

Summary of Information Sheet

Draft Burial and Cremation Bill

Crematoria

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.

Licence

A person or organisation must have a licence to operate a crematorium.

The licence must be displayed at the offices of the crematorium and available on the organisation website and the Department of Housing and Community Development website.

When the legislation commences, the current crematoria at Darwin Funeral Services and Thorak Regional Cemetery will be taken to be licensed under the legislation.

Functions in relation to crematorium

The functions of a council/organisation are to:

- ensure cremations are performed in accordance with the legislation
- ensure the crematorium has the proper equipment to carry out cremations
- if the crematorium provides a place for interring disposed remains, ensure that the place is maintained and is accessible to the public
- establish policies for the crematorium in accordance with regulations
- establish and maintain records relating to the operation of the crematorium
- establish and maintain a register of cremations.

Manager of the crematorium

If the crematorium is managed by a council, the manager is the CEO of the council or their delegate.

If the crematorium is managed by a person/company, the manager is the person appointed by the owner.

Information to be on organisation website

The following information must be on the website:

- fees and charges
- application process for a cremation permit
- general information including open hours.

Signage

There must be signage which states the name of the crematorium, contact details and opening hours.

Application for cremation

Application can be made by the executor/administrator of the estate, next of kin or another appropriate person.

The application 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 must also include:

- the address and phone number of the applicant
- the relationship of the applicant to the deceased
- confirmation of reasonable attempts to notify the executor/administrator and senior next of kin
- any known objections of the executor/administrator or next of kin.

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.

Cremation permit

Before the crematorium manager issues a permit, they must be satisfied that reasonable steps have been taken by the applicant to notify the executor or administrator and the senior next of kin of the application.

Register of cremations

A register must be maintained and must 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

It must also include:

- date of cremation
- name of person who conducted the cremation
- if the ashes are interred at the council/organisation, the place of interment, date and details of any memorial.

Inspection of register

The register of cremations must be available for inspection by the public (for example at the crematorium office) in accordance with council/organisation policy.

A council/organisation may determine and charge a fee for inspection of the registers.

Objections to cremation

The executor/administrator or any next of kin may object to the cremation, in writing, to the crematorium manager. The objection must include the relationship of the person to the deceased and the reason for the objection. The manager may take any objection into account before issuing a cremation permit.

Interstate and overseas deaths

If a person dies in another Australian state or territory, a document that satisfies the medical certification requirements concerning death in that state or territory may be used in the application for a burial permit.

If the death occurred outside Australia, the medical certification requirements are one of the following:

- 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 issued under section 34(1) of the *Births, Deaths and Marriages Registration Act*, stating the cause of death
- a certificate issued by a coroner or a person or entity equivalent to a coroner in the place where the death occurred.

It is important that the crematorium manager understands the documents provided and a translation should be obtained if they are not in English.

If none of the above are available, then the following documents are acceptable:

- a certificate of cause of death issued by a medical practitioner after a post mortem has been performed
- a certificate from an Australian coroner stating that no further examination of the human remains is necessary and that there is no reason not to dispose of the human remains in a lawful manner.

Disputes

The executor or administrator of the estate of a deceased person has the power to make any decision under the legislation regarding human 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 who is 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 person or Torres Strait Islander with strong cultural ties, a person who is appropriate according to their custom 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.

Surrender of licence

An organisation can surrender a crematorium licence (for example if the crematorium closes).

If a licence is surrendered, records must be forwarded to Territory Archives within six months.

Prohibition of cremation

The following people may prohibit a burial, if they believe on reasonable grounds that it is appropriate to do so, by giving a written notice to the crematorium manager:

- Coroner
- Director of Public Prosecutions
- Solicitor for the Northern Territory
- a justice of the peace
- a police officer
- an inspector.

Transport of human remains

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

If the transport is in the same compartment as other passengers, (for example on an aeroplane) the body must be in a sealed container such as a coffin.

Memorials

It is a matter for the council/organisation whether, what kind and on what conditions, memorials are allowed at the crematorium.

The council/organisation should have application and permit forms for approving the erection of memorials. The crematorium manager may grant the permit with conditions. The department will help the manager to draft a permit form which covers requirements of the legislation.

If a memorial becomes unsafe (likely to cause physical danger to a person) the council/organisation may, in writing, ask the person who applied to erect the memorial, to repair or remove it within a reasonable period. If the person does not carry out the work by the date given in writing, the council/organisation can carry out the work and recover the cost from the person.

The council can also carry out work to make a memorial safe if it is an urgent matter.

If a memorial becomes unsafe due to actions of the council/organisation, the council/organisation must repair it and may not recover costs.