



Policy behind the Proposed Cemeteries Act

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INTRODUCTION

This paper should be read in conjunction with the paper titled “Outline of a Proposed new Cemeteries Act”. This paper expands on the reasoning behind some of the positions expressed in that paper.

The purpose of the *Cemeteries Act* (the Act) is to regulate the establishment, maintenance and control of cemeteries and to regulate the time, manner and place of burials, cremations and exhumations in the Northern Territory. The Cemeteries Regulations cover administrative matters such as keeping registers, burial times, depth of graves and visiting hours.

The Act can be traced back to a 1952 Commonwealth Ordinance. Amendments to the Act over time have involved the introduction of exhumation provisions in 1999, crematorium provisions in 2000 and provisions to allow burials in closed cemeteries in 2005.

The *Cemeteries Act* has not had a full review since it was enacted in 1979.

A discussion paper (*Cemeteries Act Review Discussion Paper*) was released to the public on 7 December 2012 and submissions closed in March 2013. 18 substantial submissions were received and since then a lot of research has been undertaken regarding various cemetery and other practices across Australia.

A position paper titled “Outline of a Proposed New Cemeteries Act” sets out the fundamental matters that are expected to be included in a new *Cemeteries Act*. That paper will be the basis for further consultation and give people the chance to advise support or objections to the proposed way forward.

In this paper, the word “facility” includes a cemetery and cremation or aquamation facilities and premises.

NO LONGER ALLOWED

BURIALS AT SEA

Context

This question was not specifically asked in the *Cemeteries Act Review Discussion Paper*. However, the Discussion Paper does mention burials at sea in regard to the Act’s relationship with other legislation.

Currently, a burial at sea requires the written consent of the Minister for Local Government under section 21 of the *Cemeteries Act*. A burial at sea also requires a permit obtained under the Commonwealth *Environment Protection (Sea Dumping) Act 1981*. The Commonwealth will generally only grant a permit for burial at sea to funeral homes, to ensure proper handling of the body and preparation for burial. The body must be prepared for burial at sea in accordance with the Ship Captain’s Medical Guide.

Very few burials at sea have been approved in the Northern Territory. The designated burial area is an area known as the ‘North Gutter’, located at 12° 05’S 130° 36’E, that is 357° true 18 miles from Charles Point, as advised by the Harbourmaster, or some 30 nautical miles from Darwin in the Beagle Gulf. This location was selected to ensure sufficient depth of water. The water depth is approximately 60 metres.

The Commonwealth Department of the Environment has recently advised that sea burials that take place at North Gutter are outside the jurisdiction of the *Environment Protection (Sea Dumping) Act 1981* (EPSD Act), as the site is within Territory waters. Therefore, sea burials at this site do not require a Sea Burial Permit under the EPSD Act.

There has been no automatic right to burial at sea. Permits would only be granted to those with a demonstrated connection to the sea, such as long serving Navy personnel.

The Ship Captain's Medical Guide states that the body must not be embalmed or placed in a casket. It may only be sewn into a weighted shroud. The burial must be in water deeper than 2,000 metres (6,600 ft) and not interfere with shipping, fishing or undersea communications. Australian Defence Force vessels engaged in armed conflict or emergency situations are exempt from these requirements.

The depth of North Gutter is inadequate for sea burials. This is evident when the 60m depth at North Gutter is compared with the requirement for a depth greater than 2,000m in the Ship Captain's Medical Guide, and 3,000m required by applications processed by the Commonwealth Department of the Environment. Sea burials should therefore not be permitted at this site. There is no site within Territory waters that meets the required depth for sea burials.

It is proposed that sea burials should no longer be available under the *Cemeteries Act*. This proposal is supported by the Environment Protection Authority.

It is worth noting that this will not totally prohibit sea burials, as NT residents who wish to be buried at sea still have recourse through the *Environment Protection (Sea Dumping) Act 1981* to be buried in Commonwealth waters.

