Regulations,
- (b) has breached any of the terms of the licence for the facility, or
- (c) has lost the qualification on the basis of which the registration was made.

(2) A certificate of a practitioner shall be cancelled if the Council considers it necessary in the interest of public health.

16. Suspension of registration

(1) The Council may suspend for a period determined by the Council the registration of a practitioner in any of the following circumstances where

- (a) an offence in relation to the practitioner is being investigated;
- (b) allegations of misconduct have been made against the practitioner;
- (c) a false declaration has been made in a certificate issued by the practitioner; or
- (d) the practitioner has contravened but has not been convicted of a provision of this Act.

(2) The Council shall conduct and conclude its investigation within a period of six months from the time of suspension of the practitioner.

17. Representation to the Board

A registration shall not be cancelled or suspended unless the Council has given the practitioner at least thirty days notice of its intention to cancel or suspend the registration and has provided the practitioner an opportunity to make representations, to the Council.

Licensing of Facilities

18. Licence of facility

(1) A person shall not own or operate a facility unless that facility is licensed under this Act.

(2) Facilities to which subsection (1) apply are

- (a) cold storage facilities for human remains;
- (b) mortuaries;
- (c) funeral homes;
- (d) crematoria;
- (e) columbariums;
- (f) mausoleums;
- (g) cemeteries; and
- (h) hearses.

(3) There shall be prescribed in the Regulations the details of the services to be rendered by the facilities specified in subsection (2).

19. Application and conditions for a licence

- (1) A person may apply to a district committee for a licence to own or operate a facility.
- (2) There shall be attached to the application
 - (a) a preliminary approval from the district planning authority of the relevant District Assembly of the suitability of the land or premises to be used for the facility,
 - (b) the block plan of the facility,
 - (c) the requisite clearance from the Environmental Protection Agency, and
 - (d) evidence of financial capability for the ownership or operation of the facility applied for.
- (3) A licence shall not be granted to an applicant unless the district committee is satisfied that
 - (a) the past or present conduct of the person concerned with the operation of the facility provides reasonable grounds to believe that the applicant will operate in accordance with this Act,
 - (b) the applicant or managing employee of the applicant has the experience or training to manage the facility in accordance with this Act,
 - (c) the applicant has submitted a plan of the facility,
 - (d) the applicant is able to provide the resources and equipment required to manage the facility, and
 - (e) any other requirement specified by the Council has been complied with.
- (4) For the purposes of this Act “**a person concerned with the operation of the facility**” in subsection (3) (a) means
 - (a) the applicant,
 - (b) an officer or director of the facility,
 - (c) a person holding more than ten percent of the equity shares of the facility or an officer or director of that person, or
 - (d) a person who has a beneficial interest in the operation of the facility.

20. Issue and renewal of licence

- (1) Where a district committee is satisfied that an applicant qualifies under sub-section (3) of section 19 and has fulfilled all other conditions required under this Act, it shall make the necessary recommendation to the Council which may issue the licence.
- (2) The licence shall expire on the 31st day of December of the year of issue and may be renewed subject to this Act.
- (3) There shall be paid by the applicant in respect of the licence and a renewal of it the fee prescribed by the Council, and a licence or renewal shall not be issued unless the relevant fee has been paid.

21. Revocation of licence

A district committee may refuse to renew a licence to own or operate a facility if

- (a) the conduct or situation of the licensee disqualifies the licensee from being granted a licence;
- (b) the licensee is a body corporate and the shareholding of the body has changed in a way that

- compromises the financial ability or technical competence or both; or
- (c) a district committee has reasonable grounds to believe that the continued operation of the facility by the licensee will
 - (i) create risk to public health, safety or is indecent, or
 - (ii) result in a social or financial loss to members of the public because of non-compliance with the provisions of this Act.

22. Notice of refusal to renew licence

Where a district committee intends to refuse to renew a licence, the district committee shall give the applicant or licensee

- (a) a notice of intention to refuse,
- (b) reasons for the intention to refuse, and
- (c) an opportunity to make representation to the Board.

23. Representation to the Board

(1) An applicant or licensee who receives a notice under section 22 may make a representation to the Board within fifteen days from the date of receipt of the notice of refusal.

(2) Where a representation is not made under subsection (1), a district committee may refuse to renew a licence or may recommend the revocation of the licence, after the time specified under subsection (1) of this section has expired.

(3) Where representation is made under this section the affected facility shall not operate until the case is determined by the Council.

24. Power of entry and inspection

(1) Subject to subsection (2), a person authorised by a district committee may at any time enter

- (a) a licensed facility used for the storage and disposal of human remains, or
- (b) any premises suspected by the authorised person to be used for the storage and disposal of human remains.

