

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Cemeteries and Crematoria Bill 2002

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
4	Notes 3
Part 2	Cemeteries and crematoria
Division 2.1	Operation of cemeteries and crematoria
5	Codes of practice 4
6	Guidelines for exercise of Minister's powers 5
Division 2.2	Perpetual care trusts
7	Establishment of perpetual care trusts 6

Contents

	Page
8 Determination of trust percentage	7
9 Perpetual care funds	8
10 Payments into perpetual care fund	8
11 Protection of perpetual care funds	9
12 Provisions applying to authorised deposit-taking institutions	9
13 Accounts and records for perpetual care funds	10
14 Audit	10
Division 2.3 Improvement notices	
15 Improvement notices	11
16 Penalty for failing to end contravention	12
17 Chief executive may take action to remedy consequences of contravention	12
Division 2.4 Offences about burials and cremations	
18 Person must not bury or cremate human remains without permit	13
19 Operator not to allow burial or cremation without permit etc	13
20 Minister or magistrate may prohibit cremation	14
21 Exhumation of human remains	14
22 Burials to take place only at cemetery	15
23 Cremations to take place only at crematorium	15
24 Cremation to conceal an offence	15
25 Doctors certificates	16
Part 3 The cemeteries board	
Division 3.1 Establishment and functions	
26 Establishment of board	17
27 Functions of board etc	17
28 Ministerial directions to board	17
29 Reports to Minister by board	18
30 Providing information to Minister by board	18
Division 3.2 Members of board	
31 Members of board	18
32 Term of appointment of members	19
33 Ending of appointment of members	19

	Page
34 Conditions of appointment of members generally	19
Division 3.3 Proceedings of board	
35 Time and place of meetings	20
36 Presiding member at meetings	20
37 Quorum at meetings	20
38 Voting at meetings	20
39 Conduct of meetings etc	21
40 Disclosure of interest by members	21
41 Members to be honest etc	22
Division 3.4 Staff	
42 Arrangements for staff	22
Part 4 Miscellaneous	
43 Review of decisions	23
44 Notification of reviewable decisions	23
45 Acts and omissions of representatives	24
46 False or misleading statements	25
47 Determination of fees	25
48 Approved forms	25
49 Regulation-making power	26
Part 5 Transitional matters	
Division 5.1 Assets and liabilities of former trustees	
50 Meaning of <i>former trustees</i> for pt 5	27
51 Vesting of assets and liabilities of former trustees in board	27
52 Evidentiary certificate for vested assets and liabilities	27
53 Registration of changes in title to certain assets	27
54 Proceedings and evidence in relation to vested assets and liabilities	28
Division 5.2 General	
55 Transitional regulations	29
56 Modification of pt 5's operation	30
57 Expiry of pt 5	30

Contents

	Page
58 Repeal of Acts	30
59 Repeal of subordinate laws	30
60 Acts amended—sch 1	30
 Schedule 1	
Consequential amendments of other laws	31
Part 1.1	
Land (Planning and Environment) Act 1991	31
Part 1.2	
Coroners Act 1997	31
 Dictionary	32

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Cemeteries and Crematoria Bill 2002

A Bill for

An Act about cemeteries and crematoria

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Cemeteries and Crematoria Act 2002*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see *Legislation Act 2001*, s 75).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see *Legislation*
11 *Act 2001*, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see *Legislation Act 2001*, s 79).

15 **3 Dictionary**

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

17 *Note 1* The dictionary at the end of this Act defines certain words and
18 expressions used in this Act, and includes references (*signpost*
19 *definitions*) to other words and expressions defined elsewhere in this
20 Act or in other legislation.

21 For example, the signpost definition '*stillborn child*—see the *Births,*
22 *Deaths and Marriages Registration Act 1997*, section 4 (1).' means that
23 the expression 'stillborn child' is defined in that subsection and that the
24 definition applies to this Act.

25 *Note 2* A definition in the dictionary (including a signpost definition) applies to
26 the entire Act unless the definition, or another provision of the Act,
27 provides otherwise or the contrary intention otherwise appears (see
28 *Legislation Act 2001*, s 155 and s 156 (1)).

1 **4 Notes**

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

3 *Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of
4 notes.

Part 2 Cemeteries and crematoria

Division 2.1 Operation of cemeteries and crematoria

5 Codes of practice

- (1) The Minister may, in writing, approve codes of practice for cemeteries and crematoria.
- (2) A code of practice may make provision in relation to the following matters:
 - (a) burials, exhumations and cremations;
 - (b) the operation of cemeteries and crematoria;
 - (c) the design, construction and maintenance of—
 - (i) buildings, monuments, memorials, tombstones, gravestones, tablets, monumental inscriptions, mausoleums, vaults and other structures and things within cemeteries and crematoria; and
 - (ii) walls, fences, paths, roads, drains and other works of cemeteries and crematoria;
 - (d) without limiting paragraph (c), responsibility for the maintenance of buildings, monuments, memorials, tombstones, gravestones, tablets, monumental inscriptions, mausoleums, vaults and other structures and things within cemeteries and crematoria;
 - (e) the equipment used in cemeteries and crematoria, including its maintenance;
 - (f) the grounds of cemeteries and crematoria, including their maintenance;
 - (g) the position, depth and maintenance of graves;

