



Australian Capital Territory

Cremation Act 1966 No 10

Republication No 4

Republication date: 12 September 2001

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Cremation Act 1966* as in force on 12 September 2001. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

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 includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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 *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Cremation Act 1966

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Amendments incorporated to
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Australian Capital Territory

Cremation Act 1966

An Act relating to cremations

1 Short title

This Act may be cited as the *Cremation Act 1966*.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

body means the body of a dead person.

crematorium means a building fitted with apparatus for the purpose of burning human remains.

cremation authority means the holder of a licence to operate a crematorium.

licence means a licence granted under section 5 that is in force.

medical referee means a medical referee under section 4.

the coroner includes a deputy coroner.

undertaker includes a person having charge of the arrangements for the cremation of a body.

4 Medical referees

- (1) There may be 1 or more medical referees for the purposes of this Act.
- (2) The Minister may appoint a medical practitioner who has practised for at least 5 years to be a medical referee for the purposes of this Act.

5 Licence to operate crematorium

- (1) A person may apply in writing to the Minister for the grant of a licence to operate a crematorium on premises specified in the application.

Note If a form is approved under s 28 (Approval of forms) for an application, the form must be used.

- (2) An application shall be accompanied by a full description of the equipment available, or to be made available, in the premises for the cremation of bodies.
- (3) The Minister may, in his or her discretion, approve the application or reject the application.
- (4) Where the Minister approves an application, he or she shall grant to the applicant a licence to operate a crematorium on premises specified in the licence.

6 Transfer of licences

- (1) The holder of a licence may, with the consent in writing of the Minister, but without consent shall not, transfer a licence.
- (2) Where, with the consent of the Minister, the holder of a licence, transfers his or her licence to another person, that person shall be deemed to become the holder of the licence to the exclusion of the former holder.

7 Application to cremate a body

- (1) A person may apply to a cremation authority for the cremation of a body.

Note If a form is approved under s 28 (Approval of forms) for an application, the form must be used.

- (2) Except where the coroner has given, under his or her hand, a certificate issued by a coroner authorising the cremation of the body of the deceased, an application under subsection (1) for the cremation of the body shall be accompanied by certificates given by a medical practitioner and a medical referee, respectively.

Note If a form is approved under s 28 (Approval of forms) for a certificate, the form must be used.

- (3) Notwithstanding subsection (2), an application for the cremation of a body need not be accompanied by the certificates referred to in that subsection if it is accompanied by either—
- (a) a certificate given by a medical practitioner certifying that—
 - (i) the body is that of a stillborn child; and
 - (ii) the medical practitioner was in attendance at the birth; and
 - (iii) in the opinion of the medical practitioner, there is no reason why the body should not be cremated; or
 - (b) a certificate given by a medical referee certifying that he or she is satisfied that the body is that of a stillborn child and that, in his or her opinion, there is no reason why the body should not be cremated.
- (4) A medical practitioner or medical referee who has signed a certificate for the purpose of subsection (2) or (3) shall, at the request of a person who appears to the medical practitioner or medical referee to be a relative of the deceased person or to be the undertaker having charge of the arrangements for the cremation of the body, deliver the certificate to that person or undertaker.

8 Cremation authority to approve application

- (1) Subject to section 9, a cremation authority shall not cremate a body at the crematorium, or permit or suffer a body to be cremated at the crematorium, unless it has approved an application made to it for the cremation of the body.

Maximum penalty: 50 penalty units.

- (2) Where application is made to a cremation authority for the cremation of a body, the authority may, in its discretion but subject to this Act, approve or refuse to approve the application for the cremation of the body.

9 Procedure in relation to certain cremations

A cremation authority may cremate the body of a person who has died outside the Territory if there is furnished to the authority a document duly given in accordance with the law of the State or Territory in which the person died that authorises, or gives permission for, the cremation of the body in that State or Territory.

