

Outline of the proposed Cemeteries Act

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INTENTION

The intention of a new *Cemeteries Act* is to:

- ensure human remains are treated with dignity and respect;
- reduce red tape;
- devolve decisions locally where possible;
- provide for cemeteries on Aboriginal land;
- provide for various types of burials including natural and upright burials;
- provide for the process of aquamation as well as cremation; and
- introduce freehold cemeteries.

TYPES OF CEMETERIES

There will be provision for:

- (a) Public cemeteries (Cemeteries on Crown Land through Crown leases or freehold tenure with a prescribed property notice);
- (b) Freehold cemeteries (Privately owned cemeteries);
- (c) Community Cemeteries (Cemeteries on Aboriginal land managed by local government councils);
- (d) Homeland Cemeteries (Cemeteries on Aboriginal land trust or Community Living Area land managed by the relevant Land Council or Community Living Area Association);
- (e) Cremation facilities (for cremations); and
- (f) Aquamation facilities (Aquamation uses the chemical process of alkaline hydrolysis – similar to the way in which a body decomposes if placed in a flowing stream of water).

NO LONGER ALLOWED

There will not be any burials at sea in Northern Territory waters or any new private burial grounds. Burials at sea in Commonwealth waters are administered under Commonwealth legislation.

DECLARATION OF CEMETERIES

Ministerial approval will be required for the declaration or establishment of:

- (a) Public cemeteries
- (b) Freehold cemeteries
- (c) Community Cemeteries
- (d) Homeland Cemeteries
- (e) Cremators
- (f) Aquamators.

Planning approval will be required before Ministerial approval can be given unless the cemetery is an existing cemetery.

The Minister may not declare a Community Cemetery unless the relevant Land Council or Community Living Area Association and the local government council are in agreement that the cemetery should be declared a community cemetery under the *Cemeteries Act*.

The Minister may only declare a Homeland Cemetery upon application of the relevant Land Council or Community Living Area Association, and only if the Minister is satisfied that the applicant has the appropriate resources to manage the cemetery.

It will be a requirement that any new cemeteries be located on well-drained, non-flooding land that has appropriate soil depth.

RESPONSIBILITY

Responsibility for compliance with the legislation will be:

- (a) Public Cemeteries – Local Government Council or, if the cemetery is not in a local government area, the Board of Trustees
- (b) Freehold Cemeteries – Owner
- (c) Community Cemeteries – Local Government Council
- (d) Homeland Cemeteries – the relevant Land Council or Community Living Area Association
- (e) Cremators – Owner
- (f) Aquamators – Owner.

REGISTERS AND OTHER INFORMATION

The Table below indicates the information that each category of cemeteries, cremators and aquamators is required to keep:

	Register of burials, cremations, aquamations or exhumations that is available for public inspection	Plans and information on the cemetery, crematorium or aquamatorium available on the website	Publicly available annual audited financial statements and reports
Public Cemetery	✓	✓	✓
Freehold Cemetery	✓	✓	
Community Cemetery	✓	✓	✓
Homeland Cemetery	✓		
Cremator	✓	✓	
Aquamator	✓	✓	

CEMETERY POLICIES

It will be a matter for the responsible parties to have policies such as:

- Memorial structures
- Hours of opening
- Types of graves permitted
- Sections or areas of the cemetery for specific use (or where specific rules apply)
- Cemetery rules
- Use of allotments after exhumations
- Fees and charges.

CEMETERY MANAGEMENT – PUBLIC AND COMMUNITY CEMETERIES

The local government council for the area in which a public or community cemetery is located is responsible for the care and maintenance of the cemetery as well as ensuring compliance with legislation.

The chief executive officer (CEO) of the council is the manager of a Cemetery unless the role of manager has been assigned by the CEO to another person. In the case of a community cemetery, the CEO must appoint an employee living in the community to be manager of the cemetery. For example, this may be a role of the local essential services officer.

