

Serial
Burial and Cremation Bill 2018
Mr McCarthy

A Bill for an Act to provide for the establishment, maintenance and control of
cemeteries and other facilities for the burial and disposal of human remains,
and for related purposes

CONSULTATION DRAFT ONLY
PREPARED FOR THE DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT

NORTHERN TERRITORY OF AUSTRALIA

BURIAL AND CREMATION ACT 2018

Act No. [] of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2018

An Act to provide for the establishment, maintenance and control of cemeteries and other facilities for the burial and disposal of human remains, and for related purposes

[Assented to [] 2018]
[Introduced [] 2018]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Burial and Cremation Act 2018*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Objects of Act

The objects of this Act are:

- (a) to ensure human remains are treated with dignity and respect; and
- (b) to provide for different methods of burial and disposal of human remains; and
- (c) to accommodate different practices and beliefs for the burial and disposal of human remains; and

- (d) to regulate cemeteries, crematoria and other facilities for the burial and disposal of human remains.

4 **Application of Act**

This Act does not apply to:

- (a) a cemetery or part of a cemetery controlled by the Commonwealth War Graves Commission incorporated by Royal Charter on 21 May 1917; or
- (b) a part of a human that has been or is intended to be disposed of following a medical or surgical procedure.

5 **Definitions**

In this Act:

Aboriginal community living area, see section 3 of the *Local Government Act*.

Aboriginal community living area association, see section 3 of the *Local Government Act*.

burial permit means a permit to bury human remains in a cemetery under section 18.

cemetery means a cemetery established under section 8(1).

cemetery plan, see section 14.

CEO means the Chief Executive Officer of the Agency administering this Act.

Chief Health Officer, see section 4 of the *Public and Environmental Health Act*.

closed cemetery:

- (a) for Part 10, Division 2 – see section 78; or
- (b) for Part 12, Division 3 – see section 114(1)(c).

community cemetery, means a class of cemetery declared under section 8(2)(c).

compliance review is a program mentioned in section 98.

council, for an area, means the council constituted for that area under the *Local Government Act*.

cremation means the process of using fire or heat to reduce human remains to ash.

disposal, in relation to human remains, means disposal by:

- (a) cremation; or
- (b) any other process prescribed by regulation.

disposed remains means human remains that have been reduced by cremation or any other process prescribed by regulation.

disposal permit means a permit under section 63 to dispose of human remains in a facility.

enforcement order means an order issued under section 107(a) or (b).

exclusive right of burial means a right mentioned in section 35(2).

facility means a place for:

- (a) cremation; or
- (b) any other process prescribed by regulation for the disposal of human remains.

human remains means the body, or part of a body, of a deceased person, but does not include a body, or part of a body, that has been cremated or undergone any other process of disposal prescribed by regulation.

independent cemetery means a class of cemetery declared under section 8(2)(b).

inspector means an inspector appointed under section 94.

local cemetery means a class of cemetery declared under section 8(2)(d).

manager:

- (a) of a cemetery – see section 13; or
- (b) of a facility – see section 58.

memorial means a gravestone, headstone, tombstone, plaque, tablet, cenotaph or any other structure or permanent physical object used to memorialise a deceased person.

next of kin, see section 6.

place of burial means a particular grave or plot in a cemetery.

place for keeping means a particular area of a facility used to keep disposed remains and includes a plot, columbarium or any other structure.

public cemetery, means a class of cemetery declared under section 8(2)(a).

request for burial, see section 19.

responsible entity:

- (a) for the operation of a cemetery – see section 12; or
- (b) for the operation of a facility – see section 57.

semi-closed cemetery:

- (a) for Part 10, Division 1 – see section 75; or
- (b) for Part 12, Division 2 – see section 114(1)(b).

senior next of kin, see section 121(1).

suspension notice means a notice issued under section 110.

Territory Archives, see section 4 of the *Information Act*.

Tribunal means the Civil and Administrative Tribunal.

Note for section 5

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

6 Meaning of next of kin

A **next of kin**, in relation to a deceased person, means the following people:

- (a) for a deceased person who was of Aboriginal person or Torres Strait Islander with strong cultural and traditional ties to a community or group – a person who, according to the customs and tradition of that community or group to which the person belonged, is appropriate to perform that role;
- (b) a spouse;
- (c) a de facto partner;
- (d) a child of or above 18 years of age;

- (e) a parent;
- (f) a sibling of or above 18 years of age.

7 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 7

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Cemeteries

Division 1 Types of Cemeteries

8 Establishment of cemetery

- (1) The Minister, by *Gazette* notice, may establish a cemetery.
- (2) The notice must declare the cemetery as one of the following classes of cemetery:
 - (a) a public cemetery;
 - (b) an independent cemetery;
 - (c) a community cemetery;
 - (d) a local cemetery.
- (3) The notice must specify the following:
 - (a) the responsible entity for the cemetery;
 - (b) the location of the cemetery.
- (4) The Minister must not establish a community cemetery unless the Minister is satisfied that there is one of the following:
 - (a) a lease for the land to be used as a cemetery;
 - (b) a licence for the land to be used as a cemetery;
 - (c) written consent from the land owner for the establishment of the cemetery.

- (5) The Minister must not establish a local cemetery unless the Minister is satisfied that:
- (a) there is one of the following:
 - (i) a lease for the land to be used as a cemetery;
 - (ii) a licence for the land to be used as a cemetery;
 - (iii) written consent from the land owner for the establishment of the cemetery; and
 - (b) the Aboriginal community living area association or other corporation that will be the responsible entity for the proposed cemetery has the appropriate resources and capability to operate the cemetery.
- (6) The Minister must table a copy of the notice in the Legislative Assembly within 6 sitting days after the notice has been published in the *Gazette*.

9 Agency to keep register of cemeteries

- (1) The Agency must establish and maintain a register of cemeteries established by the Minister under section 8(1).
- (2) A copy of the register must be available on the Agency's website.

Division 2 Minister may change class or revoke declaration of cemetery

10 Minister may change class of cemetery

- (1) The Minister, by *Gazette* notice, may change the class of a cemetery.
- (2) The notice must specify who is the responsible entity for the cemetery.
- (3) Any change in a class of cemetery is subject to the conditions mentioned in section 8(4) and (5).

11 Minister may revoke establishment of cemetery

- (1) If a cemetery does not have any human remains interred in the cemetery, the Minister, by *Gazette* notice, may revoke the establishment of that cemetery.

- (2) The notice must specify the following:
 - (a) the name of the cemetery;
 - (b) the location of the cemetery;
 - (c) the responsible entity for the cemetery;
 - (d) the date the revocation takes effect.

Part 3 Management of cemeteries

12 Responsible entity for cemetery

- (1) The responsible entity for a cemetery is as follows:
 - (a) for a public cemetery or community cemetery – the Council for the area where the cemetery is located;
 - (b) for a independent cemetery – the person specified in the notice under section 8(1);
 - (c) for a local cemetery – the Aboriginal community living area association or any other corporation that is specified in the notice under section 8(1).
- (2) The responsible entity for a cemetery must manage and control the cemetery.
- (3) The responsible entity has the following functions:
 - (a) to care for and maintain the cemetery;
 - (b) to ensure burials of human remains and exhumations in the cemetery are undertaken in accordance with this Act;
 - (c) to fund the maintenance of the cemetery;
 - (d) to ensure there is access to equipment to undertake burials and exhumations;
 - (e) to establish and maintain records of burials and exhumations undertaken in the cemetery;
 - (f) to establish and maintain the registers that are required under this Act;
 - (g) to establish a cemetery plan for the cemetery;
 - (h) to establish cemetery policies for the cemetery;

- (i) any other functions conferred on the responsible entity under this Act or another Act.
- (4) In exercising a power or function under this Act, the responsible entity must have regard to the following:
- (a) the most efficient way of maintaining the cemetery;
 - (b) if the cemetery serves a particular cultural or religious community – the values of that community;
 - (c) the heritage value of the cemetery.

13 Manager of cemetery

The manager of a cemetery is as follows:

- (a) for a public cemetery or community cemetery – the Chief Executive Officer of the Council for the area where the cemetery is located;
- (b) for an independent cemetery – an individual appointed by the responsible entity;
- (c) for a local cemetery – an individual appointed by the responsible entity.

