

Australian Capital Territory

Cemeteries and Crematoria Act 2020

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

About this republication

The republished law

This is a republication of the *Cemeteries and Crematoria Act 2020* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 5 September 2026. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 5 September 2026.

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):

- 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, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

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 the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Cemeteries and Crematoria Act 2020

Contents

Page

Part 1 Preliminary

1 Name of Act 2
3 Dictionary 2
4 Notes 2
5 Offences against Act—application of Criminal Code etc 3
6 Object of Act 3

Part 2 Right to burial or interment

8 Right to burial 4
9 Right to interment 5
10 Right to burial and right to interment—transfer 7
11 Right to burial and right to interment—term 9
12 Right to burial or interment—notice about end of term and revoking right 9

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Page

Part 3 Burial, cremation, interment or exhumation

Division 3.1 Definition

13 Meaning of *certification document*—pt 3 12

Division 3.2 Transporting human remains

14 Offence—transporting human remains 12

Division 3.3 Burial

Subdivision 3.3.1 Burial other than at cemetery

15 Burial other than at cemetery—application 13

16 Offences—burial other than at cemetery 14

Subdivision 3.3.2 Burial at cemetery

17 Burial at cemetery—application 15

18 Offence—burial at cemetery 17

19 Offence—refusal or interference with burial activities related to religion, cultural group etc 18

20 Offence—burial to conceal offence 18

21 Burial—term 18

Division 3.4 Cremation

22 Cremation—application 19

23 Cremation—2 or more people at same time 21

24 Minister or magistrate may prohibit cremation 22

25 Licensee must make remains available for collection 22

25A Offences—failure to notify applicant or suitable person about collection of cremated remains 23

25B Offences—disposal of cremated remains 24

26 Offence—cremation other than at crematorium 25

27 Offence—cremation at crematorium 25

28 Offence—refusal or interference with cremation activities related to religion, cultural group etc 26

29 Offence—cremation to conceal offence 27

Division 3.5 Interment

30 Interment—application 27

31 Offence—interment 29

32 Offence—refusal or interference with interment activities related to religion, cultural group etc 29

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

33 Interment—term 30

Division 3.6 Disinterment

34 Disinterment—application 30

35 Disinterment—approval by regulator 31

36 Offence—disinterment 32

Division 3.7 Exhumation

37 Exhumation—application 33

38 Offences—exhumation 34

Division 3.8 Miscellaneous

39 Approved container or wrapping—application 35

40 Burial or cremation without certification document 36

41 Medical referee—appointment 37

42 Offences—cause of death certificate not to be given by doctor or nurse practitioner 38

43 Requirements for transportation, burial or cremation in coffin etc 39

Part 4 Operating facility

Division 4.1 Offences—general

44 Offence—damage to facility property 40

45 Offence—operating facility without licence 40

46 Offence—operating facility not in accordance with licence 41

47 Offences—failure to maintain facility 41

Division 4.2 Licence to operate facility

48 Meaning of *suitable person*—div 4.2 42

49 Licence—application 42

50 Licence—term 45

51 Licence—amendment 45

52 Licence—transfer 47

53 Licence—surrender 50

54 Closing facility—application 50

55 Application—request for information 52

56 Offences—failure to update information in application 53

57 Offence—failure to update information 54

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

Division 4.3 Regulator's register—licence

58 Register of licences 55

Division 4.4 Licensee's operating procedures, register and records

Subdivision 4.4.1 Standard operating procedures

59 Standard cemetery operating procedures 56

60 Standard crematorium operating procedures 58

61 Standard facility operating procedures 59

Subdivision 4.4.2 Licensee registers

62 Register—right to burial and right to interment 60

63 Register—burial, cremation, interment etc 61

63A Register—collection of cremated remains 63

64 Offences—keeping registers 64

Subdivision 4.4.3 Licensee records

65 Facility records—burial, cremation, interment etc 65

66 Offences—failing to keep records 66

67 Offences—auditing records 66

68 Offence—transferring records 67

Part 5 Regulatory action

Division 5.1 Disciplinary action

69 Definitions—div 5.1 69

70 Immediate suspension of licence—danger to public health 70

71 Disciplinary action—no immediate danger to public health 71

72 Amended or suspended licence—action by regulator 72

Division 5.2 Directions

73 Direction to stop contravening Act or condition 73

74 Offence—direction 73

Division 5.3 Enforceable undertakings

75 Enforceable undertaking for offence 74

76 Enforceable undertaking—withdrawal or amendment 75

77 Ending enforceable undertaking 75

78 Undertaking not admission of fault or liability 76

79 Enforceable undertaking—contravention 76

80 Enforceable undertaking—effect on other proceedings 77

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Page

81 Enforceable undertakings—register 77

Part 6 Enforcement

Division 6.1 Definitions

82 Definitions—pt 6 79

Division 6.2 Authorised people

83 Authorised person—appointment 80
84 Identity cards 80
85 Authorised person must show identity card 81
86 Power to enter premises 81
87 Consent to entry 83
88 General powers on entry to premises 84
89 Power to seize things 84
90 Direction to give name and address 86
91 Offence—fail to comply with direction to give name and address 87

Division 6.3 Search warrants

92 Warrants—generally 87
93 Warrants—application other than in person 89
94 Warrants—announcement before entry 90
95 Details of warrant to be given to occupier etc 91
96 Occupier entitled to be present during search etc 91
97 Receipt for things seized 92
98 Moving things to another place 92
99 Access to things seized 93
100 Return of things seized 94
101 Damage etc to be minimised 95
102 Compensation for exercise of enforcement powers 95

Part 7 Perpetual care trusts

103 Authority perpetual care trust—establishment 97
104 Licensee perpetual care trust—establishment 97
105 Determination of trustee 98
106 Determination of perpetual care trust percentage 98
107 Perpetual care trust percentage—requesting information and documents 99

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		Page
108	Perpetual care trust—licensee receipt	99
109	Offence—failure to give perpetual care trust percentage	100
110	Offence—protection of perpetual care trust	100
111	Perpetual care trust—records	101
112	Perpetual care trust—dissolution	102

Part 7A Maintenance of closed facilities

112A	Territory responsible for maintenance of closed facilities	103

Part 8 Cemeteries and crematoria authority

113	Establishment of authority	104
114	Functions of authority	104
115	Approval to operate facility	105
116	Authority taken to be licensee	105
116A	Minister may make declaration closing authority operated facility	105
117	Establishment of governing board	107
118	Governing board members	107
118A	Chief executive officer of authority	107
118B	Authority's staff	107
119	Ministerial directions to authority	108

Part 9 Regulator

120	Regulator—appointment	109
121	Regulator—functions	109
122	Delegation	109

Part 10 Codes of practice

123	Code of practice—approval	110
124	Failure to comply with code of practice	110

Part 11 Notification and review of decisions

125	Definitions—pt 11	112
126	Reviewable decision notices	112
127	Applications for review	112

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Page

Part 12 Miscellaneous

128 Determination of fees 113
129 Protection from liability 113
130 Regulation-making power 114

Part 21 Transitional—Cemeteries and Crematoria Amendment Act 2024

215 Continuation of perpetual care trusts 115
216 Expiry—pt 21 115

Schedule 1 Reviewable decisions 116

Dictionary 117

Endnotes

1 About the endnotes 122
2 Abbreviation key 122
3 Legislation history 123
4 Amendment history 124
5 Earlier republications 128
6 Expired transitional or validating provisions 129

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Australian Capital Territory

Cemeteries and Crematoria Act 2020

An Act about cemeteries and crematoria, and for other purposes

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Part 1 Preliminary

1 Name of Act

This Act is the *Cemeteries and Crematoria Act 2020*.

3 Dictionary

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

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (***signpost definitions***) to other terms defined elsewhere.

For example, the signpost definition '***stillborn child***—see the *Births, Deaths and Marriages Registration Act 1997*, dictionary.' means that the term 'stillborn child' is defined in that dictionary and the definition applies to this Act.

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

4 Notes

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

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

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5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (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.

6 Object of Act

(1) The main object of this Act is to provide a financially sustainable model for the management of cemeteries and crematoria that recognises, and provides for, the diverse needs of the community.

(2) This is achieved particularly by—

(a) recognising the rights of people to the dignified and respectful treatment of their human remains and the human remains of their loved ones; and

(b) respecting the diverse burial, cremation and interment practices, cultural practices and religious beliefs of people; and

(c) promoting financially sustainable facilities and practices for burying and cremating human remains and interring cremated remains.

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Part 2 Right to burial or interment

8 Right to burial

(1) A person may apply to the licensee of a cemetery for a right to burial of human remains at the cemetery.

(2) The application must be in writing and include the following:

(a) the name and contact details of the person;

(b) the date of the application;

(c) the kind of burial site at the cemetery sought;

(d) the preferred burial area at the cemetery (if any);

(e) anything else prescribed by regulation.

(3) The licensee of the cemetery must—

(a) accept the application; or

(b) refuse the application.

(4) The licensee may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The licensee may accept the application only if the licensee is satisfied that, at the time the right to burial will be exercised for the first time—

(a) a burial site will be available at the cemetery; and

(b) if the person applied for—

(i) a kind of burial site at the cemetery—a burial site of that kind will be available at the cemetery; and

(ii) a right to burial in a particular area of the cemetery—a burial site will be available in the area of the cemetery.

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(6) If the licensee accepts the application, the licensee must give the person a document, in writing, including the following information (a ***right to burial certificate***):

(a) the name and location of the cemetery;

(b) the unique identifying number for—

(i) the right to burial certificate; and

(ii) the licensee of the cemetery;

(c) the day the right is given;

(d) if the application was for a kind of burial site at the cemetery—the kind of burial site;

(e) if the application was for a particular area of the cemetery—the area;

(f) any other information prescribed by regulation.

(7) The licensee must give the person—

(a) the facility plan for the cemetery; and

(b) a statement to the effect that, if a right to burial under the certificate has not been exercised within 60 years after the day the right is given, the right will end; and

(c) anything else prescribed by regulation.

9 Right to interment

(1) A person may apply to the licensee of a facility for a right to interment of cremated remains at the facility.

(2) The application must be in writing and include the following:

(a) the name and contact details of the person;

(b) the kind of interment site sought at the facility;

(c) the preferred interment area at the facility (if any);

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(d) anything else prescribed by regulation.

(3) The licensee of the facility must—

(a) accept the application; or

(b) refuse the application.

(4) The licensee may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The licensee may accept the application only if the licensee is satisfied that at the time the right will be exercised for the first time—

(a) an interment site will be available at the facility; and

(b) if the person applied for—

(i) a kind of interment site at the facility—the interment site will be of the kind applied for; and

(ii) an interment site in a particular area of the facility—an interment site will be available in the area.

(6) If the licensee accepts the application, the licensee must give the person a document, in writing, containing the following information (a ***right to interment certificate***):

(a) the name and location of the facility;

(b) the unique identifying number for—

(i) the right to interment certificate; and

(ii) the licensee of the facility;

(c) the day the right is given;

(d) if the application is for a kind of interment site at the facility—the kind of interment site;

(e) if the application is for a particular area of the facility—the area;

(f) any other information prescribed by regulation.

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(7) The licensee of the facility must give the person—

(a) the facility plan for the facility; and

(b) a statement to the effect that if the person does not exercise the right within 60 years after the day the right is given, the right will cease; and

(c) anything else prescribed by regulation.

10 Right to burial and right to interment—transfer

(1) A person who has a right to burial at a cemetery or a right to interment at a facility may apply to transfer the right to another person.

(2) The application must—

(a) be made to the licensee—

(i) for a right to burial—of the cemetery; or

(ii) for a right to interment—of the facility; and

(b) be in writing and include the following information:

(i) the name and contact details of the person applying to transfer the right (the ***transferor)***;

(ii) a copy of the right to burial certificate or right to interment certificate for the right;

(iii) the name and contact details of the person to whom the right is to be transferred (the ***transferee***) and a statement that the transferee agrees to the right being transferred to them;

(iv) anything else prescribed by regulation.

(3) The licensee must—

(a) accept the application; or

(b) refuse the application.

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(4) The licensee may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The licensee may accept the application only if satisfied that a right under the right to burial certificate or right to interment certificate has not been exercised.

(6) If the licensee of a facility accepts an application , the licensee must—

(a) attach a written amendment to the right to burial certificate or right to interment certificate stating—

(i) the name and contact details of the transferor; and

(ii) the name and contact details of the transferee; and

(iii) the period remaining in the term of the right; and

(iv) anything else prescribed by regulation; and

(b) tell the transferor, in writing—

(i) that the licensee is transferring the right to the transferee; and

(ii) the day of the transfer; and

(c) tell the transferee, in writing, that the right has been transferred to them and give the transferee a copy of—

(i) for a right to burial—the right to burial certificate; and

(ii) for a right to interment—the right to interment certificate; and

(iii) the written amendment of the certificate mentioned in paragraph (a).

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11 Right to burial and right to interment—term

(1) A right to burial of human remains at a cemetery—

(a) starts on the day the licensee of the cemetery gives a right to burial certificate to the person who applied for the right under section 8; and

(b) ends—

(i) for a right to burial of 1 person—when the person is buried in accordance with the right; or

(ii) for a right to burial of 2 or more people—when all the people have been buried in accordance with the right; or

(iii) if the right has not been exercised—60 years after the right is given.

Note The term of a burial is in perpetuity (see s 21).

(2) A right to interment of cremated remains at a facility—

(a) starts on the day the licensee of the facility gives a right to interment certificate to the person who applied for the right under section 9; and

(b) if the right has not been exercised—ends 60 years after the day the right is given.

Note The term of the interment of cremated remains is in perpetuity unless the remains are disinterred in accordance with this Act (see s 33).

