



AUSTRALIAN CAPITAL TERRITORY

# Cemeteries and Crematoria Act 2003

A2003-11

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
4	Notes 3
5	Offences against Act—application of Criminal Code etc 3
<b>Part 2</b>	<b>Cemeteries and crematoria</b>
<b>Division 2.1</b>	<b>Operation of cemeteries and crematoria</b>
6	Codes of practice 4

---

## Contents

---

	Page
7	5
8	6
<b>Division 2.2</b>	<b>Perpetual care trusts</b>
9	6
10	7
11	8
12	9
13	10
14	10
15	10
16	11
<b>Division 2.3</b>	<b>Improvement notices</b>
17	12
18	13
19	13
<b>Division 2.4</b>	<b>Offences about burials and cremations</b>
20	14
21	14
22	15
23	15
24	16
25	16
26	16
27	17
<b>Part 3</b>	<b>The cemeteries board</b>
<b>Division 3.1</b>	<b>Establishment and functions</b>
28	18
29	18
30	18
31	19

	Page
32 Providing information to Minister by board	19
<b>Division 3.2 Members of board</b>	
33 Members of board	19
34 Term of appointment of members	20
35 Ending of appointment of members	20
36 Conditions of appointment of members generally	21
<b>Division 3.3 Proceedings of board</b>	
37 Time and place of meetings	21
38 Presiding member at meetings	21
39 Quorum at meetings	21
40 Voting at meetings	22
41 Conduct of meetings etc	22
42 Disclosure of interest by members	22
43 Members to be honest etc	23
<b>Division 3.4 Staff</b>	
44 Arrangements for staff	23
<b>Part 4 Miscellaneous</b>	
45 Review of decisions	24
46 Notification of reviewable decisions	24
47 Acts and omissions of representatives	25
48 False or misleading statements	26
49 Determination of fees	26
50 Approved forms	26
51 Regulation-making power	27
<b>Part 5 Transitional matters</b>	
<b>Division 5.1 Assets and liabilities of former trustees</b>	
52 Meaning of <i>former trustees</i> for pt 5	28
53 Vesting of assets and liabilities of former trustees in board	28
54 Evidentiary certificate for vested assets and liabilities	28
55 Registration of changes in title to certain assets	28

## Contents

---

	Page
56 Proceedings and evidence in relation to vested assets and liabilities	29
57 Perpetual care fund offence	30
<b>Division 5.2 General</b>	
58 Transitional regulations	30
59 Modification of pt 5's operation	31
60 Expiry of pt 5	31
61 Repeal of Acts	31
62 Repeal of subordinate laws	31
63 Acts amended—sch 1	31
<b>Schedule 1 Consequential amendments</b>	<b>32</b>
<b>Part 1.1 Land (Planning and Environment) Act 1991</b>	<b>32</b>
<b>Part 1.2 Coroners Act 1997</b>	<b>32</b>
<b>Dictionary</b>	<b>33</b>



AUSTRALIAN CAPITAL TERRITORY

# Cemeteries and Crematoria Act 2003

**A2003-11**

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An Act about cemeteries and crematoria, and for other purposes

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*Notified under the Legislation Act 2001 on 27 March 2003  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))*

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Cemeteries and Crematoria Act 2003*.

### 2 Commencement

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

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

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

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

### 3 Dictionary

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

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

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

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

#### 4 Notes

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

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

#### 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (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** Cemeteries and crematoria

### **Division 2.1** Operation of cemeteries and crematoria

#### **6** Codes of practice

- (1) The Minister may, in writing, approve codes of practice for cemeteries and crematoria.
- (2) A code of practice may make provision in relation to the following matters:
  - (a) burials, exhumations and cremations;
  - (b) the operation of cemeteries and crematoria;
  - (c) the design, construction and maintenance of—
    - (i) buildings, monuments, memorials, tombstones, gravestones, tablets, monumental inscriptions, mausoleums, vaults and other structures and things within cemeteries and crematoria; and
    - (ii) walls, fences, paths, roads, drains and other works of cemeteries and crematoria;
  - (d) without limiting paragraph (c), responsibility for the maintenance of buildings, monuments, memorials, tombstones, gravestones, tablets, monumental inscriptions, mausoleums, vaults and other structures and things within cemeteries and crematoria;
  - (e) the equipment used in cemeteries and crematoria, including its maintenance;
  - (f) the grounds of cemeteries and crematoria, including their maintenance;
  - (g) the position, depth and maintenance of graves;

