

2020

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY
Cemeteries and Crematoria Bill 2019**

REVISED EXPLANATORY STATEMENT

**Presented by
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Introduction

This explanatory statement relates to the Cemeteries and Crematoria Bill 2019 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the ACT Legislative Assembly.

This explanatory statement must be read in conjunction with the Bill and Government amendments moved by the Minister for City Services. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative statement of the meaning of a provision, this being a responsibility of the Courts.

Background

The Bill has been developed to ensure the ACT has a best-practice regulatory framework for cemeteries and crematoria, and any other future facility, and to recognise and promote the diverse range of religious and cultural needs and preferences of the ACT community.

In 2017 the Environment and Transport and City Services Standing Committee of the Legislative Assembly held an Inquiry (the Inquiry) into the management of cemeteries in the ACT. The Inquiry developed a report with 12 recommendations including ensuring religious and cultural needs can be met.

Overview of the Bill

In summary, the Bill:

- a) Sets out that the objects of the Act are to provide a financially sustainable model for management of cemeteries and crematoria that recognises, and provides for, the diverse needs of the community by:
 - i) recognising the rights of people to dignified and respectful treatment of their human remains and the remains of their loved ones;
 - ii) respecting diverse burial, cremation and interment practices, cultural practices and religious beliefs of people; and
 - iii) promoting financially sustainable facilities and practices for burying and cremating human remains.
- b) Establishes a dictionary that assists in interpretation of the Act.
- c) Creates a framework to ensure that community needs and preferences, in particular religious and cultural needs, can be met. This is achieved by:
 - i) requiring operators to consider community needs in operating a facility; and

- ii) making it an offence for operators to refuse any reasonable request made on the basis of religious or cultural needs.
- d) Establishes a licensing framework for all cemetery and crematoria facilities that:
 - i) requires all facilities to have a licence to operate and the regulator will have the ability impose conditions on a licence;
 - ii) creates an ability to transfer or amend a licence;
 - iii) creates a process to close a facility to further services or surrender a licence for a facility; and
 - iv) creates offences around not complying with the conditions of a licence or operating without a valid licence.
- e) Creates a flexible framework that sets out the minimum operational standards for facilities but also encourages best-practice, including requiring operators to:
 - i) keep the facility clean and tidy, and maintain the facility to a reasonable standard;
 - ii) keep a plan of the facility and ensure that all interment (burial and interment of cremated remains) sites have a unique identifying number that relates to the plan of the facility;
 - iii) not interfere with interment cemeteries;
 - iv) keep and create standard operating procedures for application processes and complaint handling;
 - v) for facilities that do cremations, keep standard operating procedures for the transport and handling of bodily remains prior to cremation; how cremations occur; what occurs with cremated remains after the cremation occurs; the process for interring cremated remains; and the process for returning cremated remains to the applicant;
 - vi) for facilities that do burials, keep standard operating procedures for the transport and movement of bodily remains and the exhumation of bodily remains, including for the purpose of deepening the remains to allow another burial to occur in the same site and the burial of bodily remains;
 - vii) review standard operating procedures at least once every two years; and
 - viii) set aside separate sections of the facility for particular religious or cultural groups.
- f) Establish the Cemeteries and Crematoria Authority that:
 - i) has the same functions as the current Authority which are to efficiently and effectively manage the operations of the facilities for which they are appointed as operator by the Minister;
 - ii) allows the Minister to prescribe other functions for the Authority, such as building and operating a crematorium and monitoring and reporting on community needs and preferences. This will allow the

new Authority to have a strategic role where necessary and appropriate; and

- iii) require the Authority to have at least two members who represent different religions or cultures and raise the minimum number of members from four to six.
- g) Creates an effective regulatory and enforcement framework that:
 - i) creates a regulator role and the ability to appoint authorised people for the Act;
 - ii) gives the ability to give directions about compliance with the Act, enter into enforceable undertakings and search premises; and
 - iii) creates new offences for non-compliance with the Act or a direction, including some strict liability offences where consistent with the *Guide for Framing Offences*.
- h) Allows the Minister to make codes of practice under the Act and set fees.
- i) Create a model that is financially sustainable including:
 - i) create a new financial arrangement for long term maintenance of facilities in the form of a trust;
 - ii) allow the operator of public facilities (the authority) to manage a single trust for all public facilities, with funds being used across multiple facilities; and
 - iii) require operators to manage short term maintenance without a trust (currently managed through the Perpetual Care Trust under the Act).
- j) Requires operators to keep records including registers that:
 - i) detail all pre-sold interment sites, including the contact details (name, phone number, mailing address, email address) of the right holder;
 - ii) for all interments the type of remains interred (bodily or ashes), detail of the person interred (full name, date of birth (if known), date of death), contact details of the person who has the right to make decisions about a site, location of interment on a map including a unique identifying location number, GPS coordinates, whether there are any other interments in the site;
 - iii) for cremations the date of the cremation and a unique identifying number for the remains, the status of the remains after cremation including whether the ashes were interred or returned to the applicant;
 - iv) for the interment of cremated remains, whether the whole, part or no ashes were interred;
 - v) require records to be kept in a secure ICT database; and

- vi) sets out clear and transparent processes for applying for a right to burial or interment and for applying for burials, cremations and interments and for transferring rights.

Human Rights Implications

Directorates are obliged under the *Human Rights Act 2004* (HR Act) to act and make decisions consistently with human rights. This includes ensuring any amendments result in a law that is proportionate – that is, that it limits rights in the least restrictive way possible to achieve the purpose of the legislation. This includes considering if any amendment is going to have a disproportionate impact on low income earners or other vulnerable people, engaging the right to equality under section 8 of the HR Act.

During the development of the Bill due regard was given to its compatibility with human rights as set out in the HR Act. The amendments introduced in the Bill give effect to a contemporary and best-practice cemeteries and crematoria regulatory scheme.

As a law of the Territory, the Bill may be seen as engaging the following human rights in the HR Act:

- the right to freedom of expression and belief;
- the right to be presumed innocent until proven guilty; and
- the right to privacy.

An assessment of the Bill against section 28 of the HR Act is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the relationship between the limitation and its purposes; and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Right to freedom of expression and belief

Section 14 of the HR Act provides a right to freedom of religion and belief and states that no one can be coerced in a way that would limit their freedom to have or adopt a religion or belief in worship, observance, practice or teaching. Many religions and cultures and specific practices that relate to the disposal and interment of the dead and access to services that meet these specific needs supports this human right.

The 2018 community engagement process told us more than 1 in 10 people who have a religious or cultural need in relation to burial or cremation do not have this need met by the services in the ACT, and an additional 28% of people neither agree nor disagree that their need is met. Meeting community

needs and preferences was a key objective in reviewing the Cemeteries and Crematoria Act. Specifically, the Bill provides this human right by:

- updating objects of the Act to include a reference to meeting community needs and preferences;
- requiring operators of facilities (cemeteries and crematoria) to consider religious needs and preferences operating a facility;
- retain an offence for an operator to interfere with a religious or cultural ceremony; and
- including a new provision that makes it an offence for the operator of a facility to refuse any reasonable request made on religious or cultural grounds.

This will provide a framework that will have an overall positive impact on the human right to freedom of belief and expression.

Right to be presumed innocent until proven guilty

Strict liability offences engage the presumption of innocence under section 22 (1) of the HR Act by removing the fault elements from an offence. This means an accused will be automatically presumed guilty unless they successfully raise the defence of reasonable and honest mistake. A number of new strict liability offences have been proposed in this RIS, with most affecting the operator of a facility.

The offences that are proposed to be strict liability affecting an operator of a facility all have a simple yes / no criteria and allow for an escalating and proportionate offence framework.

There will be some strict liability offences that apply to the community more generally, specifically creating a strict liability offence for damaging a headstone or memorial.

Right to privacy

Some provisions proposed in this RIS may engage the right to privacy (section 12 of the HR Act) as there is a greater responsibility on operators to collect information about a person who is applying for a service. Specifically, operators will be required to collect the full name, postal address, telephone number and email address of a person who applies for a service, and then becomes a 'right holder'. The collection of this information is considered necessary to ensure that the right holder has a fair opportunity to make decisions about their right in the future. For example, a person who is the right holder for interred cremated remains can make a decision about whether those interred remains can be moved in the future, and an operator is required to capture and store this to be able to inform the right holder of their rights.

Climate Change Impacts

The Bill has no identifiable climate change impacts.

