

**NORTHERN TERRITORY OF AUSTRALIA**

**BURIAL AND CREMATION ACT 2022**

As in force at 29 November 2022

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 29 November 2022

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## BURIAL AND CREMATION ACT 2022

**An Act to provide for the burial and disposal of human remains and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Burial and Cremation Act 2022*.

#### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 23 May 2024, it commences on that day.

#### **3 Objects of Act**

The objects of this Act are:

- (a) to enable and accommodate different methods and practices for the burial, exhumation and disposal of human remains, including respecting the rights of Aboriginal people to practice customs and traditions in relation to burials, exhumations and disposals; and
- (b) to ensure records of burials, exhumations and disposals of human remains are kept and maintained for the benefit of next of kin and future generations; and
- (c) to regulate record keeping for the protection and maintenance of burial sites; and
- (d) to recognise different burial areas for the burial of human remains; and
- (e) to regulate cemeteries for the burial of human remains; and

- (f) to regulate the management of cemeteries in a way that takes into account economic, social, cultural and regional interests; and
- (g) to regulate facilities for the disposal of human remains.

#### **4 Application of Act**

This Act does not apply in relation to the following:

- (a) a cemetery or part of a cemetery controlled by the Commonwealth War Graves Commission incorporated by Royal Charter on 21 May 1917;
- (b) a part of a human that has been or is intended to be disposed of following a medical or surgical procedure;
- (c) human remains that are a heritage object or archaeological object, including an Aboriginal or Macassan archaeological object, under the *Heritage Act 2011*;
- (d) human remains that are historically associated with a heritage place or an archaeological place, including an Aboriginal or Macassan archaeological place, under the *Heritage Act 2011*;
- (e) the exhumation of human remains if the exhumation is authorised under another law in force in the Territory.

#### **5 Recognition of rights and interests of Aboriginal people**

- (1) The rights and interests of Aboriginal traditional owners and Aboriginal people specified in subsections (2), (3) and (4) are to be recognised and the regulation of burials, exhumations, disposals and related activities under this Act must be in harmony with those rights and interests.
- (2) This Act is not intended to limit traditional rights to use Aboriginal land otherwise than in accordance with the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).
- (3) This Act is not intended to limit native title rights and interests otherwise than in accordance with the *Native Title Act 1993* (Cth).
- (4) This Act must be interpreted in a way that does not prejudice traditional rights and interests to use Aboriginal land and native title rights and interests to the extent those rights and interests are recognised and protected by law.

**6 Act binds Crown**

- (1) This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its capacities.
- (2) The Crown is liable for an offence against this Act as a body corporate.

**7 Definitions**

In this Act:

**Aboriginal community living area** means an area granted as an Aboriginal community living area under Part 8 of the *Pastoral Land Act 1992*, or the corresponding previous legislative provisions.

**Aboriginal community living area association**, see section 7 of the *Local Government Act 2019*.

**Aboriginal land**, see section 3 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

**affected person**, see section 187(2).

**archives service**, see section 4 of the *Information Act 2002*.

**burial** means the following:

- (a) natural burial in the ground without a shroud or funerary box;
- (b) burial in the ground in a shroud;
- (c) burial in the ground in a funerary box;
- (d) interment in a structure;
- (e) any other funerary practice for burial or interment.

**burial approval**, see section 38(1).

**burial approval form**, see section 40(1).

**burial area** means the following areas of land:

- (a) a cemetery;
- (b) a burial ground.

**burial fee**, for a burial, means a fee charged for the following:

- (a) use of the burial plot;
- (b) digging the grave;
- (c) any other fee for a service required to undertake the burial.

**burial ground** means an area of land declared to be a burial ground by the Minister under section 31(1).

**burial outside a cemetery**, see section 65(2).

**cemetery** means an area of land declared to be a cemetery by the Minister under section 16(1).

**cemetery plan** means a plan required for a cemetery under section 24(1).

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

**closed cemetery**, see section 106.

**community cemetery** means a class of cemetery declared under section 16(2)(b).

**council**, see section 7 of the *Local Government Act 2019*.

**cremation** means the process of using fire and heat in a purpose-built furnace to reduce human remains to ashes.

**culturally sensitive information**, in relation to a deceased person, means information identified as culturally sensitive in:

- (a) a burial approval form;
- (b) a burial notification;
- (c) an application for exhumation and relocation of human remains under section 87(1);
- (d) an exhumation notification;
- (e) a disposal approval form.

**decision maker**, see section 9.

**decision notice**, for a decision, means a written notice setting out the matters required for a notice of decision under section 34 of the *Northern Territory Civil and Administrative Tribunal Act 2014*.

**declared infectious disease** means a disease declared by the Chief Health Officer under section 192(1).

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

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

**disposal approval**, see section 138(1).

**disposal approval form**, see section 139(1).

**enforcement order**:

- (a) for a cemetery – means an order issued under section 164; or
- (b) for a facility – means an order issued under section 172.

**exclusive right of burial** means a right mentioned in section 50(1).

**exhumation approval**, see section 87(5).

**facility** means a place or premises, whether fixed or mobile, for cremation or any other process prescribed by regulation for the disposal of human remains.

**funeral director** means a person who carries on the business of arranging for the burial of human remains or the disposal of human remains.

**funerary box** includes a coffin, casket or other container used to keep human remains for burial.

**grantee**, in relation to an exclusive right of burial, means the individual to whom an exclusive right of burial is granted under section 50.

**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 is cremated or undergoes any other process of disposal prescribed by regulation.

**independent cemetery** means a class of cemetery declared under section 16(2)(d).

**inspector** means an inspector appointed under section 149.

**interest holder**, see section 8.

**Land Council** means an Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

**local cemetery** means a class of cemetery declared under section 16(2)(c).

**manager:**

(a) of a cemetery – see section 23(1); or

(b) of a facility – see section 131(1).

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

**multiple burials** means the burial of human remains in a burial site where other human remains are already buried.

**native title**, see section 223 of the *Native Title Act 1993* (Cth).

**native title holder**, see section 224 of the *Native Title Act 1993* (Cth).

**native title rights and interests**, see section 223 of the *Native Title Act 1993* (Cth).

**next of kin**, see section 10.

**officer** means a person specified in section 145(1).

**permanent record:**

(a) for a cemetery – means the records specified in section 182(1); or

(b) for a facility – means the records specified in section 182(2).

**personal representative**, in relation to a grantee, means the person specified by the grantee under section 54(1)(b).

**premises** includes:

(a) land; and

(b) a permanent or temporary building or construction on land.

**provider** means a person who, or body that, provides, or holds out to provide, a health service or community service.

**public cemetery** means a class of cemetery declared under section 16(2)(a).

**Public Trustee**, see section 5 of the *Public Trustee Act 1979*.

**representative for a burial ground**, see section 36(1).

**responsible entity**:

(a) for a cemetery – see section 22(1); or

(b) for a facility – see section 130(1).

**reviewable decision**, see section 187(1).

**semi-closed cemetery**, see section 103.

**senior next of kin**, see section 11(1).

**structure** means a building or a portion of a building used to inter human remains.

**suspended cemetery**, see section 168(1).

**suspension notice** means a notice issued under section 175(1).

**undeclared area** means an area of land that is not within a burial area.

*Note for section 7*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

## 8 **Meaning of interest holder**

An **interest holder**, in relation to land, means the following:

- (a) the person recorded in the land register, as defined in section 4 of the *Land Title Act 2000*, as the person entitled to:
  - (i) the fee simple interest in land; or
  - (ii) a lease from the Crown under the *Crown Lands Act 1992*, the *Pastoral Land Act 1992* or the *Special Purposes Leases Act 1953*;
- (b) if the land is an Aboriginal community living area – the association that holds interest in the land;

- (c) if the land is Aboriginal land – the Land Trust, established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), that holds interest in the land;
- (d) if the land is subject to native title – the native title holder;
- (e) if the land is Crown land as defined in section 3 of the *Crown Lands Act 1992* – the Territory.

*Notes for section 8(c) and (d)*

*A provision of this Act that deals with a matter relevant to an interest holder of Aboriginal land or land that is subject to native title is subject to a provision relating to that matter in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) or the *Native Title Act 1993* (Cth) respectively – see section 5.*

## 9 **Meaning of *decision maker***

A ***decision maker***, for a deceased person, means:

- (a) the executor or administrator of the estate of the deceased person; or
- (b) if there is no executor or administrator of the estate of the deceased person – the senior next of kin; or
- (c) in any other case – the Public Trustee.

## 10 **Meaning of *next of kin***

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

- (a) for a deceased person who was an Aboriginal or Torres Strait Islander person and who had strong cultural and traditional ties to a community or group – a person who, according to the customs and traditions of the 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;
- (g) a person who, immediately before the death of the deceased person, had a relationship with the deceased person.



**11 Meaning of *senior next of kin***

- (1) A ***senior next of kin***, in relation to a deceased person, means one of the following people in descending order:
- (a) if the deceased person was an Aboriginal or Torres Strait Islander person and had strong cultural and traditional ties to a community or group – a person who, according to the customs and traditions of that community or group to which the person belonged, is appropriate to perform that role;
  - (b) if paragraph (a) does not apply and the deceased person was, immediately before death, both married and in a de facto relationship then the senior next of kin is:
    - (i) in the situation where 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) in the situation where the parent of the deceased person's youngest child is the deceased person's de facto partner and the deceased person did not live with the deceased person's spouse immediately before death – the deceased person's de facto partner; or
    - (iii) in any other situation – the deceased person's spouse;
  - (c) if paragraphs (a) and (b) do not apply and the deceased person was, immediately before death, married – the deceased person's spouse;
  - (d) if paragraphs (a) to (c) do not apply and the deceased person was, immediately before death, in a de facto relationship – the deceased person's de facto partner;
  - (e) if paragraphs (a) to (d) do not apply – the deceased person's eldest child who is 18 years of age or older who can be contacted within a reasonable period;
  - (f) if paragraphs (a) to (e) do not apply – the deceased person's parent;
  - (g) if paragraphs (a) to (f) do not apply – the deceased person's eldest sibling who is 18 years of age or older who can be contacted within a reasonable period;

- (h) if paragraphs (a) to (g) do not apply – a person who immediately before the death of the deceased person, had a relationship with the deceased person.

*Note for subsection (1)(e)*

*If the eldest child cannot be contacted within a reasonable period, the next eldest child who is 18 years of age or older who can be contacted is the senior next of kin for the deceased person.*

*Note for subsection (1)(g)*

*If the eldest sibling cannot be contacted within a reasonable period, the next eldest sibling who is 18 years of age or older who can be contacted is the senior next of kin for the deceased person.*

- (2) Despite the seniority order mentioned in subsection (1), a senior next of kin must be the person in the most senior order:
- (a) who has not been certified as mentally unfit by 2 medical practitioners; and
  - (b) who can be contacted within a reasonable period.

## **12 Mediation to facilitate dispute resolution**

- (1) The parties to the following disputes may engage in mediation to facilitate a resolution or other outcome of the dispute if each party to the dispute agrees to participate in the mediation:
- (a) determination of the senior next of kin for a deceased person;
  - (b) determination of a decision regarding the human remains of a deceased person.
- (2) Any mediation must be conducted by a person agreed to by each party to the dispute.
- (3) At the conclusion of a mediation, the person conducting the mediation must issue to each party to the dispute a certificate:
- (a) stating that the mediation took place; and
  - (b) if the parties came to an agreement during the mediation – stating the agreement; and
  - (c) setting out the outcome of the mediation.
- (4) If the parties come to an agreement during mediation, that agreement is binding on the parties for the purposes of this Act.
- (5) A party to the dispute may request that any part, or all parts, of the agreement mentioned in subsection (4) remain confidential and if all

parties agree, the part, or parts, of the agreement must not be disclosed to any person other than for the administration of this Act or another Act.

### **13 Determination of senior next of kin**

- (1) If there is a dispute regarding who is the senior next of kin for a deceased person, a next of kin may:
  - (a) request the other parties to the dispute to engage in mediation in accordance with section 12(1) to resolve the dispute; or
  - (b) apply to NTCAT for a determination of the senior next of kin for the deceased person.
- (2) NTCAT must consider the following in determining the senior next of kin:
  - (a) the order of people mentioned in section 11(1);
  - (b) if 2 or more people have equal status as the senior next of kin because of their standing under section 11(1)(a), (f) or (h) – whether any of those people would provide to NTCAT an undertaking that they will organise and pay any relevant cost for the burial or disposal of the deceased person;
  - (c) if 2 or more people have equal status as the senior next of kin because of their standing under section 11(1)(f) or (h) – the nature of the relationship of each of those people to the deceased person immediately before death.
- (3) NTCAT, after determining who is the senior next of kin for a deceased person, may:
  - (a) order that the person is the senior next of kin for the deceased person; and
  - (b) make any other order NTCAT considers appropriate.
- (4) Section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply to a decision of NTCAT under this section.

### **14 Decision-making powers concerning human remains**

- (1) The decision maker for a deceased person has the power to:
  - (a) make any decision required under this Act regarding the human remains of the deceased person in accordance with this Act; and

- (b) decide the outcome of any dispute regarding the human remains of the deceased person under this Act.
- (2) If there is more than one executor of the estate of the deceased person and there is a dispute regarding the human remains of the deceased person between the executors, an executor may:
    - (a) request the other parties to the dispute to engage in mediation in accordance with section 12(1) to resolve the dispute; or
    - (b) apply to NTCAT for a determination of which executor has the authority to make decisions under this Act regarding the human remains of the deceased person.
  - (3) NTCAT must consider the following in determining which executor has authority to make decisions:
    - (a) the status of each executor in relation to the hierarchy of senior next of kin specified in section 11(1);
    - (b) if the executors have equal status because of their standing under section 11(1)(f) or (h) – the nature of the relationship of each executor to the deceased person immediately before death.
  - (4) NTCAT, after determining which executor of the estate of the deceased person has authority to make decisions under this Act regarding the deceased person, may:
    - (a) order that the executor is the executor with authority to make decisions under this Act regarding the deceased person; and
    - (b) make any other order NTCAT considers appropriate.
  - (5) Section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply to a decision of NTCAT under this section.

## **15 Application of Criminal Code**

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

*Note for section 15*

*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 Burial areas**

### **Division 1 Cemeteries**

#### **Subdivision 1 Classes of cemeteries**

##### **16 Declaration of cemetery**

- (1) Subject to section 17, the Minister may, by *Gazette* notice, declare an area of land to be a cemetery.
- (2) The notice must classify the cemetery as one of the following classes of cemetery:
  - (a) a public cemetery;
  - (b) a community cemetery;
  - (c) a local cemetery;
  - (d) an independent cemetery.
- (3) The notice must specify the following details:
  - (a) the name of the cemetery;
  - (b) the responsible entity for the cemetery;
  - (c) the location of the cemetery.

##### **17 Matters to be considered before declaration**

- (1) Before declaring an area of land to be a cemetery, the Minister must take into account any matters prescribed by regulation relating to the declaration of a cemetery.
- (2) In addition to subsection (1), before declaring an area of land to be an independent cemetery, the Minister must:
  - (a) consult with the responsible entity for any public cemetery, community cemetery or local cemetery located within 100 km of the proposed independent cemetery; and
  - (b) take into account the sustainability of the independent cemetery and each cemetery mentioned in paragraph (a) if the independent cemetery was to be declared.