PRIVATE BURIAL GROUNDS

Under the *Cemeteries Act*, a private burial ground is established by the Administrator on crown land. This means that if there is a desire to establish a private burial ground, the land must first of all be surveyed and relinquished to the Crown before the private burial ground can be declared. The Act and regulations do not provide any specific guidance in relation to private burial grounds apart from some provisions that apply to other cemeteries. It does not require that private burial grounds have a Board.

There has only been one private burial ground approved under the *Cemeteries Act*. This is likely because of the complexity and expense of having land surveyed and surrendered to the Crown. Where burials have occurred outside of public cemeteries they have generally occurred via the Ministerial approval available in certain circumstances to have a burial outside of a cemetery.

In light of the lack of demand for private burial grounds, the complexities around the matter and the alternatives that are now available, it is proposed that the concept of private burial grounds not be continued. The one existing private burial ground will, however, remain.

It should be noted that this does not affect any sacred or traditional Aboriginal burial grounds.

CEMETERIES ON CROWN LAND MANAGED BY LOCAL GOVERNMENT COUNCILS

It has been commented that Crown land may not be the most appropriate form of tenure for cemeteries which are managed by local government councils or Boards of Trustees. This is because neither a local government council nor a Board of Trustees are Northern Territory government agencies. It has been suggested that the tenure may be better held as a lease or as freehold tenure with a prescribed property notice. It is intended that the new legislation will allow for these types of tenure.

PLANNING PERMISSION

It is worth noting that there are no definitions for cemetery, crematorium or aquatorium in the NT Planning Scheme. Therefore, unless the legislation is changed, such uses would be undefined and require the consent of the Development Consent Authority. In addition, it should be noted that the NT Planning Scheme specifies that undefined uses in Zones SD, MD, MR and HR are prohibited. As such, a cemetery, crematorium or

aquamator cannot be on an urban residential property, unless it is a heritage place and has the concurrence of the Minister.

There are also no specific performance criteria in the NT Planning Scheme relating to cemeteries, crematoria or aquamators. Applications to establish such facilities would therefore be assessed against section 51 (matters to be taken into account) of the Planning Act, which includes the results of any assessment under the Environmental Assessment Act, among other things.

In circumstances where a cemetery, crematorium or aquamator is proposed on land that is unzoned, planning approval is not required.

CEMETERIES ON ABORIGINAL LAND

It is proposed that two modern categories of cemeteries on Aboriginal land be introduced, namely community cemeteries and homeland cemeteries.

Under section 71 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA), where land is not leased or under licence, Aborigines may use land in accordance with Aboriginal tradition which governs the rights of that Aborigine or group of Aborigines. This arguably allows for the traditional use of sacred burial sites.

Section 74 of ALRA provides that the Act does not affect the application to Aboriginal land of a law of the Northern Territory to the extent that that law is capable of operating concurrently with this Act. It is expected that the proposed laws in this paper concerning cemeteries on Aboriginal land will be able to operate concurrently with ALRA. This is comparable to the way traffic and planning laws can operate on ALRA land.

It is accepted that where the two Acts cannot operate concurrently, ALRA will prevail.

Cemeteries on ALRA land are currently governed by section 6(1A) of the *Cemeteries Act* (NT) which states that: 'the Administrator may, by notice in the Gazette, dedicate to the purpose of a public cemetery, Aboriginal land which has been leased in perpetuity as a nominal rental under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth to the Commonwealth of Australia for the purpose of a public cemetery'.

It is understood, however, that cemeteries exist in regional and remote communities which are not appropriately gazetted under the Act. Many of these cemeteries are being maintained by local government councils. The issue of these cemeteries not being appropriately recognised under the *Cemeteries Act* needs to be addressed in the new legislation.

In remedying this matter, it is understandable that requiring that land, intended or already used for cemeteries, to be leased to the Commonwealth in perpetuity may not be palatable to Land Councils or Land Trusts. The question therefore becomes whether an appropriate solution can be found which satisfies the communities' desire to have cemeteries properly managed, as well as respecting the Land Council and Land Trust's authority over the land.

It should be noted that the focus of these proposals are on cemeteries (as understood in the common sense) on Aboriginal land, rather than traditional Aboriginal burial grounds, sacred sites or burials outside of cemeteries.

