



Australian Capital Territory

# **Cemeteries and Crematoria Regulations 2003 No 31**

made under the

**Cemeteries and Crematoria Act 2003**

**Republication No 1**

**Effective: 27 September 2003 – 27 September 2004**

Republication date: 27 September 2003

Regulations not amended

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Cemeteries and Crematoria Regulations 2003*, made under the *Cemeteries and Crematoria Act 2003*, including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes). It also includes any commencement, amendment, repeal or expiry affecting the republished law to 27 September 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Cemeteries and Crematoria Regulations 2003

made under the

**Cemeteries and Crematoria Act 2003**

## Contents

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	Page	
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of regulations	2
3	Dictionary	2
4	Notes	2
5	Offences against regulations—application of Criminal Code etc	3
<b>Part 2</b>	<b>Burial etc of remains</b>	
6	Certification documents	4
7	Requirements for burial of human remains—Act, s 20	5
8	Requirements for cremation of human remains—Act, s 20	5

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R1  
27/09/03

Cemeteries and Crematoria Regulations 2003  
Effective: 27/09/03-27/09/04

contents 1

## Contents

---

		Page
9	Requirements for burial or cremation of foetal remains—Act, s 20	6
10	Burial in vaults	7
11	Disposal of cremated remains	7
<b>Part 3</b>	<b>Records</b>	
<b>Division 3.1</b>	<b>Operator register</b>	
12	Register to be kept	9
13	Form of operator register and copies	11
<b>Division 3.2</b>	<b>Application records</b>	
14	Keeping application records	11
<b>Part 4</b>	<b>Opening, closing and operation of facilities</b>	
<b>Division 4.1</b>	<b>Opening and closing facilities</b>	
15	Meaning of <i>relevant details</i> for pt 4	13
16	Opening facilities	13
17	Change of details to be notified	14
18	Closing facilities	14
19	Private burial grounds—appointment of trustee	15
<b>Part 5</b>	<b>Miscellaneous</b>	
20	Separate sections of public cemeteries	16
21	Property not to be damaged	16
22	Medical referees	17
<b>Part 6</b>	<b>Transitional</b>	
23	Permits for burial	18
24	Permits for cremation	18
25	Existing cemeteries and crematoria	18
26	Medical referees	18
27	Modification of Act, pt 5	19
28	Expiry of pt 6 and sch 1	19

<b>Schedule 1</b>	<b>Modification of Act, part 5</b>	Page 20
<b>Dictionary</b>		21
<b>Endnotes</b>		
1	About the endnotes	22
2	Abbreviation key	22
3	Legislation history	23
4	Amendment history	23





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page 1

## Part 1 Preliminary

### 1 Name of regulations

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

### 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, and includes references (signpost definitions) to other words and expressions defined elsewhere in these regulations.

For example, the signpost definition ‘*certification document*—see regulation 6.’ means that the term ‘certification document’ is defined in that regulation.

*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.



## **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.

## 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—
  - (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**

- (1) 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
- (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 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.

## **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.

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

## **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;

- (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.



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

## **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
  - (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—
  - (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.

## 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
- (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).

## 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 Existing cemeteries and crematoria

- (1) A public cemetery that, immediately before the commencement of these regulations, was set apart for, or dedicated to, the purpose of a public cemetery under the *Cemeteries Act 1933*, section 5 is taken to be a cemetery opened under regulation 16 (Opening facilities).
- (2) A crematorium that, immediately before the commencement of these regulations, was licensed to operate under the *Cremation Act 1966*, section 5 is taken to be a crematorium opened under regulation 16.

### 26 Medical referees

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



**27 Modification of Act, pt 5**

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

**28 Expiry of pt 6 and sch 1**

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

## Schedule 1 Modification of Act, part 5

(see reg 27)

### **[1.1] New section 57A**

*in division 5.1, insert*

#### **57A Exclusive rights of burial**

- (1) To remove any 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.

## 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.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

#### **Cemeteries and Crematoria Regulations 2003 SL2003-31**

notified LR 17 September 2003

reg 1, reg 2 commenced 17 September 2003 (LA s 75 (1))

remainder commenced 27 September 2003 (reg 2 and see Cemeteries and Crematoria Act 2003 A2003-11 s 2)

### 4 Amendment history

#### **Commencement**

reg 2 om LA s 89 (4)

#### **Transitional**

pt 6 hdg exp 27 September 2004 (reg 28)

#### **Permits for burial**

reg 23 exp 27 September 2004 (reg 28)

#### **Permits for cremation**

reg 24 exp 27 September 2004 (reg 28)

#### **Existing cemeteries and crematoria**

reg 25 exp 27 September 2004 (reg 28)

#### **Medical referees**

reg 26 exp 27 September 2004 (reg 28)

#### **Modification of Act, pt 5**

reg 27 exp 27 September 2004 (reg 28)

#### **Expiry of pt 6 and sch 1**

reg 28 exp 27 September 2004 (reg 28)

#### **Modification of Act, part 5**

sch 1 exp 27 September 2004 (reg 28)

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