



Australian Capital Territory

Cemeteries and Crematoria Amendment Act 2024

A2024-14

An Act to amend the *Cemeteries and Crematoria Act 2020*

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

1 Name of Act

This Act is the *Cemeteries and Crematoria Amendment Act 2024*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

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

**4 Closing facility—application
Section 54 (1)**

substitute

- (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).

5 Section 54 (7), new note

insert

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

6 Sections 103 and 104

substitute

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.

- (5) In this section:

closed facility means a facility that was closed in accordance with an approval given under section 54.

7 New part 7A

insert

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).

8 New section 116A*insert***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);
 - (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.

9 New part 21

insert

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).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 March 2024.

2 Notification

Notified under the [Legislation Act](#) on 19 April 2024.

3 Republications of amended laws

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

I certify that the above is a true copy of the Cemeteries and Crematoria Amendment Bill 2024, which was passed by the Legislative Assembly on 10 April 2024.

Acting Clerk of the Legislative Assembly

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