



2002

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

Cemeteries and Crematoria Bill 2002

EXPLANATORY MEMORANDUM

**Circulated by the authority of
Bill Wood MLA
Minister for Urban Services**

CEMETERIES AND CREMATORIA BILL 2002

EXPLANATORY MEMORANDUM

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CEMETERIES AND CREMATORIA BILL 2002

OUTLINE

The Cemeteries and Crematoria Bill has been developed in response to the National Competition Policy Review of the *Cemeteries Act 1933* and *Cremation Act 1966*. The Centre for International Economics undertook the review.

The report examined the ACT's cemeteries and cremation legislation to ensure the protection of public cemeteries and the management of public cemeteries and private burial grounds occurs as effectively and efficiently as possible, in accordance with National Competition Policy.

The objective of the Bill is to establish a consistent and contemporary framework for the regulation of cemeteries and crematoria in the ACT replacing the outdated *Cemeteries Act 1933* and *Cremation Act 1966*.

In summary, the key features of the Bill are:

- A Ministerial power to determine one or more codes of practice, which would be disallowable instruments.
- The establishment of a perpetual care trust for the maintenance of each cemetery or crematorium.
- A requirement for the Minister to determine the percentage (the perpetual care trust percentage) of each of the fees received by the operator, for a burial, interment of ashes or memorialisation at the specific cemetery or crematorium to be contributed to the perpetual care trust.
- A requirement that an operator of a cemetery or crematorium must open and maintain a trust account (perpetual care fund) with an authorised deposit taking institution.
- Protection of money deposited in the perpetual care fund from being used to pay an operator's debts, or from being used to satisfy a judgement against the operator.
- A power for the Chief Executive to issue an improvement notice to an operator, requiring that person rectify the matter of non-compliance specified in the notice.
- Various provisions relating to burials, cremations, exhumations and the issuing of certificates by medical practitioners.
- The establishment, functions and operation of the ACT Cemeteries Board.
- Provisions allowing for the review of various administrative decisions.
- A regulation making power.
- Repeals and consequential amendments for other pieces of legislation.

DETAILS OF THE BILL

PART I PRELIMINARY

1.1 Formal requirements (clauses 1 and 2)

Clauses 1 and 2 are the formal requirements of all Acts, specifying the title and commencement arrangements. These clauses take effect from the day on which the Bill is notified in the *Gazette*. The rest of the Bill's provisions take effect from the date, or dates the Minister notifies in the *Gazette*. There is also provision for the remaining parts of the Bill to take effect six months after it is first notified in the *Gazette*. This is a 'catch - all' provision which will ensure all provisions commence no later than six months after first notification.

1.2 Dictionary (clause 3)

The dictionary at the end of the Bill defines key words and expressions used in the Bill, and includes references to other words and expressions defined in other parts of the Bill or in other legislation.

The dictionary forms part of the Bill.

1.3 Notes (clause 4)

A note included in the Bill is explanatory only and is not part of the Bill.

PART 2-CEMETERIES AND CREMATORIA

Division 2.1-Operation of Cemeteries and Crematoria

2.1 Codes of practice (clause 5)

Clause 5 provides the Minister with the power to determine codes of practice in relation to the operation of cemeteries and/or crematoria. The codes could cover a range of matters such as record keeping, burial in vaults, by-laws for the cemetery Board, or outlining minimum operating standards or guidelines.

The Minister would also be able to determine that another document such as an Australian Standard be a code of practice for the purposes of this Bill.

Any code of practice would be a disallowable instrument under the *Legislation Act 2001*.

2.2 Guidelines for exercise of Minister's powers (clause 6)

Under clause 6 of the Bill the Minister is able to issues guidelines on how he or she would exercise the following powers:

- (a) approval of a purpose for a trust under clause 7 (3) (b);
- (b) prohibition of the cremation of specified human remains under clause 20 (1); and
- (c) approval for a person to be buried in a location outside a cemetery under clause 22.

