



Australian Capital Territory

# **Cemeteries and Crematoria Act 2003**

**A2003-11**

**Republication No 13**

**Effective: 12 December 2011**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Cemeteries and Crematoria Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 12 December 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 12 December 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Cemeteries and Crematoria Act 2003

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
3	Dictionary 2
4	Notes 2
5	Offences against Act—application of Criminal Code etc 3
<b>Part 2</b>	<b>Cemeteries and crematoria</b>
<b>Division 2.1</b>	<b>Operation of cemeteries and crematoria</b>
6	Codes of practice 4
7	Guidelines for exercise of Minister's powers 5
8	Perpetual tenure of graves etc 6
<b>Division 2.2</b>	<b>Perpetual care trusts and reserves</b>
9	Establishment of perpetual care trusts 6

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12/12/11

Cemeteries and Crematoria Act 2003  
Effective: 12/12/11

contents 1

## Contents

---

		Page
10	Establishment of perpetual care trust reserve	7
11	Determination of trust percentages	8
12	Payments into perpetual care trust	9
13	Planning period	9
14	Perpetual care trust reserve	10
15	Protection of perpetual care trust	10
16	Protection of perpetual care trust reserve	11
16A	Accounts and records for perpetual care trusts	11
16B	Audit	12
16C	Dissolution of perpetual care trusts	12
<b>Division 2.3 Improvement notices</b>		
17	Improvement notices	13
18	Offence—failing to end contravention	14
19	Director-general may take action to remedy consequences of contravention	14
<b>Division 2.4 Offences about burials and cremations</b>		
20	Person must not bury or cremate human remains or foetal remains except in accordance with regulation	15
21	Operator not to allow burial or cremation except in accordance with regulation etc	15
22	Exhumation of human remains or foetal remains	16
23	Exhumation of human remains	16
24	Burials to take place only at cemetery	17
25	Cremations to take place only at crematorium	17
26	Cremation to conceal offence	18
27	Doctors certificates	18
<b>Part 3 The cemeteries authority</b>		
<b>Division 3.1 Establishment of cemeteries authority and governing board</b>		
28	Establishment of cemeteries authority	20
28A	Functions of cemeteries authority	20
29	Establishment of governing board	21
29A	Governing board members	21

---

	Page
30 Ministerial directions to cemeteries authority	21
<b>Division 3.2 Staff of cemeteries authority</b>	
44 Arrangements for staff	22
<b>Part 4 Notification and review of decisions</b>	
45 Meaning of <i>reviewable decision</i> —pt 4	23
46 Reviewable decision notices	23
46A Applications for review	23
<b>Part 5 Miscellaneous</b>	
47 Acts and omissions of representatives	24
49 Determination of fees	25
50 Approved forms	25
51 Regulation-making power	25
<b>Schedule 1 Reviewable decisions</b>	27
<b>Dictionary</b>	28
<b>Endnotes</b>	
1 About the endnotes	31
2 Abbreviation key	31
3 Legislation history	32
4 Amendment history	34
5 Earlier republications	39





Australian Capital Territory

# **Cemeteries and Crematoria Act 2003**

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An Act about cemeteries and crematoria, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Cemeteries and Crematoria Act 2003*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*stillborn child*—see the *Births, Deaths and Marriages Registration Act 1997*, dictionary.' means that the term '*stillborn child*' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## **Part 2** **Cemeteries and crematoria**

### **Division 2.1** **Operation of cemeteries and crematoria**

#### **6** **Codes of practice**

- (1) The Minister may approve codes of practice for cemeteries and crematoria.
- (2) A code of practice may make provision in relation to the following matters:
  - (a) burials, exhumations and cremations;
  - (b) the operation of cemeteries and crematoria;
  - (c) the design, construction and maintenance of—
    - (i) buildings, monuments, memorials, tombstones, gravestones, tablets, monumental inscriptions, mausoleums, vaults and other structures and things in cemeteries and crematoria; and
    - (ii) walls, fences, paths, roads, drains and other works of cemeteries and crematoria;
  - (d) without limiting paragraph (c), responsibility for the maintenance of buildings, monuments, memorials, tombstones, gravestones, tablets, monumental inscriptions, mausoleums, vaults and other structures and things in cemeteries and crematoria;
  - (e) the equipment used in cemeteries and crematoria, including its maintenance;
  - (f) the grounds of cemeteries and crematoria, including their maintenance;
  - (g) the position, depth and maintenance of graves;

- (h) the construction of coffins to be placed in vaults;
  - (i) burial and other rights in relation to cemeteries and crematoria;
  - (j) the making and keeping of records about cemeteries and crematoria, including records of burials, exhumations and cremations, and burial and other rights in relation to cemeteries and crematoria;
  - (k) the perpetual care trusts of cemeteries and crematoria;
  - (l) the inspection of cemeteries and crematoria and their records.
- (3) A code of practice approved under this section may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

- (4) A code of practice approved under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## **7 Guidelines for exercise of Minister's powers**

- (1) The Minister may issue guidelines about the exercise of any of the following powers of the Minister:
- (a) to approve a purpose for a trust under section 9 (3) (b) (Establishment of perpetual care trusts);
  - (b) to prohibit the cremation of stated human remains under section 22 (1) (Minister or magistrate may prohibit cremation);
  - (c) to permit a burial under section 24 (Burials to take place only at cemetery) at a place other than a cemetery.