-
- 1 (h) the construction of coffins to be placed in vaults;
- 2 (i) burial and other rights in relation to cemeteries and crematoria;
- 3 (j) the making and keeping of records about cemeteries and
- 4 crematoria, including records of burials, exhumations and
- 5 cremations, and burial and other rights in relation to cemeteries
- 6 and crematoria;
- 7 (k) the perpetual care funds of cemeteries and crematoria;
- 8 (l) the inspection of cemeteries and crematoria and their records.
- 9 (3) A code of practice approved under this section may apply, adopt or
- 10 incorporate a law or instrument, or a provision of a law or
- 11 instrument, as in force from time to time.
- 12 *Note 1* The text of an applied, adopted or incorporated law or instrument,
- 13 whether applied as in force from time to time or in force at a particular
- 14 time, is taken to be a notifiable instrument if the operation of the
- 15 *Legislation Act 2001*, s 47 (5) or (6) is not displaced (see s 47 (7)).
- 16 *Note 2* A notifiable instrument must be notified under the *Legislation Act 2001*.
- 17 (4) A code of practice approved under this section is a disallowable
- 18 instrument.
- 19 *Note* A disallowable instrument must be notified, and presented to the
- 20 Legislative Assembly, under the *Legislation Act 2001*.

21 **6 Guidelines for exercise of Minister's powers**

- 22 (1) The Minister may issue written guidelines about the exercise of any
- 23 of the following powers of the Minister:
- 24 (a) to approve a purpose for a trust under section 7 (3) (b)
- 25 (Establishment of perpetual care trusts);
- 26 (b) to prohibit the cremation of stated human remains under
- 27 section 20 (1) (Minister or magistrate may prohibit cremation);
- 28 (c) to permit a burial under section 22 (Burials to take place only
- 29 at cemetery) at a place other than a cemetery.

1 (2) The Minister must comply with any guideline applying to the
2 exercise of a power mentioned in subsection (1).

3 (3) A guideline is a disallowable instrument.

4 *Note* A disallowable instrument must be notified, and presented to the
5 Legislative Assembly, under the *Legislation Act 2001*.

6 **Division 2.2 Perpetual care trusts**

7 **7 Establishment of perpetual care trusts**

8 (1) This section applies to each cemetery or crematorium (other than a
9 private burial ground).

10 (2) There is established, by this subsection, a trust (the *perpetual care*
11 *trust*) for the cemetery or crematorium.

12 (3) The perpetual care trust is established for—

13 (a) the maintenance of the cemetery or crematorium, including, for
14 example, the maintenance of—

15 (i) the grounds of the cemetery or crematorium; and

16 (ii) monuments, memorials, tombstones, gravestones, tablets,
17 monumental inscriptions, mausoleums, vaults and graves
18 within the cemetery or crematorium; and

19 (iii) walls, fences, paths, roads, drains and other works of the
20 cemetery or crematorium; and

21 (b) any other purpose approved, in writing, by the Minister.

22 (4) An approval under subsection (3) (b) is a disallowable instrument.

23 *Note* A disallowable instrument must be notified, and presented to the
24 Legislative Assembly, under the *Legislation Act 2001*.

25 (5) The trustee of the perpetual care trust is the operator for the time
26 being of the cemetery or crematorium.

-
- 1 (6) However, if there is no operator, the trustee is the person appointed
2 as trustee for the perpetual care trust under the *Trustee Act 1925* or,
3 if no-one is appointed as trustee under that Act, the chief executive.
- 4 (7) The perpetual care trust is taken to be a charitable trust established
5 for public charitable purposes.
- 6 (8) The regulations may declare that expenditure of a particular kind or
7 for a particular purpose is, or is not, expenditure for the maintenance
8 of a cemetery or crematorium.
- 9 (9) Subsection (3) (a) has effect subject to any regulations made for
10 subsection (8).

11 **8 Determination of trust percentage**

- 12 (1) The Minister must, for each cemetery or crematorium, determine the
13 percentage (the *perpetual care trust percentage*) of each amount
14 received by the operator for a burial, interment of ashes or
15 memorialisation at the cemetery or crematorium that is to form part
16 of the perpetual care trust of the cemetery or crematorium.
- 17 (2) The perpetual care trust percentage determined for the cemetery or
18 crematorium must be the percentage that the Minister considers
19 necessary to ensure that there are sufficient funds in the perpetual
20 care trust so that the cemetery or crematorium will be adequately
21 maintained.
- 22 (3) The Minister must tell the operator the perpetual care trust
23 percentage determined.
- 24 (4) The Minister may, by written notice to the operator of a cemetery or
25 crematorium, require the operator to give the Minister stated
26 information or documents that the Minister reasonably needs to
27 make a determination under this section.

