

2002

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Urban Services)

# **Cemeteries and Crematoria Bill 2002 (No 2)**

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2002

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Urban Services)

## **Cemeteries and Crematoria Bill 2002 (No 2)**

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### **A Bill for**

An Act about cemeteries and crematoria, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Cemeteries and Crematoria Act 2002 (No 2)*.

4 **2 Commencement**

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

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

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

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

15 **3 Dictionary**

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

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

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

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

1 **4 Notes**

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

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

4 **5 Offences against Act—application of Criminal Code etc**

5 Other legislation applies in relation to offences against this Act.

6 *Note 1 Criminal Code*

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

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

13 *Note 2 Penalty units*

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

- 1 **Part 2** **Cemeteries and crematoria**
- 2 **Division 2.1** **Operation of cemeteries and**  
3 **crematoria**
- 4 **6** **Codes of practice**
- 5 (1) The Minister may, in writing, approve codes of practice for  
6 cemeteries and crematoria.
- 7 (2) A code of practice may make provision in relation to the following  
8 matters:
- 9 (a) burials, exhumations and cremations;
- 10 (b) the operation of cemeteries and crematoria;
- 11 (c) the design, construction and maintenance of—
- 12 (i) buildings, monuments, memorials, tombstones,  
13 gravestones, tablets, monumental inscriptions,  
14 mausoleums, vaults and other structures and things  
15 within cemeteries and crematoria; and
- 16 (ii) walls, fences, paths, roads, drains and other works of  
17 cemeteries and crematoria;
- 18 (d) without limiting paragraph (c), responsibility for the  
19 maintenance of buildings, monuments, memorials, tombstones,  
20 gravestones, tablets, monumental inscriptions, mausoleums,  
21 vaults and other structures and things within cemeteries and  
22 crematoria;
- 23 (e) the equipment used in cemeteries and crematoria, including its  
24 maintenance;
- 25 (f) the grounds of cemeteries and crematoria, including their  
26 maintenance;
- 27 (g) the position, depth and maintenance of graves;



- 
- 1 (h) the construction of coffins to be placed in vaults;
- 2 (i) burial and other rights in relation to cemeteries and crematoria;
- 3 (j) the making and keeping of records about cemeteries and  
4 crematoria, including records of burials, exhumations and  
5 cremations, and burial and other rights in relation to cemeteries  
6 and crematoria;
- 7 (k) the perpetual care funds of cemeteries and crematoria;
- 8 (l) the inspection of cemeteries and crematoria and their records.
- 9 (3) A code of practice approved under this section may apply, adopt or  
10 incorporate a law or instrument, or a provision of a law or  
11 instrument, as in force from time to time.
- 12 *Note 1* The text of an applied, adopted or incorporated law or instrument,  
13 whether applied as in force from time to time or in force at a particular  
14 time, is taken to be a notifiable instrument if the operation of the  
15 Legislation Act, s 47 (5) or (6) is not displaced (see s 47 (7)).
- 16 *Note 2* A notifiable instrument must be notified under the Legislation Act.
- 17 (4) A code of practice approved under this section is a disallowable  
18 instrument.
- 19 *Note* A disallowable instrument must be notified, and presented to the  
20 Legislative Assembly, under the Legislation Act.

## 21 **7 Guidelines for exercise of Minister's powers**

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

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

3 (3) A guideline is a disallowable instrument.

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

## 6 **8 Perpetual tenure of graves etc**

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

11 (2) However, if no human remains (including foetal remains and  
12 cremated remains) are buried or interred in the burial place within  
13 60 years after the day the right is given, the operator may revoke the  
14 right in accordance with the code of practice.

## 15 **Division 2.2 Perpetual care trusts**

### 16 **9 Establishment of perpetual care trusts**

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

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

21 (3) The perpetual care trust is established for—

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

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

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

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

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

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

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

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

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

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

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

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

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

## 22 **10 Determination of trust percentage**

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

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

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

3 (3) The Minister must tell the operator the perpetual care trust  
4 percentage determined.

5 (4) The Minister may, by written notice to the operator of a cemetery or  
6 crematorium, require the operator to give the Minister stated  
7 information or documents that the Minister reasonably needs to  
8 make a determination under this section.