14 Cemetery plans

- (1) The responsible entity for a cemetery must establish and maintain a cemetery plan for the cemetery.
- (2) A cemetery plan must include the following information:
 - (a) the layout of the cemetery that identifies any portion of the cemetery for specific use;
 - (b) the types of burials available in the cemetery;
 - (c) the amount of any fees related to the cemetery charged by the responsible entity;
 - (d) any policy or other matter prescribed by regulation.

15 Public opening hours of cemetery

- (1) A cemetery must be open to the public for a minimum of 8 hours a day.
- (2) If authorised by the responsible entity, a cemetery may be open up to 24 hours a day.

- (3) The responsible entity, on request, may allow access to the cemetery outside the opening hours.

16 Information to be publicly available

- (1) The responsible entity for a cemetery must ensure that the following information is available on the cemetery's website:
- (a) the cemetery plan;
 - (b) general information relating to the cemetery including the public opening hours of the cemetery;
 - (c) details of the application process for a burial permit or an exclusive right of burial;
 - (d) the amount of any fees charged by the responsible entity;
 - (e) any other information prescribed by regulation.
- (2) Subsection (1) does not apply to a local cemetery.

17 Information to be displayed at cemetery

The responsible entity for a cemetery must ensure that the following information is displayed at the cemetery:

- (a) the name of the cemetery;
- (b) the public opening hours of the cemetery;
- (c) the contact details of the manager of the cemetery.

Part 4 Burials

Division 1 Burials within cemetery

18 Burial permit

- (1) The manager of a cemetery may issue a permit to bury human remains in the cemetery.
- (2) The permit may be issued subject to any conditions that the manager considers appropriate.
- (3) A person may apply to the manager of a cemetery for a permit by submitting the following:
- (a) a request for burial;

- (b) one of the following documents:
- (i) a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act*;
 - (ii) written authorisation from a coroner for the authority to bury human remains.

Note for subsection (3)

Part 4, Division 2 includes other provisions relevant to an application.

- (4) A manager may refuse to issue a permit under subsection (1).
- (5) If a manager refuses to issue a permit, the manager must give the applicant written reasons for the refusal.
- (6) Despite subsection (4), the manager of a public cemetery must not refuse to issue a permit under subsection (1) if:
- (a) an application for a permit complies with the requirements of this Act; and
 - (b) any fee determined by the responsible entity has been paid.
- (7) A person commits an offence if the person issues a permit under subsection (1), after receiving an application under subsection (3), and the application does not contain the documents mentioned in subsection (3).

Maximum penalty: 50 penalty units.

- (8) A person commits an offence if:
- (a) a burial permit was issued to the person; and
 - (b) the permit is subject to a condition under subsection (2); and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in a contravention of the condition and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (9) Strict liability applies to subsections (7) and (8)(a) and (b).

19 Request for burial

A request for burial must include the following information about the deceased person, if known:

- (a) full name;
- (b) gender;
- (c) date of birth;
- (d) country of birth;
- (e) address of residence immediately before death;
- (f) date of death;
- (g) place of death;
- (h) cause of death;
- (i) last occupation before death;
- (j) marital status;
- (k) any other information prescribed by regulation.

20 Burial in vault, mausoleum, crypt or any other structure

- (1) Human remains must not be buried in a vault, mausoleum, crypt or any other structure unless that structure is set in cement and covered by slate, stone, concrete, glass slab or similar material.
- (2) Human remains must not be buried in a vault, mausoleum, crypt or any other structure unless the human remains are:
 - (a) encased in a container, or wrapped in material, that is hermetically sealed; and
 - (b) enclosed in a receptacle.

21 Multiple burials

- (1) The manager of a cemetery may authorise multiple burials in the same grave.
- (2) A grave used for multiple burials must comply with the requirements of section 34.

22 Burial times

A burial must not take place in a cemetery except at the times determined from time to time by the responsible entity for the cemetery.

23 Register of burials

- (1) The responsible entity for a cemetery must establish and maintain a register of the burials of human remains that occur in the cemetery.
- (2) The register must include the following information regarding each burial:
 - (a) the information mentioned in section 19;
 - (b) the date of burial;
 - (c) the number or other means of locating the place of burial;
 - (d) the type of burial;
 - (e) the depth of any grave;
 - (f) descriptive details of any memorial erected at the place of burial;
 - (g) the date of erection of any memorial at the place of burial;
 - (h) the name of the person who officiated the burial ceremony, if any;
 - (i) any other information prescribed by regulation.
- (3) The responsible entity must ensure the register of burials is publicly available.
- (4) The responsible entity may determine and charge a fee for the inspection of the register of burials at the cemetery.

Division 2 Interstate and overseas deaths

24 Interstate deaths

If a person dies in another State or Territory, a document that satisfies the requirements for burial of human remains in that State or Territory may be used instead of a document mentioned in section 18(3)(b).

25 Overseas deaths

- (1) If a person dies outside Australia, any of the following documents may be used instead of a document mentioned in section 18(3)(b):
 - (a) a death certificate issued by a person legally authorised to do so in the place where the death occurred;
 - (b) a notice under a law in force in the place where the death occurred that is equivalent to a notice issued under section 34(1) of the *Births, Deaths and Marriages Registration Act*, stating the cause of death;
 - (c) a certificate issued by a coroner or a person or entity equivalent to a coroner in the place where the death occurred.
- (2) If none of the documents mentioned in subsection (1) are able to be provided, any of the following documents may be used instead:
 - (a) a certificate of cause of death issued by a medical practitioner after a post-mortem is performed;
 - (b) a certificate from an Australian coroner stating that:
 - (i) no further examination of the human remains is necessary; and
 - (ii) there is no reason not to dispose of the human remains in a lawful manner.

Division 3 Memorials

26 Memorial within cemetery

- (1) The manager of a cemetery may authorise the erection of a memorial at a place of burial in the cemetery in accordance with any policy determined by the responsible entity.
- (2) A person may, in writing, apply to the manager for authorisation to erect a memorial at a place of burial.
- (3) The manager may authorise the erection of the memorial subject to any conditions the manager considers appropriate.
- (4) A person commits an offence if a person erects a memorial in a cemetery without authorisation from the manager under subsection (1).

Maximum penalty: 50 penalty units.

- (5) A person commits an offence if a person contravenes a condition of an authorisation under subsection (3).

Maximum penalty: 25 penalty units.

- (6) An offence against subsection (4) or (5) is an offence of strict liability.

27 Requirement to repair memorial

- (1) If a memorial at a place of burial becomes unsafe, the responsible entity, by written notice, may require the person mentioned in section 26(2) to repair, remove or reinstate the memorial within a reasonable period specified in the notice.

- (2) If the required work under subsection (1) is not carried out within the period specified in the notice, the responsible entity may:

- (a) carry out the required work; and
- (b) recover the cost of the work as a debt payable by the person mentioned in section 26(2).

- (3) A written notice under subsection (1) is not required if:

- (a) a memorial at a place of burial becomes unsafe; and
- (b) urgent action to repair, remove or reinstate the memorial is considered necessary by the responsible entity.

- (4) The responsible entity may:

- (a) carry out the work mentioned in subsection (3); and
- (b) recover the cost of the work as a debt payable by the person mentioned in section 26(2).

- (5) If a memorial becomes unsafe due to the actions of the responsible entity, the responsible entity:

- (a) must repair, remove or reinstate the memorial; and
- (b) must not recover costs from the person mentioned in section 26(2).

- (6) This section does not apply to a cemetery that is, or forms part of, a heritage place.

- (7) In this section:

unsafe means likely to cause physical danger to a person.

30 Offence to bury outside cemetery without permit

- (1) A person commits an offence if:
- (a) the person intentionally buries human remains; and
 - (b) the human remains are buried at a location outside a cemetery; and
 - (c) a permit mentioned in section 29(1) has not been issued for the burial of the human remains.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(b) and (c).

- (3) A person commits an offence if:

- (a) a permit mentioned in section 29(1) has been issued to a person; and
- (b) the permit is subject to a condition under section 29(2); and
- (c) the person intentionally engages in conduct; and
- (d) the conduct results in a contravention of the condition and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (4) Strict liability applies to subsection (3)(a) and (b).

31 Objection to burial outside cemetery

- (1) The following persons may object to the burial of human remains of a deceased person outside a cemetery:

- (a) an executor or administrator of the deceased person's estate;
- (b) any next of kin of the deceased person.

