

Australian Capital Territory

Cemeteries and Crematoria (Code of Practice) Approval 2007

Disallowable instrument DI2007–100

made under the

Cemeteries and Crematoria Act 2003, section 6 (Codes of Practice)

1 Name of instrument

This instrument is the Cemeteries and Crematoria (Code of Practice) Approval 2007.

2 Commencement

This instrument commences on the day after notification.

3 Approval or Declaration or Appointment

The document entitled the “ACT Cemeteries and Crematoria Code of Practice 2007” attached to this instrument is approved as a code of practice.

4 Revocation

Disallowable Instrument DI 2003-268 is revoked.

John Hargreaves MLA
Minister for Territory and Municipal Services

18 April 2007

ACT
Cemeteries and
Crematoria

Code of Practice

2007

ACT Cemeteries and Crematoria Code of Practice 2007

1. Background

- 1.1 This Code of Practice has been made under section 6 of the *Cemeteries and Crematoria Act 2003* and should be read in conjunction with the Act and Regulations.
- 1.2 The Code outlines the minimum operating requirements that apply to all cemeteries and crematoria in the ACT, whether public or private.

2. Dictionary

- 2.1 The dictionary at the end of this Code of Practice is part of this Code.

3. Plan of Cemeteries and Crematoria

- 3.1 An operator of a cemetery or crematorium must prepare a plan showing the layout and detailed subdivision of the cemetery or crematorium and make that plan available to the public.

4. Right of Burial or Interment

- 4.1 A right of burial and a right of interment of ashes includes the right to decide whether human remains or cremated human remains are buried or interred in a specific location in a cemetery or crematorium; the right to decide if a monument or memorial is placed or erected on the site; and the responsibility for any maintenance of the monument or memorial.
- 4.2 When the operator of a cemetery or crematorium gives someone the right of burial or the right of interment of ashes in the cemetery or crematorium, the right lasts forever. The operator of the cemetery or crematoria will give the person a certificate stating that they have exclusive right of burial or right of interment of ashes and list the particular place that the right is for. The right of burial or right of interment of ashes is passed down to descendants of the person who purchased the right of burial or right of interment of ashes. It is the responsibility of the holder of the right of burial or right of interment of ashes to inform the operator of the cemetery or crematorium of any change in contact details. For example, if the holder of a right of burial dies and the right of burial is passed to one of their children, that child must contact the operator of the cemetery and inform them that they are the new holder of the right of burial.

- 4.3 If no human remains (including foetal remains and cremated remains) are buried or interred in a place where a right of burial or right of interment of ashes has been granted within 60 years, then the operator of the cemetery or crematorium may revoke the right of burial or right of interment. The exception to this is when a person purchases a family plot (or group of plots). If one plot in the group of plots has human remains buried or interred in it, the operator of the cemetery or crematorium may not revoke the right of burial or right of interment for that group of plots.
- 4.4 The operator of a cemetery or crematorium must follow the steps below to revoke a right of burial or right of interment:
- 4.4.1 The operator of a cemetery or crematorium must attempt to contact the holder of the right of burial or right of interment of ashes. If the holder of the right of burial or right of interment of ashes is contacted, see paragraph 4.4.6.
- 4.4.2 If the holder of the right of burial or right of interment of ashes cannot be contacted because they are dead, the operator of a cemetery or crematorium must attempt to contact a descendant of the person who purchased the right of burial or right of interment of ashes.
- 4.4.3 If the operator cannot contact either the person or one of their descendants, they must advertise in *The Canberra Times* that they plan to revoke the right of burial or right of interment of ashes for a particular location, unless the person holding the right of burial or right of interment of ashes for the location or one of their descendants contacts the operator within 4 weeks.
- 4.4.4 If no one contacts the operator about the right of burial or right of interment of ashes then the operator may revoke the right of burial or right of interment of ashes after the 4 week period has elapsed.
- 4.4.5 If the person who held a right of burial or right of interment of ashes that has been revoked tries to use the right of burial or right of interment of ashes at a later time, the operator must offer them either: an equivalent right of burial or right of interment of ashes; or a compensation payment of half of the fee for the equivalent right of burial or right of interment of ashes.
- 4.4.6 If contact is made with the holder of the right of burial or right of interment of ashes or one of their descendants then:
- (a) the person may choose to sell the right of burial or right of interment of ashes to the operator for half of the fee at the time the sale takes place for an equivalent right of burial or right of interment of ashes; or
 - (b) the person may choose to retain the right of burial or right of interment of ashes.