- (h) the construction of coffins to be placed in vaults;
  - (i) burial and other rights in relation to cemeteries and crematoria;
  - (j) the making and keeping of records about cemeteries and crematoria, including records of burials, exhumations and cremations, and burial and other rights in relation to cemeteries and crematoria;
  - (k) the perpetual care funds of cemeteries and crematoria;
  - (l) the inspection of cemeteries and crematoria and their records.
- (3) A code of practice approved under this section may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or in force at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not displaced (see s 47 (7)).

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

- (4) A code of practice approved under this section is a disallowable instrument.

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

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

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

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

(3) A guideline is a disallowable instrument.

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

## **8 Perpetual tenure of graves etc**

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

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

## **Division 2.2 Perpetual care trusts**

### **9 Establishment of perpetual care trusts**

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

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

(3) The perpetual care trust is established for—

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

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

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

(iii) walls, fences, paths, roads, drains and other works of the cemetery or crematorium; and

(b) any other purpose approved, in writing, by the Minister.

*Note* An example is part of the Act, 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).

(4) An approval under subsection (3) (b) is a disallowable instrument.

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

(5) The trustee of the perpetual care trust is the operator for the time being of the cemetery or crematorium.

(6) However, if there is no operator, the trustee is the person appointed as trustee for the perpetual care trust under the *Trustee Act 1925* or, if no-one is appointed as trustee under that Act, the chief executive.

(7) The perpetual care trust is taken to be a charitable trust established for public charitable purposes, and is not for profit.

(8) The regulations may declare that expenditure of a particular kind or for a particular purpose is, or is not, expenditure for the maintenance of a cemetery or crematorium.

(9) Subsection (3) (a) has effect subject to any regulations made for subsection (8).

## 10 Determination of trust percentage

(1) The Minister must, for each cemetery or crematorium, determine the percentage (the *perpetual care trust percentage*) of each amount received by the operator for a burial, interment of ashes or memorialisation at the cemetery or crematorium that is to form part of the perpetual care trust of the cemetery or crematorium.

(2) The perpetual care trust percentage determined for the cemetery or crematorium must be the percentage that the Minister considers necessary to ensure that there are sufficient funds in the perpetual

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

- (3) The Minister must tell the operator the perpetual care trust percentage determined.
- (4) The Minister may, by written notice to the operator of a cemetery or crematorium, require the operator to give the Minister stated information or documents that the Minister reasonably needs to make a determination under this section.

## **11 Perpetual care funds**

- (1) A person commits an offence if the person—
  - (a) becomes the operator of a cemetery or crematorium; and
  - (b) does not, within 1 month after the day the person becomes operator, open a trust account (a *perpetual care fund*) with an authorised deposit-taking institution (*ADI*) under a title that includes the name of the cemetery or crematorium and the words ‘perpetual care fund’ for the cemetery or crematorium.

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

- (2) The operator of a cemetery or crematorium commits an offence if the operator does not maintain a perpetual care fund for the cemetery or crematorium.

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

- (3) The operator commits an offence if the operator—
  - (a) opens the perpetual care fund; and
  - (b) does not tell the chief executive in writing of the name of the ADI with which the perpetual care fund is maintained, the branch (if any) where the fund is maintained, the account number (if any) and the title of the account within 2 business days after the opening.

Maximum penalty: 20 penalty units.

- (4) The operator (or, if there is no operator, the trustee of the perpetual care fund) commits an offence if—
- (a) a change is made in the ADI with which the perpetual care fund is maintained, the branch where the fund is maintained or the account number or title; and
  - (b) the operator does not tell the chief executive in writing of the new ADI, branch or account number or title within 2 business days after the change.

Maximum penalty: 20 penalty units.