- (2) The objection mentioned in subsection (1) must:

- (a) be in writing; and
- (b) state the applicant's relationship to the deceased person; and
- (c) state the reasons for the objection; and

- (d) be submitted to the CEO before the CEO makes a decision under section 29(1).

32 Information of burial outside cemetery

- (1) A person issued a permit under section 29(1) must provide the following information to the Agency regarding a burial outside a cemetery after the burial has occurred:
 - (a) the information mentioned in section 19;
 - (b) the GPS coordinates of the place where the human remains are interred;
 - (c) the date of burial;
 - (d) the depth of the grave;
 - (e) details about how the human remains are interred;
 - (f) descriptive details of any memorial erected at the place where the human remains are buried;
 - (g) the date of erection of any memorial at the place where the human remains are buried;
 - (h) the name of the person who officiated the ceremony, if any;
 - (i) any other information prescribed by regulation.
- (2) The person must provide the information mentioned in subsection (1) to the Agency within 30 days after the burial occurred.

33 Agency requirements for burial outside cemetery

- (1) The Agency must establish and maintain a register of burials located outside a cemetery.
- (2) The register must include the information mentioned in section 32(1).
- (3) If human remains are buried at a location outside a cemetery in accordance with a permit issued under section 29, the Agency must provide to the Registrar-General the appropriate information for the record of administrative interests kept under section 38 of the *Land Title Act*.

Division 5 Depth of burial

34 Depth of burial within cemetery and outside cemetery

- (1) Human remains that are buried must be completely covered by soil that is at least 1 m deep at its shallowest point.
- (2) If it is not reasonably practicable to comply with subsection (1), human remains that are buried must be completely covered by:
 - (a) a layer of stone, concrete or similar material impervious to water, which is at least 50 mm thick and placed directly over the remains; and
 - (b) soil that is at least 500 mm deep at its shallowest point.

Part 5 Exclusive rights of burial in cemetery

Division 1 Rights of burial generally

35 Responsible entity may grant exclusive right of burial

- (1) An exclusive right of burial entitles an individual to the exclusive right to bury any human remains at a specific place of burial in a cemetery.
- (2) A responsible entity, on payment of the relevant fee, may grant to an individual an exclusive right of burial in a cemetery for which it is responsible.
- (3) A particular exclusive right of burial cannot be granted to more than one individual.
- (4) An exclusive right of burial may be granted subject to any conditions that the responsible entity specifies in the right.
- (5) The responsible entity may determine and charge a fee for an exclusive right of burial.

36 Duration of right

An exclusive right of burial expires after 50 years or any shorter period specified in the right.

Note for section 36

Part 5, Division 3 sets out the process for the expiry and renewal of an exclusive right of burial.

37 Entitlements of exclusive right of burial

- (1) A holder of an exclusive right of burial may do the following at the specific place of burial:
 - (a) bury human remains in accordance with a burial permit issued under section 18;
 - (b) erect a memorial in accordance with an authorisation under section 26.
- (2) The holder of an exclusive right of burial must obtain the approval of the responsible entity before exercising the right.
- (3) The responsible entity must approve the exercise of an exclusive right of burial unless there is an appropriate reason to not approve the exercise of the exclusive right of burial.

38 Exercise of exclusive right of burial

If the holder of an exclusive right of burial dies, the exclusive right of burial may be exercised by:

- (a) the executor or administrator of the estate of the holder of the right; or
- (b) any next of kin of the holder of the right.

39 Change of contact details

If the contact details for the holder of an exclusive right of burial change, the holder of an exclusive right of burial must notify the responsible entity as soon as practicable after the change.

Division 2 Transfer and surrender

40 Transfer of exclusive right of burial prohibited

An exclusive right of burial is not transferable to another person.

41 Surrender to responsible entity of unexercised right of burial by holder

- (1) The holder of an unexercised exclusive right of burial may surrender the right to the responsible entity that granted it.
- (2) Subsection (1) includes a right that has been exercised but after which the human remains have been exhumed.

- (3) On the surrender of an exclusive right of burial to a responsible entity:
 - (a) the person surrendering the right has no further entitlements under the right; and
 - (b) the responsible entity, if there are no human remains interred in the place of burial to which the surrendered right applied, may grant another exclusive right of burial in respect of that place.

42 Refund for unexercised or refused exclusive right of burial

- (1) The responsible entity must establish a policy for refunds of exclusive rights of burial for the following circumstances:
 - (a) the surrender of unexercised exclusive rights of burial under section 41(1);
 - (b) if the responsible entity has not approved the exercise of an exclusive right of burial under section 37(3).
- (2) The manager of the cemetery must ensure that a person applying for an exclusive right of burial is aware of the refund policy before entering into an agreement for the exclusive right of burial.
- (3) The refund policy that applies to the surrender of the exclusive right of burial is the policy current at the time the person entered into the agreement for the exclusive right of burial.

Division 3 Expiry and renewal of exclusive rights of burial

43 Responsible entity to notify holder of expiry of right

- (1) At least 12 months before an exclusive right of burial expires, the responsible entity for the cemetery to which the right applies must take reasonable steps to notify the holder of the right that the right will expire at the end of the period for which it was granted.
- (2) A notification under subsection (1) must advise the holder of the right of the following details:
 - (a) the date of expiry;
 - (b) whether the right is available for renewal;
 - (c) the fee for any renewal;
 - (d) the maximum period, not exceeding a further 50 years, for which it may be renewed (if any).

44 Renewal of exclusive right of burial

- (1) If an exclusive right of burial is available for renewal, the responsible entity, in the notice, must give the holder of the right the option to renew the right.
- (2) The holder of an exclusive right of burial that is available for renewal may apply to renew the right for a further period specified in the notice not exceeding 50 years.
- (3) An application under subsection (2):
 - (a) must be in writing; and
 - (b) may be made at any time within 12 months before the expiry date of the right, but no later than 28 days after the expiry date of the right; and
 - (c) must be accompanied by the renewal fee.
- (4) On receiving a renewal application under subsection (2), the responsible entity must renew the right for the period specified.
- (5) An exclusive right of burial renewed under this section applies to the same place of burial as the original right.
- (6) If the holder of an exclusive right of burial has died, the exclusive right of burial may be renewed by:
 - (a) the executor or administrator of the estate of the holder of the right; or
 - (b) any next of kin of the holder of the right.

45 Exclusive right of burial not renewed

If an exclusive right of burial expires, the responsible entity may grant another exclusive right of burial in respect of the place of burial to which an expired right applied if:

- (a) the exclusive right of burial is not renewed within the time allowed; and
- (b) no human remains are buried at that place of burial.

Division 4 Register of exclusive rights of burial**46 Responsible entity to keep register of exclusive rights of burial**

- (1) The responsible entity for a cemetery must establish and maintain a register of exclusive rights of burial that the responsible entity has granted.
- (2) The register must include the following details:
 - (a) the place of burial in respect of which each exclusive right of burial was granted;
 - (b) the full name and address of the holder of the exclusive right of burial.
- (3) In accordance with the cemetery's policy, a person may inspect a cemetery's register of exclusive rights of burial at any time on payment of any relevant fee.
- (4) The responsible entity may determine a fee for the inspection of the cemetery's register of exclusive rights of burial.

Part 6 Exhumations**47 Offence to exhume without authorisation**

- (1) A person commits an offence if:
 - (a) the person intentionally exhumes human remains; and
 - (b) the person is not authorised under section 48(2) to exhume the human remains.

Maximum penalty: 300 penalty units or imprisonment for 3 years.

- (2) Strict liability applies to subsection (1)(b).
- (3) An offence against this section is a summary offence.