- (3) The Minister must not declare a community cemetery, a local cemetery or an independent cemetery unless the Minister is satisfied that there is one of the following documents:
- (a) a lease between the lessor of the land and the prospective responsible entity for the land to be used as a cemetery;
  - (b) a sublease between the sublessor of the land and the prospective responsible entity for the land to be used as a cemetery;
  - (c) a licence issued by the licensor of the land to the prospective responsible entity for the land to be used as a cemetery;
  - (d) a written agreement between each interest holder of the land and the prospective responsible entity for the land to be used as a cemetery;
  - (e) if an interest holder is the prospective responsible entity – written consent from each interest holder of the land or if there is only one interest holder, written confirmation from the interest holder, for the land to be used as a cemetery.

*Example for subsection (3)(d)*

*For land subject to native title, an indigenous land use agreement under the Native Title Act 1993 (Cth) that authorises the use of the land as a burial area.*

## **18            Agency to keep register of cemeteries**

- (1) The Agency must establish and maintain a register of cemeteries declared by the Minister under section 16(1).
- (2) A copy of the register must be available on the Agency's website.

## **19            Minister may change details of cemetery**

- (1) The Minister may, by *Gazette* notice, change the following:
  - (a) the name of the cemetery;
  - (b) the responsible entity for the cemetery;
  - (c) the location of the cemetery.
- (2) Before the Minister makes a change under subsection (1), the Minister must:
  - (a) have regard to any matters prescribed by regulation relating to changing the details of a cemetery; and

- (b) in the case of a change of responsible entity for a community cemetery, a local cemetery or independent cemetery under subsection (1)(b) – be satisfied there is one of the documents mentioned in section 17(3) for the new responsible entity.

## **20 Minister may change class of cemetery**

- (1) The Minister may, by *Gazette* notice, change the class of a cemetery.
- (2) The notice must specify who is the responsible entity for the cemetery.
- (3) Before the Minister changes the class of a cemetery under subsection (1), the Minister must have regard to any matters prescribed by regulation relating to changing the class of a cemetery.

*Note for section 20*

*A change in a class of cemetery is subject to the matters mentioned in section 17.*

## **21 Minister may revoke declaration of cemetery**

- (1) If there are no human remains buried in a cemetery, the Minister may, by *Gazette* notice, revoke the declaration of the cemetery.
- (2) The notice must specify the following details:
- (a) the name of the cemetery;
  - (b) the responsible entity for the cemetery;
  - (c) the location of the cemetery;
  - (d) the date the revocation takes effect.

## **Subdivision 2 Management of cemeteries**

### **22 Responsible entity for cemetery**

- (1) The ***responsible entity for a cemetery*** is as follows:
- (a) for a public cemetery or a community cemetery located in a council area – the council;
  - (b) for a public cemetery or a community cemetery located outside a council area – the entity specified in the notice under section 16(1);

- (c) for a local cemetery – the Aboriginal corporation, Aboriginal community living area association or other entity specified in the notice under section 16(1);
  - (d) for an independent cemetery – the entity specified in the notice under section 16(1).
- (2) For subsection (1), the responsible entity for a cemetery must be a body corporate or an individual.
- (3) The responsible entity for a cemetery must manage and control the cemetery.
- (4) The responsible entity has the following functions:
- (a) to establish a cemetery plan for the cemetery;
  - (b) to establish policies for the cemetery;
  - (c) to ensure that there is access to equipment to undertake burials and exhumations in the cemetery;
  - (d) to care for and maintain the cemetery;
  - (e) to fund the maintenance of the cemetery;
  - (f) to ensure that the cemetery is accessible to the public in accordance with this Act or another Act;
  - (g) to ensure that the burial register is accessible to the public in accordance with this Act or another Act;
  - (h) any other functions conferred on the responsible entity under this Act or another Act.
- (5) In exercising a power or function under this Act, the responsible entity must have regard to the following:
- (a) if the cemetery serves a particular cultural or religious community – the values of that community;
  - (b) the heritage value of the cemetery, including the heritage significance of a heritage place or heritage object under the *Heritage Act 2011*;
  - (c) the most efficient way of maintaining the cemetery.
- (6) In this section:

**council area**, see section 7 of the *Local Government Act 2019*.



### **23 Manager of cemetery**

- (1) The ***manager of a cemetery*** is the chief executive officer of the responsible entity for the cemetery.
- (2) If the responsible entity mentioned in subsection (1) does not have a chief executive officer, the manager of the cemetery is the person employed in the position equivalent to a chief executive officer for that responsible entity.
- (3) The responsible entity for a cemetery must notify the Agency of the following information regarding the manager of the cemetery:
  - (a) the full name of the manager;
  - (b) the contact details of the manager.
- (4) A notification under subsection (3) must be in writing and occur as soon as reasonably practicable after the person becomes the manager of the cemetery.

### **24 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 location of each burial site;
  - (d) whether multiple burials are permitted in the cemetery;
  - (e) whether exclusive rights of burial are available in the cemetery;
  - (f) the date the cemetery plan was last reviewed in accordance with subsection (4);
  - (g) any other matter prescribed by regulation.

*Example for subsection (2)(c)*

*An aerial photograph that indicates the plot number for each burial site in the cemetery.*

- (3) A burial approval may still be given to bury human remains in the cemetery before the cemetery plan is established.

- (4) The responsible entity for a cemetery must review the cemetery plan at least every 4 years.

**25 Public opening hours of public cemetery**

A public cemetery must be open to the public for a minimum of 8 hours a day.

**26 Fees for cemetery services**

- (1) The responsible entity for a cemetery may impose a fee to be charged for a service.
- (2) The amount of any fees charged by the responsible entity for a cemetery must be specified as individual fees for each good or service provided by the responsible entity.

*Example for subsection (2)*

*The fee for the use of a burial plot and the fee for digging the grave must be specified as individual fees and cannot be combined to be specified as one fee.*

- (3) A burial fee charged by the responsible entity for a community cemetery or a local cemetery must not exceed the estimated cost incurred in relation to carrying out the burial.

**27 Waiver of fees**

- (1) The responsible entity for a cemetery may grant a waiver, wholly or partly, of a fee charged by the responsible entity.
- (2) The granting of the waiver must be in accordance with:
- (a) any guidelines made by the CEO under section 194; and
  - (b) any policy established by the responsible entity for the waiver of fees.
- (3) Subject to subsection (4), the responsible entity for a cemetery may establish a policy for the waiver of fees charged by the responsible entity.
- (4) The responsible entity for a community cemetery or a local cemetery must establish a policy for the waiver of burial fees charged by the responsible entity.
- (5) A policy established by the responsible entity for a cemetery under subsection (3) or (4) must provide for the following:
- (a) circumstances in which a fee may be waived, including alleviating financial hardship;

- (b) the process for applying for a waiver, including establishing financial hardship;
  - (c) the process for granting a waiver.
- (6) A policy established by the responsible entity for a cemetery under subsection (3) or (4) must not be inconsistent with any guidelines made by the CEO under section 194.
- (7) The responsible entity for a cemetery must:
- (a) publish the policy mentioned in subsection (3) or (4) on the responsible entity's website; and
  - (b) provide, or make available, a copy of the policy for waiving burial fees mentioned in subsection (4) to each person applying for a burial approval.

## **28 Multiple burials policy**

- (1) The responsible entity for a cemetery must establish a policy for multiple burials if the responsible entity permits multiple burials in the cemetery.
- (2) The policy must provide for the following matters:
- (a) the application process for a multiple burial;
  - (b) information and conditions relating to multiple burials;
  - (c) the date the policy was last amended or replaced.

*Note for section 28*

*Part 3, Division 1 provides for the application process for burials within a cemetery.*

## **29 Information to be publicly available**

The responsible entity for a cemetery must ensure that the following information is available on the responsible entity'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 approval;
- (d) if available at the cemetery – details of the application process for an exclusive right of burial;

- (e) the amount of any fees charged by the responsible entity and specified as individual fees;
- (f) any other information prescribed by regulation.

**30      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 contact details of the responsible entity;
- (c) for a public cemetery – the public opening hours of the cemetery.

**Division 2      Burial grounds**

**31      Declaration of burial ground**

- (1) Subject to section 32, the Minister may, by *Gazette* notice, declare an area of land to be a burial ground for the burial of human remains.
- (2) The notice must specify the following details:
  - (a) the name of the burial ground;
  - (b) the name of the representative for the burial ground;
  - (c) the location of the burial ground.
- (3) For a burial ground that is located on Aboriginal land, the burial ground may incorporate more than one area of land held by one or more Land Trusts.

**32      Matters to be considered before declaration**

- (1) Before declaring a burial ground, the Minister must take into account any matters prescribed by regulation relating to the declaration of a burial ground.
- (2) The Minister must not declare a burial ground if:
  - (a) the proposed area of land overlaps with another burial area; or

- (b) in the case of the proposed area of land being located on Aboriginal land – the area has more than one Land Council for that area.

*Notes for subsection (2)(a)*

- 1        *A parcel of land may have more than one burial area located on it as long as the burial areas do not overlap.*
- 2        *Burial area means a cemetery or a burial ground.*

- (3) The Minister must not declare a burial ground unless the Minister is satisfied that there is written consent:
  - (a) from each interest holder of the proposed burial ground for the use of the land as a burial ground; and
  - (b) from the prospective representative to be the representative for the burial ground.

*Example for subsection (3)*

*For land subject to native title, an indigenous land use agreement under the Native Title Act 1993 (Cth) that authorises the use of the land as a burial area.*

### **33            Agency to keep register of burial grounds**

- (1) The Agency must establish and maintain a register of burial grounds declared by the Minister under section 31(1).
- (2) A copy of the register must be available on the Agency's website.
- (3) If the representative for a burial ground consents, in writing, to the representative's name and contact details being published on the Agency's website, the Agency must publish those details with the copy of the register mentioned in subsection (2).

### **34            Minister may change details of burial grounds**

- (1) The Minister may, by *Gazette* notice, change the following details of a burial ground:
  - (a) the name of the burial ground;
  - (b) the representative for the burial ground;
  - (c) the location of the burial ground.

- (2) Before the Minister changes the details of a burial ground under subsection (1), the Minister must:
- (a) be satisfied there is written consent from each interest holder of the burial ground and the representative for the burial ground; and
  - (b) have regard to any matters prescribed by regulation relating to changing the details of a burial ground.

### **35            Minister may revoke declaration of burial ground**

- (1) The Minister may, by *Gazette* notice, revoke the declaration of the burial ground if there is written consent from each interest holder of the burial ground for the revocation.
- (2) The notice must specify the following details:
- (a) the name of the burial ground;
  - (b) the representative for the burial ground;
  - (c) the location of the burial ground;
  - (d) the date the revocation takes effect.

### **36            Representative for burial ground**

- (1) The ***representative for a burial ground*** is:
- (a) for Aboriginal land – the Land Council for the area on which the burial ground is located; or
  - (b) for all other land – the entity agreed to by each interest holder of the burial ground.

*Examples for subsection (1)(b)*

*For land that is subject to native title, the registered native title body corporate as defined in section 253 of the Native Title Act 1993 (Cth) or the Land Council for the area on which the burial ground is located.*

- (2) Despite subsection (1), an interest holder of Aboriginal land may nominate another entity to be the representative for the burial ground if the entity mentioned in subsection (1) does not consent to be the representative.
- (3) An entity mentioned in subsection (1)(b) or (2) must:
- (a) be a body corporate or an individual; and
  - (b) consent to being the representative for the burial ground.

- (4) The representative for a burial ground has the following functions:
- (a) to be the point of contact with the public for proposed burials and exhumations in the burial ground, if relevant;
  - (b) to consent to burials in the burial ground, if relevant;
  - (c) to receive information about burials and exhumations in the burial ground from the Agency;
  - (d) to provide comments under section 79(1) in relation to the request for information in the register of burials outside a cemetery.

### **Division 3            Undeclared areas**

#### **37            Burial in undeclared area**

- (1) A person may, in accordance with Part 3, Division 4, bury the human remains of a deceased person in an undeclared area.
- (2) The regulations may prescribe restrictions on the location of a burial in an undeclared area.
- (3) Before a regulation is made prescribing a restriction on the location of a burial in an undeclared area, the Minister must consult with the following on the proposed restriction:
  - (a) all Land Councils;
  - (b) for a restriction that relates to pastoral land – the Minister responsible for administering the *Pastoral Land Act 1992*.
- (4) If there is an inconsistency between the regulations and the exercise of traditional rights to use Aboriginal land or native title rights and interests, or a reasonable belief in the existence of those rights and interests:
  - (a) for Aboriginal land – the rights and interests prevail to the extent of the inconsistency; or
  - (b) for land that is subject to native title – the rights and interests prevail to the extent of the inconsistency, subject to the rights and interests of any other interest holder that prevail over native title rights and interests in accordance with the *Native Title Act 1993* (Cth).

## **Part 3 Burial process**

### **Division 1 Burials within cemetery**

#### **38 Application for burial approval**

- (1) The manager of a cemetery may approve the burial of human remains in the cemetery (a ***burial approval***).
- (2) A person may apply to the manager for a burial approval by submitting the following:
  - (a) the following details regarding the applicant:
    - (i) full name, address and contact details;
    - (ii) relationship to the deceased person;
  - (b) a burial approval form;
  - (c) one of the following documents in relation to the deceased person:
    - (i) a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996*;
    - (ii) a certificate under section 12(3) of the *Births, Deaths and Marriages Registration Act 1996*;
    - (iii) a certificate issued by the coroner or the coroner's clerk under section 17(1) of the *Coroners Act 1993*;
    - (iv) a certificate issued by the Registrar under section 44(1)(a) of the *Births, Deaths and Marriages Registration Act 1996* certifying the registration of the death of the deceased person;
  - (d) if the burial is a multiple burial – confirmation of consent required under section 44(2);
  - (e) confirmation of the notification of, or confirmation of reasonable attempts to notify, the decision maker for the deceased person;
  - (f) any objection, known to the applicant, from the decision maker for the deceased person to the burial of the deceased person.

*Note for subsection (2)*

*Sections 185 and 186 include other provisions relevant to an application.*



- (3) The manager of a cemetery may not apply for a burial approval under subsection (2) to bury human remains in that cemetery.
- (4) The manager of a cemetery may request a copy of the document required under subsection (2)(c)(i) or (ii) from a provider if the document is not submitted under subsection (2).
- (5) If the manager of a cemetery requests a copy of a document under subsection (4), the provider must provide a copy of the document to the manager unless the provider does not have access to the document.
- (6) The burial approval may be given subject to any conditions that the manager of the cemetery considers appropriate.
- (7) Despite subsection (6), the manager of a cemetery must not impose a condition on a burial approval that is intended to limit the exercise of rights and interests mentioned in section 5 unless the condition is imposed for environmental protection, public health purposes or public safety purposes.
- (8) If the manager of a cemetery knows there is an objection from the decision maker for the deceased person under subsection (2)(f) or section 45(1), the manager of the cemetery must not approve the burial of the human remains of the deceased person unless the decision maker withdraws, in writing, the decision maker's objection.
- (9) A manager of a cemetery may refuse to approve a burial unless:
  - (a) the proposed burial relates to the exercise of rights and interests mentioned in section 5; and
  - (b) the proposed burial does not contravene this Act or another Act.
- (10) If a manager of a cemetery refuses to approve a burial, the manager must give the applicant a decision notice.

*Note for subsection (10)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

### **39            Conditions on burial approval**

- (1) The applicant must comply with any conditions imposed on the burial approval.

