

Australian Capital Territory

Cemeteries and Crematoria Code of Practice in the ACT 2003 (No. 1)

Disallowable Instrument DI 2003—268

made under the

Cemeteries and Crematoria Act 2003, section no 6

I determine that the attached Code of Practice titled Cemeteries and Crematoria Code of Practice in the ACT is made under section 6 of the *Cemeteries and Crematoria Act 2003* with effect from 27 September 2003.

Bill Wood
Minister for Urban Services
12 September 2003

Cemeteries and Crematoria

Code of Practice

in the ACT

2003

Background

This Code of Practice has been developed under section 6 of the *Cemeteries and Crematoria Act 2003*. The Code of Practice is a disallowable instrument under the *Legislation Act 2001*, which must be notified and presented to the Legislative Assembly.

This Code of Practice outlines the minimum operating requirements that apply to all cemeteries and crematoria in the ACT, whether public or private.

Definitions

In this Code of Practice:

Act means the *Cemeteries and Crematoria Act 2003* and its regulations.

Burial means the burial of human remains in the earth or the placement of human remains in a vault.

Cemetery means a public or private cemetery.

Crematorium means a public or private crematorium.

Grave means any burial place formed in the ground by excavation, and without any internal wall of brickwork or stonework, or any other artificial lining.

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.

Interment means interment of cremated human remains or a non-viable foetus in a specific part or area of a cemetery or crematoria.

Operator of a cemetery or crematorium means the person who manages the cemetery or crematorium.

Vault means a place for the burial or entombment containing internal walls of brickwork or stonework, or any other artificial lining.

Code of Practice

Plan of Cemeteries and Crematoria

An operator of a cemetery or crematorium must prepare a plan showing the layout and detailed subdivision of the cemetery or crematorium and make that plan available to the public.

Right of Burial or Interment

A right of burial and a right of interment of ashes includes the right to decide whether human remains or cremated human remains are buried or interred in a specific location in a cemetery or crematorium; the right to decide if a monument or memorial is placed or erected on the site; and the responsibility for any maintenance of the monument or memorial.

When the operator of a cemetery or crematorium gives someone the right of burial or the right of interment of ashes in the cemetery or crematorium, the right lasts forever. The operator of the cemetery or crematoria will give the person a certificate stating that they have exclusive right of burial or right of interment of ashes and list the particular place that the right is for. The right of burial or right of interment of ashes is passed down to descendants of the person who purchased the right of burial or right of interment of ashes. It is the responsibility of the holder of the right of burial or right of interment of ashes to inform the operator of the cemetery or crematorium of any change in contact details. For example, if the holder of a right of burial dies and the right of burial is passed to one of their children, that child must contact the operator of the cemetery and inform them that they are the new holder of the right of burial.

If no human remains (including foetal remains and cremated remains) are buried or interred in a place where a right of burial or right of interment of ashes has been granted within 60 years, then the operator of the cemetery or crematorium may revoke the right of burial or right of interment. The exception to this is when a person purchases a family plot (or group of plots). If one plot in the group of plots has human remains buried or interred in it, the operator of the cemetery or crematorium may not revoke the right of burial or right of interment for that group of plots.

The operator of a cemetery or crematorium must follow the steps below to revoke a right of burial or right of interment:

1. The operator must attempt to contact the holder of the right of burial or right of interment of ashes. If the holder of the right of burial or right of interment of ashes is contacted, see step 6.
2. If the holder of the right of burial or right of interment of ashes cannot be contacted because they are dead, the operator must attempt to contact a

- descendant of the person who purchased the right of burial or right of interment of ashes.
3. If the operator cannot contact either the person or one of their descendants, they must advertise in *The Canberra Times* that they plan to revoke the right of burial or right of interment of ashes for a particular location, unless the person holding the right of burial or right of interment of ashes for the location or one of their descendants contacts the operator within 4 weeks.
 4. If no one contacts the operator about the right of burial or right of interment of ashes then the operator may revoke the right of burial or right of interment of ashes after the 4 week period has elapsed.
 5. If the person who held a right of burial or right of interment of ashes that has been revoked tries to use the right of burial or right of interment of ashes at a later time, the operator must offer them either: an equivalent right of burial or right of interment of ashes; or a compensation payment of half of the fee for the equivalent right of burial or right of interment of ashes.
 6. If contact is made with the holder of the right of burial or right of interment of ashes or one of their descendants then:
 - (a) the person may choose to sell the right of burial or right of interment of ashes to the operator for half of the fee at the time the sale takes place for an equivalent right of burial or right of interment of ashes; or
 - (b) the person may choose to retain the right of burial or right of interment of ashes.

A person cannot have a burial site reopened for the purpose of an additional burial in the site unless he or she is the holder of the right of burial for that site, or produces the written consent of the holder, or the lawful successor of the holder.

An application for right of burial or right of interment may only be granted to the person who wishes to use that right. An undertaker or funeral director may not make application for, or on behalf, of a person. The operator of a cemetery or crematorium may refuse to set apart and grant to any person the right of burial or right of interment of ashes in more than one site. However, family estates, where a person may purchase at least two adjacent sites with multiple burials per grave, are allowed.