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

## **12 Payments into perpetual care fund**

- (1) This section applies if the operator of a cemetery or crematorium receives an amount for a burial, interment of ashes or memorialisation at the cemetery or crematorium.
- (2) The perpetual care trust percentage of the amount forms part of the perpetual care trust of the cemetery or crematorium.
- (3) The operator commits an offence if the operator—
- (a) receives the amount; and
  - (b) fails to pay the perpetual care trust percentage of the amount into the perpetual care fund of the cemetery or crematorium as soon as possible after the end of the named month in which the operator receives the amount.

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

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

### **13 Protection of perpetual care funds**

- (1) An amount credited to the perpetual care fund of a cemetery or crematorium is not available for payment of debts of the operator of the cemetery or crematorium and is not liable to be attached or taken in execution to satisfy a judgment against the operator.
- (2) This section does not apply to debts incurred by the operator in the maintenance of the cemetery or crematorium or for a purpose approved by the Minister under section 9 (3) (b).

### **14 Provisions applying to authorised deposit-taking institutions**

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

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

- (1) The operator of a cemetery or crematorium commits an offence if the operator does not keep accounts and records for—
  - (a) amounts received by the operator for burials, interment of ashes, and memorialisations at the cemetery or crematorium; and
  - (b) amounts paid into the perpetual care fund of the cemetery or crematorium; and

- (c) amounts withdrawn from the perpetual care fund and the purposes for which the amounts are applied.

Maximum penalty: 20 penalty units.

- (2) The operator commits an offence if the operator does not—
  - (a) keep the accounts and records at the operator's principal place of business in the ACT, or at another place with the written approval of the chief executive; and
  - (b) keep the accounts and records in a way that they can be conveniently and properly audited; and
  - (c) keep the accounts and records for at least 7 years after they are made.

Maximum penalty: 20 penalty units.

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

## **16 Audit**

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

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

- (2) The operator commits an offence if the operator does not give 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 report relates.

Maximum penalty: 20 penalty units.

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

## Division 2.3 Improvement notices

### 17 Improvement notices

- (1) The chief executive may give the operator of a cemetery or crematorium a notice under this subsection if—
- (a) the chief executive believes on reasonable grounds that this Act has been, or is being, contravened in relation to the cemetery or crematorium; and
  - (b) the contravention is not an offence against this Act.

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

- (2) The notice under subsection (1) must—
- (a) state the contravention and the reasons for the belief; and
  - (b) invite the operator to make written representations, within a stated period of not less than 14 days, why the operator should not be required to end the contravention, remedy the consequences of the contravention or both.
- (3) If, after considering any written representations made by the operator within the stated period, the chief executive is satisfied that the operator should be required to end the contravention, remedy the consequences of the contravention or both, the chief executive may give the operator a notice under this subsection (an *improvement notice*).
- (4) The improvement notice—
- (a) must require the operator to end the contravention, remedy the consequences of the contravention, or do both, within a stated time; and
  - (b) may state the action the operator must take to comply with the notice; and

- (c) if the notice requires the operator to end the contravention—must state that failure to end the contravention, without reasonable excuse, within the stated time is an offence; and
- (d) if the notice requires the operator to remedy the consequences of the contravention—must state that, if the operator fails to remedy the consequences within the stated time, the chief executive may arrange for action to be taken to remedy the consequences and that the operator will be liable for the cost of taking the action.

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

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

Maximum penalty: 50 penalty units.

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

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

- (1) If the operator of a cemetery or crematorium fails to remedy the consequences of a contravention of this Act in accordance with an improvement notice or any additional time allowed by the chief executive, the chief executive may arrange for the action that the chief executive considers necessary or desirable to remedy the consequences to be taken by or on behalf of the Territory.
- (2) The cost of any action taken under this section is a debt payable by the operator to the Territory.

## Division 2.4 Offences about burials and cremations

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

- (1) A person commits an offence if—
- (a) the person buries human remains, or foetal remains, at a cemetery; and
  - (b) the burial is not in accordance with the regulations.

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

- (2) A person commits an offence if—
- (a) the person cremates human remains or foetal remains at a crematorium; and
  - (b) the cremation is not in accordance with the regulations.

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

- (3) An offence against this section is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the chief health officer has given a public health direction under the *Public Health Act 1997* requiring the cremation of the remains.

