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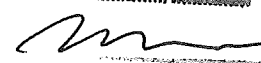
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LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

MINISTER FOR LOCAL GOVERNMENT, HOUSING AND  
COMMUNITY DEVELOPMENT

**Burial and Cremation Bill 2019**

**SERIAL NO. 97**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The Burial and Cremation Bill 2019 is the Bill for the *Burial and Cremation Act 2019* and provides for the declaration and management of cemeteries for the burial of human remains, the licensing and management of facilities for the disposal of human remains, and for related purposes.

The *Burial and Cremation Act 2019* repeals and replaces the *Cemeteries Act 1952*.

The objects of the *Burial and Cremation Act 2019* are to:

- (a) ensure human remains are treated with dignity and respect;
- (b) provide for different methods of burial and disposal of human remains;
- (c) accommodate different practices for and beliefs regarding the burial and disposal of human remains;
- (d) regulate cemeteries for the burial of human remains; and
- (e) regulate facilities for the disposal of human remains.

## **NOTES ON CLAUSES**

### **Part 1 Preliminary matters**

#### **Clause 1. Short title**

Clause 1 is a formal clause that provides that this Bill, after assent, may be cited as the *Burial and Cremation Act 2019*.

#### **Clause 2. Commencement**

Clause 2 is a formal clause that provides that the commencement of this Act will occur on a day fixed by the Administrator of the Northern Territory (the Administrator) by notice published in the Northern Territory Government Gazette.

#### **Clause 3. Objects of Act**

Clause 3 provides for the five objects of this Act. The first object listed is to ensure that human remains are treated with dignity and respect. This is the overarching object of this Act and informs the ensuing four objects, which include providing for and accommodating different beliefs, practices and methods of burial and disposal of human remains, as well as regulating cemeteries and facilities.

#### **Clause 4. Application of Act**

Clause 4 specifies two types of occasions when the provisions of this Act do not apply. First, this Act does not apply to a cemetery or part of a cemetery controlled by the Commonwealth War Graves Commission. Second, this Act does not apply to a part of a human that has, or is intended to be, disposed of following a medical or surgical procedure. An example of this may be a surgically amputated body part.

#### **Clause 5. Definitions**

Clause 5 contains definitions for terms used throughout this Act.

#### **Clause 6. Meaning of *land owner***

Clause 6 defines 'land owner' for the purposes of this Act, with reference to the different types of land tenure and land ownership under Commonwealth and Northern Territory legislation. The main purpose of this clause is to clearly identify who is the land owner wherever the term is used in this Act.

#### **Clause 7. Meaning of *next of kin***

Clause 7 lists the categories of people, in relation to a deceased person, who are recognised as next of kin. A next of kin is someone with a defined relationship to a deceased person, and in accordance with this Act, may be able to make decisions or be involved in processes concerning the deceased person's human remains, such as being able to apply for a disposal approval under clause 80(2)(b).

Paragraph (a) provides that a next of kin is a person who, according to the customs and tradition of the community or group to which the deceased person belonged, is appropriate to perform that role. For this category of next of kin to apply, the deceased person must have been an Aboriginal or Torres Strait Islander person with strong cultural and traditional ties to the community or group to which the person belonged.

Paragraphs (b) to (f) list the other categories of persons in relation to a deceased person: a spouse; a de facto partner; children at least 18 years of age; parents; and siblings at least 18 years of age.

## **Clause 8.     Meaning of *senior next of kin***

Clause 8(1) provides a hierarchy, listed in descending order, in relation to the concept of a 'senior next of kin' for a deceased person. The senior next of kin for a deceased person is the person who holds the decision-making power and may decide the outcome in relation to any disputes when making decisions relating to a deceased person's human remains under this Act.

However, it should be noted that if there is an executor or administrator of the estate of the deceased person, the executor or administrator has the decision-making power and decides the outcome in accordance with this Act – not the senior next of kin (refer to clause 148(1)).

Paragraph (a) provides that the senior next of kin, for a deceased person who was an Aboriginal or Torres Strait Islander person with strong cultural and traditional ties, is the appropriate person according to the customs and traditions of that community or group to which the deceased person belonged.

Paragraph (b) provides that – for a deceased person not mentioned in paragraph (a) – the senior next of kin for a deceased person who was both married and in a de facto relationship immediately before death is the de facto partner if the deceased person was in a continuous de facto relationship for at least the two years immediately before death and the deceased person did not, at any time during those two years, live with their spouse. The de facto partner is also the senior next of kin if the deceased person had a child with their de facto partner and were living together on a genuine domestic basis, whether or not the deceased person and de facto partner lived together continuously for at least the two years immediately before death. Otherwise, in any other case, the deceased person's spouse is considered to be the senior next of kin.

Paragraph (c) provides that – for a deceased person not mentioned in paragraph (a) – the senior next of kin is the deceased person's spouse if the deceased person was, immediately before death, married and not in a de facto relationship.

Paragraph (d) provides that – for a deceased person not mentioned in paragraph (a) – the senior next of kin is the deceased person's de facto partner if the deceased person was, immediately before death, in a de facto relationship but not married.

Paragraphs (b), (c) and (d) are mutually exclusive and therefore operate in descending order for the purposes of the senior next of kin hierarchy. In other words, a deceased person was either both married and in a de facto relationship (paragraph (b)), married and not in a de facto relationship (paragraph (c)), or in a de facto relationship but not married (paragraph (d)).

Paragraph (e) provides that – if paragraphs (a) to (d) do not apply – the senior next of kin is the deceased person's eldest child who is at least 18 years of age. The note for subclause (1)(e) clarifies that if the eldest child cannot be contacted within a reasonable period, the next eldest child who is contactable (and who is at least 18 years of age) is the senior next of kin.

Paragraph (f) provides that – if paragraphs (a) to (e) do not apply – the senior next of kin is the deceased person's parent. Parents of a deceased person have equal status in relation to the senior next of kin hierarchy and may make an application to the Northern Territory Civil and Administrative Tribunal (NTCAT) under clause 9(1) for a determination of who is the senior next of kin.

Paragraph (g) provides that – if paragraphs (a) to (f) do not apply – the senior next of kin is the deceased person's eldest sibling who is at least 18 years of age. The note for subclause (1)(g) clarifies that if the eldest sibling cannot be contacted within a reasonable period, the next eldest sibling who is contactable (and who is at least 18 years of age) is the senior next of kin.

Paragraph (h) provides that – if paragraphs (a) to (g) do not apply – the senior next of kin is a person who immediately before the death of the deceased person had a relationship with the deceased person and, in the opinion of the manager of the cemetery or facility, is an appropriate person to make the decision.

It is noted that the senior next of kin is also a relevant person to notify when undertaking significant actions in relation to the deceased person's human remains under this Act, for example, when applying for an approval to exhume and relocate human remains.

Clause 8(2) requires a senior next of kin to be a person who has not been certified as mentally unfit and can be contacted within a reasonable period.

Clause 8(3) clarifies how a person may be certified as mentally unfit, that is, certified by two medical practitioners as mentally unfit.

#### **Clause 9. NTCAT may determine senior next of kin**

Clause 9(1) provides that any person or category of person mentioned in the senior next of kin hierarchy in clause 8(1) has standing to apply to NTCAT for a determination as to who is the senior next of kin. This provision allows for the identification of the senior next of kin in circumstances where there is no executor or administrator of the estate of the deceased person and the senior next of kin is either unclear or there are disputes concerning who is the senior next of kin.

Clause 9(2) requires NTCAT to take three factors into consideration when determining the senior next of kin for a deceased person, depending on the categories of persons outlined in clause 8(1).

First, NTCAT is required to consider the hierarchy as set out in clause 8(1).

Second, if two or more people have equal status as senior next of kin, NTCAT is required to take into account whether each person provides an undertaking (in other words, a formal promise) to organise and pay for any relevant cost for the burial or disposal of the deceased person. This applies in relation to the following circumstances: if there are two or more people according to customs and tradition and the deceased person was an Aboriginal or Torres Strait Islander person with strong cultural and traditional ties; the parents of the deceased person; and if there are two or more people who had a relationship with the deceased person immediately before death and are all considered to be appropriate people (in the opinion of the manager of the cemetery or facility).

Third, if two or more people have equal status as senior next of kin because they are a parent, or because they are considered to be an appropriate person under clause 8(1)(h), NTCAT is required to take the nature of the relationship, immediately before death, into account.

Clause 9(3) provides that NTCAT, after determining an application, can make an order that a person is the senior next of kin for the deceased person (for the purposes of this Act). NTCAT may also make any other order that NTCAT considers appropriate.

Clause 9(4) provides that section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* does not apply to a decision of NTCAT under clause 9. An application under this clause will be considered by NTCAT in its original jurisdiction, which means this dispute or issue has not been the subject of an earlier adjudication (this is in comparison to the reviewable decisions under Schedule 1 of this Act, which fall within NTCAT's review jurisdiction). In other words, not applying section 140 of the *Northern Territory Civil and Administrative Tribunal Act 2014* means that NTCAT's determination under this clause cannot be reviewed again by NTCAT.

#### **Clause 10. Application of Criminal Code**

Clause 10 is a formal clause that provides that Part IIAA of the *Criminal Code Act 1983* applies to offences against this Act. The note for clause 10 clarifies that Part IIAA states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. Part IIAA also defines, or elaborates on, certain concepts commonly used in the creation of offences.

## **Part 2 Cemeteries**

### **Division 1 Classes of cemeteries**

#### **Clause 11. Declaration of cemetery**

Clause 11(1) provides that the Minister may declare an area of land to be a cemetery by notice in the *Gazette*.

Clause 11(2) provides that, before declaring an area of land to be a cemetery under subclause (1), the Minister must have regard to any matters prescribed by regulation.

Clause 11(3) requires that the Minister must declare a cemetery as one of four classes of cemeteries. The four different classes of cemeteries are: public cemeteries, community cemeteries, local cemeteries and independent cemeteries. The differentiation between cemetery classes is based on a number of factors, including the community that the cemetery serves. In general terms, 'public cemeteries' are cemeteries that serve urban communities with larger populations. Historically, public cemeteries in the Northern Territory are cemeteries located on Crown land that were declared under the *Cemeteries Act 1952*. 'Community cemeteries' and 'local cemeteries' are cemeteries which serve regional and remote communities with smaller populations. 'Independent cemeteries' are cemeteries which are considered to be privately-run cemeteries.

Clause 11(4) requires that the notice in the *Gazette* must specify the name of the cemetery, the responsible entity for the cemetery and the location of the cemetery.

Clause 11(5) requires one of the following written documents to be in existence, to the satisfaction of the Minister, before the Minister may declare a community cemetery or local cemetery:

- (a) a lease between the land owner and the prospective responsible entity for the land to be used as a cemetery;
- (b) a sublease between the sublessor and the prospective responsible entity for the land to be used as a cemetery;
- (c) a licence issued by the land owner to the prospective responsible entity for the land to be used as a cemetery;
- (d) written consent from the land owner for the land to be used as a cemetery; or
- (e) an agreement executed between the Executive Director of Township Leasing and the prospective responsible entity that allows the land to be used as a cemetery.

Clause 11(6) requires the Minister to table a copy of the notice, declaring an area of land to be a cemetery, in the Legislative Assembly of the Northern Territory within six sitting days after the notice has been published in the *Gazette*.

Clause 11(7) clarifies the meaning of 'Executive Director of Township Leasing' for the purposes clause 11(5)(e).

#### **Clause 12. Agency to keep register of cemeteries**

Clause 12 requires the Agency administering this Act to establish and maintain a register of cemeteries declared by the Minister. A copy of this register is required to be made available on the Agency's website.

## **Division 2 Minister may change or revoke declaration**

### **Clause 13. Minister may change details of cemetery**

Clause 13(1) lists details of the declared cemetery that the Minister may change, by notice in the *Gazette*, including the name, responsible entity and location of the cemetery.

Clause 13(2) clarifies that the Minister must have regard to any matters prescribed by regulation before changing the details of a declared cemetery under clause 13(1).

Clause 13(3) requires the Minister to be satisfied that there is a document in existence under clause 11(5) (a lease, sublease, licence, written consent or relevant agreement) for the prospective responsible entity if the Minister is changing the responsible entity for a community cemetery or local cemetery.

Clause 13(4) requires the Minister to table a copy of the notice, changing the details of the cemetery, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

### **Clause 14. Minister may change class of cemetery**

Clause 14(1) provides that the Minister may change the class of a cemetery by notice in the *Gazette*.

Clause 14(2) requires the notice to specify the responsible entity for the cemetery.

Clause 14(3) requires the Minister, before changing the class of a cemetery, to have regard to any matters prescribed by regulation before changing the class of a cemetery.

Clause 14(4) requires the Minister to be satisfied that there is a document in existence under clause 11(5) (a lease, sublease, licence, written consent or relevant agreement) for the prospective responsible entity if the Minister is changing the class of a cemetery.

Clause 14(5) requires the Minister to table a copy of the notice, changing the class of the cemetery, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

### **Clause 15. Minister may revoke declaration of cemetery**

Clause 15(1) provides that the Minister may revoke the declaration of a cemetery, by notice in the *Gazette*, if there are no human remains buried or interred in the cemetery.

Clause 15(2) requires the notice to specify the name, location and responsible entity for the cemetery. The notice is required to also specify the date the revocation of the declaration of the cemetery takes effect.

