

2024

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for City Services)

# Cemeteries and Crematoria Amendment Bill 2024

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## A Bill for

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

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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 2024*.

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 Legislation amended**

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

9 **4 Closing facility—application**  
10 **Section 54 (1)**

11 *substitute*

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

15 (a) section 8 (Right to burial);

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

19 (c) section 9 (Right to interment);

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

22 **5 Section 54 (7), new note**

23 *insert*

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

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1 **6 Sections 103 and 104**

2 *substitute*

3 **103 Authority perpetual care trust—establishment**

- 4 (1) A trust (the *authority perpetual care trust*) is established.
- 5 (2) The authority perpetual care trust may be used only for the  
6 maintenance of a closed facility.
- 7 (3) The authority perpetual care trust is—
- 8 (a) taken to be a charitable trust established for public trust  
9 charitable purposes; and
- 10 (b) not-for-profit.
- 11 (4) A regulation may prescribe a kind of expenditure as expenditure that  
12 is, or is not, expenditure for the maintenance of a closed facility.
- 13 (5) In this section:
- 14 *closed facility* means a facility that was closed in accordance with a  
15 declaration made under section 116A (2).

16 **104 Licensee perpetual care trust—establishment**

- 17 (1) A trust (the *licensee perpetual care trust*) is established.
- 18 (2) The licensee perpetual care trust may be used only for the  
19 maintenance of a closed facility.
- 20 (3) The licensee perpetual care trust is—
- 21 (a) taken to be a charitable trust established for public trust  
22 charitable purposes; and
- 23 (b) not-for-profit.
- 24 (4) A regulation may prescribe a kind of expenditure as expenditure that  
25 is, or is not, expenditure for the maintenance of a closed facility.

- 1 (5) In this section:  
2 *closed facility* means a facility that was closed in accordance with an  
3 approval given under section 54.

4 **7 New part 7A**

5 *insert*

6 **Part 7A Maintenance of closed facilities**

7 **112A Territory responsible for maintenance of closed facilities**

- 8 (1) The Territory is responsible for maintaining each closed facility to an  
9 acceptable standard.

10 **Examples—maintenance**

- 11 • maintenance of the grounds of the facility  
12 • maintenance of mausoleums, vaults and graves in the facility  
13 • maintenance of walls, fences, paths, roads and drains of the facility

- 14 (2) However, the Minister may authorise an entity to be responsible for  
15 maintaining a closed facility on behalf of the Territory.

- 16 (3) An authorisation is a notifiable instrument.

- 17 (4) If the expenditure required for the maintenance of a closed facility  
18 exceeds the amount available in the perpetual care trust for the closed  
19 facility, the Territory is responsible for the additional expenditure  
20 required for the maintenance of the closed facility.

- 21 (5) In this section:

22 *closed facility* means a facility that was closed in accordance with—

- 23 (a) an approval given under section 54; or  
24 (b) a declaration made under section 116A (2).

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**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

1 (c) any other requirements prescribed by regulation in relation to  
2 the application or closure has been met.

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

5 (4) A declaration under subsection (2) is a notifiable instrument.

6 **9 New part 21**

7 *insert*

8 **Part 21 Transitional—Cemeteries and**  
9 **Crematoria Amendment Act 2024**

10 **215 Continuation of perpetual care trusts**

11 (1) The authority perpetual care trust, established under section 103 as in  
12 force immediately before the commencement day, is taken to be the  
13 authority perpetual care trust established under section 103 on the  
14 commencement day.

15 (2) The licensee perpetual care trust, established under section 104 as in  
16 force immediately before the commencement day, is taken to be the  
17 licensee perpetual care trust established under section 104 on the  
18 commencement day.

19 (3) In this section:

20 *commencement day* means the day the *Cemeteries and Crematoria*  
21 *Amendment Act 2024*, section 3 commences.

22 **216 Expiry—pt 21**

23 This part expires 5 years after the day it commences.

24 *Note* A transitional provision is repealed on its expiry but continues to have  
25 effect after its repeal (see [Legislation Act](#), s 88).

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## Endnotes

**1 Presentation speech**

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

**2 Notification**

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

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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