After release of the first discussion paper, a further discussion paper concentrating on cemeteries on Aboriginal land was distributed to Land Councils for comment. The paper suggested the introduction of "Community Cemeteries" which could be managed by local government councils in consultation with local authorities.

Informal comments received were supportive of the idea. Suggestions included that cemeteries on Community Living Areas (CLA) should be included as well as Cemeteries on ALRA land and that local authorities in communities should deal with any issues that arise in relation to the community cemetery.

It was also submitted that the question of tenure is less critical than the issue of responsibility for the upkeep and maintenance of a cemetery (whether public or community). It was commented that the Regional Council should still be engaged in the upkeep and maintenance of the cemeteries.

In relation to Mutitjulu, as a community within a National Park, it was noted that burials in a Commonwealth Reserve need to be determined by the Director under Regulation 12.32 of the *Environment Protection and Biodiversity Conservation Regulations* (Cth). This is a special case which will need to be discussed further with the Director of National Parks.

The Jilkminggan Community Aboriginal Corporation (JCAC) also requested to be involved in discussions about cemeteries on Aboriginal land. JCAC advised that they are a community living area association and wish to run their own cemetery rather than have it managed by the local government council. JCAC advised there is currently a cemetery in Jilkminggan which is managed by JCAC. Similarly, the local government council also advised that they look after the same cemetery.

It seems that if a community living area association had the resources and ability to run their cemetery, they could be allowed to do so. The same reasoning could apply to cemeteries on ALRA land in a situation where a land council desired to manage a cemetery. No Land Councils have indicated any desire to manage cemeteries. The concerns around cemetery management are that the cemetery is properly looked after and useable, that proper records are kept and that the finances are in order. The Minister would need to be assured that proper governance arrangements are in place. As such, a cemetery would not be run by a local government council, a new category of cemeteries would be needed. It is suggested that cemeteries managed by CLA associations or a Land Council would be in a new category of "Homeland Cemetery".

As with any cemetery, if it was found that proper governance was not taking place to an extent that environmental health or appropriate record keeping was an issue, the Minister would be able to make rectification orders and, if the problems continued, either suspend or cease the benefits of the cemetery being recognised under the *Cemeteries Act*.

EXHUMATIONS

While the current Act provides that a next of kin may apply for an exhumation, it also allows for the executor of the estate or a "proper person in the circumstances" to apply for an exhumation. The Act does not define who a "proper person in the circumstances" is. Given that applications for exhumations may arise in very varied circumstances, and also that they are quite rare, (there has only been seven applications in the last five years), it seems that each application should be considered according to its particular circumstances.

To reduce red tape, it is suggested that the Chief Executive of the Department of Local Government and Regions is the appropriate approving body for exhumations. It is expected that the Chief Executive would consult as widely as appropriate depending on the circumstances of a request for exhumation. The position paper details the specific matters that should be taken into account when the Chief Executive is considering an application for exhumation.

CEMETERY POLICIES

As far as possible, decisions and policies are to be left with the responsible body. Decision making will be devolved to cut red tape and to pass responsibility, wherever logical, to those responsible for the facility.

Proposed responsibilities and where they sit include:

Minister	Department Chief Executive	Facility Authority
Declaration of Cemeteries	Consent to a burial outside of a cemetery	Issue permits for cremation, aquamation or burial
Appointment of members of a Board of Trustees to a public cemetery outside of a local government area	Appoint inspectors	Receive objections to cremation/aquamation
Approve establishment of Crematorium or aquamation facilities	Approve exhumation	General policies
Suspension of operation of a facility		Setting of fees
Closure of a facility		Permission to organise/provide funeral
		Approval of multiple burials

EXCLUSIVE RIGHTS

Under the *Cemeteries Act*, a person may apply to a Board of Trustees for an exclusive right of burial over one or more allotments in a public cemetery. Exclusive rights of burial are granted in perpetuity and there is no limit on the number of rights granted to a person.

Stakeholder submissions in relation to exclusive rights of burial were received from local government councils, an individual, the Australian Funeral Directors Association (AFDR) and Australasian Cemeteries and Crematoria Association (ACCA) and government departments.

