

Australian Capital Territory

# Cemeteries and Crematoria (Code of Practice) Approval 2007

Disallowable instrument DI2007–100

made under the

*Cemeteries and Crematoria Act 2003*, section 6 (Codes of Practice)

## EXPLANATORY STATEMENT

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### Explanation of the formal instrument.

The Cemeteries and Crematoria (Code of Practice) Approval 2007 is made under section 6 of the Cemeteries and Crematoria Act 2003. This instrument records the Minister’s approval of the ACT Cemeteries and Crematoria Code of Practice, which is attached to the instrument. The instrument also revokes the previous Code of Practice.

### Explanation of the Code of Practice attached to the instrument.

#### *Overview*

The objective of the ACT Cemeteries and Crematoria Code of Practice (“the Code of Practice”) is to establish a consistent operational framework for cemeteries and crematoria in the ACT.

The new Code of Practice is substantially the same as the previous code, except in respect of the clauses which deal with acceptable coffins for burial and cremation. The new Code removes any legislative impediment to the use of cardboard coffins, although such coffins (like all other coffins) must satisfy the requirements of the *Cemeteries and Crematoria Regulation 2003* and the Cemeteries and Crematoria (Containers for Burial) Approval 2004 (No 1) NI2004-332 and the Cemeteries and Crematoria (Containers for Cremation) Approval 2004 (No 1) NI2004-333.

In revising these clauses, the opportunity has also been taken to clarify the layout of the Code of Practice (as compared to the previous code) by introducing numbered provisions, rewording some provisions in line with more recent drafting principles and revising some definitions to bring them into line with the *Cemeteries and Crematoria Act 2003*.

As the changes to the Code of Practice do not impose appreciable costs on the community, or part of the community (and may actually reduce costs) a regulatory

impact statement under section 34 of the *Legislation Act 2001* is not required for this instrument.

In revising the Code of Practice the Department of Territory and Municipal Services consulted with the Australian Funeral Director's Association, the Australasian Cemeteries and Crematoria Association and operators of Canberra's cemeteries and crematorium.

The provisions of the Code of Practice are detailed below under the title of the appropriate section.

*The provisions of the Code of Practice in detail*

1. **Background** outlines the basis of and use for the Code of Practice.
2. **Dictionary** notes that the Dictionary at the end of the Code of Practice forms part of the Code.
3. **Plan of Cemeteries and Crematoria** explains that the operator of a facility must prepare a plan showing the layout of the facility.
4. **Right of Burial or Interment** explains this right and how this right is passed from one person to another. This right may also be revoked if burial or interment has not taken place within 60 years. The operator of a facility must follow specific steps before a right for burial or interment may be revoked; these are outlined in this section. An operator may also refuse the sale of more than one right of burial or interment per person.
5. **Maintenance of graves and vaults** is not the responsibility of the operator of a facility as a general rule. Maintenance of graves and vaults is the responsibility of the holder of the right of burial or interment.
6. **Maintenance of cemeteries and crematoria** grounds in a safe, clean and orderly condition is the responsibility of the operator of the facility.
7. **Keeping application records** as required by the *Cemeteries and Crematoria Regulation 2003* is further outlined in this section. Records must be kept for at least 20 years and then made available for public access if there is a request for information. If the operator cannot store these records or ceases all responsibility as the operator, the Chief Executive of the relevant ACT government department with oversight of cemeteries and crematoria must provide storage. The public has access to application records on request for reasonable copying costs.
8. **Design and construction of monuments etc.** must be approved by the operator and may need development approval under the *Land (Planning and Environment) Regulations 1992* if they are greater than 1.8 metres high.
9. **Removal, alterations or repair of monuments, inscriptions etc** can occur by the operator if they are dangerous, unsightly or do not meet the plans and particulars

approved by the operator. Costs to be met by the holder of right of burial or interment.

**10. Planting of trees, covering of graves, memorial areas etc.** is not to occur without approval of the operator. In a lawn burial or interment area, a person should not place any monument, tablet, gravestone, kerbing, railing, vessel or container other than the standard tablet approved by the operator.

**11. Multiple burials in a grave or burial site** may occur. Requests for additional burials at a site can only be made by the holder of the Right of Burial or by written consent of the holder or descendant.

**12. Operator not to interfere with burial ceremonies**

The operator is not permitted to interfere with religious burial ceremonies.

**13. Rights of the head of religious denominations or other recognised group in relation to the portion of a cemetery or crematorium set apart for that group.**

The recognised head of any religious denomination or other group under Section 20 of the Act has the right to:

1. Prohibit the performance of a service within the part of the cemetery or crematorium set apart for their group, with written notice to the operator.
2. May object to a burial, interment or the granting of exclusive rights of burial or interment in the cemetery or crematorium set apart for their group, with written notice to the operator. The operator may also consult with other cultural leaders within the community or nationally when appropriate. If the objection is valid then the operator must grant refusal.
3. They may object to the placing of any monumental design or inscription within the part of the cemetery or crematorium set apart for their group. The operator must inform the applicant that an objection has been received and invite a response to the objection.

**14. Coffins for burial.** This clause calls up sections 20 and 21 of the *Cemeteries and Crematoria Act 2003* and advises that a person or operator commits an offence if burial of human or foetal remains at a cemetery or crematorium is not in accordance with section 7 of the Cemetery and Crematoria Regulation 2003. Notifiable Instrument NI2004-332 Cemeteries and Crematoria (Containers for Burial) Approval 2004 specifies the minimum requirements that a container approved for burial must meet.

**15. Coffins for cremation.** This clause calls up sections 20 and 21 of the *Cemeteries and Crematoria Act 2003* and advises that a person or operator commits an offence if cremation of human or foetal remains at a cemetery or crematorium is not in accordance with section 8 of the Cemetery and Crematoria Regulation 2003. Notifiable Instrument NI2004-333 Cemeteries and Crematoria (Containers for Cremation) Approval 2004 specifies the minimum requirements that a container approved for cremation must meet. The provision removes the requirements of the previous code that effectively stopped the use of cardboard coffins for cremation.

**16. Content of coffins delivered for cremation** must not contain any of the items contained in the unacceptable content list (eg. anything constructed of PVC, cardiac pacemaker, battery powered, and pathological waste). A list of acceptable contents is also contained in the section (eg. shrouds, silicon implants, radio-active injectable solutions).

**17. Handling of cremated remains** must follow the guidelines established in this section. Crematorium staff must not open coffins and remains must be able to be identified at all stages during the cremation process. Bodies are to be cremated separately. Exceptions require written approval from the cremation authority and include: (1) The bodies to two children from the same family who died at the same time, (2) For a mother and her baby who both died at childbirth.

Only the operator of the crematorium can alter the location or remove the remains from the site with express written permission from the holder of the right of interment.