### 21 Operator not to allow burial or cremation except in accordance with regulations etc

- (1) The operator of a cemetery or crematorium commits an offence if—
- (a) the operator allows human remains, or foetal remains, to be buried or cremated at the cemetery or crematorium; and
  - (b) the burial or cremation is not in accordance with the regulations.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the chief health officer has given a public health direction under the *Public Health Act 1997* requiring the cremation of the remains.

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

- (1) The Minister, a magistrate or a special magistrate under the *Magistrates Court Act 1930* may, by written notice given to the operator of a crematorium, prohibit the cremation of stated human remains, either absolutely or until stated conditions are complied with.
- (2) The operator commits an offence if—
  - (a) the notice has not been revoked; and
  - (b) the stated conditions have not been complied with; and
  - (c) the operator cremates the human remains.

Maximum penalty: 50 penalty units.

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

## **23 Exhumation of human remains**

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

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

- (2) An offence against this section is a strict liability offence.
- (3) A person may apply to the chief health officer for permission to exhume human remains buried in a cemetery.
- (4) The chief health officer may give the permission, either conditionally or unconditionally, if satisfied that it would not be contrary to the interests of public health to give permission.
- (5) If the chief health officer refuses to give the permission, the chief health officer must give the applicant written notice of the refusal and the reasons for it.

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

- (1) A person commits an offence if—
  - (a) the person buries human remains other than at a cemetery; and
  - (b) the person does not have the Minister's written permission.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (2) An offence against this section is a strict liability offence.

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

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

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (2) An offence against this section is a strict liability offence.

#### **26 Cremation to conceal offence**

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

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

## 27 Doctors certificates

- (1) A doctor commits an offence if—
- (a) a coroner must hold an inquest into the manner and cause of death of a person under the *Coroners Act 1997*; and
  - (b) the doctor gives a certificate about the death of the person for the regulations.

Maximum penalty: 10 penalty units.

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

- (2) An offence against subsection (1) is a strict liability offence.
- (3) A doctor commits an offence if—
- (a) the doctor gives a certificate about the death of a person for the regulations; and
  - (b) the doctor knows that—
    - (i) the doctor has a financial interest in the person's death under a life insurance policy; or
    - (ii) the doctor has a right or expectancy to property of any kind on the person's death.

Maximum penalty: 50 penalty units.

- (4) In this section:

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

## **Part 3                    The cemeteries board**

### **Division 3.1            Establishment and functions**

#### **28      Establishment of board**

- (1) There is an Australian Capital Territory Public Cemeteries Board.
- (2) The board—
  - (a) is a corporation with perpetual succession; and
  - (b) may have a common seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) may acquire, hold and dispose of property.

#### **29      Functions of board etc**

- (1) The functions of the board are to effectively and efficiently manage public cemeteries and crematoria for which the board has been appointed in writing as the operator by the Minister.

*Note*      A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (2) The board must operate on a sound financial basis.
- (3) An appointment under subsection (1) is a disallowable instrument.

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

#### **30      Ministerial directions to board**

- (1) The Minister may give written directions to the board about the exercise of its functions.
- (2) Before giving a direction, the Minister must—
  - (a) tell the board about the proposed direction; and

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

### **31 Reports to Minister by board**

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

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

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

## **Division 3.2 Members of board**

### **33 Members of board**

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

*Note 1*    For the making of appointments (including acting appointment), see 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).

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

- (2) The board must include at least 4 members who, in the Minister's opinion, represent the general community and religious denominations.
- (3) The Minister must appoint a member to be the chairperson and another member to be deputy chairperson.

### **34    Term of appointment of members**

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

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

### **35    Ending of appointment of members**

The Minister may end the appointment of a member—

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the member—
  - (i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (ii) is absent from 3 consecutive meetings without reasonable excuse; or
  - (iii) contravenes section 42 (Disclosure of interest by members) or 43 (Members to be honest etc).

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

### **36 Conditions of appointment of members generally**

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

## **Division 3.3 Proceedings of board**

### **37 Time and place of meetings**

- (1) Meetings of the board are to be held at the times and places it decides.
- (2) However, the board must meet at least once every 3 months.
- (3) The chairperson—
  - (a) may at any time call a meeting of the board; and
  - (b) must call a meeting if asked by the Minister or at least 2 members.
- (4) The chairperson must give the other members reasonable notice of the time and place of a meeting called by the chairperson.