Clause 15(3) requires the Minister to table a copy of the notice, revoking the declaration of the cemetery, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

## **Division 3 Management of cemeteries**

### **Clause 16. Responsible entity for cemetery**

Clause 16(1) lists the entities that are to be the responsible entity for the different classes of cemeteries, including who is the responsible entity for a particular public cemetery or community cemetery when it is located in or located outside a local government council area. The responsible entity for a public cemetery or community cemetery located in a council area is the council for the area. The responsible entity for a public cemetery or community cemetery located outside a council area is the entity specified in the notice declaring the cemetery. The responsible entity for an independent cemetery is the entity specified in the notice declaring the cemetery. The

responsible entity for a local cemetery is the Aboriginal corporation, Aboriginal community living area association or other entity specified in the notice declaring the cemetery.

Clause 16(2) requires the responsible entity for a cemetery to manage and control the cemetery.

Clause 16(3) lists the functions of a responsible entity in relation to a cemetery. These functions are to: ensure that burials of human remains and exhumations in the cemetery are undertaken in accordance with this Act; establish and maintain the registers that are required under this Act; establish and maintain records of burials and exhumations undertaken in the cemetery; ensure that the burial register is accessible to the public in accordance with this Act or another Act; establish a cemetery plan and cemetery policies for the cemetery; ensure that there is access to equipment to undertake burials and exhumations in the cemetery; ensure that the cemetery is accessible to the public; care for and maintain the cemetery; fund the maintenance of the cemetery; and any other functions conferred on the responsible entity under this Act or another Act.

Clause 16(4) lists matters that must be considered whenever a responsible entity is exercising powers or performing functions under this Act. The responsible entity must have regard to: the values of the community it serves if the cemetery serves a particular cultural or religious community; the heritage value of the cemetery and the most efficient way of maintaining the cemetery.

#### **Clause 17. Manager of cemetery**

Clause 17(1) lists the persons who are to be cemetery managers for the different classes of cemeteries. In summary, the cemetery manager is the chief executive officer of the responsible entity for the cemetery.

Clause 17(2) clarifies that if the responsible entity does not have a chief executive officer position, the cemetery manager is the person employed in the position that is equivalent to a chief executive officer for that particular responsible entity.

Clause 17(3) requires the responsible entity for a cemetery to notify the Agency administering this Act of the full name and contact details of the cemetery manager.

Clause 17(4) clarifies that the notification under subclause (3) must be in writing and occur as soon as is reasonably practicable.

#### **Clause 18. Cemetery plans**

Clause 18(1) requires a responsible entity for a cemetery to establish and maintain a cemetery plan for a cemetery.

Clause 18(2) requires the cemetery plan to include information relating to the layout of the cemetery that identifies any portion of the cemetery that has a specific use, the types of burials available in the cemetery and any policy or other matter prescribed by regulation.

Clause 18(3) clarifies that if the responsible entity for a cemetery has not yet established a cemetery plan for the cemetery as required under subclause (1), a burial approval may still be given to bury human remains in the cemetery.

#### **Clause 19. Public opening hours of cemetery**

Clause 19 requires all cemeteries to be open for a minimum of eight hours a day (within a 24 hour period).

#### **Clause 20. Fees for cemetery services**

Clause 20(1) requires that the fees charged by the responsible entity for a cemetery must be shown as itemised fees. This means the fees must list each separate item that make up the total of the

costs to undertake a burial (and any other fees in relation to the cemetery), rather than as a lump sum. Fees must be shown as itemised fees in order to allow for transparency for consumers to compare the costs of burial between different cemeteries.

Clause 20(2) requires that any fee charged by the responsible entity in relation to a community cemetery or local cemetery must be reasonable.

#### **Clause 21. Information to be publicly available**

Clause 21(1) requires the responsible entity for a cemetery to make the following information publicly available on the responsible entity's website: the cemetery plan; general information relating to the cemetery (including the public opening hours); details of the application process for a burial approval; details of the application process for an exclusive right of burial (if exclusive rights of burial are available at the cemetery); the amount of fees charged (shown as itemised fees); and any other information prescribed by regulation.

Clause 21(2) clarifies that the requirement under subclause (1) does not apply to the responsible entity for a local cemetery.

#### **Clause 22. Information to be displayed at cemetery**

Clause 22 requires a responsible entity for a cemetery to ensure that the name of the cemetery and the contact details of the responsible entity are displayed at the cemetery. In relation to a public cemetery, there is an additional requirement for the responsible entity to display the public opening hours at the cemetery.

### **Part 3 Burials**

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

#### **Clause 23. Burial approval**

Clause 23(1) provides that a cemetery manager may give a burial approval for human remains to be buried in the cemetery.

Clause 23(2) provides that a burial approval may specify any conditions that the cemetery manager considers appropriate. In practice, a cemetery manager may consider whether the conditions being placed on a burial approval are consistent with the objects of this Act (clause 3) and the matters mentioned in clause 16(4), as the applicant has the ability to request that the cemetery manager vary or remove a condition under clause 24(2).

Clause 23(3) lists the details and documents that need to be provided by the applicant in order for the burial approval to be given. The relevant details include the applicant's full name, address, contact details and relationship to the deceased person. The relevant documents include a burial form (which includes the deceased person's full name, sex or gender, date of birth, country of birth, date of death, place of death, address of residence immediately before date of death, last occupation before death, marital status and any other information prescribed by regulation) and either a medical certificate of cause of death (a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996*) or a certificate issued by the coroner or the coroner's clerk under section 17(1) of the *Coroners Act 1993* (coroner's certificate).

Clause 23(4) clarifies that a cemetery manager may not apply for a burial approval in a cemetery that they manage, as this would mean the cemetery manager would be approving their own application.

Clause 23(5) allows the cemetery manager the power to request a copy of the notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* from a provider if the notice is not submitted with the burial application under subclause (3). A provider, for the purposes of

this Act, means a person or body who provides, or holds out to provide, a health service or community service (such as a health clinic, hospital, a medical practitioner, a registered nurse, and administrative staff working for a health clinic).

Clause 23(6) requires the provider to provide a copy of the notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* to the cemetery manager, on request, unless the provider does not have access to the notice.

Clause 23(7) allows the cemetery manager to refuse to give a burial approval.

Clause 23(8) provides that the refusal to give a burial approval under clause 23(7) must be given as a decision notice to the applicant. A decision notice is written notice setting out the decision and the reasons for it; and any right the person to whom the notice is given has, under this Act or another Act, to apply for a review of, or to appeal the decision.

#### **Clause 24. Conditions on burial approval**

Clause 24(1) requires the applicant to comply with a condition placed on a burial approval given by the cemetery manager.

Clause 24(2) allows the applicant who has been given the burial approval to request to the cemetery manager to vary or remove a condition placed on that burial approval. The request must be in writing.

Clause 24(3) requires the cemetery manager to take into account the objects of this Act and whether the condition is consistent with the matters mentioned in clause 16(4) (that is, the values of the community it serves if the cemetery serves a particular cultural or religious community; the heritage value of the cemetery and the most efficient way of maintaining the cemetery) when deciding whether to vary or remove a condition placed on that burial approval.

Clause 24(4) provides that the cemetery manager must give a new burial approval if a request to vary or remove a condition is approved.

Clause 24(5) requires the cemetery manager to give the applicant a decision notice if the request to vary or remove any condition placed on the burial approval is refused. A decision notice is written notice setting out the decision and the reasons for it; and any right the person to whom the notice is given has, under this Act or another Act, to apply for a review of, or to appeal the decision.

#### **Clause 25. Burial form**

Clause 25 lists the information that is to be included in the burial form, if known. This includes the deceased person's: full name; sex or gender; date of birth; country of birth; date of death; place of death; address of residence immediately before date of death; last occupation before death; marital status; and any other information prescribed by regulation.

#### **Clause 26. Burial approval given without complete application**

Clause 26 makes it an offence for a person to give a burial approval after receiving an application for a burial approval which does not contain the details and documents mentioned in clause 23(3). This is an offence of strict liability and carries a maximum penalty of 50 penalty units.

The details and documents mentioned in clause 23(3) are: the applicant's full name, address, contact details; the applicant's relationship to the deceased person; a burial form; and either a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* or a coroner's certificate.

#### **Clause 27. Burial without approval**

Clause 27 makes it an offence for a person to intentionally bury human remains in a cemetery if a burial approval was not given by the relevant cemetery manager. Strict liability applies to the burial

of the human remains in the cemetery and the fact that a burial approval was not given for the burial of those human remains in that cemetery. This offence carries a maximum penalty of 200 penalty units or two years imprisonment.

#### **Clause 28. Interment in structure**

Clause 28 provides that a person must not inter human remains in a structure unless the human remains are interred in accordance with the Regulations. A 'structure' means a crypt or any other structure prescribed by regulation, whether natural or constructed.

#### **Clause 29. Manner and conduct of burial**

Clause 29(1) provides that a responsible entity for a cemetery must not require human remains to be buried in the ground in a certain manner other than wrapped in a shroud. The note for subclause (1) clarifies, through use of an example, that the responsible entity must not require human remains to be placed in a coffin for burial in the ground.

Clause 29(2) clarifies that, despite subclause (1), a responsible entity for a cemetery must require that human remains are buried in accordance with any guidelines made by the Chief Health Officer under clause 149 regarding the manner of burial of human remains. In other words, if a requirement in any such guideline is inconsistent with subclause (1), the requirement in the guideline overrides subclause (1) to the extent of the inconsistency.

Clause 29(3) provides that a responsible entity for a cemetery, except for an independent cemetery, must not require a burial to be conducted by a funeral director. A 'funeral director' means a person who carries on the business of arranging for the burial or disposal of human remains.

Clause 29(4) allows further requirements for the manner or conduct of a burial in a cemetery to be prescribed by regulation.

#### **Clause 30. Multiple burials or internments**

Clause 30(1) allows a cemetery manager to authorise multiple burials at a place of burial (that is, in a grave, plot or section in a structure). In other words, two or more deceased persons can be buried in the same place of burial.

Clause 30(2) requires a person, who is burying human remains from multiple deceased persons in the same grave or plot, to comply with the depth of burial requirements under clause 45. This means there needs to be at least one metre of soil above the shallowest human remains. If that is not practicable, there needs to be a solid layer of impervious material over the human remains and at least half a metre of soil.

Clause 30(3) states that a person must not inter human remains from multiple deceased persons in the same section of a structure, unless the human remains are interred in accordance with the Regulations.

For clarity, this clause applies whether multiple deceased persons are being buried or interred at the same time in an unused place of burial or if other human remains are being subsequently buried or interred at a place of burial that currently has human remains buried or interred.

#### **Clause 31. Register of burials**

Clause 31(1) requires a responsible entity to establish and maintain a register of the burials that occur in the cemetery.

Clause 31(2) requires the register to include information on the deceased person required under clause 25 (that is, full name, sex or gender, date of birth, country of birth, date of death, place of death, address of residence immediately before date of death, last occupation before death, and

marital status); the date of burial; the plot number; GPS coordinates or other means of locating the place of burial; the type of burial; the depth of the human remains below ground level (if applicable); the name of the person who officiated at the ceremony (if any); the name of the funeral director or any other person that arranged the burial (if any); descriptive details of any memorial erected at the place of burial; and the date of erection of any memorial at the place of burial (if known). If the human remains have been exhumed after burial, the register must also include: the date the exhumation approval was given by the CEO of the Agency; the date of exhumation; the name of the person carrying out the exhumation; and the place of relocation of the human remains. In addition, the register must include any other information prescribed by regulation.

### **Clause 32. Inspection of register of burials**

Clause 32(1) requires the cemetery manager to allow the executor or administrator of the estate of a deceased person or any next of kin of a deceased person the ability to inspect the burial register for the entry of the relevant deceased person. The cemetery manager is required to provide a copy or summary of information in the register for the entry of a deceased person, at the request of the executor or administrator of the estate of the deceased person or any next of kin of the deceased person.

Clause 32(2) requires the cemetery manager to allow a Northern Territory Government agency to inspect the burial register. The cemetery manager is required to provide a copy or summary of information in the register, at the request of a Northern Territory Government agency.

Clause 32(3) clarifies that the cemetery manager can allow a person or an organisation that has an adequate reason to inspect the burial register.

Clause 32(4) clarifies that the cemetery manager can provide a person or an organisation that has an adequate reason a copy or summary of information in the burial register, at the request of the person or organisation.

Clause 32(5) lists the considerations that must be taken into account in determining what constitutes an 'adequate reason' in relation to subclauses (3) and (4). These considerations are: the nature of a person's or organisation's interest; the sensitivity of the information; the use to be made of the information; the need to protect the deceased person from unjustified intrusion into the deceased person's privacy; and any other considerations prescribed by regulation.

Clause 32(6) clarifies that the inspection of the burial register or production of a copy or summary of information in the register must be done in accordance with any policy determined by the responsible entity for the cemetery. However, this does not apply to an inspection or production under subclause (2).

### **Clause 33. Fees regarding register of burials**

Clause 33 allows the responsible entity for a cemetery the ability to determine and charge a fee for the inspection of the burial register or production of a copy or summary of information in the register. However, this does not apply to an inspection of or production to a Northern Territory Government agency under clause 32(2), or an inspection by the executor or administrator of the estate of a deceased person or any next of kin of a deceased person under clause 32(1)(a).

