

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Cemeteries and Crematoria Bill 2002 (No 2)

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Cemeteries and Crematoria Bill 2002 (No 2)

A Bill for

An Act about cemeteries and crematoria, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Cemeteries and Crematoria Act 2002 (No 2)*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Dictionary**

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

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

21 For example, the signpost definition '*stillborn child*—see the *Births,*
22 *Deaths and Marriages Registration Act 1997*, section 4 (1).' means that
23 the expression 'stillborn child' is defined in that subsection and that the
24 definition applies to this Act.

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

1 **4 Notes**

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

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

4 **5 Offences against Act—application of Criminal Code etc**

5 Other legislation applies in relation to offences against this Act.

6 *Note 1 Criminal Code*

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

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

13 *Note 2 Penalty units*

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

- 1 **Part 2** **Cemeteries and crematoria**
- 2 **Division 2.1** **Operation of cemeteries and**
3 **crematoria**
- 4 **6** **Codes of practice**
- 5 (1) The Minister may, in writing, approve codes of practice for
6 cemeteries and crematoria.
- 7 (2) A code of practice may make provision in relation to the following
8 matters:
- 9 (a) burials, exhumations and cremations;
- 10 (b) the operation of cemeteries and crematoria;
- 11 (c) the design, construction and maintenance of—
- 12 (i) buildings, monuments, memorials, tombstones,
13 gravestones, tablets, monumental inscriptions,
14 mausoleums, vaults and other structures and things
15 within cemeteries and crematoria; and
- 16 (ii) walls, fences, paths, roads, drains and other works of
17 cemeteries and crematoria;
- 18 (d) without limiting paragraph (c), responsibility for the
19 maintenance of buildings, monuments, memorials, tombstones,
20 gravestones, tablets, monumental inscriptions, mausoleums,
21 vaults and other structures and things within cemeteries and
22 crematoria;
- 23 (e) the equipment used in cemeteries and crematoria, including its
24 maintenance;
- 25 (f) the grounds of cemeteries and crematoria, including their
26 maintenance;
- 27 (g) the position, depth and maintenance of graves;

- 1 (h) the construction of coffins to be placed in vaults;
2 (i) burial and other rights in relation to cemeteries and crematoria;
3 (j) the making and keeping of records about cemeteries and
4 crematoria, including records of burials, exhumations and
5 cremations, and burial and other rights in relation to cemeteries
6 and crematoria;
7 (k) the perpetual care funds of cemeteries and crematoria;
8 (l) the inspection of cemeteries and crematoria and their records.
- 9 (3) A code of practice approved under this section may apply, adopt or
10 incorporate a law or instrument, or a provision of a law or
11 instrument, as in force from time to time.
- 12 *Note 1* The text of an applied, adopted or incorporated law or instrument,
13 whether applied as in force from time to time or in force at a particular
14 time, is taken to be a notifiable instrument if the operation of the
15 Legislation Act, s 47 (5) or (6) is not displaced (see s 47 (7)).
- 16 *Note 2* A notifiable instrument must be notified under the Legislation Act.
- 17 (4) A code of practice approved under this section is a disallowable
18 instrument.
- 19 *Note* A disallowable instrument must be notified, and presented to the
20 Legislative Assembly, under the Legislation Act.

21 **7 Guidelines for exercise of Minister's powers**

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

1 (2) The Minister must comply with any guideline applying to the
2 exercise of a power mentioned in subsection (1).

3 (3) A guideline is a disallowable instrument.

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

6 **8 Perpetual tenure of graves etc**

7 (1) If the operator of a cemetery or crematorium gives someone the
8 right of burial, or the right of interment of ashes, in a plot, vault or
9 other place of burial (the *burial place*) in the cemetery or
10 crematorium, the right lasts forever.

11 (2) However, if no human remains (including foetal remains and
12 cremated remains) are buried or interred in the burial place within
13 60 years after the day the right is given, the operator may revoke the
14 right in accordance with the code of practice.