1 **9 Perpetual care funds**

- 2 (1) The operator of a cemetery or crematorium must, for each cemetery
3 or crematorium the operator manages, open and maintain a trust
4 account (a *perpetual care fund*) with an authorised deposit-taking
5 institution (*ADI*) under a title that includes the name of the cemetery
6 or crematorium and the words ‘perpetual care fund’.

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

- 9 (2) Within 2 business days after opening the perpetual care fund, the
10 operator must tell the chief executive in writing of the name of the
11 ADI with which the perpetual care fund is maintained, the branch (if
12 any) where the fund is maintained, the account number (if any) and
13 the title of the account.

14 Maximum penalty: 20 penalty units.

- 15 (3) If a change is made in the ADI with which the perpetual care fund is
16 maintained, the branch where the fund is maintained or the account
17 number or title, the operator (or, if there is no operator, the trustee of
18 the perpetual care fund) must, within 2 business days after the
19 change, tell the chief executive in writing of the new ADI, branch or
20 account number or title.

21 Maximum penalty: 20 penalty units.

22 **10 Payments into perpetual care fund**

- 23 (1) This section applies if the operator of a cemetery or crematorium
24 receives an amount for a burial, interment of ashes or
25 memorialisation at the cemetery or crematorium.

- 26 (2) The perpetual care trust percentage of the amount forms part of the
27 perpetual care trust of the cemetery or crematorium.

- 1 (3) As soon as possible after the end of the named month in which the
2 operator receives the amount, the operator must pay into the
3 perpetual care fund of the cemetery or crematorium the perpetual
4 care trust percentage of the amount.

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

7 **11 Protection of perpetual care funds**

- 8 (1) An amount credited to the perpetual care fund of a cemetery or
9 crematorium is not available for payment of debts of the operator of
10 the cemetery or crematorium and is not liable to be attached or taken
11 in execution to satisfy a judgment against the operator.

- 12 (2) This section does not apply to debts incurred by the operator in the
13 maintenance of the cemetery or crematorium or for a purpose
14 approved by the Minister under section 7 (3) (b).

15 **12 Provisions applying to authorised deposit-taking**
16 **institutions**

- 17 (1) This section applies to an ADI with which a perpetual care fund of a
18 cemetery or crematorium is maintained.

- 19 (2) The ADI is not obliged to control or supervise transactions of the
20 perpetual care fund or how amounts withdrawn from the account are
21 applied.

- 22 (3) The ADI must not, in relation to any liability of the operator of the
23 cemetery or crematorium or anyone else to the ADI, have or obtain
24 any recourse or right, whether by way of settlement, counterclaim,
25 charge or otherwise against an amount credited to the perpetual care
26 fund.

- 27 (4) This section does not relieve the ADI from any liability it may have
28 apart from this section.

1 **13 Accounts and records for perpetual care funds**

2 (1) The operator of a cemetery or crematorium must keep accounts and
3 records for—

4 (a) amounts received by the operator for burials, interment of
5 ashes and memorialisations at the cemetery or crematorium;
6 and

7 (b) amounts paid into the perpetual care fund of the cemetery or
8 crematorium; and

9 (c) amounts withdrawn from the perpetual care fund and the
10 purposes for which the amounts are applied.

11 Maximum penalty: 20 penalty units.

12 (2) The operator must—

13 (a) keep the accounts and records at the operator's principal place
14 of business in the ACT, or at another place with the written
15 approval of the chief executive; and

16 (b) keep the accounts and records in a way that they can be
17 conveniently and properly audited; and

18 (c) keep the accounts and records for at least 7 years after they are
19 made.

20 Maximum penalty: 20 penalty units.

21 **14 Audit**

22 (1) As soon as practicable after the end of each financial year, the
23 operator of a cemetery or crematorium must have the accounts and
24 records mentioned in section 13 audited by a person who is a
25 registered company auditor within the meaning of the Corporations
26 Act.

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

- 1 (2) The operator must give the auditor's report and the audited accounts
2 to the chief executive as soon as practicable after the end of the
3 financial year to which the report relates.

4 Maximum penalty: 20 penalty units.

5 **Division 2.3 Improvement notices**

6 **15 Improvement notices**

- 7 (1) The chief executive may give the operator of a cemetery or
8 crematorium a notice under this subsection if—

9 (a) the chief executive believes on reasonable grounds that this
10 Act has been, or is being, contravened in relation to the
11 cemetery or crematorium; and

12 (b) the contravention is not an offence against this Act.

13 *Note* A reference to an Act includes a reference to statutory instruments made
14 or in force under the Act, including any approved codes of practice (see
15 *Legislation Act 2001*, s 104).

- 16 (2) The notice under subsection (1) must—

17 (a) state the contravention and the reasons for the belief; and

18 (b) invite the operator to make written representations, within a
19 stated period of not less than 14 days, why the operator should
20 not be required to end the contravention, remedy the
21 consequences of the contravention or both.