12 Right to burial or interment—notice about end of term and revoking right

(1) This section applies—

(a) to the licensee of a cemetery if—

(i) a right to burial certificate has been given in relation to the cemetery; and

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(ii) a right under the certificate has not been exercised; and

(iii) 58 years have passed since the certificate was given; and

(b) to the licensee of a facility if—

(i) a right to interment certificate has been given in relation to the facility; and

(ii) a right under the certificate has not been exercised; and

(iii) 58 years have passed since the certificate was given.

(2) The licensee must take all reasonable steps—

(a) to contact the right holder and tell them the right will end in 2 years (the ***notice period***); and

(b) if the licensee becomes aware that the right holder is deceased—to contact a descendant of the right holder to tell them that the right will end at the end of the notice period.

(3) If the licensee takes the steps mentioned in subsection (2) but is unable to contact the right holder or their descendant 4 weeks before the end of the notice period, the licensee must give public notice that the right will be revoked at the end of the notice period.

(4) If the licensee gives public notice in accordance with subsection (3), and the licensee is not contacted by the right holder or a descendant of the right holder, the licensee may revoke the right at the end of the notice period.

(5) If, within the notice period, the right holder or a descendant of the right holder contacts the licensee about the right, the right holder or descendant may—

(a) retain the right for the remaining period of the term of the right; or

(b) forfeit the right to the licensee for half the fee for an equivalent right until the forfeiture occurs.

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(6) If the licensee revokes the right in accordance with subsection (4) and the right holder or a descendant of the right holder applies to the licensee to exercise the right after it has been revoked, the licensee must give the right holder or descendant—

(a) an equivalent right at the cemetery or facility; or

(b) half the fee for the equivalent right at the time the right holder or descendant makes the application to exercise the right.

(7) In this section:

right holder means—

(a) for a right to burial—

(i) the person who was given the right under section 8; or

(ii) if the right has been transferred to another person under section 10—the person to whom the right to burial was transferred; and

(b) for a right to interment—

(i) the person who was given the right under section 9; or

(ii) if the right has been transferred to another person under section 10—the person to whom the right was transferred.

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Part 3 Burial, cremation, interment or exhumation

Division 3.1 Definition

13 Meaning of *certification document*—pt 3

In this part:

certification document, for the human remains of a deceased person, means—

(a) a doctor's certificate of fetal death for the deceased person mentioned in the *Births, Deaths and Marriages Registration Act 1997*, section 5 (Notification of births); or

(b) a cause of death certificate for the deceased person; or

(c) a coroner's certificate for the deceased person mentioned in the *Coroners Act 1997*, section 15 (Control and release of body of deceased); or

(d) if the human remains are of a deceased person who died outside the ACT—a document (however described), issued under a law of the place where the person died, that substantially corresponds to a certificate mentioned in paragraph (a), (b) or (c).

Division 3.2 Transporting human remains

14 Offence—transporting human remains

(1) A person commits an offence if—

(a) the person transports human remains; and

(b) the human remains are not in an acceptable container or acceptable wrapping.

Maximum penalty: 50 penalty units.

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

Division 3.3 Burial

Subdivision 3.3.1 Burial other than at cemetery

15 Burial other than at cemetery—application

(1) A person may apply to the regulator for permission to bury human remains at a place other than a cemetery.

(2) The application must be in writing and include the following information and documents:

(a) the name and contact details of the person;

(b) the name of the deceased person whose human remains will be buried;

(c) the address of the place where the burial will take place;

(d) anything else prescribed by regulation;

(e) either—

(i) a certification document for the human remains; or

(ii) an approval under section 40 (Burial or cremation without certification document);

(f) if the human remains are fetal remains—a statement signed by a doctor, nurse or midwife stating that the remains are fetal remains and there is no reason why the remains should not be buried.

(3) The regulator must—

(a) permit the burial; or

(b) refuse to permit the burial.

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(4) The regulator may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The regulator may permit the burial only if satisfied that it would not be contrary to the interests of public health.

(6) The permission must be in writing and may be subject to conditions.

(7) If the regulator refuses the application, the regulator must tell the person, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

16 Offences—burial other than at cemetery

(1) A person commits an offence if—

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

(b) the person does not have permission under section 15.

Maximum penalty: 100 penalty units.

(2) A person commits an offence if—

(a) the person has permission to bury human remains other than at a cemetery under section 15; and

(b) the person does not bury the human remains in accordance with the permission.

Maximum penalty: 100 penalty units.

(3) A person commits an offence if—

(a) the person has permission to bury human remains other than at a cemetery under section 15; and

(b) the permission is subject to a condition; and

(c) the person does not comply with the condition.

Maximum penalty: 100 penalty units.

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Subdivision 3.3.2 Burial at cemetery

17 Burial at cemetery—application

(1) A person may apply to the licensee of a cemetery for human remains to be buried at the cemetery.

(2) The application must be in writing and include—

(a) the name and contact details of the person; and

(b) the name of the deceased person whose human remains are to be buried and their—

(i) date of birth (if known); and

(ii) date of death (if known); and

(c) if the deceased person has a right to burial at the cemetery—a copy of the right to burial certificate for the person; and

(d) if the deceased person does not have a right to burial at the cemetery—an application under section 8; and

(e) a statement about whether the deceased person will be buried in an acceptable container or acceptable wrapping; and

(f) if the deceased person will be buried in a container or wrapping approved under section 39—a copy of the approval; and

(g) either—

(i) a certification document for the human remains; or

(ii) an approval under section 40 (Burial or cremation without certification document); and

(h) if the human remains are fetal remains—a statement signed by a doctor, nurse or midwife stating that the remains are fetal remains and there is no reason why the remains should not be buried.

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(3) The licensee must—

(a) accept the application; or

(b) refuse the application.

(4) The licensee may refuse to consider the application further if it is not in accordance with subsection (2).

(5) If the deceased person has a right to burial at the cemetery, the licensee must accept the application.

(6) If the deceased person does not have a right to burial at the cemetery—the licensee may only accept the application if the licensee gives a right to burial certificate for the deceased person.

(7) If the licensee agrees to the burial, the licensee must—

(a) schedule a day and time for the burial; and

(b) allocate a burial site that—

(i) is on the facility plan for the cemetery; and

(ii) is a kind of burial site and in the burial area mentioned on the right to burial certificate covering the deceased person; and

(c) tell the person, in writing, of the licensee's agreement to the burial, including the day and time of the scheduled burial; and

(d) allocate a unique identifying number for the burial; and

(e) give the person the unique identifying number in writing.

(8) If the licensee does not agree to the burial, the licensee must tell the person in writing.

(9) If an undertaker or funeral director is acting for, or on behalf of, a person, information that must be given to the person under this section may instead be given to the undertaker or funeral director.

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18 Offence—burial at cemetery

(1) A person commits an offence if the person—

(a) is the licensee of a cemetery; and

(b) buries human remains at the cemetery; and

(c) fails to comply with a requirement mentioned in subsection (2).

Maximum penalty: 50 penalty units.

(2) For subsection (1) (c), the requirements are that—

(a) the human remains must be contained in an acceptable container or acceptable wrapping; and

(b) the person must have either of the following for the human remains:

(i) a certification document;

(ii) an approval given under section 40 (Burial or cremation without certification document); and

(c) if the human remains are buried in a vault—the person must have a written statement from the person who transported the remains to the cemetery stating that the human remains—

(i) have been embalmed; and

(ii) are in a sealed corrosion resistant container; and

(d) the human remains must be buried in accordance with the following:

(i) the minimum standards for the burial of human remains prescribed by regulation;

(ii) the standard operating procedures for the cemetery;

(iii) if a code of practice applies to the burial or the cemetery—the code of practice;

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(iv) anything else prescribed by regulation.

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

19 Offence—refusal or interference with burial activities related to religion, cultural group etc

A person commits an offence if—

(a) the person is the licensee of a cemetery; and

(b) the person buries human remains at the cemetery; and

(c) the deceased person whose human remains are buried, or a family member of the deceased person, requests or carries out activities for the burial that are—

(i) related to the deceased person's religion, cultural group or other special category; and

Examples—other special category
babies, children or members of the Australian Defence Force

(ii) reasonable in the circumstances; and

(d) the person refuses the request, or interferes with the activities being carried out.

Maximum penalty: 50 penalty units.

20 Offence—burial to conceal offence

A person commits an offence if the person buries human remains to conceal the commission of an offence.

Maximum penalty: 1 000 penalty units, imprisonment for 5 years or both.

21 Burial—term

The term of the burial of human remains at a cemetery—

(a) starts on the day the human remains are buried; and

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(b) continues in perpetuity.

Division 3.4 Cremation

22 Cremation—application

(1) A person may apply to the licensee of a crematorium for the cremation of human remains at the crematorium.

(2) The application must be in writing and include—

(a) the name and contact details of the person; and

(b) the name of the deceased person whose human remains will be cremated and their—

(i) date of birth (if known); and

(ii) date of death (if known); and

(c) a statement about whether the deceased person has left directions that their remains not be cremated; and

(d) a statement about whether the deceased person will be in an acceptable container or acceptable wrapping; and

(e) either—

(i) a certification document; or

(ii) an approval under section 40 (Burial or cremation without certification document); and

(f) a certificate from a medical referee stating that there is no medical reason why the human remains should not be cremated; and

(g) if the human remains are fetal remains—a statement signed by a doctor, nurse or midwife stating that the remains are human remains and there is no reason why the remains should not be cremated; and

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(h) if the application is for the cremation of 2 or more people at the same time—an approval under section 23.

(3) The licensee must—

(a) accept the application; or

(b) refuse the application.

(4) The licensee may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The licensee may accept the application only if satisfied that—

(a) the deceased person did not leave directions that their human remains should not be cremated; and

(b) the cremation has not been prohibited under section 24; and

(c) the container for the cremation of the human remains is an acceptable container or acceptable wrapping.

(6) If the licensee agrees to the cremation, the licensee must—

(a) schedule a day and time for the cremation; and

(b) tell the person, in writing, of the licensee's agreement to cremate the human remains, including the day of the scheduled cremation; and

(c) allocate a unique identifying number for the cremation; and

(d) give the person the unique identifying number in writing.

(7) If the licensee refuses the application, the licensee must tell the person in writing.

(8) If an undertaker or funeral director is acting for, or on behalf of, a person, information that must be given to the person under this section may instead be given to the undertaker or funeral director.

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23 Cremation—2 or more people at same time

(1) A person may apply to the regulator for approval to cremate the human remains of 2 or more people at the same time.

(2) The application must be in writing and include—

(a) the name and contact details of the person; and

(b) the name of each deceased person whose human remains are to be cremated; and

(c) a statement about whether any of the deceased people have left directions that their remains not be cremated; and

(d) for each deceased person—either—

(i) a certification document; or

(ii) an approval under section 40 (Burial or cremation without certification document); and

(e) a certificate from a medical referee stating that there is no medical reason why the human remains should not be cremated; and

(f) if the human remains are fetal remains—a statement signed by a doctor, nurse or midwife stating that the remains are human remains and there is no reason why the remains should not be cremated; and

(g) a statement about why it is appropriate to cremate the people at the same time.

Example—appropriate

two people who are family members and died at the same time

(3) The regulator must—

(a) accept the application; or

(b) refuse the application.

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(4) The regulator may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The regulator may accept the application if the regulator is satisfied that allowing the people to be cremated at the same time is reasonable in the circumstances.

(6) If the regulator refuses the application, the regulator must tell the person, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

24 Minister or magistrate may prohibit cremation

(1) The Minister or a magistrate may prohibit the cremation of human remains at a crematorium.

(2) The Minister or magistrate may prohibit the cremation only if satisfied that the cremation would—

(a) be reasonably likely to be dangerous; or

(b) create a health or safety risk; or

(c) hinder an investigation under a territory law.

(3) The prohibition must be in writing and given to the licensee of the crematorium.

Note For how documents may be given, see the Legislation Act, pt 19.5.

25 Licensee must make remains available for collection

(1) If human remains are cremated at a crematorium, the licensee must, within 7 days after the cremation, notify the applicant that the cremated remains are available for collection.

(2) The licensee must make the cremated remains available for collection by the applicant for 3 years after the day the applicant is notified (the ***retention period***).

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(3) If the applicant does not collect the cremated remains within the first year of the retention period, the licensee must make the remains available for collection by a suitable person until the end of the retention period.

(4) If the cremated remains have not been collected within the first 2 years of the retention period, the licensee must ask the applicant or a suitable person to collect the remains by—

(a) contacting the last known telephone number of the applicant or suitable person on at least 2 days; and

(b) sending a written notice to the last known postal or email address of the applicant or suitable person.

(5) A notice under subsection (4) (b) must state—

(a) the day the retention period ends; and

(b) that the licensee may dispose of the cremated remains after that day.

(6) In this section:

applicant, in relation to the cremation of human remains, means the person who applied to the licensee of a crematorium for the cremation under section 22.

suitable person means a person who is—

(a) a family member of the deceased person whose human remains were cremated; and

(b) over 16 years of age.

25A Offences—failure to notify applicant or suitable person about collection of cremated remains

(1) A person commits an offence if—

(a) the person is the licensee of a crematorium; and

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(b) human remains are cremated at the crematorium; and

(c) the person fails to comply with section 25 (1).

Maximum penalty: 20 penalty units.

(2) A person commits an offence if—

(a) the person is the licensee of a crematorium; and

(b) human remains are cremated at the crematorium; and

(c) the cremated remains are not collected within the first 2 years of the retention period; and

(d) the person fails to comply with section 25 (4).

Maximum penalty: 20 penalty units.

(3) In this section:

retention period—see section 25 (2).

25B Offences—disposal of cremated remains

(1) A person commits an offence if—

(a) the person is the licensee of a crematorium; and

(b) human remains are cremated at the crematorium; and

(c) the person fails to comply with section 25 (1); and

(d) the person disposes of the cremated remains.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is the licensee of a crematorium; and

(b) human remains are cremated at the crematorium; and

(c) the cremated remains are not collected within the first 2 years of the retention period; and

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(d) the person fails to comply with section 25 (4); and

(e) the person disposes of the cremated remains.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if—

(a) the person is the licensee of a crematorium; and

(b) human remains are cremated at the crematorium; and

(c) the person disposes of the cremated remains before the end of the retention period.