## 9 **11 Perpetual care funds**

10 (1) The operator of a cemetery or crematorium commits an offence if  
11 the operator does not open and maintain a trust account (a *perpetual*  
12 *care fund*) with an authorised deposit-taking institution (*ADI*) under  
13 a title that includes the name of the cemetery or crematorium and  
14 the words 'perpetual care fund', for each cemetery or crematorium  
15 the operator manages.

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

18 (2) The operator commits an offence if the operator—

19 (a) opens the perpetual care fund; and

20 (b) does not tell the chief executive in writing of the name of the  
21 ADI with which the perpetual care fund is maintained, the  
22 branch (if any) where the fund is maintained, the account  
23 number (if any) and the title of the account within 2 business  
24 days after the opening.

25 Maximum penalty: 20 penalty units.

26 (3) The operator (or, if there is no operator, the trustee of the perpetual  
27 care fund) commits an offence if—

28 (a) a change is made in the ADI with which the perpetual care  
29 fund is maintained, the branch where the fund is maintained or  
30 the account number or title; and

1 (b) the operator does not tell the chief executive in writing of the  
2 new ADI, branch or account number or title within 2 business  
3 days after the change.

4 Maximum penalty: 20 penalty units.

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

## 6 **12 Payments into perpetual care fund**

7 (1) This section applies if the operator of a cemetery or crematorium  
8 receives an amount for a burial, interment of ashes or  
9 memorialisation at the cemetery or crematorium.

10 (2) The perpetual care trust percentage of the amount forms part of the  
11 perpetual care trust of the cemetery or crematorium.

12 (3) The operator commits an offence if the operator—

13 (a) receives the amount; and

14 (b) fails to pay the perpetual care trust percentage of the amount  
15 into the perpetual care fund of the cemetery or crematorium as  
16 soon as possible after the end of the named month in which the  
17 operator receives the amount.

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

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

## 21 **13 Protection of perpetual care funds**

22 (1) An amount credited to the perpetual care fund of a cemetery or  
23 crematorium is not available for payment of debts of the operator of  
24 the cemetery or crematorium and is not liable to be attached or taken  
25 in execution to satisfy a judgment against the operator.

26 (2) This section does not apply to debts incurred by the operator in the  
27 maintenance of the cemetery or crematorium or for a purpose  
28 approved by the Minister under section 9 (3) (b).

1 **14 Provisions applying to authorised deposit-taking**  
2 **institutions**

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

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

- 16 (1) The operator of a cemetery or crematorium commits an offence if  
17 the operator does not keep accounts and records for—
- 18 (a) amounts received by the operator for burials, interment of  
19 ashes, and memorialisations at the cemetery or crematorium;  
20 and
- 21 (b) amounts paid into the perpetual care fund of the cemetery or  
22 crematorium; and
- 23 (c) amounts withdrawn from the perpetual care fund and the  
24 purposes for which the amounts are applied.
- 25 Maximum penalty: 20 penalty units.
- 26 (2) The operator commits an offence if the operator does not—
- 27 (a) keep the accounts and records at the operator's principal place  
28 of business in the ACT, or at another place with the written  
29 approval of the chief executive; and

1 (b) keep the accounts and records in a way that they can be  
2 conveniently and properly audited; and

3 (c) keep the accounts and records for at least 7 years after they are  
4 made.

5 Maximum penalty: 20 penalty units.

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

## 7 **16 Audit**

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

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

15 (2) The operator commits an offence if the operator does not give the  
16 auditor's report and audited accounts to the chief executive as soon  
17 as practicable after the end of the financial year to which the report  
18 relates.

19 Maximum penalty: 20 penalty units.

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

## 21 **Division 2.3 Improvement notices**

### 22 **17 Improvement notices**

23 (1) The chief executive may give the operator of a cemetery or  
24 crematorium a notice under this subsection if—

25 (a) the chief executive believes on reasonable grounds that this  
26 Act has been, or is being, contravened in relation to the  
27 cemetery or crematorium; and

1 (b) the contravention is not an offence against this Act.

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

5 (2) The notice under subsection (1) must—

6 (a) state the contravention and the reasons for the belief; and

7 (b) invite the operator to make written representations, within a  
8 stated period of not less than 14 days, why the operator should  
9 not be required to end the contravention, remedy the  
10 consequences of the contravention or both.

11 (3) If, after considering any written representations made by the  
12 operator within the stated period, the chief executive is satisfied that  
13 the operator should be required to end the contravention, remedy the  
14 consequences of the contravention or both, the chief executive may  
15 give the operator a notice under this subsection (an *improvement*  
16 *notice*).

