

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Cemeteries and Crematoria Amendment Bill 2005

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Cemeteries and Crematoria Amendment Bill 2005

A Bill for

An Act to amend the *Cemeteries and Crematoria Act 2003*

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

1 **1 Name of Act**

2 This Act is the *Cemeteries and Crematoria Amendment Act 2005*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

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

7 **3 Act amended**

8 This Act amends the *Cemeteries and Crematoria Act 2003*.

9 **4 Codes of practice**
10 **Section 6 (2) (k)**

11 *omit*

12 funds

13 *substitute*

14 trusts

15 **5 Perpetual tenure of graves etc**
16 **Section 8 (1)**

17 *substitute*

18 (1) If the operator of a cemetery or crematorium gives someone the
19 right of burial, or the right of interment of ashes, in a burial place,
20 the right lasts forever.

6 **Division 2.2***substitute***Division 2.2** **Perpetual care trusts and reserves****9** **Establishment of perpetual care trusts**

- (1) This section applies to each cemetery or crematorium (other than a private burial ground).
- (2) A trust (the *perpetual care trust*) is established for the cemetery or crematorium.
- (3) The perpetual care trust is established for—
- (a) the short-term and long-term maintenance of the cemetery or crematorium, including, for example, the maintenance of—
- (i) the grounds of the cemetery or crematorium; and
- (ii) monuments, memorials, tombstones, gravestones, tablets, monumental inscriptions, mausoleums, vaults and graves within the cemetery or crematorium; and
- (iii) walls, fences, paths, roads, drains and other works of the cemetery or crematorium; and

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

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

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

- (5) The public trustee is the trustee of the perpetual care trust.
- (6) The perpetual care trust is taken to be a charitable trust established for public charitable purposes, and is not for profit.

1 (7) A regulation may declare that expenditure of a particular kind or for
2 a particular purpose is, or is not, expenditure for the maintenance of
3 a cemetery or crematorium.

4 (8) Subsection (3) (a) has effect subject to any regulation made for
5 subsection (7).

6 **10 Establishment of perpetual care trust reserve**

7 (1) A perpetual care trust reserve (the *reserve*) is established for the
8 perpetual care trust of a cemetery or crematorium.

9 (2) The reserve is part of the perpetual care trust of the cemetery or
10 crematorium.

11 (3) The reserve is established for the long-term maintenance of the
12 cemetery or crematorium, including, for example, the maintenance
13 of anything mentioned in section 9 (3) (a) (i), (ii) or (iii), or for a
14 purpose approved for section 9 (3) (b).

15 *Note 1* The perpetual care trust reserve amount is not available for any payment
16 without the Minister's written approval (see s 16).

17 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
18 does not limit, the meaning of the provision in which it appears (see
19 Legislation Act, s 126 and s 132).

20 (4) Income received from investments of amounts in the reserve of a
21 perpetual care trust becomes part of the reserve of the trust.

22 (5) The public trustee must keep the reserve in an account that is
23 identifiably separate from the rest of the perpetual care trust.

24 **11 Determination of trust percentages**

25 (1) The Minister must, for each cemetery or crematorium, determine—

26 (a) the percentage (the *perpetual care trust percentage*) of each
27 operator receipt that is to form part of the perpetual care trust
28 of the cemetery or crematorium; and

- 1 (b) the percentage of the perpetual care trust percentage (the
2 *perpetual care trust reserve percentage*) that is to form part of
3 the reserve of the perpetual care trust of the cemetery or
4 crematorium.
- 5 (2) The percentages determined for the cemetery or crematorium must
6 be the percentages that the Minister considers necessary to ensure
7 that there are sufficient funds in the perpetual care trust and the
8 reserve of the perpetual care trust so that the cemetery or
9 crematorium will be adequately maintained in both the short-term
10 and long-term.
- 11 (3) The Minister must tell the operator and the public trustee the
12 percentages determined for the cemetery or crematorium.
- 13 (4) The Minister must, at least once in each planning period for the
14 cemetery or crematorium, review the percentages determined for the
15 cemetery or crematorium.
- 16 (5) The Minister may, by written notice to the operator of the cemetery
17 or crematorium, require the operator to give the Minister stated
18 information or documents that the Minister reasonably needs to
19 make a determination under this section, or to review the
20 percentages determined under this section, for the cemetery or
21 crematorium.

22 **12 Payments into perpetual care trust**

- 23 (1) This section applies to each operator receipt for a cemetery or
24 crematorium.
- 25 (2) The perpetual care trust percentage of the operator receipt forms
26 part of the perpetual care trust of the cemetery or crematorium.

- 1 (3) The operator commits an offence if the operator fails to give the
2 perpetual care trust percentage of the operator receipt to the public
3 trustee as soon as possible after the end of the month in which the
4 operator receives the operator receipt.

5 Maximum penalty: 20 penalty units.

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

7 **13 Planning period**

- 8 (1) The Minister must determine, in writing, the planning period for
9 each cemetery and crematorium.

- 10 (2) A planning period must be no longer than 5 years.

- 11 (3) The Minister must tell the operator of the cemetery or crematorium
12 and the public trustee the planning period determined.