- (2) The Minister must comply with any guideline applying to the exercise of a power mentioned in subsection (1).
- (3) A guideline is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## **8 Perpetual tenure of graves etc**

- (1) If the operator of a cemetery or crematorium gives someone the right of burial, or the right of interment of ashes, in a burial place, the right lasts forever.
- (2) However, if no human remains (including foetal remains and cremated remains) are buried or interred in the burial place within 60 years after the day the right is given, the operator may revoke the right in accordance with the code of practice.

## **Division 2.2 Perpetual care trusts and reserves**

### **9 Establishment of perpetual care trusts**

- (1) This section applies to each cemetery or crematorium (other than a private burial ground).
- (2) A trust (the *perpetual care trust*) is established for the cemetery or crematorium.
- (3) The perpetual care trust is established for—
  - (a) the short-term and long-term maintenance of the cemetery or crematorium, including, for example, the maintenance of—
    - (i) the grounds of the cemetery or crematorium; and
    - (ii) monuments, memorials, tombstones, gravestones, tablets, monumental inscriptions, mausoleums, vaults and graves in the cemetery or crematorium; and

(iii) walls, fences, paths, roads, drains and other works of the cemetery or crematorium; and

(b) any other charitable purpose approved by the Minister.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) An approval under subsection (3) (b) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(5) The public trustee is the trustee of the perpetual care trust.

(6) The perpetual care trust is taken to be a charitable trust established for public charitable purposes, and is not for profit.

(7) A regulation may declare that expenditure of a particular kind or for a particular purpose is, or is not, expenditure for the maintenance of a cemetery or crematorium.

(8) Subsection (3) (a) has effect subject to any regulation made for subsection (7).

## **10 Establishment of perpetual care trust reserve**

(1) A perpetual care trust reserve (the *reserve*) is established for the perpetual care trust of a cemetery or crematorium.

(2) The reserve is part of the perpetual care trust of the cemetery or crematorium.

- (3) The reserve is established for the long-term maintenance of the cemetery or crematorium, including, for example, the maintenance of anything mentioned in section 9 (3) (a) (i), (ii) or (iii), or for a purpose approved for section 9 (3) (b).

*Note 1* The perpetual care trust reserve amount is not available for any payment without the Minister's written approval (see s 16).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) Income received from investments of amounts in the reserve of a perpetual care trust becomes part of the reserve of the trust.
- (5) The public trustee must keep the reserve in an account that is identifiably separate from the rest of the perpetual care trust.

## 11 Determination of trust percentages

- (1) The Minister must, for each cemetery or crematorium, determine—
- (a) the percentage (the *perpetual care trust percentage*) of each operator receipt that is to form part of the perpetual care trust of the cemetery or crematorium; and
  - (b) the percentage of the perpetual care trust percentage (the *perpetual care trust reserve percentage*) that is to form part of the reserve of the perpetual care trust of the cemetery or crematorium.
- (2) The percentages determined for the cemetery or crematorium must be the percentages that the Minister considers necessary to ensure that there are sufficient funds in the perpetual care trust and the reserve of the perpetual care trust so that the cemetery or crematorium will be adequately maintained in both the short-term and long-term.
- (3) The Minister must tell the operator of the cemetery or crematorium and the public trustee the percentages determined for the cemetery or crematorium.

- (4) The Minister must, at least once in each planning period for the cemetery or crematorium, review the percentages determined for the cemetery or crematorium.
- (5) The Minister may, by written notice to the operator of the cemetery or crematorium, require the operator to give the Minister stated information or documents that the Minister reasonably needs to make a determination under this section, or to review the percentages determined under this section, for the cemetery or crematorium.

## **12 Payments into perpetual care trust**

- (1) This section applies to each operator receipt for a cemetery or crematorium.
- (2) The perpetual care trust percentage of the operator receipt forms part of the perpetual care trust of the cemetery or crematorium.
- (3) The operator of the cemetery or crematorium commits an offence if the operator fails to give the perpetual care trust percentage of the operator receipt to the public trustee as soon as possible after the end of the month in which the operator receives the operator receipt.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

## **13 Planning period**

- (1) The Minister must determine, in writing, the planning period for each cemetery and crematorium.
- (2) A planning period must be no longer than 5 years.
- (3) The Minister must tell the operator of the cemetery or crematorium and the public trustee the planning period determined.