OUTLINE OF PROVISIONS OF THE BILL

PART 1 PRELIMINARY

Section 1 Name of the Act

This section sets out that the name of this Act is the *Cemeteries and Crematoria Act 2019*.

Section 2 Commencement

This section sets out that the naming and commencement provisions in the Act commence on the day of notification, while all other provisions in the Act commence on a day or days fixed by the Minister for City Services by written notice within six months from the day of notification. A single day for these provisions or separate days can be fixed for the commencement of different provisions.

Any provisions that have not commenced within six months of the day of notification will commence automatically on the first day after that six month period.

This is to allow for the development of the new licensing scheme for facilities, as various other provisions throughout the Act are intended to apply to a facility that is licensed under the Act, such as right to burial applications. Six months is considered an appropriate amount of time for a new licensing scheme to be established as there is only one single facility in the ACT that this would apply to. This is because the cemeteries and crematoria authority will not be required to hold a licence, leaving only the privately owned crematorium in Gungahlin to acquire a licence.

Section 3 Dictionary

This section states that the dictionary at the end of the Act is part of this Act.

Section 4 Notes

This section sets out that a note in the Bill is explanatory and does not form part of the Bill.

Section 5 Offences against this Act – application of criminal code etc

This section sets out that other legislation applies in relation to offences against this Act.

Section 6 Objects of the Act

This section sets out that the main object of the Act is to provide a financially

sustainable model for the management of cemeteries and crematoria that recognises, and provides for, the diverse needs of the community.

This section also sets out how this is to be achieved, specifically the objective is to be achieved by:

- recognising the rights of people to dignified and respectful treatment of their human remains and the remains of their loved ones; and
- respecting the diverse burial, cremation and interment practices, cultural practices and religious beliefs of people. Access to burial and cremation services that meet a person's needs is an essential part of supporting the human right to freedom of belief. This also addresses a key issue identified in the 2018 engagement process which told us that 1 in 10 people who have a religious or cultural need in relation to burial or cremation do not have that need met currently; and
- promoting financially sustainable facilities and practices for burying and cremating human remains and interring cremated remains.

PART 2 RIGHT TO BURIAL OR INTERMENT

Section 7 Definition

This section sets out a definition for this part.

Section 8 Right to burial – application

This section sets out that a person can apply to the licensee of a cemetery for a right to burial of human remains at the cemetery. The application must include a minimum level of information (for example, the kind of burial sought, preferred burial area and contact details of the applicant). The licensee can refuse to consider an application if it does not include this information and can only approve an application if a burial site of the kind applied for will be available.

A licensee must give an applicant a burial certificate if an application is accepted. The certificate must include a minimum level of information (for example the unique identifying number for the right, the kind of burial site) and a statement to the effect that, if a right is not exercised within 60 years, the right will end.

Section 9 Right to interment

This section sets out that a person can apply to the licensee of a facility for a right to inter cremated remains at the facility and a certificate can be issued. The application must include a minimum level of information (for example the name and contact details of the person applying for the right and the kind of interment facility sought). A licensee can refuse to consider an application if it does not include the required information. The licensee can only approve an application if an interment site of the kind applied for will be available.

If the licensee of a facility gives a right to interment, the licensee is required to

give an applicant a right of interment certificate. The certificate must include a minimum level of information (for example the unique identifying number for the right, the kind of interment site) and a statement to the effect that, if a right is not exercised within 60 years, the right will end.

Section 10 Right to burial and right to interment – transfer

This section provides a right for someone who has a right of burial at a cemetery or right to interment at a facility to apply to the licensee to transfer the right to another person. The application must include a minimum level of information (for example the name and contact details of the person who would receive the transferred right). The licensee can refuse to consider a request if it does not include the minimum information required.

A licensee can only accept the application if a right to burial under the certificate (issued under section 8) or a right to interment under the certificate (issued under section 9) has not been exercised (i.e. that no burials or interments in the site have occurred). This provision has been included to ensure that once a burial or interment occurs in a site no further burials or interments are permitted unless it is at the request of the right holder. This will avoid possible cases where two people who were not known to one another are buried or interred in the same site. If a licensee accepts an application to transfer a right of burial or interment, the licensee is required to attach a written amendment to the burial or interment certificate. The licensee must tell the transferor that the licensee is transferring the right and the day of the transfer. The licensee must tell the transferee that the right of burial or interment has been transferred to them and give them a copy of the right and amendment.

Section 11 Right to burial and interment – term

This section sets out the term of burials and interments. For both burials and interments, the right starts on the day the licensee of a facility gives a burial certificate or interment certificate to the applicant. If the right is not exercised within 60 years the right ends.

Section 12 Right to burial and right to interment – notice about end of term and revoking right

This section applies when a licensee has given a right of burial or a right of interment and the right has not been exercised within 58 years of the right being given. In these cases, the licensee must take all reasonable steps to contact the right holder and tell them the right will end in 24 months (the notice period). The requirement to contact right holders extends to any new right holder if the right has been transferred.

If the licensee has not heard from the right holder four weeks before the end of the notice period, the licensee is required to give the public notice that the right will be revoked at the end of the notice period.

If the right holder contacts the licensee within the notice period, they may

retain the right for the remaining term or forfeit the right to the licensee for half of the fee for an equivalent right at the time of the forfeiture.

The licensee may revoke the right if they have taken the steps above and the right holder has not been in contact and the notice period has ended.

PART 3 BURIAL, CREMATION, INTERMENT OR EXHUMATION

Division 3.1 Definition

Section 13 Meaning of certification document – pt 3

This section sets out a definition of a certification document for this part.

Division 3.2 Transporting human remains

Section 14 Offence – transporting human remains

This section creates an offence for transporting human remains if they are not in an acceptable container or wrapping. This is a strict liability offence with a maximum penalty of 50 penalty units.

Strict liability offences must not be subjective in nature and must have a yes / no criteria. To assist in interpreting whether an offence has been committed under this section it is important to refer to the definition of 'acceptable container or wrapping' which is defined in section 39 of the Act. Section 39 allows the Chief Health Officer to approve a container or wrapping and an approval is a notifiable instrument. In determining whether an offence has been committed under this section an authorised officer would refer to the notifiable instrument made under section 39 that sets out approved containers and wraps.

This offence will apply equally to a licensee operating a facility and a member of the general community. It is expected that the community in general would reasonably expect that the transport of a deceased person to be regulated. It is a defence against this offence, and all strict liability offences for honest and reasonable mistake of fact.

Division 3.3 Burial

Subdivision 3.3.1 Burial other than at cemetery

Section 15 Burial other than at cemetery – application

This section sets out a process for a person to apply to the regulator to bury human remains at a place other than a cemetery. The application must include a minimum level of information. The regulator can refuse to consider an application that does not include the minimum required information.

A burial at a place other than a cemetery can only be approved if the regulator is satisfied that it would not be contrary to the interests of public health. If an application is refused the regulator must tell the person in writing the reasons

for the refusal.

If approval is given it may be subject to conditions.

Section 16 Offences – burial other than at cemetery

This section makes it an offence to bury human remains other than at a cemetery unless the person has an approval under section 15.

This section also creates an offence in the case where someone has approval to bury human remains outside of a cemetery, issued under section 15, and either does not bury remains in accordance with the permission or does not comply with a condition of the approval.

This offence is important to ensure that burials only occur in line with minimum standards. Burial of human remains should only occur in designated cemeteries unless approval has been given for a burial outside of these areas. This is required to ensure that burials do not occur in inappropriate places which would affect future land use (for example, burial of human remains in a residential area would impact what can occur on that land in the future).

The maximum penalty for these offences is 100 penalty units.

Subdivision 3.3.2 Burial at cemetery

Section 17 Burial at cemetery – application

This section allows a person to apply to the licensee of a cemetery for human remains to be buried there. The application must be in writing and include a minimum level of information. If the application does not include all the required information the licensee can refuse to consider the application.

If the deceased person already has a right of burial at the cemetery (a right to burial certificate) the licensee must accept the application. If the deceased person is not already covered by a right of burial at the cemetery, and if the licensee accepts the application, the licensee must give a right of burial certificate covering that person.

If a licensee agrees to an application under this section, they must schedule a day and time for the burial and allocate a burial site that is on the plan for the cemetery and is of the kind mentioned in the right to burial covering that person. That is, if the right is for a special section of the cemetery the burial must occur in that section. The licensee must tell the person in writing of the agreement to the burial, including the day and time of the burial.

