



Australian Capital Territory

Cemeteries and Crematoria Regulation 2003

SL2003-31

made under the

Cemeteries and Crematoria Act 2003

Republication No 6

Effective: 1 July 2011

Republication date: 1 July 2011

Last amendment made by A2011-22

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Cemeteries and Crematoria Regulation 2003*, made under the *Cemeteries and Crematoria Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 July 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 July 2011.

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

Kinds of republications

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

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

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

Editorial changes

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

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

Uncommenced provisions and amendments

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

Modifications

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

Penalties

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



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R6
01/07/11

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Effective: 01/07/11

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Cemeteries and Crematoria Act 2003

Part 1 Preliminary

1 Name of regulation

This regulation is the *Cemeteries and Crematoria Regulation 2003*.

3 Dictionary

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

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

For example, the signpost definition '*certification document*—see section 6.' means that the term 'certification document' is defined in that section.

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

4 Notes

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

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

5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

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

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

Note 2 Penalty units

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

Part 2 Burial etc of remains

6 Certification documents

- (1) Each of the following is a *certification document* in relation to human remains:
 - (a) a notice of death for the dead person issued under the *Births, Deaths and Marriages Registration Act 1997*, section 35 (1);
 - (b) if the remains are of a stillborn child—a certificate under the *Births, Deaths and Marriages Registration Act 1997*, section 5 (4), certifying the cause of foetal death;
 - (c) a certificate under the *Coroners Act 1997*, section 16 (Release of body);
 - (d) if the person died outside the ACT, a document that—
 - (i) was issued or given under the law of the place where the person died; and
 - (ii) corresponds to a certificate mentioned in paragraph (a), (b) or (c);
 - (e) a statement under subsection (2).
- (2) The Minister may, in writing, state that human remains may be buried or cremated without a document mentioned in subsection (1) (a), (b), (c) or (d) if the Minister is satisfied that it is impracticable to obtain one.

7 Requirements for burial of human remains—Act, s 20

- (1) The burial of human remains is in accordance with this regulation if—
- (a) an application has been made to the operator of a cemetery or private burial ground for the burial; and
 - (b) the application is accompanied by a certification document for the human remains; and
 - (c) if the application mentioned in paragraph (a) requests the burial to be in accordance with a previously purchased right of burial—the burial is in accordance with the right; and
 - (d) the human remains are in a coffin, casket or other container approved by the chief health officer under subsection (2).

Note If a form is approved under the Act, s 50 for an application, the form must be used.

- (2) The chief health officer may, in writing, approve a container for subsection (1) (d).
- (3) An approval under subsection (2) is a notifiable instrument.

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

8 Requirements for cremation of human remains—Act, s 20

- (1) The cremation of human remains is in accordance with this regulation if—
- (a) an application has been made to the operator of a crematorium for the cremation; and
 - (b) the application is accompanied by—
 - (i) a certificate from a medical referee stating that there is no medical reason why the remains should not be cremated; and
 - (ii) a certification document; and

- (c) the operator of the crematorium is satisfied that the person did not leave directions that the person's body should not be cremated; and
- (d) the remains are in a coffin, casket or other container approved by the chief health officer under subsection (2).

Note If a form is approved under the Act, s 50 for an application, the form must be used.

- (2) The chief health officer may, in writing, approve a container for subsection (1) (d).
- (3) An approval under subsection (2) is a notifiable instrument.

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

9 Requirements for burial or cremation of foetal remains— Act, s 20

- (1) The burial or cremation of foetal remains is in accordance with this regulation if—
 - (a) an application has been made to the operator of a facility for the burial or cremation; and
 - (b) the application is accompanied by a statement signed by a doctor, nurse or midwife who states that—
 - (i) the remains are foetal remains; and
 - (ii) there is no reason why the remains should not be buried or cremated; and
 - (c) for the burial of the remains—the remains are in a coffin, casket or other container approved by the chief health officer under subsection (2).

Note If a form is approved under the Act, s 50 for an application, the form must be used.

- (2) The chief health officer may, in writing, approve a container for subsection (1) (c).
- (3) An approval under subsection (2) is a notifiable instrument.

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

10 Burial in vaults

The operator of a cemetery must not bury human remains in a vault unless the person who delivers the remains to the operator gives the operator a statutory declaration to the effect that the remains—

- (a) have been embalmed; and
- (b) are in a sealed corrosion resistant metal container.

11 Disposal of cremated remains

- (1) After cremating human or foetal remains, the operator of a crematorium must give the ashes to the person who applied for the cremation (the *applicant*) or, with the written consent of the applicant, to another person (the *representative*).
- (2) If the operator is not able to give the ashes to the applicant or representative under subsection (1) within a reasonable time, the operator must give written notice to the applicant that—
 - (a) the ashes are available for collection or disposal; and
 - (b) if the applicant does not, within 1 year after the day the applicant receives the notice, collect the ashes, or make arrangements for the collection or disposal of the ashes, the operator may dispose of the ashes at the crematorium.
- (3) If the applicant does not, within 1 year after the day the applicant receives notice under subsection (2), collect the ashes, or make arrangements for the collection or disposal of the ashes, the operator may—
 - (a) give the ashes to a person who is—

- (i) a family member of the dead person; and
 - (ii) over 16 years old; or
- (b) dispose of the ashes at the crematorium.
- (4) In this section:
family member—see the *Civil Law (Wrongs) Act 2002*, section 32.

