

Summary of Information Sheet

Draft Burial and Cremation Bill

Community cemeteries

Disclaimer

This information sheet is not legal advice and does not cover all of the requirements proposed under the draft Burial and Cremation Bill. It is intended only as a quick reference for some main provisions. The full Bill should be read for a complete picture.

Functions of a council in relation to a cemetery

Within its resources and budget council should:

- care for and maintain the cemetery
- ensure burials of human remains and exhumations in the cemetery are undertaken in accordance with the legislation
- fund the maintenance of the cemetery
- ensure there is access to equipment to undertake burials and exhumations
- establish and maintain records of burials and exhumations undertaken in the cemetery
- establish and maintain the registers
- establish a cemetery plan
- establish cemetery policies.

In carrying out its functions, council must have regard to:

- the most efficient way of maintaining the cemetery
- if the cemetery serves a particular cultural or religious community – the values of that community
- the heritage value of the cemetery.

Cemetery plan

The cemetery plan must include a diagram/sketch or explanation of the layout of the cemetery which identifies any portion of the cemetery which has a specific use.

Public information

The following information must be available on the council's website:

- the cemetery plan
- general information relating to the cemetery
- details of the application process for obtaining a burial permit
- fees and charges.

Signage at the cemetery

There must be a sign at the cemetery which states:

- the name of the cemetery
- council contact details.

Application for burial permit

An application is a request for permission to bury the deceased and must include one of the following:

- a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act* (This notice is signed by a doctor, certifying that the death was due to natural causes and includes advice that the death has not been referred to a coroner)
- written authorisation from a coroner for the authority to bury the human remains.

It should include the following information, if known:

- full name of the deceased
- gender
- date of birth
- country of birth
- address of residence immediately before death
- date of death
- place of death
- cause of death
- last occupation before death
- marital status.

Council will have a form for people to complete in order to apply for a burial permit. The department will assist council to draft an application form and develop a process which covers requirements for council under the legislation.

Disputes

The executor or administrator of the estate of a deceased person has the power to make any decision under the legislation regarding the remains of the deceased person in accordance with the legislation.

If there is a dispute regarding human remains under the legislation and there is no executor or administrator of the estate of a deceased person, the senior next of kin has the power to decide the outcome of the dispute.

The senior next of kin is the person who is most senior, in the order set out in the legislation. They must be easily contactable and not certified mentally unfit.

It should be noted that the hierarchy only applies if there is a dispute and there is no executor or administrator of the estate of the deceased person.

Generally, the hierarchy is in the following order:

- if the deceased was an Aboriginal or Torres Strait Islander person with strong cultural ties, a person who is appropriate according to their customs and tradition
- spouse/de facto partner (special provisions apply if the deceased was still legally married but in a de facto relationship)
- eldest child over 18
- parent
- eldest sibling over 18
- a person who immediately before death had a relationship with the deceased and in the opinion of the manager is an appropriate person.

Issue of permit

A cemetery manager may issue a burial permit if the required documents are provided. The permit may be subject to any conditions that the manager considers appropriate.

If an application for a burial permit is refused, the manager must give written reasons for the refusal to the applicant.

Register of burials

Council must maintain a register of burials.

The register will include, if known:

- full name of the deceased
- gender
- date of birth
- country of birth
- address of residence immediately before death
- date of death
- place of death
- cause of death
- last occupation before death
- marital status
- the date of burial
- identification of the grave (e.g. grave number)
- the type of burial (e.g. horizontal in coffin)
- the depth to the coffin/shroud
- descriptive details and date of any memorial erected at the grave
- the name of the person who officiated at the burial ceremony (if there was one).

Access to register

The register of burials will be available for inspection (e.g. at the council office) in accordance with council policy.

Council may determine and charge a fee for inspection of the register.

Memorials

The manager may authorise the erection of a memorial (e.g. tombstone) in accordance with council policies.

Depth of burial

Buried human remains must be completely covered by soil that is at least one metre deep. If this is not reasonably possible, there must be a 50 millimetre watertight layer (e.g. concrete) placed directly over the remains and there must be at least 500 millimetres of soil above that.

Fees and charges

Councils may choose to set fees and charges for cemetery services. If council chooses to set fees, those fees must be reasonable.

Transport of human remains

If human remains are transported in a separate compartment from other passengers in a vehicle, the compartment must be capable of being easily cleaned and the body must be covered.

If the remains are in the same compartment as other passengers, (e.g. on an aeroplane), the body must be in a sealed container such as a coffin.

Compliance

The department will establish a program of compliance reviews and will report to council on the results of these reviews. A compliance report might recommend administrative or operational changes.