The licensee is also required to allocate a unique identifying number that identifies the burial.

Section 18 Offence – burial at cemetery

This section makes it an offence for the licensee of a cemetery to bury human remains except in accordance with this section. This section specifically

requires burials to occur:

- in an acceptable container or wrapping
- with a certification document or an approval issued under section 40
- if the remains are buried in a vault, the remains are embalmed and sealed in a corrosion resistant container
- in accordance with:
 - the minimum standards for burial of human remains prescribed by regulation
 - the minimum standard operating procedures for the cemetery
 - if a code of practice applied, the code of practice
 - anything else prescribed by regulation.

This offence is important to ensure that all burials occur in a uniform way and in accordance with minimum standards. This is needed from a health perspective to ensure that human health and the environment will not be adversely affected by a burial, and to ensure the orderly development of cemeteries.

An offence against this section is a strict liability

offence with a maximum penalty of 50 penalty units.

Section 19 Offence – refusal or interference with burial activities related to religion, cultural group, etc

This section makes it an offence for a licensee of a facility to refuse a request in relation to a burial at the facility that is related to the deceased person's religion, cultural group or other special category (e.g. babies, children or ex-military) and is reasonable in the circumstances. It also makes it an offence for the operator to interfere with the activities being carried out.

This offence is important to support the human right to freedom of belief. Many religious and cultural groups have particular needs in relation to burial or cremation that must be observed. This offence will ensure that licensees of facilities cannot refuse a reasonable request made on religious or cultural grounds and cannot interfere with a religious or cultural activity.

The maximum penalty for this offence is 50 penalty units.

Section 20 Offence – burial to conceal offence

This section makes it an offence for a person to bury human remains to conceal the commission of an offence. The maximum penalty for this offence is 1000 penalty units, imprisonment for 5 years, or both.

This high penalty is considered justified given the serious nature of burying a body to conceal an offence. The penalty could only be imposed by a court.

Section 21 Burial – term

This section sets out that a term of burial of human remains starts on the day the remains are buried and continues in perpetuity.

Division 3.4 Cremation

Section 22 Cremation – application

This section allows a person to apply to the licensee of a crematorium for the cremation of human remains. The application must be in writing and include a minimum level of information (for example the details of the deceased person and date of birth, certification document etc.). A licensee can refuse to consider an application if it does not include the minimum information.

The licensee can only accept the application if satisfied that the deceased person did not leave instructions that they should not be cremated, that the cremation has not been prohibited (under section 24) and that the container for the cremation is an acceptable container or wrapping. If the licensee refuses the application, they must tell the person in writing.

If the licensee agrees to the cremation, they must schedule a day and time for the cremation and allocate a unique identification number.

Section 23 Cremation – 2 or more people at the same time

This section allows for a person to apply to the regulator to cremate two or more people at the same time. The application must be in writing and include a minimum level of information (for example, the details of each deceased person and a statement about why it is appropriate to cremate the people at the same time). The regulator can refuse to consider an application if the required information has not been provided.

The regulator may approve the application if satisfied that allowing people to be cremated at the same time is reasonable in the circumstances.

If the regulator refuses the application, they must tell the person, in writing, the reasons for the refusal.

Section 24 Minister or magistrate may prohibit cremation

This section allows the Minister or a magistrate to prohibit the cremation of human remains at a crematorium. The Minister or magistrate may only prohibit a cremation if satisfied that the cremation would likely be dangerous, may create a health or safety risk or may hinder an investigation under a Territory law. The prohibition must be in writing and be given to the licensee of the crematorium where the cremation was to take place.

Section 25 Offence – collection of cremated remains

This section applies when the licensee of a crematorium has cremated remains that are not covered by a right of interment at the crematorium. The licensee must tell the person who applied for the cremation that the remains are available to be collected.

If the remains are not collected within one year from the date of the cremation the licensee may give the remains to a person who is a family member of the person who was cremated and is over 16 years of age.

If the remains are not collected within two years from the date of the cremation the licensee must, on at least two occasions, call or write to the last known postal or email address requesting they collect the remains.

If the licensee has taken all the steps above and the remains have not been collected within 3 years of the date of the cremation the licensee may dispose of the remains.

This offence is important to ensure that cremated remains are treated in a dignified and respectful way and are not lost. The process of having a loved one cremated is distressful and occurs at a time of grief. This section provides safeguards for the family of the cremated person to ensure they have adequate time to deal with the collection of cremated remains and certainty around what will happen to the remains if not immediately collected.

It is an offence not to comply with this section with a maximum penalty of 50 penalty units.

Section 26 Offence – cremation other than at crematorium

This section makes it an offence to cremate human remains except at a crematorium. The penalty for this offence 50 penalty units, 6 months imprisonment, or both.

This offence is important for ensuring that cremations occur in a standard way at an appropriate facility. The cremation process involves high temperatures or potentially dangerous products, and can produce a waste product that must be appropriately dealt with. This offence protects the environment and community from cremations that could have an adverse impact.

Section 27 Offences – cremation at crematorium

This section makes it an offence for the licensee of a crematorium to cremate human remains except in accordance with this section. This section requires that:

- human remains are in an acceptable container or wrapping
- the cremation of human remains is not prohibited under section 24
- the human remains are cremated in accordance with:
 - the minimum standards for cremation prescribed by regulation
 - the standard operating procedures for the crematorium
 - if a code of practice applies, the code of practice
 - anything else prescribed by regulation.

It is a defence to a prosecution for an offence against this section if the Chief Health Officer has given a public health direction, in writing, under the *Public Health Act 1997* that requires the cremation of human remains in a way that

does not satisfy some or all of the requirements.

This offence is important to ensure that cremations occur in a standard way and in accordance with minimum standards.

This is a strict liability offence with a maximum penalty of 50 penalty units.

Section 28 Offence – refusal or interference with cremation activities related to religion, cultural group, etc

This section makes it an offence for the licensee of a crematorium to refuse a reasonable request related to the deceased person's religion, cultural group or other special category (for example, babies, children or ex-military). This section also makes it an offence for the licensee to interfere with these activities being carried out.

The maximum penalty for this offence is 50 penalty units.

Section 29 Offence – cremation to conceal offence

This section makes it an offence for a person to cremate human remains to conceal an offence. The maximum penalty for this offence is 1000 penalty units, imprisonment for 5 years, or both.

This high penalty is considered justified given the serious nature of cremating a body to conceal an offence. The penalty could only be imposed by a court.

Division 3.5 Interment

Section 30 Interment – application

This section allows for a person to apply to the licensee of a facility for the interment of cremated remains at the facility. A facility includes both a cemetery and crematorium. The application must be in writing and include a minimum level of information and the licensee can refuse to consider the application if the information is not included.

If the deceased person is covered by a right to interment at the facility the licensee must agree to the application. If the deceased person is not covered by a right to interment at the facility the licensee must give a right of interment certificate covering the person.

If the licensee agrees to the interment, they must allocate an interment site that is on the plan for the facility and is a kind of interment site mentioned in the interment certificate.

The licensee must issue a unique identifying number for the interment site.

Section 31 Offence - interment

This section makes it an offence for the licensee of a facility to inter cremated remains except in accordance with this section. This section requires that the

interment occur in accordance with the minimum standards prescribed by regulation, the standard operating procedure for the facility, if a code of practice applies, the code of practice, and anything else prescribed by regulation.

This offence applies only to licensees of facilities.

This is a strict liability offence with a maximum penalty of 50 penalty units.

Section 32 Offence – refusal or interference with interment activities related to religion, cultural group, etc

This section makes it an offence for the licensee of a facility to refuse a reasonable request for interment of cremated remains related to the deceased person's religion, cultural group or other special category (for example, babies, children or ex-military) that is reasonable in the circumstances. This section also makes it an offence for the licensee to interfere with these activities being carried out.

The maximum penalty for this offence is 50 penalty units.

Section 33 Interment – term

This section sets out that the term of interment starts on the day the remains are interred and continues in perpetuity, unless the remains are disinterred in accordance with section 34 or 35.

Division 3.6 Disinterment

Section 34 Disinterment – application

This section allows a person to apply to the licensee of a facility for the disinterment of cremated remains from an interment site at the facility. The application must be in writing and include a minimum level of information (for example, the relation of the person to the person's remains being disinterred). The operator can refuse to consider an application if it does not include the minimum information.

The licensee can only agree to the disinterment if satisfied that the person is a family member of the deceased and is over the age of 16.