In relation to the number of exclusive rights that can be held by a person, submissions varied from limiting it to one, two, eight or unlimited allotments. It was also suggested that it should be a matter for the discretion of the Board. In other states there are various approaches but in Queensland and Tasmania it is a matter for the council or cemetery manager. Given that there are various considerations which would impact on the feasibility of allowing exclusive rights and to what number in any particular cemetery, it is proposed that the granting of exclusive rights and the conditions upon which an exclusive right may be granted should be in accordance with the policy of the Board or Cemetery Management. Thus, if a cemetery is to offer exclusive rights, there must be a policy about how such rights are to be administered and what conditions will apply. A register of exclusive rights must be maintained.

Responses in relation to the possibility of selling exclusive rights almost unanimously recommended that there should be no profiteering from any transfers. Most submissions recommended either that transfers not be allowed or that they must be approved by the Board. Generally respondents wanted holders of exclusive rights to be able to return them to the Board if they so wished.

The intention is that an exclusive right will not be transferrable but can be returned to the Board. It will be a matter for the Board and its policies how a returned exclusive right is to be treated. While a person holds an exclusive right, they have the right to say whose remains may be interred in the site. Once the holder of an exclusive right has been buried, no further interments will be allowed unless the person was named and notified by the right holder to the Board as a person who could be interred at the site.

All respondents suggested that an exclusive right should be time-limited, with suggested limits ranging from 10 years with an option to renew, to 50 years. In light of this, it is intended that the Board may set the period of

validity according to its policies. For example, the longer the period, the more expensive the right might cost. However, no exclusive right will be allowed to exceed 50 years.

There will be transitional provisions for currently existing exclusive rights. Currently existing exclusive rights will expire in 60 years.

All respondents who answered the question indicated that an exclusive right should be renewable. It is conceivable however, that the Board may not be able to offer a renewal for some reason such as the site no longer being appropriate due to geological or planning considerations. Where the site will continue to be available, on expiry of an exclusive right, the holder is to be offered first option on a fresh exclusive right. Board policy will determine who else may be offered the site if the holder of the right does not renew.

MULTIPLE BURIALS

Every respondent to the discussion paper indicated that it should be up to the Cemetery Board to approve multiple burials.

This would be according to cemetery policy and could not override any exclusive right.

ALLOTMENTS AFTER EXHUMATIONS

All respondents advised that after an exhumation an allotment should be re-allocated and re-used if the exhumed remains are not to be re-buried in the same allotment.

It would be a matter for the Cemetery Board and its policies as to how an allotment is to be used after exhumation.

DEPTH OF GRAVES – PUBLIC AND COMMUNITY CEMETERIES

Responses as to whether graves should have to be an adequate depth to allow an additional burial if required were divided. Only one response rejected this idea. Of the rest of the responses, 50% said it should be left to the discretion of the Board and 50 % stated that all graves should be dug to be an adequate depth to allow an additional burial if required.

This issue relates to conventional horizontal burials and does not take account of “natural”, upright or other kinds of burials that may be approved in future.

In light of the modern preference to economise on the amount of finite land being taken up by cemeteries and taking into account comments received, it seems appropriate to require that, where possible in cemeteries administered by local government councils, graves be initially dug to a depth that will allow at least two burials.

Allocation of graves will be a matter for the Cemetery Board in conjunction with their policies and, in particular, any exclusive rights.

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

Currently under the *Cemeteries Act*, a Board may issue a permit for the burial of the body of a deceased person in the cemetery upon production of a notice of interment, particulars of the coffin and either a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act* duly signed in accordance with that section or a coroner’s certificate.

This process has worked well in the past and should continue. It may need adjustment as to what particular details are required on the notice of interment and the information concerning the intended method of burial may need updating to take into account the new kinds of burials that can be allowed.

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

If the death occurred outside the Territory a certificate of cause of death under the law of the place in relation to the deceased person

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

DEPTH OF BURIAL - PUBLIC, COMMUNITY, HOMELAND AND FREEHOLD CEMETERIES

The current *Cemeteries Act* and Regulations makes no provision for the depths of burials for a single burial. Instead, the Regulations provide the depth of burials where there are multiple burials. The Table below is a comparison of the depths of burial in other Australian jurisdictions.

