FUNERAL BURIAL AND CREMATION

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Funeral Burial and Cremation Act 2017

TABLE OF AMENDMENTS

The Funeral Burial and Cremation Act 2017 No 27 was certified on 19 December 2017 and commenced on 1 June 2018 (s 2).

Amending Legislation	Certified	Date of Commencement
Births Deaths and Marriages Registration (Amendment) Act 2020 No 14	23 October 2020	23 October 2020
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to regulate funerals, burials and cremations and the operation of cemeteries and other facilities for the disposal of human remains, to repeal the *Cemeteries Act 1922* and for related purposes.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title

This Act may be cited as the *Funeral Burial and Cremation Act 2017*.

2 Commencement

This Act commences on 1 June 2018.

3 Definitions

In this Act:

'Authority' means a person delegated the responsibility for the management of the burial ground or crematorium;

'burial ground' means:

(a) land used or intended to be used for the burial of human remains;
(b) land that was designated under any other written law for the purposes of burial of human remains but has subsequently been no longer used for that purpose; or
(c) for the disposing of ashes by burial after a cremation;

'Committee' means the Funeral, Burial and Cremation Committee established under Section 5;

'cremation' means the reduction of human remains by burning in a dignified manner;

'crematorium' means:

(a) appliances, machinery and furnaces for effecting cremation and includes any building in which such appliances, machinery and furnaces are fixed; or
(b) land for the purposes of constructing a pyre;

'disposal' means burial or cremation of human remains;

'funeral' means a ceremony connected to a burial or cremation of a deceased person;

'human remains' means the remains of a deceased person or stillborn child;

'Minister' means the President of the Republic;

'person in control' has the same meaning as provided for in Section 9;

'pyre' means a pile of wood on which human remains are disposed of as part of a funeral ceremony;

'stillborn child' means that the child, being of at least 7 months' gestation or of a length of at least 14 inches, is not born alive; and

'testamentary instrument' means a will or codicil.

4 Act binds Republic

This Act binds the Republic.

PART 2 — ADMINISTRATION

5 Funeral, Burial and Cremation Committee

A Funeral, Burial and Cremation Committee is established.

6 Membership

(1) The Committee shall consist of the Secretary for Land Management as the Chairperson and representatives from the following:
   (a) Department of Health;
   (b) Department of Justice;
   (c) Department of Finance;
   (d) Nauru Police Force; and
   (e) Registry of Births, Deaths and Marriages.

(2) The Heads of Departments shall nominate to the Chairperson his or her representative in the Committee being:
   (a) an employee of the Department at the commencement of this Act; or
   (b) an employee in January of each successive year or where the nominated employee resigns or transfers from the respective Department.

7 Functions of the Committee

The functions of the Committee are to advise and make recommendations to the Minister on:

(a) applications for burial and cremation, where necessary;
(b) the development and implementation of policies relating to funeral, burial and cremation;
(c) the design and the construction of a crematorium;
(d) developing policies for the designation and use of burial ground and crematorium;
(e) developing policies for the disposal of ashes and other remains after cremation;
(f) the opening of new burial ground or crematorium; and
(g) such other directions given by the Minister.

8 Meetings of the Committee

(1) Meetings of the Committee shall be convened by the Chairperson and in his or her absence, a nominated representative of the Chairperson.

(2) The Chairperson shall keep minutes of meetings of the Committee.

(3) The Committee may establish its own practice and procedure for its meetings.

9 Person in control of funeral, burial or cremation

(1) Subject to subsection (3), control of the disposal of human remains by burial or cremation vest in the following persons in order of priority:
  (a) the spouse of the deceased;
  (b) the adult child of the deceased;
  (c) the parents of the deceased;
  (d) the adult siblings of the deceased; or
  (e) where the deceased is a minor or stillborn child, the parents or guardians.

(2) Where the person at the top of the order of priority in subsection (1) is unavailable or unwilling to give instructions, the right to give instructions passes to the person who is next in the order of priority.

(3) Where a person, prior to his or her death, makes a testamentary instrument providing for the mode of disposal of his or her remains and by any specified person, the instructions contained in the testamentary instrument shall prevail over subsection (1).

10 Prerequisite for burial or cremation

A person in control shall not dispose of any human remains unless:

(a) an appropriate health practitioner has given notice of a certificate of death of the deceased;

(b) the death of the deceased person has been registered by the Registrar of Births, Deaths and Marriages;

(c) where an inquest is to be held into the death, the body is disposed of in accordance with an authority given by the coroner; and

(d) where the deceased died of any infectious or contagious disease, the corpse shall be placed and sealed in a body bag and transferred directly from the hospital or place of death to the burial ground or crematorium.