Maximum penalty: 50 penalty units.

(4) In this section:

retention period—see section 25 (2).

26 Offence—cremation other than at crematorium

A person commits an offence if the person cremates human remains other than at a crematorium.

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

27 Offence—cremation at crematorium

(1) A person commits an offence if the person—

(a) is the licensee of a crematorium; and

(b) cremates human remains at the crematorium; and

(c) fails to meet a requirement mentioned in subsection (2).

Maximum penalty: 50 penalty units.

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(2) For subsection (1) (c), the requirements are that—

(a) the human remains must be contained in an acceptable container or acceptable wrapping; and

(b) the cremation of the human remains is not prohibited under section 24 (Minister or magistrate may prohibit cremation); and

(c) the human remains are cremated in accordance with the following:

(i) the minimum standards for the cremation of human remains prescribed by regulation;

(ii) the standard operating procedures for the crematorium;

(iii) if a code of practice applies to the cremation or the crematorium—the code of practice;

(iv) anything else prescribed by regulation.

(3) It is a defence to a prosecution for an offence against subsection (1) if the chief health officer has given a public health direction, in writing, under the *Public Health Act 1997* that requires the cremation of the remains in a way that does not satisfy some or all of the requirements.

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

28 Offence—refusal or interference with cremation activities related to religion, cultural group etc

A person commits an offence if—

(a) the person is the licensee of a crematorium; and

(b) the person cremates human remains at the crematorium; and

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(c) the deceased person whose human remains are cremated, or a family member of the deceased person, requests or carries out at the crematorium activities for the cremation that are—

(i) related to the deceased person's religion, cultural group or other special category; and

Examples—other special category
babies, children or members of the Australian Defence Force

(ii) reasonable in the circumstances; and

(d) the person refuses the request, or interferes with the activities being carried out.

Maximum penalty: 50 penalty units.

29 Offence—cremation to conceal offence

A person commits an offence if the person cremates human remains to conceal the commission of an offence.

Maximum penalty: 1 000 penalty units, imprisonment for 5 years or both.

Division 3.5 Interment

30 Interment—application

(1) A person may apply to the licensee of a facility for the interment of cremated remains at the facility.

(2) The application must be in writing and include—

(a) the name and contact details of the person; and

(b) the name of the deceased person whose cremated remains will be interred in the interment site and their—

(i) date of birth (if known); and

(ii) date of death (if known); and

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(c) if the deceased person has a right to interment of cremated remains at the facility—a copy of the right to interment certificate; and

(d) if the deceased person does not have a right to interment of cremated remains at the facility—an application under section 9.

(3) The licensee must—

(a) accept the application; or

(b) refuse the application.

(4) The licensee may refuse to consider the application further if it is not in accordance with subsection (2).

(5) If the deceased person has a right to interment at the facility, the licensee must agree to the interment.

(6) If the deceased person does not have a right to interment at the facility—the licensee may only accept the application if the licensee gives a right to interment certificate for the deceased person.

(7) If the licensee agrees to the interment, the licensee must—

(a) allocate an interment site that—

(i) is on the facility plan for the facility; and

(ii) is a kind of interment site and in the interment area mentioned on the right to interment certificate; and

(b) allocate a unique identifying number for the interment; and

(c) tell the person, in writing, of the licensee's agreement to the interment, including—

(i) the day and time of the scheduled burial; and

(ii) the unique identifying number for the interment.

(8) If the licensee does not agree to the interment, the licensee must tell the person in writing.

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31 Offence—interment

(1) A person commits an offence if—

(a) the person is the licensee of a facility; and

(b) the person inters cremated remains at the facility; and

(c) the interment is not in accordance with any of the following:

(i) the minimum standards for the interment of cremated remains prescribed by regulation;

(ii) the standard operating procedures for the facility;

(iii) if a code of practice applies to the interment or the facility—the code of practice;

(iv) anything else prescribed by regulation.

Maximum penalty: 50 penalty units.

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

32 Offence—refusal or interference with interment activities related to religion, cultural group etc

A person commits an offence if—

(a) the person is the licensee of a facility; and

(b) the person inters cremated remains at the facility; and

(c) the deceased person whose cremated remains are interred, or a family member of the deceased person, requests or carries out at the facility activities for the interment that are—

(i) related to the deceased person's religion, cultural group or other special category; and

Examples—other special category

babies, children or members of the Australian Defence Force

(ii) reasonable in the circumstances; and

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(d) the person refuses the request, or interferes with the activities being carried out.

Maximum penalty: 50 penalty units.

33 Interment—term

The term of the interment of cremated remains at a facility starts on the day the remains are interred and ends on the earlier of—

(a) if the remains are disinterred from the site in accordance with section 34 or section 35—the day the remains are disinterred; or

(b) continues in perpetuity.

Division 3.6 Disinterment

34 Disinterment—application

(1) A person may apply to the licensee of a facility for the disinterment of cremated remains from an interment site at the facility.

(2) The application must be in writing and include—

(a) the name and contact details of the person; and

(b) the name of the deceased person whose cremated remains will be disinterred; and

(c) the relationship of the person to the person whose cremated remains will be disinterred; and

(d) a copy of the right to interment certificate for the deceased person.

(3) The licensee must—

(a) accept the application; or

(b) refuse the application.

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(4) The licensee may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The licensee may agree to the disinterment of the cremated remains only if satisfied that the person is a family member of the deceased person and is over the age of 16.

(6) If the licensee agrees to the disinterment of cremated remains from a burial site at the facility, the licensee must tell the person, in writing—

(a) the unique identifying number for the disinterment; and

(b) the date after which the cremated remains will be available for collection; and

(c) anything else prescribed by regulation.

35 Disinterment—approval by regulator

(1) This section applies if the licensee of a facility intends to disinter cremated remains from an interment site at the facility on the licensee's own initiative.

(2) The licensee may apply to the regulator for approval of the disinterment of cremated remains from the site.

(3) The application must be in writing and include the following information:

(a) the unique identifying number of the facility;

(b) the unique identifying number of the site from which the cremated remains will be interred;

(c) the name of the deceased person whose cremated remains are interred in the site;

(d) the purpose of disinterring the cremated remains from the site;

(e) anything else prescribed by regulation.

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(4) The regulator must—

(a) accept the application; or

(b) refuse the application.

(5) The regulator may refuse to consider the application further if it is not in accordance with subsection (3).

(6) The regulator may approve the disinterment only if satisfied that—

(a) the cremated remains will be dealt with appropriately, with care and are not at risk of being mismanaged or lost; and

(b) the licensee has appropriate practices and procedures to avoid—

(i) misplacing the cremated remains; or

(ii) damaging any container or memorialisation relating to the cremated remains; and

(c) the licensee intends—

(i) to relocate the cremated remains to another interment site in the facility; or

(ii) to store the cremated remains at the facility; or

(iii) to give the cremated remains of the deceased person whose human remains are interred to a person who the licensee is satisfied is a family member of the deceased person and over the age of 16.

(7) If the regulator refuses the application, the regulator must tell the licensee, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

36 Offence—disinterment

A person commits an offence if—

(a) the person is the licensee of a facility; and

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(b) the person disinters cremated remains from an interment site at the facility; and

(c) either—

(i) the licensee has not agreed to an application under section 34; or

(ii) the regulator has not approved the disinterment under section 35; and

(d) the disinterment is not in accordance with—

(i) the minimum standards for the disinterment of cremated remains prescribed by regulation; and

(ii) the standard operating procedures for a facility; and

(iii) if a code of practice applies to the disinterment or the facility—the code of practice; and

(iv) anything else prescribed by regulation.

Maximum penalty: 50 penalty units.

Division 3.7 Exhumation

37 Exhumation—application

(1) A person may apply to the chief health officer for authorisation to exhume human remains.

(2) The application must—

(a) be in writing; and

(b) include anything else prescribed by regulation.

(3) The chief health officer must—

(a) accept the application; or

(b) refuse the application.

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(4) The chief health officer may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The chief health officer may—

(a) authorise the exhumation only if satisfied that it would not be contrary to the interests of public health; and

(b) impose conditions on the authorisation.

(6) If the chief health officer authorises the exhumation, the chief health officer must tell the person, in writing—

(a) that the exhumation is authorised; and

(b) any conditions applying to the authorisation.

(7) If the chief health officer refuses the application, the chief health officer must tell the person, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

38 Offences—exhumation

(1) A person commits an offence if—

(a) the person exhumes human remains; and

(b) the person is not authorised to exhume the human remains—

(i) by a warrant under the *Coroners Act 1997* authorising the exhumation; or

(ii) by the regulator given under section 37.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

(2) A person commits an offence if—

(a) the regulator authorises the exhumation of human remains under section 37; and

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(b) the authorisation is subject to a condition; and

(c) the person exhumes the human remains; and

(d) the person does not comply with the condition.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

(3) Subsection (1) does not apply if—

(a) the licensee exhumes human remains from a burial site at the cemetery; and

(b) the sole purpose of exhuming the human remains is to enable the burial in the site of the human remains of a deceased person who has a right to burial in the same site as the deceased person whose human remains are exhumed.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

Division 3.8 Miscellaneous

39 Approved container or wrapping—application

(1) The chief health officer may, in writing, approve—

(a) a container other than a coffin or eco-coffin as suitable for transporting, burying or cremating human remains; or

(b) a wrapping other than a shroud as suitable for transporting, burying or cremating human remains.

(2) The chief health officer may approve the container or wrapping—

(a) at the officer's own initiative; or

(b) on application made under subsection (3).

(3) A person may apply to the chief health officer for approval of a container or wrapping for transporting, burying or cremating human remains.

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(4) The application must be in writing and include anything else prescribed by regulation.

(5) The chief health officer must—

(a) accept the application; or

(b) refuse the application.

(6) The chief health officer may refuse to consider the application further if it is not in accordance with subsection (4).

(7) The chief health officer may approve a container or wrapping only if satisfied—

(a) that transporting, burying or cremating human remains in the container or wrapping is not contrary to public health; and

(b) of anything else prescribed by regulation.

(8) The approval may be subject to conditions.

(9) If the chief health officer refuses the application, the chief health officer must tell the person, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

(10) An approval under subsection (2) (a) is a notifiable instrument.

40 Burial or cremation without certification document

(1) The regulator may approve the burial or cremation of human remains without a certification document.

(2) A person may apply to the regulator for approval of the burial or cremation of human remains of a deceased person without a certification document.

(3) The application must be in writing and include—

(a) the name and contact details of the person; and

(b) the name of the deceased person; and

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(c) an explanation of why there is no certification document for the deceased person; and

(d) a description of the measures the person has taken to obtain a certification document for the deceased person.

(4) The regulator must—

(a) accept the application; or

(b) refuse the application.

(5) The regulator may refuse to consider the application further if it is not in accordance with subsection (3).

(6) The regulator may accept the application only if satisfied that it is impracticable to obtain a certification document for the human remains.

(7) If the regulator refuses the application, the regulator must tell the person, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

41 Medical referee—appointment

(1) The regulator may appoint a person as a medical referee.

(2) The person must be a doctor who has been a doctor for a continuous period of at least 5 years before the day the regulator appoints the person as a medical referee.

Note 1 For the making of appointments (including acting appointments), see the 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 Legislation Act, s 207).

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42 Offences—cause of death certificate not to be given by doctor or nurse practitioner

(1) A person commits an offence if—

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

(b) the person is a doctor or nurse practitioner; and

(c) the person gives the registrar-general a cause of death certificate for the deceased person.

Maximum penalty: 10 penalty units.

Note The *Coroners Act 1997*, s 13 states when a coroner must hold an inquest into the manner and cause of death of a person.

(2) A person commits an offence if the person—

(a) is a doctor or nurse practitioner; and

(b) gives the registrar-general a cause of death certificate for a deceased person; and

(c) knows that—

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

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

Maximum penalty: 50 penalty units.

(3) In this section:

doctor includes a doctor who is a medical referee.

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43 Requirements for transportation, burial or cremation in coffin etc

(1) The chief health officer may determine requirements for the transportation, burial or cremation of human remains in any of the following kind of container or wrapping:

(a) a coffin;

(b) an eco-coffin;

(c) a shroud.

(2) The chief health officer must be satisfied the requirement is in the interests of public health.

(3) A determination is a notifiable instrument.

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Part 4 Operating facility

Division 4.1 Offences—general

44 Offence—damage to facility property

(1) A person commits an offence if the person damages or disturbs property at a facility.

Maximum penalty: 10 penalty units.

(2) Subsection (1) does not apply to—

(a) something done at the facility by the licensee of the facility—

(i) to reasonably maintain the facility; or

(ii) to ensure the safety of people at the facility; or

(b) damage or disturbance of property at the facility resulting from the exhumation of human remains authorised by—

(i) a warrant under the *Coroners Act 1997* authorising the exhumation; or

(ii) written permission of the regulator given under section 37 (Exhumation—application).

45 Offence—operating facility without licence

A person commits an offence if—

(a) the person operates a facility; and

(b) the person is not the licensee of the facility.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

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46 Offence—operating facility not in accordance with licence

(1) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) has been given a licence to operate the facility under division 4.2; and

(c) does not operate the facility in accordance with the licence.

Maximum penalty: 50 penalty units.

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

47 Offences—failure to maintain facility

(1) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) does not maintain the facility.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) does not keep the facility clean and tidy.

Maximum penalty: 50 penalty units.

(3) In this section:

facility does not include any of the following:

(a) a monument, headstone, gravestone or other memorial on a burial site or interment site;

(b) a memorial to a deceased person that is not attached to a burial site or interment site.