If the licensee agrees to the disinterment, they must tell the person in writing the unique identification number and the date after which the remains will be available for collection.

Section 35 Disinterment – approval by regulator

This section applies if the licensee of a facility intends to disinter cremated remains on their own initiative. The licensee must apply to the regulator for the approval to disinter the remains. The application must be in writing and include a minimum level of information. The regulator can refuse to consider an application if the minimum information is not provided.

The regulator may only approve the disinterment if satisfied that:

- the cremated remains will be dealt with appropriately, with care and are not at risk of being mismanaged or lost;
- the licensee has processes to avoid misplacing the remains or damaging any container or memorialisation related to the cremated remains; and
- the licensee intends to relocate the cremated remains, or provide the remains to a family member.

If the regulator refuses an application, they must tell the licensee in writing of the reasons for the refusal.

Section 36 Offence – disinterment

This section makes it an offence for the licensee of a facility to disinter cremated remains without an application under section 34 or an approval from the regulator under section 35. It is also an offence to disinter except in accordance with the minimum standards for disinterment prescribed by regulation, the standard operating procedures for the facility, if a code of practice exists, the code of practice and anything else prescribed by regulation.

The Act requires all interments to be in perpetuity. However, recognising that interred cremated remains and buried human remains are different and that it may be reasonable grounds for the disinterment of cremated remains, either by the family or by the licensee of that facility. However, disinterring cremated remains is not an activity that should be taken lightly and the community expects that if remains are disinterred, it will only occur in certain circumstances and in accordance with minimum standards. This offence is an important deterrent for operators to ensure that the minimum standards as set out in this Act are met.

The maximum penalty for this offence is 50 penalty units.

Division 3.7 Exhumation

Section 37 Exhumation – application

This section allows a person to apply to the Chief Health Officer to exhume human remains. The application must be in writing and include anything prescribed by regulation. The Chief Health Officer can only authorise the exhumation if satisfied that it would not be contrary to the interests of public health and may impose conditions on the authorisation.

If the Chief Health Officer refuses an application they must tell the person, in writing, of the reasons for the refusal.

Section 38 Offences – exhumation

This section makes it an offence to exhume human remains except in

accordance with an authorisation under section 37 or by a warrant under the *Coroners Act 1997*. The penalty for this offence is 200 penalty units or two years imprisonment or both.

The high penalty is considered justified given the serious nature of disinterring remains without approval. Cases of ashes potentially being lost during disinterment have occurred in Canberra and a strong framework is needed to ensure this does not occur again.

This section does not apply if the licensee exhumes human remains from a burial site for the sole purpose of enabling another burial to occur in the site.

This section also makes it an offence for a person who holds an authorisation under section 37 that is subject to a condition to not comply with the condition. The penalty for this offence is 200 penalty units or two years imprisonment or both.

Division 3.8 Miscellaneous

Section 39 Approved container or wrapping – application

This section sets out that the Chief Health Officer may approve a container other than a coffin or eco-coffin or wrapping other than a shroud as suitable for transporting, burying or cremating human remains.

This can occur either on the Chief Health Officer's own initiative or by through an application by a person. The Chief Health Officer can only approve a wrapping if satisfied that burying, transporting or cremating the remains in the container would not be contrary to public health.

A decision to approve a container or wrapping is a notifiable instrument.

Section 40 Burial or cremation without certification document

This section allows a person to apply to the regulator for a burial or cremation to occur without a certification document. An application must be in writing and include a minimum level of information (for example, an explanation of why there is no certificate and a description of the measures taken to obtain one). The regulator can refuse to consider an application if it does not include the minimum information required.

The regulator can only approve the application if satisfied that it is impracticable to obtain a certification document. If the regulator refuses the application, they must tell the person in writing of the reasons for the refusal.

Section 41 Medical referee – appointment

This section allows the regulator to appoint a person as a medical referee. A medical referee must be a doctor who has been a doctor for a continuous period of at least five years before the day the regulator appoints the person as a medical referee.

Section 42 Offences – doctor’s certificate

This section makes it an offence for a doctor to give a certificate about the death of a deceased person if the coroner must hold an inquest into the manner and cause of death of the deceased person under the *Coroners Act 1997*. The maximum penalty for this offence is 10 penalty units.

This section also makes it an offence for a doctor to give a certificate about the death of a person and has a financial interest in the deceased person under a life insurance policy or has a right or expectancy to property of any kind. The maximum penalty for this offence is 50 penalty units.

Section 43 Requirements for transportation, burial or cremation in coffin etc

This section allows the Chief Health Officer to determine requirements for the burial, cremation or transportation of human remains in a coffin, an eco-coffin, a shroud. The Chief Health Officer must be satisfied that the requirement is in the interests of public health. A determination under this section is a notifiable instrument.

PART 4 OPERATING FACILITY

Division 4.1 Offences – general

Section 44 Offence – damage to facility property

This section creates an offence if a person damages or disturbs property at a facility. This does not apply to something done by the licensee of the facility to maintain the facility or ensure the safety of people at the facility, or damage or disturbance as a result of an exhumation under the *Coroners Act 1997* or an authorisation under section 37.

Section 45 Offence – operating facility without a licence

This section makes it an offence for a person to operate a facility if the person is not the licensee of the facility. The penalty for this offence is 100 penalty units or one year imprisonment or both.

Section 46 Offence – operating facility not in accordance with licence

This section makes it an offence for a licensee of a facility to operate a facility not in accordance with a licence. This is a strict liability offence with a maximum penalty of 50 penalty units.

Section 47 Offence – failure to maintain facility

This section makes it an offence for a licensee of a facility to not maintain the facility or keep the facility clean and tidy. The maximum penalty for this offence is 50 penalty units.

For this section, a facility does not include a memorial, monument, headstone or gravestone.

Division 4.2 Licence to operate facility

Section 48 Meaning of suitable person – div 4.2

This section sets out a definition for this division.

Section 49 Licence – application

This section allows for a person to apply to the regulator for a licence to operate a facility. The application must be in writing and include a minimum level of information. The regulator may only approve the application if satisfied that the applicant has the appropriate level of skill and knowledge to operate a facility and that they will, when operating the facility demonstrate respect for the diversity of people’s religious and cultural beliefs and practices, and that they are likely to comply with the requirements of this Act.

The regulator may refuse an application if the application contains information that is materially false or misleading, or if they believe the applicant is not a suitable person to operate the facility. If the regulator refuses an application, they must tell the applicant in writing the reasons for the refusal.

A licence can be issued subject to conditions and must give the applicant notice of an approval including a unique identifying number for the facility and licence.

Section 50 Licence – term

This section sets out that a licence to operate a facility starts on the day after the licence fee is paid and ends either when the licence is surrendered under section 53 or cancelled under division 5.1.

Section 51 Licence – amendment

This section allows the licensee of a facility to apply to the regulator to amend the licence. The application must be in writing and include a minimum level of information. The regulator can refuse to accept the application if it does not include the required information.

The regulator may only approve the application if satisfied that the amendment is consistent with the licensee demonstrating respect for the diversity of people’s religious and cultural beliefs and practices, and that they are likely to comply with the requirements of this Act.

The regulator may refuse an application if the application contains information that is materially false or misleading, if they believe the applicant is not a suitable person to operate the facility or if the applicant has failed to comply with this Act.

Section 52 Licence – transfer

This section allows the licensee of a facility to apply to transfer the licence to operate the facility to another person. The application must be in writing and include a minimum level of information. The regulator can refuse to consider an application if it does not include the minimum required information.

The regulator may only approve the application if satisfied that the transferee has the appropriate level of skill and knowledge to operate a facility and that they will, when operating the facility demonstrate respect for the diversity of people's religious and cultural beliefs and practices, and that they are likely to comply with the requirements of this Act.

The regulator may refuse an application if the application contains information that is materially false or misleading, or if they believe the applicant is not a suitable person to operate the facility. If the regulator refuses an application they must tell the transferee in writing the reasons for the refusal.

Section 53 Licence – surrender

This section allows a licensee to surrender a licence to operate a facility. The licensee must give the regulator written notice of the intention to surrender the licence in writing.

Section 54 Closing facility – application

This section allows the licensee of a facility to apply to the regulator to close the facility to further applications for a right to burial, further burials, further applications for a right to interment and further interments. The regulator may only accept the application if satisfied that the licensee has fulfilled each right to burial or interment at the facility or that the licensee will be able to fulfil each right to burial or cremation at the facility.

