

2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Urban Services)

## Cemeteries and Crematoria Bill 2001

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(Minister for Urban Services)

## **Cemeteries and Crematoria Bill 2001**

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### **A Bill for**

An Act about cemeteries and crematoria

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

5 This Act is the *Cemeteries and Crematoria Act 2001*.

### 2 Commencement

This Act commences on a day fixed by the Minister by notice in the Gazette.

10 *Note 1* The provisions of an Act providing for its name and commencement automatically commence on the date of notification of the Act (see *Interpretation Act 1967*, s 10B).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see *Interpretation Act 1967*, s 10C (1)).

15 *Note 3* If a provision has not commenced within 6 months beginning on the date of notification of the Act, it automatically commences on the first day after that period (see *Interpretation Act 1967*, s 10E (2)).

### 3 Dictionary

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

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

25 For example, the signpost definition '*improvement notice*—see section 14 (Improvement notices).' means that the expression 'improvement notices' is defined in that section.

30 *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 *Interpretation Act 1967*, s 11F and s 11G).

**4 Notes**

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

*Note* See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

## **Part 2 Cemeteries and crematoria**

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

5 **5 Codes of practice**

- (1) The Minister may determine codes of practice for cemeteries and crematoria.
- (2) Without limiting subsection (1), a code of practice may make provision with respect to the following matters:
  - 10 (a) burials, exhumations and cremations;
  - (b) the operation of cemeteries and crematoria;
  - (c) the design, construction and maintenance of—
    - 15 (i) buildings, monuments, memorials, tombstones, gravestones, tablets, monumental inscriptions, mausoleums, vaults and other structures and things within cemeteries and crematoria; and
    - (ii) walls, fences, paths, roads, drains and other works of cemeteries and crematoria;
  - 20 (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 within cemeteries and crematoria;
  - 25 (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;



- 5 (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 funds of cemeteries and crematoria;
- (l) the inspection of cemeteries and crematoria and their records.
- 10 (3) A code of practice approved under this section may apply, adopt or incorporate an instrument, or a provision of an instrument, as in force from time to time.
- (4) A determination under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## 15 Division 2.2 Perpetual care trusts

### 6 Establishment of perpetual care trusts

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

- (iii) walls, fences, paths, roads, drains and other works of the cemetery or crematorium; and
- (b) any other purpose approved, in writing, by the Minister.
- (4) An approval under subsection (3) (b) is a disallowable instrument.
- 5        *Note*     A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (5) The trustee of the trust is the operator for the time being of the cemetery or crematorium.
- 10       (6) However, if there is no operator, the trustee is the person appointed as trustee for the trust under the *Trustee Act 1925* or, if no-one is appointed as trustee under that Act, the chief executive.
- (7) The trust is taken to be a charitable trust established for public charitable purposes.
- 15       (8) The regulations 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.
- (9) Subsection (3) has effect subject to any regulations made for subsection (7).

## **7     Determination of trust percentage**

- 20       (1) The Minister must, for each cemetery or crematorium, determine the percentage (the *perpetual care trust percentage*) of each amount received by the operator for a burial, interment of ashes or memorialisation at the cemetery or crematorium that is to form part of the perpetual care trust of the cemetery or crematorium.
- 25       (2) The perpetual care trust percentage determined for the cemetery or crematorium must be the percentage that the Minister considers necessary to ensure that there are sufficient funds in the perpetual care trust so that the cemetery or crematorium will be adequately maintained.
- 30       (3) The Minister must tell the operator the perpetual care trust percentage determined.

- (4) The Minister may, by written notice to the operator of a 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.

5     **8     Perpetual care funds**

- (1) The operator of a cemetery or crematorium must, for each cemetery or crematorium the operator manages, open and maintain a trust account (a *perpetual care fund*) with an authorised deposit-taking institution (*ADI*) under a title that includes the name of the cemetery or crematorium and the words 'perpetual care fund'.

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

- (2) Within 2 business days after opening the perpetual care fund, the operator must tell the chief executive in writing of the name of the ADI with which the perpetual care fund is maintained, the branch (if any) where the fund is maintained, the account number (if any) and the title of the account.

Maximum penalty: 20 penalty units.