## **14 Perpetual care trust reserve**

- (1) At the end of a planning period for a cemetery or crematorium, an amount equal to the perpetual care trust reserve percentage for the period becomes part of the reserve of the perpetual care trust of the cemetery or crematorium.
- (2) The operator of a cemetery or crematorium must take all reasonable steps to ensure that, at the end of the planning period, the amount mentioned in subsection (1) is in the perpetual care trust of the cemetery or crematorium.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) For working out the amount equal to the perpetual care trust reserve percentage in the planning period, the perpetual care trust reserve percentage is the most recent percentage determined in the period under section 11 (1) (b) for the cemetery or crematorium.

## **15 Protection of perpetual care trust**

- (1) The operator of a cemetery or crematorium commits an offence if the operator applies an amount in the perpetual care trust for a purpose other than a purpose for which the trust is established.

Maximum penalty: 50 penalty units.

- (2) Without limiting subsection (1), an amount forming part of the perpetual care trust of a cemetery or crematorium is not—
  - (a) available for payment of debts of an operator of the cemetery or crematorium; or
  - (b) liable to be attached or taken in execution to satisfy a judgment against an operator of the cemetery or crematorium.

- (3) Subsection (2) does not apply to the perpetual care trust (other than the perpetual care trust reserve) in relation to a debt incurred by an operator of the cemetery or crematorium for a purpose for which the trust is established.
- (4) This section does not impose an obligation on the public trustee to ensure that amounts in the perpetual care trust are applied for a particular purpose.

## **16 Protection of perpetual care trust reserve**

An amount forming part of the reserve of a perpetual care trust is not available for any payment without the prior written approval of the Minister.

## **16A Accounts and records for perpetual care trusts**

- (1) The operator of a cemetery or crematorium commits an offence if the operator fails to keep accounts and records that show—
  - (a) operator receipts; and
  - (b) amounts paid to the public trustee for the perpetual care trust of the cemetery or crematorium; and
  - (c) amounts withdrawn from the perpetual care trust (including from the reserve of the perpetual care trust) and the purposes for which the amounts are applied.

Maximum penalty: 20 penalty units.

- (2) The operator of a cemetery or crematorium commits an offence if the operator fails to keep the accounts and records—
  - (a) at the operator's principal place of business in the ACT, or at another place with the written approval of the director-general; and
  - (b) in a way that they can be conveniently and properly audited; and

- (c) for at least 7 years after they are made; and
- (d) in accordance with any requirement prescribed by regulation.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

### **16B Audit**

- (1) The operator of a cemetery or crematorium commits an offence if the operator fails to have the accounts and records mentioned in section 16A audited by a person who is a registered company auditor within the meaning of the Corporations Act as soon as practicable after the end of each financial year.

Maximum penalty: 50 penalty units.

- (2) The operator of a cemetery or crematorium commits an offence if the operator fails to give the auditor's report and audited accounts to the director-general as soon as practicable after the end of the financial year to which the report relates.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

### **16C Dissolution of perpetual care trusts**

- (1) This section applies if a perpetual care trust is dissolved.
- (2) The amount remaining after payment of any debts and expenses of the trust must be transferred to another perpetual care trust, or another fund, that is—
  - (a) established for a charitable purpose; and
  - (b) endorsed as exempt from income tax under the *Income Tax Assessment Act 1997* (Cwlth), subdivision 50-B (Endorsing charitable entities as exempt from income tax).

## **Division 2.3                      Improvement notices**

### **17                      Improvement notices**

(1) The director-general may give the operator of a cemetery or crematorium a notice under this subsection if—

(a) the director-general believes on reasonable grounds that this Act has been, or is being, contravened in relation to the cemetery or crematorium; and

(b) the contravention is not an offence against this Act.

*Note*                      A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any approved codes of practice (see Legislation Act, s 104).

(2) The notice under subsection (1) must—

(a) state the contravention and the reasons for the belief; and

(b) invite the operator to make written representations, within a stated period of not less than 14 days, why the operator should not be required to end the contravention, remedy the consequences of the contravention or both.

(3) If, after considering any written representations made by the operator within the stated period, the director-general is satisfied that the operator should be required to end the contravention, remedy the consequences of the contravention or both, the director-general may give the operator a notice under this subsection (an *improvement notice*).