10 Minister and others may prohibit cremations

- (1) Where the Minister or a magistrate or special magistrate appointed for the purposes of the *Magistrates Court Act 1930* is satisfied that there is reasonable cause for so doing, he or she may by notice in writing to a cremation authority prohibit the cremation of the body of the person specified in the order—
 - (a) absolutely; or
 - (b) until the conditions specified in the notice have been complied with.
 - (2) Where a notice referred to in subsection (1) has been given to a cremation authority, the authority shall not cremate the body referred to in the notice unless—
 - (a) the notice is revoked; or
 - (b) the conditions specified in the notice have been complied with.
- Maximum penalty: 50 penalty units.

11 Restrictions on cremations

- (1) A cremation authority shall not approve an application for the cremation of a body unless there has been furnished to it—
 - (a) a notice referred to in the *Registration of Births, Deaths and Marriages Act 1963*, section 34 (1) (b) or (2) (b), signed by a medical practitioner relating to the body; or
 - (b) a certificate issued by a coroner authorising the cremation of the body of the deceased.

- (2) In the application of subsection (1) in the case of the cremation in the Territory of the body of a person who died outside the Territory—
- (a) a notice, signed by a medical practitioner duly qualified to practise as a medical practitioner at the place where the person died, stating that the practitioner has, in accordance with the law of that place, signed a certificate of death with respect to the death, has the same force and effect as a notice referred to in subsection (1) (a); and
 - (b) a certificate under the hand of the coroner at the place where the person died authorising, in accordance with the law of that place, the cremation of the body has the same force and effect as a certificate under the hand of the coroner for the Territory authorising the cremation of the body.
- (3) Where an application for the cremation of the body of a deceased person states that the person left directions that his or her dead body was not to be cremated, the cremation authority shall not approve the application.

Maximum penalty: 50 penalty units.

12 Certificate of delivery of body to cremation authority

An undertaker who delivers a body to a cremation authority shall forthwith give notice of the delivery to the registrar-general by delivering to the registrar-general a certificate signed—

- (a) by the undertaker; and
- (b) by 2 persons each of whom has apparently attained the age of 18 years and was present at the delivery of the body to the cremation authority; and
- (c) if a minister of religion performed a religious or funeral service before the cremation of the body—by that minister.

Note If a form is approved under s 28 (Approval of forms) for a certificate, the form must be used.

13 Notice of cremation to be given to registrar-general

Where a body is cremated at a crematorium, the person in charge of the crematorium shall forthwith give notice of the cremation of the body to the registrar-general by delivering to the registrar-general a certificate.

14 Disposal of ashes

- (1) After the cremation of a dead body, a cremation authority may deliver the ashes to the person who made application for the cremation or, with the consent in writing of that person, to any other person.
- (2) Where, in accordance with a notice under section 9, a cremation authority cremates the body of a deceased person, the authority may deliver the ashes to the executor of the will, or the administrator of the estate, of the deceased person or, if the cremation authority does not know the name or address of that executor or administrator or there is no such executor or administrator, to the person believed by the cremation authority to be the nearest relative of the deceased person or, with the consent in writing of that executor, administrator or nearest relative, as the case may be, to any other person.
- (3) A cremation authority may give notice to the applicant for the cremation of a body, or to a person entitled to receive the ashes of a body under subsection (2), that the ashes of the body are available for disposal.
- (4) Where—
 - (a) a period of 14 days has elapsed after a cremation authority has given notice to a person in accordance with subsection (3); and
 - (b) the ashes of the body referred to in the notice have not been disposed of in accordance with the direction of that person,the cremation authority may inter those ashes in ground reserved for that purpose.

15 Registers

- (1) A cremation authority shall—
- (a) enter in a register particulars of each cremation at the crematorium; and
 - (b) subject to this Act, retain each application made to it for the cremation of a body together with any documents furnished to it in relation to the application.

Maximum penalty: 20 penalty units.

- (2) Where a cremation authority ceases to operate the crematorium, it shall deposit with the Minister the register kept in accordance with subsection (1) and deal with the applications and other documents referred to in that subsection as the Minister directs.

Maximum penalty: 20 penalty units.