- 4.5 A person cannot have a burial site reopened for the purpose of an additional burial in the site unless he or she is the holder of the right of burial for that site, or produces the written consent of the holder, or the lawful successor of the holder.
- 4.6 An application for right of burial or right of interment may only be granted to the person who wishes to use that right. An undertaker or funeral director may not make application for, or on behalf, of a person. The operator of a cemetery or crematorium may refuse to set apart and grant to any person the right of burial or right of interment of ashes in more than one site. However, family estates, where a person may purchase at least two adjacent sites with multiple burials per grave, are allowed.
- 4.7 The operator of a cemetery or crematorium may, on being satisfied that a certificate of right of burial or right of interment of ashes has been lost or destroyed, issue a duplicate certificate.

5. Maintenance of graves and vaults

- 5.1 As a general rule, the operator of a cemetery or crematorium is not responsible for the maintenance of any grave, monuments or memorials. The holder of the right of burial or right of interment is responsible for the maintenance of a grave, monument or memorial unless they have paid the operator of the cemetery or crematorium a fee for the operator to maintain them. If the holder of the right of burial or right of interment does not maintain a monument or memorial, then the operator can remove any structures, which they deem a safety risk.

6. Maintenance of cemeteries and crematoria

- 6.1 The operator of a cemetery or crematorium must maintain the grounds of the cemetery or crematorium in a safe, clean and orderly condition.

7. Keeping application records

- 7.1 The operator of a cemetery or crematorium is required to store application records for at least 20 years. After 20 years from the date an application record was created, it must be available for public access if there is a particular request in relation to that record. Records may be accessed during the first 20 years after application in special situations (eg. the restoration of war graves). If the operator does not have room to continue storing these application records, the operator may submit the documents to the Chief Executive of the ACT Government department responsible for oversight of cemeteries and crematoria for storage. The Chief Executive must retain these records of burial, interment or cremation because they

have enduring value for genealogical research for future generations. Records of interest to the Office of Australian War Graves (OAWG) should be marked appropriately as the OAWG are responsible for the perpetual care of these sites.

- 7.2 When a operator of a cemetery or crematorium ceases to be the operator of a particular cemetery or crematorium, or the cemetery or crematorium is closed; the operator shall deposit the registers and all records with the Chief Executive of the ACT Government department responsible for oversight of cemeteries and crematoria, who may then either arrange for storage of these documents or transfer them to the next operator.
- 7.3 After application records become open to public access, a copy of the records must be made available to a person on payment of reasonable copying costs.

8. Design and construction of monuments etc.

- 8.1 A person shall not erect any building, monument, memorial, tombstone, gravestone, tablet, monumental inscription, mausoleum, vault, kerbing, railing or other structure in a cemetery or crematorium unless the plans and particulars have been submitted to and approved in writing by the operator of the cemetery or crematorium. The operator (in accordance with plans and particulars) must approve construction of the structure.
- 8.2 Construction of vaults, mausoleums and other buildings above ground need development approval. In addition, any monuments, memorials, tombstones, gravestones, or tablets that are greater than 1.8 m high (the measurement does not include the foundation), may need development approval under the *Land (Planning and Environment) Regulation 1992*. The operator of the cemetery or crematorium must not approve the erection of any building, monument, memorial etc. that needs development approval unless it has development approval from the ACT Planning and Land Authority.

9. Removal, alterations or repair of monuments, inscriptions etc.

- 9.1 The operator of the cemetery or crematorium may remove, alter or repair any building, monument, memorial, tombstone, gravestone, tablet, monumental inscription, mausoleum, vault, kerbing, railing or other structure in a cemetery or crematorium; or any inscription on the structure, that is, in their opinion, dangerous, unsightly, or in disrepair, or has not been erected in accordance with the plans and particulars approved by the operator. Costs will be borne by the holder of the right of burial or interment of ashes.

10. Planting of trees, covering of graves, memorial areas etc.

- 10.1 The operator of a cemetery or crematorium may set apart an site as a lawn burial or interment area. In a lawn burial or interment area, a person must not erect or place any monument, tablet, gravestone, kerbing, railing, vessel, container (eg. glass vases), statue, candle or any structure other than the standard tablet approved by the operator.
- 10.2 In all other areas, a person must not, unless the operator of a cemetery or crematorium agrees in writing: plant a tree or shrub in a cemetery or memorial area; cover a grave with tiles, cement, chips or any other covering; place a vessel, statue or container on a grave; or place an inscription on a structure.
- 10.3 The operator of a cemetery or crematorium may set aside areas for commemorative purposes that do not involve the burial or interment of human remains.

11. Multiple burials in a grave or burial site

- 11.1 There may be multiple burials in a burial site in a cemetery. There must be at least 150mm between the top of one coffin or casket and the bottom of the next. The upper surface of a coffin or casket must be at least 900mm below the natural surface level of the soil where it is buried or have a 75mm concrete slab on top of the coffin or casket.
- 11.2 A person can not have a site reopened for the purpose of an additional burial unless they are the holder of the Right of Burial for that site, or they produce the written consent of the holder or, if the holder is dead, the written consent of the lawful descendant of the holder.