If the regulator refuses the application, they must tell the licensee in writing of the reasons for the refusal.

Section 55 Application – request for information

This section allows the regulator to request additional information if they believe on reasonable grounds it is necessary to approve or amend applications for a licence to operate a facility.

The regulator must request the additional information in writing and may require the information within a stated time. The regulator may refuse to consider an application further until additional information is received.

Section 56 Offences – failure to update information in application

This section makes it an offence for the licensee of a facility to fail to update information in an application for a licence to operate a facility or an application to amend a licence to operate a facility if the information changes before the person receives a decision on the application.

Section 57 Offence – failure to update information

This section makes it an offence for the licensee of a facility to not tell the regulator about certain changes including the name and contact details of the licensee or any information or matters on the facility plan. An offence against this section is strict liability with a maximum penalty of 50 penalty units.

Division 4.3 Regulator’s register – licence

Section 58 Register of licences

This section requires the regulator to keep a register of licenses to operate a facility. The register must include information about each licence issued and any amendments to the licence. If a licence is amended under division 5.1 (disciplinary action), a description of the amendment, reasons for the amendment and date of the amendment must be included.

The register must also include if a licence is renewed, transferred, surrendered, suspended or cancelled.

The regulator must make the information on the register available for public inspection and may correct a mistake, error or omission in the register.

Division 4.4 Licensee’s operating procedures, register and records

Subdivision 4.4.1 Standard operating procedures

Section 59 Standard cemetery operating procedures

This section requires the licensee of a cemetery to make and keep written procedures for the cemetery for:

- allocating a unique identifying number for human remains buried at the facility;
- transporting and moving human remains;
- burying human remains;
- exhuming human remains;
- interring cremated remains;
- disinterring cremated remains;
- resolving complaints about any of the above; and
- anything else prescribed by regulation.

This section also makes it a strict liability offence for the licensee not to make the standard operating procedures and review them at least once every two years. An offence against this section is strict liability with a maximum penalty of 50 penalty units.

Section 60 Standard crematorium operating procedures

This section requires the licensee of a crematorium to make and keep written

procedures for the crematorium for:

- allocating a unique identifying number for the cremation of human remains and the cremated remains;
- transporting and moving human remains;
- the collection of cremated remains from the crematorium;
- disposing of cremated remains that have not been collected from the crematorium or interred at the crematorium; and
- resolving complaints about any of the above.

This section also makes it a strict liability offence for the licensee not to make the standard operating procedures and review them at least once every two years. An offence against this section is strict liability with a maximum penalty of 50 penalty units.

Section 61 Standard facility operating procedures

This section requires the licensee of a facility to make and keep written procedures for the facility for the interment of cremated remains at the facility including procedures for:

- allocating a unique identifying number for the interment of cremated remains;
- interring cremated remains at the facility;
- disinterring cremated remains from the facility;
- the collection of disinterred cremated remains; and
- resolving complaints about any of the above.

This section also makes it a strict liability offence for the licensee not to make the standard operating procedures and review them at least once every two years. An offence against this section is strict liability with a maximum penalty of 50 penalty units.

Subdivision 4.4.2 Licensee registers

Section 62 Register – right to burial and right to interment

This section requires the licensee of a facility to keep a register for each right to burial or interment at the facility. The register must include the following information and documents:

- the date the right was given;
- for a right to burial, the unique number of the right to burial certificate and the certificate;
- for an interment, the unique number of the right to interment certificate and the certificate;
- if a right is transferred under section 10, the date of the transfer, name of the transferee and a copy of the written notice of the transfer; and
- if a right is revoked under section 12, the date the right is revoked and the reason the right is revoked.

Section 63 Register – burial, cremation, interment etc

This section requires the licensee of a facility to keep a register of each burial, cremation, interment, disinterment and exhumation at the facility.

For a burial the register must include the name of the deceased, their date of birth and death (if known), the unique identifying number, the date the burial occurred and the unique identifying number of the site in the facility where the remains are buried or if the burial was a natural burial the GPS location of the remains.

For a cremation the register must include the name of the deceased, their date of birth and death (if known), the unique identifying number, the date the remains were cremated, if the remains were collected the details of the collection including the name and contact details of the person who collected the remains and whether some or all of the remains were collected.

For the interment of cremated remains the register must include the name of the deceased person, their date of birth and death (if known), the unique identifying number and the date the remains were interred.

Section 64 Offence – keeping registers

This section makes it an offence for the licensee of a facility to not keep a register under section 62 or 63, or not keep the register in a secure ICT database that can be searched by the public. An offence against this section is a strict liability offence with a maximum penalty of 50 penalty units.

This offence applies only to the licensee of a facility. This Act sets out minimum requirements for keeping registers, and that these registers must be kept in a secure ICT database that can be searched by the public. These requirements are important for ensuring that minimum standards are met and that a base level of information is both kept, and accessible to the broader community. Licensees of facilities can reasonably be expected to know about these requirements and keep the required registers. This offence is an important element of ensuring these standards are met.

Subdivision 4.4.3 Licensee records

Section 65 Facility records – burial, cremation, interment etc

This section requires the licensee of a facility to keep certain information.

The licensee of a cemetery must keep a copy of the application documents for each application for a right to burial under section 8 and a burial under section 17. The licensee must also keep a copy of an authorisation for any exhumations that occur.

The licensee of a crematorium must keep a copy of the information for a cremation under section 22 and any documents provided by a person who

collects cremated remains.

The licensee of a facility must keep a copy of the information provided in an application for interment under section 30 and information for disinterments under section 34 or section 35.

Section 66 Offences – failing to keep records

This section makes it an offence for a licensee to fail to keep the records required under section 65, or failing to keep the records in a secure ICT database. If a regulation states that records must be kept for a period of time, the licensee must keep the records for that period of time. An offence against this section is a strict liability offence with a maximum penalty of 50 penalty units.

This offence applies only to the licensee of a facility. This Act sets out minimum requirements for keeping records, and that these records must be kept in a secure ICT database that can be searched by the public. These requirements are important for ensuring that minimum standards are met and that a base level of information is both kept, and accessible to the broader community. Licensees of facilities can reasonably be expected to know about these requirements and keep the required registers. This offence is an important element of ensuring these standards are met.

Section 67 Offences – auditing records

This section creates an offence for the licensee of a facility to fail to have licensee receipts audited by 31 October after the end of each financial year. An offence against this section is a strict liability offence with a maximum penalty of 20 penalty units.

This offence applies only to licensees of facilities. A licensee of a facility has certain obligations, including contributing funds to perpetual care trusts for the long term maintenance of the facility. To ensure that accurate amounts are paid, auditing of licensee receipts is necessary.

Section 68 Offence – transferring records

This section makes it an offence for a licensee to close a facility or transfer or surrender a licence for the facility without transferring the records in division 4.4 to the regulator. An offence against this section is a strict liability offence with a maximum penalty of 20 penalty units.

Cemetery and crematoria facilities provide important public services to the community and in doing so keep records. In cases when a licensee ceases operating a facility it is important that the records they are responsible for be appropriately transferred to the government so these can be kept in the long term.

PART 5 REGULATORY ACTION

Division 5.1 Disciplinary action

Section 69 Definitions – div 5.1

This section sets out definitions for this division.

Section 70 Immediate suspension of licence – danger to public health

This section allows the regulator to immediately suspend a licence to operate a facility if they believe on reasonable grounds that the licensee has engaged in disciplinary conduct and there is a danger to public health as a result of the conduct.

The regulator must tell the licensee that the licence is being suspended and the reasons for the suspension.

If the regulator takes disciplinary action under section 71 the suspension ends either on the day when the other disciplinary action starts or 30 days after the day the regulator tells the licensee of the suspension.

If the regulator does not take other disciplinary action the suspension ends either on the day the licensee is given written notice about the regulators decision not to take disciplinary action, or 30 days after the immediate suspension notice was given to the licensee.

Section 71 Disciplinary action – no immediate danger to public health

This section allows the regulator to take disciplinary action if they believe on reasonable grounds that the licensee is engaging in disciplinary conduct, and the regulator intends to take action against the licensee in relation to the conduct, but the regulator does not believe there is an immediate danger to public health.

The regulator must give the licensee written notice stating the conduct, the proposed action, the reason the action is considered appropriate and stating that the licensee can make a written submission about the action within 14 days.

If a licensee makes a written submission the regulator must consider this. If after considering the submission that disciplinary action will not be taken the regulator must tell the licensee this in writing.

