

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Cemeteries and Crematoria Regulations 2003

Subordinate Law SL2003-

The Australian Capital Territory Executive makes the following regulations under the *Cemeteries and Crematoria Act 2003*.

Dated 2003.

Minister

Minister

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Part 1 Preliminary

1 Name of regulations

These regulations are the *Cemeteries and Crematoria Regulations 2003*.

2 Commencement

These regulations commence on the commencement of the *Cemeteries and Crematoria Act 2003*.

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

3 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note 1 The dictionary at the end of these regulations defines certain terms used in these regulations.

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

4 Notes

A note included in these regulations is explanatory and is not part of these regulations.

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

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5 Offences against regulations—application of Criminal Code etc

Other legislation applies in relation to offences against these regulations.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against these regulations (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.

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Part 2 Burial etc of remains

6 Certification documents

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

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

- (1) The burial of human remains is in accordance with these regulations if—

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

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

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

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

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

The cremation of human remains is in accordance with these regulations if—

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

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- (c) the operator of the crematorium is satisfied that the person did not leave directions that the person's body should not be cremated; and
- (d) the remains are in a coffin, casket or other container that complies with a code of practice.

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

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

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

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

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

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

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10 Burial in vaults

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

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

11 Disposal of cremated remains

- (1) After cremating human or foetal remains, the operator of a crematorium must give the ashes to the person who applied for the cremation (the *applicant*) or, with the written consent of the applicant, to another person (the *representative*).
- (2) If the operator is not able to give the ashes to the applicant or representative under subregulation (1) within a reasonable time, the operator must give written notice to the applicant that—
 - (a) the ashes are available for collection or disposal; and
 - (b) if the applicant does not, within 1 year after the day the applicant receives the notice, collect the ashes, or make arrangements for the collection or disposal of the ashes, the operator may dispose of the ashes at the crematorium.
- (3) If the applicant does not, within 1 year after the day the applicant receives notice under subregulation (2), collect the ashes, or make arrangements for the collection or disposal of the ashes, the operator may—
 - (a) give the ashes to a person who is—
 - (i) a family member of the dead person; and
 - (ii) over 16 years old; or

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- (b) dispose of the ashes at the crematorium.
- (4) In this regulation:
family member—see the *Civil Law (Wrongs) Act 2002*, section 29.

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Part 3 Records

Division 3.1 Operator register

12 Register to be kept

- (1) The operator of a facility must keep a register (the *operator register*).
- (2) The operator must record in the operator register the required details of—
 - (a) burials at the facility of human and foetal remains; and
 - (b) interments at the facility of the ashes of cremated human and foetal remains; and
 - (c) cremations carried out at the facility.
- (3) The operator of a facility must comply with subregulations (1) and (2).

Maximum penalty: 10 penalty units.

- (4) The *required details* for a burial, interment or cremation are as follows:
 - (a) for human remains, or the ashes of human remains, of a person other than a stillborn child—
 - (i) the person's name; and
 - (ii) the date of the person's death;
 - (b) for human remains, or the ashes of human remains, of a stillborn child who has a name—the child's name;

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- (c) for human remains, or the ashes of human remains, of a stillborn child who has no name or for foetal remains or the ashes of foetal remains—
 - (i) the name of each known parent; and
 - (ii) the date of death or, if not known, the approximate date of death;
- (d) for a cremation—the date of cremation;
- (e) for a burial or interment—the date of burial or interment;
- (f) the place where the human or foetal remains or ashes are buried or interred;
- (g) if the human or foetal remains have been exhumed, or the ashes of cremated human or foetal remains have been recovered—
 - (i) the date of exhumation or recovery; and
 - (ii) the reason for exhumation or recovery; and
 - (iii) if the remains or ashes are reburied in, or returned to, a place other than where originally buried or interred—the date and place of reburial or reinterment.

Examples of reasons for exhumation

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

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

- (5) For subregulation (4) (f), the place must be described in a way that allows it to be readily identified.
- (6) An offence against subregulation (3) is a strict liability offence.

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13 Form of operator register and copies

- (1) The operator register must be—
 - (a) able to be searched by the public; and
 - (b) available for public inspection at all times the facility is open to the public.