Part 3 **Records**

Division 3.1 **Operator register**

12 **Register to be kept**

- (1) The operator of a facility must keep a register (the *operator register*).
- (2) The operator must record in the operator register the required details of—
 - (a) burials at the facility of human and foetal remains; and
 - (b) interments at the facility of the ashes of cremated human and foetal remains; and
 - (c) cremations carried out at the facility.
- (3) The operator of a facility must comply with subsections (1) and (2).
Maximum penalty: 10 penalty units.
- (4) The *required details* for a burial, interment or cremation are as follows:
 - (a) for human remains, or the ashes of human remains, of a person other than a stillborn child—
 - (i) the person's name; and
 - (ii) the date of the person's death;
 - (b) for human remains, or the ashes of human remains, of a stillborn child who has a name—the child's name;
 - (c) for human remains, or the ashes of human remains, of a stillborn child who has no name or for foetal remains or the ashes of foetal remains—
 - (i) the name of each known parent; and

- (ii) the date of death or, if not known, the approximate date of death;
- (d) for a cremation—the date of cremation;
- (e) for a burial or interment—the date of burial or interment;
- (f) the place where the human or foetal remains or ashes are buried or interred;
- (g) if the human or foetal remains have been exhumed, or the ashes of cremated human or foetal remains have been recovered—
 - (i) the date of exhumation or recovery; and
 - (ii) the reason for exhumation or recovery; and
 - (iii) if the remains or ashes are reburied in, or returned to, a place other than where originally buried or interred—the date and place of reburial or reinterment.

Examples of reasons for exhumation

- 1 the coroner orders exhumation
- 2 remains are exhumed for reburial elsewhere

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

- (5) For subsection (4) (f), the place must be described in a way that allows it to be readily identified.
- (6) An offence against this section is a strict liability offence.

13 Form of operator register and copies

- (1) The operator register must be—
 - (a) able to be searched by the public; and

- (b) available for public inspection at all times the facility is open to the public.

Note The operator register may be kept electronically (see *Electronic Transactions Act 2001*, s 11 (2)).

- (2) The operator of a facility must give a member of the public a copy of an entry in the operator register for the facility on request and payment of reasonable copying costs.

Division 3.2 Application records

14 Keeping application records

- (1) The operator of a facility must keep each application record at the facility in accordance with the code of practice.
- (2) Each of the following documents is an *application record* in relation to a facility:
 - (a) an application made to the operator for burial, right of burial, right of interment of ashes, or cremation;
 - (b) any document supplied with an application mentioned in paragraph (a);
 - (c) in relation to an exhumation or recovery of ashes at the facility—the written permission of the chief health officer or a warrant from the coroner authorising the exhumation or recovery;
 - (d) a written direction given by an applicant for someone else to collect the cremated remains from the facility;
 - (e) approved applications for the erection of memorials, tombstones and inscriptions.

Part 4 Opening, closing and operation of facilities

Division 4.1 Opening and closing facilities

15 Meaning of *relevant details* for pt 4

In this part:

relevant details, in relation to an operator or a proposed operator, are—

- (a) the name, address and telephone number of the operator or proposed operator; and
- (b) the location of the facility; and
- (c) the place where the accounts and records of the perpetual care fund are kept, or proposed to be kept;
- (d) if a form is approved for this definition, any other details required by the form.

Note If a form is approved under the Act, s 50 for a notice of relevant details, the form must be used.

16 Opening facilities

- (1) The Minister may, in writing, open a facility.
- (2) The Minister must not open a facility unless the proposed operator has given the Minister the relevant details.
- (3) The Minister must not open a cemetery unless—
 - (a) a watertable assessment (or hydrological survey) of the proposed site has been conducted; and
 - (b) the Minister is satisfied that there will be no contamination of the watertable; and

- (c) the proposed use of the site is consistent with the territory plan.
- (4) The Minister must not open a crematorium unless—
 - (a) the proposed use of the site is consistent with the territory plan;
and
 - (b) the Minister is satisfied that the proposed operator has an environmental authorisation, required by the *Environment Protection Act 1997*, section 42, to operate the crematorium.
- (5) An instrument under subsection (1) is a disallowable instrument.

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

17 Change of details to be notified

- (1) If the relevant details of the operator of a facility change, the operator must, in writing, tell the Minister of the change.

Note If a form is approved under the Act, s 50 for a notice of change of relevant details, the form must be used.

- (2) If the operator of a facility changes, the new operator must, in writing, tell the Minister of the change.

18 Closing facilities

- (1) The Minister may, in writing, close a facility.
- (2) The instrument under subsection (1) is a notifiable instrument.

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

- (3) The notifiable instrument commences—
 - (a) 3 months after the day the instrument is notified under the Legislation Act; or
 - (b) on a later date stated in the instrument.