- (2) The applicant may, in writing, request the manager of a cemetery to vary or remove any condition of a burial approval.
- (3) When making a decision to vary or remove a condition of a burial approval, the manager of a cemetery must consider whether a condition imposed on a burial approval is consistent with the objects of this Act.
- (4) The manager of a cemetery must give a new burial approval under section 38(1) if the manager approves a request to vary or remove a condition imposed on a burial approval.
- (5) The manager of a cemetery may refuse to approve a request to vary or remove any condition imposed on a burial approval.
- (6) If the manager refuses to approve a request to vary or remove any condition imposed on a burial approval, the manager must give the applicant a decision notice.

*Note for subsection (6)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

#### **40            Burial approval form**

- (1) A **burial approval form** must include the following information about the deceased person, if known:
  - (a) full name;
  - (b) sex or gender;
  - (c) date of birth;
  - (d) country of birth;
  - (e) date of death;
  - (f) place of death;
  - (g) address of residence immediately before death;
  - (h) any other information prescribed by regulation.
- (2) The applicant may include a statement in the burial approval form informing the manager of the cemetery that certain information mentioned in subsection (1) is culturally sensitive information.

**41 Burial approval given without application or incomplete application**

- (1) A person commits an offence if:
- (a) an application for approval to bury the human remains of a deceased person under section 38(2):
    - (i) is not submitted; or
    - (ii) does not comply with the requirements specified in section 38(2)(c) to (f); and
  - (b) the person gives a burial approval for the human remains of the deceased person.

Maximum penalty: 50 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 defendant has a reasonable excuse.

**42 Burial without approval**

- (1) A person commits an offence if:
- (a) the person intentionally buries human remains; and
  - (b) the human remains are buried in a cemetery; and
  - (c) a burial approval was not given for the burial of those human remains.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(b) and (c).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

**43 Manner or undertaking of burial**

- (1) The responsible entity for a cemetery, other than an independent cemetery, must not require that human remains be contained in a funerary box for a burial in the ground.
- (2) The responsible entity for a public cemetery or an independent cemetery may require that human remains are to be wrapped in a shroud for a burial in the ground if the human remains are not proposed to be contained in a funerary box for the burial.

- (3) The responsible entity for a cemetery, other than an independent cemetery, must not require a burial to be undertaken by a funeral director.
- (4) The regulations may prescribe further requirements for the manner or undertaking of a burial in a cemetery.

#### **44            Multiple burials**

- (1) Subject to the responsible entity's policy for multiple burials established under section 28(1), the manager of a cemetery may authorise multiple burials at a burial site.
- (2) In addition to the other requirements for the approval of a burial, the applicant must also provide confirmation of consent for the proposed multiple burial from each decision maker for each deceased person buried at the burial site.
- (3) A person must not bury human remains from multiple deceased persons in a particular burial site unless the human remains are buried in accordance with the requirements of section 81.
- (4) If there is an exclusive right of burial for the burial site of a proposed multiple burial, the multiple burial must be in accordance with that right.
- (5) The regulations may prescribe further requirements for multiple burials in a cemetery.

#### **45            Objection to burial in a cemetery**

- (1) The decision maker for a deceased person may object to the burial of human remains of the deceased person in a cemetery.
- (2) The objection must be made in writing to the manager of the cemetery at which it is proposed to bury human remains of the deceased person and state the following:
  - (a) the person is the decision maker for the deceased person;
  - (b) the reasons for the objection.
- (3) An objection mentioned in subsection (1) may be withdrawn, in writing, by the decision maker who submitted the objection.

#### **46            Register of burials**

- (1) The responsible entity for a cemetery must establish and maintain a register of the burials of human remains in the cemetery.

- (2) The register must include the following information regarding each burial in the cemetery:
- (a) the information mentioned in section 40(1);
  - (b) the date of burial;
  - (c) the plot number, GPS coordinates or other means of locating the burial site;
  - (d) the type of burial;
  - (e) the depth of the human remains below ground level, if applicable;
  - (f) the full name of the person who officiated at the ceremony, if any;
  - (g) the full name of the funeral director or any other person responsible for undertaking the burial;
  - (h) descriptive details of any memorial erected at the burial site;
  - (i) the date of erection of any memorial at the burial site, if known;
  - (j) if the human remains have been exhumed after a burial – the information required by section 91;
  - (k) any other information prescribed by regulation.

#### **47 Access to information in register of burials**

- (1) The manager of a cemetery must, on request from the following persons, provide the person with a copy or summary of information in the register of burials for the entry of a deceased person:
- (a) the executor or administrator of the estate of the deceased person;
  - (b) any next of kin of the deceased person;
  - (c) the applicant for the burial approval for the deceased person.
- (2) The manager of a cemetery must, on request, provide a copy or summary of information in the register of burials to any Agency.
- (3) The manager of a cemetery may, on request of a person or organisation, provide the person or organisation with a copy or summary of information in the register of burials for the entry of a deceased person, if satisfied the person or organisation has an

adequate reason for wanting a copy or summary of that information.

- (4) In deciding whether a person or an organisation has an adequate reason for wanting a copy or summary of information in the register of burials for the entry of a deceased person, the manager must have regard to the following:
  - (a) the nature of the person's or organisation's interest;
  - (b) the sensitivity of the information, including culturally sensitive information;
  - (c) the use to be made of the information;
  - (d) the need to protect the deceased person about whom the information is sought from unjustified intrusion of the deceased person's privacy;
  - (e) any other considerations prescribed by regulation.
- (5) If information is specified as culturally sensitive information in the burial approval form, that information must be redacted when providing a copy or summary of information under subsection (3).
- (6) The production of a copy or summary of information in the register under subsection (1) or (3) must be done in accordance with any policy determined by the responsible entity for a cemetery.
- (7) The responsible entity for a cemetery may determine and charge a fee for the production of a copy or summary of information in the register under subsection (1) or (3).

## **Division 2 Memorials within public cemetery**

### **48 Application for authorisation to erect memorial**

- (1) Before erecting a memorial in a public cemetery, a person must, in writing, apply to the manager of the cemetery for authorisation to erect a memorial in the cemetery.
- (2) The manager may authorise the erection of the memorial in accordance with any policy determined by the responsible entity.
- (3) The manager may authorise the erection of the memorial subject to any conditions the manager considers appropriate.
- (4) The applicant must comply with any conditions imposed under subsection (3).

- (5) If there is an exclusive right of burial at a burial site, the manager must not authorise the erection of a memorial at that site unless:
- (a) the grantee of the exclusive right of burial consented to the erection of the memorial; or
  - (b) if the grantee of the exclusive right of burial is deceased – the person mentioned in section 55(1) consented to the erection of the memorial.

#### **49 Requirement to repair memorial**

- (1) If a memorial in a public cemetery becomes unsafe, the responsible entity for the cemetery may, by written notice, require the person who was authorised to erect the memorial to repair, remove or reinstate the memorial within a reasonable period specified in the notice.

*Note for subsection (1)*

*The responsible entity must provide all the options (repair, remove or reinstate a memorial) to the applicant.*

- (2) A notice under subsection (1) must also state that the applicant may apply to NTCAT for a review of the requirement made under subsection (1).

*Note for subsection (2)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

- (3) If the work required under subsection (1) is not carried out within the period specified in the notice, the responsible entity may carry out the required work.
- (4) If a memorial in a public cemetery becomes unsafe or is damaged due to the actions of the responsible entity for the cemetery, the responsible entity:
- (a) must make reasonable attempts to provide, by written notice to the applicant for that memorial, information:
    - (i) on the state of the memorial; and
    - (ii) on the responsible entity's plan to repair or reinstate the memorial within a reasonable period; and
  - (b) must repair or reinstate the memorial within a reasonable period; and

- (c) must not recover costs of repair or reinstatement from the applicant.
- (5) The applicant may, in writing, waive the requirement of the responsible entity to repair or reinstate a memorial under subsection (4).
- (6) If the applicant waives the requirement of the responsible entity to repair or reinstate a memorial under subsection (5), the responsible entity:
  - (a) must remove the memorial if it is unsafe; or
  - (b) may remove the memorial if the applicant provides consent for the removal.
- (7) A written notice under subsection (1) or (4) is not required if:
  - (a) a memorial in a public cemetery becomes unsafe; and
  - (b) urgent action to repair, remove or reinstate the memorial is considered necessary by the responsible entity.
- (8) The responsible entity for the cemetery may carry out the work mentioned in subsection (7)(b).
- (9) In this section:

**unsafe**, in relation to a memorial, means likely to cause physical danger to a person.

## **Division 3 Exclusive rights of burial in public cemetery or independent cemetery**

### **Subdivision 1 Rights of burial generally**

#### **50 Grant of exclusive right of burial**

- (1) An exclusive right of burial entitles the grantee to the exclusive right to bury any human remains at a specific burial site in a public cemetery or an independent cemetery.
- (2) In accordance with the responsible entity's policy, the manager of a public cemetery or an independent cemetery, on payment of the relevant fee, may grant to an individual an exclusive right of burial in that cemetery.
- (3) A particular exclusive right of burial cannot be granted:
  - (a) to more than one individual; or



- (b) subject to section 51, for a specific burial site if human remains are already buried at that burial site.
- (4) An exclusive right of burial may be granted subject to any conditions that the manager specifies in the right.
- (5) The responsible entity may determine and charge a fee for an exclusive right of burial.
- (6) Exclusive rights of burial are not available in community cemeteries or local cemeteries.

#### **51 Exclusive right of burial granted after burial**

Despite section 50(3)(b), the manager of a public cemetery or independent cemetery, on payment of the relevant fee, may grant to the person who applied for approval to bury the human remains of a deceased person an exclusive right of burial for a specific burial site where the human remains of the deceased person are already buried if:

- (a) the human remains were buried within 12 months from the date the application for the right is made; and
- (b) no other human remains are buried at the burial site.

#### **52 Certificate of grant of exclusive right of burial**

- (1) The manager must issue to the grantee a certificate of the grant if the manager of a public cemetery or an independent cemetery grants an exclusive right of burial.
- (2) The certificate of a grant of an exclusive right of burial must contain the following information:
  - (a) the name of the responsible entity;
  - (b) the name and location of the cemetery;
  - (c) the full name of the manager of the cemetery;
  - (d) the location of the specific burial site;
  - (e) the full name of the grantee;
  - (f) the date the right of burial was granted;
  - (g) the period of duration of the right of burial;
  - (h) any conditions specified by the manager on the grant of the right;

- (i) the full name of the personal representative for the grantee;
  - (j) the full names of each person specified to be buried at the burial site;
  - (k) any conditions specified by the grantee for the exercise of the right.
- (3) If the manager of a public cemetery or an independent cemetery is satisfied that a certificate of a grant of an exclusive right of burial is lost, misappropriated or destroyed, the manager may, on payment of the relevant fee, issue a duplicate certificate to:
- (a) the grantee; or
  - (b) if the grantee is deceased – the person mentioned in section 55(1).

### **53 Duration of right**

An exclusive right of burial expires on:

- (a) the day that is 50 years after the day on which the right was issued; or
- (b) if the certificate issued under section 52(1) specifies a shorter period for the duration of the right – the earlier date.

*Note for section 53*

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

### **54 Entitlements of exclusive right of burial**

- (1) The grantee is entitled to do the following under an exclusive right of burial:
- (a) bury human remains in accordance with a burial approval at the burial site for which the right was granted;
  - (b) specify a personal representative to exercise the right once the grantee is deceased;
  - (c) specify persons whose human remains are to be buried at the burial site in respect of which the right was granted;
  - (d) specify any conditions on the exercise of the right upon the death of the grantee.
- (2) The grantee may amend any information under subsection (1) from time to time.

- (3) A grantee is the only person who has the entitlement to specify or amend any information in subsection (1)(b), (c) or (d).
- (4) If the grantee amends any information under subsection (2), the manager of the cemetery must:
  - (a) update the certificate of the grant with the updated information; and
  - (b) reissue the certificate of the grant to the grantee with the original duration of the right or the new duration of the right if the right is renewed under section 62(5).

#### **55 Exercise of exclusive right of burial**

- (1) If the grantee of an exclusive right of burial is deceased, the right may be exercised, subject to any conditions specified on the certificate issued under section 52(1), by:
  - (a) the personal representative for the grantee; or
  - (b) if the grantee did not specify a personal representative – the decision maker for the deceased grantee.
- (2) Despite subsection (1), the person exercising the exclusive right of burial may only exercise the right if:
  - (a) the person has not been certified as mentally unfit by 2 medical practitioners; and
  - (b) the person can be contacted within a reasonable period.

#### **56 Change of contact details**

- (1) If the contact details for the grantee change, the grantee must notify the responsible entity as soon as practicable after the change.
- (2) If the contact details for the personal representative for the grantee change, the grantee or the personal representative must notify the responsible entity as soon as practicable after the change.

#### **57 Exclusive rights of burial policy**

- (1) The responsible entity for a public cemetery or an independent cemetery must establish a policy for exclusive rights of burial if the responsible entity permits exclusive rights of burial in the cemetery.
- (2) The policy must provide for the following matters:
  - (a) the application process for an exclusive right of burial;

- (b) the renewal process for an exclusive right of burial;
- (c) information regarding the certificate of an exclusive right of burial including the information to be specified on the certificate;
- (d) the maximum period of duration of the exclusive right of burial;
- (e) the notification process for updating the contact details of the grantee of an exclusive right of burial and the personal representative for the grantee;
- (f) the policy for refunds of payments for exclusive rights of burial in relation to the surrender of unexercised rights;
- (g) the date the policy was last amended or replaced.

## **Subdivision 2 Transfer and surrender**

### **58 Transfer of exclusive right of burial prohibited**

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

### **59 Surrender of unexercised right of burial**

- (1) The grantee of an unexercised exclusive right of burial may surrender the right to the manager of the public cemetery or independent cemetery for which it was granted.
- (2) Subsection (1) includes a right that has been exercised but after which the human remains have been exhumed.
- (3) A grantee surrendering an exclusive right of burial has no further entitlements under that right.
- (4) If an exclusive right of burial is surrendered, the manager may do any of the following in respect of the burial site to which the surrendered right applied:
  - (a) grant a new exclusive right of burial under section 50(2);
  - (b) give a burial approval under section 38(1) for the burial of human remains not in relation to an exclusive right of burial;
  - (c) use the area for a different purpose other than burying human remains.

**60 Refund for surrendered exclusive rights of burial**

- (1) The responsible entity for a public cemetery or an independent cemetery must establish a policy for refunds of payments for exclusive rights of burial in relation to the surrender of unexercised exclusive rights of burial under section 59(1) if the responsible entity provides for exclusive rights of burial.
- (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.

**Subdivision 3 Expiry and renewal of exclusive right of burial**

**61 Notification of expiry of exclusive right of burial**

- (1) At least 12 months before an exclusive right of burial expires, the manager of the public cemetery or independent cemetery to which the right applies must take reasonable steps to notify the following persons that the right will expire at the end of the period for which it was granted:
  - (a) the grantee of the exclusive right of burial;
  - (b) if the grantee is deceased:
    - (i) the personal representative for the grantee; or
    - (ii) if the grantee did not specify a personal representative or the personal representative is not able to be contacted – the decision maker for the deceased grantee.
- (2) A notification under subsection (1) must be in writing and include the following details:
  - (a) the expiry date;
  - (b) the fee for renewal;
  - (c) the maximum period, not exceeding a further 50 years, for which it may be renewed.