- 22 (3) If, after considering any written representations made by the
23 operator within the stated period, the chief executive is satisfied on
24 reasonable grounds that the operator should be required to end the
25 contravention, remedy the consequences of the contravention or
26 both, the chief executive may give the operator a notice under this
27 subsection (an *improvement notice*).

- 1 (4) The improvement notice—
- 2 (a) must require the operator to end the contravention, remedy the
- 3 consequences of the contravention, or do both, within a stated
- 4 time; and
- 5 (b) may state the action that the operator must take to comply with
- 6 the notice; and
- 7 (c) if the notice requires the operator to end the contravention—
- 8 must state that failure to end the contravention, without
- 9 reasonable excuse, within the stated time is an offence; and
- 10 (d) if the notice requires the operator to remedy the consequences
- 11 of the contravention—must state that, if the operator fails to
- 12 remedy the consequences, within the stated time, the chief
- 13 executive may arrange for action to be taken to remedy the
- 14 consequences and that the operator will be liable for the cost of
- 15 taking the action.

16 **16 Penalty for failing to end contravention**

17 The operator of a cemetery or crematorium must not, without

18 reasonable excuse, fail to end a contravention of this Act in

19 accordance with an improvement notice.

20 Maximum penalty: 50 penalty units.

21 **17 Chief executive may take action to remedy consequences**

22 **of contravention**

- 23 (1) If the operator of a cemetery or crematorium fails to remedy the
- 24 consequences of a contravention of this Act in accordance with an
- 25 improvement notice or any additional time allowed by the chief
- 26 executive, the chief executive may arrange for the action that the
- 27 chief executive considers necessary or desirable to remedy the
- 28 consequences to be taken by or on behalf of the Territory.
- 29 (2) The cost of any action taken under this section is a debt payable by
- 30 the operator to the Territory.

**Division 2.4 Offences about burials and
cremations**

**18 Person must not bury or cremate human remains without
permit**

- (1) A person must not bury human remains at a cemetery unless the burial is authorised by a permit given by the operator of the cemetery under the regulations.

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

- (2) A person must not cremate human remains at a crematorium unless the cremation is authorised by a permit given by the operator of the crematorium under the regulations.

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

- (3) Subsection (2) does not apply to human remains if the chief health officer has given a public health direction under the *Public Health Act 1997* requiring the cremation of the remains.

**19 Operator not to allow burial or cremation without permit
etc**

- (1) The operator of a cemetery or crematorium must not allow human remains to be buried or cremated at the cemetery or crematorium unless the burial or cremation is authorised by a permit given by the operator under the regulations.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply to human remains if the chief health officer has given a public health direction under the *Public Health Act 1997* requiring the cremation of the remains.

- 1 (3) The operator of a cemetery or crematorium must not give a permit
2 under the regulations authorising a burial or cremation at the
3 cemetery or crematorium unless the requirements of the regulations
4 for the giving of the permit are complied with.

5 Maximum penalty: 50 penalty units.

6 **20 Minister or magistrate may prohibit cremation**

- 7 (1) The Minister, a magistrate, or a special magistrate under the
8 *Magistrates Court Act 1930*, may, by written notice given to the
9 operator of a crematorium, prohibit the cremation of stated human
10 remains either absolutely or until stated conditions are complied
11 with.

- 12 (2) The operator must not cremate the human remains unless—

- 13 (a) the notice is revoked; or
14 (b) the stated conditions have been complied with.

15 Maximum penalty: 50 penalty units.

16 **21 Exhumation of human remains**

- 17 (1) A person must not exhume human remains buried in a cemetery
18 except—

- 19 (a) under a warrant under the *Coroners Act 1997*; or
20 (b) with written permission of the chief health officer under this
21 section.

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

- 24 (2) The chief health officer may give written directions about the
25 exhumation of human remains.

- 26 (3) A direction under subsection (2) is a disallowable instrument.

27 *Note* A disallowable instrument must be notified, and presented to the
28 Legislative Assembly, under the *Legislation Act 2001*.

- 1 (4) A person must not contravene a direction of the chief health officer
2 under subsection (2).
3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.
- 5 (5) A person may apply to the chief health officer for permission to
6 exhume human remains buried in a cemetery.
- 7 (6) The chief health officer may give the permission if satisfied that it
8 would not be contrary to the interests of public health to grant the
9 permission.
- 10 (7) If the chief health officer refuses to give the permission, the chief
11 health officer must give the applicant written notice of the refusal
12 and the reasons for it.

13 **22 Burials to take place only at cemetery**

- 14 A person must not bury human remains other than at a cemetery
15 unless the person has the written permission of the Minister.
- 16 Maximum penalty: 100 penalty units, imprisonment for 1 year or
17 both.

18 **23 Cremations to take place only at crematorium**

- 19 A person must not cremate human remains other than at a
20 crematorium.
- 21 Maximum penalty: 100 penalty units, imprisonment for 1 year or
22 both.