15 **Division 2.2 Perpetual care trusts**

16 **9 Establishment of perpetual care trusts**

17 (1) This section applies to each cemetery or crematorium (other than a
18 private burial ground).

19 (2) A trust (the *perpetual care trust*) is established for the cemetery or
20 crematorium.

21 (3) The perpetual care trust is established for—

22 (a) the maintenance of the cemetery or crematorium, including, for
23 example, the maintenance of—

24 (i) the grounds of the cemetery or crematorium; and

25 (ii) monuments, memorials, tombstones, gravestones, tablets,
26 monumental inscriptions, mausoleums, vaults and graves
27 within the cemetery or crematorium; and

- 1 (iii) walls, fences, paths, roads, drains and other works of the
2 cemetery or crematorium; and
- 3 (b) any other purpose approved, in writing, by the Minister.
- 4 *Note* An example is part of the Act, is not exhaustive and may extend, but
5 does not limit, the meaning of the provision in which it appears (see
6 Legislation Act, s 126 and s 132).
- 7 (4) An approval under subsection (3) (b) is a disallowable instrument.
- 8 *Note* A disallowable instrument must be notified, and presented to the
9 Legislative Assembly, under the Legislation Act.
- 10 (5) The trustee of the perpetual care trust is the operator for the time
11 being of the cemetery or crematorium.
- 12 (6) However, if there is no operator, the trustee is the person appointed
13 as trustee for the perpetual care trust under the *Trustee Act 1925* or,
14 if no-one is appointed as trustee under that Act, the chief executive.
- 15 (7) The perpetual care trust is taken to be a charitable trust established
16 for public charitable purposes, and is not for profit.
- 17 (8) The regulations may declare that expenditure of a particular kind or
18 for a particular purpose is, or is not, expenditure for the maintenance
19 of a cemetery or crematorium.
- 20 (9) Subsection (3) (a) has effect subject to any regulations made for
21 subsection (8).

22 **10 Determination of trust percentage**

- 23 (1) The Minister must, for each cemetery or crematorium, determine the
24 percentage (the *perpetual care trust percentage*) of each amount
25 received by the operator for a burial, interment of ashes or
26 memorialisation at the cemetery or crematorium that is to form part
27 of the perpetual care trust of the cemetery or crematorium.
- 28 (2) The perpetual care trust percentage determined for the cemetery or
29 crematorium must be the percentage that the Minister considers
30 necessary to ensure that there are sufficient funds in the perpetual

1 care trust so that the cemetery or crematorium will be adequately
2 maintained.

3 (3) The Minister must tell the operator the perpetual care trust
4 percentage determined.

5 (4) The Minister may, by written notice to the operator of a cemetery or
6 crematorium, require the operator to give the Minister stated
7 information or documents that the Minister reasonably needs to
8 make a determination under this section.

9 **11 Perpetual care funds**

10 (1) The operator of a cemetery or crematorium commits an offence if
11 the operator does not open and maintain a trust account (a *perpetual*
12 *care fund*) with an authorised deposit-taking institution (*ADI*) under
13 a title that includes the name of the cemetery or crematorium and
14 the words 'perpetual care fund', for each cemetery or crematorium
15 the operator manages.

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

18 (2) The operator commits an offence if the operator—

19 (a) opens the perpetual care fund; and

20 (b) does not tell the chief executive in writing of the name of the
21 ADI with which the perpetual care fund is maintained, the
22 branch (if any) where the fund is maintained, the account
23 number (if any) and the title of the account within 2 business
24 days after the opening.

25 Maximum penalty: 20 penalty units.

26 (3) The operator (or, if there is no operator, the trustee of the perpetual
27 care fund) commits an offence if—

28 (a) a change is made in the ADI with which the perpetual care
29 fund is maintained, the branch where the fund is maintained or
30 the account number or title; and

- 1 (b) the operator does not tell the chief executive in writing of the
2 new ADI, branch or account number or title within 2 business
3 days after the change.