(2) Where an authorised officer enters a place by virtue of subsection (1), the authorised officer shall inspect as applicable

- (a) the facility including plant and equipment,
- (b) the licence, registers and books of the facility,
- (c) the registration certificate of any practitioner, and
- (d) the premises,

and make recommendations to the district committee.

(3) The inspector shall at the request of the person in charge of the facility or premises produce the authorisation.

(4) The Council shall cause each licensed facility to be inspected at least once a year.

(5) A police officer not below the rank of Assistant Superintendent may enter a facility or any premises if the police officer has reasonable cause to believe that an offence with respect to this Act has been or is being committed there.

(6) A district committee may order the closure of a facility in the presence of a police officer if it is considered to be in the public interest to do so.

25. Obstruction of inspector

A person shall not obstruct an authorised inspector in the performance of a function under this Act.

Burial Grounds

26. Authorised burial grounds

(1) A person shall not bury the human remains of a person in a place other than in a burial ground authorised under this Act.

(2) A burial ground authorised under this Act shall be registered with the district committee.

27. District Assemblies to provide burial grounds

Each District Assembly shall, on the advice of its district committee, provide public burial grounds for the burial of human remains or corpses in the area of authority of the District Assembly.

28. Private burial grounds

(1) A District Assembly may on the advice of its district committee license as a private burial ground a parcel of land which a person may wish to set aside as a private burial ground.

(2) There shall be attached to a licence issued under subsection (1) the conditions determined by the District Assembly in consultation with its sub-committee.

29. Exhumation

(1) The Board, through the Minister and in consultation with the relevant District Assembly, may apply to the coroner to order the exhumation of any human remains and removal of the human remains to a place it shall direct.

(2) Subject to the Coroners Act, 1960 (Act 18) a person shall not exhume, or after burial remove, any human remains except under subsection (1).

Staff, Financial and Miscellaneous Provisions

30. Registrar and his functions

(1) There shall be appointed by the President in accordance with article 195 of the Constitution, a registrar of the Board.

(2) The registrar is responsible for the day-to-day administration of the affairs of the Board and is answerable to the Council in the performance of the functions of office.

(3) The registrar shall keep up-to-date records of registered practitioners and licensed facilities under

this Act.

(4) The registrar shall as approved by the Council, issue and renew the registration certificates of practitioners.

(5) The registrar shall perform any other functions determined by the Council.

(6) The registrar may delegate any of the functions to another officer of the Board but the registrar is not relieved from ultimate responsibility for the performance of a delegated function.

31. Administrative secretary

(1) The President shall appoint an administrative secretary of the Board, in accordance with article 195 of the Constitution.

(2) The administrative secretary shall assist the registrar in the performance of functions and shall be the secretary to the Board.

32. Appointment of staff

(1) The Board shall have other officers and staff necessary for the proper and effective performance of its functions.

(2) The staff of the Board shall perform the functions that the Registrar may assign to them.

(3) The President shall in accordance with article 195 of the Constitution and on the terms and conditions determined by the President, appoint the staff of the Board.

(4) The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment of the public officers under this Act.

(5) The Board may engage the services of consultants and advisers on the recommendation of the registrar.

(6) Other public officers may be transferred or seconded to the Board or may otherwise give assistance to it.

33. Funds of the Board

The funds of the Board include

- (a) money approved by Parliament for the Board,
- (b) grants and loans received through the Government,
- (c) fees received by the Board in the performance of its functions, and
- (d) donations.

34. Accounts and audit

(1) The Board shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The books of account of the Board shall be audited by the Auditor-General within three months of the end of the immediately preceding financial year.

(3) The financial year of the Board shall be the same as the financial year of the Government.

35. Opening of bank account

The Board may with the approval of the Accountant-General open and operate bank accounts.

36. Annual reports

(1) The Council shall, within six months of the end of the financial year, submit to the Minister an annual report of the activities and operations of the Board in respect of the preceding year.

(2) The annual report shall include a copy of the audited accounts together with the Auditor-General's report and the Minister shall within two months after receipt of the annual report submit the report to Parliament with the necessary comments.

(3) The Council shall also submit to the Minister any other reports that the Minister may in writing require.