## 62 Renewal of exclusive right of burial

- (1) If an exclusive right of burial is expiring, the manager of a public cemetery or an independent cemetery must, in the notice under section 61(1), give the grantee of the exclusive right of burial the option to renew the right.
- (2) The grantee of an exclusive right of burial that is expiring may apply to renew the right for a further period specified in the notice not exceeding 50 years.
- (3) An exclusive right of burial may be renewed more than once in accordance with this section.
- (4) An application under subsection (2):
  - (a) must be in writing to the manager; 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.
- (5) On receiving a renewal application under subsection (2), the manager must renew the right for the period specified.
- (6) Despite subsection (5), the manager may, only in exceptional circumstances, refuse to renew the right.

### *Example of exceptional circumstances for subsection (6)*

*A natural event has destroyed the burial site for which the exclusive right of burial relates.*

- (7) If the manager refuses to renew the right, the manager must give a decision notice to the grantee or if the grantee is deceased, the person specified in subsection (8).

### *Note for subsection (7)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

- (8) If the grantee is deceased, the exclusive right of burial may be renewed by any of the following persons:
  - (a) the personal representative for the grantee;
  - (b) the decision maker for the deceased grantee.

- (9) An exclusive right of burial renewed under this section applies to the same burial site as the original right.

### **63 Exclusive right of burial not renewed**

If an exclusive right of burial is not renewed within the period allowed under section 62(4)(b) and there are no human remains buried in the burial site, the manager of a public cemetery or an independent cemetery may do any of the following in respect of the burial site to which an expired right applied:

- (a) grant a new exclusive right of burial under section 50(2) or 51;
- (b) give a burial approval under section 38(1) for the burial of human remains not in relation to an exclusive right of burial;
- (c) use the area for a different purpose other than burying human remains.

## **Subdivision 4 Register of exclusive rights of burial**

### **64 Register of exclusive rights of burial**

- (1) The responsible entity for a public cemetery or an independent cemetery must establish and maintain a register of exclusive rights of burial that the manager of the cemetery has granted.
- (2) The register must include the following details:
  - (a) the full name, address and contact details of the grantee of the exclusive right of burial;
  - (b) the burial site in respect of which each exclusive right of burial was granted;
  - (c) any information recorded on the certificate issued under section 52(1);
  - (d) the expiry date of each exclusive right of burial granted;
  - (e) if the grantee of an exclusive right of burial specified a personal representative – the full name, address and contact details of the personal representative for the grantee;
  - (f) any other information prescribed by regulation.
- (3) The responsible entity must not make the register publicly available.

## **Division 4 Burials outside cemetery**

### **65 Burial outside cemetery**

- (1) A person may bury human remains of a deceased person in a location outside a cemetery in accordance with this Division.
- (2) A **burial outside a cemetery** includes the burial of the human remains of a deceased person in:
  - (a) a burial ground;
  - (b) an undeclared area;
  - (c) a suspended cemetery.

### **66 Notification of burial outside cemetery**

- (1) Before a burial outside a cemetery occurs, one of the following persons must notify the Agency of the proposed burial (a **burial notification**):
  - (a) the person undertaking the burial;
  - (b) the executor or administrator of the estate of the deceased person;
  - (c) the deceased person's next of kin;
  - (d) the representative for a burial ground.
- (2) The burial notification must include the following details:
  - (a) the person's full name and contact details;
  - (b) the person's relationship to the deceased person;
  - (c) the full name and contact details of the decision maker for the deceased person;
  - (d) if the person providing the burial notification is not the person undertaking the burial – the full name and contact details of the person undertaking the burial;
  - (e) the information mentioned in section 40(1)(a) to (g);
  - (f) the name of the burial ground or the name of the location of the burial site;
  - (g) the GPS coordinates of the burial site where the human remains are proposed to be buried;



- (h) whether the human remains are to be buried in the ground or interred;
  - (i) whether the burial site will be a single burial or multiple burial;
  - (j) the proposed date of burial;
  - (k) any other information prescribed by regulation.
- (3) The person providing the burial notification may include a statement in the burial notification informing the Agency that certain information mentioned in subsection (2) is culturally sensitive information.
- (4) If the GPS coordinates mentioned in subsection (2)(g) cannot be provided the following may be provided instead:
- (a) a map indicating the location of the burial site;
  - (b) an aerial photograph indicating the location of the burial site;
  - (c) a description of the burial site that provides sufficient details to ensure the relevant land is able to be identified.
- (5) In addition to the burial notification, the applicant must also provide the documents mentioned in section 67.

## **67 Documents to be provided with burial notification**

- (1) A burial notification for a deceased person must be accompanied by:
- (a) one of the following documents:
    - (i) a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996*;
    - (ii) a certificate under section 12(3) of the *Births, Deaths and Marriages Registration Act 1996*;
    - (iii) a certificate issued by the coroner or the coroner's clerk under section 17(1) of the *Coroners Act 1993*;
    - (iv) a certificate issued by the Registrar under section 44(1)(a) of the *Births, Deaths and Marriages Registration Act 1996* certifying the registration of the death of the deceased person; and
  - (b) a statement from the person providing the burial notification that the person contacted, or made reasonable attempts to contact, the decision maker for the deceased person and

there are no known objections to the burial of the human remains of the deceased person.

*Note for subsection (1)*

*Sections 185 and 186 include other provisions relevant to a notification.*

- (2) If the document specified in subsection (1)(a)(i) or (ii) cannot be provided with the burial notification for a deceased person, the person providing the burial notification to the Agency must provide the name of the provider where the medical practitioner completed the document under section 12(3) or 34(1) of the *Births, Deaths and Marriages Registration Act 1996* in relation to the deceased person.
- (3) Subject to subsection (6), for the burial of human remains of a deceased person in a burial ground, the burial notification must also be accompanied by confirmation of consent for the burial:
  - (a) from the representative for the burial ground; or
  - (b) from each interest holder of the area on which the burial ground is located.
- (4) Subject to subsection (6), for the burial of human remains of a deceased person in an undeclared area, the burial notification must also be accompanied by:
  - (a) confirmation of consent for the burial from each interest holder; and
  - (b) confirmation that the burial complies with any restrictions prescribed by regulation under section 37.
- (5) Subject to subsection (6), for the burial of human remains of a deceased person in a suspended cemetery, the burial notification must also be accompanied by confirmation of consent for the burial from each interest holder.
- (6) Consent for the burial of human remains of a deceased person is not required from an interest holder or the representative for a burial ground in the following circumstances:
  - (a) the burial relates to the exercise of rights and interests mentioned in section 5;
  - (b) for land that is subject to native title – the burial is not inconsistent with the rights and interests of any other interest holder that prevail over native title rights and interests in accordance with the *Native Title Act 1993* (Cth).

- (7) For land that is subject to native title:
  - (a) an interest holder of that land who is not the native title holder must not unreasonably withhold consent for a person to undertake a burial on that land; and
  - (b) a dispute about the withholding of consent may be decided by NTCAT on application by the person wishing to undertake the burial.
- (8) For a multiple burial, the burial notification must be accompanied by confirmation of consent for the burial from the decision maker for each deceased person buried at the burial site.

**68            Information not known or considered culturally sensitive**

- (1) Despite section 66, information regarding a deceased person does not need to be provided to the Agency if the information:
  - (a) is not known; or
  - (b) is considered by the person providing the information to be culturally sensitive.
- (2) If the name of the deceased person is considered to be culturally sensitive, the person providing the information must provide sufficient details to ensure the deceased person is able to be identified.
- (3) If the burial site is considered to be culturally sensitive, the person providing the information must provide:
  - (a) for a burial in a burial ground – sufficient details to ensure the burial ground is identified; or
  - (b) for a burial in an undeclared area or a suspended cemetery – an approximate or general indication of the burial site to ensure the relevant land is able to be identified.

**69            CEO may request documents**

- (1) The CEO may request a copy of the document mentioned in section 67(1)(a)(i) or (ii) from a provider if the document is not submitted with the burial notification.
- (2) If the CEO requests a copy of the document under subsection (1), the provider must provide a copy of the document to the CEO unless the provider does not have access to the document.

## **70 Receipt of burial notification**

- (1) After receiving a burial notification, the Agency must provide confirmation of receipt of the notification to the person who submitted the notification.
- (2) If an incomplete burial notification is received, the Agency must contact the person who submitted the notification to inform the person that the notification is incomplete and provide any information in order for the person to complete the notification.
- (3) For a burial ground, if the person who submitted the burial notification was not the representative for the burial ground, the Agency must, in writing to the representative:
  - (a) confirm receipt of the notification, whether the notification was complete or incomplete; and
  - (b) inform the representative of any information provided to the person who submitted the incomplete notification in order for the person to complete the notification.

## **71 Objection to burial outside cemetery**

- (1) The decision maker for a deceased person or an interest holder mentioned in section 8(c) or (d) may object to the burial of human remains of a deceased person at a location outside a cemetery.
- (2) The objection mentioned in subsection (1) must:
  - (a) be in writing; and
  - (b) state the deceased person's full name; and
  - (c) state the reasons for the objection; and
  - (d) be submitted to the following before the burial occurs:
    - (i) the person undertaking the burial;
    - (ii) the Agency.
- (3) If the Agency received a burial notification for a deceased person and an objection under subsection (1) was made in relation to the deceased person, the Agency must:
  - (a) notify the following persons that an objection to the burial of the deceased person was made:
    - (i) the person who submitted the burial notification;

- (ii) the person undertaking the burial; and
- (b) provide a statement in the notification that it is an offence to proceed with the burial if there is an objection from the decision maker for the deceased person.
- (4) An objection mentioned in subsection (1) may be withdrawn, in writing, by the person who submitted the objection.

**72 Offence to undertake burial subject to objection from decision maker or relevant interest holder**

- (1) A person commits an offence if:
  - (a) the decision maker for a deceased person or an interest holder mentioned in section 8(c) or (d) objects to the burial of the deceased person outside a cemetery and the person has knowledge of that circumstance; and
  - (b) the person intentionally buries the human remains of a deceased person; and
  - (c) the human remains are buried at a location outside a cemetery.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(c).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

**73 Offence to undertake burial without consent of representative or interest holder**

- (1) A person commits an offence if:
  - (a) the person intentionally buries the human remains of a deceased person; and
  - (b) the human remains are buried at a location outside a cemetery; and
  - (c) consent is required for the burial of the human remains from:
    - (i) if the burial is in a burial ground – the representative for that burial ground or each interest holder; or
    - (ii) if the burial is in an undeclared area or a suspended cemetery – each interest holder; and

- (d) the person does not have consent from the person mentioned in paragraph (c).

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(b), (c) and (d).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

#### **74 Burial notification may be provided after burial**

- (1) Despite the requirement under section 66 to provide the burial notification before the burial in a location outside a cemetery, the burial notification may be provided after the burial if the person providing the notification was not able to provide the notification before the burial.

*Note for subsection (1)*

*A burial notification provided under subsection (1) contains information for a burial that has occurred.*

- (2) The person providing the burial notification after a burial must inform the Agency of the reason why the burial notification was not provided before the burial.
- (3) If the Agency knows that the burial of a deceased person occurred and a burial notification for the burial was not provided to the Agency, the Agency may, in writing, direct the person who undertook the burial to provide a completed burial notification to the Agency within 60 days from the day the direction is received by the person.
- (4) For subsection (3), if the Agency directed a person to provide a completed burial notification to the Agency, the person is taken to have complied with the direction if another person provided the completed burial notification on behalf of the person.

*Examples for subsection (4)*

*The person's employer or a next of kin of the deceased person.*

#### **75 Offence for failure to comply with burial notification direction**

- (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) the person received a written direction from the Agency under section 74(3) to provide the Agency with a completed burial notification within 60 days of receiving the direction; and
- (d) the person contravenes the direction.

Maximum penalty: 20 penalty units.

- (2) Strict liability applies to subsection (1)(b), (c) and (d).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has taken reasonable steps to comply with the direction.

## **76 Information about burial outside cemetery**

- (1) The Agency may, in writing, request a person who provided a burial notification for a deceased person to provide the following information to the Agency after the burial:
  - (a) the date of burial;
  - (b) details about how the human remains are buried;
  - (c) the descriptive details of any memorial erected at the place where the human remains are buried;
  - (d) if the GPS coordinates provided in the burial notification are different – the GPS coordinates of the burial site;
  - (e) any other information the Agency considers appropriate.
- (2) If the GPS coordinates mentioned in subsection (1)(d) cannot be provided the following may be provided instead:
  - (a) a map indicating the location of the burial site;
  - (b) an aerial photograph indicating the location of the burial site;
  - (c) a description of the burial site that provides sufficient details to ensure the relevant land is able to be identified.
- (3) The information regarding a deceased person does not need to be provided to the Agency if the information:
  - (a) is not known; or
  - (b) is considered by the person providing the information to be culturally sensitive.

- (4) If the burial site is considered to be culturally sensitive, the person providing the information may give an approximate or general indication of the burial site.

**77 Register of burials outside cemetery**

- (1) The Agency must establish and maintain a register of burials located outside a cemetery.
- (2) The register must include the following:
- (a) the information mentioned in section 66;
  - (b) the information provided under section 76(1);
  - (c) for a burial in a burial ground – the name of the representative for the burial ground;
  - (d) for a burial in an undeclared area or a suspended cemetery – the name of each interest holder;
  - (e) any other information prescribed by regulation.

**78 Access to information in register of burials outside cemetery**

- (1) The CEO must, on request from the following persons, provide the person with a copy or summary of information in the register of burials outside a cemetery for the entry of a deceased person:
- (a) the executor or administrator of the estate of the deceased person;
  - (b) the person who provided the burial notification for the deceased person;
  - (c) any next of kin of the deceased person;
  - (d) if the deceased person is buried in a burial ground – the representative for the burial ground or the interest holder or a prospective interest holder of the burial ground;
  - (e) if the deceased person is buried in an undeclared area or a suspended cemetery – the interest holder or a prospective interest holder of the undeclared area or suspended cemetery.
- (2) Subject to section 79, the CEO may, on request of a person or organisation, provide the person or organisation with a copy or summary of information in the register of burials outside a cemetery for the entry of a deceased person, if satisfied the person or organisation has an adequate reason for wanting a copy or



summary of that information.

- (3) If information is specified as culturally sensitive information in the burial notification, that information must be redacted when providing a copy or summary of information under subsection (2).
- (4) The CEO may determine and charge a fee for the production of a copy or summary of information in the register under subsection (2).

**79 Matters to be considered before providing access to information from register of burials outside cemetery**

- (1) Before making a decision under section 78(2), the CEO must invite the following people to provide comments in relation to the request for information under section 78:
  - (a) if the deceased person is buried in a burial ground – the representative for the burial ground;
  - (b) if the deceased person is buried in an undeclared area or a suspended cemetery – the interest holder of the undeclared area or suspended cemetery.
- (2) The invitation under subsection (1) must:
  - (a) be in writing; and
  - (b) specify a reasonable period of time that the comments need to be provided to the CEO.
- (3) The CEO must take into account any comments received from the representative for a burial ground or the interest holder before making a decision under section 78(2).
- (4) Despite subsection (1), the CEO does not need to make an invitation under subsection (1) if the CEO reasonably believes that a decision under section 78(2) needs to be made before an invitation under subsection (1) can be made.
- (5) In deciding whether a person or an organisation has an adequate reason for wanting a copy or summary of information in the register for the entry of a deceased person under section 78(2), the CEO must have regard to the following:
  - (a) the nature of the person's or organisation's interest;
  - (b) the sensitivity of the information, including culturally sensitive information;
  - (c) the use to be made of the information;

- (d) the need to protect the deceased person about whom the information is sought from unjustified intrusion of the deceased person's privacy;
- (e) any other considerations prescribed by regulation.