The aim of the guidelines is to outline, for example, the process the Minister would use, and the factors that he or she would consider when making a decision under the above clauses. The Minister is required to comply with any guidelines that have been developed under Clause 6. The guidelines would also be disallowable instruments under the *Legislation Act 2001*.

Division 2.2-Perpetual care trusts

The most significant issue in provision of cemetery or crematoria services is the funding of ongoing and future maintenance. The success of a perpetual care fund depends on whether the initial interment levy is high enough, the skill with which it is managed, and the standard of maintenance of the cemetery. Although no financial arrangement can guarantee against fraud or mismanagement, the advantage of such a fund is that maintenance-specific funds become identifiable and auditable, and their adequacy can be monitored and assessed.

2.3 Establishment of perpetual care trusts (clause 7)

Under a perpetual care trust, a percentage of the cost of each burial, interment or memorialisation is invested in a trust, which is used for the maintenance of the cemetery or crematorium (but not a private burial ground) or any other purpose as determined by the Minister. This could include, for example, the maintenance of:

- (a) the grounds of the cemetery or crematorium; and
- (b) monuments, memorials, tombstones, mausoleums, graves; and
- (c) vaults within the cemetery or crematorium; and
- (d) walls, fences, paths, roads, drains and other works of the cemetery or crematorium.

The Minister's determination would be a disallowable instrument under the *Legislation Act 2001*.

The proposed perpetual care trust would only provide for maintenance of gravesites and interment areas developed after the trust's introduction.

The trustee of the trust is the operator of the cemetery or crematorium. 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, then the Chief Executive.

So that there is no misinterpretation, the Bill provides that the trust is to be taken as a charitable trust established for public charitable purposes.

2.4 Determination of trust percentage (clause 8)

The Minister would, for each cemetery and crematorium, determine the percentage (the perpetual care trust percentage) of each fee received for a burial, interment of ashes or memorialisation that would form part of the perpetual care trust of the cemetery or crematorium.

The percentage is the minimum amount for each facility that the Minister considers appropriate so that there are sufficient funds in the perpetual care trust to ensure that the cemetery or crematorium is adequately maintained.

The Minister is required to advise each operator of the determined perpetual care trust percentage for his or her facility. If an operator disagrees with the Minister's determination, he or she may apply to the Administrative Appeals Tribunal for a review of the determination.

In order for the Minister to make an accurate determination, he or she may write to the operator of a cemetery or crematorium requiring the operator to provide specified additional information.

If the Minister does not receive that information, the Minister would determine a percentage, which he or she believes is reasonable.

2.5 Perpetual care funds (clause 9)

The operator of a cemetery or crematorium is required to open and maintain a trust account (a perpetual care fund) with an authorised deposit-taking institution (ADI) for each cemetery or crematorium that he or she manages. The account must contain the name of the crematorium or cemetery and the words "perpetual care fund."

Within two business days of opening the perpetual care fund, the operator is required to provide the Chief Executive with the following information in writing:

- (a) the name of the authorised deposit taking institution (ADI) with which the perpetual care fund is maintained;
- (b) the branch (if any) where the fund is maintained;
- (c) the account number (if any); and
- (d) the name of the account.

If any of the above information changes then the operator, or, if there is no operator, the trustee of the perpetual care fund is required to provide the updated information to the Chief Executive within two business days of the changes.

In case of a cemetery or crematorium being sold, or the operator becoming bankrupt, the perpetual care fund would transfer to the new owner. Or, in the situation where the Government was seeking another operator, the perpetual care account and the lease for the cemetery or crematorium would revert to the Territory until a new operator was found.

2.6 Payments into the perpetual care fund (clause 10)

Where an operator receives payment for a burial, interment of ashes or a memorialisation at the cemetery or crematorium, the operator deposits the appropriate percentage of the fees (perpetual care trust percentage) into the perpetual care fund. This action would occur as soon as possible after the end of the month in which the operator receives the payment.