(4) The improvement notice—

(a) must require the operator to end the contravention, remedy the consequences of the contravention, or do both, within a stated time; and

(b) may state the action the operator must take to comply with the notice; and

- (c) if the notice requires the operator to end the contravention—must state that failure to end the contravention, without reasonable excuse, within the stated time is an offence; and
- (d) if the notice requires the operator to remedy the consequences of the contravention—must state that, if the operator fails to remedy the consequences within the stated time, the director-general may arrange for action to be taken to remedy the consequences and that the operator will be liable for the cost of taking the action.

**18 Offence—failing to end contravention**

- (1) The operator of a cemetery or crematorium commits an offence if the operator fails to end a contravention of this Act in accordance with an improvement notice.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

**19 Director-general may take action to remedy consequences of contravention**

- (1) If the operator of a cemetery or crematorium fails to remedy the consequences of a contravention of this Act in accordance with an improvement notice or any additional time allowed by the director-general, the director-general may arrange for the action that the director-general considers necessary or desirable to remedy the consequences to be taken by or on behalf of the Territory.
- (2) The cost of any action taken under this section is a debt payable by the operator to the Territory.

## **Division 2.4                      Offences about burials and cremations**

### **20                      Person must not bury or cremate human remains or foetal remains except in accordance with regulation**

- (1) A person commits an offence if—
- (a) the person buries human remains or foetal remains at a cemetery; and
  - (b) the burial is not in accordance with a regulation.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
- (a) the person cremates human remains or foetal remains at a crematorium; and
  - (b) the cremation is not in accordance with a regulation.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) An offence against this section is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the chief health officer has given a public health direction under the *Public Health Act 1997* requiring the cremation of the remains.

### **21                      Operator not to allow burial or cremation except in accordance with regulation etc**

- (1) The operator of a cemetery or crematorium commits an offence if—
- (a) the operator allows human remains or foetal remains to be buried or cremated at the cemetery or crematorium; and

(b) the burial or cremation is not in accordance with a regulation.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the chief health officer has given a public health direction under the *Public Health Act 1997* requiring the cremation of the remains.

## **22 Minister or magistrate may prohibit cremation**

- (1) The Minister, a magistrate or a special magistrate under the *Magistrates Court Act 1930* may, by written notice given to the operator of a crematorium, prohibit the cremation of stated human remains, either absolutely or until stated conditions are complied with.
- (2) The operator commits an offence if—
  - (a) the notice has not been revoked; and
  - (b) the stated conditions have not been complied with; and
  - (c) the operator cremates the human remains.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

## **23 Exhumation of human remains or foetal remains**

- (1) A person commits an offence if—
  - (a) the person exhumes human remains or foetal remains buried in a cemetery; and
  - (b) the person is not authorised to exhume the remains.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) For this section, a person is *authorised* to exhume human remains or foetal remains if—
  - (a) a warrant under the *Coroners Act 1997* authorises the exhumation; or
  - (b) the chief health officer has given written permission under this section for the exhumation.
- (3) An offence against this section is a strict liability offence.
- (4) A person may apply to the chief health officer for permission to exhume human remains buried in a cemetery.
- (5) The chief health officer may give the permission, either conditionally or unconditionally, if satisfied that it would not be contrary to the interests of public health to give permission.
- (6) If the chief health officer refuses to give the permission, the chief health officer must give the applicant written notice of the refusal and the reasons for it.

## **24 Burials to take place only at cemetery**

- (1) A person commits an offence if—
  - (a) the person buries human remains other than at a cemetery; and
  - (b) the person does not have the Minister's written permission.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (2) An offence against this section is a strict liability offence.

## **25 Cremations to take place only at crematorium**

- (1) A person commits an offence if the person cremates human remains other than at a crematorium.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) An offence against this section is a strict liability offence.

## 26 Cremation to conceal offence

A person commits an offence if the person cremates human remains with intent to conceal the commission of an offence.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

## 27 Doctors certificates

- (1) A doctor commits an offence if—
- (a) a coroner must hold an inquest into the manner and cause of death of a person under the *Coroners Act 1997*; and
  - (b) the doctor gives a certificate about the death of the person for a regulation.

Maximum penalty: 10 penalty units.

*Note* The *Coroners Act 1997*, s 13 states when a coroner must hold an inquest into the manner and cause of death of a person.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) A doctor commits an offence if the doctor—
- (a) gives a certificate about the death of a person for a regulation; and
  - (b) knows that—
    - (i) the doctor has a financial interest in the person's death under a life insurance policy; or
    - (ii) the doctor has a right or expectancy to property of any kind on the person's death.

Maximum penalty: 50 penalty units.

(4) In this section:

*doctor* includes a doctor who is a medical referee under a regulation.

## **Part 3 The cemeteries authority**

*Note* The governance of territory authorities, including the cemeteries authority, is regulated by the *Financial Management Act 1996* (the *FMA*), pt 9 as well as the Act that establishes them.