12. Operator not to interfere with burial ceremonies

- 12.1 The operator of the cemetery or crematorium or the employees of the operator are not permitted to interfere with the performance of religious ceremonies associated with a burial service.

13. Rights of the head of religious denominations or other recognised group in relation to the portion of a cemetery or crematorium set apart for that group

- 13.1 The recognised head of any religious denomination or other group with a specific part of a cemetery or crematorium dedicated for it under section 20 of the *Cemeteries and Crematoria Regulation 2003* has the following rights:

- 13.1.1 They may prohibit the performance of a service within the part of the cemetery or crematorium set apart for their group by giving a written notice to the operator. On receipt of this notice, the operator of the cemetery or crematorium must prevent the holding of services in that area.
- 13.1.2 They may object to a burial or interment or a grant of exclusive right of burial or interment in the part of a cemetery or crematorium set apart for their group by writing to the operator. The operator of the cemetery or crematorium must inform the applicant that an objection has been received and invite the applicant to submit a response to the objection. The operator must consider the objection and the response to the objection when they are making a decision about whether to allow the burial or interment or granting the exclusive right of burial or interment. The operator may also consult with other cultural leaders within the community or nationally when appropriate. If the objection remains valid, the operator must refuse to allow the burial or interment or grant the exclusive right of burial.
- 13.1.3 They may object to the placing of any monumental design or inscription within the part of the cemetery or crematorium set apart for their group. The operator of the cemetery or crematorium must inform the applicant that an objection has been received and invite the applicant to submit a response to the objection. The operator must consider the objection and the response to the objection when they are making a decision about whether to allow the design or inscription. If the objection remains valid the operator must prevent the design or inscription from being placed in that area, or if it is already in the area, ask the owner of the right of burial or right of interment to remove the design or inscription.

14. Coffins for burial

- 14.1 A person (see section 20 of the Act) or an operator of a cemetery or crematorium (see section 21 of the Act) commits an offence if the person or operator buries human or foetal remains at a cemetery or crematorium if the burial is not accordance with the Regulations.
- 14.2 The requirements for burial of human remains are specified in section 7 of the Regulations.
- 14.3 Subsection 7(1)(d) requires that the human remains are in a coffin, casket or other container approved by the chief health officer under subsection 7(2). The chief health officer has approved, as Notifiable Instrument NI2004-332 Cemeteries and Crematoria (Containers for Burial) Approval 2004, that a coffin, casket or other container is approved for the burial of human remains if it complies with certain minimum requirements. These minimum requirements are that it:
- (a) not leak liquids or gases;

- (b) be securely closed before transportation to the burial site up to and including committal to the ground;
- (c) be constructed so as not distort or collapse when handled during the normal course of events leading up to burial (including handling when damp); or
- (d) otherwise, be approved in writing by the chief health officer.

14.4 Any coffin constructed of metal or having a metal internal liner or other metal insert is not acceptable for burial.

15. Coffins for cremation

15.1 A person (see section 20 of the Act) or an operator of a cemetery or crematorium (see section 21 of the Act) commits an offence if the person or operator cremates human or foetal remains at a crematorium and the cremation is not in accordance with the Regulations.

15.2 The requirements for cremation of human remains are specified in section 8 of the Regulations. Subsection 8(1)(d) requires that the human remains are in a coffin, casket or other container approved by the chief health officer under subsection 8(2). The chief health officer has approved, as Notifiable Instrument NI2004-333 Cemeteries and Crematoria (Containers for Cremation) Approval 2004, that a coffin, casket or other container is approved for the burial of human remains if it complies with certain minimum requirements. These minimum requirements are that it:

- (a) be made from a material that will minimise the release of organochlorines during incineration in a crematorium;
- (b) not leak liquids or gases;
- (c) be securely closed before transportation to the cremation site up to and including cremation;
- (d) be constructed so as not distort or collapse when handled during the normal course of events leading up to cremation (including handling when damp);
- (e) be made out of material that is suitable for combustion during cremation; or
- (f) otherwise, be approved in writing by the chief health officer.

15.3 Any coffin constructed of metal or having a metal internal liner or other metal insert is not acceptable for cremation.