2.7 Protection of perpetual care funds (clause 11)

The Bill provides a safeguard that monies paid in to the perpetual care fund can be used for maintenance, or other purposes as determined by the Minister under subclause 7 (3) (b) only. The perpetual care fund can not be used to pay general debts or be used to satisfy a judgement against an operator.

2.8 Provisions applying to authorised deposit-taking institutions (clause 12)

Clause 12 applies to an authorised deposit-taking institution (ADI) with which a perpetual care fund of a cemetery or crematorium is maintained.

An ADI is not responsible for supervising or monitoring transactions in and out of the perpetual care fund or how the funds are used.

Also the ADI can not, in relation to any liability of an operator, or any one else, gain access to the funds in the perpetual care fund to discharge that liability.

This clause does not relieve the ADI from any liability it may have apart from this clause.

2.9 Accounts and records for perpetual care funds (clause 13)

An operator of a cemetery or crematorium is required to keep records and accounts for the following:

- (a) fees received for burials, interments of ashes and memorialisations at the cemetery or crematorium;
- (b) amounts paid in the perpetual care fund of the cemetery or crematorium; and
- (c) amounts withdrawn from the perpetual care fund and the purposes for which the funds were used.

Also, an operator must:

- (a) keep the necessary accounts and records at the operator's principal place of business in the ACT, or another place, with written approval of the Chief Executive;
- (b) keep the accounts and records in a way that they can be audited; and
- (c) keep the accounts and records for seven years after they are made.

2.10 Audit (clause 14)

The operator is required to have the accounts and records relating to the perpetual care fund audited by a qualified financial auditor annually.

The operator is then required to forward a copy of the auditor's report and audited accounts to the Chief Executive as soon as practicable after the end of the financial year to which the reports relates.

Division 2.3 Improvement notices

2.11 Improvement notices (clause 15)

The purpose of an improvement notice is to enable the Chief Executive to require an operator of a cemetery or crematorium to undertake improvements (such as structural work or repairs to upgrade the facility), so that it complies with the required minimum standards as specified in the regulations or codes of practice.

Where the Chief Executive is satisfied that the operator has contravened or is contravening the Act, then a “show cause” notice may be issued, provided that the identified contravention does not constitute an offence against this Bill.

The notice would:

- (a) specify the contravention that has occurred and the Chief Executive’s reasoning; and
- (b) invite the operator to make written representations within a specified period of not less than fourteen days why the operator should not be required to cease the contravention, remedy the consequences of the contravention, or do both.

If, after considering any written submissions from the operator, the Chief Executive is still satisfied that the operator should be required to cease the contravention, remedy the consequences of the contravention, or do both, he or she may issue an improvement notice to the operator.

The improvement notice:

- (a) must require the operator to cease the contravention, remedy the consequences of the contravention or do both, within the time specified in the notice;
- (b) may state the action the operator must take to comply with the notice.

Where the improvement notice requires the operator to end the contravention the notice must state that failure to comply with the notice is an offence.

Where the improvement notice requires the operator remedy the consequences of the contravention the notice must state, if the operator fails to comply with the notice, then the Chief Executive may arrange for actions to be taken to remedy the consequences and the operator would be liable for the costs incurred.

In most instances the Chief executive would also provide verbal advice on matters needing rectification and why. The officer and licensee would usually agree on the time frames for the work to be completed.

If the improvement notice requires the operator to remedy the consequences of a contravention of the Act, the notice must be prepared in accordance with the

requirements of the code of practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal 1989*.

The operator of a cemetery or crematorium may apply to the administrative appeals tribunal for review of the Chief Executive's decision to issue an improvement notice.

2.12 Penalty for failing to end contravention (clause 16)

Where an operator has been issued with an improvement notice, it will be an offence to fail to comply with a notice (end the contravention) without a reasonable excuse, with a maximum penalty of 50 penalty units.

2.13 Chief Executive may take action to remedy consequences of contravention (clause 17)

Due to the sensitive nature of cemeteries and crematoria there is a requirement on government to ensure that they are maintained in accordance with community expectations and to require rectification of matters that could lead to neglect.