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Division 4.2 Licence to operate facility

48 Meaning of *suitable person*—div 4.2

In this division:

suitable person, for an application under this division, means a person who—

(a) has not, within 2 years before the application is made, committed an offence under this Act or a corresponding law of a State; and

(b) is not, and has not been within the 5 years before the application—

(i) bankrupt or personally insolvent; or

(ii) involved in the management of a corporation when the corporation was insolvent.

Note 1 ***Bankrupt or personally insolvent***—see the Legislation Act, dict, pt 1.

Note 2 ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

49 Licence—application

(1) A person may apply to the regulator for a licence to operate a facility.

(2) The application must be in writing and include the following information:

(a) the name and contact details of the person;

(b) the name and address of the facility;

(c) whether the facility is a cemetery, a crematorium or both;

(d) the facility plan;

(e) a statement about the knowledge and experience the person has relevant to operating the facility;

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(f) a statement about how the person will, when operating the facility—

(i) demonstrate respect for the diversity of people's religious and cultural beliefs and practices in relation to death and dying, the burial and cremation of human remains and interment of cremated remains; and

(ii) implement financially sustainable practices for burying and cremating human remains or interring cremated remains at the facility;

(g) anything else prescribed by regulation.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(3) The regulator must—

(a) accept the application; or

(b) refuse the application.

(4) The regulator may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The regulator may accept the application only if the regulator is satisfied that—

(a) the person has the appropriate level of knowledge and experience relevant to operating the facility; and

(b) the person will, when operating the facility—

(i) demonstrate respect for the diversity of people's religious and cultural beliefs and practices in relation to death and dying, the burial and cremation of human remains and interment of cremated remains; and

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(ii) implement financially sustainable practices for burying and cremating human remains or interring cremated remains at the facility; and

(c) the person is likely to comply with the requirements of this Act.

(6) The regulator may refuse the application if the regulator believes on reasonable grounds—

(a) that the application contains information that is materially false or misleading; or

(b) the person is not a suitable person to operate the facility.

(7) The regulator may give the licence subject to conditions.

(8) If the regulator accepts the application, the regulator must tell the person, in writing, that the application is accepted and give the person a licence to operate the facility stating—

(a) the name and address of the facility; and

(b) the name and contact details of the licensee; and

(c) the unique identifying number for the facility and the licence; and

(d) any conditions on the licence; and

(e) anything else prescribed by regulation.

(9) If the regulator refuses the application, the regulator must tell the person, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

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50 Licence—term

A licence to operate a facility starts on the day after the day this licence fee is paid and ends on the earlier of—

(a) if the licence is surrendered under section 53—the day the surrender takes effect; and

(b) if the licence is cancelled under division 5.1 (Disciplinary action)—the day the cancellation takes effect.

51 Licence—amendment

(1) The licensee of a facility may apply to the regulator to amend the licence to operate the facility.

(2) The application must be in writing and include the following information:

(a) the name and contact details of the licensee;

(b) the unique identifying number of the facility and licence;

(c) a description of the proposed amendment;

(d) the reason for the proposed amendment;

(e) a statement about how the proposed amendment is consistent with—

(i) demonstrating respect for the diversity of people's religious and cultural beliefs and practices in relation to death and dying, the burial and cremation of human remains and interment of cremated remains; and

(ii) implementing financially sustainable practices for burying and cremating human remains or interring cremated remains at the facility;

(f) anything else prescribed by regulation.

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(3) The regulator must—

(a) accept the application; or

(b) refuse the application.

(4) The regulator may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The regulator may accept the application only if satisfied that—

(a) the proposed amendment is consistent with the licensee—

(i) demonstrating respect for the diversity of people's religious and cultural beliefs and practices in relation to death and dying, the burial and cremation of human remains and interment of cremated remains; and

(ii) implementing financially sustainable practices for burying and cremating human remains or interring cremated remains at the facility; and

(b) the licensee has complied, and is likely to continue to comply, with the requirements of this Act.

(6) The regulator may refuse the application if the regulator believes on reasonable grounds that—

(a) the application contains information that is materially false or misleading; or

(b) the person is not a suitable person to operate the facility; or

(c) the person has failed to comply with this Act.

(7) The regulator may accept the application subject to conditions.

(8) If the regulator accepts the application, the regulator must—

(a) allocate a unique identifying number for the amendment; and

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(b) tell the licensee, in writing, that the application is accepted and give the licensee a written document stating the following:

(i) the name and address of the facility;

(ii) the name and contact details of the licensee;

(iii) the unique identifying number for the facility, licence and amendment;

(iv) any conditions imposed on the licence as a result of the amendment.

(9) If the regulator refuses the application, the regulator must tell the licensee, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

52 Licence—transfer

(1) The licensee of a facility (the ***transferor***) may apply to the regulator to transfer the licence to operate the facility to another person (the ***transferee***).

(2) The application must be in writing and include the following information:

(a) the name and contact details of the transferor;

(b) the unique identifying number of the licence;

(c) the name of the facility;

(d) the unique identifying number of the facility;

(e) the facility plan;

(f) the name and contact details of the transferee;

(g) a statement about the knowledge and experience of the transferee relevant to operating the facility;

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(h) a statement about how the transferee will, when operating the facility—

(i) demonstrate respect for the diversity of people's religious and cultural beliefs and practices in relation to death and dying, the burial and cremation of human remains and interment of cremated remains; and

(ii) implement financially sustainable practices for burying and cremating human remains or interring cremated remains at the facility;

(i) the reason for the transfer of the licence;

(j) anything else prescribed by regulation.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(3) The regulator must—

(a) accept the application; or

(b) refuse the application.

(4) The regulator may refuse to consider the application further if it is not in accordance with subsection (2).

(5) The regulator may accept the application only if satisfied that—

(a) the transferee has the appropriate level of knowledge and experience relevant to operating the facility; and

(b) the transferee will, when operating the facility—

(i) demonstrate respect for the diversity of people's religious and cultural beliefs and practices in relation to death and dying, the burial and cremation of human remains and interment of cremated remains; and

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(ii) implement financially sustainable practices for burying and cremating human remains or interring cremated remains at the facility; and

(c) the transferee is likely to comply with the requirements of this Act.

(6) The regulator may refuse the application if the regulator believes on reasonable grounds that—

(a) the application contains information that is materially false or misleading; or

(b) the transferee is not a suitable person.

(7) If the regulator accepts the application, the regulator must—

(a) tell the transferor and the transferee, in writing, that the transfer is approved; and

(b) give to the transferee the licence stating—

(i) the name and address of the facility; and

(ii) the name of the licensee; and

(iii) a unique identifying number for the facility and licence; and

(iv) the facility plan; and

(v) the term of the licence; and

(vi) any conditions on the licence; and

(vii) anything else prescribed by regulation.

(8) If the regulator refuses the application, the regulator must tell the transferor, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

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53 Licence—surrender

(1) A licensee may surrender a licence to operate a facility to the regulator by giving the regulator notice of the licensee's intention to surrender the licence.

(2) The notice must be in writing and include the following information:

(a) the name of the licensee;

(b) the unique identifier for the licence;

(c) the day on which the surrender notice is given to the regulator;

(d) the reason the licensee is surrendering the licence.

(3) The licensee may nominate a day, on or after the day the surrender notice is given to the regulator, on which the surrender of the licence takes effect.

(4) The surrender of a licence takes effect on the earlier of—

(a) 28 days after the day the licensee gives the surrender notice to the regulator; and

(b) the day nominated by the licensee.

54 Closing facility—application

(1) The regulator may approve the licensee of a facility closing the facility to further applications under any 1 or more of the following sections:

(a) section 8 (Right to burial);

(b) unless the deceased person has a right to burial at the time of the application for burial—section 17 (Burial at cemetery—application);

(c) section 9 (Right to interment);

(d) unless the deceased person has a right to interment at the time of application for interment—section 30 (Interment—application).

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(2) The licensee of a facility may apply to the regulator to close the facility.

(3) The application must be in writing and contain the following information and documents:

(a) the name and contact details of the licensee;

(b) the unique identifying number of the licence and facility;

(c) a statement about why the licensee wants to close the facility;

(d) an up-to-date map of the facility showing each site in which a right to burial or right to interment has been exercised;

(e) information about the number of sites at the facility at which a right to burial or right to interment has not been exercised;

(f) for each right to burial or right to interment that has been given but not exercised at the facility—

(i) the number and kind of rights given but not exercised; and

(ii) a copy of each right to burial certificate or right to interment certificate;

(g) anything else prescribed by regulation.

(4) The regulator must—

(a) accept the application; or

(b) refuse the application.

(5) The regulator may refuse to consider the application further if the application is not in accordance with subsection (3).

(6) The regulator may accept the application only if the regulator is satisfied that—

(a) either—

(i) the licensee has fulfilled each right to burial or right to interment at the facility; or

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(ii) the licensee will be able to fulfil each right to burial or right to interment at the facility even if the facility is closed; and

(b) if a right to burial or right to interment has been given but not exercised at the facility and the licensee will not be able to fulfil the right—the licensee has revoked the right under section 12 (Right to burial or interment—notice about end of term and revoking right).

(7) If the regulator accepts the application, the regulator must tell the licensee, in writing, that the closure of the facility is approved and the date of the closure.

Note The Territory is responsible for the maintenance of a facility after it is closed (see s 112A).

(8) If the regulator refuses the application, the regulator must tell the licensee, in writing, the reasons for the refusal.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

55 Application—request for information

(1) The regulator may require any of the following people to give the regulator additional information the regulator believes on reasonable grounds to be necessary to decide the application:

(a) a person who applies for a licence under section 49; and

(b) a person who applies to amend a licence under section 51.

(2) If an application is to transfer a licence under section 52, the regulator may require the following people to give the regulator additional information the regulator believes on reasonable grounds to be necessary to decide the application:

(a) the person who applies to transfer the licence;

(b) the person who is to receive the transferred licence.

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(3) The regulator must—

(a) request, in writing, the additional information; and

(b) may require the additional information to be provided within a stated time.

(4) The regulator may refuse to consider the application further until the additional information is provided.

56 Offences—failure to update information in application

(1) A person commits an offence if—

(a) a person applies to the regulator for a licence under section 49; and

(b) the information required to be included in the application under section 49 (2) changes; and

(c) the person does not tell the regulator, in writing, about the change within 7 days.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is a licensee of a facility; and

(b) the person applies to the regulator to amend the licence under section 51; and

(c) the information required to be included in the application under section 51 (2) changes; and

(d) the person does not tell the regulator, in writing, about the change within 7 days.

Maximum penalty: 50 penalty units.

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(3) A person commits an offence if—

(a) the person is a licensee of a facility; and

(b) the person applies to the regulator to transfer the licence to another person under section 52; and

(c) the information required to be included in the application under section 52 (2) changes; and

(d) the person does not tell the regulator, in writing, about the change within 7 days.

Maximum penalty: 50 penalty units.

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

57 Offence—failure to update information

(1) A person commits an offence if—

(a) the person is a licensee of a facility; and

(b) any of the following information changes:

(i) the name and contact details of the licensee;

(ii) any information or matters on the facility plan; and

(c) the person does not tell the regulator, in writing, about the change within 30 days.

Maximum penalty: 50 penalty units.

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

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Division 4.3 Regulator's register—licence

58 Register of licences

(1) The regulator must keep a register of licences to operate a facility.

(2) The register must include the following information:

(a) for each licence given under section 49—

(i) the name and contact details of the licensee; and

(ii) the unique identifying number of the licence; and

(iii) the unique identifying number of the facility; and

(iv) the term of the licence; and

(v) if the licence is subject to conditions—the conditions;

(b) if a licence is amended under section 51—

(i) a description of the amendment; and

(ii) the reasons for the amendment; and

(iii) the date the amendment starts;

(c) if a licence is amended under division 5.1 (Disciplinary action)—

(i) a description of the amendment; and

(ii) the reasons for the amendment; and

(iii) the date the amendment starts;

(d) if a licence is transferred under section 52—the name of the person to whom the licence is transferred;

(e) if a licence is surrendered under section 53—the date the licence is surrendered;

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(f) if a licence is suspended under section 70 (Immediate suspension of licence—danger to public health) or section 71 (Disciplinary action—no immediate danger to public health)—

(i) the reason the licence is suspended; and

(ii) the date the suspension starts and ends;

(g) if a licence is cancelled under division 5.1—

(i) the reason the licence is cancelled; and

(ii) the date the cancellation starts.

(3) The regulator must make the information on the register available for public inspection.

(4) The regulator may correct a mistake, error or omission in the register.

(5) The regulator may change a detail included in the register to keep it up-to-date.

Division 4.4 Licensee's operating procedures, register and records

Subdivision 4.4.1 Standard operating procedures

59 Standard cemetery operating procedures

(1) The licensee of a cemetery must make and comply with written procedures for the cemetery (the ***standard cemetery operating procedures***) including procedures for the following:

(a) allocating a unique identifying number for the human remains of each deceased person buried at the facility;

(b) transporting and moving human remains at the cemetery;

(c) burying human remains in a site at the cemetery;

(d) exhuming human remains from a site at the cemetery;

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(e) interring cremated remains in a site at the cemetery;

(f) disinterring cremated remains from a site at the cemetery;

(g) resolving complaints to the licensee about any activities mentioned in paragraphs (a) to (f);

(h) anything else prescribed by regulation.

(2) A person commits an offence if the person—

(a) is the licensee of a cemetery; and

(b) does not make the standard cemetery operating procedures.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if the person—

(a) is the licensee of a cemetery; and

(b) does not comply with the standard cemetery operating procedures.

Maximum penalty: 50 penalty units.

(4) A person commits an offence if the person—

(a) is the licensee of a cemetery; and

(b) does not review the standard operating procedures at least every 2 years.

Maximum penalty: 50 penalty units.