## **Division 2 Interstate and overseas deaths**

### **Clause 34. Interstate deaths**

Clause 34 clarifies that, if a person dies in another Australian state or territory, an equivalent document may be used instead of a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* or a coroner's certificate. This is in relation to an application for a burial approval. The equivalent document must satisfy the legal requirements for the approval of the burial of human remains in the particular Australian state or territory where the person died.

### **Clause 35. Overseas deaths**

Clause 35(1) provides a list of equivalent documents that may be used instead of a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* or a coroner's certificate, when applying for a burial approval in the Northern Territory in relation to a deceased person who died outside of Australia. These documents include: a death certificate issued by a person legally authorised to do so in the place where the death occurred; a notice under a law in force in the place where the death occurred that is equivalent to a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* (stating the cause of death); or a certificate issued by a coroner or a person or entity equivalent to a coroner in the place where the death occurred.

Clause 35(2) clarifies that if the document is in a language other than English, a certified translation of the document into English language must be provided along with the original document.

Clause 35(3) lists the documents that may be provided if none of the documents mentioned in clause 35(1) are able to be provided. These are a medical certificate of cause of death issued by a medical practitioner after a post-mortem examination is performed or a certificate from an Australian coroner stating that no further examination of the human remains is necessary and there is no reason not to dispose of the human remains in a lawful manner.

### **Division 3 Memorials within public cemetery**

#### **Clause 36. Application for authorisation to erect memorial**

Clause 36(1) requires a person to apply, in writing, to the cemetery manager for authorisation before erecting a memorial in a public cemetery.

Clause 36(2) allows the cemetery manager to authorise the erection of memorials in accordance with the responsible entity's policy.

Clause 36(3) allows the cemetery manager to set any conditions that the manager considers appropriate when authorising the erection of a memorial.

Clause 36(4) clarifies that if the cemetery manager has authorised the erection of a memorial subject to any conditions under subclause (3), the applicant mentioned in subclause (1) must comply with those conditions.

Clause 36(5) provides that if there is an exclusive right of burial at that place of burial (that is, at a grave, plot or section in a structure), the authorisation to erect a memorial must not be given unless the grantee of the exclusive right has provided consent to the erection of the memorial. If the grantee is deceased, the most senior person in accordance with the hierarchy in clause 50(1) must instead provide consent to the erection of the memorial. The most senior person in accordance with that hierarchy is the executor or administrator of the grantee. If the executor or administrator of the grantee is not applicable, the most senior person will be the personal representative specified in the exclusive right of burial. If the personal representative is not applicable, then any next of kin of the deceased person can provide consent to the erection of the memorial.

#### **Clause 37. Requirement to repair memorial**

Clause 37(1) provides that if a memorial in a public cemetery becomes unsafe (that is, it is likely to cause physical danger to a person), the responsible entity for the public cemetery may require the person who applied to the cemetery manager for authorisation to erect the memorial to repair, remove or reinstate the memorial. The requirement must be given as written notice and specify a reasonable period for the applicant to repair, remove or reinstate the memorial. The note for subclause (1) clarifies that the responsible entity is required to provide all options to the applicant, that is, the options to repair, remove or reinstate the memorial. For example, the responsible entity cannot require the applicant to specifically reinstate the memorial.

Clause 37(2) requires the written notice in subclause (1) to state that the applicant may apply to NTCAT for a review of the requirement.

Clause 37(3) clarifies that if the work required is not carried out within the period specified in the written notice in subclause (1), the responsible entity for the public cemetery may repair, remove or reinstate the memorial.

Clause 37(4) requires the responsible entity for the public cemetery, if a memorial in a public cemetery becomes unsafe or damaged due to the actions of the responsible entity, to make reasonable attempts to provide written notice to the person who applied for authorisation to erect the memorial informing the applicant on the state of the memorial and the responsible entity's plan to repair, reinstate the memorial within a reasonable period. The responsible entity is required to repair or reinstate the memorial within a reasonable period and cannot recover the costs to repair or reinstate the memorial from the applicant.

Clause 37(5) allows the person who applied for authorisation to erect the memorial to, in writing, waive the requirement of the responsible entity for the public cemetery to repair or reinstate the memorial which has become unsafe or damaged due to the actions of the responsible entity.

Clause 37(6) requires the responsible entity for the public cemetery, if the situation under subclause (5) applies, to remove the memorial.

Clause 37(7) clarifies that if a memorial in a public cemetery becomes unsafe and urgent action to repair, remove or reinstate the memorial is considered necessary by the responsible entity for the public cemetery, the responsible entity is not required to provide notice to the person who applied for authorisation to erect the memorial.

Clause 37(8) allows the responsible entity for the public cemetery to carry out the required work in relation to subclause (7) if urgent action to repair, remove or reinstate the memorial is considered necessary by the responsible entity.

Clause 37(9) clarifies that 'unsafe', in relation to a memorial, means that the memorial is likely to cause physical danger to a person.

#### **Division 4 Burials outside cemetery**

##### **Clause 38. Definition**

Clause 38 provides that for the operation of Part 3, Division 4 (Burials outside cemetery), the area of land of a suspended cemetery is considered to be a 'location outside a cemetery'. For the meaning of a 'suspended cemetery', refer to clause 131.

##### **Clause 39. Burial outside cemetery**

Clause 39(1) provides that the CEO of the Agency may approve the burial of human remains at a location outside a cemetery.

Clause 39(2) provides that the CEO of the Agency may give the approval subject to any condition that the CEO considers appropriate.

Clause 39(3) lists the information that an applicant is to submit to the CEO of the Agency for an approval to bury human remains at a location outside a cemetery: the applicant's full name, address, contact details and relationship to the deceased person; the deceased person's full name, sex or gender, date of birth, country of birth, date of death, place of death, address of residence immediately before date of death, last occupation before death, marital status and any other information prescribed by regulation; either a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* or a coroner's certificate; any objections, known to the applicant, of the executor or administrator of the estate of the deceased person or any next of kin of the deceased

person to the burial at a location outside a cemetery; and any other information or document prescribed by regulation.

Clause 39(4) requires the CEO of the Agency to be satisfied that there is consent from the land owner and any relevant lessee for the burial of human remains on that land and also have regard to any matter prescribed by regulation when making a decision to approve a burial at a location outside a cemetery.

Clause 39(5) allows the CEO of the Agency to refuse to give an approval to bury human remains at a location outside a cemetery.

Clause 39(6) clarifies that a refusal under subclause (5) must be given as a decision notice to the applicant. A decision notice is a written notice setting out the decision and the reasons for it and any right the person to whom the notice is given has, under this Act or another Act, to apply for a review of, or to appeal the decision.

#### **Clause 40. Burial outside cemetery without approval**

Clause 40 makes it an offence for a person to intentionally bury human remains at a location outside a cemetery without approval from the CEO of the Agency for the burial of the human remains. Strict liability applies to the human remains being buried at a location outside a cemetery without approval being given by the CEO for the burial of the human remains. This offence carries a maximum penalty of 200 penalty units or two years imprisonment.

#### **Clause 41. Contravention of approval**

Clause 41 makes it an offence for a person, who has been given an approval to bury human remains at a location outside a cemetery subject to a condition, to intentionally engage in conduct which results in a contravention of the condition and the person is reckless in relation to that result. Strict liability applies to the approval to bury human remains at a location outside a cemetery being subject to a condition. This offence carries a maximum penalty of 100 penalty units.

#### **Clause 42. Objection to burial outside cemetery**

Clause 42 allows the executor or administrator of the estate of the deceased person or any next of kin of the deceased person to object to the burial of that deceased person at a location outside a cemetery. The objection must be in writing, state the objector's relationship to the deceased person, state the reasons for the objection and be submitted to the CEO of the Agency prior to the CEO making a decision to approve the burial of human remains at a location outside a cemetery.

#### **Clause 43. Information about burial outside cemetery**

Clause 43(1) lists the information that a person who has been given approval to bury human remains at a location outside a cemetery must provide to the Agency administering this Act. This information includes the following: the approval number; the GPS coordinates of the place where the human remains are buried; the date of burial; the depth of the human remains below ground level (if the human remains are buried in the ground); details about how the human remains are buried; the name of the person who officiated at the ceremony (if any); the name of the funeral director or any other person who arranged the burial (if any); descriptive details of any memorial erected at the place where the human remains are buried; the date of erection of the memorial (if known); and any other information prescribed by regulation.

Clause 43(2) clarifies that if the GPS coordinates of the place where the human remains are buried cannot be provided, a map indicating the location of the burial may be provided instead.

Clause 43(3) requires the person given an approval to bury human remains at a location outside a cemetery must provide the information mentioned in subclause (1) to the Agency administering this Act within 30 days after the date the burial occurred.

Clause 43(4) requires the Agency administering this Act to provide the appropriate information for the record of administrative interests kept under section 38 of the *Land Title Act 2000* to the Registrar-General if human remains are buried at a location outside a cemetery. In practice, this may involve an agreement between the Registrar-General and the Agency administering this Act for the Agency to administratively input the appropriate information.

#### **Clause 44. Register of burials outside a cemetery**

Clause 44(1) requires the Agency administering this Act to establish and maintain a register of burials located outside a cemetery.

Clause 44(2) requires the register of burials located outside a cemetery to include the information in the burial form (which includes the deceased person's full name, sex or gender, date of birth, country of birth, date of death, place of death, address of residence immediately before date of death, last occupation before death, marital status and any other information prescribed by regulation).

Additionally, the register is to include the following information (if provided by the person given approval to bury human remains at a location outside a cemetery): the approval number; the GPS coordinates of the place where the human remains are buried; the date of burial; the depth of the human remains below ground level (if the human remains are buried in the ground); details about how the human remains are buried; the name of the person who officiated at the ceremony (if any); the name of the funeral director or any other person who arranged the burial (if any); the descriptive details of any memorial erected at the place where the human remains are buried; the date of erection of the memorial (if known); and any other information prescribed by regulation.

Clause 44(3) requires the CEO of the Agency to provide a copy or summary of information in the register of burials located outside a cemetery, to the executor or administrator of the estate of the deceased person and any next of kin of the deceased person, at the request of the person.

Clause 44(4) clarifies that the CEO of the Agency can provide a person or an organisation that has an adequate reason with a copy or summary of information in the register of burials located outside a cemetery, at the request of the person or organisation.

Clause 44(5) lists the considerations that must be taken into account in determining what constitutes an 'adequate reason'. These considerations are: the nature of a person's or organisation's interest; the sensitivity of the information; the use to be made of the information; the need to protect the deceased person from unjustified intrusion into the deceased person's privacy; and any other considerations prescribed by regulation.

Clause 44(6) clarifies that the CEO of the Agency can allow a person to inspect the register of burials located outside a cemetery, if the CEO considers it appropriate to do so.

Clause 44(7) clarifies that the CEO of the Agency has the ability to determine and charge a fee for the production of a copy or summary of information in the register under subclause (4).

### **Division 5 Depth of burial**

#### **Clause 45. Depth of burial within cemetery and outside cemetery**

Clause 45(1) requires that all human remains that are buried in the ground must be completely covered by soil that is at least one metre deep at its shallowest point.

Clause 45(2) clarifies that if it is not reasonably practicable to comply with the requirement under subclause (1), the human remains must be completely covered by a layer of stone, concrete or similar material impervious to water, which is at least 50 millimetres thick and placed directly over the human remains. The human remains are then to be covered with soil that is at least 500 millimetres deep at its shallowest point.

## **Part 4 Exclusive rights of burial in cemetery**

### **Division 1 Rights of burial generally**

#### **Clause 46. Grant of exclusive right of burial**

Clause 46(1) provides that an exclusive right of burial entitles the grantee to the exclusive right to bury any human remains at a specific place of burial (a grave, plot or section in a structure) in a cemetery.

Clause 46(2) allows the cemetery manager to grant an individual an exclusive right of burial in accordance with the responsible entity's policy, on payment of the relevant fee.

Clause 46(3) clarifies that an exclusive right of burial cannot be granted to more than one individual (in other words, there is only one grantee). In addition, an exclusive right of burial cannot be granted if human remains are already buried at that specific place of burial.

Clause 46(4) provides that an exclusive right of burial can be granted, subject to any conditions that the cemetery manager specifies in the right.

Clause 46(5) clarifies that the responsible entity may determine and charge a fee for an exclusive right of burial.

#### **Clause 47. Certificate of grant of exclusive right of burial**

Clause 47(1) requires a cemetery manager to issue a certificate of grant of exclusive right of burial if the cemetery manager has granted an exclusive right of burial at a place of burial (a grave, plot or section in a structure).

Clause 47(2) requires the cemetery manager to record on the certificate of grant of exclusive right of burial any information specified by the grantee under clauses 49(1)(b), (c) or (d). This information may include: persons to be buried at the place of burial; the personal representative for the exercise of the right once the grantee is deceased; and any conditions for the exercise of the right upon the death of the grantee.

#### **Clause 48. Duration of right**

Clause 48 provides that an exclusive right of burial expires 50 years after the date that it is granted, or any shorter period that is specified on the certificate of grant of exclusive right of burial issued under clause 47(1). The note for clause 48 clarifies that the process for the expiry and renewal of an exclusive right of burial is set out in Part 4, Division 3 (Expiry and renewal of exclusive right of burial).

