



2003

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

Cemeteries and Crematoria Regulations 2003

EXPLANATORY MEMORANDUM

**Circulated by the authority of
Bill Wood MLA
Minister for Urban Services**

AUSTRALIAN CAPITAL TERRITORY
CEMETERIES AND CREMATORIA ACT 2003
CEMETERIES AND CREMATORIA REGULATIONS 2003
SUBORDINATE LAW No 2003-31
EXPLANATORY MEMORADUM

Outline

The objective of the regulations is to establish a consistent and contemporary framework for the operation of cemeteries and crematoria in the ACT, under the *Cemeteries and Crematoria Act 2003*.

Formal Clauses

Part 1 – Preliminary

Clauses 1 and 2 are formal requirements. They deal with the short title of the regulations and the commencement provisions.

Clause 3 states that the Dictionary at the end of the regulations is part of these regulations.

Clause 4 explains that notes included in the regulations are only explanatory.

Clause 5 clarifies that the Criminal Code covers all offences in this regulations

Part 2 – Burial etc of remains

Clause 6 outlines what is a certification document for human remains and where these can be obtained.

Clause 7 outlines the requirements for the burial of human remains. An application has to be made to a cemetery and accompanied with a certification document. The application must also be in accordance with a previously purchased right of burial. The human remains must also be contained in a coffin casket or any other container approved by the chief health officer.

Clause 8 outlines the requirements for cremation of human remains. An application has to be made to a crematorium and accompanied with a certification document and a certificate from a medical referee. The operator of the crematorium must also be satisfied that the person did not leave any directions stating that they do not want their body cremated. The human remains must also be contained in a coffin casket or any other container approved by the chief health officer.

Clause 9 outlines the requirements for burial or cremation of foetal remains. An application has to be made to the cemetery or crematorium and accompanied by a statement from a nurse or doctor that the remains are indeed foetal and there is no known reason why that cannot be buried or cremated. The human remains must also be contained in a coffin casket or any other container approved by the chief health officer.

Clause 10 establishes the conditions in which an operator of a cemetery may accept human remains for burial in a vault. The remains must be embalmed and sealed in a corrosion resistant metal container.

Clause 11 establishes how an operator of a crematorium may dispose of the cremated remains. The remains must be given to the person who made the application for cremation or a representative who has been given written consent. If in a reasonable time the operator is unable to give the ashes to the applicant, the operator must write to the applicant that the ashes are available for collection. If the applicant does not collect the ashes within one year for when written notice is given, the operator can then either dispose of the ashes at the crematorium or give the ashes to a family member of the dead person who is over 16 years of age.

Part 3 – Records

Division 3.1 – Operator register

Clause 12 details the register the operator of a cemetery or crematoria must keep. The operator must keep records for all burial, interment of ashes and cremations that have taken place. The required details that must be kept are also listed in this clause.

Clause 13 requires the operator register must be able to be searched by the public at all times when the facility is open. The public paying reasonable copying costs can obtain copies of records.

Division 3.2 – Application records

Clause 14 requires operators to keep each application record in accordance with the code of practice. This clause also lists which documents are application records such as application for the erection of memorials or tombstones.

Part 4 – Opening, closing and operation of facilities

Division 4.1 – Opening and closing facilities

Clause 15 outlines the meaning of relevant details for part 4, including name, address and telephone of the operator, location of the facility, the place where accounts and records of the perpetual care trust are kept.

Clause 16 provides the Minister with the power to open a facility in writing providing the proposed operator has given the Minister the relevant details. The Minister must not open a facility unless certain assessments of hydrological status of the water table

are made to avoid contamination and that the proposed site is consistent with the Territory Plan.

Clause 17 states that an operator must tell the Minister in writing if any of the relevant details change or if the operator of the facility changes.

Clause 18 provides the Minister with the power to close a facility completely or partially.

Clause 19 provides the Minister with the power to appoint a trustee for a private burial ground if there is no trustee.

Part 5 – Miscellaneous

Clause 20 allows the Minister, in writing, to set aside public land for the burial of a particular group of people, such as members of the armed services, ethnic groups, religious denominations.

Clause 21 provides for penalties to be given to a person who damages or disturbs property at a facility. The clause also lists when this regulation does not apply, such as, when human remains are exhumed with the written permission of the chief health officer.

Clause 22 allows the chief executive to appoint medical referees. A person can only be appointed a medical referee, if they are a doctor and have been practising as such for a continuous period of at least five years prior to the day of appointment.

Part 6 – Transitional

Clause 23 provides for human and foetal remains, which have been buried under the old legislation, to meet the requirements of the new regulations.

Clause 24 provides for human and foetal remains, which have been cremated under the old legislation, to meet the requirements of the new regulations.

Clause 25 provides for already existing cemeteries and crematoria, which have been declared open under the old legislation, to be declared open under the new legislation.

Clause 26 provides for medical referees that were appointed under the old legislation to remain appointed medical referees under the new legislation.

Clause 27 allows for the modification of the Act under schedule 1 of the regulations.

Clause 28 allows for the expiry of Part 6 and schedule 1 the day the Act, Part 5 expires.

Schedule 1 outlines more information in regards to exclusive rights of burial, confirming that the exclusive right of burial under the old legislation lasts forever as if the right has been given under Section 8 of the new Act. The time limit that would

have applied to Gungahlin Cemetery under the old legislation does not apply under the new Act.

Dictionary defines key words that are used in the regulations.