16. Content of coffins delivered for cremation

16.1 In addition to human remains and foetal remains, the following are acceptable contents of coffins for cremation:

- (a) coffin lining (must not be constructed of materials containing Poly-vinyl chloride (PVC));

- (b) sheets, pillows, mattress (must not contain PVC and the mattresses must not be inner spring or latex-based rubber mattresses);
- (c) body wrap/bag (must not contain PVC);
- (d) shroud;
- (e) clothing must not contain outer garments made wholly or principally of latex-based rubber or plastic (eg. wet weather gear, fishing waders);
- (f) footwear, such as shoes, sandals, slippers etc are acceptable, although rubber/plastic soles or uppers are not desirable (note - some heavier forms of footwear are not acceptable);
- (g) embalming or temporary preservation fluid;
- (h) radioactive injectable solutions;
- (i) metal joints, pins, and plates;
- (j) silicon implants;
- (k) dental work including false teeth;
- (l) prosthetic limbs, callipers, plaster casts, although Funeral Directors must discuss these with the cremation authority to determine whether the particular bodily appliance will be acceptable and, if appropriate, the extent of body covered by a plaster cast;
- (m) spectacles and jewellery are acceptable but not recommended;
- (n) handbags are not recommended but acceptable if they do not contain PVC and they do not exceed 300 mm x 200 mm x 100 mm;
- (o) a single book of maximum dimensions 200 mm x 125 mm x 40 mm;
- (p) photographs without metal frames or glass; and
- (q) any other items comprised entirely of readily combustible materials that do not explode when subjected to heat or upon combustion generate temperatures, emissions, or residues that are unacceptable to the crematorium operator.

16.2 The following are unacceptable content of coffins for cremation:

- (a) cardiac defibrillator, battery powered;
- (b) cardiac pacemaker, battery powered;
- (c) drug infusion pump;
- (d) irradiated metal pellets;
- (e) metal walking stick;
- (f) any item containing Poly-vinyl chloride (PVC) or Latex-based rubber;
- (g) work boots, military boots, gumboots or similar;
- (h) any item containing metal or glass, other than those listed as acceptable content;
- (i) pathological waste (including infection-control gear, syringes, gauze) and materials used in preparation of the body for cremation;
- (j) fluid in any container, including a bottle or can containing alcohol;
- (k) any battery (whether or not implanted in the body), pressurised spray can and any other item, which explodes when, subjected to heat;
- (l) the uncremated body of any animal or bird;
- (m) any book, paper or paper products, other than those listed in acceptable content, and shredded paper in pillows and mattresses;

- (n) plastic and metal handles on coffins (these are to be removed before cremation); or
 - (o) any other item that explodes when subjected to heat or upon combustion generates temperatures, emissions, or residues that are unacceptable to the crematorium operator.
- 16.3 At the time of booking the cremation, the operator of the crematorium should be made aware if the temperature of the body will be less than 4 degrees Centigrade when it is delivered to the crematorium.
- 17. Handling of cremated remains**
- 17.1 Crematorium staff should not open coffins. If the person who completed the application for cremation requests that the coffin be opened after the crematorium has accepted the coffin, the relevant funeral director should first be contacted.
- 17.2 The body and subsequent remains must be correctly identified throughout the cremation process. For example, this may be done by the coffin nameplate, code, tag or other form of identification being placed in a keeper on an external panel of the cremator to indicate in which compartment the relevant remains are located, or a non-combustible metal tag or disc, stamped with a unique number previously registered on the cremation documentation of the deceased, which accompanies the coffin and body into the cremator.
- 17.3 Each body should be cremated separately except for the cremation of foetuses as a group in accordance with the Regulations. Other exceptions require prior written approval from the Chief Executive of the ACT government department with oversight of crematoria. Examples of possible exceptions are:
- (a) the bodies of two children of the same family who died at the same time;
 - (b) for a mother and her baby who both died at childbirth; or
 - (c) multiple body parts (which have been used for scientific experimentation or teaching purposes).
- 17.4 The holder of the right for interment of ashes can apply in writing to the operator of the crematorium to alter the location for interment or for the removal of remains from the site. Disruption of remains can only occur by crematorium staff with express written permission of the holder of the right of interment of ashes.

Dictionary

Act means the *Cemeteries and Crematoria Act 2003*.

Regulations means the *Cemeteries and Crematoria Regulation 2003*.

Burial means the burial of human remains in the earth or the placement of human remains in a vault.

Grave means any burial place formed in the ground by excavation, and without any internal wall of brickwork or stonework, or any other artificial lining.

Interment means interment of cremated human remains or cremated foetal remains in a specific part or area of a cemetery or crematoria.

Operator of a cemetery or crematorium means the person who manages the cemetery or crematorium.

Vault means a place for burial or entombment which contains internal walls of brickwork or stonework, or any other artificial lining.

Note The Act contains definitions relevant to this Code. For example the Act defines the following terms:

- cemetery
- crematorium
- foetal remains
- human remains.