If an operator fails to comply with an improvement notice then the Chief executive may take the necessary or desirable actions to remedy the consequences of the non-compliance with the Act.

The cost of any action taken by the Chief Executive under this section is a debt payable by the operator to the Territory.

Division 2.4 Offences about burials and cremations

2.14 Person must not bury or cremate human remains without permit (clause 18)

A person is not permitted to bury or cremate human remains unless the person has obtained a permit from the cemetery or crematorium operator, as appropriate.

The prohibition on the cremation of human remains without a permit does not apply where the Chief Health Officer has issued a public health direction under the *Public Health Act 1997*, requiring the cremation of the remains.

2.15 Operator not allowed to bury or cremate without a permit (clause 19)

A cemetery or crematorium operator is not permitted to allow the burial or cremation of human remains at the cemetery or crematorium unless the operator has provided the necessary permit authorising the burial or cremation.

Also, a cemetery or crematorium operator is not permitted to allow the burial or cremation of human remains at the cemetery or crematorium unless the requirements of the relevant regulations have been complied with.

This clause does not apply where the Chief Health officer has issued a public health direction under the *Public Health Act 1997*, requiring the cremation of the remains.

2.16 Minister or magistrate may prohibit cremation (clause 20)

This clause allows the Minister, a magistrate or special magistrate to prohibit the cremation of human remains absolutely or until the specified conditions are complied with. The notice would be in writing and issued to the operator.

It would be an offence for the operator to cremate the human remains unless

- (a) the notice is revoked; or
- (b) the specified conditions have been complied with.

2.17 Exhumation of human remains (clause 21)

A person can not exhume human remains buried in a cemetery except in accordance with a warrant issued under the *Coroners Act 1997* or by written permission of the Chief Health Officer.

The Chief Health Officer has the power to issue written directions about the exhumation of human remains, in order to minimise the risks to public health and safety. The Chief Health Officer's direction would be a disallowable instrument.

Subclauses 5 to 8 contain the procedures where a person wishes to apply for approval to exhume human remains.

If the Chief Health Officer refuses an application for an exhumation he or she must notify the applicant in writing in accordance with the requirements of the code of practice in force under the *Administrative Appeals Act 1989*, section 25B (1).

2.18 Burials to take place only at cemetery (clause 22)

It is an offence for a person to bury human remains other than at a cemetery without the written approval of the Minister. This provision is designed to ensure that appropriate environmental and public health safeguards are put in place so that there is no future risk to the community.

2.19 Cremations to take place only at crematoria (clause 23)

A person is not permitted to cremate human remains other than in a crematorium. This clause is designed to ensure that appropriate public and environmental safeguards are put in place so that there are not any potential risks to the public, for example, from a faulty or incomplete cremation.

2.20 Cremation to conceal an offence (clause 24)

A person is not permitted to cremate human remains with the intent to conceal an offence. The reason being, once a person is cremated there is nothing to identify that person, particularly if there are none of the required certificates or permits. This is considered a very serious matter and the Bill provides for a maximum penalty of 500 penalty units, five years imprisonment, or both.

2.21 Doctors certificates (clause 25)

Doctors are not permitted to issue a death certificate stating that the person died of natural causes if there is a need for the coroner to hold an inquest into the person's death under the *Coroner's Act 1997*.

The second part of this clause prohibits a doctor from issuing a death certificate that the person died of natural causes if the doctor knows that he or she has:

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

PART 3 THE CEMETERIES BOARD

Division 3.1 Establishment and functions

3.1 Establishment of the Board (clause 26)

This clause establishes the Australian Capital Territory Public Cemeteries Board, replacing the Trustee of the Canberra Public Cemeteries, which was established under the *Cemeteries Act 1933*.

The Board:

- (a) is a corporation with perpetual succession;
- (b) may have a common seal;
- (c) may sue and be sued in its corporate name; and
- (d) may acquire, hold and dispose of property.