If the regulator is satisfied on reasonable grounds that disciplinary action should be taken, they must tell the person the day the action is to be taken and take the action.

Section 72 Amendment of suspended licence – action by regulator

This section applies if under this part a condition on a licence to operate a

facility is imposed or amended, or if a licence to operate a facility is suspended and the licence is returned to the regulator.

Division 5.2 Directions

Section 73 Direction to stop contravening Act or condition

This section applies if the regulator believes that a person is contravening this Act or a condition on a licence to operate a facility. The regulator may direct the person to comply with the Act, or condition, by doing or not doing a thing.

A direction can require the person to carry out remedial action if the regulator considers it necessary to restore land that is damaged because of a contravention. The direction must include the thing that is required to be done, or not done, and the period for compliance with the direction.

Section 74 Offence – direction

This section makes it an offence for a person who has been given a direction under section 73 to fail to comply with the direction. An offence under this section is strict liability with a maximum penalty of 50 penalty units.

Division 5.3 Enforceable undertakings

Section 75 Enforceable undertaking for offence

This section applies if the regulator believes on reasonable grounds that a person has committed an offence under this Act. The regulator may tell the person in writing that the regulator believes an offence has been committed, the grounds for this belief, the facts about the offence, that the person may give an enforceable undertaking, information about the effect of giving or not giving an enforceable undertaking.

If the person wishes to give an enforceable undertaking, they must give the regulator a written proposal about the future conduct as a result of the alleged offence. The proposed undertaking must acknowledge that the regulator believes the person has committed an offence and contain a statement by the person stating they understand the proposed undertaking becomes enforceable if accepted by the regulator, setting out assurances about the person's future conduct and agreeing to be bound by the undertaking.

If the regulator accepts the proposed undertaking, they must tell the person who gave the undertaking that it has been accepted and is an enforceable undertaking for this Act.

Section 76 Enforceable undertaking – withdrawal or amendment

This section allows a person who gave an enforceable undertaking to withdraw or amend the undertaking only with the regulator's written agreement. The undertaking cannot be amended to provide for a different alleged offence.

Section 77 Ending enforceable undertaking

This section allows the regulator to end an enforceable undertaking by written notice to the person only if satisfied that the undertaking is no longer necessary or desirable to ensure the person complies with this Act. This can occur on the regulator's own initiative or by application from the person who gave the undertaking. The undertaking ends when the person who made the undertaking receives the regulator's written notice.

Section 78 Undertaking not admission of fault or liability

This section applies when a person gives the regulator a proposed undertaking, whether or not it is accepted by the regulator. Giving the undertaking is not an express or implied admission of fault or liability nor relevant to deciding fault or liability in relation to the alleged offence. An undertaking (proposed or enforceable) is admissible in evidence in a court or tribunal.

Section 79 Enforceable undertaking – contravention

This section allows the regulator to apply to the Magistrates Court for an order if the regulator believes on reasonable grounds that an enforceable undertaking has been contravened. If the Magistrates Court finds that an enforceable undertaking has been contravened, the court may make one or more of the following orders:

- requiring the person who gave the undertaking to ensure that it is not contravened;
- an order requiring the person who gave the undertaking to pay to the Territory the amount assessed by the court as the value of the benefits derived directly or indirectly, from the contravention;
- an order requiring the person who gave the undertaking to compensate someone who has suffered loss or damage because of the contravention of the undertaking; and/or
- any other order the court considers appropriate.

Section 80 Enforceable undertaking – effect on other proceedings

This section specifies that a proceeding may not be brought against a person for an alleged offence if an enforceable undertaking is in force in relation to the offence and the person has not failed to comply with the undertaking.

Section 81 Enforceable undertakings – register

This section requires the regulator to keep a register of enforceable undertakings including the details of the person who gave the undertaking, the particulars of it, the date it took effect and anything else prescribed by regulation.

PART 6 ENFORCEMENT

Division 6.1 Definitions

Section 82 Definitions – pt 6

This section sets out definitions for this part.

Division 6.2 Authorised people

Section 83 Authorised person – appointment

This section allows the regulator to appoint a public servant as an authorised person for this Act.

Section 84 Identity cards

This section requires the regulator to give each authorised person an identity card stating their name and appointment as an authorised person. The identity card must show a recent photograph of the person, the date of issue and expiry of the card and anything else prescribed by regulation.

This section creates an offence if the person stops being an authorised person and fails to return the identity card to the regulator.

Section 85 Authorised person must show identity card

This section requires that if an authorised person exercises a power under this Act, they must show their identity card to the individual.

Section 86 Power to enter premises

This section specifies that, for this Act, an authorised person may at any reasonable time enter the premises that the public is entitled to use, at any time enter the premises with the occupier's consent, or at any time enter the premises if they believe on reasonable grounds that there is a risk to the environment or public health, and the risk is so serious that immediate entry is necessary without a search warrant. An authorised person may enter a premises with a search warrant.

Section 86 (1) (c) provides the ability for an authorised person to enter a premises without a warrant if the authorised person believes, on reasonable grounds, that there is a risk to the environment or public health, and the risk is so immediate that immediate entry without a search warrant is necessary. This section can apply to a residential premises only if that premises is also a facility. This potentially engages the right to privacy and reputation under section 12 of the HR Act. Section 12 of the HR Act provides everyone the right to not have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

This potential limitation is safeguarded by a high test to enter a premises without a warrant. An authorised officer gaining entry in this way would need

to be satisfied that the risk to the environment or public health posed was both so serious and urgent that immediate entry is required. Additionally, it is highly unlikely that a facility is also a residential premises. In the ACT land use zoning prevents a facility from operating from residential zones and any residential element of a facility is likely to be separated from the operations of the facility for practical reasons.

An authorised person may not enter any part of the premises that is being used only for residential purposes without consent of the occupier.

Section 87 Consent to entry

This section specifies that if an authorised person is seeking the consent of an occupier to enter the premises under section 86, they must show their identity card and tell the occupier the purpose of entry, the reason for and identity of any other person accompanying the authorised person, that anything found and seized under this part may be used as evidence in court and that consent can be refused.

If the occupier consents to the entry the authorised person must ask the occupier to sign a written acknowledgement that the occupier consent to the entry, stating the time and date that consent was given, that the occupier was told of the purpose of entry, the reason for and identity of any other person accompanying the authorised person, that anything found and seized under this part may be used as evidence in court and that consent can be refused.

Section 88 General powers on entry to premises

This section allows an authorised person who enters a premises under this part to do one or more of the following things:

- inspect or examine;
- take measurements or conduct tests;
- take samples;
- make sketches, drawings or any other kind of record including film, audio and photographs; and
- require the occupier to give the authorised person reasonable help to exercise a power after this part.

A person must take all reasonable steps to comply with a requirement to help an authorised person to exercise a power under this part. To not do so is an offence with a maximum penalty of 50 penalty units.

Section 89 Power to seize things

This section allows an authorised person who enters a premises under this part to seize anything if the seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

An authorised person who enters a premises under a search warrant may seize anything at the premises that they are authorised to seize under the

warrant.

An authorised person who enters a premises under this part may seize anything at the premises if they are satisfied on reasonable grounds that the thing is connected to an offence and to prevent it from being concealed, lost, destroyed or used to commit, continue or repeat an offence.

Having seized a thing an authorised person can remove the thing from the premises or leave it at the premises but restrict access to it.

Section 90 Direction to give name and address

This section applies if an authorised person believes on reasonable grounds that a person has committed, is committing or is about to commit an offence against this Act or may be able to assist in the investigation in an offence against this Act. The authorised person may direct the person to give the authorised person their full name and address.

If the authorised person believes on reasonable grounds that the information is false or misleading, they may direct the person to produce evidence.

If an authorised person gives a direction to a person, the authorised person must tell the person it is an offence if the person fails to comply with the direction and give the direction in a language or way of communicating that the authorised person believes the person is likely to understand.

Section 91 Offence – fail to comply with direction to give name and address

This section creates an offence if the authorised person directs a person to give their name and address under section 90, the authorised person produces their identity card, the authorised person warns the person that the failure to comply is an offence, and the person did not give their full name and address. An offence against this section is strict liability with a maximum penalty of 10 penalty units.

Division 6.3 Search warrants

Section 92 Search warrant – generally

An authorised person may apply to a magistrate for a search warrant to enter a premises. The application must be sworn and state the grounds on which the warrant is sought.