17 (4) The improvement notice—

18 (a) must require the operator to end the contravention, remedy the  
19 consequences of the contravention, or do both, within a stated  
20 time; and

21 (b) may state the action the operator must take to comply with the  
22 notice; and

23 (c) if the notice requires the operator to end the contravention—  
24 must state that failure to end the contravention, without  
25 reasonable excuse, within the stated time is an offence; and

26 (d) if the notice requires the operator to remedy the consequences  
27 of the contravention—must state that, if the operator fails to  
28 remedy the consequences within the stated time, the chief  
29 executive may arrange for action to be taken to remedy the  
30 consequences and that the operator will be liable for the cost of  
31 taking the action.



1 **18 Penalty for failing to end contravention**

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

5 Maximum penalty: 50 penalty units.

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

7 **19 Chief executive may take action to remedy consequences**  
8 **of contravention**

9 (1) If the operator of a cemetery or crematorium fails to remedy the  
10 consequences of a contravention of this Act in accordance with an  
11 improvement notice or any additional time allowed by the chief  
12 executive, the chief executive may arrange for the action that the  
13 chief executive considers necessary or desirable to remedy the  
14 consequences to be taken by or on behalf of the Territory.

15 (2) The cost of any action taken under this section is a debt payable by  
16 the operator to the Territory.

17 **Division 2.4 Offences about burials and**  
18 **cremations**

19 **20 Person must not bury or cremate human remains except**  
20 **in accordance with regulations**

21 (1) A person commits an offence if—

22 (a) the person buries human remains, or foetal remains, at a  
23 cemetery; and

24 (b) the burial is not in accordance with the regulations.

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

- 1 (2) A person commits an offence if—  
2 (a) the person cremates human remains or foetal remains at a  
3 crematorium; and  
4 (b) the cremation is not in accordance with the regulations.  
5 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
6 both.  
7 (3) An offence against this section is a strict liability offence.  
8 (4) It is a defence to a prosecution for an offence against subsection (2)  
9 if the chief health officer has given a public health direction under  
10 the *Public Health Act 1997* requiring the cremation of the remains.

11 **21 Operator not to allow burial or cremation except in**  
12 **accordance with regulations etc**

- 13 (1) The operator of a cemetery or crematorium commits an offence if—  
14 (a) the operator allows human remains, or foetal remains, to be  
15 buried or cremated at the cemetery or crematorium; and  
16 (b) the burial or cremation is not in accordance with the  
17 regulations.  
18 Maximum penalty: 50 penalty units.  
19 (2) An offence against this section is a strict liability offence.  
20 (3) It is a defence to a prosecution for an offence against subsection (1)  
21 if the chief health officer has given a public health direction under  
22 the *Public Health Act 1997* requiring the cremation of the remains.

23 **22 Minister or magistrate may prohibit cremation**

- 24 (1) The Minister, a magistrate or a special magistrate under the  
25 *Magistrates Court Act 1930* may, by written notice given to the  
26 operator of a crematorium, prohibit the cremation of stated human  
27 remains, either absolutely or until stated conditions are complied  
28 with.

- 1 (2) The operator commits an offence if—  
2 (a) the notice has not been revoked; and  
3 (b) the stated conditions have not been complied with; and  
4 (c) the operator cremates the human remains.  
5 Maximum penalty: 50 penalty units.

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

7 **23 Exhumation of human remains**

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

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

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

- 18 (3) A person may apply to the chief health officer for permission to  
19 exhume human remains buried in a cemetery.

- 20 (4) The chief health officer may give the permission, either  
21 conditionally or unconditionally, if satisfied that it would not be  
22 contrary to the interests of public health to give permission.

- 23 (5) If the chief health officer refuses to give the permission, the chief  
24 health officer must give the applicant written notice of the refusal  
25 and the reasons for it.

1 **24 Burials to take place only at cemetery**

2 (1) A person commits an offence if—

3 (a) the person buries human remains other than at a cemetery; and

4 (b) the person does not have the Minister's written permission.

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

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

8 **25 Cremations to take place only at crematorium**

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

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

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

14 **26 Cremation to conceal offence**

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

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

19 **27 Doctors certificates**

20 (1) A doctor commits an offence if—

21 (a) a coroner must hold an inquest into the manner and cause of  
22 death of a person under the *Coroners Act 1997*; and

1 (b) the doctor gives a certificate about the death of the person for  
2 the regulations.