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

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60 Standard crematorium operating procedures

(1) The licensee of a crematorium must make and comply with written procedures for the crematorium (the ***standard crematorium operating procedures***) including procedures for the following:

(a) allocating a unique identifying number for—

(i) the cremation of human remains of a deceased person including the application, the human remains and the cremation; and

(ii) the cremated remains;

(b) transporting and moving human remains at the crematorium;

(c) cremating human remains at the crematorium;

(d) the collection of cremated remains from the crematorium;

(e) disposing of cremated remains that have not been collected from the crematorium or interred at the crematorium;

(f) resolving complaints to the licensee about any activities mentioned in paragraphs (a) to (e).

(2) A person commits an offence if the person is—

(a) the licensee of a crematorium; and

(b) does not make the standard crematorium operating procedures.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if the person—

(a) is the licensee of a crematorium; and

(b) does not comply with the standard crematorium operating procedures.

Maximum penalty: 50 penalty units.

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(4) A person commits an offence if the person—

(a) is the licensee of a crematorium; and

(b) does not review the standard crematorium operating procedures at least every 2 years.

Maximum penalty: 50 penalty units.

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

61 Standard facility operating procedures

(1) The licensee of a facility must make and comply with written procedures for the interment of cremated remains at the facility (the ***standard facility operating procedures***) including procedures for the following:

(a) allocating a unique identifying number for an application for interment of cremated remains at the facility;

(b) interring cremated remains at the facility;

(c) allocating a unique identifying number for an application for the disinterment of cremated remains from an interment site at the facility;

(d) disinterring cremated remains from an interment site at the facility;

(e) the collection of disinterred cremated remains;

(f) resolving complaints to the licensee about any activities mentioned in paragraphs (a) to (e).

(2) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) does not make the standard facility operating procedures.

Maximum penalty: 50 penalty units.

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(3) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) does not comply with the standard facility operating procedures.

Maximum penalty: 50 penalty units.

(4) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) does not review the standard facility operating procedures at least every 2 years.

Maximum penalty: 50 penalty units.

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

Subdivision 4.4.2 Licensee registers

62 Register—right to burial and right to interment

(1) The licensee of a facility must keep a register of each right to burial or right to interment at the facility.

(2) The register must include the following information and documents:

(a) the date the right was given;

(b) for a right to burial—

(i) the unique identifying number of the right to burial certificate; and

(ii) a copy of the right to burial certificate;

(c) for a right to interment—

(i) the unique identifying number of the right to interment certificate; and

(ii) a copy of the right to interment certificate;

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(d) if the right is transferred under section 10 (Right to burial and right to interment—transfer)—

(i) the date of the transfer; and

(ii) the name of the transferor and transferee; and

(iii) a copy of the written statement given under section 10 (Right to burial and right to interment—transfer) for the transferred right;

(e) if the right is revoked under section 12 (Right to burial or interment—notice about end of term and revoking right)—

(i) the date the right is revoked; and

(ii) the reason the right is revoked.

63 Register—burial, cremation, interment etc

(1) The licensee of a facility must keep a register of each burial, cremation, interment, disinterment and exhumation at the facility.

(2) The register must include the following information for a burial:

(a) the name of the deceased person whose human remains are buried and their—

(i) date of birth (if known); and

(ii) date of death (if known);

(b) the unique identifying number—

(i) of the right to burial certificate; and

(ii) for the burial site, application, deceased person and their human remains and the burial given under section 17 (Burial at cemetery—application);

(c) the date the human remains are buried;

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(d) either—

(i) the unique identifying number of the facility site where the human remains of the deceased person are buried; or

(ii) if the burial was a natural burial, the GPS location where the human remains of the deceased person are buried in the cemetery.

(3) The register must include the following information for a cremation:

(a) the name of the deceased person whose human remains are cremated and their—

(i) date of birth (if known); and

(ii) date of death (if known);

(b) the unique identifying number for the cremation;

(c) the date the human remains are cremated.

(4) The register must include the following information for the interment of cremated remains:

(a) the name of the deceased person whose cremated remains are interred at the facility and their—

(i) date of birth (if known); and

(ii) date of death (if known);

(b) the unique identifying number—

(i) of the right to interment certificate; and

(ii) for the interment site, deceased person and cremated remains allocated under section 30 (Interment—application);

(c) the date the cremated remains are interred.

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63A Register—collection of cremated remains

(1) The licensee of a crematorium must keep a register of information in relation to the collection of cremated remains from the crematorium.

(2) The register must include the following information in relation to cremated remains available for collection from the crematorium:

(a) for an applicant notified under section 25 (1)—

(i) the date the licensee notified the applicant; and

(ii) the applicant's name and contact details;

(b) for a person asked to collect the cremated remains under section 25 (4)—

(i) the date the licensee contacted the person; and

(ii) the person's name and contact details.

(3) The register must include the following information in relation to cremated remains collected from the crematorium:

(a) the name and contact details of the person who collected the cremated remains;

(b) the relationship of the person who collected the cremated remains to the deceased person;

(c) whether all or some of the cremated remains of the deceased person were collected;

(d) the date the cremated remains were collected.

(4) If the licensee disposes of cremated remains, the register must also include the date the licensee disposed of the cremated remains.

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64 Offences—keeping registers

(1) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) is required to keep a register under—

(i) section 62 (Register—right to burial and right to interment); or

(ii) section 63 (Register—burial, cremation, interment etc); or

(iii) section 63A (Register—collection of cremated remains); and

(c) does not keep the register.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) keeps a register under—

(i) section 62 (Register—right to burial and right to interment); or

(ii) section 63 (Register—burial, cremation, interment etc); and

(c) does not keep the register—

(i) in a secure electronic database; and

(ii) in a way that can be searched by members of the public.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if the person—

(a) is the licensee of a facility; and

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(b) keeps a register under section 63A (Register—collection of cremated remains); and

(c) does not keep the register in a secure electronic database.

Maximum penalty: 50 penalty units.

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

Subdivision 4.4.3 Licensee records

65 Facility records—burial, cremation, interment etc

(1) The licensee of a cemetery must keep—

(a) a copy of the information and documents provided for each—

(i) application under section 8 (Right to burial); and

(ii) application under section 17 (Burial at cemetery—application); and

(b) for the exhumation of human remains at the cemetery—a copy of the authorisation given under section 37 (Exhumation—application).

(2) The licensee of a crematorium must keep—

(a) a copy of the information and documents provided for each application under section 22 (Cremation—application); and

(b) any documents provided by a person who collects cremated remains from the crematorium.

(3) The licensee of a facility must keep a copy of the information and documents provided for an application under section 30 (Interment—application).

(4) The licensee of a facility must keep—

(a) a copy of the information and documents provided for each application under section 34 (Disinterment—application); and

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(b) a copy of an authorisation under section 35 (Disinterment—approval by regulator).

66 Offences—failing to keep records

(1) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) is required to keep records under section 65; and

(c) fails to keep the records.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) keeps the records mentioned in section 65; and

(c) fails to keep the records—

(i) in a secure ICT database; or

(ii) if a period is prescribed by regulation—for the period.

Maximum penalty: 50 penalty units.

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

67 Offences—auditing records

(1) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) fails to have the licensee receipts audited—

(i) no later than 31 October after the end of each financial year; and

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(ii) by a person who is a registered company auditor within the meaning of the Corporations Act.

Maximum penalty: 20 penalty units.

(2) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) is required to have licensee receipts audited under subsection (1); and

(c) fails to give the auditor's report and audited accounts to the regulator within 90 days after the end of the financial year to which the report relates.

Maximum penalty: 20 penalty units.

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

68 Offence—transferring records

(1) A person commits an offence if—

(a) the person is the licensee of a facility; and

(b) any of the following circumstances applies:

(i) the regulator approves the closure of the facility under section 54;

(ii) the person is bankrupt or insolvent and does not transfer their licence to operate the facility under section 52;

(iii) the person surrenders their licence to the regulator under section 53; and

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(c) the person fails to transfer to the regulator the register and records mentioned division 4.4 (Licensee's operating procedures, register and records) within 30 days.

Maximum penalty: 20 penalty units.

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

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Part 5 Regulatory action

Division 5.1 Disciplinary action

69 Definitions—div 5.1

In this division:

disciplinary action, against a licensee, means any of the following actions in relation to the licence or licensee:

(a) imposing, or amending, a condition on the licence;

(b) suspending the licence for a fixed period or until a particular event happens;

(c) disqualifying the licensee from applying for another licence for a fixed period or until a particular event happens;

(d) cancelling the licence.

disciplinary conduct, of a licensee, means the following kinds of conduct:

(a) the licensee has stopped operating the facility mentioned in the licence;

(b) the licensee used false or misleading information to obtain the licence;

(c) the licensee contravened a condition of the licence;

(d) the licensee failed to comply with a provision of this Act.

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70 Immediate suspension of licence—danger to public health

(1) The regulator may suspend a licence to operate a facility immediately if the regulator believes on reasonable grounds that—

(a) the licensee has engaged in disciplinary conduct; and

(b) there is a danger to public health as a result of the conduct.

(2) The regulator must tell the licensee, in writing, that the regulator is suspending the licence starting immediately and the reasons for the suspension.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

(3) The suspension starts when the regulator tells the licensee about the suspension.

(4) If the regulator takes other disciplinary action under section 71 in relation to the disciplinary conduct, the suspension ends on the earlier of—

(a) the day when the other disciplinary action starts; and

(b) 30 days after the day the regulator tells the licensee of the suspension.

(5) If the regulator does not take other disciplinary action under section 71 in relation to the disciplinary conduct, the suspension ends on the earlier of—

(a) the day when the licensee is given written notice of the regulator's decision not to take disciplinary action; and

(b) 30 days after the day the immediate suspension notice is given to the licensee.

Note A decision under this section is a reviewable decision (see s 125).

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(6) During the suspension the licensee is—

(a) taken not to have a licence to operate the facility; and

(b) disqualified from applying for a licence to operate a facility.

71 Disciplinary action—no immediate danger to public health

(1) This section applies if—

(a) the regulator believes on reasonable grounds that a licensee is engaging in disciplinary conduct; and

(b) the regulator proposes to take disciplinary action against the licensee in relation to the conduct; and

(c) the regulator believes on reasonable grounds that the conduct does not give rise to a danger to public health.

(2) The regulator must give the licensee a written notice stating—

(a) the disciplinary conduct; and

(b) the proposed disciplinary action; and

(c) the reasons the regulator considers the proposed disciplinary action is appropriate; and

(d) that the licensee—

(i) may give the regulator a written submission about the proposed disciplinary action; and

(ii) must give the submission to the regulator within 14 days.

(3) If the licensee gives the regulator a submission under subsection (2), the regulator must consider the submission.

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(4) After considering the submission—

(a) if the regulator is satisfied on reasonable grounds that it is not appropriate in all the circumstances to take the action, the regulator must tell the licensee, in writing, that the disciplinary action will not be taken; or

(b) if the regulator is satisfied on reasonable grounds that it is appropriate in all the circumstances to take the disciplinary action, the regulator—

(i) must take the action; and

(ii) before the action is taken, tell the person, in writing, the day the action will be taken and the reasons the disciplinary action will be taken.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

(5) Disciplinary action takes effect on the day mentioned in subsection (4) (b) (ii).

72 Amended or suspended licence—action by regulator

(1) This section applies if—

(a) under this part—

(i) a condition on a licence to operate a facility is imposed or amended; or

(ii) a licence to operate a facility is suspended; and

(b) the licence is returned to the regulator.

(2) If a condition on the licence is imposed or amended, the regulator must—

(a) return the amended licence to the licensee; or

(b) give the licensee a replacement licence that includes the amendment.

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(3) If the licence is suspended, and the suspension ends before the end of the term of the licence, the regulator must return the licence to the licensee when the suspension ends.

Division 5.2 Directions

73 Direction to stop contravening Act or condition

(1) This section applies if the regulator believes on reasonable grounds that a person is—

(a) contravening this Act; or

(b) contravening a condition on a licence to operate a facility.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) The regulator may direct the person to comply with this Act, or the condition by doing, or not doing, a thing.

(3) The direction may require the person to carry out remedial action if the regulator considers the action is necessary to restore land that is damaged because of the person's contravention.

(4) The direction must be in writing and state—

(a) the thing required to be done, or not done; and

(b) the period for compliance with the direction.

74 Offence—direction

(1) A person commits an offence if—

(a) the regulator gives the person a direction under section 73; and

(b) the person fails to comply with the direction.

Maximum penalty: 50 penalty units.

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

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Division 5.3 Enforceable undertakings

75 Enforceable undertaking for offence

(1) This section applies if the regulator believes on reasonable grounds that a person has committed an offence under this Act.

(2) The regulator may tell the person, in writing—

(a) that the regulator believes the person has committed the alleged offence; and

(b) the grounds for the regulator's belief; and

(c) the facts of the alleged offence; and

(d) that the person may give an enforceable undertaking to the regulator in relation to the alleged offence; and

(e) information about the effect of—

(i) giving an enforceable undertaking, including the consequences of contravening the undertaking; and

(ii) not giving an enforceable undertaking; and

(f) how the person may enter and withdraw from an enforceable undertaking; and

(g) the assurances about the person's future conduct that the regulator would be prepared to accept for an enforceable undertaking.

(3) If the person wishes to give the enforceable undertaking, the person must give the regulator a written proposal about the person's future conduct as a result of the alleged offence (a ***proposed undertaking***).

(4) The proposed undertaking must—

(a) acknowledge that the regulator believes that the person has committed an alleged offence; and

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(b) contain a statement by the person—

(i) to the effect that the person understands that the proposed undertaking becomes an enforceable undertaking if accepted by the regulator; and

(ii) setting out assurances about the person's future conduct for the enforceable undertaking; and

(iii) agreeing to be bound by the enforceable undertaking.

(5) If the regulator accepts a proposed undertaking, the regulator must tell the person who gave the undertaking that the undertaking has been accepted and is an enforceable undertaking for this Act.