The magistrate may only issue the warrant if satisfied that there are reasonable grounds for suspecting there is a particular thing or activity connected with an offence and the thing or activity is being engaged in at the premises or may be within the next 7 days.

The search warrant must state that an authorised person may enter the premises and exercise powers under this part, the offence for which the warrant is issued, the things that may be seized under the warrant, the hours

when the premises may be entered and the date, within 7 days after the day of the warrant's issue, the warrant ends.

Section 93 Search warrant – application other than in person

This section allows an authorised person to apply for a warrant by phone, radio, email, fax or letter because of urgent or other special circumstances. The authorised person may apply for the warrant before the application is sworn.

Section 94 Search warrant – announcement before entry

This section applies before an authorised person enters a premises under a search warrant. The authorised person must announce that they are an authorised person authorised to enter the premises, give everyone at the premises the opportunity to allow entry to the premises and identify themselves to the occupier if they are present.

The authorised person is not required to comply with this if they believe on reasonable grounds that immediate entry is required to ensure the safety of anyone or the effective execution of the search warrant.

Section 95 Details of search warrant to be given to occupier etc

This section requires an authorised person to give an occupier, or person who represents an occupier, a copy of the search warrant and a document setting out the rights and obligations of the person when executing a search warrant.

Section 96 Occupier entitled to be present during search etc

This section allows the occupier of a premises, or other person who represents the occupier, to be present when a search warrant is being executed. The person is not entitled to observe the search if it would impede the search or if the person is under arrest.

Section 97 Receipt for things seized

This section requires an authorised person, as soon as practicable, to give a receipt for a thing that is seized to the person who the thing was seized from.

The receipt must include a description of the thing seized, an explanation of why it was seized, the authorised person's name and contact details and, if the thing is being removed from the premises, where it is being taken.

Section 98 Moving things to another place

This section allows a thing found at a premises under a search warrant to be moved to another place for examination or processing if there are reasonable grounds for believing the thing is or contains something to which the warrant relates, and it is significantly more practicable to examine or process the thing at the other place.

The thing may be moved to the other place for not longer than 72 hours, unless the authorised person has applied to a magistrate for an extension on the grounds that the thing cannot be examined or processed within 72 hours.

If a thing is moved to another place the authorised person must, if practicable, tell the occupier the address of the place and allow the occupier or their representative to be present during the examination or processing.

Section 99 Access to things seized

This section allows a person who would, apart from the seizure, be entitled to inspect a thing seized under this part to inspect the thing, photograph the thing and if the thing is a document, take extracts or make copies of the thing.

Section 100 Return of things seized

This section requires a thing seized under this part to be returned to its owner, or reasonable compensation paid for the loss of the thing if an infringement notice for an offence connected with the thing has not been issued within a certain timeframe.

Section 101 Damage etc to be minimised

This section requires an authorised person to take all reasonable steps to ensure that they cause as little inconvenience, detriment and damage as practicable. If an authorised person does damage anything they must give notice of the particulars of the damage to the person who they believe on reasonable grounds is the owner of the thing.

Section 102 Compensation for exercise of enforcement powers

This section allows a person to claim compensation from the Territory if they suffer loss or expense because of the exercise of a function under this part. Compensation may be brought in a court of competent jurisdiction or an offence against this Act.

PART 7 PERPETUAL CARE TRUSTS

Section 103 Authority perpetual care trust – establishment

This section establishes a perpetual care trust for the long term maintenance of the facilities operated by the authority. The trust is taken to be a charitable trust established for public trust charitable purposes and is not for profit.

Section 104 Licensee perpetual care trust – establishment

This section establishes a trust for the long term maintenance of each facility operated by a licensee who is not the authority. The trust is taken to be a charitable trust established for public trust charitable purposes and is not for profit.

Section 105 Determination of trustee

This section requires the Minister to determine the trustee for a perpetual care trust as either a public trustee or the director-general. In doing so, the Minister must first consult with either the authority or with the licensee.

Section 106 Determination of perpetual care trust percentage

This section requires the Minister to determine the percentage of each licensee receipt for each facility that has a perpetual care trust. The percentage must be the percentage the Minister considers necessary to ensure there are sufficient funds in the perpetual care trust to adequately maintain the facility.

The Minister must, at least once every five years, review the perpetual care trust percentage. A determination is a notifiable instrument.

Section 107 Perpetual care trust percentage – requesting information and documents

This section allows the Minister to require that the licensee of a facility give the Minister information or documents the Minister may reasonably need to determine a perpetual care trust percentage or to review the percentage. The Minister must give the notice in writing and state the time in which the licensee must give the information or documents. It is an offence for a licensee to not give the Minister the requested information within the stated time. An offence against this section is strict liability with a maximum penalty of 20 penalty units.

Section 108 Perpetual care trust – licensee receipt

This section requires the licensee of a facility to pay the perpetual care trust percentage of the licensee receipt into the trust for the facility.

Section 109 Offence – failure to give perpetual care trust percentage

This section makes it an offence for a licensee of a facility to not pay the perpetual care trust percentage of the licensee receipt into the trust for the facility by no later than 31 October after the end of each financial year in which the person receives the licensee receipt. This is a strict liability offence with a maximum penalty of 30 penalty units.

Section 110 Offence – protection of perpetual care trust

This section makes it an offence for the licensee of a facility to apply an amount in the perpetual care trust for a purpose other than a purpose for which the trust is established. The maximum penalty for this offence is 50 penalty units.

This section also specifies that the amount forming the perpetual care trust for a facility is not available for the payment of debts of the licensee, or liable to be attached or taken in execution to satisfy a judgement against the licensee.

Section 111 Perpetual care trust – records

This section requires the licensee of a facility to keep a record of the following information:

- the licensee receipts for the facility;
- the amounts paid into the perpetual care trust; and
- for an amount withdrawn from the perpetual care trust, the amount withdrawn, the purpose for which the amount was applied and a copy of the Minister's approval to withdraw the amount.

This section makes it an offence to not keep this information with a maximum penalty of 50 penalty units.

This section also makes it an offence for the licensee of a facility to not keep the records for at least 7 years after the record is made at the facility, and in accordance with any requirements prescribed by regulation. The maximum penalty for this offence is 50 penalty units.

An offence against this section is a strict liability offence.

Section 112 Perpetual care trust – dissolution

This section applies if a perpetual care trust for a facility is dissolved. The amount remaining after payment of any debts and expenses for the facility must be transferred to another perpetual care trust or to a fund that is established for a charitable purpose and is endorsed as exempt from tax income under the *Income Tax Assessment Act 1997 (Cwlth)*.

PART 8 CEMETERIES AND CREMATORIA AUTHORITY

Section 113 Establishment of authority

This section establishes the Cemeteries and Crematoria Authority.

Section 114 Functions of authority

This section sets out the functions of the Authority. The functions of the Authority are to:

- develop, build or operate a facility approved by the Minister under section 115;
- recognise the rights of people to the dignified and respectful treatment of their human remains and the human remains of their loved ones when operating a facility;
- to respect the diverse burial, cremation and interment practices, cultural practices and religious beliefs when operating the facility;
- to operate the facility in a financially sustainable way;
- to promote financially sustainable practices for burying or cremating human remains or interring cremated remains at the facility;
- to maintain the facility to acceptable standard; and

- any other function given to the authority under this Act or another Territory law.

Section 115 Approval to operate facility

This section allows the Minister to approve the Authority to develop, build or operate a facility. An approval is a notifiable instrument.

Section 116 Authority taken to be licensee

This section specifies that if the Minister approves the authority to operate a facility under section 115, the authority is taken to be the licensee of the facility. Section 46, division 4.2 and division 5.1 do not apply to the Authority.

Section 117 Establishment of governing board

This section requires the authority to have a governing board.

Section 118 Governing board members

This section requires the governing board to have at least 6 but not more than 12 members. The governing board must be sufficiently diverse to carry out its functions and include at least 2 members who in the Minister's opinion represent the general community and religious denominations.

Section 119 Ministerial directions to authority

This section allows the Minister to give the authority written directions about the exercise of its functions. Before giving a direction, the Minister must tell the authority, in writing about the proposed direction, give the authority a reasonable time to comment on the direction and consider any comments made by the authority. The Authority must comply with a direction given to it by the Minister.

The Minister must present a copy of a direction given under this section to the Legislative Assembly within 6 sitting days of the direction being given to the Authority.