11 Person to provide information to Registrar of Births, Deaths and Marriages

Where a Funeral Officiator, conducts a burial or in any other way disposes of human remains, he or she shall provide to the Registrar of Births, Deaths and Marriages:

(a) a declaration, signed by at least two reputable persons who witnessed the burial or other disposal, stating that the burial or other disposal, has been duly carried out; and

(b) where the death has not been registered, such information as the Registrar of Births, Deaths and Marriages requires for the purpose of registering the death.

[s 11 am Act 14 of 2020 s 10(a), opn 23 Oct 2020]

12 Disposal of human remains within 24 hours

A person in control shall dispose of the human remains within 24 hours from:

(a) receiving the human remains from the hospital; or

(b) the time of the death, where the death occurs at home and an appropriate health practitioner has certified the death without taking the deceased to the hospital; and
(c) compliance with Section 10(b).

13 Removal of human remains from the Republic

(1) A person in control shall not transport or remove any human remains from the Republic without:
  (a) a certificate of death of the deceased given by an appropriate health practitioner;
  (b) a certificate of death issued by the Registrar of Births, Deaths and Marriages;
  (c) a certificate from an appropriate health practitioner that the human remains is medically preserved and capable of being so transported; and
  (d) complying with such other conditions as may be prescribed.

(2) A person in control shall transport the human remains within 6 hours from receiving the human remains from the hospital.

14 Time for burial and cremation

(1) No burial or cremation shall take place before 7am or after 6pm on any day of the week without the prior approval of the Authority.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $5,000 or to a term of imprisonment not exceeding 12 months or to both.

15 Public burial ground or crematorium

(1) The Minister shall on recommendation of the Committee and in consultation with the Cabinet, designate such place or places for a public burial ground or crematorium.

(2) The Minister in consultation with the Cabinet for public purposes:
   (a) may acquire private property for the purpose of a burial ground or crematorium; and
   (b) any such acquisition shall be for public purposes.

(3) Any land acquired for the purpose of subsection (1), shall be designated as a burial ground or crematorium and vests in the Republic free from all estates, interests, charges, rights, encumbrances or titles whatsoever in trust, to be devoted to the burial or the cremation of human remains.

(4) Any public burial ground or crematorium designated under subsection (1) shall be surveyed, pegged and gazetted.

(5) A public burial ground or crematorium shall not be used for any purpose other than any related purposes of the burial or cremation of human remains.

16 Burial ground for race, faith etc

(1) The Minister in designating public burial ground may designate such areas which shall be reserved for the burial of human remains of a person belonging to a specific community, religion or race.

(2) The conditions for such designation may be prescribed by the Minister.

17 Management of burial ground or crematorium

(1) The Minister may appoint a person, who shall have the management and control of the public burial ground or crematorium and a person so appointed shall be deemed to be the Authority for burial or cremation.

(2) In the management and control of public burial ground or crematorium, a person appointed under subsection (1) shall:
   (a) maintain the burial ground or crematorium, fences or any other structures erected on the boundaries;
   (b) enclose, lay out and embellish the burial ground;
   (c) maintain access to and within the burial ground or crematorium including the construction, repair, maintenance or improvements of a road or path;
   (d) maintain and repair memorials, buildings and other structures in the burial ground or crematorium;
   (e) employ such persons necessary to maintain the burial ground or crematorium;
   (f) ensure the depth at which the human remains may be buried;
   (g) lay out the burial ground including the size of, distance and layers in between the graves; and
   (h) charge fees in respect of such matters, as may be prescribed.

18 Burial or cremation in designated burial ground or crematorium

(1) No person shall bury or cremate any human remains in any place other than in a designated burial ground or crematorium.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $5,000 or to a term of imprisonment not exceeding 12 months or to both.

19 Application to carry out burial or cremation

(1) An application for the burial or cremation of human remains in a burial ground or crematorium shall be made to the Authority in the prescribed form.

(2) A person making the application under subsection (1) shall:
- (a) provide the name, age, address and occupation of the deceased;
- (b) specify the form of disposal of human remains;
- (c) specify place of burial or cremation;
- (d) provide the proposed date and time of burial or cremation;
- (e) provide the details of the Funeral Officiator, who will conduct the funeral service;
- (f) provide a certificate for burial or cremation from the Nauru Police Force or any other authority;
- (g) pay any fees if applicable; and
- (h) provide such other requirements which may be as prescribed.