Where a public cemetery is not in a local government area, (Nhulunbuy, for example) a Board of Trustees appointed by the Minister is responsible for the care and maintenance of the cemetery as well as ensuring compliance with legislation.

The Board of Trustees must appoint a person to be manager of the cemetery.

PLANS

All cemeteries must have a cemetery plan.

In the case of a community cemetery, the local authority is to provide advice to the local government council regarding the cemetery and the local authority is to be fully consulted regarding the cemetery plan.

At a minimum, a cemetery plan must detail the layout of the cemetery and denote areas of specific use. It should also detail planned future development. It must contain all policies in relation to use of the cemetery such as:

- (a) conduct of funerals
- (b) services provided
- (c) fees
- (d) types of burials permitted (eg conventional, upright, natural, mausoleum, vault)
- (e) multiple burials
- (f) locations for burials
- (g) granting of exclusive rights
- (h) memorials – including ownership and maintenance
- (i) hours open to the public.

HOURS OPEN TO THE PUBLIC - PUBLIC, COMMUNITY AND FREEHOLD CEMETERIES

Public, Community and Freehold Cemeteries regardless of whether they are “closed” must be open to the public at least 8 hours per day and may be open to the public up to 24 hours per day.

A person may apply to the responsible party to have access to a cemetery out of normal opening hours .

SIGNAGE - PUBLIC, COMMUNITY AND FREEHOLD CEMETERIES

A Public, Community or Freehold cemetery must have a sign with the name of the cemetery, contact details for the responsible body, the opening hours and the rules governing the cemetery.

EXCLUSIVE RIGHTS - PUBLIC, COMMUNITY AND FREEHOLD CEMETERIES

From the commencement of the legislation, the local government council, owner or Board of Trustees may set the period of validity of new exclusive rights. For example, the longer the period, the more expensive the right might cost. However, no exclusive right will be allowed to exceed 50 years.

The policy must also specify how many exclusive rights a person may hold and any conditions which may be attached to exclusive rights. Cemetery policy will also dictate whether exclusive rights may be traded or passed to another person.

On expiry of an exclusive right, where the site will continue to be available, the holder is to be offered first option on a fresh exclusive right. Board policy will determine who else may be offered the site if the holder of the right does not renew.

DEPTH OF GRAVES – PUBLIC AND COMMUNITY CEMETERIES

In public and community cemeteries recommended best practice would be that all new graves for conventional (horizontal) burials must be dug to a depth that will accommodate two burials.

DEPTH OF BURIAL

All human remains, coffin, container or receptacle must be covered by ground that is at least 1 metre deep at its shallowest point. If that is not possible, the remains, coffin, container or receptacle must be completely covered by at least a 50 millimetres thick layer of stone, concrete or similar durable material placed directly over the remains and ground that is at least 500 millimetres deep at its shallowest point.

This will apply to all burials including multiple burials in all cemeteries and other burial grounds (that is, burials outside a cemetery).

TYPES OF BURIAL

Burials may be as approved according to the policies of the responsible parties and may include conventional (horizontal) burials in a coffin or shroud, upright burials and natural burials.

PERMISSION TO BURY - PUBLIC, COMMUNITY, HOMELAND AND FREEHOLD CEMETERIES

Before a body may be buried in a cemetery, the owner, local government council, Board of trustees or delegate may issue a burial permit after being provided with a completed notice of interment, a notice under section 34(1) of the *Births Deaths and Marriages Registration Act* signed in accordance with that section or advice from the Coroner authorising the burial of the body.

If the death occurred outside the Territory, a certificate of cause of death under the law of the place in relation to the deceased person must be provided.

If the death occurred outside the Territory and no certificate is available, a statutory declaration by the nearest next of kin stating all information that would normally be provided in a certificate of cause of death must be provided.