The FMA, pt 9 deals, for example, with the corporate status of territory authorities and their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

### **Division 3.1 Establishment of cemeteries authority and governing board**

#### **28 Establishment of cemeteries authority**

The Australian Capital Territory Public Cemeteries Authority (the *cemeteries authority*) is established.

*Note* If a law changes an entity's name (like the Australian Capital Territory Public Cemeteries Board), the entity continues in existence under the new name (the Australian Capital Territory Public Cemeteries Authority) and its identity is not affected by the change (see Legislation Act, s 183).

#### **28A Functions of cemeteries authority**

- (1) The functions of the cemeteries authority are to effectively and efficiently manage public cemeteries and crematoria for which the authority has been appointed as the operator by the Minister.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (2) An appointment under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## **29 Establishment of governing board**

The cemeteries authority has a governing board.

*Note* An appointment of a governing board member is an appointment under this section (see *Financial Management Act 1996*, s 78 (7) (b)).

## **29A Governing board members**

- (1) The governing board has at least 4, and not more than 12, members.

*Note 1* The chairperson and deputy chairperson of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

*Note 2* The chief executive officer is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

- (2) The governing board must include at least 4 members who, in the Minister's opinion, represent the general community and religious denominations.

## **30 Ministerial directions to cemeteries authority**

- (1) The Minister may give written directions to the cemeteries authority about the exercise of its functions.
- (2) Before giving a direction, the Minister must—
- (a) tell the cemeteries authority about the proposed direction; and
  - (b) give the cemeteries authority a reasonable opportunity to comment on the proposed direction; and
  - (c) consider any comments made by the cemeteries authority.
- (3) The Minister must present a copy of a direction given under this section to the Legislative Assembly within 6 sitting days after it is given.
- (4) The cemeteries authority must comply with a direction given to it under this section.

- (5) For the *Competition and Consumer Act 2010* (Cwlth), this Act authorises—
- (a) the giving of a direction under this section; and
  - (b) the doing of, or the failure to do, anything by the cemeteries authority to comply with a direction under this section.

## **Division 3.2 Staff of cemeteries authority**

### **44 Arrangements for staff**

- (1) The cemeteries authority may arrange with the director-general to use public servants in the administrative unit under the director-general's control.
- (2) The *Public Sector Management Act 1994* applies to the management by the cemeteries authority of public servants who are the subject of an arrangement under subsection (1).
- (3) This division does not limit the power of the cemeteries authority to employ people who are not public servants.

## Part 4 Notification and review of decisions

### 45 Meaning of *reviewable decision*—pt 4

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 46 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 46A Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 5 Miscellaneous

### 47 Acts and omissions of representatives

- (1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.

- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

#### **49 Determination of fees**

- (1) The Minister may determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (3) The Legislation Act, section 254A (Delegation by Minister) does not apply to a function under this section.

#### **50 Approved forms**

- (1) The Minister may approve forms for this Act.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

#### **51 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may make provision in relation to the following:

- (a) the protection of cemeteries and crematoria;
- (b) the conduct of cemeteries and crematoria;

- (c) the requirements for burials and cremations;
  - (d) certificates by doctors required for burials and cremations;
  - (e) any matter about which provision may be made by a code of practice.
- (3) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

## Schedule 1 Reviewable decisions

(see pt 4)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	11 (1) (a)	determination of perpetual care trust percentage	operator of cemetery or crematorium
2	11 (1) (b)	determination of perpetual care trust reserve percentage	operator of cemetery or crematorium
3	17	issue improvement notice requiring operator to remedy consequences of contravention of Act	operator of cemetery or crematorium
4	19	refuse to allow additional time to remedy consequences of contravention of Act	operator of cemetery or crematorium
5	23	refuse to give permission to exhume human remains buried in cemetery	applicant for permission
6	24	refuse to give permission to bury human remains other than at cemetery	applicant for permission

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- appoint
- chief health officer
- contravene
- director-general
- exercise
- function
- public trustee
- reviewable decision notice.

***burial place***, for a cemetery or crematorium, means a plot, vault or other place of burial or interment of ashes in the cemetery or crematorium.

***bury*** includes inter human remains in a vault.

***cemeteries authority*** means the Australian Capital Territory Public Cemeteries Authority.

***cemetery*** means a public cemetery, private cemetery or private burial ground.

***code of practice*** means a code of practice approved under section 6.

***crematorium*** means a public or private crematorium.

***exhume*** includes remove human remains from a vault.

***foetal remains*** means the body, or part of the body, of a dead foetus (other than a stillborn child), but does not include cremated foetal remains.

***governing board*** means the governing board of the cemeteries authority.

**human remains** means the body, or part of the body, of a dead person (including a stillborn child), but does not include cremated human remains.