[subs (2) am Act 14 of 2020 s 10(b), opn 23 Oct 2020]

20 Closure of burial ground or crematorium

(1) The Minister may in consultation with the Cabinet close a burial ground or crematorium.

(2) A closed burial ground or crematorium shall not be sold, leased, disposed of or diverted for other purposes.

21 Reopening of closed burial ground or crematorium

The Minister may, in consultation with the Cabinet, reopen a closed burial ground or crematorium, if he or she is satisfied that the burial ground or crematorium should be reopened.

PART 5 — REGISTER FOR BURIAL AND CREMATION

22 Register

(1) The Authority shall keep and maintain a Register for burial and cremation of human remains.

(2) The Authority shall record in the Register the following:

(a) name, age, address and gender of the deceased;

(b) date of death;

(c) date of burial;

(d) name and address of the Funeral Officiator who conducted the funeral service of the deceased;

(e) person in control; and

(f) such other requirements which may be as prescribed.

[subs (2) am Act 14 of 2020 s 10(c), opn 23 Oct 2020]

(3) The Authority commits an offence and upon conviction is liable to a fine not exceeding $1,000 if, without reasonable excuse, the Authority fails to comply with the requirements of subsections (1) and (2).

(4) A person commits an offence and upon conviction is liable to a fine not exceeding $5,000 or to a term of imprisonment not exceeding 6 months if the person alters the Register without lawful authority.

(5) For the purposes of any court proceeding, an entry in the Register made under this Act and duly certified by the Authority shall be received as sufficient evidence of the matters stated in the entry.

PART 6 — PUBLIC BURIAL GROUND

23 Reservation at burial ground

The Authority may on the application of a person reserve a place of burial in a public burial ground.

24 Place of interment

(1) The place for interment of an adult shall have a:
   (a) depth of 2 metres;
   (b) length of 2 metres; and
   (c) width of 1 metre.

(2) The place for interment of a child under the age of 10 years shall have a:
   (a) depth of 2 metres;
   (b) length of 1.5 metres; and
   (c) width of 1 metre.

25 One corpse per grave

No more than one corpse shall be placed in each grave at any given time except:

(a) in the case of interment of a child under 10 years, provided the upper most coffin is at least 1 meter below the ground surface; or

(b) more than 1 member of the same family may be interred at the same time in 1 grave provided the upper most coffin is at least 1 meter below the ground surface.

26 Space between graves

The space between the graves should be at least 50 centimetres.

27 Covering

A person, who buries a body shall fill or cause to be filled with turf or other material immediately in the grave in which such body is placed and doing so shall allow sufficient turf or other material for the natural subsidence of the earth with which the grave has been filled.

28 Reopening or exhumation

No grave shall be reopened or exhumed without an order of the District Court.

29 Visitation rights

A public burial ground shall be open to the public from sunrise to sunset each day.

30 Tombstone and markings

(1) No tombstone, monument or markings shall be placed on any graves except as may be authorised by the Authority.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $5,000 or to a term of imprisonment not exceeding 12 months or to both.

31 Conduct of person at burial ground

(1) No person shall at any time in a burial ground:
(a) behave indecently or violently;
(b) use violent, abusive or indecent language;
(c) cause any disturbance resulting in the prevention, interruption, or delaying of the decent and solemn disposal of human remains;
(d) disturb or interfere with a person with a bereavement right;
(e) deposit any trash or other waste;
(f) play any games or sports; or
(g) drive a motorised device of any kind on the lawns, gardens or flower beds.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a term of imprisonment not exceeding 2 years.

32 Trespass

(1) A person shall not without the consent in writing of the Authority, enter or remain in the burial ground at any time between sunset and sunrise.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $5,000 or to a term of imprisonment not exceeding 6 months or to both.

33 Animals

(1) No person shall allow his or her domesticated or farm animals to stray into a designated burial ground.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $5,000 or to a term of imprisonment not exceeding 6 months or to both.

34 Power of Police to remove person or to impound animal

(1) A police officer shall have the power to arrest without warrant a person or, to remove a person or to impound any animal from a burial ground.

(2) A person who refuses to comply with the directions of a police officer commits an offence and upon conviction is liable to a fine not exceeding $5,000 or to a term of imprisonment not exceeding 12 months or to both.

35 Interference with human remains in burial ground

(1) No person shall interfere with or offer any indignity to human remains interred in a burial ground.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 5 years or to both.

36 Desecration

(1) A person shall not open, damage, desecrate or destroy a memorial or place of interment of human remains in a burial ground.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 5 years or to both.