CREMATION AND AQUAMATION PERMITS

Before a body may be cremated or aquamated the respective facility owner, local government council, Board of Trustees or delegate may issue a cremation or aquamation permit after being provided with:

- (a) an application from a person stating that:
 - (i) the applicant is the administrator or executor of the deceased's estate, or if there is no administrator or executor, the reason that the person has authority to make the application and the address and contact details of the applicant;
 - (ii) the name, address, date of birth, date of death, occupation, gender and marital status of the deceased and whether the deceased had any children;
 - (iii) the relationship of the applicant to the deceased;
 - (iv) whether the deceased had made an attested declaration that the deceased wished to be cremated or aquamated;
 - (v) in the situation where there is no attested declaration that the deceased wished to be cremated, whether the applicant is aware of any objections from any close relatives (spouse, de-facto partner, child over the age of 18, parent or sibling of the deceased, or in the case of an Indigenous deceased, a person who is an appropriate person according to the customs and tradition of the community or group to which the deceased person belonged); and
 - (vi) the required medical documentation is attached to the application.

- (b) (i) a certificate signed by 2 legally qualified medical practitioners, who have no direct or indirect interest ensuing upon the death, one of whom has attended the deceased in a professional capacity prior to death, stating that death was due to natural causes and that there is no reason not to cremate; or
- (ii) a certificate signed by a legally qualified medical practitioner who has no direct or indirect interest ensuing upon the death, stating that he or she has conducted a post-mortem examination of the body of the deceased and that death was due to natural causes and that there is no reason not to cremate; or
- (ii) a certificate signed by a coroner stating that he or she has inquired as to the cause of death of the deceased and that no further examination of the body is necessary and that there is no reason not to cremate.

Where a person dies overseas and is brought to the Territory for cremation or aquamation, the medical evidence required to issue a permit will be different from a case where the death has occurred within Australia.

If the death is not a reportable death under the *Coroner's Act*, the medical evidence required will be a certification of the cause of death under a law in force in the place of death. If this is not available, the certification required will be a certificate of cause of death after a post mortem by an Australian legally qualified medical practitioner, who has no direct or indirect interest ensuing upon the death. Where such a death has been referred to the Coroner, a Coroner's certificate will be required stating that he or she has inquired as to the cause of death of the deceased and that no further examination of the body is necessary and that there is no reason not to cremate.

INTERVENTION

The Solicitor for the Northern Territory, the Director of Public Prosecutions, a Justice of the Peace, the Coroner, a police officer or an inspector, having reasonable cause for so doing, may forbid the cremation or

aquamation of the body of a deceased person and order the removal of the body to such custody as the person giving the notice sees fit.

The executor/administrator or, if there is no executor/administrator, the senior next of kin has ultimate decision making power concerning the manner and place of disposal of a body provided it is within the parameters of the law. A hierarchy of next of kin similar to that in the *Coroner's Act* will apply.

EXHUMATIONS – ANYWHERE IN THE NORTHERN TERRITORY

Exhumations must be approved by CEO of the Department of Local Government and Regions or delegate after consultation with Chief Health Officer, any other appropriate consultation and on appropriate conditions.

The matters that the Chief Executive must take into account are:

- (a) whether the applicant has notified all the close relatives of the applicant's intention to make an application under this section and that a close relative may object on reasonable grounds to the proposed exhumation and removal;
- (b) whether the applicant has allowed all the close relatives sufficient time in which to object to the proposed exhumation and removal;
- (c) if the applicant has been unable to locate all the close relatives – that the applicant has taken all reasonable steps to do so;
- (d) that no close relative has provided reasonable grounds for objecting to the proposed exhumation and removal;
- (e) that the Chief Health Officer has approved in writing the proposed exhumation and removal;
- (f) if the Chief Health Officer has approved the proposed exhumation and removal subject to conditions – that the applicant will comply with those conditions;
- (g) 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;
- (h) that the applicant has arranged for appropriate transportation for the removal of the remains; and
- (i) any additional matters the Chief Executive considers relevant to the application.

The hierarchy of next of kin will apply with regards to the weight given to the wishes of the senior next of kin in consideration of any application.

All human remains must be placed in a coffin or suitable container once they are exhumed.