**improvement notice**—see section 17 (3).

**long-term**, for maintenance of a cemetery or crematorium, means maintenance of the cemetery or crematorium after it is closed for new burials, interment of ashes or memorialisations.

**maintain** includes alter, remove, renew and repair.

**memorialisation** means the erection of a memorial for a dead person.

**operator**, of a cemetery or crematorium, means the person who manages the cemetery or crematorium.

**operator receipt**, for a cemetery or crematorium, means an amount received by the operator of the cemetery or crematorium for a burial, interment of ashes or memorialisation (including, for example, for purchase and maintenance of a burial place or any service related to the burial, interment or memorialisation) at the cemetery or crematorium.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**perpetual care trust**—see section 9 (2).

**perpetual care trust percentage**, for a cemetery or crematorium—see section 11 (1) (a).

**perpetual care trust reserve percentage**, for a cemetery or crematorium—see section 11 (1) (b).

**planning period**, for a cemetery or crematorium, means a planning period determined for the cemetery or crematorium under section 13.

***private burial ground*** means an area of unleased territory land reserved under the territory plan as a burial ground.

***private cemetery*** means land leased for the purposes of a cemetery or for the purposes of a cemetery and crematorium.

***private crematorium*** means land leased for the purposes of a crematorium or for the purposes of a cemetery and crematorium.

***public cemetery*** means unleased territory land reserved under the territory plan for use as a cemetery or for use as a cemetery and crematorium.

***public crematorium*** means unleased territory land reserved under the territory plan for use as a crematorium or for use as a cemetery and crematorium.

***reserve***, of a perpetual care trust—see section 10 (1).

***reviewable decision***, for part 4 (Notification and review of decisions)—see section 45.

***short-term***, for maintenance of a cemetery or crematorium, means maintenance of the cemetery or crematorium that is not long-term maintenance.

***stillborn child***—see the *Births, Deaths and Marriages Registration Act 1997*, dictionary.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Cemeteries and Crematoria Act 2003 A2003-11**

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75 (1))

remainder commenced 27 September 2003 (s 2 and LA s 79)

as modified by

#### **Cemeteries and Crematoria Regulations 2003 SL2003-31 sch 1**

notified LR 17 September 2003

reg 1, reg 2 commenced 17 September 2003 (LA s 75 (1))

sch 1 commenced 27 September 2003 (s 2 and see A2003-11, s 2 and LA s 79)

as amended by

#### **Validation of Fees (Cemeteries) Act 2003 A2003-61 s 5**

notified LR 17 December 2003

s 1, s 2 commenced 17 December 2003 (LA s 75 (1))

s 5 commenced 18 December 2003 (s 2)

#### **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.3, sch 2 pt 2.14**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 1 pt 1.3, sch 2 pt 2.14 commenced 9 April 2004 (s 2 (1))

#### **Cemeteries and Crematoria Amendment Act 2005 A2005-27**

notified LR 28 June 2005

s 1, s 2 commenced 28 June 2005 (LA s 75 (1))

remainder commenced 29 June 2005 (s 2)

#### **Financial Management Legislation Amendment Act 2005 A2005-52 sch 1 pt 1.6**

notified LR 26 October 2005

s 1, s 2 commenced 26 October 2005 (LA s 75 (1))

sch 1 pt 1.6 commenced 1 January 2006 (s 2 (2))

**Statute Law Amendment Act 2007 (No 2) A2007-16 sch 1 pt 1.1**

notified LR 20 June 2007

s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))

sch 1 pt 1.1 commenced 11 July 2007 (s 2 (1))

**Statute Law Amendment Act 2008 A2008-28 sch 1 pt 1.2, sch 3 pt 3.10**

notified LR 12 August 2008

s 1, s 2 commenced 12 August 2008 (LA s 75 (1))

sch 1 pt 1.2, sch 3 pt 3.10 commenced 26 August 2008 (s 2)

**ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.17**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.17 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

**Fair Trading (Australian Consumer Law) Amendment Act 2010 A2010-54 sch 3 pt 3.2**

notified LR 16 December 2010

s 1, s 2 commenced 16 December 2010 (LA s 75 (1))

sch 3 pt 3.2 commenced 1 January 2011 (s 2 (1))

**Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.21**

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.21 commenced 1 July 2011 (s 2 (1))

**Statute Law Amendment Act 2011 (No 3) A2011-52 sch 3 pt 3.9**

notified LR 28 November 2011

s 1, s 2 commenced 28 November 2011 (LA s 75 (1))

sch 3 pt 3.9 commenced 12 December 2011 (s 2)

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Commencement

s 2 om LA s 89 (4)