## **80 Information to be provided to Registrar-General**

After receipt of information under this Division relating to a burial outside a cemetery, the Agency must provide the following information to the Registrar-General for the record of administrative interests kept under section 38 of the *Land Title Act 2000*:

- (a) confirmation that a burial has occurred on land outside a cemetery;
- (b) the number of burial sites on the land mentioned in paragraph (a);
- (c) the name of any burial ground located on the land mentioned in paragraph (a) and the contact details for the representative for the burial ground;
- (d) any other information prescribed by regulation.

## **Division 5 Depth and direction of burial within cemetery and outside cemetery**

### **81 Depth of burial**

Human remains that are buried in the ground must be:

- (a) completely covered by soil that is at least 1 m deep at its shallowest point; or
- (b) completely covered by:
  - (i) 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
  - (ii) soil that is at least 500 mm deep at its shallowest point.

### **82 Direction of burial**

- (1) Subject to section 81, human remains may be buried in the ground in any direction, including horizontally or vertically.

- (2) If the burial is being undertaken in a cemetery, subsection (1) is subject to any policy established by the responsible entity for the cemetery.

## **Division 6 Interment in structure within cemetery and outside cemetery**

### **83 Declaration of structure**

- (1) Subject to section 85, the Minister may, by *Gazette* notice, declare a structure or class of structure to be a structure for the interment of human remains.
- (2) The notice must specify the following details:
- (a) the structure or class of structure type;
  - (b) the person or entity responsible for managing and controlling the structure or class of structure;
  - (c) the location of the structure or class of structure.

*Examples for subsection (2)(a)*

*Mausoleum, crypt or tomb.*

*Notes for section 83*

*1 Division 1 applies to interments within cemeteries.*

*2 Division 4 applies to interments outside cemeteries.*

### **84 Revocation of declaration of structure**

- (1) Subject to section 85, the Minister may, by *Gazette* notice, revoke the declaration of a structure or class of structure as a structure for the interment of human remains.
- (2) The notice must specify the following details:
- (a) the structure or class of structure type;
  - (b) the person or entity responsible for managing and controlling the structure or class of structure;
  - (c) the location of the structure or class of structure.

*Examples for subsection (2)(a)*

*Mausoleum, crypt or tomb.*

**85 Matters to be considered before declaration or revocation**

Before declaring or revoking the declaration of a structure or class of structure, the Minister must take into account any matters prescribed by regulation relating to the declaration or revocation of the declaration of a structure or class of structure.

**86 Interment in structure**

- (1) A person commits an offence if:
- (a) the person intentionally interments human remains; and
  - (b) the human remains are interred in a structure; and
  - (c) the structure is not declared or within a class of structure declared to be a structure for the interment of human remains by the Minister under section 83(1).

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(b) and (c).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

**Part 4 Exhumations**

**Division 1 Exhumation inside cemetery**

**87 Application for exhumation and relocation of human remains**

- (1) A person may apply to the CEO for approval to exhume human remains of a deceased person in a cemetery and relocate the human remains to another place in or outside the Territory.
- (2) The application must include the following information:
- (a) the person's full name, address and contact details;
  - (b) the person's relationship to the deceased person;
  - (c) the deceased person's full name;
  - (d) the full name and contact details of the decision maker for the deceased person;
  - (e) the name of the cemetery;
  - (f) the date the deceased person was buried;

- (g) the proposed date of exhumation;
- (h) the place where the human remains are proposed to be buried, disposed of, or otherwise relocated;
- (i) confirmation of consent from:
  - (i) the decision maker for the deceased person; and
  - (ii) if the human remains are buried in a burial site with other human remains – each decision maker for each deceased person buried in that site; and
  - (iii) if the human remains are buried at a specific burial site in accordance with an exclusive right of burial – the person mentioned in section 55(1).
- (3) The applicant may include a statement in the application informing the CEO that certain information mentioned in subsection (2) is culturally sensitive information.
- (4) If the decision maker mentioned in subsection (1)(i)(ii) cannot be contacted, the applicant must provide a statutory declaration that states that the applicant has made reasonable attempts to contact the decision maker and that the decision maker cannot be contacted.
- (5) The CEO may, in writing, approve the exhumation and relocation of human remains of a deceased person (an **exhumation approval**) if satisfied of the following matters:
  - (a) the proposed exhumation and relocation is in accordance with any guidelines made by the Chief Health Officer under section 193;
  - (b) whether the applicant has obtained, or is able to obtain, the necessary authorisations to:
    - (i) bury the human remains at the place the applicant intends to relocate the remains; or
    - (ii) cremate, dispose of, or otherwise make arrangements for the human remains;
  - (c) any other matters the CEO considers relevant.
- (6) The exhumation approval may be given subject to any conditions that the CEO considers appropriate.

- (7) Despite subsection (6), the CEO must not impose a condition on an exhumation approval that is intended to limit the exercise of rights and interests mentioned in section 5 unless the condition is imposed for environmental protection, public health purposes or public safety purposes.
- (8) The CEO may refuse to give an exhumation approval unless:
- (a) the proposed exhumation relates to the exercise of rights and interests mentioned in section 5; and
  - (b) the proposed exhumation does not contravene this Act or another Act.
- (9) If the CEO refuses to give an exhumation approval, the CEO must give the applicant a decision notice.

*Note for subsection (9)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

## **88 Exhumation without approval**

- (1) A person commits an offence if:
- (a) the person intentionally exhumes human remains; and
  - (b) an exhumation approval is required; and
  - (c) no approval was given for the exhumation of human remains.
- Maximum penalty: 100 penalty units.
- (2) Strict liability applies to subsection (1)(b) and (c).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

## **89 Contravention of condition of exhumation**

- (1) A person commits an offence if:
- (a) the person has an exhumation approval; and
  - (b) the approval is subject to a condition under section 87(6); and
  - (c) the person engages in conduct; and

(d) the conduct results in a contravention of the condition.

Maximum penalty: 50 penalty units.

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

## 90 Exception for exhumation approval

An exhumation approval is not needed for the exhumation of human remains if:

- (a) the human remains are removed from the burial site to allow for the additional burial of human remains in the burial site; and
- (b) the human remains are immediately returned to the burial site.

## 91 Exhumation information

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

- (a) the date the exhumation approval was given by the CEO;
- (b) the date of exhumation;
- (c) the full name of the person who undertook the exhumation;
- (d) the place where the human remains are buried, disposed of, or otherwise relocated.

## Division 2 Exhumation of human remains outside of cemetery

### 92 Exhumation outside cemetery

- (1) A person may exhume the human remains of a deceased person from a location outside a cemetery and relocate the human remains to another place in or outside the Territory in accordance with this Division.
- (2) An **exhumation outside a cemetery** includes the exhumation of human remains in:
  - (a) a burial ground; or
  - (b) an undeclared area; or
  - (c) a suspended cemetery.

**93 Notification of exhumation and relocation of human remains**

- (1) Before an exhumation outside a cemetery occurs, one of the following persons must notify the Agency of the exhumation (an ***exhumation notification***):
  - (a) the person undertaking the exhumation;
  - (b) the executor or administrator of the estate of the deceased person;
  - (c) the deceased person's next of kin;
  - (d) the representative for a burial ground.
- (2) The exhumation notification must include the following information:
  - (a) the person's full name and contact details;
  - (b) the person's relationship to the deceased person;
  - (c) the deceased person's full name;
  - (d) the full name and contact details of the decision maker for the deceased person;
  - (e) if the person providing the exhumation notification is not the person undertaking the exhumation – the full name and contact details of the person undertaking the exhumation;
  - (f) the name of the burial ground or name of the location of the burial site where the deceased person was buried;
  - (g) the date when the deceased person was buried, or an approximate date if the date is not known;
  - (h) GPS coordinates of the burial site;
  - (i) the proposed date of exhumation;
  - (j) the place where the human remains are proposed to be buried, disposed of, or otherwise relocated.
- (3) The person providing the exhumation notification may include a statement in the exhumation notification informing the Agency that certain information mentioned in subsection (2) is culturally sensitive information.



- (4) If the GPS coordinates mentioned in subsection (2)(h) cannot be provided the following may be provided instead:
  - (a) a map indicating the location of the burial site;
  - (b) an aerial photograph indicating the location of the burial site;
  - (c) a description of the burial site that provides sufficient details to ensure the relevant land is able to be identified.
- (5) In addition to the exhumation notification, the applicant must also provide the documents mentioned in section 94.

**94 Documents to be provided with exhumation notification**

- (1) The exhumation notification must be accompanied by confirmation of consent for the exhumation and relocation from the following:
  - (a) the decision maker for the deceased person;
  - (b) if the human remains are buried in a burial site with other human remains – each decision maker for each deceased person buried in that site.
- (2) If the decision maker mentioned in subsection (1)(b) cannot be contacted, the person notifying must provide a statutory declaration that states that the person has made reasonable attempts to contact the decision maker and that the decision maker cannot be contacted.
- (3) The exhumation notification must be accompanied by confirmation of the following:
  - (a) if the exhumation is located on a sacred site – the person notifying the Agency of the exhumation has obtained the necessary authorisation:
    - (i) under the *Northern Territory Aboriginal Sacred Sites Act 1989*; or
    - (ii) from the relevant Land Council;

- (b) if the deceased person suffered from a declared infectious disease at the time of the person's death and the burial occurred less than 6 months prior to the date of the proposed exhumation – the applicant has consulted the Chief Health Officer in relation to the proposed exhumation.

*Note for subsection (3)(b)*

*Under section 192(2), the CEO may make guidelines in relation to declared infectious diseases for the purposes of exhumations outside a cemetery.*

## **95 Information not known or considered culturally sensitive**

- (1) Despite section 93, information regarding a deceased person proposed to be exhumed does not need to be provided to the Agency if the information:
  - (a) is not known; or
  - (b) is considered by the person providing the information to be culturally sensitive.
- (2) If the name of the deceased person proposed to be exhumed is considered culturally sensitive, the person providing the information must provide sufficient details to ensure the deceased person is able to be identified.
- (3) If the burial site is considered to be culturally sensitive, the person providing the information must provide:
  - (a) for a burial in a burial ground – sufficient details to ensure the burial ground is identified; or
  - (b) for a burial in an undeclared area or a suspended cemetery – an approximate or general indication of the burial site to ensure the relevant land is able to be identified.

## **96 Receipt of exhumation notification**

- (1) After receiving an exhumation notification, the Agency must provide confirmation of receipt of the notification to the person who submitted the notification.
- (2) If an incomplete exhumation notification is received, the Agency must contact the person who submitted the notification to inform the person that the notification is incomplete and provide any information in order for the person to complete the notification.

- (3) For a burial ground, if the person who submitted the exhumation notification was not the representative for the burial ground, the Agency must:
- (a) provide confirmation of receipt of the notification, whether the notification was complete or incomplete, to the representative; and
  - (b) inform the representative of any information provided to the person who submitted the incomplete notification in order for the person to complete the notification.

**97 Offence to undertake exhumation without consent from decision maker**

- (1) A person commits an offence if:
- (a) the person intentionally exhumes the human remains of a deceased person; and
  - (b) the human remains are exhumed from a location outside a cemetery; and
  - (c) the human remains are exhumed without one of the following in relation to the human remains and any other human remains buried in the same burial site:
    - (i) consent from the decision maker for the deceased person for the exhumation;
    - (ii) a declaration under section 94(2).

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(b) and (c).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

**98 Exhumation notification may be provided after exhumation**

- (1) Despite the requirement under section 93 to provide the exhumation notification before the exhumation outside a cemetery occurs, the notification may be provided after the exhumation if the person providing the notification was not able to provide the notification before the exhumation.

*Note for subsection (1)*

*An exhumation notification provided under subsection (1) contains information for an exhumation that has occurred.*

- (2) The person providing the exhumation notification after an exhumation must inform the Agency of the reason why the exhumation notification was not provided before the exhumation.
- (3) If the Agency knows that the exhumation of human remains occurred and an exhumation notification for the exhumation was not provided to the Agency, the Agency may, in writing, direct the person who undertook the exhumation to provide a completed exhumation notification to the Agency within 60 days from the day the direction is received by the person.
- (4) For subsection (3), if the Agency has directed a person to provide a completed exhumation notification to the Agency, the person is taken to have complied with the direction if another person has provided the completed exhumation notification on behalf of the person.

*Examples for subsection (4)*

*The person's employer or a next of kin of the deceased person.*

## **99 Offence for failure to comply with exhumation notification direction**

- (1) A person commits an offence if:
  - (a) the person intentionally exhumes the human remains of a deceased person; and
  - (b) the human remains are exhumed at a location outside of a cemetery; and
  - (c) the person received a written direction from the Agency under section 98(3) to provide the Agency with a completed exhumation notification within 60 days of receiving the direction; and
  - (d) the person contravenes the direction.

Maximum penalty: 20 penalty units.

- (2) Strict liability applies to subsection (1)(b), (c) and (d).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has taken reasonable steps to comply with the direction.

## **100 Information about exhumation outside cemetery**

- (1) The Agency may, in writing, request a person who provided an exhumation notification for the human remains of a deceased person to provide the following information to the Agency after the exhumation:
  - (a) the date of exhumation;
  - (b) the full name of the person who undertook the exhumation;
  - (c) if the GPS coordinates provided in the exhumation notification are different – the GPS coordinates of the burial site where the human remains were exhumed;
  - (d) the place where the human remains are buried, disposed of, or otherwise relocated.
- (2) If the GPS coordinates mentioned in subsection (1)(c) cannot be provided the following may be provided instead:
  - (a) a map indicating the location of the burial site;
  - (b) an aerial photograph indicating the location of the burial site;
  - (c) a description of the burial site that provides sufficient details to ensure the relevant land is able to be identified.
- (3) Despite subsection (1), information regarding a deceased person who has been exhumed does not need to be provided to the Agency if the information:
  - (a) is not known; or
  - (b) is considered by the person providing the information to be culturally sensitive.
- (4) If the burial site is considered to be culturally sensitive, the person providing the information may give an approximate or general indication of the burial site.

## **101 Exhumation information**

The Agency must ensure the following information for each exhumation is included in the register of burials outside a cemetery:

- (a) the date of exhumation;
- (b) the full name of the person undertaking the exhumation;

- (c) the place where the human remains are buried, disposed of, or otherwise relocated.

### **102 Agency must notify Registrar-General**

If human remains are exhumed at a location outside a cemetery, the Agency must provide the appropriate information for the record of administrative interests kept under section 38 of the *Land Title Act 2000* to the Registrar-General.

## **Part 5 Closure of cemeteries**

### **Division 1 Semi-closed cemeteries**

#### **103 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 44;
- (b) the exercise of an exclusive right of burial under section 54(1)(a) or 55 that was granted before the cemetery was declared a semi-closed cemetery;
- (c) the exercise of an exclusive right of burial under section 55 for the following situations after the cemetery was declared a semi-closed cemetery:
  - (i) an exclusive right of burial for a burial site is surrendered by a grantee under section 59(1) or not renewed under section 62(2) and a new exclusive right of burial for that burial site is granted under section 50(2);
  - (ii) an exclusive right of burial for a burial site is surrendered by a grantee under section 59(1) and a new exclusive right of burial for a burial site in the cemetery is granted to the grantee under section 50(2);
- (d) in accordance with section 59(4)(b) if:
  - (i) an exclusive right of burial is surrendered; and
  - (ii) the manager of the cemetery approved a burial in respect of the burial site to which the surrendered right applied;

- (e) in accordance with section 63(b) if:
  - (i) an exclusive right of burial is not renewed; and
  - (ii) the manager of the cemetery approved a burial in respect of the burial site to which the expired right applied.