INSPECTORS AND COMPLIANCE

The CEO of the Department of Local Government and Regions may appoint persons or position holders to be inspectors. Inspectors are to carry out compliance reviews to ensure that facilities are operated according to law and all legal requirements are being met. Inspectors will have powers to enter the facility or cemetery (with appropriate notice), access records and ask questions relevant to legislative compliance in a similar way to inspectors under the *Local Government Act*.

Inspectors must report irregularities to the CEO. The CEO must report serious irregularities to the Minister. In very serious cases or for repeated breaches, the Minister may suspend or revoke the right of a cremator or aquamator to operate and impose conditions for the future of the facility which the Minister sees fit. On similar grounds the Minister may temporarily close a cemetery and make directions as to the future operations of the cemetery. If the directions are not complied with in a reasonable time, the Minister may close the cemetery, limit the operations of the Cemetery or make any other appropriate direction to ensure proper management of the cemetery.

SEMI-CLOSED CEMETERY

A semi-closed cemetery is closed on conditions that the Minister declares and, except when declared otherwise, may not have any new graves apart from those for which exclusive rights have been issued. A semi-closed cemetery is still available for multiple burials according to the cemetery policies. A cemetery may be declared semi-closed by the Minister in the following circumstances:

- (a) Public cemeteries
On application of the local government council or after consultation with the local government council.
- (b) Freehold cemeteries
On application of the owner.
- (c) Community Cemeteries
On application of the local government council after consultation with the relevant Land Council or Community Living Area Association.
- (d) Homeland Cemeteries
On application of the relevant Land Council or Community Living Area Association.

The Alice Springs General Cemetery on Memorial Avenue and the Darwin General Cemetery on McMillan's Road have been declared "closed" under the current legislation. However, as burials still occur in these cemeteries they will be declared semi-closed.

CLOSED CEMETERIES

When a cemetery is closed by the Minister (as opposed to semi-closed) no further burials (regardless of exclusive rights) may occur.

The circumstances in which a cemetery may be declared closed are:

- (a) Public cemeteries
On application of the local government council or after consultation with the local government council; or
After consideration of a report of an inspector after a temporary closure and failure to abide by directions.
- (b) Freehold cemeteries
On application of the owner; or
After consideration of a report of an inspector after a temporary closure and failure to abide by directions.
- (c) Community Cemeteries
On application of the local government council after consultation with the relevant Land Council or Community Living Area Association; or
After consideration of a report of an inspector after a temporary closure and failure to abide by directions.
- (d) Homeland Cemeteries
On application of the relevant Land Council or Community Living Area Association; or
After consideration of a report of an inspector after a temporary closure and failure to abide by directions.

Where a cemetery is temporarily closed, semi-closed or closed, the instrument must be gazetted, tabled in the Legislative Assembly and advertised throughout the Territory. A sign indicating the fact must also be displayed at the cemetery.

Cemetery management must do everything possible to ensure that there are no outstanding exclusive rights when a cemetery is closed. However, the rights of exclusive rights holders with regards to what happens when the cemetery becomes a closed cemetery must be addressed in the contractual arrangements during the purchase of an exclusive right and should be clearly advised by the cemetery.

Within six months of the closure of a cemetery, management must forward all prescribed records relating to the cemetery to NT archives.

A cemetery that has been closed as a result of failure to abide by directions given after a temporary closure may be re-opened following the same procedures for declaring or establishing the relevant cemetery.

TRANSFORMATION TO PARKLANDS

A closed cemetery must continue to be maintained in its state at date of closure unless the Minister approves permission for the cemetery being made into parklands. If the cemetery is a declared heritage place its state must be preserved and it may not be transformed into parklands.

An application for a cemetery to be transformed into parklands may be made as follows:

- (a) Public cemeteries
On application of the local government council or after consultation with the local government council.
- (b) Freehold cemeteries
On application of the owner.
- (c) Community Cemeteries
On application of the local government council after consultation with the relevant Land Council or Community Living Area Association.
- (d) Homeland Cemeteries
On application of the relevant Land Council or Community Living Area Association

Six months before an application for permission to transform a closed cemetery into parklands is made, the intention to make such application must be widely advertised (including by signage at the cemetery site) and all known affected people (e.g. relatives of deceased) advised where possible. The advertisement and advice must include a plan of what is intended and information on what is allowed to happen according to the legislation if the Minister accedes to the request.