The operator may, on being satisfied that a certificate of right of burial or right of interment of ashes has been lost or destroyed, issue a duplicate certificate.

Maintenance of graves and vaults

As a general rule, the operator of a cemetery or crematorium is not responsible for the maintenance of any grave, monuments or memorials. The holder of the right of burial or right of interment is responsible for the maintenance of a grave, monument or memorial

unless they have paid the operator of the cemetery or crematorium a fee for the operator to maintain them. If the holder of the right of burial or right of interment does not maintain a monument or memorial, then the operator can remove any structures, which they deem a safety risk.

Maintenance of cemeteries and crematoria

The operator of the cemetery or crematorium must maintain the grounds of the cemetery or crematorium in a safe, clean and orderly condition.

Keeping application records

The cemetery or crematorium operator is required to store application records for at least 20 years. After 20 years from the date an application record was created, it must be available for public access if there is a particular request in relation to that record. Records may be accessed during the first 20 years after application in special situations (eg. the restoration of war graves). If the operator does not have room to continue storing these application records, the operator may submit the documents to the Chief Executive of the relevant ACT Government department for storage. The Chief Executive must retain these records of burial, interment or cremation because they have enduring value for genealogical research for future generations. Records of interest to the Office of Australian War Graves (OAWG) should be marked appropriately as the OAWG are responsible for the perpetual care of these sites.

When a cemetery or crematorium operator ceases to be the operator of a particular cemetery or crematorium, or the cemetery or crematorium is closed; the operator shall deposit the registers and all records with the Chief Executive, who may then either arrange for storage of these documents or transfer them to the next operator.

After application records become open to public access, a copy of the records must be made available to a person on payment of reasonable copying costs.

Design and construction of monuments etc.

A person shall not erect any building, monument, memorial, tombstone, gravestone, tablet, monumental inscription, mausoleum, vault, kerbing, railing or other structure in a cemetery or crematorium unless the plans and particulars have been submitted to and approved in writing by the operator. The operator (in accordance with plans and particulars) must approve construction of the structure.

Construction of vaults, mausoleums and other buildings above ground need development approval. In addition, any monuments, memorials, tombstones, gravestones, or tablets that are greater than 1.8 m high (the measurement does not include the foundation), will need development approval under the *Land (Planning and Environment) Regulations 1992* (ACT). The operator must not approve the erection of any building, monument, memorial etc. that needs development approval unless it has development approval.

Removal, alterations or repair of monuments, inscriptions etc.

The operator may remove, alter or repair any building, monument, memorial, tombstone, gravestone, tablet, monumental inscription, mausoleum, vault, kerbing, railing or other structure in a cemetery or crematorium; or any inscription on the structure, that is, in their opinion, dangerous, unsightly, or in disrepair, or has not been erected in accordance with the plans and particulars approved by the operator. Costs will be borne by the holder of the Right of Burial or Interment.

Planting of trees, covering of graves, memorial areas etc.

The operator of a public cemetery or crematorium may set apart an site as a lawn burial or interment area. In a lawn burial or interment area, a person must not erect or place any monument, tablet, gravestone, kerbing, railing, vessel, container (eg. glass vases), statue, candle or any structure other than the standard tablet approved by the operator.

In all other areas, a person must not, unless the operator of a cemetery or crematorium agrees in writing: plant a tree or shrub in a cemetery or memorial area; cover a grave with tiles, cement, chips or any other covering; place a vessel, statue or container on a grave; or place an inscription on a structure.

The Board or operator of a cemetery or crematorium may set aside areas for commemorative purposes that do not involve the burial or interment of human remains.

Multiple burials in a grave or burial site

There may be multiple burials in a burial site in a cemetery. There must be at least 150mm between the top of one coffin or casket and the bottom of the next. The upper surface of a coffin or casket must be at least 900mm below the natural surface level of the soil where it is buried or have a 75mm concrete slab on top of the coffin or casket.

A person can not have a site reopened for the purpose of an additional burial unless they are the holder of the Right of Burial for that site, or they produce the written consent of the holder or, if the holder is dead, the written consent of the lawful descendant of the holder.

Operator not to interfere with burial ceremonies

The operator of the cemetery or crematorium or the employees of the operator are not permitted to interfere with the performance of religious ceremonies associated with a burial service.