#### **104 Application to semi-close cemetery**

- (1) The following may, in writing, apply to the Minister to declare a cemetery a semi-closed cemetery:
  - (a) an interest holder of 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 a semi-closed cemetery.

#### **105 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 104; or
  - (b) on the Minister's own initiative.
- (2) The Minister must not make a declaration under subsection (1) unless the Minister has consulted with each interest holder of the land on which the cemetery is located.
- (3) The notice 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 responsible entity for the cemetery's policies;
  - (c) the date the semi-closure takes effect.

### **Division 2 Closed cemeteries**

#### **106 Closed cemetery**

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

**107 Application to close cemetery**

- (1) The following may, in writing, apply to the Minister to declare a cemetery a closed cemetery:
  - (a) an interest holder of 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 a closed cemetery.
- (3) Before making an application under subsection (1), the applicant must take reasonable steps to ensure there are no outstanding exclusive rights of burial in the cemetery.

**108 Declaration of closed cemetery**

- (1) The Minister may, by *Gazette* notice, declare a cemetery to be a closed cemetery:
  - (a) on application under section 107; or
  - (b) on the Minister's own initiative.
- (2) The Minister must not make a declaration under subsection (1) unless the Minister has consulted with each interest holder of the land on which the cemetery is located.
- (3) The declaration must include the following information:
  - (a) conditions of the closure of the cemetery, if any;
  - (b) the date the closure takes effect.

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

**109 Notification of semi-closed cemetery and closed cemetery**

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

- (a) a statement that the cemetery is a semi-closed cemetery or a closed cemetery;
- (b) the information contained in the declaration under section 105(3) or 108(3).



#### **Division 4 Revocation of semi-closed or closed declaration**

##### **110 Revocation of declaration of semi-closed cemetery**

If a semi-closed cemetery is able to provide for more burials other than the burials mentioned in section 103, the Minister may, by *Gazette* notice, revoke the declaration of the cemetery as a semi-closed cemetery.

##### **111 Revocation of declaration of closed cemetery**

If a closed cemetery is able to provide for more burials after being declared as a closed cemetery, the Minister may, by *Gazette* notice, revoke the declaration of the cemetery as a closed cemetery.

#### **Division 5 Transformation of closed cemetery into public park**

##### **112 Closed cemetery**

A closed cemetery may, after 50 years from the day of the declaration of closure, be transformed into a public park under section 119.

##### **113 Application to transform closed cemetery into public park**

- (1) The responsible entity for a closed cemetery may, in writing, apply to the Minister to transform the closed cemetery into a public park.
- (2) If a cemetery or a portion of a cemetery was consecrated according to the rites or practices of a religious or cultural group, the responsible entity may offer an opportunity to control or maintain the area of land that the cemetery or the portion of the cemetery is located 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 responsible entity not interfere with specific burial sites in the cemetery or portion of the cemetery.
- (4) The responsible entity must fulfil each reasonable request mentioned in subsection (3) of the religious or cultural group.

## **114 Content of application**

- (1) An application to transform a closed cemetery into a public park must be in writing and include the following information:
  - (a) particulars about the proposal to transform the 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 controlled or maintained by the Commonwealth War Graves Commission;
  - (g) if any memorials controlled or maintained by the Commonwealth War Graves Commission are proposed to be removed, disposed of or relocated – consent from the Commonwealth War Graves Commission for the removal, disposal or relocation of those memorials;
  - (h) particulars about the proposed future use of any building in the cemetery;
  - (i) the estimated costs of:
    - (i) transforming the cemetery into a public park; and
    - (ii) maintaining the proposed public park;
  - (j) particulars of how the costs mentioned in paragraph (i) are to be met;
  - (k) copies of any objections received during the public consultation under section 116;
  - (l) consent from each interest holder for the transformation;
  - (m) any other information prescribed by regulation.
- (2) The Minister may, in writing, request further information from the responsible entity.

**115 Notice of intention to transform cemetery into public park**

- (1) Before making an application under section 113(1), the responsible entity for the closed cemetery must give 6 months notice of the responsible entity's intention to apply to transform a cemetery into a park by advertising:
  - (a) in a newspaper circulating in Territory; and
  - (b) on the responsible entity's website; and
  - (c) at the cemetery.
- (2) The responsible entity must take all reasonable steps to notify the following persons of the responsible entity's intention to transform a closed cemetery into a public park:
  - (a) any next of kin of each deceased person buried in the cemetery if the next of kin's contact information is available;
  - (b) any other person who was given approval to bury a deceased person 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 the public consultation process required to be undertaken by the responsible entity under section 116;
  - (c) information on how to object, under section 118, to the transformation of a closed cemetery into a public park.

**116 Public consultation**

- (1) Before making an application under section 113(1), the responsible entity for a closed cemetery must publish on the responsible entity's website:
  - (a) the plan of the proposed public park, including the timeframe of the proposed transformation; and
  - (b) a statement inviting the public to provide written submissions on the plan of the proposed public park, including:
    - (i) where to make the submission; and
    - (ii) the date the submission needs to be submitted by, which must not be less than 60 days from the day the statement is published.

- (2) The responsible entity for a closed cemetery must give proper consideration to any submission received from the public under subsection (1)(b).
- (3) Within 60 days from the day to make submissions under subsection (1)(b) close, the responsible entity for a closed cemetery must publish a post-consultation report on the responsible entity's website that specifies any changes to be made to the proposed public park.
- (4) After publishing the post-consultation report, the responsible entity for a cemetery must hold a public meeting in the area of the cemetery to discuss the post-consultation report.
- (5) The responsible entity for a closed cemetery must give notice of the public meeting mentioned in subsection (4) by:
  - (a) publishing the time and place of the meeting on the responsible entity's website; and
  - (b) displaying notice of the time and place of the meeting at the cemetery.
- (6) The public meeting mentioned in subsection (4) must not be held less than 14 days after the date the notice under subsection (5) is given.
- (7) The Minister may direct the responsible entity for a cemetery to undertake any additional steps for public consultation that the Minister considers appropriate.

#### **117 Obligations of responsible entity**

- (1) Before making an application under section 113(1), the responsible entity for the closed cemetery must:
  - (a) establish an inventory and a layout of the cemetery that identifies all burial sites and memorials including any inscriptions or other particulars; and
  - (b) photograph each memorial.
- (2) The responsible entity for a closed cemetery must ensure the records mentioned in subsection (1) are publicly available in accordance with the responsible entity's policy.
- (3) In addition to subsection (2), the responsible entity for a public cemetery that is a closed cemetery must ensure the records mentioned in subsection (1) are available on the responsible entity's website.

## **118 Objections**

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

## **119 Minister may transform closed cemetery into public park**

- (1) The Minister may approve an application under section 113(1) to transform a closed cemetery into a public park.
- (2) The Minister may take into account any objection made under section 118(1) before approving an application under subsection (1).

*Note for subsection (2)*

*Section 114(1)(k) specified that an application under section 113(1) must include copies of objections made to the transformation of a closed cemetery into a public park.*

- (3) The Minister may impose conditions on the approval of the application that the Minister considers appropriate.
- (4) The Minister must give notice in the *Gazette* of the approval of an application under section 113(1) to transform a closed cemetery into a public park.

## **120 Relocation of memorials**

- (1) If, under section 119(1), the Minister approves the transformation of a closed cemetery into a public park, the responsible entity for the cemetery may, subject to subsection (2) and any conditions imposed by the Minister under section 119(3):
  - (a) remove and dispose of any memorial; or
  - (b) relocate any memorial to a different place within the public park; or
  - (c) relocate any memorial to another burial area.

- (2) Before removing or relocating a memorial, the responsible entity for the cemetery must take all reasonable steps to notify:
- (a) the person who applied to the manager of the cemetery to erect the memorial under section 48; and
  - (b) any next of kin of a deceased person buried at the burial site where the memorial is located if the next of kin's contact information is available.

**121            Prohibited activities**

A person must not organise or participate in any competitive sports in a public park mentioned in section 119(1).

**122            Minimum period of public park for independent cemetery**

A closed independent cemetery that is transformed into a public park must remain as a public park for a minimum period of 50 years from the day the Minister approves the application under section 119(1).

**Part 6            Facilities**

**Division 1        Licence to operate facility**

**123            Minister may grant licence to operate facility**

- (1) The Minister may grant a person a licence to operate a facility.
- (2) A person may, in writing, apply to the Minister for a licence to operate a facility.
- (3) The Minister may, in a licence granted under subsection (1), specify conditions in respect of the operation of a facility.
- (4) The Minister must give notice in the *Gazette* that a licence to operate a facility has been granted.
- (5) The notice must specify the following details:
  - (a) the responsible entity for the facility;
  - (b) the location of the facility or, if it is mobile, a description that identifies the facility;
  - (c) each process available at the facility for the disposal of human remains;

- (d) any other information the Minister considers appropriate.

**124 Operation of facility without licence**

- (1) A person commits an offence if:
  - (a) the person intentionally operates a facility; and
  - (b) the person does not hold a licence to operate the facility under section 123(1).

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.

**125 Contravention of condition of licence**

- (1) A person commits an offence if:
  - (a) the person holds a licence to operate a facility; and
  - (b) the licence is subject to a condition under section 123(3); 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: 200 penalty units or imprisonment for 2 years.

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

**126 Licence to operate must be publicly available**

The responsible entity for a facility must ensure a copy of the licence to operate the facility:

- (a) is displayed at the facility; and
- (b) is available on the responsible entity's website.

**127 Surrender of licence to operate facility**

- (1) A person who holds a licence to operate a facility may surrender the licence to the Minister.

- (2) The Minister must give notice in the *Gazette* that the licence to operate a facility has been surrendered.

### **128        Requirement to forward permanent records**

- (1) If a licence to operate a facility is surrendered under section 127(1), the person who held that licence must forward the facility's permanent records to the archives service within 9 months of the surrender.
- (2) A person commits an offence if the person contravenes the requirement under subsection (1).

Maximum penalty:        100 penalty units.

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

### **129        Agency to keep register of facilities**

- (1) The Agency must establish and maintain a register of licensed facilities.
- (2) A copy of the register must be available on the Agency's website.

## **Division 2        Management of facilities**

### **130        Responsible entity for facility**

- (1) The ***responsible entity for a facility*** is the person who holds the licence granted under section 123(1).
- (2) Despite subsection (1), if a facility is located in a public cemetery, the responsible entity for that facility is the responsible entity for that public cemetery.
- (3) The responsible entity must manage and control the facility.
- (4) The responsible entity has the following functions:
  - (a) to ensure the disposal of human remains at the facility is undertaken in accordance with this Act and the licence to operate the facility;
  - (b) to establish and maintain a register of disposals of human remains;
  - (c) to establish and maintain records relating to the operation of the facility;



- (d) to ensure that the register of disposals of human remains is accessible to the public in accordance with this Act or another Act;
- (e) to ensure the facility has the proper equipment to undertake the disposal of human remains;
- (f) to establish policies for the facility;
- (g) any other functions conferred on the responsible entity under this Act or another Act.

**131        Manager of facility**

- (1) The ***manager of a facility*** is the chief executive officer of the responsible entity for the facility.
- (2) If the responsible entity does not have a chief executive officer, the manager of the facility is the person employed in the position equivalent to a chief executive officer for that responsible entity.
- (3) The responsible entity for a facility must notify the Agency of the following information regarding the manager of the facility:
  - (a) the full name of the manager;
  - (b) the contact details of the manager.
- (4) A notification under subsection (3) must be in writing and occur as soon as reasonably practicable after the person becomes the manager of the facility.

**132        Register of disposals of human remains**

- (1) The responsible entity for a facility must establish and maintain a register of disposals of human remains undertaken at the facility.
- (2) The register must include the following information regarding each disposal of human remains undertaken at the facility:
  - (a) the information mentioned in section 139;
  - (b) the date of disposal of human remains;
  - (c) the process of disposal of human remains;
  - (d) the full name of the person who disposed of the human remains;
  - (e) any other information prescribed by regulation.

**133            Access to information in register of disposals of human remains**

- (1) The manager of a facility must, on request from the following persons, provide the person with a copy or summary of information in the register of disposals of human remains for the entry of a deceased person:
  - (a) the executor or administrator of the deceased person;
  - (b) any next of kin of the deceased person;
  - (c) the applicant for the disposal approval for the deceased person.
- (2) The manager of a facility must, on request, provide a copy or summary of information in the register to any Agency.
- (3) The manager of a facility may, on request of a person or organisation, provide the person or organisation with a copy or summary of information in the register of disposals of human remains for the entry of a deceased person, if satisfied that the person or organisation has an adequate reason for wanting a copy or summary of that information.
- (4) In deciding whether a person or an organisation has an adequate reason for wanting to inspect the register or wanting a copy or summary of information in the register of disposals of human remains for the entry of a deceased person, the manager must have regard to the following:
  - (a) the nature of the person's or organisation's interest;
  - (b) the sensitivity of the information, including culturally sensitive information;
  - (c) the use to be made of the information;
  - (d) the need to protect the deceased person about whom the information is sought from unjustified intrusion of the deceased person's privacy;
  - (e) any other considerations prescribed by regulation.
- (5) If information is specified as culturally sensitive information in the disposal approval form, that information must be redacted when providing a copy or summary of that information under subsection (3).

- (6) The production of a copy or summary of information in the register under subsection (1) or (3) must be done in accordance with any policy determined by the responsible entity for a facility.
- (7) The responsible entity for a facility may determine and charge a fee for the production of a copy or summary of information in the register under subsection (1) or (3).

#### **134        Fees for facility services**

- (1) The responsible entity for a facility may impose a fee to be charged for a service.
- (2) The amount of any fees charged by the responsible entity for a facility must be specified as individual fees for each good or service provided by the responsible entity.

*Example for subsection (2)*

*The fee for disposing the human remains of a deceased person and the fee for transporting the human remains of a deceased person must be specified as individual fees and cannot be combined to be specified as one fee.*

#### **135        Information to be publicly available**

The responsible entity for a facility must ensure that the following information is available on the responsible entity's website:

- (a) general information relating to the facility including the public opening hours of the facility;
- (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) the amount of any fees charged by the responsible entity and specified as individual fees;
- (e) any other information prescribed by regulation.

#### **136        Information to be displayed at facility**

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.

## **Part 7                      Cremation and other processes prescribed for disposal of human remains**

### **137                      Application of Part 7**

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

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

### **138                      Application for disposal approval**

- (1) The manager of a facility may approve the disposal of human remains of a deceased person at the facility (a ***disposal approval***).
- (2) A person may apply to the manager of a facility for a disposal approval by submitting the following:
  - (a) the following details regarding the applicant:
    - (i) full name, address and contact details;
    - (ii) relationship to the deceased person;
  - (b) a disposal approval form;
  - (c) confirmation of the notification of, or confirmation of reasonable attempts to notify the decision maker for the deceased person;
  - (d) any objections, known to the applicant, from the decision maker for the deceased person;
  - (e) the documents specified in subsection (3).
- (3) An application under subsection (2) must include:
  - (a) each of the following:
    - (i) a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996*;
    - (ii) a certificate signed by 2 medical practitioners stating that the death is not a reportable death under section 12 of the *Coroners Act 1993*; or

- (b) each of the following:
  - (i) a certificate under section 12(3) of the *Births, Deaths and Marriages Registration Act 1996*;
  - (ii) a certificate signed by 2 medical practitioners stating that the death is not a reportable death under section 12 of the *Coroners Act 1993*; or
- (c) a certificate issued by the coroner or the coroner's clerk under section 17(1) of the *Coroners Act 1993*; or
- (d) a certificate issued by the Registrar under section 44(1)(a) of the *Births, Deaths and Marriages Registration Act 1996* certifying the registration of the death of the deceased person.