If the Minister agrees to the request for permission to transform a closed cemetery into parklands, the Minister may impose conditions as he sees fit. However, the closed cemetery may be laid out as a park or garden for use as a place of quiet recreation only. Before doing so, an inventory and plan identifying all memorials and graves in the cemetery must be made and any inscriptions and other particulars of each memorial must be recorded. Each memorial must also be photographed. In the case of Public, Freehold and Community Cemeteries, these records are to be available for inspection by members of the public. In the case of Homeland cemeteries, the records are to be held by the relevant land Trust or Community Living Area Association and available for inspection according to the policy of that body.

After the inventory and other measures described above have been taken, unless the Minister's permission declares otherwise, the appropriate authority may remove, relocate or replace any monument or other memorial.

SPECIAL PROVISION FOR FREEHOLD CEMETERIES

After a freehold cemetery has been “approved parklands” for a minimum of 50 years, the land may be dealt with in any way permitted under the Northern Territory’s planning laws.

BURIALS OUTSIDE OF A CEMETERY

A burial may not occur outside of a cemetery unless approval has been given by the CEO of the Department. The CEO may only give permission in exceptional circumstances and after consultation with the Department responsible for Environmental Health.

The application to bury outside of a cemetery must include the GPS location of the proposed burial site, a copy of the certificate of title to the land and written confirmation from the owner of the land that they agree to the burial. While GPS is not an entirely accurate description of the location of a proposed burial, it would be used as a general guide.

An appropriate fee to cover administrative costs must be paid when an application is submitted. The CEO must also consider:

- Location of the burial site;
- Relevant public health issues;
- Whether the burial is likely to contaminate groundwater which may be used for drinking or domestic water supplies;
- Structures/services that may be affected;
- Remoteness of burial site and distance from nearest public cemetery;
- Any written objections to the burial provided to the CEO by the deceased’s nearest next of kin
- Future access to the burial site; and
- Historical and cultural connection to the land.

The existence of previous burials at the site is not of itself a reason to approve a burial outside of a cemetery. The CEO must take into account the overarching preference that bodies be buried in a cemetery.

Where a land council has given approval for a body to be buried on non-leased Land Trust land, the CEO may treat this as an exceptional circumstance and should only refuse approval if there are good reasons to do so.

The Department must notify the Registrar General of approval given and the GPS location of the grave is to be recorded on the certificate of title to the land. The notation of an existence of a grave creates no protection or easement type rights and no right of access.

The Department must keep a register of approvals to bury outside of a cemetery.

TRANSPORT OF A DECEASED BODY

A person will not be allowed to transport uncremated (or unaquated) human remains unless the remains are secured or restrained against movement within the vehicle/mode of transport and the remains:

- are kept in a compartment that is physically separate from a part of the vehicle designed for the carriage of the driver and passengers and is capable of being easily cleaned and disinfected; or
- are contained in a coffin, shroud or other container or wrapping from which no bodily discharges, contaminants or infectious substances may escape.

The Chief Health Officer may make guidelines concerning the transport of bodies. Such guidelines must be on the website of the Department of Local Government and Regions and the Department of Health and must be complied with.

OFFENCES

Offences in the new Act will include:

- establishment of a cemetery, cremation or aquamation facilities without Ministerial approval;
- interference with a funeral;
- desecration of a memorial or place of interment;
- burial, cremation, aquamation or exhumation without permit;
- inappropriate handling of a body;
- inappropriate transport of a body (including failure to follow measures to ensure public health and safety is maintained);
- hindering an inspector;
- failure to keep proper register;
- erect a structure in a cemetery without permission; and
- false statement in application for burial, cremation, aquamation or exhumation permit.