

**2003**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**VALIDATION OF FEES (CEMETERIES) BILL 2003**

**Explanatory Statement**

**Circulated by authority of**

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Minister for Urban Services**

## Validation of Fees (Cemeteries) Bill 2003

### Overview

The Validation of Fees (Cemeteries) Bill 2003 (the Bill) validates fees charged for cemetery and crematoria services from 1 July 2001 until 14 November 2003.

Administrative oversights resulted in the charging of fees, for the purposes of the now repealed *Cemeteries Act 1933*, which were in excess of the amounts authorised by the fee determination in place under that Act.

The last valid determination made under that Act was in June 2000 for the fees applicable from 1 July 2000 until 30 June 2001. While documents were prepared in 2001, 2002 and 2003, purporting to determine increased and new fees for, respectively, the 2001-02, 2002-03 and 2003-04 financial years, because those documents were not notified and presented to the Legislative Assembly in accordance with the requirements of the *Legislation Act 2001*, the documents have no legal effect. This means that there has been no legal basis for charging the increases in fees and the new fees, beyond the amounts authorised in the last valid determination (in 2000).

Further, from 27 September 2003, when the new *Cemeteries and Crematoria Act 2003* replaced the repealed Act, until 15 November 2003, there was no fee determination in place under the new Act authorising the charging of any fees.

The effect of the Bill is to provide a legal basis for the charging of the fees set out in the various fee determinations prepared for last two, and the current, financial years.

The Bill validates fees charged up to and including 14 November 2003. On 15 November 2003 a fee determination under the new *Cemeteries and Crematoria Act* came into effect. This determination reflects the fees which have been charged for services from 1 July 2003.

It appears that the process failures which have resulted in no valid determinations being made in recent years may be related to the delegation of the Minister's power to determine fees. The Bill, therefore, also amends the Cemeteries and Crematoria Act to provide that the power to determine fees may not be delegated.

## Clause notes

### ***Clauses 1, 2, 3 and 6 – Formal clauses***

***Clauses 1, 2, 3 and 6*** are formal clauses:

- setting out the name of the Act;
- setting out its commencement arrangements;
- explaining that notes in the Act are explanatory and do not form part of the Act; and
- providing for the Act to expire the same day it commences.

### ***Clause 4 – Validation***

***Clause 4*** is to the effect that the instruments prepared to determine the fees for 2001-02, 2002-03 and 2003-04 are taken to have been validly made.

***Clause 4(4)*** ensures that fees set out in the instrument prepared to determine fees from 1 July 2003 could be validly charged between 27 September 2003 and 14 November 2003, even though the *Cemeteries Act 1933* was repealed on 27 September 2003 and no determination of fees under the new *Cemeteries and Crematoria Act 2003* was notified until 14 November 2003.

### ***Clause 5 – Cemeteries and Crematoria Act 2003, new section 49(3)***

***Clause 5*** amends the *Cemeteries and Crematoria Act 2003* by inserting a new section 49(3) which is to the effect that the Minister may not delegate his or her power, under that Act, to determine fees.

## ***Schedule 1***

***Schedule 1*** is a Diagrammatic representation of the walls of Christ the Redeemer Mausoleum Crypt showing fees for the interment of human ashes and remains.

The diagram shows the vault and crypt numbers and the prices charged for these vaults and crypts from 1 July 2001 to 30 June 2002.