*Note for subsection (3)*

*Sections 185 and 186 include other provisions relevant to an approval.*

- (4) Despite subsection (2), the manager of a facility may not apply for an approval under subsection (2) to dispose of human remains in that facility.
- (5) The manager may request a document mentioned in subsection (3)(a) from a provider if the document is not submitted under subsection (2).
- (6) If the manager requests a document under subsection (5), the provider must provide a copy of the document to the manager unless the provider does not have access to the document.
- (7) If the manager of a facility knows there is an objection from the decision maker for the deceased person under subsection (2)(d) or section 144(1), the manager of the facility must not approve the disposal of the human remains of the deceased person unless the decision maker withdraws, in writing, the decision maker's objection.
- (8) The manager of a facility may:
  - (a) give a disposal approval; or
  - (b) refuse to give a disposal approval.

- (9) If the manager of a facility refuses to give a disposal approval, the manager must give the applicant a decision notice.

*Note for subsection (9)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

### **139 Disposal approval form**

- (1) A **disposal approval form** must include the following information about the deceased person, if known:
- (a) full name;
  - (b) sex or gender;
  - (c) date of birth;
  - (d) country of birth;
  - (e) date of death;
  - (f) place of death;
  - (g) address of residence immediately before death;
  - (h) any other information prescribed by regulation.
- (2) The applicant may include a statement in the disposal approval form informing the manager of the facility that certain information mentioned in subsection (1) is culturally sensitive information.

### **140 Disposal approval given without application or incomplete application**

- (1) A person commits an offence if:
- (a) an application for approval to dispose of the human remains of a deceased person under section 138(2):
    - (i) is not submitted; or
    - (ii) does not comply with the requirements specified in section 138(2)(c) to (e); and
  - (b) the person gives a disposal approval for the human remains of the deceased person.

Maximum penalty: 100 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 defendant has a reasonable excuse.

#### **141 Disposal without approval**

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

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

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

#### **142 Interested persons not to certify**

- (1) A person commits an offence if:
  - (a) the person intentionally signs a certificate mentioned in section 138(3)(a)(ii) or (b)(ii) 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 138(3)(a)(ii) or (b)(ii) 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.

#### **143 Disposal outside a 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 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.

#### **144 Objection to disposal of human remains of deceased person**

- (1) The decision maker for a deceased person may object to the disposal of human remains of the deceased person.
- (2) The objection must be made in writing to the manager of the facility at which it is proposed to dispose of the human remains of the deceased person and state the following:
- (a) the person is the decision maker for the deceased person;
  - (b) the reasons for the objection.
- (3) An objection mentioned in subsection (1) may be withdrawn, in writing, by the decision maker who submitted the objection.

### **Part 8 Officers may prohibit burial or disposal of human remains**

#### **145 Officers may prohibit burial or disposal of human remains**

- (1) Any of the following officers may, by written notice, prohibit the burial or disposal of human remains if that officer believes on reasonable grounds that the burial or disposal will not comply with this Act or another Act:
- (a) the Coroner;
  - (b) the Director of Public Prosecutions;
  - (c) the Solicitor for the Northern Territory;
  - (d) the CEO;
  - (e) a police officer;
  - (f) an inspector;
  - (g) if each person mentioned in paragraph (a) to (f) is not available to prohibit the burial or disposal – a justice of the peace.



- (2) A notice under subsection (1) may be:
- (a) absolute; or
  - (b) subject to any conditions stated in the notice.
- (3) In addition to prohibiting human remains from being buried or disposed of, an officer may order that the human remains:
- (a) be moved to a specified place; or
  - (b) be placed into the custody of a specified person.
- (4) A notice under subsection (1):
- (a) must be given to the following:
    - (i) the executor or administrator of the estate of the deceased person;
    - (ii) the senior next of kin for the deceased person;
    - (iii) if the burial or disposal is in a cemetery or facility – the responsible entity for the cemetery or facility or the manager of the cemetery or facility; and
  - (b) must specify the following information:
    - (i) the human remains to which the prohibition applies;
    - (ii) the grounds for the prohibition;
    - (iii) the period of the prohibition;
    - (iv) any order given under subsection (3);
    - (v) any conditions placed on the prohibition or other relevant information; and
  - (c) must state that a person given notice under paragraph (a) may apply to NTCAT for a review of the prohibition.

*Note for subsection (4)(c)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

- (5) A notice under subsection (1) may be withdrawn, in writing, by the officer who prohibited the burial or disposal in the notice.

**146 Approval of burial or disposal contrary to prohibition notice**

- (1) A person commits an offence if:
- (a) a notice under section 145(1) applies to human remains and the person has knowledge of that circumstance; and
  - (b) the person receives an application under section 38(2) or 138(2) relating to the human remains; and
  - (c) the person intentionally approves:
    - (i) the burial of the human remains under section 38(1); or
    - (ii) the disposal of the human remains under section 138(1).

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

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

**147 Contravention of prohibition notice**

- (1) A person commits an offence if:
- (a) a notice under section 145(1) applies to human remains and the person has knowledge of that circumstance; and
  - (b) the person intentionally buries or disposes of human remains; and
  - (c) the burial or disposal of human remains results in a contravention of the notice and the person is reckless in relation to that result.

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

- (2) An offence against subsection (1) is a summary offence.
- (3) A person commits an offence if:
- (a) a notice under section 145(1) applies to human remains and the person has knowledge of that circumstance; and
  - (b) the person intentionally engages in conduct; and

- (c) that conduct results in the contravention of an order made under section 145(3) or a condition under section 145(2)(b) and the person is reckless in relation to that result.

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

**148 Manager must notify applicant of prohibition notice**

If a prohibition notice is given to the responsible entity for a cemetery or facility or the manager of a cemetery or facility under section 145(1), the manager must immediately notify the applicant who was given a burial approval or a disposal approval for the human remains to which the prohibition applies that a prohibition notice has been given for those human remains.

**Part 9 Compliance reviews, investigations and enforcement**

**Division 1 Inspectors**

**149 Appointment of inspectors**

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

**150 Identity cards for inspectors**

- (1) The CEO must give an inspector an identity card stating the person's full name and that the person is an inspector.
- (2) The identity card must:
  - (a) display a recent photograph of the inspector; and
  - (b) state 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.

**151 Return of identity card**

- (1) A person who ceases to be an inspector must return the person's identity card to the CEO as soon as reasonably practicable.

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 defendant has a reasonable excuse.

**152 Functions of inspector**

- (1) An inspector has the following functions:
- (a) to monitor and enforce compliance with this Act;
  - (b) to carry out compliance reviews;
  - (c) to investigate contraventions and assist prosecution of offences against this Act;
  - (d) to perform any other function conferred on inspectors under this Act or another 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 reviews**

**153 Compliance reviews**

- (1) The Agency must, from time to time, conduct compliance reviews of cemeteries and facilities.
- (2) The purpose of a compliance review is to ensure that responsible entities operate and administer cemeteries or facilities in accordance with this Act.

**154 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 any compliance review of the cemetery or the facility.

- (2) The report may contain recommendations for operational or administrative changes.

### **Division 3 Investigations**

#### **155 Investigations**

The Agency may, at any time, direct one or more inspectors to investigate the operation or administration of a cemetery or facility.

### **Division 4 Powers of inspectors**

#### **156 Power of entry**

- (1) For the purposes of performing functions under this Act, an inspector may:
- (a) enter, examine and search the premises of the responsible entity; and
  - (b) examine and take copies of any records or other documents relating to 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:
- (a) do anything reasonably necessary to facilitate the exercise of powers under subsection (1); or
  - (b) answer any reasonable question related to the compliance review or the investigation asked by the inspector; or
  - (c) produce any specified record or documentary material relevant to the compliance review or the investigation; or
  - (d) give any other assistance the inspector reasonably requires; or
  - (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 fails to comply with a request under subsection (2).

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 request under subsection (2).

**157 Entry on Aboriginal land**

The power of an inspector to enter a premises may be exercised under this Act, despite:

- (a) the premises being located on Aboriginal land; and
- (b) the inspector not holding a permit under the *Aboriginal Land Act 1978* to enter or remain on Aboriginal land.

**158 Procedure for entry**

Before entering any premises in the exercise of a function 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) show the inspector's identity card to any persons present at the premises in accordance with section 159; and
- (c) give any persons on the premises a reasonable opportunity to allow entry to the premises.

**159 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 an occupier of the 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.

**160 Power of formal questioning**

- (1) For the purposes of a compliance review or an investigation, an inspector may, by written notice, require a person:
  - (a) within the time allowed in the notice, to provide written answers to specific 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) within the time allowed in the notice, to produce specified records or documents; or
  - (d) within the time allowed in the notice, to produce 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 the person at the examination.
- (4) A person commits an offence if the person fails to comply with 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 a requirement under this section.

## **161 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) Despite subsection (1), 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.

## **162 Confidential matters**

- (1) A person must not refuse to comply with a requirement under section 156 or 160 because the answer, information, record or document is confidential.

- (2) Despite subsection (1), the person is not required to comply with the requirement if it requires the person to disclose legally privileged information.

**163 Inspector's report**

- (1) If an inspector finds evidence of an irregularity or a contravention of the Act in the operation or administration of a cemetery or facility, the inspector must report the matter to:
- (a) the CEO; and
  - (b) the responsible entity for that cemetery or facility.
- (2) If the irregularity or contravention appears to involve dishonesty or serious illegality, the CEO must report the matter to the Minister.

**Division 5 Enforcement order for cemetery**

**164 Minister may issue an enforcement order**

The Minister may issue an enforcement order to the responsible entity for a cemetery requiring action to be taken if the Minister believes on reasonable grounds that there were repeated contraventions of this Act or another Act, or irregularities in the operation or administration of a cemetery.

**165 Content of enforcement order**

An enforcement order under this Division must be in writing and must:

- (a) state the grounds on which it was issued; and
- (b) state the actions or measures that the responsible entity for the cemetery is required to take in order to:
  - (i) comply with each provision being contravened; and
  - (ii) remedy any contravention or the matters or activities causing any contravention; and
  - (iii) remedy any irregularity or the matters or activities causing any irregularity; and
- (c) specify a date by which the responsible entity for the cemetery is required to comply with the order; and
- (d) state the maximum penalty for contravening the order; and



- (e) state that the responsible entity for the cemetery may seek a review by NTCAT of the decision to issue the order or any of its terms.

*Note for paragraph (e)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

## **166 Contravention of enforcement order**

- (1) A responsible entity commits an offence if:
- (a) the responsible entity for a cemetery was issued an enforcement order under section 164; and
  - (b) the responsible entity intentionally engages in conduct; and
  - (c) the conduct results in a contravention of the enforcement order and the responsible entity is reckless in relation to that result.

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.

## **167 Requirements after issue of enforcement order**

The responsible entity for a cemetery to which an enforcement order is issued must, by the end of the period specified in the order, report, in writing, to the Minister:

- (a) the steps taken by the responsible entity to address the matters raised in the order; or
- (b) if no steps have been taken – the reasons why no steps have been taken.

## **Division 6 Enforcement actions for cemetery**

### **168 Minister may suspend cemetery**

- (1) The Minister may, by *Gazette* notice, suspend a cemetery (a **suspended cemetery**) if, after the issue of an enforcement order in respect of the cemetery, the specified irregularities or contraventions are not remedied.

- (2) A notice under subsection (1) must include the following information:
  - (a) any conditions of the suspension of the cemetery;
  - (b) the date the suspension takes effect.
- (3) The responsible entity for a suspended cemetery must ensure that the following information is displayed at the cemetery:
  - (a) a statement that the cemetery is a suspended cemetery;
  - (b) the information mentioned in subsection (2).

**169 Burial in suspended cemetery**

- (1) Subject to any conditions stated in the suspension notice under section 168(1), the burial of human remains of a deceased person may occur in a suspended cemetery.
- (2) A burial mentioned in subsection (1) is taken to be a burial at a location outside a cemetery and must be done in accordance with Part 3, Division 4.

**170 Requirement to forward permanent records**

- (1) The Minister may direct the responsible entity for the suspended cemetery to forward its permanent records to the archives service within 9 months of suspension.
- (2) A responsible entity commits an offence if the responsible entity contravenes the requirement under subsection (1).

Maximum penalty: 100 penalty units.

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

**Division 7 Remedy of contraventions of cemetery**

**171 Revocation of suspension**

The Minister may, by *Gazette* notice, revoke the suspension of a cemetery if the Minister determines that the responsible entity for the suspended cemetery has remedied the irregularities or contraventions specified in the enforcement order.

## **Division 8      Enforcement order and suspension of facility**

### **172      Minister may issue an enforcement order**

If the Minister believes on reasonable grounds that there have been repeated contraventions of this Act or another Act, or irregularities in the operation or administration of a facility, the Minister may issue an enforcement order to the responsible entity for that facility:

- (a) requiring action to be taken; and
- (b) specify any variation of conditions of the licence granted to operate the facility.

### **173      Content of enforcement order**

An enforcement order under this Division must be in writing and must:

- (a) state the grounds on which it was issued; and
- (b) state the actions or measures that the responsible entity for the facility is required to take in order to:
  - (i) comply with each provision being contravened; and
  - (ii) remedy any contravention or the matters or activities causing any contravention; and
  - (iii) remedy any irregularity or the matters or activities causing any irregularity; and
- (c) specify a date by which the responsible entity for the facility is required to comply with the order; and
- (d) state any variation of conditions of the licence granted to operate the facility; and
- (e) state the maximum penalty for contravening the order; and
- (f) state that the responsible entity for the facility may seek a review by NTCAT of the decision to issue the order or any of its terms.

*Note for paragraph (f)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

#### **174 Contravention of enforcement order**

- (1) A responsible entity commits an offence if:
  - (a) the responsible entity for a facility was issued an enforcement order under section 172; and
  - (b) the responsible entity intentionally engages in conduct; and
  - (c) the conduct results in a contravention of the enforcement order and the responsible entity is reckless in relation to that result.

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.

#### **175 Minister may suspend operation of facility**

- (1) The Minister may issue a suspension notice to the responsible entity for a facility requiring it to suspend operation of that facility if the Minister believes on reasonable grounds that there have been repeated contraventions of this Act or another Act, or irregularities in the operation or administration of the facility.
- (2) If the Minister issues a suspension notice to a responsible entity for a facility, the Minister must give notice in the *Gazette* that the Minister has suspended the operation of the facility.

#### **176 Content of suspension notice**

A suspension notice under this Division must be in writing and must:

- (a) state the grounds on which it is issued; and
- (b) state the date the suspension takes effect; and
- (c) state the actions or measures that the responsible entity for the facility is required to take in order to:
  - (i) comply with each provision being contravened; and
  - (ii) remedy any contravention or the matters or activities causing any contravention; and
  - (iii) remedy any irregularity or the matters or activities causing any irregularity; and

- (d) specify a date by which the responsible entity for the facility is required to comply with the suspension notice; and
- (e) state the maximum penalty for contravening the suspension notice; and
- (f) state that the responsible entity for the facility may seek a review by NTCAT of the decision to issue the suspension notice or any of its terms.