- (3) If a change is made in the ADI with which the perpetual care fund is maintained, the branch where the fund is maintained or the account number or title, the operator (or, if there is no operator, the trustee of the perpetual care fund) must, within 2 business days after the change, tell the chief executive in writing of the new ADI, branch or account number or title.

Maximum penalty: 20 penalty units.

**9     Payments into perpetual care fund**

- (1) This section applies if the operator of a cemetery or crematorium receives an amount for a burial, interment of ashes or memorialisation at the cemetery or crematorium.
- (2) The perpetual care trust percentage of the amount forms part of the perpetual care trust of the cemetery or crematorium.

- (3) No later than the next business day after the operator receives the amount, the operator must pay into the perpetual care fund of the cemetery or crematorium the perpetual care trust percentage of the amount.

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

- (4) However, if the amount is paid by direct deposit or electronic transfer into an account of the operator, the operator may comply with subsection (3) no later than the next business day after the operator becomes aware of the payment.
- 10

#### **10 Protection of perpetual care funds**

- (1) An amount credited to the perpetual care fund of a cemetery or crematorium is not available for payment of debts of the operator of the cemetery or crematorium and is not liable to be attached or taken in execution to satisfy a judgment against the operator.
- 15

- (2) This section does not apply to debts incurred by the operator in the maintenance of the cemetery or crematorium or for a purpose approved by the Minister under section 6 (3) (b).

#### **11 Provisions applying to authorised deposit-taking institutions**

20

- (1) This section applies to an ADI with which a perpetual care fund of a cemetery or crematorium is maintained.
- (2) The ADI is not obliged to control or supervise transactions of the perpetual care fund or how amounts withdrawn from the account are applied.
- 25
- (3) The ADI must not, in relation to any liability of the operator of the cemetery or crematorium or anyone else to the ADI, have or obtain any recourse or right, whether by way of settlement, counterclaim, charge or otherwise against an amount credited to the perpetual care fund.
- 30

- (4) This section does not relieve the ADI from any liability it may have apart from this section.

## **12 Accounts and records for perpetual care funds**

- 5 (1) The operator of a cemetery or crematorium must keep accounts and records for—
- (a) amounts received by the operator for burials, interment of ashes and memorialisations at the cemetery or crematorium; and
  - 10 (b) amounts paid into the perpetual care fund of the cemetery or crematorium; and
  - (c) amounts withdrawn from the perpetual care fund and the purposes for which the amounts are applied.

Maximum penalty: 20 penalty units.

- (2) The operator must—
- 15 (a) keep the accounts and records at the operator's principal place of business in the Territory, or at another place with the written permission of the chief executive; and
  - (b) keep the accounts and records in a way that they can be conveniently and properly audited; and
  - 20 (c) keep the accounts and records for at least 7 years after they are made.

Maximum penalty: 20 penalty units.

## **13 Audit**

- 25 (1) As soon as practicable after the end of each financial year, the operator of a cemetery or crematorium must have the accounts and records mentioned in section 12 audited by a person who is a registered company auditor within the meaning of the Corporations Law.

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

- 5 (2) The operator must give the auditor's report and the audited accounts to the chief executive as soon as practicable after the end of the financial year to which the report relates.

Maximum penalty: 20 penalty units.

## **Division 2.3 Improvement notices**

### **14 Improvement notices**

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

- (a) the chief executive 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.

15 *Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including codes of practice (see *Legislation Act 2001*, s 92).

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

- (a) state the contravention and the reasons for the belief; and
- 20 (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.

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

- 30 (4) The improvement notice—

- 5 (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 that the operator must take to comply with the notice; and
- (c) must, if the notice requires the operator to end the contravention—state that failure to end the contravention, without reasonable excuse, within the stated time is an offence; and
- 10 (d) must, if the notice requires the operator to remedy the consequences of the contravention—state that, if the operator fails to remedy the consequences, within the stated time, the chief executive may arrange for action to be taken to remedy the consequences and that the operator will be liable for the
- 15 cost of taking the action.
- (5) If the improvement notice requires the operator to remedy the consequences of a contravention of this Act, the notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B
- 20 (1).

## **15 Penalty for failing to end contravention**

The operator of a cemetery or crematorium must not, without reasonable excuse, fail to end a contravention of this Act in accordance with an improvement notice.