- (4) The Minister may close a facility completely or partially.

Example of partial closure of a facility

A cemetery may be closed to all new purchases of rights of burial, but burials may continue in allotments if a right of burial has already been purchased.

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

- (5) To remove any doubt, land where a closed facility is located is land being used for the facility despite the closure.

Note The purpose for which land is used is important for the *Planning and Development Act 2007*.

19 Private burial grounds—appointment of trustee

The Minister may appoint a trustee for a private burial ground if there is no trustee.

Part 5 Miscellaneous

20 Separate sections of public cemeteries

- (1) The Minister may, in writing, set aside part of the land in a public cemetery for the burial of people of a particular class.

Examples of particular classes

- 1 members of a religious denomination
- 2 members of an ethnic group
- 3 members of an armed service

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

- (2) A notice under subsection (1) is a notifiable instrument.

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

21 Property not to be damaged

- (1) A person must not damage or disturb property at a facility.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply to—
- (a) something done by the operator of the facility—
 - (i) to reasonably maintain the cemetery; or
 - (ii) to ensure the safety of people at the facility; or
 - (b) the exhumation of human remains or foetal remains—
 - (i) with the written permission of the chief health officer; or
 - (ii) under a warrant issued under the *Coroners Act 1997*, section 27.

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

22 Medical referees

- (1) The director-general may appoint 1 or more medical referees for this regulation.
- (2) The director-general may appoint a person as a medical referee only if—
- (a) the person is a doctor; and
 - (b) the person has been a doctor for a continuous period of at least 5 years immediately before the day of appointment.

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

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

Dictionary

(see s 3)

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

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

- ACT
- appoint
- chief health officer
- entity.

Note 3 Terms used in this regulation have the same meaning that they have in the *Cemeteries and Crematoria Act 2003*. For example, the following terms are defined in the *Cemeteries and Crematoria Act 2003*, dict:

- cemetery
- code of practice
- crematorium
- foetal remains
- human remains
- operator.

certification document—see section 6.

facility means a cemetery or crematorium.

medical referee means a medical referee appointed under section 22.

relevant details, for part 4 (Opening, closing and operation of facilities)—see section 15.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

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

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

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

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

The endnotes also include a table of earlier republications.

2 Abbreviation key

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

3 Legislation history

This regulation was originally the *Cemeteries and Crematoria Regulations 2003*. It was renamed under the *Legislation Act 2001*.

Cemeteries and Crematoria Regulation 2003 SL2003-31

notified LR 17 September 2003

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

remainder commenced 27 September 2003 (s 2 and see Cemeteries and Crematoria Act 2003 A2003-11, s 2)

as amended by

Health Legislation Amendment Act 2006 (No 2) A2006-46 sch 2 pt 2.1

notified LR 17 November 2006

s 1, s 2 commenced 17 November 2006 (LA s 75 (1))

sch 2 pt 2.1 commenced 18 November 2006 (s 2 (1))

Planning and Development (Consequential Amendments) Act 2007 A2007-25 sch 1 pt 1.4

notified LR 13 September 2007

s 1, s 2 commenced 13 September 2007 (LA s 75 (1))

sch 1 pt 1.4 commenced 31 March 2008 (s 2 and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.22

notified LR 30 June 2011

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

sch 1 pt 1.22 commenced 1 July 2011 (s 2 (1))

4 Amendment history

Name of regulation

s 1 am R3 LA

Commencement

s 2 om LA s 89 (4)

Requirements for burial or cremation of foetal remains—Act, s 20

s 9 am A2006-46 amdt 2.1

Closing facilities

s 18 am A2007-25 amdt 1.14

Endnotes

5 Earlier republications

Medical referees

s 22 am A2011-22 amdt 1.75

Transitional

pt 6 hdg exp 27 September 2004 (s 28)

Permits for burial

s 23 exp 27 September 2004 (s 28)

Permits for cremation

s 24 exp 27 September 2004 (s 28)

Existing cemeteries and crematoria

s 25 exp 27 September 2004 (s 28)

Medical referees

s 26 exp 27 September 2004 (s 28)

Modification of Act, pt 5

s 27 exp 27 September 2004 (s 28)

Expiry of pt 6 and sch 1

s 28 exp 27 September 2004 (s 28)

Modification of Act, part 5

sch 1 exp 27 September 2004 (s 28)

5 Earlier republications

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

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

Republication No and date	Effective	Last amendment made by	Republication for
R1 27 Sept 2003	27 Sept 2003– 27 Sept 2004	not amended	new regulation
R2 28 Sept 2004	28 Sept 2004– 1 Nov 2004	not amended	commenced expiry

Republication No and date	Effective	Last amendment made by	Republication for
R3 2 Nov 2004	2 Nov 2004– 17 Nov 2006	not amended	includes editorial amendments under Legislation Act
R4 18 Nov 2006	18 Nov 2006– 30 Mar 2008	A2006-46	amendments by A2006-46
R5 31 Mar 2008	31 Mar 2008– 30 June 2011	A2007-25	amendments by A2007-25

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