#### **Clause 49. Entitlements of exclusive right of burial**

Clause 49(1) lists what the grantee is entitled to do in relation to an exclusive right of burial at a place of burial (a grave, plot or section in a structure). These entitlements include: burying human remains in accordance with a burial approval at the place of burial; specifying a personal representative who may exercise the right after the grantee is deceased; specifying persons to be buried at the place of burial; and specifying conditions on the exercise of the right upon the death of the grantee.

Clause 49(2) allows the grantee to amend any information the grantee has specified, from time to time (that is, a personal representative who may exercise the right after the grantee is deceased, persons to be buried at the place of burial and conditions on the exercise of the right upon the death of the grantee).

Clause 49(3) clarifies that only the grantee is entitled to specify or amend the following information: a personal representative who may exercise the right once the grantee is deceased; persons to be buried at the place of burial; and conditions on the exercise of the right upon the death of the grantee.

## **Clause 50. Exercise of exclusive right of burial**

Clause 50(1) provides a hierarchy of persons who may exercise an exclusive right of burial if a grantee is deceased. The right may be exercised by the executor or administrator of the estate of the grantee. If there is no executor or administrator of the estate of the grantee, then the right may be exercised by the personal representative specified by the grantee on the certificate of an exclusive right of burial. If there is no executor or administrator of the estate of the grantee or a specified personal representative, the right may be exercised by any next of kin of the grantee.

Clause 50(2) provides that, despite the hierarchy in subclause (1) of who may exercise the exclusive right of burial if the grantee is deceased, the person who may exercise the right must be the person in the most senior order in the hierarchy who has not been certified as mentally unfit and can be contacted within a reasonable period.

Clause 50(3) clarifies how a person may be certified as mentally unfit, that is, certified by two medical practitioners as mentally unfit.

Clause 50(4) clarifies that if there is a dispute regarding the exercise of an exclusive right of burial and there is no executor or administrator of the estate of the grantee or personal representative for the grantee, then the senior next of kin for the grantee has the power to decide the outcome of the dispute. This is specifically relevant to the operation of subclause (1)(c).

## **Clause 51. Change of contact details**

Clause 51 requires the grantee of an exclusive right of burial to notify the responsible entity for the cemetery as soon as practicable if the grantee's contact details change.

## **Division 2 Transfer and surrender**

### **Clause 52. Transfer of exclusive right of burial prohibited**

Clause 52 provides that an exclusive right of burial is not transferrable to another person.

In relation to exclusive rights of burial granted before this Act, refer to clause 162 (Transfer of exclusive right of burial in cemetery) of Part 15, Division 2 (Transitional matters for *Burial and Cremation Act 2019*), which allows one final transfer within 60 years after this Act commences.

### **Clause 53. Surrender of unexercised right of burial**

Clause 53(1) provides that the grantee of an unexercised exclusive right of burial may surrender the right to the relevant cemetery manager.

Clause 53(2) clarifies that, in relation to subclause (1), an unexercised exclusive right of burial includes a right that was previously exercised but subsequently all human remains have since been exhumed from the specific place of burial.

Clause 53(3) clarifies that when a grantee surrenders an exclusive right of burial to the cemetery manager, the grantee has no further entitlements under that right.

Clause 53(4) allows the cemetery manager, on the surrender of an exclusive right of burial, the ability to do any of the following with the place of burial: grant a new exclusive right of burial at the place of burial; give a burial approval without granting an exclusive right of burial; or use the area for a different purpose other than burying human remains (for example, general landscaping of the cemetery).

#### **Clause 54. Refund for unexercised or refused exclusive right of burial**

Clause 54(1) requires a responsible entity for a cemetery which grants exclusive rights of burial to establish a refund policy in relation to the surrender of exclusive rights of burial.

Clause 54(2) requires the cemetery manager to ensure that a person applying for an exclusive right of burial is aware of the refund policy before the person enters into an agreement for the right.

Clause 54(3) clarifies that the refund policy that applies to the surrender of an exclusive right of burial is the policy that was in place at the time the person was granted the exclusive right of burial.

### **Division 3 Expiry and renewal of exclusive right of burial**

#### **Clause 55. Notification of expiry of exclusive right of burial**

Clause 55(1) requires the cemetery manager to take reasonable steps to notify the grantee that the exclusive right of burial will expire at the end of the period granted by the right. The cemetery manager must do so at least 12 months before the expiry date.

If the grantee is deceased, the cemetery manager must notify all of the following categories of persons, if they are applicable in the circumstances: the executor or administrator of the estate of the grantee; the personal representative specified on the certificate of grant of exclusive right of burial; and any known next of kin of the grantee.

Clause 55(2) requires the notification to be in writing and include the expiry date, the fee for renewal, and the maximum period (not exceeding a further 50 years) for which the right may be renewed.

#### **Clause 56. Renewal of exclusive right of burial**

Clause 56(1) requires the cemetery manager to give the grantee the option to renew an exclusive right of burial in the notification of the expiry of the right.

Clause 56(2) clarifies that the grantee is able to renew the exclusive right of burial for a further period specified in the notice, not exceeding 50 years.

Clause 56(3) provides that the application for renewal of the right must be in writing to the cemetery manager, and accompanied by the renewal fee. The application may be made at any time within 12 months before the expiry date of the right, and no later than 28 days after the expiry date of the right.

Clause 56(4) requires the cemetery manager to renew the right for the specified period on receiving an application to renew an exclusive right of burial.

Clause 56(5) clarifies that the cemetery manager may refuse to renew an exclusive right of burial only in exceptional circumstances, such as where a natural event has destroyed the place of burial for which the exclusive right of burial relates.

Clause 56(6) requires the cemetery manager to give the applicant a decision notice if they refuse the renewal of the exclusive right of burial. A decision notice is written notice setting out the decision and the reasons for it; and any right the person to whom the notice is given has, under this Act or another Act, to apply for a review of, or to appeal the decision.

Clause 56(7) clarifies that if the grantee is deceased, the exclusive right of burial may be renewed by any of the following persons: the executor or administrator of the estate of the grantee; the personal representative specified by the grantee on the certificate of grant of exclusive right of burial; or any next of kin of the grantee.

Clause 56(8) clarifies that an exclusive right of burial that is renewed applies to the same place of burial where the right was originally granted.

#### **Clause 57. Exclusive right of burial not renewed**

Clause 57 allows the cemetery manager, if an unexercised exclusive right of burial is not renewed within 12 months before the expiry date of the right and no later than 28 days after the expiry date of the right, the ability to do any of the following with the place of burial: grant a new exclusive right of burial at the place of burial; give a burial approval without granting an exclusive right of burial; or use the area for a different purpose other than burying human remains (for example, general landscaping of the cemetery).

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

#### **Clause 58. Responsible entity to keep register of exclusive rights of burial**

Clause 58(1) requires a responsible entity for a cemetery to establish and maintain a register of exclusive rights of burial that have been granted by the cemetery manager.

Clause 58(2) lists the details that are required to be included in the register of exclusive rights of burial, which must include for each exclusive right of burial: the full name, address and contact details of the grantee; the specific place of burial granted; any information recorded on the certificate issued under clause 47(1); the expiry date; and any other information prescribed by regulation.

Clause 58(3) requires the responsible entity to not make the register of exclusive rights of burial publicly available.

### **Part 5 Exhumations**

#### **Clause 59. Application for exhumation and relocation of human remains**

Clause 59(1) lists the persons who may apply to the CEO of the Agency for approval to exhume human remains and relocate those human remains to another location outside of the Northern Territory or to another place in the Northern Territory. These persons are the executor or administrator of the estate of the deceased person, any next of kin of the deceased person and any person who, in the opinion of the CEO, is an appropriate person in the circumstances.

Clause 59(2) provides that before making an application to the CEO of the Agency, the applicant must notify the following persons that applicant is making an application to exhume and relocate human remains: any executor or administrator of the estate of the deceased person; the senior next of kin for the deceased person; and the grantee of the exclusive right of burial (if the human remains are buried at a specific place of burial in accordance with an exclusive right of burial). If the grantee is deceased, the personal representative of the grantee of an exclusive right of burial must be notified.

Clause 59(3) requires the applicant (in relation to the notification under subclause (2)) to include in the notification a statement advising that the person may object on reasonable grounds to the proposed exhumation and relocation, in writing to the CEO of the Agency, and that the objection must be made within 28 days from the date of the notification under subclause (2).

Clause 59(4) provides that the CEO of the Agency may, in writing, approve the exhumation and relocation of human remains, if satisfied of matters prescribed by regulation. This approval is known as an exhumation approval.

Clause 59(5) provides that the exhumation approval may be given subject to any conditions that the CEO of the Agency considers appropriate.

Clause 59(6) allows the CEO of the Agency to refuse to give an exhumation approval.

Clause 59(7) provides that if the CEO of the Agency refuses to give an exhumation approval, the CEO must give the applicant a decision notice. A decision notice is written notice setting out the decision and the reasons for it; and any right the person to whom the notice is given has, under this Act or another Act, to apply for a review of, or to appeal the decision.

#### **Clause 60. Exhumation without approval**

Clause 60 makes it an offence for a person to intentionally exhume human remains without an exhumation approval being given for those human remains, in circumstances where an exhumation approval is required. Strict liability applies to whether an exhumation approval is required and whether an exhumation approval was not given for the human remains. This offence carries a maximum penalty of 200 penalty units or two years imprisonment.

#### **Clause 61. Contravention of condition of exhumation**

Clause 61 makes it an offence for a person who has an exhumation approval that is subject to a condition and that person intentionally engages in conduct that results in a breach of the condition and the person is reckless in relation to that result. Strict liability applies to whether the person has been given an exhumation approval and whether the exhumation approval is subject to a condition. This offence carries a maximum penalty of 100 penalty units or 12 months imprisonment.

#### **Clause 62. Exception for exhumation**

Clause 62 provides that an exhumation approval is not needed where the exhumation is for an additional burial if the human remains are removed from the place where the human remains are buried to allow for the additional burial. However, the human remains are to be immediately returned to the place where the human remains were buried. An example may be a situation where the human remains are returned to the same grave where the human remains were previously buried.

In addition, an exhumation approval is not needed for an exhumation authorised by another Act.

#### **Clause 63. Objections**

Clause 63(1) provides a list of persons who may object to an exhumation and relocation of human remains. The objection may be made by the executor or administrator of the estate of the deceased person, any next of kin of the deceased person, and a grantee who has an exclusive right of burial at the place of burial that the proposed exhumation relates. If the grantee is deceased, the personal representative for the grantee may object to the exhumation and relocation of the human remains.

Clause 63(2) provides that the objection must be made to the CEO of the Agency, in writing, and must state the person's relationship to the deceased person and the reasons for the objection.

Clause 63(3) provides that the CEO of the Agency may take into account any objection received within 28 days from the date of the notification under clause 59(2) before giving an exhumation approval.

#### **Clause 64. Exhumation information**

Clause 64 provides that the responsible entity for a cemetery must ensure that for each exhumation that occurs in the cemetery, the following information is included in the burial register: the date the exhumation approval was given by the CEO of the Agency; the date of the exhumation; the name of the person carrying out the exhumation; and the place of relocation.

## **Part 6      Facilities**

### **Division 1    Licence to operate facility**

#### **Clause 65.    Minister may grant licence to operate facility**

Clause 65(1) provides that the Minister may grant a person a licence to operate a facility.

Clause 65(2) clarifies the mechanism for the Minister to grant a licence to a person to operate a facility. A person may apply in writing to the Minister for a licence to operate a facility.

Clause 65(3) provides that the Minister may specify conditions in the licence granted under subclause (1) in relation to the operation of the facility.

Clause 65(4) requires the Minister to provide notice in the *Gazette* that a licence to operate a facility has been granted under subclause (1).

Clause 65(5) requires the notice in the *Gazette* to specify the responsible entity for the facility, the location of the facility (or if the facility is mobile, a description that identifies the facility), and any processes available at the facility for the disposal of human remains (for example, cremation). The notice is also required to specify any other information that the Minister considers appropriate.

Clause 65(6) requires the Minister to table a copy of the notice, granting a person a licence to operate a facility, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

#### **Clause 66.    Operation of facility without licence**

Clause 66 makes it an offence for a person to intentionally operate a facility without a licence. Strict liability applies to whether the person does not hold a licence to operate a facility. This is a summary offence that carries a maximum penalty of 300 penalty units or three years imprisonment.

#### **Clause 67.    Contravention of condition of licence**

Clause 67 makes it an offence for a person, who holds a licence to operate a facility that is subject to a condition and the person intentionally engages in conduct that results in a contravention of the condition and the person is reckless in relation to that result. Strict liability applies to whether a person holds a licence to operate a facility and whether that licence is subject to a condition. This offence carries a maximum penalty of 200 penalty units or 2 years imprisonment.

#### **Clause 68.    Licence to operate must be publicly available**

Clause 68 requires the responsible entity for a facility to ensure that a copy of the licence to operate a facility is displayed at the facility and is available on the responsible entity's website.

#### **Clause 69.    Surrender of licence to operate facility**

Clause 69(1) allows a person, who holds a licence to operate a facility, to surrender the licence to the Minister.

Clause 69(2) requires the Minister to provide notice in the *Gazette* that a licence to operate a facility has been surrendered under subclause (1).