37. Offences

A person who

- (a) practises in a facility without registering as a practitioner under this Act,
- (b) uses a facility for services other than what it is licensed for,
- (c) fails to license a facility contrary to section 18,
- (d) makes a false declaration in pursuance of an application for registration or for a licence under this Act,
- (e) having failed to renew the registration or licence operates the facility contrary to sections 13 and 20,
- (f) obstructs an inspector appointed under this Act contrary to section 25,
- (g) obstructs a district committee from implementing the closure of a facility,
- (h) disregards a provision of the safety Regulations,
- (i) pollutes the environment in the course of his operations under this Act,
- (j) accepts, releases or disposes of human remains contrary to this Act or the Regulations,
- (k) buries human remains in a place other than an authorised burial ground contrary to section 27 or 28,
- (l) exhumes or after burial removes any human remains contrary to section 29, or
- (m) contravenes any other provision of this Act,

commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment for a term not exceeding two years or to both the fine and the imprisonment and the Court may order temporary or permanent closure of the facility.

38. Regulations

The Minister may by legislative instrument make Regulations

- (a) for the supervision and inspection of facilities;

- (b) prescribing the standards of sanitary, safety and security arrangements of a facility;
- (c) specifying details and method of rendering services by facilities;
- (d) for the management, accommodation and equipment of a facility;
- (e) for the preparation and storage of chemical reagents and human remains;
- (f) for procedures to disinfect facilities and prevent infection;
- (g) prescribing the records and statistics to be kept in respect of human remains;
- (h) prescribing the registers to be kept in the facilities in respect of human remains;
- (i) regulating the admission and discharge of corpses;
- (j) prescribing the hours of work, working conditions and number of staff to be employed in a facility;
- (k) relating to
 - (i) embalming;
 - (ii) cremation;
 - (iii) exportation;
 - (iv) importation;
 - (v) burial; and
 - (vi) exhumation, of human remains;
- (l) for generally carrying into effect the provisions of this Act.

39. Interpretation

In this Act unless where the context otherwise requires,

“**anatomic pathologist**” means a person with relevant qualification and training to make diagnosis of disease from the gross and microscopic examination of tissues and cells removed during surgery, by biopsy or during post mortem examination;

“**Auditor-General**” includes an auditor appointed by the Auditor-General;

“**Board**” means the National Board for Mortuaries and Funeral Facilities established by section 1;

“**burial ground**” means land set aside to be used for the interment of human remains and includes a mausoleum, cemetery, columbarium or other structure intended for the interment of human remains or cremated human remains;

“**cold storage facility**” means a building with refrigeration equipment for storage of human remains;

“**columbarium**” means a structure designed for the purpose of interring cremated human remains in sealed compartment;

“**crematorium**” means a building or structure fitted with appliances for the purpose of cremating human remains, a place or site used for burning human remains and anything used in connection with cremation;

“district” means the area of authority of a District Assembly and includes a municipality and metropolis;

“District Assembly” includes Municipal and Metropolitan Assembly;

“district committee” means a district committee on mortuary and funeral facilities established under section 8;

“embalment” means the preservation and disinfection of all or part of a human body by any means other than refrigeration;

“facility” includes a cold store for human remains, mortuary, funeral home, crematoria, cemetery, columbarium, mausoleum and a hearse;

“functions” includes powers and duties;

“funeral home” means premises with or without cold storage facility for dead bodies where funeral services are supplied;

“hearse” means a mechanically propelled vehicle registered for the purpose of carrying or transporting human remains with or without a coffin;

“human remains” means a body of a deceased person or still-born child and includes any part or remains of a body or stillborn child or any part of a body removed in the course of surgical operation;

“mausoleum” means a building or structure other than a columbarium used as a place of interment of human remains in a sealed crypt or compartment;

“Minister” means the Minister responsible for Health;

“Ministry” means the Ministry for Health;

“mortuary” means a building with equipment for autopsies and cold storage where human remains are kept until disposal;

“pathologist” means a person with relevant professional qualification and training to make diagnoses of disease from specimen removed from patients;

“practitioner” means any person with relevant training and qualification acceptable by the Board registered to operate under this Act and includes an anatomic pathologist, anatomic pathology technician, undertaker, embalmer, cremator and sexton;

“premises” includes any house, building, structure, tent, caravan, land, ship, boat, aircraft;

“registrar” means the registrar appointed under this Act;

“Regulations” means the Regulations made under this Act;

“Sub-Committee” means the Social Services Sub-Committee or the Environmental Management Sub-Committee of the District Assembly.

40. Repeal and savings

(1) The provisions of the Registration of Births and Deaths Act, 1965 (Act 301) relating to burial grounds are hereby repealed.

(2) Despite the repeal of the Part specified in subsection (1) a burial ground in use under the provisions of the Part is hereby continued in existence but subject to the provisions of this Act.

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 30th December, 1998 and notified in the *Gazette* on 5th February, 1999.