	Depth of burial
NSW	If buried in a coffin, upper surface must not be less than 900 millimetres below natural surface level of soil
VIC	Bodily remains must not be at a depth of less than one metre from the surface of the ground
QLD	No provision
WA	No provision
SA	For human remains, coffin, container, receptacle: <ul style="list-style-type: none"> • If ground above the place of interment is to be sealed with a substantial layer of stone, concrete or similar material, there must be at least 500 millimetres of earth between the seal and the normal level of ground; and • If no seal, there must be at least 750 millimetres of earth between the coffin, container, receptacle or remains and the normal level of the ground.
TAS	<ul style="list-style-type: none"> • All human remains interred are to be completely covered by ground that is at least one metre deep at its shallowest point. • If above not possible, remains must be completely covered by at least a 50 millimetres thick layer of stone, concrete or similar durable material placed directly over the remains and ground that is at least 500 millimetres deep at its shallowest point.
ACT	No provision

NT	<p>Applies to multiple burials:</p> <ul style="list-style-type: none"> • Upper surface of the coffin nearest to the normal level of ground must be at least 750 millimetres below that level. • If above not practicable, upper surface of the coffin nearest to the level of the ground must be covered with a layer of brick, stone, concrete or other similar material; the sides of the grave above that layer must be lined with brick, stone, concrete or other similar material; and there must be at least 500 millimetres of soil between that layer and the normal level of the ground.
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The depth of burial must be one metre deep similar to Queensland and Tasmania. Where this is not possible, it is proposed that the Tasmanian approach be adopted as it is similar but less onerous than the current requirements in the Territory, yet achieves the same outcome, that remains will not be exposed. This will apply to all burials including multiple burials in all cemeteries and other burial grounds (that is, burials outside a cemetery).

CREMATION AND AQUAMATION PERMITS

Responses to the discussion paper concerning who should approve cremation permits can be categorised into a few basic opinions:

- The current system should be retained.
- Permits should be issued by the coroner.
- An independent medical referee should permit cremations.
- Funeral Directors should issue permits.

In other states there are varying approaches:

WA	Independent medical referee issues permit.
QLD	Independent doctor issues permit.
SA	Registrar of Births, Deaths and Marriages issues permit.
NSW	Independent medical referee issues permit.
VIC	Independent doctor issues permit.
ACT	Crematorium operator issues permit – application must include certificate from medical referee.
TAS	Medical practitioner issues permit.

In all Australian jurisdictions, it is necessary that medical practitioners are involved in either certifying that it is okay to cremate or in actually issuing the permit.

The current situation in the NT is that where the cremator is within a cemetery (such as Thorak cemetery), the Cemetery Board or its delegate may issue a permit providing it has the appropriate documentation which includes:

- (a) a certificate signed by two legally qualified medical practitioners, one of whom has attended the deceased in a professional capacity prior to death, stating that death was due to natural causes;
- (b) a certificate signed by a legally qualified medical practitioner stating that he or she has conducted a post-mortem examination of the body of the deceased and that death was due to natural causes; or
- (c) a certificate signed by a coroner stating that he or she has held an inquest as to the cause of death of the deceased and that no further examination of the body is necessary.

A person who has whether directly or indirectly, an interest ensuing upon the death of a deceased person in the proceeds of a policy of insurance or assurance or in any real or personal property or the income therefrom, whether immediately or in expectancy must not sign any of the certificates mentioned above.

This is fairly consistent with other states. The medical certifications are required but it is the cemetery board (i.e. the owner/operator of the cremation facility) which issues the permit.

Where a cremator is not within a cemetery, the current legislation requires that the Minister issue a cremation permit. This appears inconsistent and onerous given that when a cemetery board is the owner/operator, the board or its delegate can issue the permit.

It is arguable that there is no reason to suppose that a private owner/operator should be categorised differently from a board or its delegate for the purpose of issuing permits. In both circumstances, permits may not be issued without the proper medical authorisation. It is the medical certificates which are crucial.