4 Maximum penalty: 20 penalty units.

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

6 **12 Payments into perpetual care fund**

7 (1) This section applies if the operator of a cemetery or crematorium
8 receives an amount for a burial, interment of ashes or
9 memorialisation at the cemetery or crematorium.

10 (2) The perpetual care trust percentage of the amount forms part of the
11 perpetual care trust of the cemetery or crematorium.

12 (3) The operator commits an offence if the operator—

13 (a) receives the amount; and

14 (b) fails to pay the perpetual care trust percentage of the amount
15 into the perpetual care fund of the cemetery or crematorium as
16 soon as possible after the end of the named month in which the
17 operator receives the amount.

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

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

21 **13 Protection of perpetual care funds**

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

26 (2) This section does not apply to debts incurred by the operator in the
27 maintenance of the cemetery or crematorium or for a purpose
28 approved by the Minister under section 9 (3) (b).

1 **14 Provisions applying to authorised deposit-taking**
2 **institutions**

- 3 (1) This section applies to an ADI with which a perpetual care fund of a
4 cemetery or crematorium is maintained.
- 5 (2) The ADI is not obliged to control or supervise transactions of the
6 perpetual care fund or how amounts withdrawn from the account are
7 applied.
- 8 (3) The ADI must not, in relation to any liability of the operator of the
9 cemetery or crematorium or anyone else to the ADI, have or obtain
10 any recourse or right, whether by way of settlement, counterclaim,
11 charge or otherwise against an amount credited to the perpetual care
12 fund.
- 13 (4) This section does not relieve the ADI from any liability it may have
14 apart from this section.

15 **15 Accounts and records for perpetual care funds**

- 16 (1) The operator of a cemetery or crematorium commits an offence if
17 the operator does not keep accounts and records for—
- 18 (a) amounts received by the operator for burials, interment of
19 ashes, and memorialisations at the cemetery or crematorium;
20 and
- 21 (b) amounts paid into the perpetual care fund of the cemetery or
22 crematorium; and
- 23 (c) amounts withdrawn from the perpetual care fund and the
24 purposes for which the amounts are applied.
- 25 Maximum penalty: 20 penalty units.
- 26 (2) The operator commits an offence if the operator does not—
- 27 (a) keep the accounts and records at the operator's principal place
28 of business in the ACT, or at another place with the written
29 approval of the chief executive; and

1 (b) keep the accounts and records in a way that they can be
2 conveniently and properly audited; and

3 (c) keep the accounts and records for at least 7 years after they are
4 made.

5 Maximum penalty: 20 penalty units.

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

7 **16 Audit**

8 (1) The operator of a cemetery or crematorium commits an offence if
9 the operator fails to have the accounts and records mentioned in
10 section 15 audited by a person who is a registered company auditor
11 within the meaning of the Corporations Act as soon as practicable
12 after the end of each financial year.

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

15 (2) The operator commits an offence if the operator does not give the
16 auditor's report and audited accounts to the chief executive as soon
17 as practicable after the end of the financial year to which the report
18 relates.

19 Maximum penalty: 20 penalty units.

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

21 **Division 2.3 Improvement notices**

22 **17 Improvement notices**

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

25 (a) the chief executive believes on reasonable grounds that this
26 Act has been, or is being, contravened in relation to the
27 cemetery or crematorium; and

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

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

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

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

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

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

17 (4) The improvement notice—

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

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

23 (c) if the notice requires the operator to end the contravention—
24 must state that failure to end the contravention, without
25 reasonable excuse, within the stated time is an offence; and

26 (d) if the notice requires the operator to remedy the consequences
27 of the contravention—must state that, if the operator fails to
28 remedy the consequences within the stated time, the chief
29 executive may arrange for action to be taken to remedy the
30 consequences and that the operator will be liable for the cost of
31 taking the action.