Rights of the head of religious denominations or other recognised group in relation to the portion of a cemetery or crematorium set apart for that group

The recognised head of any religious denomination or other group with a specific part of a cemetery or crematorium dedicated for it under section 20 of the *Cemeteries and Crematoria Regulations 2003* has the following rights:

1. They may prohibit the performance of a service within the part of the cemetery or crematorium set apart for their group by giving a written notice to the operator. On receipt of this notice, the operator must prevent the holding of services in that area.
2. They may object to a burial or interment or a grant of exclusive right of burial or interment in the part of a cemetery or crematorium set apart for their group by writing to the operator. The operator must inform the applicant that an objection has been received and invite the applicant to submit a response to the objection. The operator must consider the objection and the response to the objection when they are making a decision about whether to allow the burial or interment or granting the exclusive right of burial or interment. The operator may also consult with other cultural leaders within the community or nationally when appropriate. If the objection remains valid, the operator must refuse to allow the burial or interment or grant the exclusive right of burial.
3. They may object to the placing of any monumental design or inscription within the part of the cemetery or crematorium set apart for their group. The operator must inform the applicant that an objection has been received and invite the applicant to submit a response to the objection. The operator must consider the objection and the response to the objection when they are making a decision about whether to allow the design or inscription. If the objection remains valid the operator must prevent the design or inscription from being placed in that area, or if it is already in the area, ask the owner of the right of burial or right of interment to remove the design or inscription.

Content of coffins delivered for cremation

Coffins must be constructed principally of timber and/or wood derivatives (eg. chipboard). Cardboard and wax coated cardboard coffins are not acceptable for cremation as is any coffin constructed of metal or having a metal internal liner, or other metal insert.

Acceptable content

- (a) Coffin lining (must not be constructed of materials containing Poly-vinyl chloride (PVC)).
- (b) Sheets, pillows, mattress (must not contain PVC and the mattresses must not be inner spring or latex-based rubber mattresses).
- (c) Body wrap/bag (must not contain PVC).

- (d) Shroud.
- (e) Clothing must not contain outer garments made wholly or principally of latex-based rubber or plastic (eg. wet weather gear, fishing waders).
- (f) Footwear. Shoes, sandals, slippers etc are acceptable, although rubber/plastic soles or uppers are not desirable. Work boots, military boots, gumboots or similar are not acceptable.
- (g) Embalming or temporary preservation fluid.
- (h) Radio-active injectable solutions.
- (i) Metal joints, pins, and plates.
- (j) Silicon implants.
- (k) Dental work including false teeth.
- (l) Prosthetic limbs, callipers, plaster casts. Funeral Directors must discuss these with the cremation authority to determine whether the particular bodily appliance will be acceptable and, if appropriate, the extent of body covered by a plaster cast.
- (m) Spectacles and jewellery are not recommended.
- (n) Handbags are not recommended but acceptable if they do not contain PVC and they do not exceed 300 mm x 200 mm x 100 mm.
- (o) A single book of maximum dimensions 200 mm x 125 mm x 40 mm.
- (p) Photographs without metal frames or glass.
- (q) Any other items comprised entirely of readily combustible materials that do not explode when subjected to heat or upon combustion generate temperatures, emissions, or residues that are unacceptable to the crematorium operator.

Unacceptable Content

- (a) Cardiac defibrillator, battery powered.
- (b) Cardiac pacemaker, battery powered.
- (c) Drug infusion pump.
- (d) Irradiated metal pellets.
- (e) Metal walking stick.
- (f) Any item containing Poly-vinyl chloride (PVC) or Latex-based rubber.
- (g) Any item containing metal or glass, other than those listed as acceptable content.
- (h) Pathological waste (including infection-control gear, syringes, gauze) and materials used in preparation of the body for cremation.
- (i) Fluid in any container, including a bottle or can of alcohol.
- (j) Any battery (whether or not implanted in the body), pressurised spray can and any other item, which explodes when, subjected to heat.
- (k) The uncremated body of any animal or bird.
- (l) Any book, paper or paper products, other than those listed in acceptable content, and shredded paper in pillows and mattresses.
- (m) Plastic and metal handles on coffins (these are to be removed before cremation)
- (n) Any other item that explodes when subjected to heat or upon combustion generates temperatures, emissions, or residues that are unacceptable to the crematorium operator.

At the time of booking the cremation, the crematorium operator should be made aware if the temperature of the body will be less than 4 degrees Centigrade when it is delivered to the crematorium.

Handling of cremated remains

Crematorium staff should not open coffins. If the person who completed the application for cremation requests that the coffin be opened after the crematorium has accepted the coffin, the relevant funeral director should be contacted.

The body and subsequent remains must be correctly identified throughout the cremation process. For example, this may be done by the coffin nameplate, code, tag or other form of identification being placed in a keeper on an external panel of the cremator to indicate in which compartment the relevant remains are located, or a non-combustible metal tag or disc, stamped with a unique number previously registered on the cremation documentation of the deceased, which accompanies the coffin and body into the cremator.

Each body should be cremated separately except for the cremation of foetuses as a group in accordance with the Cemeteries and Crematoria Regulations 2003. Other exceptions require prior written approval from the cremation authority. Examples of possible exceptions are: (1) The bodies of two children of the same family who died at the same time; (2) For a mother and her baby who both died at childbirth; or (3) multiple body parts (which have been used for scientific experimentation or teaching purposes).

The holder of the right for interment can apply in writing to the operator of the crematorium to alter the location or for the removal of remains from the site. Disruption of remains can only occur by crematorium staff with express written permission of the holder of the right of interment.