25 Maximum penalty: 50 penalty units.

## **16 Chief executive may take action to remedy consequences of contravention**

- 30 (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 chief executive, the chief executive may arrange for the action that the

chief executive 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.

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

**17 Person must not bury or cremate human remains without permit**

- 10 (1) A person must not bury human remains at a cemetery unless a permit given by the operator of the cemetery under the regulations authorises the burial.

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

- 15 (2) A person must not cremate human remains at a crematorium unless a permit given by the operator of the crematorium under the regulations authorises the cremation.

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

- 20 (3) Subsection (2) does not apply to human remains if the chief health officer has given a public health direction under the *Public Health Act 1997* requiring the cremation of the remains.

**18 Operator not to allow burial or cremation without permit etc**

- 25 (1) The operator of a cemetery or crematorium must not allow human remains to be buried or cremated at the cemetery or crematorium unless a permit given by the operator under the regulations authorises the burial or cremation.

Maximum penalty: 50 penalty units.



(2) Subsection (1) does not apply to human remains if the chief health officer has given a public health direction under the *Public Health Act 1997* requiring the cremation of the remains.

5 (3) The operator of a cemetery or crematorium must not give a permit under the regulations authorising a burial or cremation at the cemetery or crematorium unless the requirements of the regulations for the giving of the permit are complied with.

Maximum penalty: 50 penalty units.

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

10 (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.

15 (2) The operator must not cremate the human remains unless—  
(a) the notice is revoked; or  
(b) the stated conditions have been complied with.

Maximum penalty: 50 penalty units.

## **20 Exhumation of human remains**

20 (1) A person must not exhume human remains buried in a cemetery except—

- (a) under a warrant under the *Coroners Act 1997*; or
- (b) with written permission of the chief health officer under this section.

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

(2) The chief health officer may give written directions about the exhumation of human remains.

(3) A direction under subsection (2) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (4) A person must not contravene a direction of the chief health officer under subsection (2).
- 5       Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (5) A person may apply to the chief health officer for permission to exhume human remains buried in a cemetery.
- (6) The chief health officer may grant the permission if the chief health officer is satisfied that it would not be contrary to the interests of public health to grant the permission.
- 10       (7) If the chief health officer refuses to grant the permission, the chief health officer must give the applicant written notice of the refusal and the reasons for it.
- (8) A notice under subsection (7) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- 15

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

- A person must not bury human remains other than at a cemetery unless the person has the written permission of the Minister.
- 20       Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

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

- A person must not cremate human remains other than at a crematorium.
- 25       Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**23 Cremation to conceal an offence**

A person must not cremate human remains with intent to conceal the commission of an offence.

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

**24 Doctors certificates**

- (1) A doctor must not, for the regulations, give a certificate about the death of a person if a coroner must hold an inquest into the manner and cause of death of the person under the *Coroners Act 1997*.

10      Maximum penalty: 10 penalty units.

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

- 15      (2) A doctor must not, for the regulations, give a certificate about the death of a person if the doctor knows—

- (a) that the doctor has a financial interest in the person's death under a life insurance policy; or  
(b) that the doctor has a right or expectancy to property of any kind on the person's death.

20      Maximum penalty: 50 penalty units.

- (3) In this section:

*doctor* includes a doctor who is a medical referee under the regulations.

## **Part 3                      The cemeteries board**

### **Division 3.1              Establishment and functions**

#### **25      Establishment of board**

- 5        (1) There is an Australian Capital Territory Public Cemeteries Board.
- (2) The board—
- (a) is a corporation with perpetual succession; and
- (b) may have a common seal; and
- (c) may sue and be sued in its corporate name; and
- 10        (d) may acquire, hold and dispose of property.

#### **26      Functions**

- (1) The functions of the board are to effectively and efficiently manage public cemeteries and crematoria for which the board has been appointed as the operator by the Minister.
- 15        (2) The board must operate on a sound commercial basis.

#### **27      Ministerial directions to board**

- (1) The Minister may give written directions to the board about the exercise of its functions.
- (2) Before giving a direction, the Minister must—
- 20        (a) tell the board of the intent of the proposed direction; and
- (b) give the board a reasonable opportunity to comment on the proposed direction; and
- (c) consider any comments made by the board.
- 25        (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 board must comply with a direction given to it under this section.