3.2 Functions of Board (clause 27)

The role of the Board is to effectively and efficiently manage public cemeteries and crematoria for which the Minister has appointed the Board as the operator.

The Board will be required to operate on a sound commercial basis and will not receive any government funding, as is the current situation with the Cemeteries Trust.

3.3 Ministerial directions to Board (clause 28)

The Minister may give written directions to the Board about exercising any of its functions, which must be complied with.

However, before giving a direction, the Minister is required to:

- inform the Board of the purpose of the proposed direction;
- allow the Board a reasonable opportunity to comment on the proposed direction; and
- consider any comments made by the Board.

The Minister is required to present a copy of the direction to the Legislative Assembly within six sitting days of it being issued.

3.4 Reports to Minister (clause 29)

The Board is required to provide any reports that are requested by the Minister. These reports would be in addition to other reports, such as the annual report.

3.5 Providing information to Minister (clause 30)

The Board is required to provide the Minister with any information about its operation that he or she requests.

Division 3.2-Members of Board

3.6 Members of the Board (clause 31)

The Australian Capital Territories Cemeteries Board would consist of not less than three, and not more than twelve members appointed by the Minister. The Minister also appoints a member to be the chairperson and another to be the deputy chairperson.

3.7 Terms of appointment of members (clause 32)

Board members are appointed for a term of not longer than three years.

3.8 Ending of appointments of members (clause 33)

This clause specifies the grounds on which the Minister may terminate the appointment of a Board member, for example, for misbehaviour or bankruptcy.

3.9 Conditions of appointment generally (clause 34)

A member holds his or her position on the Board, subject to any conditions that are decided by the Minister.

Division 3.3 Proceeding of Board

3.10 Time and place of meetings (clause 35)

This clause outlines the requirement for holding of meetings.

The Board decides where and when to hold its meetings, however, the Board must meet at least once every three months.

The chairperson:

- (a) may at any time call a meeting of the Board;
- (b) is required to call a meeting if requested by the Minister or at least two members; and
- (c) must give the other members reasonable notice of the time and place of the meeting.

3.11 Presiding member at meeting (clause 36)

The chairperson presides at all the meetings when he or she is present, if the chairperson is absent the deputy chairperson presides. If both the chairperson and deputy chairperson is absent, those members at the meeting elect a person to preside.

3.12 Quorum at meetings (clause 37)

There must be at least half of the Board members present at a meeting before any business can be carried at that meeting.

3.13 Voting at meetings (clause 38)

Every member present at a meeting has an equal vote on a question or resolution, which must be decided by a majority of votes. If, however, the votes are equal, then the presiding member has the casting vote.

3.14 Conduct of meeting (clause 39)

Clause 39 of the Bill allows the Board to conduct its meetings, as it considers appropriate, which could include, for example, using a telephone hook up or closed circuit television.

Also, if all the members of the Board agree, in writing, to a proposed resolution and the correct notice has been given, then the resolution is valid resolution, although it was not passed at a meeting of the Board.

3.15 Disclosure of interest by members (clause 40)

Clause 40 applies where a Board member has a direct or indirect financial interest in an issue being considered, or about to be considered by the Board, and he or she could have a conflict of interest.

The member is required as soon as practicable after becoming aware of the potential conflict, to disclose the nature of his or her interest to a meeting of the Board.

The disclosure is recorded in the Board's minutes and unless the Board decides otherwise, the member can not be present when the Board considers the issue or take part in a decision of the Board on the issue.

Also, any other member who has a direct or indirect financial interest in the matter under consideration by the Board can not be present when the Board considers the issue or take part in a decision of the Board on the issue.

3.16 Honesty and diligence (clause 41)

Under this legislation a Board member is required to exercise his or her functions as a member with the degree of honesty, care and diligence that is required of a company director in relation to the affairs of the company.

Division 3.4 Staff

3.17 Arrangements for staff (clause 42)

The Board may arrange with the Chief Executive to use public servants for its staff. Management by the Board of public servants is subject to the *Public Sector Management Act 1994*.