13 **14 Perpetual care trust reserve**

- 14 (1) At the end of a planning period for a cemetery or crematorium, an
15 amount equal to the perpetual care trust reserve percentage for the
16 period becomes part of the reserve of the perpetual care trust of the
17 cemetery or crematorium.

- 18 (2) An operator must take all reasonable steps to ensure that, at the end
19 of the planning period, the amount mentioned in subsection (1) is in
20 the perpetual care trust for the cemetery or crematorium.

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

- 23 (3) For working out the amount equal to the perpetual care trust reserve
24 percentage in the planning period, the perpetual care trust reserve
25 percentage is the most recent percentage determined in the period
26 under section 11 (1) (b) for the cemetery or crematorium.

1 **15 Protection of perpetual care trust**

2 (1) The operator of a cemetery or crematorium commits an offence if
3 the operator applies an amount in the perpetual care trust for a
4 purpose other than a purpose for which the trust is established.

5 Maximum penalty: 50 penalty units.

6 (2) Without limiting subsection (1), an amount forming part of the
7 perpetual care trust of a cemetery or crematorium is not—

8 (a) available for payment of debts of an operator of the cemetery
9 or crematorium; or

10 (b) liable to be attached or taken in execution to satisfy a judgment
11 against an operator of the cemetery or crematorium.

12 (3) Subsection (2) does not apply to the perpetual care trust (other than
13 the perpetual care trust reserve) in relation to a debt incurred by an
14 operator for a purpose for which the trust is established.

15 (4) This section does not impose an obligation on the public trustee to
16 ensure that amounts in the perpetual care trust are applied for a
17 particular purpose.

18 **16 Protection of perpetual care trust reserve**

19 An amount forming part of the reserve of a perpetual care trust is
20 not available for any payment without the prior written approval of
21 the Minister.

22 **16A Accounts and records for perpetual care trusts**

23 (1) The operator of a cemetery or crematorium commits an offence if
24 the operator does not keep accounts and records that show—

25 (a) operator receipts; and

26 (b) amounts paid to the public trustee for the perpetual care trust of
27 the cemetery or crematorium; and

1 (c) amounts withdrawn from the perpetual care trust (including
2 from the reserve of the perpetual care trust) and the purposes
3 for which the amounts are applied.

4 Maximum penalty: 20 penalty units.

5 (2) The operator commits an offence if the operator does not—

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

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

11 (c) keep the accounts and records for at least 7 years after they are
12 made; and

13 (d) keep the accounts and records in accordance with any
14 requirement prescribed by regulation.

15 Maximum penalty: 20 penalty units.

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

17 **16B Audit**

18 (1) The operator of a cemetery or crematorium commits an offence if
19 the operator fails to have the accounts and records mentioned in
20 section 16A audited by a person who is a registered company
21 auditor within the meaning of the Corporations Act as soon as
22 practicable after the end of each financial year.

23 Maximum penalty: 50 penalty units.

24 (2) The operator commits an offence if the operator does not give the
25 auditor's report and audited accounts to the chief executive as soon
26 as practicable after the end of the financial year to which the report
27 relates.

28 Maximum penalty: 20 penalty units.

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

2 **7 New section 52**

3 *insert*

4 **52 Continuation of perpetual care trust**

- 5 (1) To remove any doubt, a perpetual care trust established under
6 section 9 and existing immediately before the commencement of
7 this section, is taken, for all purposes, to be continued under this
8 Act.
- 9 (2) In particular, a perpetual care fund making up the trust continues to
10 be part of the perpetual care trust.
- 11 (3) This section expires immediately after it commences.

12 **8 Dictionary, note 2**

13 *insert*

- 14 • public trustee

15 **9 Dictionary, new definition of *burial place***

16 *insert*

17 *burial place*, for a cemetery or crematorium, means a plot, vault or
18 other place of burial or interment of ashes in the cemetery or
19 crematorium.

20 **10 Dictionary, new definitions**

21 *insert*

22 *long-term*, for maintenance of a cemetery or crematorium, means
23 maintenance of the cemetery or crematorium after it is closed for
24 new burials, interment of ashes or memorialisations.

1 ***operator receipt***, for a cemetery or crematorium, means an amount
2 received by the operator of the cemetery or crematorium for a
3 burial, interment of ashes or memorialisation (including, for
4 example, for purchase and maintenance of a burial place or any
5 service related to the burial, interment or memorialisation) at the
6 cemetery or crematorium.

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

10 **11 Dictionary, definition of *perpetual care fund***

11 *omit*

12 **12 Dictionary, new definitions**

13 *insert*

14 ***perpetual care trust percentage***, for a cemetery or crematorium—
15 see section 11 (1) (a).

16 ***perpetual care trust reserve percentage***, for a cemetery or
17 crematorium—see section 11 (1) (b).

18 ***planning period***, for a cemetery or crematorium, means a planning
19 period determined for the cemetery or crematorium under
20 section 13.

21 ***reserve***, of a perpetual care trust—see section 10 (1).

22 ***short-term***, for maintenance of a cemetery or crematorium, means
23 maintenance of the cemetery or crematorium that is not long-term
24 maintenance.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

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

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