48 Application for exhumation and relocation of human remains

- (1) The following persons may apply to the CEO for permission to exhume human remains and move the human remains from the Territory or to another place in the Territory:
 - (a) the executor or administrator of the estate of the deceased person;

- (b) any next of kin of the deceased person;
 - (c) a person who, in the opinion of the CEO, is an appropriate person in the circumstances.
- (2) Before making an application under subsection (1), the applicant must notify the following people that the applicant is making an application under this section:
- (a) any executor or administrator of the deceased person;
 - (b) the senior next of kin;
 - (c) if the human remains are buried at a specific place of burial in accordance with an exclusive right of burial – the holder of the exclusive right of burial.
- (3) The applicant must include in the notification under subsection (2):
- (a) a statement advising that any person mentioned in subsection (2) may object on reasonable grounds, in writing to the CEO, to the proposed exhumation and relocation; and
 - (b) the person has 28 days to object to the proposed exhumation and relocation from the time the application is made.
- (4) The CEO, in writing, may permit the exhumation and relocation of human remains of a deceased person if satisfied of the following matters:
- (a) that the applicant is a person entitled under subsection (1) to make the application;
 - (b) that the applicant's stated reasons for exhuming and relocating the human remains are appropriate;
 - (c) that the applicant has notified the people mentioned in subsection (2);
 - (d) if the applicant has been unable to notify the people mentioned in subsection 2 – that the applicant has taken all reasonable steps to do so;
 - (e) that the Chief Health Officer has approved, in writing, the proposed exhumation and relocation;
 - (f) that the applicant will comply with any conditions imposed by the Chief Health Officer;

- (g) that the applicant has arranged a suitable place of relocation for the human remains;
 - (h) that the applicant has the necessary authority to bury, cremate or otherwise dispose of the human remains at the place to which the applicant intends to move the human remains;
 - (i) that the applicant has arranged for appropriate transportation of the human remains;
 - (j) that the applicant has agreed to pay for all costs associated with the exhumation;
 - (k) any additional matters the CEO considers relevant to the application.
- (5) The CEO may specify conditions in respect of the exhumation and relocation of human remains in the written permission under subsection (4).
- (6) The CEO may refuse to permit the exhumation and relocation of human remains under subsection (4).
- (7) If the CEO refuses to permit the exhumation and relocation of human remains, the CEO must give the applicant written reasons for the refusal.
- (8) A person commits an offence if:
- (a) the person has permission under subsection (4) to exhume human remains; and
 - (b) the permission is subject to a condition under subsection (5); and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in a contravention of the condition and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (9) Strict liability applies to subsection (8)(a) and (b).

49 Exception for exhumation

Permission from the CEO is not needed for exhumation in the following circumstances:

- (a) to allow for an additional burial in a grave, crypt, mausoleum, vault or other similar structure if:
 - (i) the human remains inside the structure are removed to allow for the additional burial inside the structure; and
 - (ii) the human remains are immediately returned to the structure;
- (b) if the exhumation is authorised by another Act.

50 Objections

- (1) The following persons may object, in writing, to the exhumation and relocation of human remains to the CEO:
 - (a) an executor or administrator of the deceased person's estate;
 - (b) any next of kin of the deceased person.
- (2) The objection must include the following information:
 - (a) the person's relationship to the deceased person;
 - (b) the reasons for the objection.
- (3) The CEO may take into account any objection before permitting the exhumation and relocation of human remains under section 48(4).

51 Exhumation information

The responsible entity must ensure the following information for each exhumation is included in the register of burials:

- (a) the date permission for exhumation was given by the CEO under section 48(4);
- (b) the date of exhumation;
- (c) the place of relocation.

- (b) to ensure the facility has the proper equipment to undertake the disposal of human remains;
- (c) if the facility provides a place for keeping disposed remains:
 - (i) to ensure the place is maintained; and
 - (ii) to ensure the place is accessible to the public;
- (d) to establish policies for the facility in accordance with regulations;
- (e) to establish and maintain records relating to the operation of the facility;
- (f) to establish and maintain a register of disposal of human remains;
- (g) any other functions conferred on the responsible entity under this Act or another Act.

58 Manager of facility

- (1) The manager of a facility must supervise the operations of the facility.
- (2) The manager of a facility is as follows:
 - (a) for a facility in a public cemetery or community cemetery – the Chief Executive Officer of the Council;
 - (b) for a facility in an independent cemetery or a local cemetery - an individual appointed by the responsible entity;
 - (c) for a facility that is not in a cemetery – an individual appointed by the responsible entity.

59 Register of disposal of human remains

- (1) The responsible entity for a facility must establish and maintain a register of disposal of human remains undertaken at the facility.
- (2) The register must include the following information for each disposal of human remains undertaken at the facility:
 - (a) the information mentioned in section 19;
 - (b) the date of disposal of human remains;
 - (c) the process of disposal of human remains;

- (d) the name of person who disposed of the human remains;
 - (e) if the disposed remains are kept at the facility:
 - (i) the number, or any other descriptive detail, identifying the place of keeping at the facility; and
 - (ii) descriptive details of any memorial erected at the place of keeping; and
 - (iii) the date of erection of any memorial;
 - (e) any other information prescribed by regulation.
- (3) In accordance with a facility's policy, a person may inspect a facility's register of disposal of human remains at any time on payment of any relevant fee.
- (4) The responsible entity may determine a fee for the inspection of the facility's register of human remains.

60 Information to be publicly available

- (1) The responsible entity for a facility must ensure that the following information is available on the facility's website:
- (a) the amount of fees charged by the responsible entity;
 - (b) the types of processes available for the disposal of human remains;
 - (c) details of the application process for the disposal of human remains;
 - (d) any policy approved by the responsible entity;
 - (e) general information relating to the facility including the public opening hours of the facility;
 - (f) any other information prescribed by regulation.
- (2) The manager of a facility must ensure that the following information is displayed at the facility:
- (a) the name of the facility;
 - (b) the contact details of the manager;
 - (c) the public opening hours of the facility.

61 Public opening hours of facility

- (1) If a facility provides a place for keeping disposed remains, the facility must open that area of the facility to the public for a minimum of 8 hours a day.
- (2) If authorised by the responsible entity, the place for keeping disposed remains may be open up to 24 hours a day.
- (3) The responsible entity, on request, may allow access to the place for keeping disposed remains outside the opening hours.

Part 8 Cremation and other prescribed processes for disposal of human remains

Division1 Disposal of human remains

62 Application of Part 8

This Part applies to the following processes for disposal of human remains:

- (a) cremation;
- (b) any other process prescribed by regulation.

63 Application for disposal permit

- (1) The manager of a facility may issue a permit for the disposal of human remains of a deceased person in the facility.
- (2) The following persons may apply to the manager of a facility for a permit:
 - (a) the executor or administrator of the estate of the deceased person;
 - (b) a next of kin of the deceased person;
 - (c) any other person the manager of the facility considers appropriate.
- (3) An application must include the following:
 - (a) the address and telephone number of the applicant;
 - (b) the applicant's relationship to the deceased person;

- (c) confirmation of the notification of, or confirmation of reasonable attempts to notify, the executor or administrator of the estate of the deceased person and the senior next of kin;
 - (d) any known objections of an executor or administrator or a next of kin to the disposal of the deceased person;
 - (e) the information mentioned in section 19;
 - (f) a certificate signed by:
 - (i) 2 medical practitioners, one of whom attended the deceased person in a professional capacity before death, stating that the death was due to natural causes; or
 - (ii) a medical practitioner stating that the medical practitioner conducted a post-mortem examination of the body of the deceased person and that death was due to natural causes; or
 - (iii) a coroner stating that the coroner held an inquest into the cause of death of the deceased person and that no further examination of the body is necessary.
- (4) Before issuing a permit under subsection (1), the manager of a facility must be satisfied that all reasonable steps have been taken by the applicant to notify the executor or administrator of the estate of the deceased person and the senior next of kin of the application for the disposal of a deceased person.
- (5) A person commits an offence if the person issues a permit under subsection (1) after receiving an application under subsection (2) and the application does not contain the documents mentioned in subsection (3).

Maximum penalty: 50 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.

64 Disposal outside a licensed facility

- (1) A person commits an offence if:
- (a) the person intentionally disposes of human remains; and
 - (b) the disposal occurs at a location outside a licensed facility.

Maximum penalty: 300 penalty units or imprisonment for 3 years.

- (2) Strict liability applies to subsection (1)(b).
- (3) An offence against this section is a summary offence.

65 Disposal without permit

- (1) A person commits an offence if:
 - (a) the person intentionally disposes of human remains; and
 - (b) a disposal permit has not been issued for the human remains.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(b).