Examples—enforceable undertaking

1 to stop certain conduct

2 to take particular action to compensate people adversely affected by an alleged offence committed against a stated provision of this Act

3 to take particular action to rectify a state of affairs that arose as a direct or indirect result of the alleged offence

4 to take particular action (including implementing particular systems) to prevent future offences against this Act

5 to implement publicity or education programs

76 Enforceable undertaking—withdrawal or amendment

(1) A person who gave an enforceable undertaking may withdraw from, or amend, the undertaking only with the regulator's written agreement.

(2) However, the undertaking may not be amended to provide for a different alleged offence.

77 Ending enforceable undertaking

(1) The regulator may end an enforceable undertaking by written notice to the person who gave the undertaking only if satisfied on reasonable grounds that the undertaking is no longer necessary or desirable to ensure that the person complies with this Act.

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(2) The regulator may end an enforceable undertaking on the regulator's own initiative or on the application of the person who gave the undertaking.

(3) The undertaking ends when the person who gave the undertaking receives the regulator's notice.

78 Undertaking not admission of fault or liability

(1) This section applies if a person gives the regulator a proposed undertaking in relation to an alleged offence, whether or not the undertaking is accepted by the regulator.

(2) The proposed undertaking is neither—

(a) an express or implied admission of fault or liability by the person in relation to the alleged offence; or

(b) relevant to deciding fault or liability in relation to the alleged offence.

(3) A proposed undertaking and an enforceable undertaking are not admissible in evidence in a court or tribunal in any proceeding for the alleged offence.

79 Enforceable undertaking—contravention

(1) If the regulator believes on reasonable grounds that an enforceable undertaking has been contravened, the regulator may apply to the Magistrates Court for an order.

(2) If the Magistrates Court is satisfied that the enforceable undertaking has been contravened, the court may make 1 or more of the following orders:

(a) an order requiring the person who gave the undertaking to ensure that the undertaking is not contravened;

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(b) an order requiring the person who gave the undertaking to pay to the Territory the amount assessed by the court as the value of the benefits anyone derived, directly or indirectly, from the contravention of the undertaking;

(c) an order requiring the person who gave the undertaking to compensate someone who has suffered loss or damage because of the contravention of the undertaking;

(d) any other order that the court considers appropriate.

80 Enforceable undertaking—effect on other proceedings

A proceeding may not be brought against a person for an alleged offence mentioned in an enforceable undertaking if—

(a) the enforceable undertaking is in force in relation to the alleged offence; and

(b) the person has not failed to comply with the enforceable undertaking in relation to the alleged offence.

81 Enforceable undertakings—register

(1) The regulator must keep a register of enforceable undertakings, including the following:

(a) the name of the person who gave the undertaking;

(b) particulars of the undertaking;

(c) the date the undertaking takes effect;

(d) anything else prescribed by regulation.

(2) The register may—

(a) include any other information the regulator considers relevant; and

(b) be kept in any form, including electronically, that the regulator decides.

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(3) The regulator may—

(a) correct a mistake, error or omission in the register; and

(b) change a detail included in the register to keep the register up-to-date.

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Part 6 Enforcement

Division 6.1 Definitions

82 Definitions—pt 6

In this part:

at premises includes in or on the premises.

authorised person means a person appointed as an authorised person under section 83.

connected—a thing is ***connected*** with an offence if—

(a) the offence has been committed in relation to it; or

(b) it will provide evidence of the commission of the offence; or

(c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes a person the authorised person reasonably believes is an occupier of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

premises includes land.

warrant means a warrant issued under division 6.3.

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Division 6.2 Authorised people

83 Authorised person—appointment

The regulator may appoint a public servant as an authorised person for this Act.

Note 1 For the making of appointments (including acting appointments), see the 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 Legislation Act, s 207).

84 Identity cards

(1) The regulator must give each authorised person an identity card stating their name and appointment as an authorised person and showing—

(a) a recent photograph of the person; and

(b) the date of issue of the card; and

(c) the date of expiry of the card; and

(d) anything else prescribed by regulation.

(2) A person commits an offence if—

(a) the person stops being an authorised person; and

(b) the person fails to return their identity card to the regulator within 7 days of the day the person stops being an authorised person.

Maximum penalty: 10 penalty units.

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(3) Subsection (2) does not apply to a person if the person's identity card is—

(a) lost or stolen; or

(b) destroyed by another person.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

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

85 Authorised person must show identity card

(1) If an authorised person exercises a power under this Act that affects an individual, the authorised person must first show their identity card to the individual.

(2) If an authorised person exercises a power under this Act that affects a person, other than an individual, the authorised person must first show their identity card to an individual they believe on reasonable grounds is an employee, officer or agent of the person.

Examples—person other than an individual

- the authority
- corporation
- partnership

(3) An authorised person and any other person other than a police officer who is accompanying the authorised person may not remain at premises if the authorised person fails to show the occupier their identity card when asked by the occupier.

86 Power to enter premises

(1) For this Act, an authorised person may—

(a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or

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(b) at any time, enter premises with the occupier's consent; or

(c) at any time, enter premises if the authorised person believes on reasonable grounds that—

(i) there is a risk to the environment or to public health; and

(ii) the risk is so serious and urgent that immediate entry to the premises without the authority of a warrant is necessary; or

(d) enter premises in accordance with a warrant.

(2) However—

(a) subsection (1) (a) does not authorise the entry into a part of the premises that is being used only for residential purposes; and

(b) subsection (1) (c) does not authorise the entry into premises that are used for residential purposes, unless the premises are also a facility.

(3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.

(4) To remove any doubt, an authorised person may enter premises without payment of an entry fee or other charge.

(5) An authorised person may—

(a) if entering the premises without a warrant—enter the premises with necessary assistance; and

(b) if entering the premises in accordance with a warrant—enter the premises with necessary assistance and force.

(6) In this section:

necessary assistance includes the attendance of 1 or more people who, in the opinion of the authorised person, have knowledge or skills that could assist the authorised person carry out their function.

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87 Consent to entry

(1) If an authorised person is seeking the consent of an occupier to enter premises under section 86, they must—

(a) show the occupier their identity card; and

(b) tell the occupier—

(i) the purpose of the entry; and

(ii) the reason for, and identity of, any other person accompanying the authorised person; and

(iii) that anything seized under this part may be used in evidence in court; and

(iv) that consent may be refused.

(2) If the occupier consents to the entry, the authorised person must ask the occupier to sign a written acknowledgment—

(a) that the occupier was told—

(i) the purpose of the entry; and

(ii) the reason for, and identity of, any other person accompanying the authorised person; and

(iii) that anything found and seized under this part may be used in evidence in court; and

(iv) that consent may be refused; and

(b) that the occupier consented to the entry; and

(c) stating the time and date when consent was given.

(3) If the occupier signs the written acknowledgment, the authorised person must immediately give a copy to the occupier.

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(4) A court must find that the occupier did not consent to entry to the premises by the authorised person if—

(a) the question whether the occupier consented to the entry arises in a proceeding in the court; and

(b) the written acknowledgment is not produced in evidence; and

(c) it is not proved that the occupier consented to the entry.

88 General powers on entry to premises

(1) An authorised person who enters premises under this part may do 1 or more of the following at the premises or anything at the premises:

(a) examine anything;

(b) take measurements or conduct tests;

(c) take samples;

(d) make sketches, drawings or any other kind of record (including photographs, films, audio, video or other recordings);

(e) require the occupier or any person at the premises to give the authorised person reasonable help to exercise a power under this part.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

(2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

89 Power to seize things

(1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

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(2) An authorised person who enters premises under a warrant may seize anything at the premises that they are authorised to seize under the warrant.

(3) An authorised person who enters premises under this part may seize anything at the premises if they believe on reasonable grounds that—

(a) the thing is connected with an offence against this Act; and

(b) the seizure of the thing is necessary to prevent it from being—

(i) concealed, lost or destroyed; or

(ii) used to commit, continue or repeat the offence.

(4) Having seized a thing, the authorised person may—

(a) remove the thing from the premises where it was seized; or

(b) leave the thing at the premises but restrict access to it.

(5) A person commits an offence if—

(a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4) (b); and

(b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

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

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90 Direction to give name and address

(1) This section applies if an authorised person believes on reasonable grounds that a person—

(a) has committed, is committing or is about to commit, an offence against this Act; or

(b) may be able to assist in the investigation of an offence against this Act.

(2) The authorised person may direct the person to give the authorised person the following personal details:

(a) the person's full name;

(b) the person's home address.

(3) If the authorised person believes on reasonable grounds that a personal detail given by the person in response to the direction is false or misleading, the authorised person may direct the person to produce evidence immediately of the correctness of the detail.

(4) If an authorised person gives a direction to a person, the authorised person must—

(a) tell the person that it is an offence if the person fails to comply with the direction; and

(b) give the direction in a language, or in a way of communicating, that the authorised person believes on reasonable grounds the person is likely to understand.

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91 Offence—fail to comply with direction to give name and address

(1) A person commits an offence if—

(a) an authorised person directs the person to give their full name and address under section 90; and

(b) the authorised person produces the authorised person's identity card for inspection by the person; and

(c) the authorised person warns the person that failure to comply with the direction is an offence; and

(d) the person did not give the authorised person their full name and address.

Maximum penalty: 10 penalty units.

Note It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

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

Division 6.3 Search warrants

92 Warrants—generally

(1) An authorised person may apply to a magistrate for a warrant to enter and search premises.

(2) The application must—

(a) be sworn; and

(b) state the grounds on which the warrant is sought.

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(3) The magistrate may refuse to consider the application until the authorised person—

(a) gives the magistrate all the information the magistrate requires for the application; and

(b) gives the information in the way the magistrate requires.

(4) The magistrate may issue the warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity connected with an offence against this Act; and

(b) the thing or activity—

(i) is, or is being engaged in, at the premises; or

(ii) may be, or may be engaged in, at the premises within the next 7 days.

(5) The warrant must state—

(a) that an authorised person may, with reasonable and necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and

(b) the offence for which the warrant is issued; and

(c) the things that may be seized under the warrant; and

(d) the hours when the premises may be entered; and

(e) the date, within 7 days after the day of the warrant's issue, when the warrant ends.

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93 Warrants—application other than in person

(1) An authorised person may apply for a warrant by phone, radio, email, fax, letter or other form of communication if the authorised person considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) If the magistrate issues the warrant, the magistrate must immediately give a written copy to the authorised person if it is practicable to do so.

(5) If it is not practicable to immediately give a written copy of the warrant to the authorised person—

(a) the magistrate must tell the authorised person—

(i) the terms of the warrant; and

(ii) the date and time the warrant was issued; and

(b) the authorised person must complete a form of warrant (the ***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the terms of the warrant.

(6) The written copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.

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(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the authorised person completed a warrant form—the completed warrant form.

(8) On receiving the documents mentioned in subsection (7), the magistrate must attach them to the warrant.

(9) A court must find that a power exercised by an authorised person was not authorised by a warrant under this section if—

(a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a warrant under this section.

94 Warrants—announcement before entry

(1) An authorised person must, before anyone enters premises under a warrant—

(a) announce that the authorised person is authorised to enter the premises; and

(b) give anyone at the premises an opportunity to allow entry to the premises; and

(c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

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(2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—

(a) the safety of anyone (including the authorised person or any person assisting); or

(b) that the effective execution of the warrant is not frustrated.

95 Details of warrant to be given to occupier etc

If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises when a warrant is being executed, the authorised person or a person assisting must make available to the person—

(a) a copy of the warrant; and

(b) a document setting out the rights and obligations of the person.

96 Occupier entitled to be present during search etc

(1) If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises when a warrant is being executed, the person is entitled to observe the search being conducted.

(2) However, the person is not entitled to observe the search if—

(a) to do so would impede the search; or

(b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

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97 Receipt for things seized

(1) As soon as practicable after a thing is seized by an authorised person under this part, the authorised person must give a receipt for it to the person from whom it was seized.

(2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously at the place of seizure under section 89.

(3) The receipt must include the following:

(a) a description of the thing seized;

(b) an explanation of why the thing was seized;

(c) the authorised person's name and how to contact the authorised person;

(d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

98 Moving things to another place

(1) A thing found at premises entered under a warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—

(a) both of the following apply:

(i) there are reasonable grounds for believing that the thing is, or contains something, to which the warrant relates;

(ii) it is significantly more practicable to examine or process the thing at the other place having regard to the timeliness and cost of examining or processing the thing and the availability of expert assistance; or

(b) the occupier of the premises agrees in writing.

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(2) The thing may be moved to the other place for examination or processing for not longer than 72 hours.

(3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.

(4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

(5) If a thing is moved to another place under this section, the authorised person must, if practicable—

(a) tell the occupier of the premises the address of the place, and time, the examination or processing will be carried out; and

(b) allow the occupier or the occupier's representative to be present during the examination or processing.

(6) The provisions of this part relating to the issue of warrants apply, with any necessary changes, to giving an extension under this section.

99 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

(a) inspect the thing; and

(b) photograph the thing; and

(c) if the thing is a document—take extracts from, or make copies of, the thing.

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100 Return of things seized

(1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—

(a) an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of the seizure and either—

(i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or

(ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or

(b) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—

(i) a prosecution for an offence connected with the thing is not begun within 1 year after the day of the seizure; or

(ii) a prosecution for an offence connected with the thing is begun within 1 year after the day of the seizure but the court does not find the offence proved; or

(c) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—

(i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section; or

(ii) the Magistrates Court does not find the offence proved.

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(2) If anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—

(a) is forfeited to the Territory; and

(b) may be sold, destroyed or otherwise disposed of as the regulator directs.

101 Damage etc to be minimised

(1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the authorised person, and any person assisting the authorised person, causes as little inconvenience, detriment and damage as is practicable.

(2) If an authorised person, or a person assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person whom the authorised person believes on reasonable grounds is the owner of the thing.

(3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it secured in a conspicuous place at the premises.

102 Compensation for exercise of enforcement powers

(1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—

(a) an authorised person; or

(b) a person assisting an authorised person.