1 **18 Penalty for failing to end contravention**

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

5 Maximum penalty: 50 penalty units.

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

7 **19 Chief executive may take action to remedy consequences**
8 **of contravention**

9 (1) If the operator of a cemetery or crematorium fails to remedy the
10 consequences of a contravention of this Act in accordance with an
11 improvement notice or any additional time allowed by the chief
12 executive, the chief executive may arrange for the action that the
13 chief executive considers necessary or desirable to remedy the
14 consequences to be taken by or on behalf of the Territory.

15 (2) The cost of any action taken under this section is a debt payable by
16 the operator to the Territory.

17 **Division 2.4 Offences about burials and**
18 **cremations**

19 **20 Person must not bury or cremate human remains except**
20 **in accordance with regulations**

21 (1) A person commits an offence if—

22 (a) the person buries human remains, or foetal remains, at a
23 cemetery; and

24 (b) the burial is not in accordance with the regulations.

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

- 1 (2) A person commits an offence if—
2 (a) the person cremates human remains or foetal remains at a
3 crematorium; and
4 (b) the cremation is not in accordance with the regulations.
5 Maximum penalty: 50 penalty units, imprisonment for 6 months or
6 both.
7 (3) An offence against this section is a strict liability offence.
8 (4) It is a defence to a prosecution for an offence against subsection (2)
9 if the chief health officer has given a public health direction under
10 the *Public Health Act 1997* requiring the cremation of the remains.

11 **21 Operator not to allow burial or cremation except in**
12 **accordance with regulations etc**

- 13 (1) The operator of a cemetery or crematorium commits an offence if—
14 (a) the operator allows human remains, or foetal remains, to be
15 buried or cremated at the cemetery or crematorium; and
16 (b) the burial or cremation is not in accordance with the
17 regulations.
18 Maximum penalty: 50 penalty units.
19 (2) An offence against this section is a strict liability offence.
20 (3) It is a defence to a prosecution for an offence against subsection (1)
21 if the chief health officer has given a public health direction under
22 the *Public Health Act 1997* requiring the cremation of the remains.

23 **22 Minister or magistrate may prohibit cremation**

- 24 (1) The Minister, a magistrate or a special magistrate under the
25 *Magistrates Court Act 1930* may, by written notice given to the
26 operator of a crematorium, prohibit the cremation of stated human
27 remains, either absolutely or until stated conditions are complied
28 with.

- 1 (2) The operator commits an offence if—
2 (a) the notice has not been revoked; and
3 (b) the stated conditions have not been complied with; and
4 (c) the operator cremates the human remains.

5 Maximum penalty: 50 penalty units.

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

7 **23 Exhumation of human remains**

- 8 (1) A person commits an offence if—
9 (a) the person exhumes human remains, or foetal remains, buried
10 in a cemetery; and
11 (b) there is no warrant under the *Coroners Act 1997* authorising
12 the exhumation; and
13 (c) the chief health officer has not given written permission under
14 this section.

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

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

- 18 (3) A person may apply to the chief health officer for permission to
19 exhume human remains buried in a cemetery.

- 20 (4) The chief health officer may give the permission, either
21 conditionally or unconditionally, if satisfied that it would not be
22 contrary to the interests of public health to give permission.

- 23 (5) If the chief health officer refuses to give the permission, the chief
24 health officer must give the applicant written notice of the refusal
25 and the reasons for it.

1 **24 Burials to take place only at cemetery**

2 (1) A person commits an offence if—

3 (a) the person buries human remains other than at a cemetery; and

4 (b) the person does not have the Minister's written permission.

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

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

8 **25 Cremations to take place only at crematorium**

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

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

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

14 **26 Cremation to conceal offence**

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

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

19 **27 Doctors certificates**

20 (1) A doctor commits an offence if—

21 (a) a coroner must hold an inquest into the manner and cause of
22 death of a person under the *Coroners Act 1997*; and

1 (b) the doctor gives a certificate about the death of the person for
2 the regulations.