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

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

Division 3.2 Application records

14 Keeping application records

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

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- (e) approved applications for the erection of memorials, tombstones and inscriptions.

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Part 4 Opening, closing and operation of facilities

Division 4.1 Opening and closing facilities

15 Meaning of *relevant details* for pt 4

In this part:

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

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

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

16 Opening facilities

- (1) The Minister may, in writing, open a facility.
- (2) The Minister must not open a facility unless the proposed operator has given the Minister the relevant details.
- (3) The Minister must not open a cemetery unless—
 - (a) a water table assessment (or hydrological survey) of the proposed site has been conducted; and

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- (b) the Minister is satisfied that there will be no contamination of the water table; and
 - (c) the proposed use of the site is consistent with the Territory plan.
- (4) The Minister must not open a crematorium unless—
- (a) the proposed use of the site is consistent with the Territory plan; and
 - (b) the Minister is satisfied that the proposed operator has an environmental authorisation, required by the *Environment Protection Act 1997*, section 42, to operate the crematorium.
- (5) An instrument under subregulation (1) is a disallowable instrument.

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

17 Change of details to be notified

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

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

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

18 Closing facilities

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

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

- (3) The notifiable instrument commences—

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- (a) 3 months after the day the instrument is notified under the Legislation Act; or
 - (b) on a later date stated in the instrument.
- (4) The Minister may close a facility completely or partially.

Example of partial closure of a facility

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

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

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

Note The purpose for which land is used is important for the *Land (Planning and Environment) Act 1991*.

19 Private burial grounds—appointment of trustee

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

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Part 5 Miscellaneous

20 Separate sections of public cemeteries

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

Examples of particular classes

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

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

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

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

21 Property not to be damaged

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

Maximum penalty: 10 penalty units.

- (2) Subregulation (1) does not apply to—

(a) something done by the operator of the facility—

- (i) to reasonably maintain the cemetery; or
- (ii) to ensure the safety of people at the facility; or

(b) the exhumation of human remains or foetal remains—

- (i) with the written permission of the chief health officer; or

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(ii) under a warrant issued under the *Coroners Act 1997*, section 27.

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

22 Medical referees

(1) The chief executive may appoint 1 or more medical referees for these regulations.

(2) The chief executive may appoint a person as a medical referee only if—

(a) the person is a doctor; and

(b) the person has been a doctor for a continuous period of at least 5 years immediately before the day of appointment.

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

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Part 6 Transitional

23 Permits for burial

Human remains and foetal remains are taken to have been buried in accordance with these regulations if they are buried in accordance with a permit given for their burial under the *Canberra Public Cemeteries Regulations 1939*, regulation 18.

24 Permits for cremation

Human remains and foetal remains are taken to have been cremated in accordance with these regulations if they are cremated in accordance with an application for cremation approved under the *Cremation Act 1966*, section 8.

25 Medical referees

A medical referee appointed under the *Cremation Act 1966*, section 4, is taken to be a medical referee appointed under regulation 22.

26 Modification of Act, pt 5

Schedule 1 modifies the Act, part 5 (Transitional matters).

27 Expiry of pt 6 and sch 1

This part and schedule 1 expire on the day the Act, part 5 expires.

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Schedule 1 Modification of Act, part 5

(see reg 26)

[1.1] New section 57A

in division 5.1, insert

57A Exclusive rights of burial

- (1) To remove doubt, an exclusive right of burial granted under the *Canberra Public Cemeteries Regulations 1939*, regulation 15, lasts forever as if the right had been given under section 8 (Perpetual tenure of graves etc).
- (2) In particular, the time limit that, apart from this section, would apply to a right granted for burial in the Gungahlin Cemetery under the *Canberra Public Cemeteries Regulations 1939*, regulation 15A does not apply after the commencement of this Act.

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Dictionary

(see reg 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to these regulations.

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

- ACT
- appoint
- chief health officer
- entity.

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

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

certification document—see regulation 6.

facility means a cemetery or crematorium.

medical referee means a medical referee appointed under regulation 22.

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

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Endnote

Notification

Notified under the Legislation Act on 2003.
(see www.legislation.act.gov.au)

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