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(2) Compensation may be claimed and ordered in a proceeding for—

(a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

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Part 7 Perpetual care trusts

103 Authority perpetual care trust—establishment

(1) A trust (the ***authority perpetual care trust***) is established.

(2) The authority perpetual care trust may be used only for the maintenance of a closed facility.

(3) The authority perpetual care trust is—

(a) taken to be a charitable trust established for public trust charitable purposes; and

(b) not-for-profit.

(4) A regulation may prescribe a kind of expenditure as expenditure that is, or is not, expenditure for the maintenance of a closed facility.

(5) In this section:

closed facility means a facility that was closed in accordance with a declaration made under section 116A (2).

104 Licensee perpetual care trust—establishment

(1) A trust (the ***licensee perpetual care trust***) is established.

(2) The licensee perpetual care trust may be used only for the maintenance of a closed facility.

(3) The licensee perpetual care trust is—

(a) taken to be a charitable trust established for public trust charitable purposes; and

(b) not-for-profit.

(4) A regulation may prescribe a kind of expenditure as expenditure that is, or is not, expenditure for the maintenance of a closed facility.

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(5) In this section:

closed facility means a facility that was closed in accordance with an approval given under section 54.

105 Determination of trustee

(1) The Minister must determine that the trustee for a perpetual care trust is either—

(a) the public trustee; or

(b) the director-general.

(2) Before making the determination, the Minister must consult the following people:

(a) for an authority perpetual care trust—the authority;

(b) for a licensee perpetual care trust—the licensee.

(3) A determination is a disallowable instrument.

106 Determination of perpetual care trust percentage

(1) The Minister must, for a facility for which a perpetual care trust is established, determine the percentage (the ***perpetual care trust percentage***) of each licensee receipt for the facility that is to be paid into the perpetual care trust for the facility.

(2) The perpetual care trust percentage must be the percentage the Minister considers necessary to ensure there are sufficient funds in the perpetual care trust to adequately maintain the facility.

(3) The Minister must, at least once every 5 years, review the perpetual care trust percentage for the facility.

(4) A determination under subsection (1) is a notifiable instrument.

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107 Perpetual care trust percentage—requesting information and documents

(1) The Minister may request that the licensee of a facility give the Minister information or documents that the Minister reasonably needs—

(a) to determine a perpetual care trust percentage for the facility; or

(b) to review a perpetual care trust percentage.

(2) The notice must—

(a) be in writing; and

(b) state the time within which the licensee must give the information or documents.

(3) A person commits an offence if—

(a) the person is the licensee of a facility; and

(b) the Minister requests the information or documents; and

(c) the person does not give the Minister the information or documents within the stated time.

Maximum penalty: 20 penalty units.

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

108 Perpetual care trust—licensee receipt

(1) This section applies if—

(a) a perpetual care trust is established for a facility; and

(b) the licensee of the facility receives a licensee receipt for the facility.

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(2) The perpetual care trust percentage of the licensee receipt must be paid into—

(a) if the licensee is the authority—the authority perpetual care trust for the facilities; and

(b) if the licensee is not the authority—the licensee perpetual care trust for the facility.

109 Offence—failure to give perpetual care trust percentage

(1) A person commits an offence if—

(a) the person is the licensee of a facility; and

(b) the person does not—

(i) pay the perpetual care trust percentage of a licensee receipt for the facility to the public trustee and guardian for the perpetual care trust fund; and

(ii) pay the amount by no later than 31 October after the end of each financial year.

Maximum penalty: 30 penalty units.

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

110 Offence—protection of perpetual care trust

(1) A person commits an offence if—

(a) the person is the licensee of a facility; and

(b) a perpetual care trust is established for the facility; and

(c) the person applies an amount in the perpetual care trust for a purpose other than a purpose for which the trust is established.

Maximum penalty: 50 penalty units.

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(2) Without limiting subsection (1), an amount forming part of the perpetual care trust of the facility is not—

(a) available for the payment of debts of the licensee; or

(b) liable to be attached or taken in execution to satisfy a judgment against the licensee.

111 Perpetual care trust—records

(1) The licensee of a facility must keep a record of the following about a perpetual care trust established for the facility:

(a) the licensee receipts for the facility;

(b) the amounts paid to the public trustee and guardian for the perpetual care trust fund;

(c) for an amount withdrawn from the perpetual care trust fund—

(i) the amount withdrawn; and

(ii) the purpose for which the amount was applied; and

(iii) a copy of the Minister's approval to withdraw the amount.

(2) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) does not make a record mentioned in subsection (1).

Maximum penalty: 50 penalty units.

(3) A person commits an offence if the person—

(a) is the licensee of a facility; and

(b) makes a record mentioned in subsection (1); and

(c) does not keep the record—

(i) for at least 7 years after the record is made; and

(ii) at the facility; and

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(iii) in accordance with any requirements prescribed by regulation.

Maximum penalty: 50 penalty units.

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

112 Perpetual care trust—dissolution

(1) This section applies if a perpetual care trust for a facility is dissolved.

(2) The amount remaining after the payment of any debts and expenses for the facility must be transferred to another perpetual care trust, or another fund that—

(a) is established for a charitable purpose; and

(b) is endorsed as exempt from income tax under the *Income Tax Assessment Act 1997* (Cwlth), subdivision 50-B (Endorsing charitable entities as exempt from income tax).

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Part 7A Maintenance of closed facilities

112A Territory responsible for maintenance of closed facilities

(1) The Territory is responsible for maintaining each closed facility to an acceptable standard.

Examples—maintenance

- maintenance of the grounds of the facility
- maintenance of mausoleums, vaults and graves in the facility
- maintenance of walls, fences, paths, roads and drains of the facility

(2) However, the Minister may authorise an entity to be responsible for maintaining a closed facility on behalf of the Territory.

(3) An authorisation is a notifiable instrument.

(4) If the expenditure required for the maintenance of a closed facility exceeds the amount available in the perpetual care trust for the closed facility, the Territory is responsible for the additional expenditure required for the maintenance of the closed facility.

(5) In this section:

closed facility means a facility that was closed in accordance with—

(a) an approval given under section 54; or

(b) a declaration made under section 116A (2).

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Part 8 Cemeteries and crematoria authority

113 Establishment of authority

The Cemeteries and Crematoria Authority is established.

Note 1 If a law changes an entity's name, the entity continues in existence under the new name and its name is not affected by the change (see Legislation Act, s 183).

Note 2 The governance of territory authorities, including the authority, is regulated by the *Financial Management Act 1996*, pt 9 as well as the Act that establishes them.

Note 3 The *Financial Management Act 1996*, pt 9 deals, for example, with the corporate status of territory authorities, their powers, the make-up of governing boards, the responsibilities of the governing board and board members, how governing board positions can be ended, meetings of governing boards and conflicts of interest.

114 Functions of authority

The functions of the authority are—

(a) to develop, build or operate a facility approved by the Minister under section 115; and

(b) to recognise the rights of people to the dignified and respectful treatment of their human remains and the human remains of their loved ones when operating the facility; and

(c) to respect the diverse burial, cremation and interment practices, cultural practices and religious beliefs of people when operating the facility; and

(d) to operate the facility in a financially sustainable way; and

(e) to promote financially sustainable practices for burying or cremating human remains or interring cremated remains at the facility; and

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(f) to maintain the facility to an acceptable standard; and

(g) any other function given to the authority under this Act or another territory law.

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

115 Approval to operate facility

(1) The Minister may approve the authority to develop, build or operate a facility.

(2) An approval is a notifiable instrument.

116 Authority taken to be licensee

(1) If the Minister approves the authority to operate a facility under section 115, the authority is taken to be the licensee of the facility.

(2) However, the following provisions of this Act do not apply to the authority:

(a) section 46 (Offence—operating facility not in accordance with licence);

(b) division 4.2 (Licence to operate facility);

(c) division 5.1 (Disciplinary action).

116A Minister may make declaration closing authority operated facility

(1) This section applies to a facility operated by the authority.

(2) The Minister may make a declaration closing the facility to further applications under any 1 or more of the following sections:

(a) section 8 (Right to burial);

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(b) unless the deceased person has a right to burial at the time of the application for burial—section 17 (Burial at cemetery—application);

(c) section 9 (Right to interment);

(d) unless the deceased person has a right to interment at the time of application for interment—section 30 (Interment—application).

(3) However, the Minister may make a declaration under subsection (2) only if the Minister is satisfied that—

(a) either—

(i) the authority has fulfilled each right to burial or right to interment at the facility; or

(ii) the authority will be able to fulfil each right to burial or right to interment at the facility even if the facility is closed; and

(b) if a right to burial or right to interment has been given but not exercised at the facility and the authority will not be able to fulfil the right—the authority has revoked the right under section 12 (Right to burial or interment—notice about end of term and revoking right); and

(c) any other requirements prescribed by regulation in relation to the application or closure has been met.

Note The Territory is responsible for the maintenance of a facility after it is closed (see s 112A).

(4) A declaration under subsection (2) is a notifiable instrument.

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117 Establishment of governing board

The authority has a governing board.

Note An appointment of a governing board member is an appointment under this section (see *Financial Management Act 1996*, s 78 (7) (b)).

118 Governing board members

(1) The governing board has at least 6, and not more than 12, members.

Note 1 The chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

Note 2 The chief executive officer is a member of the governing board (see *Financial Management Act 1996*, s 80 (4)).

(2) The governing board must—

(a) be sufficiently diverse to carry out its functions; and

(b) include at least 2 members who, in the Minister's opinion, represent the general community and religious denominations.

118A Chief executive officer of authority

The chief executive officer of the authority must be a public servant.

Note The chief executive officer is appointed by the director-general after consulting the authority board and the Minister (see *Financial Management Act 1996*, s 80 (3)).

118B Authority's staff

(1) The chief executive officer may employ staff for the authority on behalf of the Territory.

(2) The authority's staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, div 8.2 applies to the authority in relation to the employment of staff (see that Act, s 152).

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119 Ministerial directions to authority

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

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

(a) tell the authority, in writing, of the proposed direction; and

(b) give the authority a reasonable opportunity to comment on the proposed direction; and

(c) consider any comments made by the authority.

(3) The Minister must present a copy of a direction given under this section to the Legislative Assembly within 6 sitting days after it is given to the authority.

(4) The authority must comply with the direction given to it by the Minister under this section.

(5) For the *Competition and Consumer Act 2010* (Cwlth), this Act authorises—

(a) the giving of a direction under this section; and

(b) the doing of, or the failure to do, anything by the authority to comply with a direction given to the authority by the Minster under this section.

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Part 9 Regulator

120 Regulator—appointment

(1) The director-general must appoint a public servant as the regulator.

Note 1 For the making of appointments (including acting appointments), see the 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 Legislation Act, s 207).

(2) However, the director-general may appoint a person as the regulator only if satisfied the person has suitable qualifications and experience to exercise the functions of regulator.

(3) An appointment is a notifiable instrument.

121 Regulator—functions

(1) The regulator's functions are—

(a) to administer this Act; and

(b) any other function given to the regulator by this Act or another territory law.

(2) In the exercise of the regulator's functions, the regulator must have regard to the objects stated in section 6 (Object of Act).

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

122 Delegation

The regulator may delegate the regulator's functions under this Act or another territory law to a public servant.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

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Part 10 Codes of practice

123 Code of practice—approval

(1) The Minister may approve a code of practice in relation to—

(a) a facility; or

(b) the transportation of human remains; or

(c) the burial, cremation or exhumation of human remains; or

(d) the interment or disinterment of cremated remains; or

(e) the memorialisation of a deceased person.

(2) A code of practice may apply, adopt or incorporate an instrument, as in force from time to time.

Note The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

(3) A code of practice is a disallowable instrument.

124 Failure to comply with code of practice

(1) A person commits an offence if—

(a) a code of practice applies to the person; and

(b) the person engages in conduct; and

(c) the conduct results in a failure to comply with a requirement of the code of practice; and

(d) the person is reckless about whether the conduct complies with the code of practice.

Maximum penalty: 100 penalty units.

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(2) A person commits an offence if—

(a) a code of practice applies to the person; and

(b) the person fails to comply with a requirement of the code of practice.

Maximum penalty: 50 penalty units.

(3) Subsections (1) and (2) do not apply if—

(a) a direction has been given to the person under division 5.2 (Directions) about the requirement; and

(b) the person has complied with the direction.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

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

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Part 11 Notification and review of decisions

125 Definitions—pt 11

In this part:

decision-maker, for a reviewable decision, means the decision-maker mentioned in schedule 1, column 5 for the decision.

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

126 Reviewable decision notices

If the decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice to each person mentioned in schedule 1, column 4 in relation to the decision.

Note The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

127 Applications for review

The following people may apply to the ACAT for a review of a reviewable decision:

(a) a person mentioned in schedule 1, column 4 in relation to the decision;

(b) any other person whose interests are affected by the decision.

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Part 12 Miscellaneous

128 Determination of fees

(1) The Minister may determine fees for this Act.

(2) A determination is a disallowable instrument.

(3) The Legislation Act, section 254A (Delegation by Minister) does not apply to a function under this section.

129 Protection from liability

(1) An official is not civilly liable for conduct engaged in honestly and without recklessness—

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

(2) Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.

(3) In this section:

conduct means an act or omission to do an act.

official means—

(a) the regulator; or

(b) an authorised officer; or

(c) anyone else exercising a function under this Act.

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130 Regulation-making power

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

(2) A regulation may make provision in relation to the following:

(a) the protection of facilities;

(b) a licence for a facility;

(c) requirements for—

(i) transporting human remains; and

(ii) burying, cremating or exhuming human remains; and

(iii) interring or disinterring cremated remains; and

(iv) the memorialisation of deceased people at facilities;

(d) certificates by doctors required for burials and cremations.

(3) A regulation may create offences and fix maximum penalties of not more than 10 penalty units for the offences.