PART 9 REGULATOR

Section 120 Regulator – appointment

This section requires the Director-General to appoint a public servant as the regulator. The Director-General must be satisfied that the person has suitable qualifications and experience to exercise the functions of regulator.

An appointment is a notifiable instrument.

Section 121 Regulator – functions

This section specifies that the regulator's functions are to administer this Act, and any other function given to the regulator by this Act or by another Territory

law. In exercising the functions the regulator must have regard to the objects stated in section 6 of the Act.

Section 122 Delegation

This section allows the regulator to delegate functions under this Act or another Territory law to a public servant.

PART 10 CODES OF PRACTICE

Section 123 Code of practice – approval

This section allows the Minister to approve a code of practice in relation to a facility, the transport of human remains, burial, cremation, exhumations, interments, disinterment or memorialisation of a deceased person.

A code of practice may apply, adopt or incorporate an instrument as in force from time to time.

Section 124 Failure to comply with code of practice

This section makes it an offence for a person to engage in conduct that results in a failure to comply with a requirement of a relevant code of practice and is reckless about whether the conduct complies with the code of practice. The maximum penalty for this offence is 100 penalty units.

This section also makes it an offence for a person to fail to comply a requirement of a a code of practice. This is a strict liability offence with a maximum penalty of 50 penalty units.

This section does not apply if a direction has been given under division 5.2 and the direction has been complied with. **PART 11**

NOTIFICATION AND REVIEW OF DECISIONS

Section 125 Definitions – pt 11

This section sets out definitions for this part.

Section 126 Reviewable decision notices

This section sets out that if the decision maker makes a reviewable decision, the decision maker must give a reviewable decision notice to each person mentioned in schedule 1, column 4 in relation to the decision.

Section 127 Applications for review

This section sets out that the people listed in schedule 1, column 4, and any other person whose interests are affected by a reviewable decision, can apply to the ACAT for review of the decision.

PART 13 MISCELLANEOUS

Section 128 Determination of fees

This section sets out that the Minister can determine fees for this Act. A determination is a disallowable instrument.

Section 129 Protection from liability

This section sets out that an official is not civilly liable for conduct engaged in honestly and without recklessness in the exercise of a function under this Act or in the reasonable belief that the conduct was in the exercise of a function under this Act.

Section 130 Regulation-making power

This section sets out that the Executive may make regulations for this Act. A regulation may make provision in relation to the protection of facilities, a licence for a facility, requirements for transporting human remains, burials, cremations, exhumations, interments, disinterments and memorialisations and certificates by doctors required for burials and cremations.

This section provides the ability for a regulation to create offence and fix maximum penalties of not more than 10 penalty units for the offences. This power has been included so that the Act is robust and can deal appropriately with changes in technology as they occur without additional legislative change. For example, the definition of a cremation in the Act includes alkaline hydrolysis (water cremation). This technology is not currently used in Australia though there is interest in seeing this occur here. As this technology has not yet been regulated it may be appropriate to make certain things offences which cannot be foreseen at this time.

PART 14 REPEALS AND CONSEQUENTIAL AMENDMENTS

Section 131 Legislation repealed

This section sets out the legislation repealed under the Act – the *Cemeteries and Crematoria Act 2003*, the *Cemeteries and Crematoria Regulation 2003* and all other instruments under the *Cemeteries and Crematoria Act 2003*.

PART 20 TRANSITIONAL

Section 200 Definitions – pt 20

This section sets out definitions for this part.

Section 201 Right of burial or interment under repealed Act

This section provides transitional arrangements for any rights to burial or rights to interment that are given under the repealed Act section 8 (perpetual tenure of graves etc) but are not yet fulfilled from commencement day of this Act. These rights will be taken to be rights under section 8 of this Act (right to burial- application) and/or section 9 of this Act (right to interment - application). The starting date for the 60 year expiry remains unchanged.

Section 202 Application for burial at cemetery under repealed Act

This section provides transitional arrangements for any applications for burial that were submitted under repealed Act section 20 (person must not bury or cremate human remains except in accordance with regulation) and are still pending a decision from commencement day of this Act. These applications will be taken to be applications under section 17 of this Act (burial at cemetery – application).

Section 203 Application for burial other than at cemetery under repealed Act

This section provides transitional arrangements for any applications for burial at a place other than a cemetery that were submitted under repealed Act section 24 (burials to take place only at cemetery) and are still pending a decision from commencement day of this Act. These applications will be taken to be applications under section 15 of this Act (burial other than at cemetery – application).

Section 204 Application for cremation under repealed Act

This section provides transitional arrangements for any applications for cremation that were submitted under repealed Act section 20 (person must not bury or cremate human remains except in accordance with regulation) and are still pending a decision from commencement day of this Act. These applications will be taken to be applications under section 22 of this Act (cremation - application).

Section 205 Burial or cremation without certification document under repealed regulation

This section provides transitional arrangements for any applications to bury or cremate without a certification document under repealed regulation section 6(2) where the applications are still pending a decision from commencement day of this Act. All applications under the regulation will be taken to be applications under section 40 of this Act (burial or cremation without certification document).

Section 206 Disposal of cremated remains under repealed regulation

This section provides transitional arrangements for a situation where steps are taken but not completed to dispose of cremated remains under repealed regulation section 11 prior to commencement day, with any steps taken from commencement day being in accordance with section 25 of this Act (offence – collection of cremated remains).

Section 207 Application for exhumation under repealed Act

This section provides transitional arrangements for applications that have been submitted for the exhumation of human or fetal remains under repealed

Act section 23 (exhumation of human remains or fetal remains) prior to commencement day and a decision is pending from commencement day. These applications are taken to be applications made under section 37 of this Act (exhumation - application).

Section 208 Perpetual care trust under repealed Act

This section provides transitional arrangements for the perpetual care trusts and perpetual care trust reserves established under repealed Act sections 9 (establishment of perpetual care trust) and 10 (establishment of perpetual care trust reserve) prior to commencement day of this Act.

From commencement day, an amount forming part of the authority's perpetual care trust funds is taken to be the perpetual care trust under section 103 of this Act (authority perpetual care trust – establishment). Similarly, an amount forming part of a private facility's perpetual care trust funds are taken to be the perpetual care trust under section 104 of this Act (licensee perpetual care trust – establishment).

This will allow for the short term and long term trusts for the authority or a facility to form one single trust per operator solely for the purpose of long term maintenance.

Section 209 Accounts and records for perpetual care trusts under repealed Act

This section provides transitional arrangements for accounts and records for the authority and private facilities that were established under repealed Act section 16A (accounts and records for perpetual care trusts) prior to commencement day. From commencement day, all such accounts and records are taken to be accounts and records under section 111 of this Act (perpetual care trust – records).

Section 210 Register required to be kept under repealed regulation

This section provides transitional arrangements for information registers of the authority and other facilities kept under repealed regulation section 12 (register to be kept) prior to commencement day. From commencement day, this information is taken to be kept under sections 62 (register – right to burial and right to interment) and 63 (register – burial, cremation, interment, etc) of this Act.

Section 211 Application records kept under repealed regulation

This section provides transitional arrangements for records of operators kept under repealed regulation section 14 (keeping application records). From commencement day, these records are taken to be records under section 65 of this Act (facility records – burial, cremation, interment etc).

Section 212 Revoking right of burial or interment under repealed

code of practice

This section provides transitional arrangements for a situation where steps are taken but not completed to revoke a right of burial or right of interment under the repealed code of practice section 4.4 prior to commencement day, with any steps taken from commencement day being in accordance with section 17 of this Act (right to burial or interment – notice about end of term and revoking right).

Section 213 Transitional regulations

This section outlines that transitional regulations may be established under this Act to provide for further transitional arrangements as a result of this Act taking effect.

Subsection (1) provides for the making of a regulation to deal with any transitional matters that arises as a result of the enactment of the Bill. However, the scope of a regulation made under this subsection must be confined to that same sphere of operation as the Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose. The words *necessary or convenient* have been judicially considered to be words of limitation when referring to regulations.

Subsection (2) provides for the making of a regulation that modifies Part 20 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Subsection (3) gives a regulation made under this section full effect according to its terms. A provision of Part 20 of the Act, modified by regulation made under subsection (2),

.

Section 214 Expiry – pt 20

This section sets out that Part 20 expires after 5 years from commencement day, as the transitional arrangements will no longer be required at that time. The arrangements will, however, continue to have effect.

Schedule 1 Reviewable decisions

This schedule contains reviewable decisions.

Dictionary

The dictionary sets out definitions for the Act.