*Note for paragraph (f)*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the requirements of the person who makes a reviewable decision after the person has made a reviewable decision under this Act.*

### **177 Contravention of suspension notice**

- (1) A responsible entity commits an offence if:
  - (a) the responsible entity for a facility was issued with a suspension notice under section 175(1); 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.

### **178 Requirements after issue of enforcement order or suspension notice**

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

- (a) the steps taken by the responsible entity to address the matters raised in the order or notice; or
- (b) if no steps have been taken – the reasons why no steps have been taken.

**Division 9      Enforcement action for facility****179      Revocation of facility licence**

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

**180      Requirement to forward permanent records**

- (1) If the Minister revokes a licence to operate a facility under section 179(1), the person who held that licence must forward the facility's permanent records to the archives service within 9 months of the revocation.
- (2) A person commits an offence if the person contravenes the requirement under subsection (1).

Maximum penalty:      100 penalty units.

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

**Division 10      Remedy of contraventions of facility****181      Revocation of suspension notice**

- (1) The Minister may revoke a suspension notice if the Minister determines that the responsible entity for a facility that was required to suspend operation under section 175 remedied the irregularities or contraventions specified in the suspension notice.
- (2) If the Minister revokes a suspension notice that applied to a facility, the Minister must give notice in the *Gazette* that the suspension notice has been revoked.

**Part 10      Records****182      Permanent records**

- (1) The permanent records for a cemetery are the following:
  - (a) the cemetery plan;
  - (b) the register of burials;

- (c) the policy on multiple burials;
  - (d) authorisations given for multiple burials;
  - (e) the policy on exclusive rights of burial;
  - (f) copies of the certificates granting an exclusive right of burial;
  - (g) documentation regarding the surrender of an unexercised exclusive right of burial;
  - (h) the register of exclusive rights of burial;
  - (i) authorisations given to erect memorials;
  - (j) prohibition notices received under Part 8;
  - (k) any other permanent record prescribed by regulation.
- (2) The permanent records for a facility are the following:
- (a) the register of disposal of human remains;
  - (b) objections received by the facility manager to the disposal of human remains;
  - (c) prohibition notices received under Part 8;
  - (d) any other permanent record prescribed by regulation.
- (3) If the responsible entity for a cemetery or facility changes, the previous responsible entity must forward all its permanent records to the following within 9 months of the change of responsible entity:
- (a) the archives service;
  - (b) the new responsible entity for the cemetery or facility.
- (4) The previous responsible entity for a cemetery or facility commits an offence if the previous responsible entity contravenes the requirement under subsection (3).

Maximum penalty: 100 penalty units.

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

### **183 Record keeping**

- (1) The responsible entity for a cemetery or facility must keep the cemetery's or facility's permanent records in an electronic form in the responsible entity's record management system.

- (2) The responsible entity for a cemetery must keep the applications for burial approvals, including the burial form and required documents, for a minimum period of 7 years.
- (3) The responsible entity for a facility must keep the applications for disposal approvals, including the disposal form and required documents, for a minimum period of 7 years.
- (4) The regulations may prescribe additional requirements for keeping records under this Act.

#### **184 Failure to keep permanent records**

A person commits an offence if:

- (a) the person is a responsible entity for a cemetery or facility; and
- (b) the person intentionally engages in conduct; and
- (c) the conduct results in a contravention of a requirement on the person to keep a permanent record under this Act for a cemetery or facility and the person is reckless in relation to that result.

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

## **Part 11 Miscellaneous matters**

### **185 Interstate deaths**

If a person dies in a State or another Territory, a document that satisfies the requirements of that State or Territory may be used instead of a document mentioned in section 38(2)(c), 67(1)(a) or 138(3).

### **186 Overseas deaths**

- (1) If a person dies outside Australia, any of the following documents may be used instead of a document mentioned in section 38(2)(c), 67(1)(a) or 138(3):
  - (a) a document stating cause of death that is made under a law in force in the place where the death occurred that is equivalent to a document issued under section 12(3) or 34(1) of the *Births, Deaths and Marriages Registration Act 1996*;



- (b) a certificate issued by a coroner or a person or entity equivalent to a coroner in the place where the death occurred;
  - (c) a death certificate issued by a person legally authorised to do so in the place where the death occurred.
- (2) If a document mentioned in subsection (1) is in a language other than English, the following documents must be submitted:
- (a) the document;
  - (b) a translation of the document into English language that is authenticated or certified to the satisfaction of the manager of a cemetery, the manager of a facility or the Agency, as the case requires.
- (3) 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 an examination of the human remains has been conducted;
  - (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.

## **187 Review by NTCAT**

- (1) NTCAT 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 NTCAT for review of the decision.

### *Note for section 187*

*The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to NTCAT for review and other relevant matters in relation to reviews.*

**188 Offence to dispose of human remains by unauthorised process**

- (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 authorised under this Act or another 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.

**189 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 (1) or (2) if the person, when giving the information or document:
- (a) draws the misleading aspect of the information or 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 information or document.

*Note for subsection (3)*

*The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).*

- (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.

## **190 Offence to disclose certain information**

- (1) A person commits an offence if:
- (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
  - (b) the information is confidential and the person is reckless in relation to that circumstance; and
  - (c) the person intentionally engages in conduct; and
  - (d) the conduct results in the disclosure of the information and the disclosure is not:
    - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
    - (ii) to a person who is otherwise entitled to the information; and

- (e) the person is reckless in relation to the result and circumstance referred to in paragraph (d).

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

- (2) Strict liability applies to subsection (1)(a).
- (3) If the information referred to in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

*Note for subsection (3)*

*In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).*

## **191 Delegations**

- (1) The Minister may delegate any of the Minister's powers and functions under this Act to the CEO or 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.

## **192 Declaration of infectious diseases**

- (1) The Chief Health Officer may, by *Gazette* notice, declare a disease to be an infectious disease for the purposes of this Act.
- (2) The CEO may, after consulting with the Chief Health Officer, make guidelines in relation to any declared infectious disease for the purposes of burials, disposals or exhumations under this Act.
- (3) The Agency must publish a guideline issued under subsection (2) on the Agency's website as soon as practicable after the guideline is made.

## **193 Chief Health Officer may make guidelines**

- (1) The Chief Health Officer may, from time to time, make guidelines relating to any public health matter related to the burial, disposal or exhumation of human remains under this Act.
- (2) The Agency administering the *Public and Environmental Health Act 2011* must publish a guideline made under subsection (1) on the Agency's website as soon as practicable after the guideline is made.

**194      CEO may make guidelines**

- (1) The CEO may, from time to time, make guidelines relating to any matter under this Act.
- (2) The Agency must publish a guideline made under subsection (1) on the Agency's website as soon as practicable after the guideline is made.

**195      Regulations**

- (1) The Administrator may make regulations under this Act.

*Note for subsection (1)*

*See section 65 of the Interpretation Act 1978.*

- (2) A regulation may provide for the following:
  - (a) other processes for the disposal of human remains;
  - (b) other types of facilities for the disposal of human remains;
  - (c) further requirements for the manner or undertaking of a burial, exhumation or disposal;
  - (d) matters to be included in a cemetery plan;
  - (e) matters to be provided for in a cemetery or facility policy;
  - (f) details to be included in any register required to be maintained under this Act;
  - (g) requirements for a cemetery or facility;
  - (h) an offence against a regulation to be an offence of strict or absolute liability;
  - (i) matters to be taken into account when making a decision under this Act.

**Part 12      Repeals and transitional matters**

**Division 1      Repeals**

**196      Acts repealed**

The Acts specified in Schedule 2 are repealed.

## **Division 2            Transitional matters for Burial and Cremation Act 2022**

### **197            Definitions**

In this Division:

**commencement** means the commencement of section 196 of the *Burial and Cremation Act 2022*.

**repealed Act** means the *Cemeteries Act 1952* as in force immediately before the commencement.

**repealed Regulations** means the *Cemeteries Regulations 1967* as in force immediately before the commencement.

### **198            Public cemeteries**

On the 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 16 of this Act.

### **199            Nhulunbuy Public Cemetery**

- (1) On the commencement, the Nhulunbuy Public Cemetery mentioned in section 6A of the repealed Act is taken to be a public cemetery under section 16 of this Act.
- (2) On the commencement, the Nhulunbuy Corporation Limited is taken to be the responsible entity for the Nhulunbuy Public Cemetery under section 22 of this Act.

### **200            Establishment of cemetery plan and policies**

- (1) Subject to subsection (2), the responsible entity for a cemetery must do the following not later than 12 months after the commencement:
  - (a) establish a cemetery plan under section 24(1);
  - (b) if required – establish a policy required under section 27(4), 28(1), 57(1) or 60(1);
  - (c) ensure the information specified in section 29 is available on the responsible entity's website;
  - (d) ensure the information specified in section 30 is displayed at the cemetery.

- (2) If the responsible entity for a cemetery is required to act in accordance with a policy mentioned in subsection (1)(b), the responsible entity must establish the policy before taking action.

### **201 Closed cemeteries and semi-closed cemeteries**

- (1) On the 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 106 of this Act.
- (2) On the commencement, each of the following cemeteries is taken to be a semi-closed cemetery under section 103 of this Act:
  - (a) Alice Springs General Cemetery;
  - (b) Darwin General Cemetery.

### **202 Exclusive rights of burial in cemetery**

- (1) On the 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 50 of this Act.
- (2) Despite section 53 of this Act, an exclusive right of burial mentioned in subsection (1) expires 60 years after the commencement.
- (3) At least 12 months before the period in subsection (2) expires, the responsible entity for the cemetery that granted the exclusive right of burial must, in accordance with section 61 of this Act, notify the persons mentioned in section 61(1) of this Act that the right will expire at the end of the period.
- (4) An exclusive right of burial that is about to expire under this section may be renewed under section 62 of this Act.

### **203 Transfer of exclusive right of burial in cemetery**

- (1) Despite section 58 of this Act, on the commencement, an exclusive right of burial granted under section 29 of the repealed Act that has not expired before the commencement, may be transferred in accordance with regulation 18(2) of the repealed Regulations as in force immediately before the commencement.
- (2) The transfer of an exclusive right of burial mentioned in subsection (1) must occur within 60 years after the commencement.
- (3) After the commencement, an exclusive right of burial may only be transferred once.

**204 Private burial grounds**

On the commencement, a private burial ground established under section 6(1) of the repealed Act is taken to be a burial ground under section 31 of this Act.

**205 Permit for burial in cemetery**

An application for a permit for the burial of the body of a deceased person that, on the commencement, had not been obtained under regulation 15 of the repealed Regulations, continues to be dealt with under the repealed Regulations as in force immediately before the commencement.

**206 Multiple burial in cemetery**

- (1) An application for a multiple burial that, on the commencement, had not been determined by the Minister under regulation 19A of the repealed Regulations, is taken to be an application under section 38 with reference to section 44 of this Act.
- (2) The Minister must, after the commencement, forward each application mentioned in subsection (1) to the manager of the cemetery for which each application relates for determination in accordance with sections 38 and 43 of this Act.
- (3) If the Minister approved a multiple burial under regulation 19A of the repealed Regulations before the commencement but the proposed burial has not yet occurred on the commencement, the approval remains in force after the commencement unless:
  - (a) the proposed burial will contravene this Act or another Act; or
  - (b) the decision maker for the deceased person or any deceased person buried at the burial site objects, in writing, to the manager of the cemetery, to the proposed burial.

*Example for subsection (3)(a)*

*The depth of the burial site of the proposed burial does not comply with the requirements of section 81 of this Act.*

**207 Burial outside cemetery**

An application for the burial of a deceased person outside a cemetery that, on the commencement, had not been determined by the Minister under section 21 of the repealed Act, continues to be dealt with under the repealed Act as in force immediately before the commencement.



**208 Exhumation**

An application under section 30C of the repealed Act that, on the commencement, had not been determined by the Minister under section 30D of the repealed Act, continues to be dealt with under the repealed Act as in force immediately before the commencement.

**209 Crematoria**

- (1) On the commencement, a crematorium approved under section 14 of the repealed Act is taken to be a facility under this Act.
- (2) On the 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 123(1) of this Act.

**210 Availability of facility information**

The responsible entity for a facility must do the following not later than 12 months after the commencement:

- (a) ensure the information specified in section 135 is available on the responsible entity's website;
- (b) ensure the information specified in section 136 is displayed at the facility.

**211 Permit for cremation**

An application for a permit for cremation of the body of a deceased person that was not determined before the commencement under section 16 of the repealed Act continues to be determined under the repealed Act as it was in force immediately before commencement.

**212 Transitional regulations**

- (1) A regulation may provide for a matter of a transitional nature:
  - (a) because of the enactment of this Act; or
  - (b) to otherwise allow or facilitate the transition from the operation of the repealed Act to this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement.

- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, is repealed 1 year after the commencement.

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**Schedule 1 Reviewable decisions and affected persons**

section 187

<b>Reviewable decision</b>	<b>Affected person</b>
A decision of the manager of a cemetery under section 38(9) to refuse to give a burial approval	The applicant mentioned in section 38(2)
A decision of the manager of a cemetery under section 39(5) to not approve a request to vary or remove any condition on a burial approval	The applicant mentioned in section 39(2)
A decision of the responsible entity for a public cemetery under section 49(1) to require a person to repair, remove or reinstate a memorial	The applicant mentioned in section 48(1)
A decision of the manager of a cemetery under section 62(6) to refuse to renew an exclusive right of burial	The person mentioned in section 62(2) or (8)
A decision of the CEO under section 87(8) to refuse to approve the exhumation and relocation of human remains	The person mentioned in section 87(1)
A decision of the manager of a facility under section 138(8) to refuse to give a disposal approval	The applicant mentioned in section 138(2)
A decision of an officer under section 145(1) to prohibit the burial of human remains	The executor or administrator of the estate of the deceased person or any next of kin of the deceased person that the prohibition relates
A decision of an officer under section 145(1) to prohibit the disposal of human remains	The executor or administrator of the estate of the deceased person or any next of kin of the deceased person that the prohibition relates
A decision of the Minister under section 164 to issue an enforcement order to the responsible entity for a cemetery	The responsible entity for the cemetery

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<b>Reviewable decision</b>	<b>Affected person</b>
A decision of the Minister under section 172 to issue an enforcement order to the responsible entity for a facility	The responsible entity for the facility
A decision of the Minister under section 175 to suspend the operation of a facility	The responsible entity for the facility

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## Schedule 2 Repealed Acts

section 196

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<i>Cemeteries Ordinance 1952</i>	Act No. 18 of 1952
<i>Cemeteries Ordinance 1955</i>	Act No. 7 of 1955
<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

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**ENDNOTES**
**1 KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

**2 LIST OF LEGISLATION*****Burial and Cremation Act 2022 (Act No. 16, 2022)***

Assent date	9 August 2022
Commenced	28 November 2022 ( <i>Gaz S60, 23 November 2022</i> )

**3 LIST OF AMENDMENTS**

pt 13 hdg	rep No. 16, 2022, s 223
pt 13	
div 1 hdg	rep No. 16, 2022, s 223
ss 213 – 221	rep No. 16, 2022, s 223
pt 13	
div 2 hdg	rep No. 16, 2022, s 223
s 222	rep No. 16, 2022, s 223
pt 13	
div 3 hdg	rep No. 16, 2022, s 223
s 223	rep No. 16, 2022, s 223
sch 3	rep No. 16, 2022, s 223