(5) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—

(a) the giving of a direction under this section; and

5 (b) the doing of, or the failure to do, anything by the board to comply with a direction under this section.

## **28 Reports to Minister**

10 (1) In addition to any other reports that the board is required to make under this Act or any other law, the board must give the Minister the reports the Minister requires.

(2) A report under this section must be prepared in the form, and be based on the accounting or other policies or practices, (if any) that the Minister requires.

## **29 Providing information to Minister**

15 The board must give the Minister any information about its operations that the Minister requires.

## **Division 3.2 Members of board**

### **30 Members of the board**

20 (1) The board consists of not less than 3, and not more than 12, members appointed by the Minister.

(2) The Minister must appoint a member to be the chairperson and another member to be deputy chairperson.

25 *Note 1* A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Interpretation Act 1967*, s 28 (3) (c) and dict, def of *appoint*).

*Note 2* A power to appoint a person to a position includes power to appoint a person to act in the position (see *Interpretation Act 1967*, s 28 (4)-(6)).

**31      Term of appointment of members**

- (1) A member is to be appointed for a term of not longer than 3 years.
- (2) The instrument appointing, or evidencing the appointment of, a member must state the term for which the member is appointed.

5      **32      Ending of appointment of members**

The Minister may end the appointment of a member—

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the member—
  - 10                      (i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (ii) is absent from 3 consecutive meetings without reasonable excuse; or
  - 15                      (iii) contravenes section 36 (Disclosure of interest by members) or 37 (Honesty and diligence).

**33      Conditions of appointment generally**

A member holds the position on the conditions not provided by this Act that are decided by the Minister.

20      **Division 3.3                      Proceedings of board**

**34      Time and place of meetings**

- (1) Meetings of the board are to be held at the times and places it decides.
- (2) However, the board must meet at least once every 3 months.
- 25      (3) The chairperson—
  - (a) may at any time call a meeting of the board; and

(b) must call a meeting if asked by the Minister or at least 2 members.

(4) The chairperson must give the other members reasonable notice of the time and place of a meeting called by the chairperson.

5   **35   Procedure governing proceedings of board**

(1) The chairperson presides at all meetings at which the chairperson is present.

(2) If the chairperson is absent, the deputy chairperson presides.

10   (3) If the chairperson and the deputy chairperson are both absent, the member chosen by the members present presides.

(4) Business may be carried on at a meeting of the board only if not less than ½ the number of members appointed are present.

(5) At a meeting of the board each member has a vote on each question to be decided.

15   (6) A question is to be decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a casting vote.

(7) The board may conduct its proceedings (including its meetings) as it considers appropriate.

20   (8) The board may hold meetings, or allow members to take part in meetings, by telephone, closed-circuit television or another form of communication.

(9) A member who takes part in a meeting conducted under subsection (6) is taken to be present at the meeting.

25   (10) If—

(a) all members agree, in writing, to a proposed resolution; and

(b) notice of the resolution is given under procedures decided by the board;

the resolution is a valid resolution of the board, even though it was not passed at a meeting of the board.

- (11) The board must keep minutes of its meeting.

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

- 5        (1) This section applies to a member if—
- (a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.
- 10
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the board.
- (3) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—
- 15
- (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board on the issue.
- (4) Any other member who also has a direct or indirect financial interest in the issue must not—
- 20
- (a) be present when the board is considering its decision under subsection (3); or
  - (b) take part in making the decision.

### **37 Honesty and diligence**

- 25        In the performance of his or her functions as a member, a member must exercise the degree of honesty, care and diligence that is required to be exercised by a director of a company in relation to the affairs of the company.



## **Division 3.4            Staff**

### **38     Arrangements for staff**

- 5        (1) The board may arrange with the chief executive to use public servants in the administrative unit under the chief executive's control.
- (2) The *Public Sector Management Act 1994* applies to the management by the board of public servants the subject of an arrangement under subsection (1).