3 Maximum penalty: 10 penalty units.

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

7 (2) An offence against subsection (1) is a strict liability offence.

8 (3) A doctor commits an offence if—

9 (a) the doctor gives a certificate about the death of a person for the  
10 regulations; and

11 (b) the doctor knows that—

12 (i) the doctor has a financial interest in the person's death  
13 under a life insurance policy; or

14 (ii) the doctor has a right or expectancy to property of any  
15 kind on the person's death.

16 Maximum penalty: 50 penalty units.

17 (4) In this section:

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

1     **Part 3                                      The cemeteries board**

2     **Division 3.1                            Establishment and functions**

3     **28     Establishment of board**

4       (1) There is an Australian Capital Territory Public Cemeteries Board.

5       (2) The board—

6           (a) is a corporation with perpetual succession; and

7           (b) may have a common seal; and

8           (c) may sue and be sued in its corporate name; and

9           (d) may acquire, hold and dispose of property.

10    **29     Functions of board etc**

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

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

17     (2) The board must operate on a sound financial basis.

18     (3) An appointment under subsection (1) is a disallowable instrument.

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

21    **30     Ministerial directions to board**

22     (1) The Minister may give written directions to the board about the  
23       exercise of its functions.

24     (2) Before giving a direction, the Minister must—

25           (a) tell the board about the proposed direction; and

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

13 **31 Reports to Minister by board**

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

20 **32 Providing information to Minister by board**

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

1        **Division 3.2                    Members of board**

2        **33        Members of board**

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

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

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

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

- 13        (2) The board must include at least 4 members who, in the Minister's  
14        opinion, represent the general community and religious  
15        denominations.

- 16        (3) The Minister must appoint a member to be the chairperson and  
17        another member to be deputy chairperson.

18        **34        Term of appointment of members**

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

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

23        **35        Ending of appointment of members**

24            The Minister may end the appointment of a member—

25            (a) for misbehaviour or physical or mental incapacity; or

26            (b) if the member—

27                    (i) becomes bankrupt, applies to take the benefit of any law  
28                    for the relief of bankrupt or insolvent debtors, compounds



1 with creditors or makes an assignment of remuneration  
2 for their benefit; or

3 (ii) is absent from 3 consecutive meetings without reasonable  
4 excuse; or

5 (iii) contravenes section 42 (Disclosure of interest by  
6 members) or 43 (Members to be honest etc).

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

9 **36 Conditions of appointment of members generally**

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

12 **Division 3.3 Proceedings of board**

13 **37 Time and place of meetings**

14 (1) Meetings of the board are to be held at the times and places it  
15 decides.

16 (2) However, the board must meet at least once every 3 months.

17 (3) The chairperson—

18 (a) may at any time call a meeting of the board; and

19 (b) must call a meeting if asked by the Minister or at least  
20 2 members.

21 (4) The chairperson must give the other members reasonable notice of  
22 the time and place of a meeting called by the chairperson.

23 **38 Presiding member at meetings**

24 (1) The chairperson presides at all meetings at which the chairperson is  
25 present.

26 (2) If the chairperson is absent, the deputy chairperson presides.

- 1            (3) If the chairperson and the deputy chairperson are absent, the  
2            member chosen by the members present presides.

3            **39    Quorum at meetings**

- 4            Business may be carried on at a meeting of the board only if at least  
5            ½ the number of members appointed are present.

6            **40    Voting at meetings**

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

12           **41    Conduct of meetings etc**

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

1 **42 Disclosure of interest by members**

- 2 (1) This section applies to a member if—
- 3 (a) the member has a direct or indirect financial interest in an issue  
4 being considered, or about to be considered, by the board; and
- 5 (b) the interest could conflict with the proper exercise of the  
6 member's functions in relation to the board's consideration of  
7 the issue.
- 8 (2) As soon as practicable after the relevant facts come to the member's  
9 knowledge, the member must disclose the nature of the interest to a  
10 meeting of the board.
- 11 (3) The disclosure must be recorded in the board's minutes and, unless  
12 the board otherwise decides, the member must not—
- 13 (a) be present when the board considers the issue; or  
14 (b) take part in a decision of the board on the issue.
- 15 (4) Any other member who also has a direct or indirect financial interest  
16 in the issue must not—
- 17 (a) be present when the board is considering its decision under  
18 subsection (3); or  
19 (b) take part in making the decision.