66 Interested persons not to certify

- (1) A person commits an offence if:
 - (a) the person intentionally signs a certificate mentioned in section 63(3)(f) for a deceased person; and
 - (b) the person has a direct or indirect interest, resulting from the death of the deceased person, in any proceeds of a policy of insurance or assurance and the person has knowledge of that circumstance.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if:
 - (a) the person intentionally signs a certificate mentioned in section 63(3)(f) for a deceased person; and
 - (b) the person has a direct or indirect interest, resulting from the death of the deceased person, in any real or personal property or income, whether immediately or in the future, and the person has knowledge of that circumstance.

Maximum penalty: 50 penalty units.

67 Objections

- (1) The following persons may object, in writing, to the disposal of human remains of a deceased person to the manager of a facility:
 - (a) an executor or administrator of the deceased person's estate;
 - (b) any next of kin of the deceased person.

- (2) The objection must include the following information:
 - (a) the person's relationship to the deceased person;
 - (b) the reasons for the objection.
- (3) The manager may take into account any objection received before issuing a permit under section 65(1).

Division 2 Interstate and overseas deaths

68 Interstate deaths

If a person dies in another State or Territory, a document that satisfies the requirements of that State or Territory may be used instead of a document mentioned in section 63(3)(f).

69 Overseas deaths

- (1) If a person dies in a place outside Australia, any of the following documents may be used instead of a document mentioned in section 63(3)(f):
 - (a) a death certificate issued by a person legally authorised to do so in the place where the death occurred;
 - (b) a notice under a law in force in the place where the death occurred that is equivalent to a notice issued under section 34(1) of the *Births, Deaths and Marriages Registration Act*, stating the cause of death;
 - (c) a certificate issued by a coroner or a person or entity equivalent to a coroner in the place where the death occurred.
- (2) If none of the documents mentioned in subsection (1) are able to be provided, then any of the following documents may be used instead:
 - (a) a certificate of cause of death issued by a medical practitioner after a post mortem has been performed;
 - (b) a certificate from an Australian coroner stating that no further examination of the human remains is necessary and that there is no reason to no dispose of the human remains in a lawful manner.

Division 3 Officers may prohibit disposal

70 Officers may prohibit disposals

- (1) Any of the following persons, by written notice, may prohibit the disposal of human remains if that person believes on reasonable grounds that it is appropriate to prohibit the process:
 - (a) the Coroner;
 - (b) the Director of Public Prosecutions;
 - (c) the Solicitor for the Northern Territory;
 - (d) a justice of the peace;
 - (e) a police officer;
 - (f) an inspector.
- (2) A notice under subsection (1):
 - (a) must be given to the responsible entity or manager for the facility; and
 - (b) must specify the following information in relation to the grounds of the prohibition of the process:
 - (i) the human remains to which the prohibition applies;
 - (ii) the period of the prohibition;
 - (iii) any conditions or other relevant information; and
 - (c) may order that the human remains:
 - (i) be moved to a specified place; or
 - (ii) be placed in the custody of a specified person.
- (3) A notice may be:
 - (a) absolute; or
 - (b) subject to stated conditions.

71 Offence to contravene notice under section 70

- (1) A responsible entity commits an offence if:
- (a) a notice under section 70(2) applies to human remains and the responsible entity has knowledge of that circumstance; and
 - (b) the responsible entity intentionally disposes of human remains; and
 - (c) the disposal of human remains results in a contravention of the notice and the responsible entity is reckless in relation to that result.

Maximum penalty: 300 penalty units or imprisonment for 3 years.

- (2) A responsible entity commits an offence if:
- (a) a notice under section 70(2) applies to human remains and the responsible entity has knowledge of that circumstance; and
 - (b) the responsible entity intentionally engages in conduct; and
 - (c) that conduct results in the contravention of an order made under section 70(2)(c) or a condition under section 70(3)(b) and the responsible entity is reckless in relation to that result.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (3) An offence against subsection (1) is a summary offence.

Division 4 Memorials

72 Memorial within facility

- (1) If the facility provides a place for keeping disposed remains, the manager of a facility may authorise the erection of a memorial at a place for keeping disposed remains in accordance with any policy determined by the responsible entity.
- (2) A person may, in writing, apply to the manager for authorisation to erect a memorial at the place for keeping disposed remains.
- (3) The responsible entity may authorise the erection of the memorial subject to any conditions the manager considers appropriate.

- (4) A person commits an offence if a person erects a memorial in a facility without authorisation from the manager under subsection (1).

Maximum penalty: 50 penalty units.

- (5) A person commits an offence if a person contravenes a condition of an authorisation under subsection (3).

Maximum penalty: 25 penalty units.

- (6) An offence against subsection (4) or (5) is an offence of strict liability.

73 Requirement to repair memorial

- (1) If a memorial at a facility becomes unsafe, the responsible entity may, by written notice, require the person mentioned in section 72(2) to repair, remove or reinstate the memorial within a reasonable period specified in the notice.

- (2) If the required work mentioned in subsection (1) is not carried out within the period specified in the notice, the responsible entity may:

- (a) carry out the required work; and
- (b) recover the cost of the work as a debt payable by the person mentioned in section 72(2).

- (3) A written notice under subsection (1) is not required if:

- (a) a memorial at a facility becomes unsafe; and
- (b) urgent action to repair, remove or reinstate the memorial is considered necessary by the responsible entity.

- (4) The responsible entity may carry out the work mentioned in subsection (3) and may recover the cost of the work as a debt payable by the person mentioned in section 72(2).

- (5) If a memorial becomes unsafe due to the actions of the responsible entity, the responsible entity:

- (a) must repair, remove or reinstate the memorial; and
- (b) must not recover costs from the person mentioned in section 26(2).

- (6) In this section:

unsafe means likely to cause physical danger to a person.

Part 9 Transport of human remains

74 Vehicle used for transportation of human remains

- (1) A person must not transport human remains in a vehicle unless the human remains are covered and:
- (a) are kept in a compartment that:
 - (i) is physically separate from a part of the vehicle designed for the carriage of the driver and passengers; and
 - (ii) is capable of being easily cleaned and disinfected; or
 - (b) are contained in a coffin, receptacle, container or wrapping that does not allow any bodily discharge, contaminants or infectious substances to escape.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Part 10 Closure of cemeteries

Division 1 Semi-closed cemeteries

75 Semi-closed cemetery

A semi-closed cemetery is a cemetery at which burials are no longer available except in the following circumstances:

- (a) a multiple burial under section 21;
- (b) the exercise of an exclusive right of burial under section 35.

76 Application to declare cemetery semi-closed

- (1) The following, in writing, may apply to the Minister to declare a cemetery as a semi-closed cemetery:
- (a) the land owner for the land on which the cemetery is located;
 - (b) the responsible entity for the cemetery.
- (2) An application under subsection (1) must include the reason for the cemetery to be declared as a semi-closed cemetery.

77 Declaration of semi-closed cemetery

- (1) The Minister may, by *Gazette* notice, declare a cemetery to be a semi-closed cemetery:
 - (a) on application under section 76; or
 - (b) on the Minister's own initiative.
- (2) The Minister must not make a declaration under subsection (1) in relation to a community cemetery or a local cemetery unless the Minister has consulted with the land owner.
- (3) The declaration must include the following information:
 - (a) the conditions of the semi-closure of the cemetery, if any;
 - (b) whether multiple burials are available in accordance with the cemetery's policies;
 - (c) the date the semi-closure takes effect.

Division 2 Closed cemeteries

78 Closed cemetery

A closed cemetery is a cemetery at which burials are no longer available.

79 Application to close cemetery

- (1) The following may, in writing, apply to the Minister to declare a cemetery as a closed cemetery:
 - (a) the land owner for the area on which the cemetery is located;
 - (b) the responsible entity for the cemetery.
- (2) An application under subsection (1) must include the reason for the cemetery to be declared as a closed cemetery.
- (3) Before making an application under subsection (1), the responsible entity for a cemetery must take reasonable steps to ensure there are no outstanding exclusive rights of burial in the cemetery.

80 Declaration of closed cemetery

- (1) The Minister may, by *Gazette* notice, declare a cemetery to be a closed cemetery:
 - (a) on application under section 79; or

- (b) on the Minister's own initiative.
- (2) The Minister must not make a declaration under subsection (1) in relation to a community cemetery or a local cemetery unless the Minister has consulted with the land owner.
- (3) The declaration must include the conditions of the closure of the cemetery, if any.