3 Maximum penalty: 10 penalty units.

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

7 (2) An offence against subsection (1) is a strict liability offence.

8 (3) A doctor commits an offence if—

9 (a) the doctor gives a certificate about the death of a person for the
10 regulations; and

11 (b) the doctor knows that—

12 (i) the doctor has a financial interest in the person's death
13 under a life insurance policy; or

14 (ii) the doctor has a right or expectancy to property of any
15 kind on the person's death.

16 Maximum penalty: 50 penalty units.

17 (4) In this section:

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

- 1 (b) give the board a reasonable opportunity to comment on the
2 proposed direction; and
- 3 (c) consider any comments made by the board.
- 4 (3) The Minister must present a copy of a direction given under this
5 section to the Legislative Assembly within 6 sitting days after it is
6 given.
- 7 (4) The board must comply with a direction given to it under this
8 section.
- 9 (5) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—
- 10 (a) the giving of a direction under this section; and
- 11 (b) the doing of, or the failure to do, anything by the board to
12 comply with a direction under this section.

13 **31 Reports to Minister by board**

- 14 (1) In addition to any other reports that the board is required to make
15 under this Act or any other Territory law, the board must give the
16 Minister the reports the Minister requires.
- 17 (2) A report under this section must be prepared in the form, and be
18 based on the accounting or other policies or practices (if any), that
19 the Minister requires.

20 **32 Providing information to Minister by board**

- 21 The board must give the Minister any information about its
22 operations that the Minister requires.

1 **Division 3.2 Members of board**

2 **33 Members of board**

3 (1) The board consists of at least 4, and not more than 12, members
4 appointed by the Minister.

5 *Note 1* For the making of appointments (including acting appointment), see
6 Legislation Act, pt 19.3.

7 *Note 2* In particular, a person may be appointed for a particular provision of a
8 law (see Legislation Act, s 7 (3)) and an appointment may be made by
9 naming a person or nominating the occupant of a position (see s 207).

10 *Note 3* Certain Ministerial appointments require consultation with a Legislative
11 Assembly committee and are disallowable (see Legislation Act,
12 pt 19.3.3).

13 (2) The board must include at least 4 members who, in the Minister’s
14 opinion, represent the general community and religious
15 denominations.

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

18 **34 Term of appointment of members**

19 A member must not be appointed for a term of longer than 3 years.

20 *Note* A person may be reappointed to a position if the person is eligible to be
21 appointed to the position (see Legislation Act, s 208 and dict, pt 1, def
22 *appoint*).

23 **35 Ending of appointment of members**

24 The Minister may end the appointment of a member—

25 (a) for misbehaviour or physical or mental incapacity; or

26 (b) if the member—

27 (i) becomes bankrupt, applies to take the benefit of any law
28 for the relief of bankrupt or insolvent debtors, compounds

1 with creditors or makes an assignment of remuneration
2 for their benefit; or

3 (ii) is absent from 3 consecutive meetings without reasonable
4 excuse; or

5 (iii) contravenes section 42 (Disclosure of interest by
6 members) or 43 (Members to be honest etc).

7 *Note* A person's appointment also ends if the person resigns (see Legislation
8 Act, s 210).

9 **36 Conditions of appointment of members generally**

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

12 **Division 3.3 Proceedings of board**

13 **37 Time and place of meetings**

14 (1) Meetings of the board are to be held at the times and places it
15 decides.

16 (2) However, the board must meet at least once every 3 months.

17 (3) The chairperson—

18 (a) may at any time call a meeting of the board; and

19 (b) must call a meeting if asked by the Minister or at least
20 2 members.

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

23 **38 Presiding member at meetings**

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

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

- 1 (3) If the chairperson and the deputy chairperson are absent, the
2 member chosen by the members present presides.