20 **43 Members to be honest etc**

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

1    **Division 3.4                      Staff**

2    **44    Arrangements for staff**

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

## 1       **Part 4**                               **Miscellaneous**

### 2       **45       Review of decisions**

3       (1) The operator of a cemetery or crematorium may apply to the  
4       administrative appeals tribunal for review of any of the following  
5       decisions:

6           (a) a determination under section 10 (Determination of trust  
7           percentage) in relation to the cemetery or crematorium;

8           (b) if the operator is given an improvement notice under section 17  
9           that requires the operator to remedy the consequences of a  
10          contravention of this Act—the decision to give the  
11          improvement notice;

12          (c) a decision not to allow additional time under section 19 to  
13          remedy the consequences of a contravention of this Act.

14       (2) An applicant for permission to exhume human remains, including  
15       foetal remains, buried in a cemetery may apply in writing to the  
16       administrative appeals tribunal for review of a decision of the chief  
17       health officer under section 23 (Exhumation of human remains) to  
18       refuse to give the permission.

19       (3) An applicant for permission to bury human remains other than at a  
20       cemetery may apply to the administrative appeals tribunal for  
21       review of a decision of the Minister under section 24 (Burials to  
22       take place only at cemetery) to refuse to give the permission.

### 23       **46       Notification of reviewable decisions**

24       (1) A person who makes a decision mentioned in section 45 must give  
25       written notice of the decision to—

26           (a) for a decision mentioned in section 45 (1) (a) to (c)—the  
27           operator of the cemetery or crematorium; or

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

**47 Acts and omissions of representatives**

- 8 (1) In this section:
- 9 *representative* means—
- 10 (a) for a corporation—an executive officer, employee or agent of a  
11 corporation; or  
12 (b) for an individual—an employee or agent of the individual.
- 13 *state of mind*, of a person, includes—
- 14 (a) the person's knowledge, intention, opinion, belief or purpose;  
15 and  
16 (b) the person's reasons for the intention, opinion, belief or  
17 purpose.  
18
- 19 (2) This section applies to a prosecution for any offence against this  
20 Act.
- 21 (3) If it is relevant to prove a person's state of mind about an act or  
22 omission, it is enough to show—
- 23 (a) the act was done or omission made by a representative of the  
24 person within the scope of the representative's actual or  
25 apparent authority; and  
26 (b) the representative had the state of mind.
- 27 (4) An act done or omitted to be done on behalf of a person by a  
28 representative of the person within the scope of the representative's

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

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

#### 8 **48 False or misleading statements**

9 A person commits an offence if, for this Act—

10 (a) the person gives information to the chief executive, a doctor,  
11 the operator of a cemetery or crematorium, or anyone else; and

12 (b) the person does so knowing that the information—

13 (i) is false or misleading in a material particular; or

14 (ii) omits something that makes the information false or  
15 misleading in a material particular.

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

#### 18 **49 Determination of fees**

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

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

22 (2) A determination is a disallowable instrument.

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

#### 25 **50 Approved forms**

26 (1) The Minister may, in writing, approve forms for this Act.

27 (2) If the Minister approves a form for a particular purpose, the  
28 approved form must be used for that purpose.

1 (3) An approved form is a notifiable instrument.

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

3 **51 Regulation-making power**

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

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

7 (2) The regulations may make provision in relation to—

8 (a) the protection of cemeteries and crematoria; and

9 (b) the conduct of cemeteries and crematoria; and

10 (c) the requirements for burials and cremations; and

11 (d) certificates by doctors required for burials and cremations; and

12 (e) any matter about which provision may be made by a code of  
13 practice.

14 (3) The regulations may also prescribe offences for contraventions of  
15 the regulations and prescribe maximum penalties of not more than  
16 10 penalty units for offences against the regulations.