Division 3 Notification and management of semi-closed cemetery or closed cemetery

81 Notification of semi-closed cemetery and closed cemetery

- (1) The Minister must table a copy of a declaration made under section 77 or 80 in the Legislative Assembly within 6 sittings days after the declaration has been published in the *Gazette*.
- (2) The responsible entity for a cemetery must display a sign at the cemetery that includes the following:
 - (a) a statement that the cemetery is a semi-closed cemetery or closed cemetery;
 - (b) the information contained in the declaration under section 77 or 80.

82 Management of semi-closed and closed cemetery

- (1) The duties of a responsible entity for a cemetery under Parts 3, 4, 5 and 6 continue to apply in respect of a semi-closed cemetery.
- (2) The duties of a responsible entity for a cemetery under Parts 3 and 6 continue to apply in respect of a closed cemetery.

Division 4 Transformation of closed cemetery into public park

83 Closed cemetery

A closed cemetery may, after 50 years, be transformed into a public park under section 90.

84 Application to transform closed cemetery into public park

- (1) The following, in writing, may apply to the Minister to transform a closed cemetery into a public park:
 - (a) the land owner for the area on which the cemetery is located;

- (b) the responsible entity for the cemetery.
- (2) If a cemetery or a portion of a cemetery has been consecrated according to the rites or practices of a religious or cultural group, the applicant may offer an opportunity to acquire the land that the cemetery or portion of the cemetery resides on to that group before making an application under subsection (1).
- (3) If the religious or cultural group does not accept an offer under subsection (2), the group may request that the applicant not interfere with the graves in the cemetery or portion of the cemetery.
- (4) The applicant must fulfil all reasonable requests mentioned in subsection (3) of the religious or cultural group.

85 Content of application

- (1) The application to transform a closed cemetery into a public park must be in writing and include the following details:
 - (a) particulars about the proposal to transform a cemetery into a public park;
 - (b) the total number of burials, if known;
 - (c) the dates of the first and last burial, if known;
 - (d) the number of memorials;
 - (e) the particulars about whether the memorials are proposed to be removed and disposed of, relocated within the cemetery, or relocated to another cemetery;
 - (f) the number of any memorials provided or maintained by the Commonwealth War Graves Commission;
 - (g) if a portion of the cemetery is controlled or maintained by the Commonwealth War Graves Commission:
 - (i) documents evidencing support of the transformation of the cemetery into a public park by the Commonwealth War Graves Commission; and
 - (ii) consent from the Commonwealth War Graves Commission for the removal, disposal or relocation of any memorials;
 - (h) the number of graves for which money is held for perpetual care;

- (i) the amount of money held by the responsible entity for the perpetual care of graves;
 - (j) the amount of money held by the responsible entity otherwise than for the perpetual care of graves;
 - (k) particulars about the proposed future use of any building erected in the cemetery;
 - (l) the estimated costs of:
 - (i) transforming the cemetery into a public park; and
 - (ii) maintaining the proposed public park;
 - (m) particulars about how the applicant proposes to meet the costs mentioned in paragraph (l);
 - (n) copies of any objections received during the public consultation;
 - (o) any other details prescribed by regulation.
- (2) The Minister may, in writing, request further information from the applicant.

86 Notice of intention to transform cemetery into public park

- (1) Before making an application under section 84(1), the applicant must give 6 months' notice of the applicant's intention to apply to transform a cemetery into a park by advertising:
- (a) in a newspaper that is circulated throughout the Territory; and
 - (b) on the applicant's website, if any; and
 - (c) at the cemetery.
- (2) The applicant must ensure, if reasonably practicable, that the following people are notified of the applicant's intention to transform a closed cemetery into a public park:
- (a) the executor or administrator of the estate of each deceased person buried in the cemetery;
 - (b) any next of kin of a deceased person buried in the cemetery;
 - (c) any other person who applied for the burial permit for a deceased person buried in the cemetery.

- (3) A notice under subsection (2) must include the following:
- (a) a plan of the proposed public park including the timeframe of the proposed transformation;
 - (b) details regarding a public consultation process to be undertaken by the applicant;
 - (c) information to object to the transformation of a closed cemetery into a public park.

87 Public consultation

Before making an application under section 84(1), the applicant must undertake a public consultation on the proposed transformation.

88 Obligations of responsible entity

- (1) Before a closed cemetery is approved to be transformed into a public park, the responsible entity must:
- (a) establish an inventory and a layout of the closed cemetery that identifies all places of burial and memorials including any inscriptions or other particulars; and
 - (b) photograph each memorial.
- (2) The responsible entity for a cemetery, other than a local cemetery, must ensure the records mentioned in subsection (1) are available:
- (a) to be inspected at the cemetery; and
 - (b) on the cemetery's website; and
- (3) The responsible entity for a local cemetery must ensure the records mentioned in subsection (1) are publicly available in accordance with the cemetery's policy.

89 Objections

- (1) A person, in writing, may object to the Minister regarding the proposal to transform a cemetery into a public park.
- (2) The objection must include the following details:
- (a) the person's full name and contact details;
 - (b) the reason for the objection.

90 Minister may transform closed cemetery into public park

- (1) The Minister may, by *Gazette* notice, transform a closed cemetery into a public park:
 - (a) on application under section 84; or
 - (b) if the cemetery is a closed public cemetery – on the Minister's own initiative.
- (2) The Minister may take into account any objection received under section 89(1) before transforming a closed cemetery into a public park under subsection (1).
- (3) The Minister may impose conditions on the approval that the Minister considers appropriate.
- (4) If the Minister proposes to transform a closed cemetery into a public park under subsection (1)(b), the Minister must comply with the requirements of section 86.
- (5) The Minister must table a copy of the *Gazette* notice in the Legislative Assembly within 6 sittings days after the notice has been published in the *Gazette*.

91 Relocation of memorials

- (1) If the Minister approves the application to transform a closed cemetery into a public park under section 90(1), the applicant may, subject to any conditions imposed by the Minister:
 - (a) remove and dispose of any memorial; or
 - (b) relocate any memorial to a place within the cemetery; or
 - (c) relocate any memorial to another cemetery.

92 Activities consistent with quiet recreation

- (1) A closed cemetery transformed into a public park under this Division is to be available to the public as a place of quiet recreation only.
- (2) A person must not organise or participate in any competitive sports in a public park mentioned in section 90.

93 Minimum period of public park for an independent cemetery

A closed independent cemetery that has been transformed into a public park under section 90 must remain as a public park for a minimum period of 50 years.

Part 11 Compliance reviews and investigations

Division 1 Inspectors

94 Appointment of inspectors

- (1) The CEO may, in writing, appoint a person to be an inspector for the purposes of this Act.
- (2) An appointment may be subject to any conditions specified in the instrument of appointment that the CEO considers appropriate.

95 Identity cards for inspectors

- (1) The CEO must give an inspector an identity card stating the person's name and that the person is an inspector.
- (2) The identity card must:
 - (a) show a recent photograph of the inspector; and
 - (b) show the card's date of issue; and
 - (c) be signed by the inspector.
- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.

96 Return of identity card

- (1) A person who ceases to be an inspector must return the person's identity card to the CEO within 21 days after the cessation.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the person has a reasonable excuse.

97 Functions of inspector

- (1) An inspector has the following functions:
 - (a) to assess whether or not persons are complying with this Act;
 - (b) to carry out compliance reviews;
 - (b) to investigate and gather evidence of suspected offences against this Act;

- (c) to perform any other function conferred on inspectors under this Act.
- (2) An inspector has the powers necessary to perform the inspector's functions under this Act.
- (3) In exercising a power or performing a function under this Act, an inspector is subject to the direction of the CEO.

Division 2 Compliance review

98 Program of compliance reviews

- (1) The Agency must establish a program of compliance reviews for cemeteries that undertake burials and facilities that undertake disposals of human remains.
- (2) The purpose of a compliance review is to ensure that a cemetery that undertake burials and a facility that undertakes disposals of human remains conduct their businesses in accordance with this Act.

99 Agency must report on results of compliance review

- (1) The Agency must report to the responsible entity for a cemetery or facility on the results of a compliance review of the cemetery or facility.
- (2) The report may contain recommendations for administrative or operational changes.