#### Codes of practice

s 6 am A2005-27 s 4; A2011-52 amdt 3.19

#### Guidelines for exercise of Minister's powers

s 7 am A2011-52 amdt 3.20

#### Perpetual tenure of graves etc

s 8 am A2005-27 s 5

#### Perpetual care trusts and reserves

div 2.2 hdg sub A2005-27 s 6

#### Establishment of perpetual care trusts

s 9 sub A2005-27 s 6  
am A2008-28 amdt 1.2

#### Establishment of perpetual care trust reserve

s 10 sub A2005-27 s 6

#### Determination of trust percentages

s 11 sub A2005-27 s 6  
am A2011-52 amdt 3.21

#### Payments into perpetual care trust

s 12 sub A2005-27 s 6  
am A2011-52 amdt 3.22

#### Planning period

s 13 sub A2005-27 s 6

#### Perpetual care trust reserve

s 14 sub A2005-27 s 6  
am A2011-52 amdt 3.23, amdt 3.24

#### Protection of perpetual care trust

s 15 sub A2005-27 s 6  
am A2011-52 amdt 3.25

#### Protection of perpetual care trust reserve

s 16 sub A2005-27 s 6

#### Accounts and records for perpetual care trusts

s 16A ins A2005-27 s 6  
am A2011-22 amdt 1.74; A2011-52 amdts 3.26-3.28

#### Audit

s 16B ins A2005-27 s 6  
am A2011-22 amdt 1.74; A2011-52 amdt 3.29

**Dissolution of perpetual care trusts**

s 16C ins A2008-28 amdt 1.3

**Improvement notices**

s 17 am A2011-22 amdt 1.74

**Offence—failing to end contravention**

s 18 hdg sub A2011-52 amdt 3.30

**Director-general may take action to remedy consequences of contravention**

s 19 hdg am A2011-22 amdt 1.74

s 19 am A2011-22 amdt 1.74

**Person must not bury or cremate human remains or foetal remains except in accordance with regulation**

s 20 hdg sub A2011-52 amdt 3.31

**Exhumation of human remains or foetal remains**

s 23 hdg sub A2011-52 amdt 3.32

s 23 am A2007-16 amdt 1.1, amdt 1.2; ss renum R8 LA; A2011-52 amdt 3.33

**Doctors certificates**

s 27 am A2011-52 amdts 3.34-3.36

**The cemeteries authority**

pt 3 hdg sub A2005-52 amdt 1.74

**Establishment of cemeteries authority and governing board**

div 3.1 hdg sub A2005-52 amdt 1.75

**Establishment of cemeteries authority**

s 28 sub A2005-52 amdt 1.76

**Functions of cemeteries authority**

s 28A ins A2005-52 amdt 1.76

am A2011-52 amdt 3.37

**Establishment of governing board**

s 29 sub A2005-52 amdt 1.76

am A2008-28 amdt 3.40

**Governing board members**

s 29A ins A2005-52 amdt 1.76

**Ministerial directions to cemeteries authority**

s 30 hdg am A2005-52 amdt 1.77

s 30 am A2005-52 amdt 1.77; A2010-54 amdt 3.6

**Reports to Minister by board**

s 31 om A2005-52 amdt 1.78

**Providing information to Minister by board**

s 32 om A2005-52 amdt 1.78

## Endnotes

4 Amendment history

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### **Members of board**

s 33 om A2005-52 amdt 1.79

### **Term of appointment of members**

s 34 om A2005-52 amdt 1.79

### **Ending of appointment of members**

s 35 om A2005-52 amdt 1.79

### **Conditions of appointment of members generally**

s 36 om A2005-52 amdt 1.79

### **Time and place of meetings**

s 37 om A2005-52 amdt 1.80

### **Presiding member at meetings**

s 38 om A2005-52 amdt 1.80

### **Quorum at meetings**

s 39 om A2005-52 amdt 1.80

### **Voting at meetings**

s 40 om A2005-52 amdt 1.80

### **Conduct of meetings etc**

s 41 om A2005-52 amdt 1.80

### **Disclosure of interest by members**

s 42 om A2005-52 amdt 1.80

### **Members to be honest etc**

s 43 om A2005-52 amdt 1.80

### **Staff of cemeteries authority**

div 3.2 hdg om A2005-52 amdt 1.79  
ins A2005-52 amdt 1.80

### **Arrangements for staff**

s 44 am A2005-52 amdt 1.82, amdt 1.83; A2011-22 amdt 1.71,  
amdt 1.74

### **Proceedings of board**

div 3.3 hdg om A2005-52 amdt 1.80

### **Staff**

div 3.4 hdg om A2005-52 amdt 1.81

### **Notification and review of decisions**

pt 4 hdg sub A2008-37 amdt 1.61

### **Meaning of *reviewable decision*—pt 4**

s 45 sub A2008-37 amdt 1.61

**Reviewable decision notices**

s 46 sub A2008-37 amdt 1.61

**Applications for review**

s 46A ins A2008-37 amdt 1.61

**Miscellaneous**

pt 5 hdg exp 27 September 2004 (s 60)  
ins A2008-37 amdt 1.61

**Assets and liabilities of former trustees**

div 5.1 hdg exp 27 September 2004 (s 60)