### **38 Presiding member at meetings**

- (1) The chairperson presides at all meetings at which the chairperson is present.
- (2) If the chairperson is absent, the deputy chairperson presides.
- (3) If the chairperson and the deputy chairperson are absent, the member chosen by the members present presides.

### **39 Quorum at meetings**

Business may be carried on at a meeting of the board only if at least  $\frac{1}{2}$  the number of members appointed are present.

#### **40    Voting at meetings**

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

#### **41    Conduct of meetings etc**

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

#### **42    Disclosure of interest by members**

- (1) This section applies to a member if—
  - (a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.

- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the board.
- (3) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board on the issue.
- (4) Any other member who also has a direct or indirect financial interest in the issue must not—
  - (a) be present when the board is considering its decision under subsection (3); or
  - (b) take part in making the decision.

#### **43 Members to be honest etc**

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

### **Division 3.4 Staff**

#### **44 Arrangements for staff**

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

## Part 4                      Miscellaneous

### 45      Review of decisions

- (1) The operator of a cemetery or crematorium may apply to the administrative appeals tribunal for review of any of the following decisions:
  - (a) a determination under section 10 (Determination of trust percentage) in relation to the cemetery or crematorium;
  - (b) if the operator is given an improvement notice under section 17 that requires the operator to remedy the consequences of a contravention of this Act—the decision to give the improvement notice;
  - (c) a decision not to allow additional time under section 19 to remedy the consequences of a contravention of this Act.
- (2) An applicant for permission to exhume human remains, including foetal remains, buried in a cemetery may apply in writing to the administrative appeals tribunal for review of a decision of the chief health officer under section 23 (Exhumation of human remains) to refuse to give the permission.
- (3) An applicant for permission to bury human remains other than at a cemetery may apply to the administrative appeals tribunal for review of a decision of the Minister under section 24 (Burials to take place only at cemetery) to refuse to give the permission.

### 46      Notification of reviewable decisions

- (1) A person who makes a decision mentioned in section 45 must give written notice of the decision to—
  - (a) for a decision mentioned in section 45 (1) (a) to (c)—the operator of the cemetery or crematorium; or

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

#### **47 Acts and omissions of representatives**

- (1) In this section:

*representative* means—

- (a) for a corporation—an executive officer, employee or agent of a corporation; or
- (b) for 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.

- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's

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

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

#### **48 False or misleading statements**

A person commits an offence if, for this Act—

- (a) the person gives information to the chief executive, a doctor, the operator of a cemetery or crematorium, or anyone else; and
- (b) the person does so knowing that the information—
- (i) is false or misleading in a material particular; or
  - (ii) omits something that makes the information false or misleading in a material particular.

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

#### **49 Determination of fees**

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

*Note* The Legislation Act 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.

#### **50 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.

## **51 Regulation-making power**

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

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

- (2) The regulations may make provision in relation to—
- (a) the protection of cemeteries and crematoria; and
  - (b) the conduct of cemeteries and crematoria; and
  - (c) the requirements for burials and cremations; and
  - (d) certificates by doctors required for burials and cremations; and
  - (e) any matter about which provision may be made by a code of practice.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## **Part 5 Transitional matters**

### **Division 5.1 Assets and liabilities of former trustees**

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

In this part:

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

#### **53 Vesting of assets and liabilities of former trustees in board**

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

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

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

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

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

- (b) the board gives the registering authority for the asset a certificate under section 54 (Evidentiary certificate for vested assets and liabilities) for the asset.
- (2) The registering authority must make the entries in the appropriate register kept by the registering authority, and do anything else necessary or desirable to be done, to reflect the vesting of the asset in the board.
- (3) The evidentiary value of a register mentioned in this section is not affected by—
  - (a) the making of an entry under this section; or
  - (b) the failure to make an entry under this section; or
  - (c) the failure by the board to give a certificate to the registering authority for a registrable asset.