23 **24 Cremation to conceal an offence**

- 24 A person must not cremate human remains with intent to conceal the
25 commission of an offence.
- 26 Maximum penalty: 500 penalty units, imprisonment for 5 years or
27 both.

- 1 **25 Doctors certificates**
- 2 (1) A doctor must not, for the regulations, give a certificate about the
3 death of a person if a coroner must hold an inquest into the manner
4 and cause of death of the person under the *Coroners Act 1997*.
- 5 Maximum penalty: 10 penalty units.
- 6 *Note* The *Coroners Act 1997*, s 13 states the circumstances in which a
7 coroner must hold an inquest into the manner and cause of death of a
8 person.
- 9 (2) A doctor must not, for the regulations, give a certificate about the
10 death of a person if the doctor knows—
- 11 (a) that the doctor has a financial interest in the person's death
12 under a life insurance policy; or
- 13 (b) that the doctor has a right or expectancy to property of any
14 kind on the person's death.
- 15 Maximum penalty: 50 penalty units.
- 16 (3) In this section:
- 17 *doctor* includes a doctor who is a medical referee under the
18 regulations.

Part 3 The cemeteries board

Division 3.1 Establishment and functions

26 Establishment of board

(1) There is an Australian Capital Territory Public Cemeteries Board.

(2) The board—

(a) is a corporation with perpetual succession; and

(b) may have a common seal; and

(c) may sue and be sued in its corporate name; and

(d) may acquire, hold and dispose of property.

27 Functions of board etc

(1) The functions of the board are to effectively and efficiently manage public cemeteries and crematoria for which the board has been appointed as the operator by the Minister.

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 2001*, s 196 and dict, pt 1, def of *entity*).

(2) The board must operate on a sound financial basis.

28 Ministerial directions to board

(1) The Minister may give written directions to the board about the exercise of its functions.

(2) Before giving a direction, the Minister must—

(a) tell the board about the proposed direction; and

(b) give the board a reasonable opportunity to comment on the proposed direction; and

- 1 (c) consider any comments made by the board.
- 2 (3) The Minister must present a copy of a direction given under this
3 section to the Legislative Assembly within 6 sitting days after it is
4 given.
- 5 (4) The board must comply with a direction given to it under this
6 section.
- 7 (5) For the *Trade Practices Act 1974* (Cwlth), this Act authorises—
- 8 (a) the giving of a direction under this section; and
- 9 (b) the doing of, or the failure to do, anything by the board to
10 comply with a direction under this section.

11 **29 Reports to Minister by board**

- 12 (1) In addition to any other reports that the board is required to make
13 under this Act or any other Territory law, the board must give the
14 Minister the reports the Minister requires.
- 15 (2) A report under this section must be prepared in the form, and be
16 based on the accounting or other policies or practices, (if any) that
17 the Minister requires.

18 **30 Providing information to Minister by board**

19 The board must give the Minister any information about its
20 operations that the Minister requires.

21 **Division 3.2 Members of board**

22 **31 Members of board**

- 23 (1) The board consists of not less than 3, and not more than 12,
24 members appointed by the Minister.

25 *Note 1* For the making of appointments (including acting appointment), see
26 *Legislation Act 2001*, pt 19.3.

27 *Note 2* In particular, a person may be appointed for a particular provision of a
28 law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made

by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with a Legislative Assembly committee and are disallowable (see *Legislation Act 2001*, pt 19.3.3).

- (2) The Minister must appoint a member to be the chairperson and another member to be deputy chairperson.

32 Term of appointment of members

A member must not be appointed for a term of longer than 3 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict, pt 1, def of *appoint*).

33 Ending of appointment of members

The Minister may end the appointment of a member—

- (a) for misbehaviour or physical or mental incapacity; or
(b) if the member—

(i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

(ii) is absent from 3 consecutive meetings without reasonable excuse; or

(iii) contravenes section 40 (Disclosure of interest by members) or 41 (Members to be honest etc).

Note A person's appointment also ends if the person resigns (see *Legislation Act 2001*, s 210).

34 Conditions of appointment of members generally

A member holds the position on the conditions not provided by this Act that are decided by the Minister.

1 **Division 3.3 Proceedings of board**

2 **35 Time and place of meetings**

- 3 (1) Meetings of the board are to be held at the times and places it
4 decides.
- 5 (2) However, the board must meet at least once every 3 months.
- 6 (3) The chairperson—
- 7 (a) may at any time call a meeting of the board; and
- 8 (b) must call a meeting if asked by the Minister or at least
9 2 members.
- 10 (4) The chairperson must give the other members reasonable notice of
11 the time and place of a meeting called by the chairperson.

12 **36 Presiding member at meetings**

- 13 (1) The chairperson presides at all meetings at which the chairperson is
14 present.
- 15 (2) If the chairperson is absent, the deputy chairperson presides.
- 16 (3) If the chairperson and the deputy chairperson are both absent, the
17 member chosen by the members present presides.