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Part 21 Transitional—Cemeteries and Crematoria Amendment Act 2024

215 Continuation of perpetual care trusts

(1) The authority perpetual care trust, established under section 103 as in force immediately before the commencement day, is taken to be the authority perpetual care trust established under section 103 on the commencement day.

(2) The licensee perpetual care trust, established under section 104 as in force immediately before the commencement day, is taken to be the licensee perpetual care trust established under section 104 on the commencement day.

(3) In this section:

commencement day means the day the *Cemeteries and Crematoria Amendment Act 2024*, section 3 commences.

216 Expiry—pt 21

This part expires 5 years after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

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Schedule 1 Reviewable decisions

(see pt 11)

column 1 item	column 2 section	column 3 decision	column 4 person	column 5 decision-maker
1	15 (3) (b)	refusal to permit burial other than at cemetery	person who applied	regulator
2	23 (3) (b)	refusal to cremate 2 or more people at the same time	person who applied	regulator
3	35 (4) (b)	refusal of application for disinterment	licensee of facility	regulator
4	37 (3) (b)	refusal of application for exhumation	person who applied	chief health officer
5	40 (4) (b)	refusal to bury or cremate without certification document	person who applied	regulator
6	49 (3) (b)	refusal to give licence	person who applied	regulator
7	51 (3) (b)	refusal to amend licence	licensee	regulator
8	52 (3) (b)	refusal to transfer licence	licensee	regulator
9	54 (4) (b)	refusal of application to close facility	licensee	regulator
10	70	immediate suspension of licence—danger to public health	licensee	regulator
11	71	disciplinary action	licensee	regulator

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Dictionary

(see s 3)

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

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

- ACAT
- chief health officer
- Corporations Act
- director-general (see s 163)
- disallowable instrument (see s 9)
- doctor
- may (see s 146)
- midwife
- must (see s 146)
- notifiable instrument (see s 10)
- nurse
- nurse practitioner
- the Territory.

acceptable container means—

(a) a coffin; or

(b) an eco-coffin; or

(c) a container approved under section 39.

acceptable wrapping means—

(a) a shroud; or

(b) a wrapping approved under section 39.

at premises, for part 6 (Enforcement)—see section 82.

authorised person, for part 6 (Enforcement)—see section 82.

authority means the Cemeteries and Crematoria Authority established under section 113.

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authority perpetual care trust—see section 103 (1).

burial area, of a cemetery, means an area of the cemetery allocated for the burial of the human remains of deceased people of a particular denomination, cultural group or other special category.

Examples—other special category

babies, children or members of the Australian Defence Force

burial site, of a cemetery, includes a crypt, family memorial, lawn burial, mausoleum and natural burial site at the cemetery.

cause of death certificate, for a deceased person—see the *Births, Deaths and Marriages Registration Act 1997*, section 32F.

cemetery means a place—

(a) where human remains are buried, cremated remains are interred and deceased people are memorialised; and

(b) operated by the authority.

certification document, for the human remains of a deceased person, for part 3 (Burial, cremation, interment or exhumation)—see section 13.

chief executive officer means the chief executive officer of the authority.

code of practice means a code of practice approved by the Minister under section 123.

connected, for part 6 (Enforcement)—see section 82.

contact details, for a person, includes the person's home address, postal address (if different from the home address), email address and telephone number.

cremated remains means human remains that have been cremated.

cremation includes alkaline hydrolysis and other non-fire based methods for breaking down human remains.

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crematorium means a place—

(a) where human remains are cremated, cremated remains are interred and deceased people are memorialised; and

(b) operated by a licensee.

decision maker, for a reviewable decision, for part 11 (Notification and review of decisions)—see section 125.

disciplinary action, against a licensee, for division 5.1 (Disciplinary action)—see section 69.

disciplinary conduct, of a licensee, for division 5.1 (Disciplinary action)—see section 69.

facility means—

(a) a cemetery; or

(b) a crematorium.

facility plan means a plan of a facility that—

(a) shows the burial areas and interment areas of the facility; and

(b) shows each burial site and interment site at the facility and identifies—

(i) the kind of burial or interment site it is; and

(ii) the unique identifying number for the site; and

(c) is published on the facility's website.

family member—see the *Civil Law (Wrongs) Act 2002*, section 32.

fetal remains means the body, or part of the body, of a dead fetus that is not a stillborn child.

human remains includes a stillborn child and fetal remains.

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interment area, of a facility, means an area of the facility allocated for the interment of the cremated remains of a deceased person of a particular denomination, cultural group or other special category.

Examples—other special category

babies, children or members of the Australian Defence Force

interment site includes a site in a wall or garden.

licence, to operate a facility, means the following:

(a) a licence mentioned in section 49;

(b) an amended licence mentioned in section 51;

(c) a transferred licence mentioned in section 52.

licensee means—

(a) a person who has a licence to operate a facility; or

(b) the authority.

licensee perpetual care trust—see section 104 (1).

licensee receipt, for a facility, means an amount received by the licensee of the facility for—

(a) giving a right to burial or right to interment at the facility; or

(b) the burial or cremation of human remains at the facility; or

(c) the interment of cremated remains at the facility; or

(d) the memorialisation of a deceased person at the facility.

medical referee means a person appointed under section 41.

occupier, of premises, for part 6 (Enforcement)—see section 82.

offence, for part 6 (Enforcement)—see section 82.

perpetual care trust means—

(a) an authority perpetual care trust; or

(b) a licensee perpetual care trust.

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perpetual care trust percentage—see section 106 (1).

premises, for part 6 (Enforcement)—see section 82.

private crematorium means a crematorium operated by a person other than the authority.

public crematorium means a crematorium operated by the authority.

regulator means the public servant appointed under section 120.

reviewable decision, for part 11 (Notification and review of decisions)—see section 125.

right to burial means a right to bury human remains at a cemetery—

(a) given to a person under section 8; or

(b) transferred to a person under section 10.

right to burial certificate—see section 8 (6).

right to interment means a right to inter cremated remains at a facility—

(a) given to a person under section 9; or

(b) transferred to a person under section 10.

right to interment certificate—see section 9 (6).

standard cemetery operating procedures—see section 59 (1).

standard crematorium operating procedures—see section 60 (1).

standard facility operating procedures—see section 61 (1).

stillborn child—see the *Births, Deaths and Marriages Registration Act 1997*, dictionary.

suitable person, for division 4.2 (Licence to operate facility)—see section 48.

warrant, for part 6 (Enforcement)—see section 82.

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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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
underlining = whole or part not commenced or to be expired

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3 Legislation history

Cemeteries and Crematoria Act 2020 A2020-7
notified LR 28 February 2020
s 1, s 2 commenced 28 February 2020 (LA s 75 (1))
remainder commenced 23 August 2020 (s 2 and CN2020-15)

as amended by

Transport Canberra and City Services Legislation Amendment Act 2023 A2023-27 pt 2
notified LR 7 July 2023
s 1, s 2 commenced 7 July 2023 (LA s 75 (1))
pt 2 commenced 14 July 2023 (s 2)

Cemeteries and Crematoria Amendment Act 2024 A2024-14
notified LR 19 April 2024
s 1, s 2 commenced 19 April 2024 (LA s 75 (1))
remainder commenced 20 April 2024 (s 2)

Better Regulation Legislation Amendment Act 2025 A2025-13 pt 5
notified LR 26 May 2025
s 1, s 2 commenced 26 May 2025 (LA s 75 (1))
pt 5 commenced 9 June 2025 (s 2 (1))

Statute Law Amendment Act 2025 A2025-29 sch 4 pt 4.24
notified LR 6 November 2025
s 1, s 2 commenced 6 November 2025 (LA s 75 (1))
sch 4 pt 4.24 commenced 6 December 2025 (s 2 (5))

Nurse Practitioners Legislation Amendment Act 2026 A2026-5 pt 3, sch 1
notified LR 5 March 2026
s 1, s 2 commenced 5 March 2026 (LA s 75 (1))
pt 3, sch 1 commenced 5 September 2026 (s 2 and LA s 79)

City and Environment Legislation Amendment Act 2026 A2026-11 pt 2
notified LR 5 June 2026
s 1, s 2 commenced 5 June 2026 (LA s 75 (1))
pt 2 commenced 12 June 2026 (s 2)

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4 Amendment history

Commencement
s 2 om LA s 89 (4)

Meaning of *death certificate*—pt 2
s 7 om A2026-5 amdt 1.1

Meaning of *certification document*—pt 3
s 13 sub A2026-5 s 15

Burial at cemetery—application
s 17 am A2023-27 s 4, s 5; A2026-5 amdt 1.2

Cremation—application
s 22 am A2023-27 s 6, s 7

Licensee must make remains available for collection
s 25 am A2023-27 s 8
sub A2026-11 s 4

Offences—failure to notify applicant or suitable person about collection of cremated remains
s 25A ins A2026-11 s 4

Offences—disposal of cremated remains
s 25B ins A2026-11 s 4

Offence—cremation at crematorium
s 27 hdg sub A2026-11 s 5
s 27 am A2026-11 s 6

Interment—application
s 30 am A2026-5 amdt 1.3, amdt 1.4

Approved container or wrapping—application
s 39 am A2025-29 amdt 4.24

Offences—cause of death certificate not to be given by doctor or nurse practitioner
s 42 hdg sub A2026-5 s 16
s 42 am A2026-5 s 17, s 18

Requirements for transportation, burial or cremation in coffin etc
s 43 am A2025-29 amdt 4.24

Closing facility—application
s 54 am A2024-14 s 4, s 5; A2026-5 amdt 1.5

Standard cemetery operating procedures
s 59 am A2026-11 s 7

Standard crematorium operating procedures
s 60 am A2026-11 s 7

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Standard facility operating procedures
s 61 am A2026-11 s 7

Register—burial, cremation, interment etc
s 63 am A2023-27 s 9

Register—collection of cremated remains
s 63A ins A2023-27 s 10
sub A2026-11 s 8

Offences—keeping registers
s 64 am A2023-27 ss 11-13; ss renum R2 LA; A2026-11 s 9

Authority perpetual care trust—establishment
s 103 sub A2024-14 s 6

Licensee perpetual care trust—establishment
s 104 sub A2024-14 s 6

Determination of trustee
s 105 am A2025-29 amdt 4.24

Determination of perpetual care trust percentage
s 106 am A2025-29 amdt 4.24

Maintenance of closed facilities
pt 7A hdg ins A2024-14 s 7

Territory responsible for maintenance of closed facilities
s 112A ins A2024-14 s 7

Approval to operate facility
s 115 am A2025-29 amdt 4.24

Minister may make declaration closing authority operated facility
s 116A ins A2024-14 s 8

Chief executive officer of authority
s 118A ins A2023-27 s 14

Authority's staff
s 118B ins A2023-27 s 14

Regulator—appointment
s 120 am A2025-29 amdt 4.24

Code of practice—approval
s 123 am A2025-29 amdt 4.24

Reviewable decision notices
s 126 am A2025-29 amdt 4.24

Determination of fees
s 128 am A2025-29 amdt 4.24

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Regulation-making power
s 130 am A2025-29 amdt 4.24

Repeals
pt 13 hdg om LA s 89 (3)

Legislation repealed
s 131 om LA s 89 (3)

Transitional
pt 20 hdg exp 23 August 2025 (s 214)

Definitions—pt 20
s 200 exp 23 August 2025 (s 214)

Right of burial or interment under repealed Act
s 201 exp 23 August 2025 (s 214)

Application for burial at cemetery under repealed Act
s 202 exp 23 August 2025 (s 214)

Application for burial other than at cemetery under repealed Act
s 203 exp 23 August 2025 (s 214)

Application for cremation under repealed Act
s 204 exp 23 August 2025 (s 214)

Burial or cremation without certification document under repealed regulation
s 205 exp 23 August 2025 (s 214)

Disposal of cremated remains under repealed regulation
s 206 exp 23 August 2025 (s 214)

Application for exhumation under repealed Act
s 207 exp 23 August 2025 (s 214)

Perpetual care trust under repealed Act
s 208 exp 23 August 2025 (s 214)

Accounts and records for perpetual care trusts under repealed Act
s 209 exp 23 August 2025 (s 214)

Register required to be kept under repealed regulation
s 210 exp 23 August 2025 (s 214)

Application records kept under repealed regulation
s 211 exp 23 August 2025 (s 214)

Revoking right of burial or interment under repealed code of practice
s 212 exp 23 August 2025 (s 214)

Transitional regulations
s 213 exp 23 August 2025 (s 214)

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Expiry—pt 20

s 214 exp 23 August 2025 (s 214)

Transitional—Cemeteries and Crematoria Amendment Act 2024

pt 21 hdg ins A2024-14 s 9
exp 20 April 2029 (s 216)

Continuation of perpetual care trusts

s 215 ins A2024-14 s 9
exp 20 April 2029 (s 216)

Expiry—pt 21

s 216 ins A2024-14 s 9
exp 20 April 2029 (s 216)

Dictionary

dict am A2026-5 s 20
def ***cause of death certificate*** ins A2026-5 s 19
def ***chief executive officer*** ins A2023-27 s 15
def ***death certificate*** om A2026-5 amdt 1.6
def ***licensee receipt*** am A2025-13 s 10; A2026-5 amdt 1.7

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 23 Aug 2020	23 Aug 2020– 13 July 2023	not amended	new Act
R2 14 July 2023	14 July 2023– 19 April 2024	A2023-27	amendments by A2023-27
R3 20 Apr 2024	20 Apr 2024– 8 June 2025	A2024-14	amendments by A2024-14
R4 9 June 2025	9 June 2025– 23 Aug 2025	A2025-13	amendments by A2025-13
R5 24 Aug 2025	24 Aug 2025– 5 Dec 2025	A2025-13	expiry of transitional provisions (pt 20)
R6 6 Dec 2025	6 Dec 2025– 11 June 2026	A2025-29	amendments by A2025-29
R7 12 June 2026	12 June 2026– 4 Sept 2026	A2026-11	amendments by A2026-11

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6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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