3 **39 Quorum at meetings**

- 4 Business may be carried on at a meeting of the board only if at least
5 ½ the number of members appointed are present.

6 **40 Voting at meetings**

- 7 (1) At a meeting of the board each member has a vote on each question
8 to be decided.
9 (2) A question is to be decided by a majority of the votes of the
10 members present and voting but, if the votes are equal, the member
11 presiding has a casting vote.

12 **41 Conduct of meetings etc**

- 13 (1) The board may conduct its proceedings (including its meetings) as it
14 considers appropriate.
15 (2) The board may hold meetings, or allow members to take part in
16 meetings, by telephone, closed-circuit television or another form of
17 communication.
18 (3) A member who takes part in a meeting under subsection (2) is taken
19 to be present at the meeting.
20 (4) A resolution is a valid resolution of the board, even if it is not
21 passed at a meeting of the board, if—
22 (a) all members agree, in writing, to the proposed resolution; and
23 (b) notice of the resolution is given under procedures decided by
24 the board.
25 (5) The board must keep minutes of its meetings.

1 **42 Disclosure of interest by members**

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

20 **43 Members to be honest etc**

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

1 **Division 3.4 Staff**

2 **44 Arrangements for staff**

- 3 (1) The board may arrange with the chief executive to use public
4 servants in the administrative unit under the chief executive's
5 control.
- 6 (2) The *Public Sector Management Act 1994* applies to the management
7 by the board of public servants who are the subject of an
8 arrangement under subsection (1).
- 9 (3) This division does not limit the board's power to employ people
10 who are not public servants.

Section 47

- 1 (b) for a decision mentioned in section 45 (2)—the applicant for
2 permission to exhume human remains; or
- 3 (c) for a decision mentioned in section 45 (3)—the applicant for
4 permission to bury human remains other than at a cemetery.
- 5 (2) The notice must be in accordance with the requirements of the code
6 of practice in force under the *Administrative Appeals Tribunal*
7 *Act 1989*, section 25B (1).

47 Acts and omissions of representatives

- 8 (1) In this section:
- 9 *representative* means—
- 10 (a) for a corporation—an executive officer, employee or agent of a
11 corporation; or
12 (b) for an individual—an employee or agent of the individual.
- 13 *state of mind*, of a person, includes—
- 14 (a) the person's knowledge, intention, opinion, belief or purpose;
15 and
16 (b) the person's reasons for the intention, opinion, belief or
17 purpose.
18
- 19 (2) This section applies to a prosecution for any offence against this
20 Act.
- 21 (3) If it is relevant to prove a person's state of mind about an act or
22 omission, it is enough to show—
- 23 (a) the act was done or omission made by a representative of the
24 person within the scope of the representative's actual or
25 apparent authority; and
26 (b) the representative had the state of mind.
- 27 (4) An act done or omitted to be done on behalf of a person by a
28 representative of the person within the scope of the representative's

1 actual or apparent authority is taken to have been done or omitted to
2 be done also by the person, unless the person establishes that
3 reasonable precautions were taken and appropriate diligence was
4 exercised to avoid the act or omission.

5 (5) An individual who is convicted of an offence cannot be punished by
6 imprisonment for the offence if the individual would not have been
7 convicted of the offence without subsection (3) or (4).

8 **48 False or misleading statements**

9 A person commits an offence if, for this Act—

10 (a) the person gives information to the chief executive, a doctor,
11 the operator of a cemetery or crematorium, or anyone else; and

12 (b) the person does so knowing that the information—

13 (i) is false or misleading in a material particular; or

14 (ii) omits something that makes the information false or
15 misleading in a material particular.

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

18 **49 Determination of fees**

19 (1) The Minister may, in writing, determine fees for this Act.

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

22 (2) A determination is a disallowable instrument.

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

25 **50 Approved forms**

26 (1) The Minister may, in writing, approve forms for this Act.