This provision is identical to Section 19 of the *Cemeteries Act 1933* and allows a continuation of the existing arrangements.

In addition, the Board would be able to employ people who are not public servants.

PART 4 MISCELLANEOUS

4.1 Review of decisions (clause 43)

The effect of this clause is to create a right of review of decisions of the Minister or the Chief Executive.

The following decisions made under this Bill are subject to review by the Administrative Appeals Tribunal:

- (a) a Ministerial determination under clause 8 of the percentage of each fee which is to be paid into the perpetual care fund;
- (b) the issuing by the Chief Executive of an improvement notice under clause 15 that requires the operator to remedy the consequence of a contravention of this Bill; or
- (c) a decision of the Chief Executive not to allow additional time to remedy the consequences of a contravention of this Bill under clause 17; and
- (d) refusal of Minister under clause 22 to grant approval for a person to bury human remains in a location other than in a cemetery.

4.2 Notification of reviewable decisions (clause 44)

Clause 44 requires that a person who makes a decision that is reviewable under the Bill must provide a written copy of the decision to the person to whom the decision relates. Clause 43 specifies which decisions are reviewable.

4.3 Acts and omissions of representatives (clause 45)

This clause is aimed at addressing the issue of vicarious liability and contains provisions concerning the state of mind of people involved in a prosecution of any offence against this Bill.

In this clause:

- representative means:
 - (a) in relation to a corporation, an executive officer, employee or agent or the corporation; or
 - (b) in relation to 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

The clause provides that if it is relevant to prove a person's state of mind about an act or omission, then it is enough to show that:

- (a) the act was done or omission made by the representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the person had that state of mind.

The clause also provides that action or omission by a person's representative and within their authority is also taken as being done by the person unless he or she can establish that reasonable precautions were undertaken and appropriate diligence was exercised to avoid the act or omission.

An individual who is convicted of an offence can not be punished by imprisonment for the offence if the individual would not have been convicted of the offence without the above information.

4.4 False or misleading statements (clause 46)

It is an offence for a person to make a statement to the Chief Executive, a doctor, the operator of a cemetery or crematorium or another person, which he or she knows, is false or misleading in a material particular.

It is also an offence for a person to omit from a statement anything without which the statement is, to the person's knowledge, false or misleading in a material particular.

4.5 Determination of fees (clause 47)

The Minister may determine any necessary fees. The Ministerial determination is a disallowable instrument for the purposes of the *Legislation Act 2001*.

4.6 Approved forms (clause 48)

The Minister may approve in writing any necessary forms. This clause also stipulates that if there is an approved form then it must be used.

An approved form is a notifiable instrument under the *Legislation Act 2001*.

4.7 Regulation-making power (clause 49)

Clause 49 provides the power for the Executive to make any necessary regulations for the purposes of this Bill.

Some of the issues that could be included in regulations are:

- the protection of cemeteries and crematoria;
- the conduct of cemeteries and crematoria;
- permits for burials and cremations;
- certificates from doctors required for permits for burials and cremations; and
- any matter about which provision may be made by a code of practice.

There is also provision for the regulations to include offences for contraventions of the regulations with a maximum penalty of 10 penalty units.

PART 5-TRANSITIONALS, REPEALS AND AMENDMENTS

Division 5.1 Assets and liabilities of the former trustees

5.1 Meaning of former trustees (clause 50)

The "former trustees" means the Trustees of the Canberra Public Cemeteries set up under the *Cemeteries Act 1933*.

5.2 Vesting of assets and liabilities of former trustees in the Board (clauses 51)

This clause provides for the transfer of assets and liabilities from the former Trustees of the Canberra Public Cemeteries to the new Australian Capital Territory Public Cemeteries Board.

5.3 Evidentiary certificate of vested assets and liabilities (clause 52)

The Chief Executive of the Department, which has responsibility for the legislation, may certify that an asset has been vested in the Board under clause 51 above.

5.4 Registration of changes in title to certain assets (clause 53)

Clause 53 outlines the procedure for the change of title for registrable assets that have been vested in the Board.