37 No burial at sea

(1) A person in control shall not dispose of any human remains by burial at sea without the prior approval of the Minister.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 5 years or to both.

38 Application for burial at sea

(1) An application for burial at sea shall be made to the Authority by a person in control in the prescribed form.

(2) The application may be signed by an executor, where the deceased appointed an executor under his or her testamentary instrument, for the purposes of carrying out his or her funeral.

(3) The application shall be accompanied by a certificate from an appropriate health practitioner certifying that the human remains may be disposed of by way of burial at sea.

39 Approval for burial at sea

(1) The Authority shall submit the application to the Minister for his or her consideration.

(2) Without the prior approval of the Minister, no human remains shall be disposed of by way of burial at sea.

(3) The Minister may approve such application, where the person in control provides sufficient evidence of any connection to the sea that the deceased may have had.

40 Circumstances where burial at sea shall not be allowed

The Minister in considering an application for burial at sea shall decline the application where there is reason to suspect that the death of the deceased was due directly or indirectly to:

(a) violence;
(b) poison;
(c) an infectious or contagious disease;
(d) privation or neglect; or
(e) an illegal operation.

41 Requirements for burial at sea

(1) No burial at sea shall take place:
  (a) any closer than 10 kilometres from the high water mark;
  (b) at a depth of not less than 300 metres;
  (c) in any fishing grounds or near any shipping lanes; and
  (d) without the presence of a police officer.

(2) The person in control shall ensure:

(a) that the human remains is:
  (i) not embalmed;
  (ii) wrapped securely in a natural fibre shroud or sail cloth and not in plastic or non-biodegradable material;
  (iii) not placed in a casket or such other container; and
  (iv) weighted to allow it to sink to the bottom of the sea rapidly and permanently;
(b) that the vessel used to transport the human remains out to sea:
  (i) is sufficient to carry the human remains;
  (ii) can accommodate the people witnessing the burial; and
  (iii) has modern positioning technology to ensure the burial takes place in the appropriate location.

(3) A person who contravenes this Section, commits an offence and upon conviction is liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 12 months or to both.

42 Form of cremation

(1) The cremation of human remains may be carried out in the following manner:
   (a) by a properly constructed pyre to ensure complete disposal of the human remains; or
   (b) in a crematorium.

(2) No petroleum products shall be used to ignite or rejuvenate fire in a pyre.

43 Construction of a crematorium

No crematorium shall be constructed without the prior approval of the Authority of:

(a) a building plan;
(b) the specifications of the equipment to be used for cremation; and
(c) the source of fire.

44 Application for cremation

(1) An application for cremation shall be made to the Authority by a person in control in the prescribed form.

(2) The application may be signed by an executor, where the deceased appointed an executor under his or her testamentary instrument, for the purposes of carrying out his or her funeral.

(3) The application shall be accompanied by a certificate from an appropriate health practitioner certifying that the human remains may be disposed of by way of cremation.

45 Approval for cremation

(1) The Authority shall submit the application to the Minister for his or her consideration.

(2) Without the prior approval of the Minister, no human remains shall be disposed of by way of cremation.

46 Circumstances where cremation shall not be allowed

The Minister in considering an application for cremation shall decline the application where there is reason to suspect that the death of the deceased was due directly or indirectly to:

(a) violence;
(b) poison;
(c) privation or neglect; or
(d) an illegal operation.

47 Cremation in special circumstances

(1) Despite Section 9, a person who died of an infectious or contagious disease shall on the recommendation of a health practitioner be cremated.

(2) The human remains of a person, who died of any infectious or contagious

disease shall be placed and sealed in a body bag and transferred directly from the place of death to the crematorium.

(3) A person in control having been notified of a recommendation made under subsection (1) and who fails to comply with such recommendation, commits an offence and upon conviction is liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 2 years or to both.

48 Ashes

(1) After a cremation, the Authority shall:
   (a) where a pyre is used, authorise the person in control to collect in an approved container the remains of the wood, charcoal and ashes from the place of cremation; or
   (b) where the cremation is at a crematorium, deliver the ashes in an approved container to the person in control.

(2) Where the ashes or other remains are not collected by a person, the Authority may dispose of the ashes or other remains as provided for under Section 49.

49 Disposal of ashes

(1) The ashes and other remains of the cremation shall be disposed of by:
   (a) disposal at sea at least 3 kilometres away from the high water mark and at a depth of at least 100 metres; or
   (b) burying in a depth of not less than 1 metre in a burial ground.

(2) The ashes and other remains shall not be preserved in any form or place by a person.