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

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

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

3 **51 Regulation-making power**

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

5 *Note* Regulations must be notified, and presented to the Legislative
6 Assembly, under the Legislation Act.

7 (2) The regulations may make provision in relation to—

8 (a) the protection of cemeteries and crematoria; and

9 (b) the conduct of cemeteries and crematoria; and

10 (c) the requirements for burials and cremations; and

11 (d) certificates by doctors required for burials and cremations; and

12 (e) any matter about which provision may be made by a code of
13 practice.

14 (3) The regulations may also prescribe offences for contraventions of
15 the regulations and prescribe maximum penalties of not more than
16 10 penalty units for offences against the regulations.

1 **Part 5** **Transitional matters**

2 **Division 5.1** **Assets and liabilities of former**
3 **trustees**

4 **52** **Meaning of *former trustees* for pt 5**

5 In this part:

6 *former trustees* means The Trustees of the Canberra Public
7 Cemeteries set up under the *Cemeteries Act 1933* (repealed),
8 section 6.

9 **53** **Vesting of assets and liabilities of former trustees in**
10 **board**

- 11 (1) The assets and liabilities of the former trustees vest in the board.
- 12 (2) If an asset, right or liability that vests in the board is mentioned in a
13 contract, agreement or arrangement, a reference in the contract,
14 agreement or arrangement to the former trustees is, in relation to
15 anything happening or to happen in relation to the asset or liability
16 after the vesting of the asset or liability in the board, a reference to
17 the board.

18 **54** **Evidentiary certificate for vested assets and liabilities**

- 19 (1) The chief executive may certify that an asset or liability has vested
20 in the board under section 53.
- 21 (2) A certificate under subsection (1) is evidence of the matters it states.

22 **55** **Registration of changes in title to certain assets**

- 23 (1) This section applies if—
- 24 (a) a registrable asset vests in the board under section 53 (Vesting
25 of assets and liabilities of former trustees in board); and

- 1 (b) the board gives the registering authority for the asset a
2 certificate under section 54 (Evidentiary certificate for vested
3 assets and liabilities) for the asset.
- 4 (2) The registering authority must make the entries in the appropriate
5 register kept by the registering authority, and do anything else
6 necessary or desirable to be done, to reflect the vesting of the asset
7 in the board.
- 8 (3) The evidentiary value of a register mentioned in this section is not
9 affected by—
- 10 (a) the making of an entry under this section; or
11 (b) the failure to make an entry under this section; or
12 (c) the failure by the board to give a certificate to the registering
13 authority for a registrable asset.
- 14 (4) In this section:
- 15 *registering authority*, for a registrable asset, means the person who,
16 under Territory law, is required or permitted to enter particulars
17 about the ownership of the asset in a register.
- 18 *registrable asset* means an asset, including an interest in land,
19 particulars of the ownership of which are required or permitted
20 under Territory law to be entered in a register.

21 **56 Proceedings and evidence in relation to vested assets**
22 **and liabilities**

- 23 (1) This section applies in relation to an asset or liability that vests in
24 the board under section 53 (Vesting of assets and liabilities of
25 former trustees in board).
- 26 (2) If a proceeding had been begun in relation to the asset or liability
27 before it vested in the board and the former trustees are a party to
28 the proceeding, the board is substituted for the former trustees as a
29 party to the proceeding.

- 1 (3) If a proceeding could have been begun by or against the former
2 trustees in relation to the asset or liability before it vested in the
3 board, the proceeding may be begun by or against the board.
- 4 (4) The *Limitation Act 1985* applies to a cause of action that accrued to
5 or against the former trustees in relation to the asset or liability as if
6 the cause of action had accrued to or against the board when it
7 accrued to or against the former trustees.
- 8 (5) The court or other entity in which a proceeding is begun or
9 continued by or against the board in relation to the asset or liability
10 may give directions about the conduct of the proceeding.
- 11 (6) Any evidence that would have been admissible for or against the
12 former trustees is admissible for or against the board.
- 13 (7) In this section:
- 14 *proceeding* includes a right of appeal or review (including a right of
15 review under the *Ombudsman Act 1989*) or any other civil
16 proceeding.