## Part 4 Miscellaneous

### 39 Review of decisions

- 5 (1) The operator of a cemetery or crematorium may apply in writing to the administrative appeals tribunal for review of any of the following decisions:
- (a) a determination under section 7 (Determination of trust percentage) in relation to the cemetery or crematorium;
- 10 (b) if the operator is given an improvement notice that requires the operator to remedy the consequences of a contravention of this Act—the decision;
- (c) a decision not to allow additional time under section 16 (Chief executive may take action to remedy consequences of contravention) to remedy the consequences of a contravention of this Act.
- 15
- (2) An applicant for permission to exhume human remains buried in a cemetery may apply in writing to the administrative appeals tribunal for review of a decision of the chief health officer under section 20 (Exhumation of human remains) to refuse to grant the permission.
- 20

### 40 Acts and omissions of representatives

- (1) In this section:
- representative* means—
- 25 (a) for a corporation—an executive officer, employee or agent of a corporation; or
- (b) for an individual—an employee or agent of the individual.
- 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.
- 5 (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
- 10 (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 taken to have been done or omitted to be done also by the person, unless the person establishes that
- 15 reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (3) or (4).

20 **41 False or misleading statements**

A person must not, for or in relation to this Act—

- (a) state anything to the chief executive, a doctor, the operator of a cemetery or crematorium, or anyone else, that the person knows is false or misleading in a material particular; or
- 25 (b) omit from a statement made to the chief executive, a doctor, the operator of a cemetery or crematorium, or anyone else, anything without which the statement is, to the person's knowledge, misleading in a material particular.

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

**42 Regulation-making power**

- (1) The Executive may make regulations for this Act.
- (2) The regulations may make provision with respect to—
  - (a) the protection of cemeteries and crematoria; and
  - 5 (b) the conduct of cemeteries and crematoria; and
  - (c) permits for burials and cremations; and
  - (d) certificates by doctors required for permits for burials and cremations; and
  - 10 (e) any matter about which provision may be made by a code of practice.
- (3) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Part 5                      Transitionals, repeals and amendments

### 5      **43      Transitional regulations**

- (1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) In particular, the regulations may provide—
- 10            (a) that a permit for burial obtained under the *Canberra Public Cemeteries Regulations* is taken to be a burial permit given under the regulations under this Act; or
- (b) that an approval under the *Cremation Act 1966* of an application for the cremation of a body is taken to be a
- 15            cremation permit given under the regulations under this Act.
- (3) Regulations mentioned in subsection (2) have effect for all purposes, including division 2.4 (Offences about burials and cremations).
- (4) This section expires 1 year after it commences.

### 20      **44      Cemeteries Act 1933 No 29**

*repeal*

### **45      Cemeteries Act 1966 No 9**

*repeal*

### 25      **46      Canberra Public Cemeteries Regulations made on 30 June 1939**

*repeal*

**47    Land (Planning and Environment) Act 1991, section 4**

*insert*

*cemetery* includes crematorium.

**48    Land (Planning and Environment) Act 1991, schedule 1, item 5**

*substitute*

- |   |                           |   |   |
|---|---------------------------|---|---|
| 5 | cemetery or burial ground | 1 | to provide for the interment or cremation of human remains and the interment of the ashes of human remains. |
|---|---------------------------|---|---|

**49    Coroners Act 1997, section 12**

*substitute*

**12    General functions and jurisdiction of coroner**

- 10        (1) A coroner has the functions and jurisdiction given by this Act or any other Territory law.
- (2) Except as otherwise provided by this Act, a coroner also has all the functions and jurisdiction that were vested in a coroner immediately before the commencement of the *Coroners Act 1956*.

## Dictionary

(see s 3)

**ADI**—see section 8 (Perpetual care funds).

5        **Note**     **Authorised deposit-taking institution** is defined in the *Interpretation Act 1967*, dict.

**board** means the Australian Capital Territory Public Cemeteries Board.

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

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

**chairperson** means the chairperson of the board.

**code of practice** means a code of practice determined under section 5 (Codes of practice).

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

**deputy chairperson** means the deputy chairperson of the board.

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

20       **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 14 (Improvement notices).

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

**member** means a member of the board, and includes the chairperson and the deputy chairperson.

25       **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.

***perpetual care fund***—see section 8 (Perpetual care funds).

***perpetual care trust***—see section 6 (Establishment of perpetual care trusts).

5      ***perpetual care trust percentage***—see section 7 (Determination of trust percentage).

***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.

10      ***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.

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

***stillborn child***—see the *Births, Deaths and Marriages Registration Act 1997*, section 4 (1).

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## Endnote

### Penalty units

The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

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