Division 3 Investigations

100 Investigations

- (1) If there are reasonable grounds to suspect an irregularity in or affecting the control or management of a cemetery or facility, the Agency may direct an investigation into the operation of that cemetery or facility.
- (2) An investigation is to be carried out by one or more inspectors assigned to the investigation by the Agency.

Division 4 Powers of inspectors

101 Power of entry

- (1) For the purposes of performing functions under this Act, an inspector may:
 - (a) enter, examine and search land and premises of the cemetery or facility; and
 - (b) examine and take copies of any records or other documents of the cemetery or facility.
- (2) The responsible entity for a cemetery or facility must, at the request of an inspector and within the reasonable period specified in the request, do the following:
 - (a) anything reasonably necessary to facilitate the exercise of powers under subsection (1);
 - (b) answer any question relevant to the compliance review or the investigation asked by the inspector;
 - (c) produce any specified record or documentary material relevant to the compliance review or the investigation;
 - (d) give any other assistance the inspector reasonably requires;
 - (e) any combination of the above.
- (3) A request under subsection (2) must be in writing.
- (4) A person commits an offence if the person contravenes a request under subsection (2).

Maximum penalty: 100 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant took reasonable steps to comply with the request.

102 Procedure for entry

Before entering any land or premises in the exercise of a power under this Act, an inspector must:

- (a) announce that the inspector is an inspector who is authorised under this Act to enter the premises; and

- (b) give any person on the land or premises a reasonable opportunity to allow entry to the premises.

103 Production of identity card

- (1) An inspector must show the inspector's identity card to any persons present before exercising a power under this Act.
- (2) An inspector must show the inspector's identity card for inspection if asked to do so by the occupier of any premises during the exercise of a power under this Act.
- (3) If an inspector does not comply with a request under subsection (2), the inspector must immediately cease exercising the power under this Act.

104 Power of formal questioning

- (1) For the purposes of a compliance review or investigation, an inspector may, by written notice, require a person:
 - (a) within the time allowed in the notice, to provide written answers to specified questions or other specified written information; or
 - (b) to attend before the inspector at a specified time and place for examination on a subject stated in the notice; or
 - (c) to produce specified records or documents or records or documents of a specified kind.
- (2) A person required under subsection (1)(a) to provide written answers to questions or other written information must verify the answers or information by statutory declaration.
- (3) A person who attends for examination before an inspector must:
 - (a) if the inspector so requires, take an oath to answer truthfully all questions put to the person by the inspector; and
 - (b) answer any question put to person at the examination.
- (4) A person commits an offence if the person contravenes a requirement under this section.

Maximum penalty: 100 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant took reasonable steps to comply with the requirement.

105 Self-incrimination

- (1) A person required to answer a question, give information or produce a document under this Act is not excused from doing so on the ground that the answer, information or document might tend to incriminate the person or make the person liable to a penalty.
- (2) However, the answer, information or document is not admissible in evidence against the person in a civil or criminal proceeding except a proceeding for an offence in which the falsity or misleading nature of the answer, information or document is relevant.

106 Inspector's report

- (1) If an inspector finds evidence of an irregularity in the conduct of the affairs of a cemetery that undertakes burials or a facility that undertakes disposals of human remains, the inspector must report the matter to:
- (a) the CEO; and
 - (b) the responsible entity for that cemetery or facility.
- (2) If the irregularity appears to involve illegality or non-compliance, the CEO must report the matter to the Minister.

Part 12 Enforcement

Division 1 Enforcement orders and suspension

107 Minister may issue an enforcement order

If the Minister believes on reasonable grounds that there have been repeated contraventions of this or any other Act, or irregularities in the operation or administration of a cemetery or a facility, the Minister may do any of the following:

- (a) issue an enforcement order to the responsible entity for that cemetery requiring it to take action;
- (b) issue an enforcement order to the responsible entity for that facility requiring the action to be taken and specify any variation of conditions of a facility's licence.

111 Content of suspension notice

A suspension notice must be in writing and must:

- (a) state the grounds on which it is issued;
- (b) state the date the suspension takes effect;
- (c) specify a date by which the responsible entity is required to comply with the notice;
- (d) state the maximum penalty for contravening the suspension notice;
- (e) state that the responsible entity may seek a review by the Tribunal of the decision to issue the suspension notice or any of its terms.

112 Offence to contravene suspension notice

- (1) A responsible entity commits an offence if:
 - (a) the responsible entity was issued with a suspension notice; and
 - (b) the responsible entity intentionally operates or uses the facility that is the subject of the notice.

Maximum penalty: 300 penalty units or imprisonment for 3 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) An offence against this section is a summary offence.

113 Requirements after issue of enforcement order or suspension notice

A responsible entity to which an enforcement order or suspension notice is issued must, by the end of the period specified in the order or notice, report to the Minister:

- (a) the actions taken by the responsible entity to address the matters raised in the order or suspension notice; or
- (b) if no action has been taken, the reasons why no action has been taken.

114 Revocation or closure of declared cemetery

- (1) If, after the issue of an order in respect of a cemetery, the specified contraventions are not remedied, the Minister may, by *Gazette* notice:
 - (a) revoke the establishment of the cemetery; or
 - (b) declare the cemetery to be a semi-closed cemetery; or
 - (c) declare the cemetery to be a closed cemetery.
- (2) A revocation under subsection (1)(a) must include the following information:
 - (a) the name of the cemetery;
 - (b) the location of the cemetery;
 - (c) the responsible entity for the cemetery;
 - (d) the date the revocation takes effect.
- (3) A declaration under subsection (1)(b) must include the following information:
 - (a) the conditions of the semi-closure of the cemetery, if any;
 - (b) whether any unused grave, other than a grave for which an exclusive right of burial has been granted, may be used;
 - (c) whether multiple burials are available under the cemetery's policies;
 - (d) the date the semi-closure takes effect.
- (4) A declaration under subsection (1)(c) must include the following information:
 - (a) the conditions of the closure of the cemetery, if any;
 - (b) whether multiple burials are available in accordance with the cemetery's policies.
- (5) The Minister must not close a cemetery under subsection (1)(c) if there are any outstanding exclusive rights of burial in that cemetery.

Note for section 114

Once a cemetery has been declared as a closed cemetery under this section, burials may only occur there with the approval of the CEO under section 29.

115 Requirement to forward records

- (1) If the establishment of a cemetery is revoked or the cemetery is closed by the Minister under section 114(a) or (c), the responsible entity for that cemetery must forward all registers and records relating to the cemetery and to Territory Archives within 6 months of revocation or closure.
- (2) If the Minister revokes a facility's licence under section 118, the responsible entity for that facility must forward all registers and records relating to the facility to Territory Archives within 6 months of revocation.
- (3) A person commits an offence if the person contravenes a requirement under subsection (1) or (2).

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Division 2 Remedy of contraventions

116 Revocation of suspension notice

If the Minister determines that the responsible entity for a facility that has been required to suspend operation under section 110 has remedied the contraventions specified in the suspension notice, the Minister may revoke the suspension notice.

117 Revocation of declaration

- (1) If the Minister determines that the responsible entity for a cemetery that has been semi-closed under section 114(1)(b) has remedied the specified contraventions in the order, the Minister, by *Gazette* notice, may revoke the semi-closed declaration.
- (2) If the Minister determines that the responsible entity for a cemetery that has been closed under section 114(1)(c) has remedied the specified contraventions in the order, the Minister, by *Gazette* notice, may revoke the closed declaration.

118 Revocation of facility licence

- (1) If, after the issue of an order or a suspension notice in respect of a facility, the specified contraventions are not remedied, the Minister may revoke the licence of the facility.
- (2) The Minister must give notice in the *Gazette* and notice in a newspaper that is circulated throughout the Territory, that the licence to operate a facility has been revoked.

Part 13 Review by Tribunal

119 Review by Tribunal

- (1) The Tribunal has jurisdiction to review a decision (a **reviewable decision**) specified in Schedule 1.
- (2) An **affected person**, for a reviewable decision, is a person specified in Schedule 1 for the decision.
- (3) An affected person for a reviewable decision may apply to the Tribunal for review of the decision.

Note for section 119

The Northern Territory Civil and Administrative Tribunal Act sets out the procedure for applying to the Tribunal for review and other relevant matters in relation to reviews.

Part 14 General

120 Offence to dispose of human remains by unauthorised means

- (1) A person commits an offence if:
 - (a) the person intentionally disposes of human remains; and
 - (b) the process used to dispose of the human remains is not provided for in this Act.