In light of this, it is proposed that in future, the owner of a crematorium will be able to issue cremation permits, subject to the same conditions and requirements for medical certification that must currently be provided to a board of trustees.

The same rules should apply to authorising aquamations as will apply to cremations.

OBJECTIONS TO CREMATIONS

The discussion paper raised the question of next of kin and whether there should be a hierarchy of next of kin. In the current *Cemeteries Act* the question of next of kin only arises in the context of cremations and exhumations. In relation to cremations, the current situation is that a next of kin may object to a cremation.

After examining all submissions and the legislation in other states, it appears that the best policy includes that the paramount consideration should be the deceased's wishes in their will or an attested declaration. In certain jurisdictions, a cremation is not allowed to go ahead if particular relatives object:

- QLD – spouse, adult child or parent of deceased may object as well as personal representative but cannot object if deceased has written instructions for cremation (section 8 of the *Cremations Act*)
- WA – spouse, de factor partner and next of kin (section 13 of the *Cremation Act*) – “nearest surviving relative” defined as spouse or de facto, son or daughter, parent or brother or sister (Regulation 3 of the *Cremation Regulations*)
- SA – personal representative, parent or child (unless deceased directed cremation in will or other attested document) (section 10(7) of the *Burial and Cremation Act*)

Given that there are various cultural, philosophical and religious attitudes to cremation, it seems appropriate to allow a senior next of kin to object if the deceased made no clear indication of their wishes before death. There will be a hierarchy of the next of kin similar to the hierarchy in the *Coroner's Act*.

Respondents to the discussion paper acknowledged that a definition of next of kin was not always helpful when establishing those with similar authority in relation to Indigenous people. The definition in the *Coroner's Act* caters for this.

The same rules should apply to objecting to aquamations as will apply to objecting to cremations.

Since the Department has been administering cremations applications for a number of years, it has come to attention that deaths overseas fall into a special category. The current legislation requires that before a permit for cremation or burial is issued, a medical practitioner must sign certain documentation. This refers to a medical practitioner who has a right of practice in the Territory or another state of Australia. It is unlikely that a doctor overseas will meet this requirement.

Under the *Coroners Act*, a coroner has jurisdiction to investigate a death even if the cause of death occurred outside the Territory. A reportable death under the *Coroners Act* includes the death of a person, who ordinarily resided in the Territory at the time of death, that occurred at a place outside the Territory, where the cause of death is not certified by a person who, under a law in force in the place, is a legally qualified medical practitioner.

It has been the experience of the Department that overseas documents relating to deaths can be confusing even after translation. Documents which at first appear to be a doctor's death certificate may not in fact be so. Further, it is very difficult to know, in many cases, whether a signatory to a document is or is not a medical practitioner under the law of another country. It may well be that in some countries, the death certificate is not issued by a legally qualified medical practitioner.

As such, the requirement that the death certificate be issued by a legally qualified medical practitioner at the place or country where the deceased died will no longer be required. However, to be consistent with the *Coroners Act*, it is intended that where the death is not a reportable one and where there is a medical certificate certifying the cause of death under a law in force in the place of death, a permit may be issued.

INSPECTORS AND COMPLIANCE

Under the current Act, there is no clear mechanism for ensuring compliance with the legislation. Section 25 of the Act provides that the minister may authorise a person to inspect buildings, equipment and fittings but there is no clear inspection and compliance checking mechanisms.

The current Act is also not sufficiently strong in enabling action to be taken if a facility is not meeting general legal requirements. In particular, there is no provision to ensure appropriate record keeping.

In order to allow for appropriate inspections and response to compliance issues, it is intended to adopt a scheme similar to that found in the *Local Government Act*.

The Chief Executive of the Department will be able to appoint inspectors under the *Cemeteries Act*. Inspectors will have to have identity cards. The functions of an inspector will be to carry out any compliance review requested by the CEO and to investigate any suspected irregularities in the operation of a facility under the *Cemeteries Act*.

Where there are repeated breaches of legislation or material irregularities in the operation or administration of a facility, the Minister will be able to order remedial action and/or suspend operation or use of the facility. The Minister can also put the facility under administration during the time the operations of the facility have been suspended to allow pending burials to continue. If the problems are not remediated, the Minister may close the facility.