18 **37 Quorum at meetings**

19 Business may be carried on at a meeting of the board only if not less
20 than ½ the number of members appointed are present.

21 **38 Voting at meetings**

- 22 (1) At a meeting of the board each member has a vote on each question
23 to be decided.
- 24 (2) A question is to be decided by a majority of the votes of the
25 members present and voting but, if the votes are equal, the member
26 presiding has a casting vote.

1 **39 Conduct of meetings etc**

- 2 (1) The board may conduct its proceedings (including its meetings) as it
3 considers appropriate.
- 4 (2) The board may hold meetings, or allow members to take part in
5 meetings, by telephone, closed-circuit television or another form of
6 communication.
- 7 (3) A member who takes part in a meeting under subsection (2) is taken
8 to be present at the meeting.
- 9 (4) If—
- 10 (a) all members agree, in writing, to a proposed resolution; and
- 11 (b) notice of the resolution is given under procedures decided by
12 the board;
- 13 the resolution is a valid resolution of the board, even though it was
14 not passed at a meeting of the board.
- 15 (5) The board must keep minutes of its meeting.

16 **40 Disclosure of interest by members**

- 17 (1) This section applies to a member if—
- 18 (a) the member has a direct or indirect financial interest in an issue
19 being considered, or about to be considered, by the board; and
- 20 (b) the interest could conflict with the proper exercise of the
21 member's functions in relation to the board's consideration of
22 the issue.
- 23 (2) As soon as practicable after the relevant facts come to the member's
24 knowledge, the member must disclose the nature of the interest to a
25 meeting of the board.
- 26 (3) The disclosure must be recorded in the board's minutes and, unless
27 the board otherwise decides, the member must not—
- 28 (a) be present when the board considers the issue; or

- 1 (b) take part in a decision of the board on the issue.
- 2 (4) Any other member who also has a direct or indirect financial interest
3 in the issue must not—
- 4 (a) be present when the board is considering its decision under
5 subsection (3); or
- 6 (b) take part in making the decision.

7 **41 Members to be honest etc**

8 In the exercise of his or her functions as a member, a member must
9 exercise the degree of honesty, care and diligence that is required to
10 be exercised by a director of a company in relation to the affairs of
11 the company.

12 **Division 3.4 Staff**

13 **42 Arrangements for staff**

- 14 (1) The board may arrange with the chief executive to use public
15 servants in the administrative unit under the chief executive's
16 control.
- 17 (2) The *Public Sector Management Act 1994* applies to the management
18 by the board of public servants the subject of an arrangement under
19 subsection (1).
- 20 (3) This division does not limit the board's power to employ people
21 who are not public servants.

Part 4 Miscellaneous

43 Review of decisions

(1) The operator of a cemetery or crematorium may apply to the administrative appeals tribunal for review of any of the following decisions:

- (a) a determination under section 8 (Determination of trust percentage) in relation to the cemetery or crematorium;
- (b) if the operator is given an improvement notice under section 15 that requires the operator to remedy the consequences of a contravention of this Act—the decision;
- (c) a decision not to allow additional time under section 17 to remedy the consequences of a contravention of this Act;
- (d) a refusal under section 22 to permit a burial at a place other than a cemetery.

(2) An applicant for permission to exhume human remains buried in a cemetery may apply in writing to the administrative appeals tribunal for review of a decision of the chief health officer under section 21 (Exhumation of human remains) to refuse to give the permission.

44 Notification of reviewable decisions

(1) A person who makes a decision mentioned in section 43 must give written notice of the decision to—

- (a) for a decision mentioned in section 43 (1) (a) to (c)—the operator of the cemetery or crematorium; or
- (b) for a decision mentioned in section 43 (1) (d)—the person who asked for permission to bury human remains other than at a cemetery; or

1 (c) for a decision mentioned in section 43 (2)—the applicant for
2 permission to exhume the human remains.

3 (2) The notice must be in accordance with the requirements of the code
4 of practice in force under the *Administrative Appeals Tribunal Act*
5 1989, section 25B (1).

6 **45 Acts and omissions of representatives**

7 (1) In this section:

8 *representative* means—

9 (a) for a corporation—an executive officer, employee or agent of a
10 corporation; or

11 (b) for an individual—an employee or agent of the individual.

12 *state of mind*, of a person, includes—

13 (a) the person's knowledge, intention, opinion, belief or purpose;
14 and

15 (b) the person's reasons for the intention, opinion, belief or
16 purpose.

17 (2) This section applies to a prosecution for any offence against this
18 Act.

19 (3) If it is relevant to prove a person's state of mind about an act or
20 omission, it is enough to show—

21 (a) the act was done or omission made by a representative of the
22 person within the scope of the representative's actual or
23 apparent authority; and

24 (b) the representative had the state of mind.