16 Power to destroy applications after 20 years

A cremation authority may, in its discretion, after 20 years from the date of the cremation of a body, destroy the application for that cremation and any documents retained by it relating to that cremation.

17 Minister may revoke licence

Where a cremation authority has been convicted of an offence against this Act or any of the regulations made under this Act, the Minister may, by notice in writing to the authority, revoke the licence granted to the authority from and including a date specified in the notice, being a date not earlier than 28 days after the day on which the notice is received by the authority.

18 Cremation authority may cease to cremate on giving notice

- (1) A cremation authority may, after publishing in a newspaper published in the Territory notice of its intention so to do, discontinue

cremations from and including a date specified in the notice, being a date not earlier than 28 days after the day on which the notice is so published.

- (2) On the day on which the period referred to in the notice given under subsection (1) expires, the cremation authority shall forward to the Minister its licence to operate a crematorium for cancellation.

19 Noninterference with ceremonies

A cremation authority shall not interfere, directly or indirectly, with the performance of any religious ceremony in a place set aside for the performance of religious ceremonies or the interment of the ashes of a body.

Maximum penalty: 10 penalty units.

20 Condition of crematorium

A cremation authority shall maintain the crematorium, and the premises on which the crematorium is erected, in a clean and tidy condition and cause it to be operated in such a manner that noxious gases do not escape from the crematorium or otherwise cause a nuisance.

Maximum penalty: 50 penalty units.

21 Inspectors

- (1) There may be 1 or more inspectors for the purposes of this Act.
- (2) For the purposes of this Act, an inspector may, at all reasonable times, enter a crematorium and may—
- (a) inspect the crematorium, any equipment used in connection with the crematorium and the grounds of the crematorium; and
 - (b) take samples of the gases given off in the course of operating the crematorium; and
 - (c) examine any documents kept by the cremation authority in accordance with this Act.

- (3) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include the performance of the functions of an inspector.
- (4) An inspector shall be any public servant for the time being performing the duties of a public service office referred to in subsection (3).

22 Person in charge of crematorium to assist inspectors

The person in charge of a crematorium shall provide an inspector with all reasonable facilities and assistance for the effective exercise of his powers under this Act.

Maximum penalty: 50 penalty units.

23 Offences

- (1) A person shall not furnish to a medical practitioner, medical referee or cremation authority a document that is, to the knowledge of the person, false or misleading in a material particular.

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

- (2) A medical practitioner or a medical referee shall not give a certificate referred to in section 7 (2) that, to the knowledge of the person, is false or misleading in a material particular.

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

- (3) A person, other than a medical practitioner or a medical referee, shall not sign a medical practitioner's certificate or medical referee's certificate, respectively, referred to in section 7 (2).

Maximum penalty: 10 penalty units.

24 Persons not to cremate otherwise than at a crematorium

A person shall not cremate a body elsewhere than in a crematorium on premises specified in a licence.

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

25 Offence

A person shall not procure the cremation of a body with intent to conceal the commission of an offence.

Maximum penalty: imprisonment for 5 years.

26 Offences

- (1) A person shall not anywhere within a crematorium or the grounds of a crematorium—
- (a) distribute any handbill, card, circular or advertisement; or
 - (b) take part in any meeting, other than a meeting of a religious or commemorative character connected with the cremation of a body or the inurnment of the ashes of a body; or
 - (c) disturb any funeral service; or
 - (d) discharge any firearms, except at a military funeral and with the consent of the cremation authority; or
 - (e) wantonly damage or disturb any real or personal property or plants, shrubs or trees or disturb memorial tokens; or
 - (f) throw, cast or lay or cause to be thrown, cast or laid, any refuse or rubbish (except in receptacles provided for the purpose) or any offensive, noxious or dangerous matter; or
 - (g) commit any breach of the peace or nuisance, or otherwise offend against decency or decorum.

Maximum penalty:

- (a) for paragraphs (a) and (b)—1 penalty unit; and
- (b) for paragraphs (c), (d) and (f)—10 penalty units; and
- (c) for paragraph (e)—50 penalty units, imprisonment for 6 months or both; and

- (d) for paragraph (g)—50 penalty units.
- (2) Subsection (1) does not prevent a cremation authority distributing a card, advertisement or other document relating to the crematorium to any person within the crematorium or the grounds of the crematorium.