- (4) In this section:

*registering authority*, for a registrable asset, means the person who, under Territory law, is required or permitted to enter particulars about the ownership of the asset in a register.

*registrable asset* means an asset, including an interest in land, particulars of the ownership of which are required or permitted under Territory law to be entered in a register.

## **56 Proceedings and evidence in relation to vested assets and liabilities**

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

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

## **57 Perpetual care fund offence**

- (1) This section applies to a person who is the operator of a cemetery or crematorium if the person operated the cemetery or crematorium immediately before the commencement of this Act.
- (2) Section 11 (1) (Perpetual care funds) applies to the person as if the person became the operator on the commencement of section 11 (1).

## **Division 5.2 General**

### **58 Transitional regulations**

- (1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) In particular, the regulations may provide—

- (a) that a permit for burial obtained under the *Canberra Public Cemeteries Regulations 1939* is taken to allow burial under the regulations; or
- (b) that an approval under the *Cremation Act 1966* of an application for the cremation of a body is taken to allow cremation under the regulations.

**59 Modification of pt 5's operation**

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

**60 Expiry of pt 5**

This part expires 1 year after the day it commences.

**61 Repeal of Acts**

The following Acts are repealed:

*Cemeteries Act 1933* No 29

*Cremation Act 1966* No 10.

**62 Repeal of subordinate laws**

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

**63 Acts amended—sch 1**

Schedule 1 amends the Acts mentioned in it.

## **Schedule 1 Consequential amendments**

(see s 63)

### **Part 1.1 Land (Planning and Environment) Act 1991**

#### **[1.1] Schedule 1, item 5**

*substitute*

5	cemetery or burial ground	1	to provide for the interment or cremation of human remains and the interment of the ashes of human remains
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#### **[1.2] Dictionary, new definition of *cemetery***

*insert*

*cemetery* includes crematorium.

### **Part 1.2 Coroners Act 1997**

#### **[1.3] Section 12**

*substitute*

#### **12 General functions and jurisdiction of coroner**

- (1) A coroner has the functions and jurisdiction given by this Act or any other Territory law.
- (2) Except as otherwise provided by this Act, a coroner also has all the functions and jurisdiction that were vested in a coroner immediately before the commencement of the *Coroners Act 1956*.

## Dictionary

(see s 3)

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

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

- appoint
- authorised deposit-taking institution
- chief executive
- chief health officer
- contravene
- exercise
- function.

*ADI*—see section 11 (1).

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

*bury* includes inter human remains in a vault.

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

*chairperson* means the chairperson of the board.

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

*crematorium* means a public or private crematorium.

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

*exhume* includes remove human remains from a vault.

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

**human remains** means the body, or part of the body, of a dead person (including a stillborn child), but does not include cremated human remains.

**improvement notice**—see section 17 (3).

**maintain** includes alter, remove, renew and repair.

**member** means a member of the board, and includes the chairperson and the deputy chairperson.

**memorialisation** means the erection of a memorial for a dead person.

**operator**, of a cemetery or crematorium, means the person who manages the cemetery or crematorium.

**perpetual care fund**—see section 11.

**perpetual care trust**—see section 9 (2).

**perpetual care trust percentage**—see section 10 (1) (Determination of trust percentage).

**private burial ground** means an area of unleased Territory land reserved under the Territory plan as a burial ground.

**private cemetery** means land leased for the purposes of a cemetery or for the purposes of a cemetery and crematorium.

**private crematorium** means land leased for the purposes of a crematorium or for the purposes of a cemetery and crematorium.

**public cemetery** means unleased Territory land reserved under the Territory plan for use as a cemetery or for use as a cemetery and crematorium.

**public crematorium** means unleased Territory land reserved under the Territory plan for use as a crematorium or for use as a cemetery and crematorium.

**stillborn child**—see the *Births, Deaths and Marriages Registration Act 1997*, section 4 (1).

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## **Endnote**

### **Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

*[Presentation speech made in Assembly on 12 December 2002]*

I certify that the above is a true copy of the Cemeteries and Crematoria Bill 2003 which originated in the Assembly as the Cemeteries and Crematoria Bill 2002 (No 2) and was passed by the Legislative Assembly on 6 March 2003.

Clerk of the Legislative Assembly

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