

NORTHERN TERRITORY OF AUSTRALIA

CEMETERIES AMENDMENT ACT 1999

No. 57 of 1999

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NORTHERN TERRITORY OF AUSTRALIA

No. 57 of 1999

AN ACT

to amend the *Cemeteries Act*

[Assented to 14 December 1999]

[Second reading 14 October 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Cemeteries Amendment Act 1999*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Cemeteries Act* is in this Act referred to as the Principal Act.

4. Definitions

Section 4 of the Principal Act is amended by inserting after the definition of "cemetery" the following:

" 'Chief Health Officer' means the Chief Health Officer appointed under the *Public Health Act*;"

5. Application of Act

Section 5 of the Principal Act is amended by adding at the end the following:

"(3) Sections 30A to 30F (inclusive) apply in relation to the exhumation of the remains of a deceased person –

- (a) wherever in the Territory the remains are buried; and
- (b) whether or not the remains are buried in a cemetery."

6. New sections

The Principal Act is amended by inserting after section 30 the following:

"30A. No exhumation without consent or authorisation

"A person must not exhume the remains of a deceased person unless given consent to do so under section 30D or authorized to do so by or under another law in force in the Territory.

Penalty: 200 penalty units or 12 months imprisonment.

"30B. Guidelines in relation to exhumation etc.

"The Chief Health Officer may issue guidelines in relation to the exhumation, removal or disposal of human remains.

"30C. Application for exhumation and removal of remains

"(1) In this section, 'next of kin', in relation to a deceased person, means –

- (a) the spouse, or the de facto partner within the meaning of section 18(1A), of the deceased person;
- (b) a parent or guardian of the deceased person;
- (c) a child of the deceased person who has attained 18 years of age or, if there is no such child, a brother or sister of the deceased person who has attained that age; or
- (d) if the deceased person is an Aborigine or Torres Strait Islander – a person who, according to the customs and tradition of the community or group to which the deceased person belonged, is an appropriate person to apply for the exhumation and removal of the deceased person's remains or object to a proposed exhumation and removal of those remains.

"(2) The following persons may apply to the Minister for consent to exhume the remains of a deceased person and remove the remains from the Territory or to another place in the Territory:

- (a) a next of kin;
- (b) an executor of the estate of the deceased person;
- (c) a person who, in the opinion of the Minister, is a proper person in the circumstances.

"(3) An applicant for consent under this section must satisfy the Minister in respect of the following matters:

- (a) that the applicant is a person entitled under subsection (2) to make the application;
- (b) that the applicant has notified all the next of kin –
 - (i) of the applicant's intention to make an application under this section; and
 - (ii) that a next of kin may object on reasonable grounds to the proposed exhumation and removal;
- (c) that the applicant has allowed all the next of kin sufficient time in which to object to the proposed exhumation and removal;
- (d) if the applicant has been unable to locate all the next of kin – that the applicant has taken all reasonable steps to do so;
- (e) that no next of kin has reasonable grounds for objecting to the proposed exhumation and removal;
- (f) that the Chief Health Officer has approved in writing the proposed exhumation and removal;
- (g) if the Chief Health Officer has approved the proposed exhumation and removal subject to conditions – that the applicant will comply with those conditions;
- (h) that the applicant has the necessary authority to bury, cremate or otherwise dispose of the remains at the place to which the applicant intends to remove them;
- (j) that the applicant has arranged for appropriate transportation for the removal of the remains;

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- (k) any additional matters the Minister considers relevant to the application.

"(4) A person must not knowingly give the Minister false information in respect of an application under this section.

Penalty: 200 penalty units or 12 months imprisonment.

"(5) In considering an application under this section, the Minister must have regard to any guidelines issued under section 30B.

"30D. Consent to exhumation and removal of remains

"(1) If satisfied in respect of the matters referred to in section 30C(3), the Minister may give written consent to the applicant to exhume and remove the remains.

"(2) The Minister may specify conditions in respect of the exhumation or removal in the instrument of consent.

"(3) A person given consent under this section must comply with conditions specified in the instrument of consent.

Penalty: 200 penalty units or 12 months imprisonment.

"30E. Minister may appoint employee to be present at exhumation

"The Minister may appoint an employee within the meaning of the *Public Sector Employment and Management Act* to be present at the exhumation of human remains.

"30F. Minister may prescribe fees etc. in respect of exhumation

"(1) The Minister may, by notice in the *Gazette*, prescribe fees in respect of—

- (a) an application under section 30C; or
- (b) any other matter in connection with an application for exhumation, or an exhumation, of human remains.

"(2) In a particular case, the Minister may waive payment of the whole or part of a prescribed fee.

"(3) Expenses reasonably incurred by the Territory in connection with an application for exhumation, or an exhumation, of human remains are a debt due to

the Territory by the person who applied for consent to exhume the remains or on whose behalf the expenses were incurred."