17 Division 5.2 General

18 57 Transitional regulations

- 19 (1) The regulations may prescribe savings or transitional matters
20 necessary or convenient to be prescribed because of the enactment
21 of this Act.
- 22 (2) In particular, the regulations may provide—
- 23 (a) that a permit for burial obtained under the *Canberra Public*
24 *Cemeteries Regulations 1939* is taken to allow burial under the
25 regulations; or
- 26 (b) that an approval under the *Cremation Act 1966* of an
27 application for the cremation of a body is taken to allow
28 cremation under the regulations.

1 **58 Modification of pt 5's operation**

2 The regulations may modify the operation of this part to make
3 provision in relation to any matter that, in the Executive's opinion,
4 is not, or is not adequately, dealt with in this part.

5 **59 Expiry of pt 5**

6 This part expires 1 year after the day it commences.

7 **60 Repeal of Acts**

8 The following Acts are repealed:

9 *Cemeteries Act 1933* No 29

10 *Cremation Act 1966* No 10.

11 **61 Repeal of subordinate laws**

12 The *Canberra Public Cemeteries Regulations 1939* made on
13 30 June 1939 are repealed.

14 **62 Acts amended—sch 1**

15 Schedule 1 amends the Acts mentioned in it.

Schedule 1 Consequential amendments

(see s 62)

Part 1.1 Land (Planning and Environment) Act 1991

[1.1] 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 |
|---|---------------------------|---|---|

[1.2] Dictionary, new definition of *cemetery*

insert

cemetery includes crematorium.

Part 1.2 Coroners Act 1997

[1.3] Section 12

substitute

12 General functions and jurisdiction of coroner

- (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*.

1 Dictionary

2 (see s 3)

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

5 *Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • appoint
- 7 • authorised deposit-taking institution
- 8 • chief executive
- 9 • chief health officer
- 10 • contravene
- 11 • exercise
- 12 • function.

13 *ADI*—see section 11 (1).

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

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

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

19 *chairperson* means the chairperson of the board.

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

21 *crematorium* means a public or private crematorium.

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

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

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

- 1 **human remains** means the body, or part of the body, of a dead
2 person (including a stillborn child), but does not include cremated
3 human remains.
- 4 **improvement notice**—see section 17 (3).
- 5 **maintain** includes alter, remove, renew and repair.
- 6 **member** means a member of the board, and includes the chairperson
7 and the deputy chairperson.
- 8 **memorialisation** means the erection of a memorial for a dead
9 person.
- 10 **operator**, of a cemetery or crematorium, means the person who
11 manages the cemetery or crematorium.
- 12 **perpetual care fund**—see section 11.
- 13 **perpetual care trust**—see section 9 (2).
- 14 **perpetual care trust percentage**—see section 10 (1) (Determination
15 of trust percentage).
- 16 **private burial ground** means an area of unleased Territory land
17 reserved under the Territory plan as a burial ground.
- 18 **private cemetery** means land leased for the purposes of a cemetery
19 or for the purposes of a cemetery and crematorium.
- 20 **private crematorium** means land leased for the purposes of a
21 crematorium or for the purposes of a cemetery and crematorium.
- 22 **public cemetery** means unleased Territory land reserved under the
23 Territory plan for use as a cemetery or for use as a cemetery and
24 crematorium.
- 25 **public crematorium** means unleased Territory land reserved under
26 the Territory plan for use as a crematorium or for use as a cemetery
27 and crematorium.
- 28 **stillborn child**—see the *Births, Deaths and Marriages Registration*
29 *Act 1997*, section 4 (1).

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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