25 (4) An act done or omitted to be done on behalf of a person by a
26 representative of the person within the scope of the representative's
27 actual or apparent authority is taken to have been done or omitted to
28 be done also by the person, unless the person establishes that

1 reasonable precautions were taken and appropriate diligence was
2 exercised to avoid the act or omission.

- 3 (5) An individual who is convicted of an offence cannot be punished by
4 imprisonment for the offence if the individual would not have been
5 convicted of the offence without subsection (3) or (4).

6 **46 False or misleading statements**

7 A person must not, for or in relation to this Act—

8 (a) state anything to the chief executive, a doctor, the operator of a
9 cemetery or crematorium, or anyone else, that the person
10 knows is false or misleading in a material particular; or

11 (b) omit from a statement made to the chief executive, a doctor,
12 the operator of a cemetery or crematorium, or anyone else,
13 anything without which the statement is, to the person's
14 knowledge, misleading in a material particular.

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

17 **47 Determination of fees**

- 18 (1) The Minister may, in writing, determine fees for this Act.

19 *Note* The *Legislation Act 2001* contains provisions about the making of
20 determinations and regulations relating to fees (see pt 6.3)

- 21 (2) A determination is a disallowable instrument.

22 *Note* A disallowable instrument must be notified, and presented to the
23 Legislative Assembly, under the *Legislation Act 2001*.

24 **48 Approved forms**

- 25 (1) The Minister may, in writing, approve forms for this Act.

- 26 (2) If the Minister approves a form for a particular purpose, the
27 approved form must be used for that purpose.

1 (3) An approved form is a notifiable instrument.

2 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

3 **49 Regulation-making power**

4 (1) The Executive may make regulations for this Act.

5 *Note* Regulations must be notified, and presented to the Legislative
6 Assembly, under the *Legislation Act 2001*.

7 (2) The regulations may make provision in relation to—

8 (a) the protection of cemeteries and crematoria; and

9 (b) the conduct of cemeteries and crematoria; and

10 (c) permits for burials and cremations; and

11 (d) certificates by doctors required for permits for burials and
12 cremations; and

13 (e) any matter about which provision may be made by a code of
14 practice.

15 (3) The regulations may also prescribe offences for contraventions of
16 the regulations and prescribe maximum penalties of not more than
17 10 penalty units for offences against the regulations.

Part 5 **Transitional matters**

Division 5.1 **Assets and liabilities of former trustees**

50 **Meaning of *former trustees* for pt 5**

In this part:

former trustees means The Trustees of the Canberra Public Cemeteries set up under the *Cemeteries Act 1933* (repealed), section 6.

51 **Vesting of assets and liabilities of former trustees in board**

- (1) The assets and liabilities of the former trustees vest in the board.
- (2) If an asset, right or liability that vests in the board is mentioned in a contract, agreement or arrangement, a reference in the contract, agreement or arrangement to the former trustees is, in relation to anything happening or to happen in relation to the asset or liability after the vesting of the asset or liability in the board, a reference to the board.

52 **Evidentiary certificate for vested assets and liabilities**

- (1) The chief executive may certify that an asset or liability has vested in the board under section 51.
- (2) A certificate under subsection (1) is evidence of the matters it states.

53 **Registration of changes in title to certain assets**

- (1) This section applies if—
 - (a) a registrable asset vests in the board under section 51 (Vesting of assets and liabilities of former trustees in board); and

- 1 (b) the board gives the registering authority for the asset a
2 certificate under section 52 (Evidentiary certificate for vested
3 assets and liabilities) for the asset.
- 4 (2) The registering authority must make the entries in the appropriate
5 register kept by the registering authority, and do anything else
6 necessary or desirable to be done, to reflect the vesting of the asset
7 in the board.
- 8 (3) The evidentiary value of a register mentioned in this section is not
9 affected by—
- 10 (a) the making of an entry under this section; or
11 (b) the failure to make an entry under this section; or
12 (c) the failure by the board to give a certificate to the registering
13 authority for a registrable asset.
- 14 (4) In this section:
- 15 *registering authority*, for a registrable asset, means the person who,
16 under Territory law, is required or permitted to enter particulars
17 about the ownership of the asset in a register.
- 18 *registrable asset* means an asset, including an interest in land,
19 particulars of the ownership of which are required or permitted
20 under Territory law to be entered in a register.

21 **54 Proceedings and evidence in relation to vested assets**
22 **and liabilities**

- 23 (1) This section applies in relation to an asset or liability that vests in
24 the board under section 51 (Vesting of assets and liabilities of
25 former trustees in board).
- 26 (2) If a proceeding had been begun in relation to the asset or liability
27 before it vested in the board and the former trustees are a party to
28 the proceeding, the board is substituted for the former trustees as a
29 party to the proceeding.