Maximum penalty: 300 penalty units or imprisonment for 3 years.

- (2) Strict liability applies to subsection (1)(b).
- (3) An offence against this section is a summary offence.

121 Decision-making powers concerning human remains

- (1) A **senior next of kin**, in relation to a deceased person, means one of the following people in descending order:
 - (a) for a deceased person who was an Aboriginal person or Torres Strait Islander with strong cultural and traditional ties to a community or group – a person who, according to the customs and tradition of that community or group to which the person belonged, is appropriate to perform that role;
 - (b) for a deceased person who was, immediately before death, married – the deceased person's spouse;

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- (c) for a deceased person who was, immediately before death, in a de facto relationship – the deceased person's de facto partner;
 - (d) for a deceased person who was both married and in a de facto relationship, immediately before death:
 - (i) if the deceased person was in a continuous de facto relationship for at least the 2 years immediately before death and the deceased person did not at any time during those 2 years live with the deceased person's spouse – the deceased person's de facto partner; or
 - (ii) if the deceased person is survived by a child of the deceased person and the deceased person's de facto partner – the deceased person's de facto partner;
 - (iii) in any other case – the person's spouse;
 - (e) if paragraphs (b) to (d) do not apply – the deceased person's eldest child of or above 18 years of age;
 - (f) if paragraphs (b) to (e) do not apply – the deceased person's parent;
 - (g) if paragraphs (b) to (f) do not apply – the deceased person's eldest sibling of or above 18 years of age;
 - (h) if paragraphs (b) to (g) do not apply – a person who:
 - (i) immediately before the death of the deceased person, had a relationship with the deceased person; and
 - (ii) in the opinion of the manager of a cemetery or the manager of a facility, is an appropriate person to make the decision.
- (2) Despite the seniority order mentioned in subsection (1), a senior next of kin must be the person in the most senior order that:
- (a) has full mental capacity; and
 - (b) can be contacted within a reasonable period.
- (3) The executor or administrator of the estate of a deceased person has the power to make any decision under this Act regarding human remains of the deceased person in accordance with this Act.

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- (4) If there is no executor or administrator of the estate of a deceased person, any next of kin has the power to make any decision under this Act regarding human remains of the deceased person in accordance with this Act.
 - (5) If there is a dispute regarding human remains under this Act and there is no executor or administrator of the estate of a deceased person, the senior next of kin has the power to decide the outcome of the dispute.

122 Chief Health Officer may make guidelines

- (1) The Chief Health Officer may make guidelines relating to any public health matter under this Act.
- (2) The Agency administering the *Public and Environmental Health Act* must publish a guideline made under subsection (1) on the Agency's website as soon as practicable after they are made.

123 Failure to keep registers

A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in a contravention of the requirement on the person to keep a register under this Act and the person is reckless in relation to that result.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

124 Misleading information

- (1) A person commits an offence if:
 - (a) the person intentionally gives information to another person; and
 - (b) the information is misleading and the person has knowledge of that circumstance; and
 - (c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person intentionally gives a document to another person; and
 - (b) the document contains misleading information and the person has knowledge of that circumstance; and
 - (c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the person, when giving the document:
- (a) draws the misleading aspect of the document to the other person's attention; and
 - (b) to the extent to which the person can reasonably do so – gives the other person the information necessary to remedy the misleading aspect of the document.

- (4) In this section:

acting in an official capacity, in relation to a person, means the person is performing functions under, or otherwise related to the administration of, this Act.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

125 Delegations

- (1) The Minister may delegate any of the Minister's powers and functions under this Act to a public sector employee.
- (2) The CEO may delegate any of the CEO's powers and functions under this Act to a public sector employee.

126 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) A regulation may provide for the following:
 - (a) matters to be included in a cemetery plan;
 - (b) matters to be provided for in a cemetery or facility policy;

- (c) details to be included in any register in this Act;
- (d) requirements for a semi-closed cemetery or closed cemetery under section 114;
- (e) matters to be taken into account when making a decision under this Act.

Part 15 Repeals and transitional matters

Division 1 Repeals

127 Acts repealed

The Acts specified in Schedule 2 are repealed.

Division 2 Transitional matters for Burial and Cremation Act 2018

128 Definitions

In this Division:

commencement means the commencement of section 127 of the *Burial and Cremation Act 2018*.

repealed Act means the *Cemeteries Act* as in force immediately before the commencement.

129 Public cemeteries

On commencement, a cemetery that was a public cemetery declared under section 6(1) of the repealed Act is taken to be a public cemetery under section 8.

130 Closed cemeteries and semi-closed cemeteries

- (1) On commencement, a cemetery that was declared to be a closed cemetery under section 36(1) of the repealed Act is taken to be a closed cemetery under section 78.
- (2) However, each of the following cemeteries is taken to be a semi-closed cemetery under section 77:
 - (a) Alice Springs General Cemetery;
 - (b) Darwin General Cemetery.

131 Exclusive rights of burial in a cemetery

- (1) On commencement, an exclusive right of burial granted under section 29 of the repealed Act is taken to be an exclusive right of burial under section 35.
- (2) An exclusive right of burial mentioned in subsection (1) expires 60 years after the commencement.

132 Private burial grounds

- (1) On commencement, a private burial ground established under section 6(1) of the repealed Act continues to be called a private burial ground.
- (2) Any burial in a private burial ground after the commencement is taken to be a burial outside a cemetery under section 29.
- (3) Part 4, Division 4 applies to a private burial ground mentioned in subsection (1) after the commencement.

133 Crematoria

- (1) On commencement, a crematorium approved under section 14 of the repealed Act is taken to be a facility.
- (2) On commencement, a person who was approved to erect a crematorium under section 14(2) of the repealed Act is taken to be a person who holds a licence to operate a facility under section 52(1).

Part 16 Consequential and related matters

Division 1 Amendment of Local Government Act

134 Act amended

This Division amends the *Local Government Act*.

135 Section 102 amended (Delegation by CEO)

section 102, after "function"

insert

under this Act or another Act,

136 Section 184 replaced

section 184

repeal, insert

184 Public and community cemeteries

A council is the responsible entity for a public or community cemetery if the cemetery is situated in the council's area.

Division 3 Repeal of Part

137 Repeal of Part

This Part is repealed on the day after it commences.

Schedule 1 Reviewable decisions and affected persons

section 119

Reviewable decision	Affected person
A decision of the manager of a public cemetery to refuse an application for a burial permit under section 18(1)	The applicant mentioned in 18(3)
A decision of the responsible entity to require a person to repair, remove or reinstate a memorial under section 27(1) or 73(1)	The applicant mentioned in section 26(2) or 72(2)
A decision of the responsible entity to not approve the exercise of an exclusive right of burial under section 37(3)	The holder of an exclusive right of burial
A decision of the Minister to issue a order under section 107	The responsible entity for a cemetery or facility
A decision of the Minister to suspend the operation of a facility under section 107	The responsible entity for a facility
A decision of the Minister to revoke or close a declared cemetery under section 114	The responsible entity for a cemetery
A decision of the Minister to revoke a facility's licence under section 118	The responsible entity for a facility

Schedule 2 Repealed Acts

section 127

<i>Cemeteries Ordinance 1952</i>	Act No. 18 of 1952
<i>Cemeteries Ordinance 1955</i>	Act No. 7 of 1955
<i>Administrator's Council Ordinance 1959</i>	Act No. 22 of 1959
<i>Cemeteries Ordinance 1963</i>	Act No. 47 of 1963
<i>Cemeteries Ordinance 1964</i>	Act No. 36 of 1964
<i>Cemeteries Ordinance 1966</i>	Act No. 46 of 1966
<i>Cemeteries Ordinance 1971</i>	Act No. 4 of 1971
<i>Cemeteries Ordinance 1977</i>	Act No. 47 of 1977
<i>Cemeteries Ordinance 1978</i>	Act No. 109 of 1978
<i>Cemeteries Act 1979</i>	Act No. 92 of 1979
<i>Cemeteries Amendment Act 1999</i>	Act No. 57 of 1999
<i>Cemeteries Amendment Act 2000</i>	Act No. 68 of 2000
<i>Cemeteries Amendment Act 2005</i>	Act No. 35 of 2005