Clause 69(3) requires the Minister to table a copy of the notice that a licence to operate a facility has been surrendered in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

## **Clause 70. Requirement to forward records**

Clause 70(1) requires the responsible entity for the facility that surrendered the licence under clause 69(1) (in other words, the responsible entity who previously held the licence under clause 65(1)) to forward all its registers and records prescribed by regulation to the Northern Territory Archives Service (Archives Service). This must be done within nine months of the revocation of the licence.

Clause 70(2) makes it an offence for the responsible entity to contravene the requirement to forward all its prescribed registers and records under subclause (1). This is an offence of strict liability and carries a maximum penalty of 100 penalty units.

## **Clause 71. Agency to keep register of facilities**

Clause 71 requires the Agency administering this Act to establish and maintain a register of licences to operate a facility. A copy of this register is required to be made available on the Agency's website.

## **Division 2 Management of facilities**

### **Clause 72. Responsible entity for facility**

Clause 72(1) provides that the responsible entity for a facility is the person who holds the licence granted for the operation of the facility.

Clause 71(2) clarifies that, despite subclause (1), if a facility is located in a public cemetery, the responsible entity for that facility is the responsible entity for that public cemetery.

Clause 72(3) requires the responsible entity for the facility to manage and control the facility.

Clause 72(4) provides a list of the functions of the responsible entity for a facility, which are to: ensure that the disposal of human remains is done in accordance with this Act and the licence granted to operate the facility; establish and maintain records in relation to the operation of the facility; establish and maintain a register of disposals of human remains at the facility; ensure the facility has proper equipment to dispose of human remains; establish policies for the facility; and any other functions conferred on the responsible entity under this Act or another Act.

### **Clause 73. Manager of facility**

Clause 73(1) provides that a facility manager is the chief executive officer of the responsible entity for the facility.

Clause 73(2) clarifies that if the responsible entity does not have a chief executive officer, the facility manager is the person employed in the position that is equivalent to a chief executive officer for that particular responsible entity.

Clause 73(3) requires the responsible entity for a facility to notify the Agency administering this Act of the full name and contact details of the facility manager.

Clause 73(4) clarifies that the notification under subclause (3) must be in writing and occur as soon as is reasonably practicable.

### **Clause 74. Register of disposals of human remains**

Clause 74(1) requires the responsible entity for a facility to establish and maintain a register of disposals of human remains which are undertaken at the facility.

Clause 74(2) provides that the register of disposals of human remains must include, in relation to each disposal of human remains: the date of disposal; the process of disposal; the name of the person who disposed of the human remains; and any other information prescribed by regulation.

The register of disposals of human remains must also contain the deceased person's information included in the disposal form, which includes: the deceased person's full name; sex or gender; date of birth; country of birth; date of death; place of death; address of residence immediately before date of death; last occupation before death; marital status and any other information prescribed by regulation.

#### **Clause 75. Inspection of register of disposals of human remains**

Clause 75(1) requires the facility manager to allow the executor or administrator of the estate of a deceased person or any next of kin of a deceased person the ability to inspect the register of disposals of human remains for the entry of the relevant deceased person. The facility manager is required to provide a copy or summary of information in the register for the entry of a deceased person, at the request of the executor or administrator of the estate of the deceased person or any next of kin of the deceased person.

Clause 75(2) requires the facility manager to allow a Northern Territory Government agency to inspect the register of disposals of human remains. The facility manager is required to provide a copy or summary of information in the register, at the request of a Northern Territory Government agency.

Clause 75(3) clarifies that the facility manager can allow a person or an organisation that has an adequate reason to inspect the register of disposals of human remains.

Clause 75(4) clarifies that the facility manager can provide a person or an organisation that has an adequate reason a copy or summary of information in the register of disposals of human remains, at the request of the person or organisation.

Clause 75(5) lists the considerations that must be taken into account in determining what constitutes an 'adequate reason' in relation to subclauses (3) and (4). These considerations are: the nature of a person's or organisation's interest; the sensitivity of the information; the use to be made of the information; the need to protect the deceased person from unjustified intrusion into the deceased person's privacy; and any other considerations prescribed by regulation.

Clause 75(6) clarifies that the inspection of the register of disposals of human remains or production of a copy or summary of information in the register must be done in accordance with any policy determined by the responsible entity for the facility. However, this does not apply to an inspection or production under subclause (2).

#### **Clause 76. Fees regarding register of disposals of human remains**

Clause 76 allows the responsible entity for a facility the ability to determine and charge a fee for the inspection of the register of disposals of human remains or production of a copy or summary of information in the register. However, this does not apply to an inspection of or production to a Northern Territory Government agency under clause 75(2), or an inspection by the executor or administrator of the estate of a deceased person or any next of kin of a deceased person under clause 75(1)(a).

#### **Clause 77. Information to be publicly available**

Clause 77 lists the information required to be publicly available on the responsible entity's website in relation to a facility. This includes: general information relating to the facility (including opening hours); the types of processes available for the disposal of human remains; details of the application process for the disposal of human remains; the amount of fees charged (shown as itemised fees); and any other information prescribed by regulation.

## **Clause 78. Information to be displayed at facility**

Clause 78 requires the facility manager to ensure that the name of the facility, the contact details of the facility manager and the public opening hours of the facility are displayed at the facility.

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

### **Division 1 Disposal of human remains**

#### **Clause 79. Application of Part 7**

Clause 79 provides that Part 7 (Cremation and other prescribed processes for disposal of human remains) applies to processes for disposal of human remains, including cremation and any other processes prescribed by regulation.

#### **Clause 80. Application for disposal approval**

Clause 80(1) provides that a facility manager may approve the disposal of human remains at the facility. This is known as a disposal approval.

Clause 80(2) lists the person who may apply to the facility manager for a disposal approval: the executor or administrator of the estate of the deceased person, a next of kin of the deceased person, or any other person the facility manager considers appropriate.

Clause 80(3) clarifies that a facility manager may not apply for a disposal approval in a facility that they manage, as this would mean the facility manager would be approving their own application.

Clause 80(4) provides that an application must include the following: the full name, address and contact details of the applicant; the applicant's relationship to the deceased person; confirmation of the notification of, or confirmation of reasonable attempts to notify, the executor or administrator of the estate of the deceased person (if there is no executor or administrator of the estate of the deceased person, the senior next of kin is to be notified); and any objections, known to the applicant, of the executor or administrator of the estate of the deceased person or any next of kin of the deceased person to the disposal of the deceased person.

Additionally, the application must include a disposal form which contains the following information of the deceased person: full name; sex or gender; date of birth; country of birth; date of death; place of death; address of residence immediately before date of death; last occupation before death; marital status; and any other information prescribed by regulation.

Clause 80(5) requires the application for a disposal approval to include either a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* and a certificate signed by two medical practitioners stating that the death is not a reportable death, or else a coroner's certificate. If a coroner's certificate is provided, a certificate signed by two medical practitioners stating that the death is not a reportable death is not a required document.

Clause 80(6) requires the facility manager, prior to giving a disposal approval, to be satisfied that the applicant has taken reasonable steps to notify the executor or administrator of the estate of the deceased person and the senior next of kin of the deceased person of the application for the disposal of the deceased person's human remains.

Clause 80(7) allows the facility manager the power to request a copy of the notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* or the certificate signed by two medical practitioners stating that the death is not a reportable death from a provider if the notice or certificate is not submitted with the application for disposal approval under subclause (5).

Clause 80(8) requires the provider to provide a copy of the notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* or the certificate signed by two medical practitioners stating that the death is not a reportable death to the facility manager, on request, unless the provider does not have access to the notice or certificate.

Clause 80(9) allows the facility manager to refuse to give a disposal approval.

Clause 80(10) requires the refusal under subclause (9) to be given as a decision notice to the applicant. A decision notice is written notice setting out the decision and the reasons for it; and any right the person to whom the notice is given has, under this Act or another Act, to apply for a review of, or to appeal the decision.

#### **Clause 81. Disposal form**

Clause 81 lists the information of the deceased person that is to be included in the disposal form, if known: full name; sex or gender; date of birth; country of birth; date of death; place of death; address of residence immediately before date of death; last occupation before death; marital status; and any other information prescribed by regulation.

#### **Clause 82. Disposal approval given without complete application**

Clause 82 makes it an offence for a person to give a disposal approval after receiving an application for a disposal approval which does not contain the details and documents required in clause 80(4) and (5). This is an offence of strict liability and carries a maximum penalty of 100 penalty units.

The relevant details under clause 80(4) are: the full name, address and contact details of the applicant; the applicant's relationship to the deceased person; a disposal form; confirmation of the notification of, or confirmation of reasonable attempts to notify the executor or administrator of the estate of the deceased person (if there is no executor or administrator of the estate of the deceased person, the senior next of kin is to be notified); any objections, known to the applicant, of the executor or administrator of the estate of the deceased person or a next of kin of the deceased person to the disposal of the deceased person; and the documents specified in clause 80(5).

The documents specified in clause 80(5) are either a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* and a certificate signed by two medical practitioners stating that the death is not a reportable death, or a coroner's certificate.

#### **Clause 83. Disposal without approval**

Clause 83 makes it an offence for a person to intentionally dispose of human remains in circumstances where a disposal approval has not been given by a facility manager. Strict liability applies to whether the disposal approval has not been given by the relevant facility manager for that disposal. This offence carries a maximum penalty of 200 penalty units or two years imprisonment.

#### **Clause 84. Interested persons not to certify**

Clause 84(1) makes it an offence for a person to intentionally sign a certificate mentioned in clause 80(5)(a)(ii) (a certificate signed by two medical practitioners stating that the death is not a reportable death) if the person knows they have a direct or indirect interest, resulting from the death of the deceased person, in any proceeds of a policy of insurance or assurance. This offence carries a maximum penalty of 50 penalty units.

Clause 84(2) makes it an offence for a person to intentionally sign a certificate mentioned in clause 80(5)(a)(ii) (a certificate signed by two medical practitioners stating that the death is not a reportable death) if the person knows they have 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. This offence carries a maximum penalty of 50 penalty units.

## **Clause 85. Disposal outside a facility**

Clause 85 makes it an offence for a person to intentionally dispose of human remains outside a facility. Strict liability applies to whether the disposal occurred outside a licensed facility. This is a summary offence that carries a maximum penalty of 300 penalty units or three years imprisonment.

## **Clause 86. Objections**

Clause 86(1) allows the executor or administrator of the estate of the estate of a deceased person or any next of kin of a deceased person to object to the disposal of human remains of that deceased person.

Clause 86(2) provides that an objection under subclause (1) must be made in writing to the relevant facility manager and include the person's relationship to the deceased person and the reasons for the objection.

Clause 86(3) requires the facility manager to take into account any objections received under subclause (1) or any other objections included in the application for the disposal approval before giving the disposal approval.

Clause 86(4) provides that if there are objections under subclause (1) or objections included in the application for the disposal approval, the outcome of the dispute must be decided in accordance with clause 148 of this Act. Clause 148 (Decision-making powers concerning human remains) provides that the executor or administrator of the estate of the deceased person has the relevant decision-making power. In circumstances where there is no executor or administrator, the senior next of kin has the relevant decision-making power.

## **Division 2 Interstate and overseas deaths**

### **Clause 87. Interstate deaths**

Clause 87 clarifies that, if a person dies in another Australian state or territory, an equivalent document that satisfies the legal requirements for the approval of the disposal of human remains in the particular Australian state or territory where the person died may be used instead of a document mentioned in clause 80(5).

### **Clause 88. Overseas deaths**

Clause 88(1) provides a list of equivalent documents that may be used instead a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* and a certificate signed by two medical practitioners stating that the death is not a reportable death, or a coroner's certificate, when applying for a disposal approval in the Northern Territory in relation to a deceased person who died outside of Australia. These documents include: a death certificate issued by a person legally authorised to do so in the place where the death occurred; a notice under a law in force in the place where the death occurred that is equivalent to a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act 1996* (stating the cause of death); or a certificate issued by a coroner or a person or entity equivalent to a coroner in the place where the death occurred.

Clause 88(2) clarifies that if the document is in a language other than English, a certified translation of the document into English language must be provided along with the original document.

Clause 88(3) lists the documents that may be provided if none of the documents mentioned in subclause (1) are able to be provided. These are medical certificate of cause of death issued by a medical practitioner after a post-mortem examination is performed or a certificate from an Australian coroner stating that no further examination of the human remains is necessary and there is no reason not to dispose of the human remains in a lawful manner.

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

### **Clause 89.      Officers may prohibit burial or disposal of human remains**

Clause 89(1) provides a list of persons who may, by written notice, prohibit the burial or disposal of human remains if they believe on reasonable grounds that it is appropriate to prohibit the burial or disposal. These persons are: the Coroner; the Director of Public Prosecutions; the Solicitor for the Northern Territory; the CEO of the Agency; a justice of the peace; a police officer; and an inspector.

Clause 89(2) provides that the prohibition notice is required to be given to the responsible entity for the cemetery or facility (or the manager of the cemetery or facility) and must specify the human remains to which the prohibition applies to, the period of the prohibition, and any conditions or other relevant information. The notice may also order that the human remains be moved to a specific place or placed in the custody of a specified person. In addition, the notice must state that the responsible entity for the cemetery or facility may apply to NTCAT for a review of the prohibition.

Clause 89(3) allows the prohibition notice to be absolute or subject to stated conditions.

Clause 89(4) allows a prohibition notice to be withdrawn, in writing, by the person who prohibited the burial or disposal in the notice under subclause (1).