27 Determination of fees

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

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

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

28 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) A form in the schedule immediately before the commencement of this section is, after the commencement, taken to be an approved form.
- (5) However, the form need not be notified under the *Legislation Act 2001*.
- (6) Subsections (4) and (5) are laws to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.
- (7) Subsections (4) to (6) and this subsection expire 1 year after this section commences.

29 Regulation-making power

The Executive may make regulations for this Act.

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

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 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 endnotes.

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.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

3 Legislation history

The *Cremation Act 1966* was originally the *Cremation Ordinance 1966*. It became an ACT Act on self-government (11 May 1989).

Legislation before self-government

Legislation	Year and number	Gazette notification	Commencement
Cremation Act 1966	1966 No 10	16 May 1966	17 May 1966 (see Gaz 1966)
Cremation Ordinance 1969	1969 No 8	26 June 1969	26 June 1969
Magistrates Court Ordinance 1985	1985 No 67	19 Dec 1985	1 Feb 1986 (see Gaz 1986 No G3)
Self-Government (Consequential Amendments) Ordinance 1989	1989 No 38	10 May 1989	s 1, s 2 10 May 1989 remainder 11 May 1989 (see s 2 (2) and Gaz 1989 No S164)

Legislation after self-government

Registrar-General (Consequential Provisions) Act 1993	1993 No 64	6 Sept 1993	s 1, s 2 6 Sept 1993 remainder 1 Oct 1993 (see s 2 (2) and Gaz 1993 No S207)
Statutory Offices (Miscellaneous Provisions) Act 1994	1994 No 97	15 Dec 1994	s 1, s 2 15 Dec 1994 remainder 15 Dec 1994 (see Gaz 1994 No S293)
Cremation (Amendment) Act 1996	1996 No 64	3 Dec 1996	3 Dec 1996
Coroners (Consequential Provisions) Act 1997	1997 No 58	9 Oct 1997	9 Oct 1997
Public Health (Miscellaneous Provisions) Act 1997	1997 No 70	9 Oct 1997	s 1-3 9 Oct 1997 remainder (s. 4-44): (see Note 3)
Statute Law Revision (Penalties) Act 1998	1998 No 54	27 Nov 1998	s. 1, s 2 27 Nov 1998 remainder 9 Dec 1998 (see Gaz 1998 No 49)

Endnotes

4 Amendment history

4 Amendment history

- s 2om 2001 No 44 amdt 1.981
- s 3am 1993 No 64; 1994 No 97
def **medical practitioner** om R4 LA
(2) om R4 LA
- s 4sub 1994 No 97
am 1996 No 64
- s 5am 2001 No 44 amdt 1.982
- s 7am 1969 No 8; 1997 No 58; 2001 No 44 amdt 1.983-
1.986
- s 8am 1998 No 54
- s 9am 1994 No 97
- s 10am 1985 No 67; 1989 No 38; 1998 Act No 54
- s 11am 1997 No 58; 1998 No 54
- s 12am 1993 No 64; 2001 No 44 amdt 1.987, amdt 1.988
- s 13am 1993 No 64; 2001 No 44 amdt 1.989
- s 15am 1998 No 54
- ss 19, 20am 1998 No 54
- s 21am 1994 No 97
- ss 22-24am 1998 No 54
- s 26am 1998 No 54
- s 27am 1989 No 38
sub 2001 No 44 amdt 1.990
- s 28ins 2001 No 44 amdt 1.990
(4)-(7) exp 12 September 2002 (s 28 (7))
- s 29ins 2001 No 44 amdt 1.990
- schom 2001 No 44 amdt 1.991

5 Earlier republications

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

Republication No	Amendments to	Republication date
1	Ord 1989 No 38	31 July 1991
2	Act 1993 No 64	31 January 1994
3	Act 1998 No 54	28 February 1999

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Cremation Act 1966

NOTES—continued