- 1 (3) If a proceeding could have been begun by or against the former
2 trustees in relation to the asset or liability before it vested in the
3 board, the proceeding may be begun by or against the board.
- 4 (4) The *Limitation Act 1985* applies to a cause of action that accrued to
5 or against the former trustees in relation to the asset or liability as if
6 the cause of action had accrued to or against the board when it
7 accrued to or against the former trustees.
- 8 (5) The court or other entity in which a proceeding is begun or
9 continued by or against the board in relation to the asset or liability
10 may give directions about the conduct of the proceeding.
- 11 (6) Any evidence that would have been admissible for or against the
12 former trustees is admissible for or against the board.
- 13 (7) In this section:
- 14 *proceeding* includes a right of appeal or review (including a right of
15 review under the *Ombudsman Act 1989*) or any other civil
16 proceeding.

17 **Division 5.2 General**

18 **55 Transitional regulations**

- 19 (1) The regulations may prescribe savings or transitional matters
20 necessary or convenient to be prescribed because of the enactment
21 of this Act.
- 22 (2) In particular, the regulations may provide—
- 23 (a) that a permit for burial obtained under the *Canberra Public*
24 *Cemeteries Regulations 1939* is taken to be a burial permit
25 given under the regulations under this Act; or
- 26 (b) that an approval under the *Cremation Act 1966* of an
27 application for the cremation of a body is taken to be a
28 cremation permit given under the regulations under this Act.

- 1 (3) Regulations mentioned in subsection (2) have effect for all
2 purposes, including division 2.4 (Offences about burials and
3 cremations).

4 **56 Modification of pt 5's operation**

5 The regulations may modify the operation of this part to make
6 provision in relation to any matter that, in the Executive's opinion,
7 is not, or is not adequately, dealt with in this part.

8 **57 Expiry of pt 5**

9 This part expires 1 year after it commences.

10 **58 Repeal of Acts**

11 The following Acts are repealed:

12 *Cemeteries Act 1933* No 29

13 *Cremation Act 1966* No 10.

14 **59 Repeal of subordinate laws**

15 The *Canberra Public Cemeteries Regulations 1939* made on
16 30 June 1939 are repealed.

17 **60 Acts amended—sch 1**

18 Schedule 1 amends the Acts mentioned in that schedule.

Schedule 1 Consequential amendments of other laws

(see s 60)

Part 1.1 Land (Planning and Environment) Act 1991

[1.1] Section 4

insert

cemetery includes crematorium.

[1.2] Schedule 1, item 5

substitute

5 cemetery or burial ground

1 to provide for the interment or
cremation of human remains and
the interment of the ashes of
human remains

Part 1.2 Coroners Act 1997

[1.3] Section 12

substitute

12 General functions and jurisdiction of coroner

(1) A coroner has the functions and jurisdiction given by this Act or any other Territory law.

(2) Except as otherwise provided by this Act, a coroner also has all the functions and jurisdiction that were vested in a coroner immediately before the commencement of the *Coroners Act 1956*.

Dictionary

(see s 3)

Note 1 The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

Note 2 In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- appoint
- authorised deposit-taking institution
- chief executive
- chief health officer
- contravene
- exercise
- function.

ADI—see section 9 (1).

board means the Australian Capital Territory Public Cemeteries Board.

bury includes inter human remains in a vault.

cemetery means a public cemetery, private cemetery or private burial ground.

chairperson means the chairperson of the board.

code of practice means a code of practice approved under section 5.

crematorium means a public crematorium or private crematorium.

deputy chairperson means the deputy chairperson of the board.

exhume includes remove human remains from a vault.

human remains means the body, or part of the body, of a dead person (including a stillborn child), but does not include cremated human remains.

improvement notice—see section 15 (3).

- 1 ***maintain*** includes alter, remove, renew and repair.
- 2 ***member*** means a member of the board, and includes the chairperson
3 and the deputy chairperson.
- 4 ***memorialisation*** means the erection of a memorial for a dead
5 person.
- 6 ***operator***, of a cemetery or crematorium, means the person who
7 manages the cemetery or crematorium.
- 8 ***perpetual care fund***—see section 9.
- 9 ***perpetual care trust***—see section 7 (2).
- 10 ***perpetual care trust percentage***—see section 8 (1) (Determination
11 of trust percentage).
- 12 ***private burial ground*** means an area of unleased Territory land
13 reserved under the Territory plan as a burial ground.
- 14 ***private cemetery*** means land leased for the purposes of a cemetery
15 or for the purposes of a cemetery and crematorium.
- 16 ***private crematorium*** means land leased for the purposes of a
17 crematorium or for the purposes of a cemetery and crematorium.
- 18 ***public cemetery*** means unleased Territory land reserved under the
19 Territory plan for use as a cemetery or for use as a cemetery and
20 crematorium.
- 21 ***public crematorium*** means unleased Territory land reserved under
22 the Territory plan for use as a crematorium or for use as a cemetery
23 and crematorium.
- 24 ***stillborn child***—see the *Births, Deaths and Marriages Registration*
25 *Act 1997*, section 4 (1).

Endnotes

Republications of amended laws

- 1 For the latest republication of amended laws, see www.legislation.act.gov.au.

Penalty units

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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