The Minister's decision to close a facility would be appealable to the Northern Territory Civil and Administrative Tribunal.

BURIALS OUTSIDE OF A CEMETERY

Some key issues that arose from burials outside of cemeteries are as follows:

- change of ownership and ongoing access to burial sites;
- public health issues, including burial sites near water courses or bores;

- planning and services issues, including burial sites located near underground services or structures (including housing) that require maintenance; and
- the relationship between the *Cemeteries Act* and other relevant legislation including the *Heritage Act*, *Northern Territory Aboriginal Sacred Sites Act* and *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

It is interesting to note the clear division in opinion that arises in the submissions. This division can mostly be delineated by the type of organisation. Those in favour of keeping the legislation largely as is, believe that burials outside a cemetery should remain “exceptional” and at the discretion of the Minister. For the most part, this is the opinion of NT and some local government agencies (Department of Health, Department of Housing, City of Darwin, Alice Springs Town Council) and some relevant organisations (Australian Funerals Directors Association, Genealogical Society of the Northern Territory Inc).

On the other hand, those with the opinion that burials outside a cemetery should take into consideration cultural and traditional circumstances were mostly indigenous organisations (including the Aboriginal Areas Protection Authority). NTG agencies that mentioned spiritual and cultural connections as a principal consideration were the Office of Children and Families and the Arafura and East Arnhem Region Local Government Units.

Finally, it is worth noting that a number of submissions, consisting mostly of local government agencies, took a middle ground approach. These agencies thought that various considerations (mostly relevant to their particular function) should be taken into account, but that burials outside a cemetery should mostly be a restricted practice. These agencies included Katherine Town Council, LGANT, Litchfield Council, Roper Gulf Regional Council and the Department of Lands, Planning and the Environment.

Particular sociological and geographical circumstances exist in the Northern Territory which must be taken into account and balanced against a comparison of legislation in other Australian States and Territories. This comparison must also take into consideration the roles and responsibilities of the NTG and relevant local government councils regarding the administration of the *Cemeteries Act*. With this in mind, a strong argument can be made against restrictive legislative practices which do not allow an individual’s case to be determined by their particular circumstances. This is particularly significant for the regional and remote indigenous population, as well as pastoral and other individuals living in remote parts of the Northern Territory.

It was therefore recommended that:

- Burials outside cemeteries should remain exceptional practices, but that approval should be at the discretion of the appropriate department chief executive through their written approval. This may require further delegation as appropriate.
- Each case should be determined on its individual circumstances, however regulations should set the boundaries of appropriate factors to be taken into consideration including:
 - Location of the burial site;
 - Approval required from landowners or the appropriate cultural authority (i.e. traditional owners);
 - Relevant public health issues;
 - Whether the burial is likely to contaminate groundwater which may be used for drinking or domestic water supplies;
 - Structures/services that may be affected;
 - Remoteness of burial site and distance from nearest public cemetery;
 - Future access to the burial site;
 - Historical and cultural connection to the land; and
 - Existence of previous burials on the proposed site.

- Objections to a request to bury outside a cemetery should be given due consideration
- The same paperwork as any other burial should be required (a notice of interment, particulars of the coffin and either a notice under section 34(1) of the *Births, Deaths and Marriages Registration Act* duly signed in accordance with that section or a coroner's certificate.
- If approved, a burial outside a cemetery should be appropriately recorded (including GPS location and identity of individual) on the title of property.

TRANSPORT OF A DECEASED BODY

There is currently no provision in the *Cemeteries Act* as to how a deceased body may be transported. This question has arisen from time to time. For example, the Department has received enquiries concerning the appropriate transport of bodies from remote areas, particularly by plane. Further, there have been occasions where a relative wanted to collect a body from the morgue and take it directly to a burial site or crematorium.

To give clarity as to how a body must be transported, provisions similar to the South Australian legislation have been proposed in the position paper.

In case further direction is needed in future, the Chief Health Officer will be able to make mandatory guidelines concerning the transport of bodies.