5.5 Proceedings and evidence in relation to vested assets and liabilities (clause 54)

This clause provides that any legal proceedings commenced in relation to an asset or liability before it was vested in the Board, to which the former trust was a party, the Board is substituted for the former trustees as a party to the proceeding.

This clause also allows for proceedings to be begun by or against the Board in the situation where proceedings could have begun by or against the former trustees.

In addition, the *Limitation Act 1985* applies to a cause of action that has accrued to or against the former trustees as if the cause of the action had accrued to or against the Board when it accrued to or against the former trustees.

A court or other entity such as the Administrative Appeals Tribunal may give directions on the conduct of the proceedings. Any evidence that would have been admissible for or against the former trustees is admissible for or against the Board.

Division 5.2 General

5.6 Transitional regulations (clause 55)

Clause 55 provides for the creation of transition regulations to ensure that approvals decisions made under the Cemeteries Act would be still valid once the Cemeteries and Crematoria Bill commences.

Transitional or saving matters could include, for example:

- the granting of an exclusive right of burial obtained under the *Canberra Public Cemeteries Regulations*;
- the setting aside of a portion of a cemetery for the burial of a particular group or denomination under *the Cemeteries Act 1933*;
- a permit for burial obtained under the *Canberra Public Cemeteries Regulations*; or
- an approval of an application for cremation issued under the *Cremation Act 1966*.

5.7 Modification of Part 5's operation (clause 56)

This clause provides that the transitional regulations can modify the operation of Part 5 of the Bill to deal any matter that has not been adequately dealt with in this Part of the Bill.

This clause ensures that unforeseen matters do not hinder or create uncertainty in the regulation and management of the operation of cemeteries and crematoria as a result of the transfer from the old legislation to the new legislation.

5.8 Expiry of Part 5 (clause 57)

Part 5 expires one year after it commences.

The Bill commences on a day fixed by the Minister and he or she has discretion to fix varying dates for the commencement of the various parts of the legislation.

However, if a provision of the Bill has not commenced within six months beginning on the notification date, it automatically commences on the first day after the notification date.

5.9 Repeal of Acts (clause 58)

The *Cemeteries Act 1933 No 29* and *Cremation Act 1966 No 6* are repealed on the commencement of this Bill.

5.10 Repeal of subordinate laws (clause 59)

The *Canberra Public Cemeteries Regulations 1939* made on 30 June 1939 are repealed on the commencement of this Bill.

5.11 Acts amendment schedule 1 (clauses 60)

Schedule 1 of the Bill amends the *Land (Planning and Environment) Act 1991* and *Coroners Act 1997*.

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS OF OTHER LAWS

Part 1.1 Land (Planning and Environment) Act 1991

5.12 Amendment to section 4

Section 4 of the *Land (Planning and Environment) Act 1991* is amended to include crematoria in the definition of cemetery.

The reason for these amendments to the *Land (Planning and Environment) Act 1991* is that a cemetery and crematorium will be established by the creation of executive leases for these facilities. A sublease would then be granted to a person or company to operate the facility.

This provides a very simple and flexible administrative mechanism to provide for the opening, closing, or transfer of ownership of a cemetery or crematorium.

5.12 Schedule 1, item 5

Schedule 1 is revised to indicate that the purpose of cemetery or burial ground is to provide for the interment or cremation of human remains and the interment of ashes of human remains.

Part 1.2 Coroners Act 1997

5.14 section 12

Section 12 the *Coroners Act 1997* is repealed and the substituted section added as detailed in Part 1.2 of Schedule 1 of the Bill.

This amendment has the effect of widening the coroner's powers so that he or her has the power to issue a permit to cremate human remains in the following circumstances:

- (a) where medical referee refuses to issue certificate approving the cremation; or
- (b) where it is not possible to obtain, a medical referee's certificate, for example, where exhumed remains are being cremated.

6.1 DICTIONARY

The dictionary at the end of the Bill defines key words that are used in the Bill.