### **Clause 90.      Approval of burial or disposal despite prohibition notice**

Clause 90 makes it an offence for a person to give a burial approval or disposal approval for human remains, with the knowledge that a prohibition notice applies to those human remains. Strict liability applies to whether the person received the application for the burial approval or disposal approval. This is a summary offence that carries a maximum penalty of 300 penalty units or three years imprisonment.

### **Clause 91.      Contravention of prohibition notice**

Clause 91(1) makes it an offence if a prohibition notice applies to human remains and a person with knowledge of this circumstance intentionally buries or disposes of the human remains in contravention of the notice and the person is reckless in relation to the result. This is a summary offence that carries a maximum penalty of 300 penalty units or three years imprisonment.

Clause 91(3) makes it an offence if a prohibition notice applies to human remains and a person with knowledge of this circumstance intentionally engages in conduct which results in the contravention of an order (for the human remains to be moved to a specific place or be placed in the custody of a specified person) or a condition of the notice and the person is reckless in relation to that result. This offence carries a maximum penalty of 100 penalty units or 12 months imprisonment.

### **Clause 92.      Manager must notify applicant of prohibition notice**

Clause 92(1) clarifies the application of this provision. The requirement on the manager of a cemetery or facility under subclause (2) arises if the manager is given the prohibition notice directly and also if the prohibition notice is given to the responsible entity for the cemetery or facility.

Clause 92(2) requires the manager of a cemetery or facility to immediately notify an applicant who was given a burial approval or a disposal approval for human remains that are the subject of a prohibition notice. In other words, the manager is required to contact and notify the applicant that the human remains are not to be buried, disposed of, or otherwise dealt with in contravention of the prohibition notice.

## **Part 9 Closure of cemeteries**

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

#### **Clause 93. Semi-closed cemetery**

Clause 93 provides that a semi-closed cemetery is a cemetery where burials are generally no longer available, except under the following circumstances: a multiple burial; the exercise of an exclusive right of burial that was granted prior to the cemetery being declared a semi-closed cemetery; the exercise of a new exclusive right of burial where a pre-existing exclusive right was surrendered and the new exclusive right of burial was granted at that same place of burial; the exercise of a new exclusive right of burial where the pre-existing exclusive right had expired and the new exclusive right was granted at that same place of burial; and when a cemetery manager gives a burial approval at a place of burial where a pre-existing exclusive right of burial was not renewed or was surrendered.

#### **Clause 94. Application to semi-close cemetery**

Clause 94(1) allows the land owner of the cemetery area or the responsible entity for the cemetery the ability to apply in writing to the Minister for a cemetery to be declared a semi-closed cemetery.

Clause 94(2) requires an application to the Minister to state the reason why the cemetery should be declared a semi-closed cemetery.

#### **Clause 95. Declaration of semi-closed cemetery**

Clause 95(1) provides that the Minister may declare a cemetery a semi-closed cemetery and publish the notice of the declaration in the *Gazette*. This may be effected through an application under clause 94 or on the Minister's own initiative.

Clause 95(2) requires the Minister (or a public sector employee with delegation) to consult with the land owner for the land the cemetery is located on prior to declaring it to be a semi-closed cemetery.

Clause 95(3) lists the information that must be included in the notice published in the *Gazette*, which includes: the conditions of the semi-closure (if any); whether multiple burials are available in accordance with the cemetery's policies; and the date the semi-closure takes effect.

### **Division 2 Closed cemeteries**

#### **Clause 96. Closed cemetery**

Clause 96 clarifies that a closed cemetery is a cemetery where burials are no longer available.

#### **Clause 97. Application to close cemetery**

Clause 97(1) allows the land owner of the cemetery area or the responsible entity for the cemetery the ability to apply in writing to the Minister to declare a cemetery a closed cemetery.

Clause 97(2) requires an application to the Minister to state the reason why the cemetery should be declared a closed cemetery.

Clause 97(3) requires the responsible entity for the cemetery to take reasonable steps to ensure there are no outstanding exclusive rights of burial in the cemetery before an application under subclause (1)(b) is made. In other words, if the responsible entity is the applicant, it should ensure that all exclusive rights of burial granted in the cemetery have expired and have not been renewed prior to making an application to the Minister.

## **Clause 98. Declaration of closed cemetery**

Clause 98(1) provides that the Minister may declare a cemetery to be a closed cemetery through notice of the declaration being published in the *Gazette*. This may be effected through an application under clause 97 or on the Minister's own initiative.

Clause 98(2) states that, in relation to an application under clause 97(1)(b) made by a responsible entity, the Minister must not declare a cemetery to be a closed cemetery if there are any outstanding exclusive rights of burial in the cemetery. The operation of this provision does not limit the ability for the Minister to declare a cemetery to be a closed cemetery on the Minister's own initiative or through an application under clause 97(1)(a) by the land owner for the area on which the cemetery is located, despite the possible existence of outstanding exclusive rights of burial in the cemetery.

Clause 98(3) states that the Minister must not declare a cemetery to be a closed cemetery unless the Minister has consulted with the land owner for the cemetery area.

Clause 98(4) requires that the declaration of a cemetery to be a closed cemetery must include the conditions of the closure of the cemetery (if any) and the date the closure takes effect.

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

### **Clause 99. Notification of semi-closed cemetery and closed cemetery**

Clause 99(1) requires the Minister to table a copy of the notice, declaring a cemetery a semi-closed cemetery or a closed cemetery, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

Clause 99(2) lists the information that the responsible entity for a cemetery must ensure is displayed at the cemetery. This information is a statement that the cemetery is a semi-closed cemetery or a closed cemetery and the information contained in the notice of the declaration under clause 95 or 98, as applicable in the circumstances.

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

### **Clause 100. Revocation of declaration of semi-closed cemetery**

Clause 100(1) provides that the Minister may revoke the declaration of a cemetery as a semi-closed cemetery under clause 95(1), by notice in the *Gazette*, if the cemetery is able to provide for more burials (other than the burials mentioned in clause 93). In other words, the Minister may revoke the semi-closure of the cemetery. An example of when a semi-closed cemetery is able to provide for more burials may be if the boundaries are expanded and new places of burial (plots) become available.

Clause 100(2) requires the Minister to table a copy of the notice, revoking the declaration of the cemetery as a semi-closed cemetery, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

### **Clause 101. Revocation of declaration of closed cemetery**

Clause 101(1) provides that the Minister may revoke the declaration of a cemetery as a closed cemetery under clause 98(1), by notice in the *Gazette*, if the cemetery is able to provide for more burials. In other words, the Minister may revoke the closure of the cemetery. An example of when a closed cemetery is able to provide for more burials may be if the boundaries are expanded and new places of burial (plots) become available.

Clause 101(2) requires the Minister to table a copy of the notice, revoking the declaration of the cemetery as a semi-closed cemetery, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

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

### **Clause 102. Closed cemetery**

Clause 102 provides that, 50 years after a closed cemetery was declared as a closed cemetery under clause 98, a closed cemetery may be transformed into a public park under clause 109.

### **Clause 103. Application to transform closed cemetery into public park**

Clause 103(1) allows the responsible entity for a closed cemetery the ability to apply in writing to the Minister to transform the closed cemetery into a public park.

Clause 103(2) allows the responsible entity to offer an opportunity to control or maintain the cemetery area or a portion of the cemetery area to a religious or cultural group, if the cemetery area or portion of the cemetery area was consecrated according to the rites or practices of that group. This offer may be made before making an application to transform the closed cemetery into a public park.

Clause 103(3) provides that if the religious or cultural group which is offered the opportunity to control or maintain the cemetery or a portion of the cemetery area does not accept the offer under subclause (2), the group may instead request that the responsible entity not interfere with the portion of the cemetery area or with specific places of burial in the cemetery which have been consecrated according to the rites or practices of that group.

Clause 103(4) requires the responsible entity to fulfil all reasonable requests of the religious or cultural group in relation to not interfering with specific portions of the cemetery area or places of burial in the cemetery.

### **Clause 104. Content of application**

Clause 104(1) provides that the application to transform a cemetery into a public park, which must be in writing, must include the following information: particulars about the proposal to transform the closed cemetery into a public park; the total number of burials (if known); the dates of the first and last burial (if known); the number of memorials; the particulars about whether the memorials are proposed to be removed and disposed of, relocated within the cemetery, or relocated to another cemetery; the number of any memorials controlled or maintained by the Commonwealth War Graves Commission; and consent from the Commonwealth War Graves Commission if any memorials controlled or maintained by the Commission are proposed to be removed, disposed of, or relocated.

In addition, the application must contain particulars regarding: the proposed future use of any building in the cemetery; the estimated costs of transforming the cemetery into a public park and maintaining the proposed public park; how the responsible entity for the cemetery proposes to meet these estimated costs; copies of any objections received during the public consultation under clause 106; consent from the land owner for the transformation; and any other information prescribed by regulation.

Clause 104(2) provides that the Minister may, in writing, request further information from the responsible entity who has applied under clause 103(1).

### **Clause 105. Notice of intention to transform cemetery into public park**

Clause 105(1) provides that before making an application under clause 103(1), the responsible entity for a closed cemetery must give six months' notice of the responsible entity's intention to apply to transform a closed cemetery into a public park. This notice must be advertised in a newspaper that

is circulated throughout the Northern Territory, on the responsible entity's website and at the cemetery.

Clause 105(2) requires the responsible entity to take reasonable steps to notify any next of kin of the deceased person buried in the cemetery and any other person who was given a burial approval for a deceased person buried in the cemetery of the intention to transform the closed cemetery into a public park.

Clause 105(3) provides that the notice in subclause (2) must include a plan of the proposed public park, including the timeframe of the proposed transformation; details regarding the public consultation process required to be undertaken by the responsible entity under clause 106; and information on how to object to the transformation of the closed cemetery into a public park under clause 108.

#### **Clause 106. Public consultation**

Clause 106 requires the responsible entity for the closed cemetery, in relation to a proposal to transform the closed cemetery into a public park, to undertake public consultation as prescribed by regulation prior to making an application under clause 103(1).

#### **Clause 107. Obligations of responsible entity**

Clause 107(1) requires the responsible entity for a closed cemetery, prior to making an application to transform the closed cemetery into a public park, to establish an inventory and layout of the cemetery that identifies all places of burial (graves and plots) and memorials (including any inscriptions on the memorials or other particulars). The responsible entity must also take a photograph of each memorial.

Clause 107(2) specifically requires the responsible entity for a closed public cemetery, prior to making an application to transform the closed public cemetery into a public park, to ensure that the inventory and layout of the closed public cemetery identifying all places of burial and memorials (including any inscriptions on the memorials or other particulars) and the photographs of each memorial are made available on the responsible entity's website.

Clause 107(3) requires the responsible entity for any class of closed cemetery, prior to making an application to transform the closed cemetery into a public park, to ensure that the inventory and layout of the closed cemetery identifying all places of burial and memorials and the photographs of each memorial are publicly available in accordance with the responsible entity's policy.

#### **Clause 108. Objections**

Clause 108(1) allows any person to object to the proposal to transform a closed cemetery into a public park.

Clause 108(2) requires the objection to be made in writing to the Minister and contain the objector's full name, contact details and the reason for the objection.

#### **Clause 109. Minister may transform closed cemetery into public park**

Clause 109(1) provides that the Minister may approve an application to transform a closed cemetery into a public park.

Clause 109(2) provides that the Minister may take into account any objection received in writing under clause 108(1) prior to approving an application to transform a closed cemetery into a public park.

Clause 109(3) provides that the Minister may impose conditions on the approval of the application that the Minister considers appropriate.

Clause 109(4) requires the Minister to provide notice in the *Gazette* that an application to transform a closed cemetery into a public park has been approved by the Minister.

Clause 109(5) requires the Minister to table a copy of the notice, approving an application to transform a closed cemetery into a public park, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

#### **Clause 110. Relocation of memorials**

Clause 110 allows the responsible entity for a closed cemetery, who has an application approved by the Minister to transform a closed cemetery into a public park, to do any of the following: remove and dispose of any memorial; relocate any memorial to a different place within the public park; or relocate any memorial to another cemetery. However, the removal, disposal or relocation of memorials is subject to any conditions imposed by the Minister which may impact on or otherwise limit the exercise of any of these actions by the responsible entity.

#### **Clause 111. Prohibited activities**

Clause 111 prohibits a person from organising or participating in any competitive sports in a public park that was transformed from a closed cemetery. In practice, the public park is likely to serve a memorial function and should be respectfully used by the public as a quiet place of recreation.

#### **Clause 112. Minimum period of public park for independent cemetery**

Clause 112 requires a closed independent cemetery that was transformed into a public park to remain as a public park for a minimum period of 50 years from when the application was approved by the Minister under clause 109(1). In practice, this is to ensure that a closed independent cemetery that is transformed into a public park will not, in the immediate future, be developed or re-purposed from being a public park as independent cemeteries are generally privately owned and operated.

### **Part 10 Compliance reviews and investigations**

#### **Division 1 Inspectors**

##### **Clause 113. Appointment of inspectors**

Clause 113(1) allows the CEO of the Agency to, in writing, appoint a person to be an inspector for this Act.

Clause 113(2) provides that an appointment of an inspector may be subject to any conditions that the CEO of the Agency considers appropriate and that are specified in the instrument of appointment.

The intention behind the appointment of a person to be an inspector for this Act is to ensure there is a person acting in an official capacity to enable compliance with the provisions of this Act, including for the purpose of compliance reviews and investigations.