**Acts and omissions of representatives**

s 47 sub A2004-15 amdt 1.3

**False or misleading statements**

s 48 om A2004-15 amdt 2.35

**Determination of fees**

s 49 am A2003-61 s 5; A2011-52 amdt 3.38

**Approved forms**

s 50 am A2011-52 amdt 3.38

**Regulation-making power**

s 51 am A2011-52 amdt 3.39-3.42

**Continuation of perpetual care trust**

s 52 exp 27 September 2004 (s 60)  
ins A2005-27 s 7  
exp 29 June 2005 (s 52 (3))

**Vesting of assets and liabilities of former trustees in board**

s 53 exp 27 September 2004 (s 60)

**Evidentiary certificate for vested assets and liabilities**

s 54 exp 27 September 2004 (s 60)

**Registration of changes in title to certain assets**

s 55 exp 27 September 2004 (s 60)

**Proceedings and evidence in relation to vested assets and liabilities**

s 56 exp 27 September 2004 (s 60)

**Perpetual care fund offence**

s 57 exp 27 September 2004 (s 60)

**Exclusive rights of burial**

s 57A ins as mod SL2003-31 amdt 1.1  
exp 27 September 2004 (see SL2003-31 reg 28)

**General**

div 5.2 hdg exp 27 September 2004 (s 60)

## Endnotes

### 4 Amendment history

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#### Transitional regulations

s 58 exp 27 September 2004 (s 60)

#### Modification of pt 5's operation

s 59 exp 27 September 2004 (s 60)

#### Expiry of pt 5

s 60 exp 27 September 2004 (s 60)

#### Repeal of Acts

s 61 om LA s 89 (3)

#### Repeal of subordinate laws

s 62 om LA s 89 (3)

#### Acts amended—sch 1

s 63 om LA s 89 (3)

#### Reviewable decisions

sch 1 om LA s 89 (3)  
ins A2008-37 amdt 1.62

#### Dictionary

dict am A2005-27 s 8; A2008-37 amdt 1.63; A2011-22 amdt 1.72,  
amdt 1.73; A2011-52 amdt 3.43  
def **ADI** om A2011-52 amdt 3.44  
def **board** om A2005-52 amdt 1.84  
def **burial place** ins A2005-27 s 9  
def **cemeteries authority** ins A2005-52 amdt 1.85  
def **chairperson** om A2005-52 amdt 1.86  
def **deputy chairperson** om A2005-52 amdt 1.87  
def **governing board** ins A2005-52 amdt 1.88  
def **long-term** ins A2005-27 s 10  
def **member** om A2005-52 amdt 1.89  
def **operator receipt** ins A2005-27 s 10  
def **perpetual care fund** om A2005-27 s 11  
def **perpetual care trust percentage** om R5 LA  
ins A2005-27 s 12  
def **perpetual care trust reserve percentage** ins A2005-27  
s 12  
def **planning period** ins A2005-27 s 12  
def **reserve** ins A2005-27 s 12  
def **reviewable decision** ins A2008-37 amdt 1.64  
def **short-term** ins A2005-27 s 12

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 27 Sept 2003	27 Sept 2003– 17 Dec 2003	not amended	new Act and modification by SL2003-31
R2 18 Dec 2003	18 Dec 2003– 8 April 2004	A2003-61	amendments by A2003-61
R3 9 Apr 2004	9 Apr 2004– 27 Sept 2004	A2004-15	amendments by A2004-15
R4 28 Sept 2004	28 Sept 2004– 28 June 2005	A2004-15	commenced expiry
R5 29 June 2005	29 June 2005– 29 June 2005	A2005-27	amendments by A2005-27
R6 29 June 2005	29 June 2005– 31 Dec 2005	A2005-27	commenced expiry
R7 1 Jan 2006	1 Jan 2006– 10 July 2007	A2005-52	amendments by A2005-52
R8 11 July 2007	11 July 2007– 25 Aug 2008	A2007-16	amendments by A2007-16
R9 26 Aug 2008	26 Aug 2008– 1 Feb 2009	A2008-28	amendments by A2008-28
R10* 2 Feb 2009	2 Feb 2009– 31 Dec 2010	A2008-37	amendments by A2008-37
R11 1 Jan 2011	1 Jan 2011– 30 June 2011	A2010-54	amendments by A2010-54

## Endnotes

5 Earlier republications

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<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R12 1 July 2011	1 July 2011– 11 Dec 2011	A2011-22	amendments by A2011-22

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