1 **Part 5** **Transitional matters**

2 **Division 5.1** **Assets and liabilities of former**  
3 **trustees**

4 **52** **Meaning of *former trustees* for pt 5**

5 In this part:

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

9 **53** **Vesting of assets and liabilities of former trustees in**  
10 **board**

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

18 **54** **Evidentiary certificate for vested assets and liabilities**

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

22 **55** **Registration of changes in title to certain assets**

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

- 1 (b) the board gives the registering authority for the asset a  
2 certificate under section 54 (Evidentiary certificate for vested  
3 assets and liabilities) for the asset.
- 4 (2) The registering authority must make the entries in the appropriate  
5 register kept by the registering authority, and do anything else  
6 necessary or desirable to be done, to reflect the vesting of the asset  
7 in the board.
- 8 (3) The evidentiary value of a register mentioned in this section is not  
9 affected by—
- 10 (a) the making of an entry under this section; or  
11 (b) the failure to make an entry under this section; or  
12 (c) the failure by the board to give a certificate to the registering  
13 authority for a registrable asset.
- 14 (4) In this section:
- 15 *registering authority*, for a registrable asset, means the person who,  
16 under Territory law, is required or permitted to enter particulars  
17 about the ownership of the asset in a register.
- 18 *registrable asset* means an asset, including an interest in land,  
19 particulars of the ownership of which are required or permitted  
20 under Territory law to be entered in a register.

21 **56 Proceedings and evidence in relation to vested assets**  
22 **and liabilities**

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

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

## 17 Division 5.2 General

### 18 57 Transitional regulations

- 19 (1) The regulations may prescribe savings or transitional matters  
20 necessary or convenient to be prescribed because of the enactment  
21 of this Act.
- 22 (2) In particular, the regulations may provide—
- 23 (a) that a permit for burial obtained under the *Canberra Public*  
24 *Cemeteries Regulations 1939* is taken to allow burial under the  
25 regulations; or
- 26 (b) that an approval under the *Cremation Act 1966* of an  
27 application for the cremation of a body is taken to allow  
28 cremation under the regulations.

1 **58 Modification of pt 5's operation**

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

5 **59 Expiry of pt 5**

6 This part expires 1 year after the day it commences.

7 **60 Repeal of Acts**

8 The following Acts are repealed:

9 *Cemeteries Act 1933* No 29

10 *Cremation Act 1966* No 10.

11 **61 Repeal of subordinate laws**

12 The *Canberra Public Cemeteries Regulations 1939* made on  
13 30 June 1939 are repealed.

14 **62 Acts amended—sch 1**

15 Schedule 1 amends the Acts mentioned in it.

## **Schedule 1      Consequential amendments**

(see s 62)

### **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 |
|---|---------------------------|---|--|

#### **[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*.

## 1 Dictionary

2 (see s 3)

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

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

- 6 • appoint
- 7 • authorised deposit-taking institution
- 8 • chief executive
- 9 • chief health officer
- 10 • contravene
- 11 • exercise
- 12 • function.

13 *ADI*—see section 11 (1).

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

16 *bury* includes inter human remains in a vault.

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

19 *chairperson* means the chairperson of the board.

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

21 *crematorium* means a public or private crematorium.

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

23 *exhume* includes remove human remains from a vault.

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

- 1        **human remains** means the body, or part of the body, of a dead  
2        person (including a stillborn child), but does not include cremated  
3        human remains.
- 4        **improvement notice**—see section 17 (3).
- 5        **maintain** includes alter, remove, renew and repair.
- 6        **member** means a member of the board, and includes the chairperson  
7        and the deputy chairperson.
- 8        **memorialisation** means the erection of a memorial for a dead  
9        person.
- 10       **operator**, of a cemetery or crematorium, means the person who  
11       manages the cemetery or crematorium.
- 12       **perpetual care fund**—see section 11.
- 13       **perpetual care trust**—see section 9 (2).
- 14       **perpetual care trust percentage**—see section 10 (1) (Determination  
15       of trust percentage).
- 16       **private burial ground** means an area of unleased Territory land  
17       reserved under the Territory plan as a burial ground.
- 18       **private cemetery** means land leased for the purposes of a cemetery  
19       or for the purposes of a cemetery and crematorium.
- 20       **private crematorium** means land leased for the purposes of a  
21       crematorium or for the purposes of a cemetery and crematorium.
- 22       **public cemetery** means unleased Territory land reserved under the  
23       Territory plan for use as a cemetery or for use as a cemetery and  
24       crematorium.
- 25       **public crematorium** means unleased Territory land reserved under  
26       the Territory plan for use as a crematorium or for use as a cemetery  
27       and crematorium.
- 28       **stillborn child**—see the *Births, Deaths and Marriages Registration*  
29       *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).

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