##### **Clause 114. Identity cards for inspectors**

Clause 114(1) requires that, when an inspector is appointed under clause 113(1), the CEO of the Agency must give the inspector an identity card that states the person's name and that the person is an inspector.

Clause 114(2) requires an inspector's identity card to display a recent photograph of the inspector, state the card's date of issue and be signed by the inspector.

Clause 114(3) clarifies that a single identity card may be issued to a person to be an inspector for the purposes of this and another Act.

### **Clause 115. Return of identity card**

Clause 115 makes it an offence for a person who has ceased to be an inspector to fail to return the person's identity card as soon as practicable to the CEO of the Agency. This is an offence of strict liability and carries a maximum penalty of 20 penalty units. It is a defence to this offence if the defendant has a reasonable excuse.

### **Clause 116. Functions of inspector**

Clause 116(1) lists the functions of an inspector: to assess whether or not persons are complying with this Act; to carry out compliance reviews; to investigate and gather evidence of suspected offences against this Act; and to perform any other function conferred on inspectors under this Act or another Act.

Clause 116(2) clarifies that an inspector has the powers that are necessary to perform the inspector's functions that are mentioned in subclause (1).

Clause 116(3) clarifies that an inspector who is exercising a power or performing a function under this Act is subject to the direction of the CEO of the Agency. In other words, an inspector must comply with any directions of the CEO in relation to exercising a power or performing a function.

## **Division 2 Compliance reviews**

### **Clause 117. Program of compliance reviews**

Clause 117(1) requires the Agency administering this Act to establish a program of compliance reviews for cemeteries and facilities.

Clause 117(2) clarifies that the purpose of a compliance review is to ensure that responsible entities operate and administer cemeteries or facilities in accordance with this Act.

### **Clause 118. Agency must report on results of compliance review**

Clause 118(1) requires the Agency administering this Act to report to the relevant responsible entity on the results of any compliance review of a cemetery or a facility.

Clause 118(2) clarifies that the report may contain recommendations for operational or administrative changes in relation to the cemetery or facility.

## **Division 3 Investigations**

### **Clause 119. Investigations**

Clause 119(1) allows the Agency administering this Act to direct an investigation into the operation or administration of a cemetery or a facility. This investigation may be directed and carried out at any time.

Clause 119(2) specifies that an investigation is to be carried out by one or more inspectors that are assigned to the investigation by the Agency.

## **Division 4 Powers of inspectors**

### **Clause 120. Power of entry**

Clause 120(1) clarifies that an inspector has the power to enter, examine and search the premises of a responsible entity. Premises includes the land and a permanent or temporary building or construction on that land; premises are not limited to the land of the cemetery or facility.

Additionally, an inspector has the power to examine and take copies of any records or other documents relating to a cemetery or facility. These powers of inspectors are to be exercised for the purposes of performing functions under this Act.

Clause 120(2) requires the responsible entity to do the following: anything reasonably necessary to facilitate the exercise powers under subclause (1); answer any question relevant to the compliance review or the investigation asked by an inspector; produce any specified record or documentary material relevant to the compliance review or the investigation; and give any other assistance an inspector reasonably requires. A responsible entity may be required to do any combination of the above. The responsible entity must do so at the request of an inspector and within the reasonable period specified in the request from the inspector.

Clause 120(3) requires the request of an inspector under subclause (2) to be in writing.

Clause 120(4) makes it an offence for a person to fail to comply with a written request of an inspector under subclause (2). This is an offence of strict liability and carries a maximum penalty of 100 penalty units. It is a defence to this offence if the defendant took reasonable steps to comply with a written request of an inspector under subclause (2).

### **Clause 121. Procedure for entry**

Clause 121 outlines the required procedure that an inspector must follow before entering any premises in the exercise of a function under this Act. An inspector is required to announce they are authorised under this Act to enter the premises.

Additionally, an inspector must give any person who is on the premises a reasonable opportunity to allow the inspector to enter onto premises.

### **Clause 122. Production of identity card**

Clause 122(1) requires an inspector to show the inspector's identity card to any person who is present before the inspector exercises a power under this Act. In practice, an inspector would state the purposes for which the inspector was attending the premises.

Clause 122(2) requires an inspector to show the inspector's identity card for inspection, if requested to do so by an occupier of the premises, when the inspector is exercising a power under this Act.

Clause 122(3) requires the inspector to immediately cease exercising a power under this Act if the inspector does not comply with a request from an occupier under subclause (2).

### **Clause 123. Power of formal questioning**

Clause 123(1) allows an inspector – by written notice and for the purposes of a compliance review or an investigation – to require a person to do any of the following: within the time specified in the notice, provide written answers to specific questions or other specified written information; attend before the inspector at a specified time and place for examination on a subject stated in the notice; produce specified records or documents; or produce records or documents of a specified kind.

Clause 123(2) requires that the written answers to specific questions or other specified written information under subclause (1)(a) must be verified by statutory declaration by the person providing the answers or information.

Clause 123(3) requires that a person who attends an examination before an inspector must, if the inspector requires an oath, take an oath to answer truthfully all questions that are put to them by the inspector. Subclause (3)(b) clarifies that a person is required to answer all questions that are put to them by the inspector at the examination, unless the exemption under clause 124(2) applies in relation to legally privileged information.

Clause 123(4) makes it an offence for a person to fail to comply with a requirement under this clause. This is an offence of strict liability and the maximum penalty is 100 penalty units. It is a defence to this offence if the defendant took reasonable steps to comply with a requirement under this clause.

#### **Clause 124. Self-incrimination**

Clause 124(1) clarifies that a person that is required to answer a question, give information or produce a document under this Act is not excused from doing so because that the answer, information or document might tend to incriminate the person or make the person liable to a penalty.

Clause 124(2) further clarifies that the answer, information or document referred to in subclause (1) is not admissible in evidence against the person in a civil or criminal proceeding. However, the exemption to this is in a proceeding for an offence in which the falsity or misleading nature of the answer, information or document is relevant.

#### **Clause 125. Confidential matters**

Clause 125(1) clarifies that a person must not refuse to comply with a requirement under clause 120 (Power of entry) or clause 123 (Power of formal questioning) because the answer, information, record or document is confidential.

Clause 125(2) clarifies that there is an exception to subclause (1). A person is not required to comply with a requirement under clauses 120 or 123 if complying with that requirement would result in that person disclosing legally privileged information.

#### **Clause 126. Inspector's report**

Clause 126(1) requires an inspector, if the inspector finds evidence of an irregularity in the operation or administration of a cemetery or facility, to report the irregularity to the CEO of the Agency and the relevant responsible entity for that cemetery or facility.

Clause 126(2) clarifies that if the irregularity appears to involve dishonesty or serious illegality, the CEO of the Agency is required to report the matter to the Minister.

### **Part 11 Enforcement for cemeteries**

#### **Division 1 Enforcement order for cemetery**

##### **Clause 127. Minister may issue an enforcement order**

Clause 127 provides that the Minister may issue an enforcement order to the responsible entity for a cemetery 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 cemetery. The enforcement order will require the responsible entity to take remedial action in relation to the contraventions or irregularities.

##### **Clause 128. Content of enforcement order**

Clause 128 lists the required contents of an enforcement order issued to a responsible entity for a cemetery. This clause also clarifies that the enforcement order is required to be in writing. The content of the enforcement order must state and specify: the grounds on which the enforcement order was issued; the actions or measures that the responsible entity is required to take to comply with each provision that is being contravened and to remedy any contravention or the matters or activities that are causing any contravention; the actions or measures that the responsible entity is required to take to remedy any irregularity or the matters or activities that are causing any irregularity; the date by which the responsible entity is required to comply with the enforcement order; the maximum penalty for contravening the enforcement order; and that responsible entity may seek

a review by NTCAT of the decision to issue the enforcement order or any of the terms of the enforcement order.

#### **Clause 129. Contravention of enforcement order**

Clause 129 makes it an offence if a responsible entity for a cemetery is issued with an enforcement order, the responsible entity intentionally engages in conduct, and that conduct results in a contravention of the enforcement order and the responsible entity is reckless in relation to the contravention of the enforcement order. Strict liability applies to whether an enforcement order was issued to a responsible entity for a cemetery under clause 127. This is a summary offence that carries a maximum penalty of 300 penalty units or three years imprisonment.

#### **Clause 130. Requirements after issue of enforcement order**

Clause 130 requires the responsible entity for a cemetery that has been issued with an enforcement order to report, in writing, to the Minister within the period specified in the enforcement order. The report to the Minister is required to contain details of the steps taken by the responsible entity to address the matters raised in the order. If no steps have been taken, the responsible entity must provide reasons in the report as to why no steps have been taken.

### **Division 2 Enforcement actions for cemetery**

#### **Clause 131. Minister may suspend cemetery**

Clause 131(1) provides that the Minister may suspend a cemetery through a notice published in the *Gazette* if an enforcement order was issued and the specified contraventions or irregularities have not been remedied. In practice, a suspended cemetery is a cemetery where there are substantial conditions and limitations placed on the administration and operation of the cemetery to address to the contraventions or irregularities identified in the enforcement order.

Clause 131(2) lists the information that is required to be included in notice published in the *Gazette*, which are any conditions of the suspension of the cemetery and the date the suspension takes effect.

Clause 131(3) requires the responsible entity for the suspended cemetery to display, at the cemetery, a statement that the cemetery is a suspended cemetery and the information mentioned in subclause (2). In practice, a responsible entity may display a copy of the notice published in the *Gazette* to satisfy subclause (3)(b).

Clause 131(4) requires the Minister to table a copy of the notice, suspending the cemetery, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

#### **Clause 132. Burial in a suspended cemetery**

Clause 132 clarifies that, dependent on the conditions specified in the suspension notice under clause 131(2), the burial of human remains may occur in a suspended cemetery as a burial at a location outside a cemetery in accordance with Part 3, Division 4 (Burials outside cemetery).

#### **Clause 133. Requirement to forward records**

Clause 133(1) provides that the Minister may direct the responsible entity for the suspended cemetery to forward all its registers and records prescribed by regulation to the Archives Service within nine months of the date of suspension (see clause 131(2)(b)).

Clause 133(2) makes it an offence for a responsible entity to fail to comply with the Minister's direction to forward all its registers and records of the suspended cemetery to the Archives Service. This is an offence of strict liability and carries a maximum penalty of 100 penalty units.

### **Division 3 Remedy of contraventions of cemetery**

#### **Clause 134. Revocation of suspension**

Clause 134(1) provides that the Minister may, by notice in the *Gazette*, revoke the suspension of a cemetery if the Minister determines that the responsible entity for the cemetery has remedied the contraventions or irregularities specified in the enforcement order.

Clause 134(2) requires the Minister to table a copy of the notice, revoking the suspension, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

### **Part 12 Enforcement for facilities**

#### **Division 1 Enforcement order and suspension of facility**

##### **Clause 135. Minister may issue an enforcement order**

Clause 135 provides that the Minister may issue an enforcement order to the responsible entity for a 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 a facility. The enforcement order will require the responsible entity to take remedial action in relation to the contraventions or irregularities. The enforcement order will also specify any variation of conditions of a licence granted to operate a facility.

##### **Clause 136. Content of enforcement order**

Clause 136 lists the required contents of an enforcement order issued to a responsible entity for a facility. This clause also clarifies that the enforcement order is required to be in writing.

The content of the enforcement order must state and specify: the grounds on which the enforcement order was issued; the actions or measures that the responsible entity is required to take to comply with each provision that is being contravened and to remedy any contravention or the matters or activities that are causing any contravention; the actions or measures that the responsible entity is required to take to remedy any irregularity or the matters or activities that are causing any irregularity; the date by which the responsible entity is required to comply with the enforcement order; any variation of conditions of the licence granted to operate a facility; the maximum penalty for contravening the enforcement order; and that responsible entity may seek a review by NTCAT of the decision to issue the enforcement order or any of the terms of the enforcement order.

##### **Clause 137. Contravention of enforcement order**

Clause 137 makes it an offence if a responsible entity for a facility is issued with an enforcement order, the responsible entity intentionally engages in conduct, and that conduct results in a contravention of the enforcement order and the responsible entity is reckless in relation to the contravention of the enforcement order. Strict liability applies to whether an enforcement order was issued to a responsible entity for a facility under subclause (1)(a). This is a summary offence that carries a maximum penalty of 300 penalty units or three years imprisonment.

##### **Clause 138. Minister may suspend operation of facility**

Clause 138(1) provides that if 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 a suspension notice to the responsible entity for that facility requiring it to suspend operation of that facility. In other words, the facility manager must not give disposal approvals or carry out disposals of human remains in the facility while the suspension is in effect.

Clause 138(2) requires the Minister to give notice in the *Gazette* that the Minister has suspended the operation of a facility through the issuing of the suspension notice under subclause (1).

#### **Clause 139. Content of suspension notice**

Clause 139 lists the required contents of a suspension notice issued to a responsible entity for a facility. This clause also clarifies that the suspension notice is required to be in writing.

The content of the suspension notice must state and specify: the grounds on which the suspension notice was issued; the date the suspension takes effect; the actions or measures that the responsible entity is required to take to comply with each provision that is being contravened and to remedy any contravention or the matters or activities that are causing any contravention; the actions or measures that the responsible entity is required to take to remedy any irregularity or the matters or activities that are causing any irregularity; the date by which the responsible entity is required to comply with the suspension notice; the maximum penalty for contravening the suspension notice; and that responsible entity may seek a review by NTCAT of the decision to issue the suspension notice or any of the terms of the suspension notice.