(3) A person who fails to dispose of the ashes commits an offence and upon conviction is liable to a fine not exceeding $5,000 or to a term of imprisonment not exceeding 12 months or to both.

50 Removal of ashes from the Republic

(1) A person may remove ashes from the Republic with the approval of the Authority.

(2) No ashes shall be removed without:
   (a) the ashes being sealed in a container;
   (b) a certificate from the Authority; and
   (c) clearance from the Quarantine Division.

51 Duty of the attendant

(1) The person in charge of the crematorium at any time of the cremation shall take all reasonable steps to satisfy himself or herself that the human remains presented for cremation are the human remains referred to in the copy of the application and in the approval granted by the Minister.

(2) For the purposes of this Section, the person in charge may require the opening of the coffin or casket and the delivery to him or her of a statutory declaration or other evidence as to the identity of the deceased.

52 Fees for cremation

(1) The Authority may charge such fees as the Authority thinks fit in respect of a cremation and any other services provided by the Authority in relation to cremation.

(2) The Authority shall publish the fees it charges in the Gazette.

PART 9 — PROHIBITION ON HOME BURIAL

53 Prohibition on home burial

(1) No person shall bury any human remains, ashes or other remains from a cremation at their homes.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 12 months or to both.

54 Stillborn child

A stillborn child shall not be buried, cremated or otherwise disposed of unless the person in control of the disposal has obtained:

(a) a written certificate relating to the cause of death signed:
  (i) by an appropriate health practitioner who was present at the birth or who examined the child after birth; or
  (ii) if no appropriate health practitioner was present at the birth or examined the child after birth, by a midwife; or

(b) a statutory declaration made by the person in charge of the disposal to notify the Authority that the child was stillborn, if:
  (i) no appropriate health practitioner or midwife was present at the death; and
  (ii) it is impossible to obtain a certificate required under paragraph (a).

55 Health practitioner's certificate in relation to illness

(1) A health practitioner who attended the person during the illness shall if satisfied that the person's death was a natural consequence of the illness, give a certificate for the death immediately after he or she learns of the death.

(2) An appropriate health practitioner other than the health practitioner who attended to the person during the illness may give a certificate of death, if satisfied that the person's death was a natural consequence of the illness and that:
  (a) the health practitioner who last attended the person during the illness is unavailable;
  (b) less than 12 hours has passed since the death and the health practitioner who last attended the person during the illness is to the knowledge of the hospital unable to give a certificate; or
  (c) 12 hours or more has passed since the death and the health practitioner who last attended the person during the illness has not given a report.

56 Health practitioner's certificate in case of accident or injury

(1) A health practitioner may give a certificate of death of a person even though a death may have been reported to the Nauru Police Force:
  (a) in relation to an accident; or
  (b) where there is suspicion of any crime.

(2) The certificate shall contain the cause of death.

57 Burial or cremation of a destitute person

(1) Where the human remains of a person remains in the mortuary by reason that no claim or request has been made for the burial or cremation of a destitute person, the Authority may bury or cremate such person.

(2) The Authority shall obtain an order of the District Court before the disposal of the unclaimed human remains.

(3) Where a person is known or believed to have belonged to a particular religious denomination, the Authority shall dispose of the human remains in accordance with the religious rites.

58 False or misleading information

(1) A person shall not make a statement that is false or misleading in a material particular,whether by reason of the inclusion or omission of any particular information, provided under this Act.

(2) A person who fails to comply with subsection (1), commits an offence and upon conviction is liable to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years.

59 Delegation

The Minister may delegate any of his or her functions or powers under this Act to another person.

60 Jurisdiction of the court

The District Court shall have jurisdiction to hear and determine all offences under this Act and, shall have power to impose the penalty or punishment in respect of the offences under this Act.

61 Evidentiary presumption

In proceedings for an offence under this Act, a document purporting to be a certificate signed by the Minister certifying a matter relating to a delegation, approval or authorisation under this Act is, in the absence of proof to the contrary, proof of the matters so certified.

62 Regulations

(1) The Cabinet may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to this Act.

(2) Without limiting subsection (1), the regulations may provide for:
   (a) any forms that are required under this Act;
   (b) the fees for any applications or services that are required to be paid under this Act; or
   (c) any other matters.

PART 11 — REPEAL AND SAVINGS

63 Repeal

The *Cemeteries Act 1922* is repealed.

64 Savings

Despite the repeal of the *Cemeteries Act 1922*, all cemeteries specified under that Act remains and for the purposes of this Act, are designated burial grounds.