#### **Clause 140. Contravention of suspension notice**

Clause 140 makes it an offence if a responsible entity for a facility is issued with a suspension notice and the responsible entity intentionally operates or uses the facility that is the subject of the suspension notice. Strict liability applies to whether a suspension notice was issued to a responsible entity for a facility under subclause (1)(a). This is a summary offence that carries a maximum penalty of 300 penalty units or three years imprisonment.

#### **Clause 141. Requirements after issue of enforcement order or suspension notice**

Clause 141 requires the responsible entity for a facility that has been issued with an enforcement order or a suspension notice to report, in writing, to the Minister within the period specified in the order or notice. The report to the Minister is required to contain details of the steps taken by the responsible entity to address to the matters raised in the order or notice. If no steps have been taken, the responsible entity must provide reasons in the report as to why no steps have been taken.

### **Division 2 Enforcement action for facility**

#### **Clause 142. Revocation of facility licence**

Clause 142(1) provides that the Minister may revoke a licence granted to a person to operate a facility if, after an enforcement order or a suspension notice is issued to the responsible entity for the facility, the specified contraventions are not remedied.

Clause 142(2) requires the Minister to provide notice in the *Gazette* if the Minister revokes the licence granted to operate a facility under subclause (1).

Clause 142(3) requires the Minister to table a copy of the notice, revoking the licence granted to operate a facility, in the Legislative Assembly within six sitting days after the notice has been published in the *Gazette*.

#### **Clause 143. Requirement to forward records**

Clause 143(1) requires the responsible entity for the facility that is subject to the revocation of the licence to operate the facility under clause 142 to forward all its registers and records prescribed by regulation to the Archives Service. This must be done within nine months of the revocation of the licence.

Clause 143(2) makes it an offence for the responsible entity to contravene the requirement to forward all its prescribed registers and records under subclause (1). This is an offence of strict liability and carries a maximum penalty of 100 penalty units.

### **Division 3 Remedy of contraventions of facility**

#### **Clause 144. Revocation of suspension notice**

Clause 144(1) provides that the Minister may revoke the suspension notice if the Minister determines that the responsible entity for a facility subject to a suspension notice has remedied the contraventions or irregularities specified in the notice.

Clause 144(2) requires the Minister to give notice in the *Gazette* that the Minister has revoked a suspension notice under subclause (1).

### **Part 13 Review by NTCAT**

#### **Clause 145. Review by NTCAT**

Clause 145(1) provides that NTCAT has jurisdiction to review a decision specified in Schedule 1.

Clause 145(2) clarifies that an 'affected person' (for a reviewable decision) is the person who is able to apply to NTCAT for a review of a decision. In other words, an applicant who has standing.

Clause 145(3) clarifies that an affected person may apply to NTCAT for review of the relevant decision.

### **Part 14 Miscellaneous matters**

#### **Clause 146. Disposal of human remains by unauthorised means**

Clause 146 makes it an offence for a person to intentionally dispose of human remains by a disposal process that is not provided for under this Act or another Act. Strict liability applies to whether the disposal process is not provided for under this Act or another Act. This is a summary offence that carries a maximum penalty of 300 penalty units or three years imprisonment.

#### **Clause 147. Vehicle used for transportation of human remains**

Clause 147 makes it an offence for a person to transport human remains in a vehicle, other than in accordance with this provision. If the human remains are not contained in a coffin, receptacle, container or wrapping (that does not allow any bodily discharge, contaminants or infectious substances to escape) or other container or wrapping from which no bodily discharges, contaminants or infectious substances may escape – the person must ensure that the human remains are covered and placed in a part of the vehicle that is physically separate from the part of the vehicle designed for the carriage of the driver and passengers and is capable of being easily cleaned and disinfected. If human remains are not transported in a vehicle in accordance with this provision, this is an offence of strict liability and carries a maximum penalty of 20 penalty units.

Clause 147(3) clarifies that a 'vehicle' includes an aircraft, a motor vehicle and a vessel as defined in the *Marine Act 1981*.

#### **Clause 148. Decision-making powers concerning human remains**

Clause 148(1) clarifies that the executor or administrator of the estate of a deceased person has the power to make any relevant decision under this Act regarding the human remains of that deceased person in accordance with this Act.

Clause 148(2) clarifies that any next of kin of a deceased person has the power to make any decision regarding human remains of that deceased person if there is no executor or administrator of the estate of the deceased person under subclause (1).

Clause 148(3) clarifies that if there is a dispute regarding human remains in accordance with the matters provided under this Act and there is no executor or administrator of the estate of the deceased person, the senior next of kin has the power to decide the outcome of the dispute.

#### **Clause 149. Chief Health Officer may make guidelines**

Clause 149 allows the Chief Health Officer to make guidelines for this Act relating to any public health matter. If the Chief Health Officer makes a guideline, the Agency administering the *Public and Environmental Health Act 2011* must publish the guideline on the Agency's website as soon as practicable after the guideline is made. In practice, the Agency may consult with relevant stakeholders and community members when developing guidelines, as appropriate.

#### **Clause 150. Agency may make guidelines**

Clause 150 allows the Agency administering this Act to make guidelines in relation to any matter under this Act. If the Agency makes a guideline, the Agency must publish the guideline on the Agency's website as soon as practicable after the guideline is made. In practice, the Agency may consult with relevant stakeholders and community members when developing guidelines, as appropriate.

#### **Clause 151. Registers and records must be kept as permanent records**

Clause 151(1) provides that the Regulations may prescribe any register or record that must be kept as a permanent record. A 'permanent record' means that the record must be kept forever and is of permanent value to the Northern Territory.

Clause 151(2) requires the previous responsible entity for a cemetery or facility, if the responsible entity changes, to forward all its registers and records prescribed by regulation to both the Archives Service and the new responsible entity for the cemetery or facility. The previous responsible entity must do this within nine months of the date that the notice of the change of responsible entity was published in the *Gazette*.

Clause 151(3) makes it an offence for the previous responsible entity to contravene the requirement to forward all its prescribed registers and records under subclause (2). This is an offence of strict liability and carries a maximum penalty of 100 penalty units.

Clause 151(5) allows the requirements relating to the keeping of records under this Act to be prescribed by the Regulations.

Clause 151(6) clarifies the meaning of 'permanent record' in this clause as a record of permanent value to the Northern Territory with reference to section 4 of the *Information Act 2002*.

#### **Clause 152. Failure to keep registers or records**

Clause 152 makes it an offence for a person to intentionally engage in conduct that results in a contravention of a requirement on the person to keep a register or record for a cemetery or facility under this Act, and the person is reckless in relation to contravening the requirement to keep that register or record. This offence carries a maximum penalty of 200 penalty units or two years imprisonment.

#### **Clause 153. Misleading information**

Clause 153(1) makes it an offence to intentionally give misleading information to a person acting in an official capacity. The person intentionally giving the misleading information to the other person

acting in an official capacity must have knowledge that the information is misleading and that the person they are giving the misleading information to is acting in an official capacity. This offence carries a maximum penalty of 200 penalty units or two years imprisonment.

Clause 153(2) makes it an offence to intentionally give a misleading document to a person acting in an official capacity. The person intentionally giving the misleading document to the other person acting in an official capacity must have knowledge that the document is misleading and that the person they are giving the misleading document to is acting in an official capacity. This offence carries a maximum penalty of 200 penalty units or two years imprisonment. It is a defence to this offence if the person draws the misleading aspect of the document to the other person's attention and gives the other person the information necessary to remedy the misleading aspect of the document (to the extent to which the person can reasonably do so). The person must do this at the time when the document is given to the other person who is acting in an official capacity.

Clause 153(4) clarifies the meaning of 'acting in an official capacity' and 'misleading information' in relation to the offences contained in this clause. 'Acting in an official capacity' means the person is performing functions under this Act or performing functions related to the administration of this Act. For example, a person may be an inspector appointed under clause 113. 'Misleading information' includes information that is misleading, as well as an omission (removal) of information that would be misleading.

#### **Clause 154. Unauthorised disclosure of confidential information**

Clause 154(1) makes it an offence to disclose information obtained during the course of performing functions connected with the administration of this Act. It is an offence for such a person to intentionally engage in conduct that results in the disclosure of the information and the person is reckless in relation to the disclosure of that information. Strict liability applies to whether the person obtains information in the course of performing functions connected with the administration of this Act. This offence carries a maximum penalty of 200 penalty units or two years imprisonment.

Clause 154(3) sets out the circumstances where this offence does not apply. Specifically, this offence does not apply if the person discloses the information: for the administration of this Act; or with the consent of the person to whom the information relates; or for legal proceedings arising out of the operation of this Act.

Additionally, the offence does not apply if the information is otherwise publicly available. The note for subclause (3) clarifies that a person will not be held criminally responsible for this offence if the disclosure is justified or otherwise excused by or under a law.

#### **Clause 155. Delegations**

Clause 155 provides that the Minister may delegate the Minister's powers and functions under this Act to a public sector employee. In practice, the Minister may consider whether the employee has the training, experience and personal qualities necessary to exercise the function.

#### **Clause 156. Regulations**

Clause 156(1) provides that the Administrator may make regulations under this Act.

Clause 156(2) clarifies, without limiting the scope of subclause (1), that a regulation may provide for the following: other processes for the disposal of human remains; other types of facilities for the disposal of human remains; matters to be included in a cemetery plan; matters to be provided for in a cemetery or facility policy; details to be included in any register in this Act; requirements for a suspended cemetery; the public consultation process for a proposed transformation of a closed cemetery into a public park; provide for an offence against a regulation to be an offence of strict or absolute liability; and matters to be taken into account when making a decision under this Act.

## **Part 15 Repeals and transitional matters**

### **Division 1 Repeals**

#### **Clause 157. Acts repealed**

Clause 157 provides that the Acts specified in Schedule 2 are to be repealed.

### **Division 2 Transitional matters for *Burial and Cremation Act 2019***

Part 15, Division 2 provides for the following transitional matters in relation to the legislation:

- ensuring that a public cemetery declared under the previous Act is taken to be a public cemetery declared under this Act;
- ensuring that a cemetery declared to be closed under the previous Act is taken to be a closed cemetery under this Act;
- ensuring that Alice Springs General Cemetery and Darwin General Cemetery are taken to be semi-closed cemeteries under this Act;
- ensuring that an exclusive right of burial granted under the previous Act is taken to be an exclusive right of burial under this Act;
- providing for all pre-existing exclusive rights of burial to have an expiry of 60 years from the date this Act commences and the ability to be renewed under this Act;
- allowing for all pre-existing exclusive rights of burial to be able to be transferred once within the first 60 years after the commencement of this Act;
- clarifying that private burial grounds established under the previous Act will continue to be called 'private burial grounds' and burials at these locations will occur as burials at a location outside a cemetery after the commencement of this Act;
- clarifying that if a person is in the process of applying for a burial permit under the previous Act, that person's application will be dealt with in accordance with the previous Act;
- ensuring that a crematorium approved under the previous Act is taken to be a facility under this Act and that the person who was approved to erect the crematorium under the previous Act is taken to be the person who holds a licence to operate a facility under this Act; and
- clarifying that if a person is in the process of applying for a cremation permit under the previous Act, that person's application will be dealt with in accordance with the previous Act.

## **Part 16 Consequential and related matters**

### **Division 1 Amendment of *Local Government Act 2008***

Part 16, Division 1 amends the *Local Government Act 2008* and provides for the following changes:

- inserting a definition of 'community cemetery';
- inserting a definition of 'facility';
- inserting a definition of 'public cemetery';
- inserting a definition of 'responsible entity';
- limiting a council's authority to delegation so that a council may only delegate the powers or functions of a responsible entity under this Act to a local government subsidiary;
- adding a function of a local authority to approve a cemetery plan for each public cemetery and community cemetery within the local authority's area;

- limiting a chief executive officer of a council's authority to delegate so that a chief executive officer may only delegate a power or function under this Act to an individual;
- clarifying that a council is the responsible entity for a public cemetery or community cemetery within the council's area;
- ensuring that a council is the responsible entity for a facility if the facility is located in a public cemetery within the council's area; and
- ensuring that if a council is a responsible entity for a cemetery, that the council has the power to make by-laws for the management and control of that cemetery.

## **Division 2 Other laws amended**

Part 16, Division 2 contains a standard clause that amends the laws mentioned in Schedule 3.

## **Division 3 Repeal of Part**

Part 16, Division 3 contains a standard clause that repeals Part 16 (Consequential and related matters) on the day after this Act commences.

## **Schedule 1 Reviewable decisions and affected persons**

Schedule 1 provides a list of what constitutes a reviewable decision and who is considered an affected person in relation to a reviewable decision. Refer to clause 145.

## **Schedule 2 Repealed Acts**

Schedule 2 lists the former Acts that will be repealed on the commencement of this Act. These include the historical listings for the *Cemeteries Act 1952*. Refer to clause 157.

## **Schedule 3 Other laws amended**

Schedule 3 lists the Northern Territory legislation that is to be amended on the commencement of this Act and as a result of repealing the former Acts in Schedule 2. This ensures that any cross-referencing between other legislation and this Act is consistent. Refer to clause 173.