

## Summary of Information Sheet

# Draft Burial and Cremation Bill

### Public 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 on the council's/cemetery's website:

- cemetery plan
- general information relating to the cemetery including the public opening hours of the cemetery
- application processes for a burial permit or an exclusive right of burial
- fees and charges.

## Opening hours

A cemetery must be open to the public at least 8 hours each day.

## Signage at the cemetery

There must be a sign at the cemetery which states:

- the name of the cemetery
- council contact details.

## Types of burial

Council could have a policy about the types of burial allowed in the cemetery. At a minimum, horizontal burials (whether in a coffin or shroud) will be permitted.

Examples of other types of burial which might be offered include upright burials, natural (in a green space/under a tree) burials and burial in a mausoleum.

## 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.

If a person dies interstate or overseas, the legislation makes provision for the required documents.

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

The cemetery manager must not refuse to issue a permit if the application complies with the requirements and the applicable fee has been paid (council determines fees and charges). 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 to the applicant.

## Multiple burials

A council may allow multiple burials, that is, 2 or more burials in the same grave.

## Register of burials

Council must maintain a register of burials.

The register 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
- 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 of any memorial erected at the grave
- the date of erection any memorial
- the name of the person who officiated at the burial ceremony (if there was one)
- date of permission for any exhumation
- date of any exhumation
- place of relocation after exhumation.

## **Application for exclusive right of burial**

Council does not have to provide for exclusive rights of burial.

The following applies if a council provides for exclusive rights of burial:

- an exclusive right of burial entitles an individual to bury any human remains in a specific grave in a cemetery, subject to any conditions of the approval
- an exclusive right of burial cannot be granted to more than one individual
- an exclusive right of burial expires after 50 years or any shorter period specified in the grant.

Note - exclusive rights of burial are not transferrable.

Before a person is granted an exclusive right of burial, the cemetery manager must ensure that the applicant is aware of the refund policy.

The grant of an exclusive right of burial could include information about the council refund policy and also that the holder must advise council of any change in contact details. It could also include information about the right of renewal of the exclusive right of burial.

A person who holds an exclusive right of burial may bury human remains, provided they have a permit.

Council must keep a register of all exclusive rights of burials.

## Access to registers

The following information must be available for inspection by the public (for example at the cemetery or council office) in accordance with council policy:

- Register of burials
- Register of exclusive right of burial.

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

## Memorials

The manager may authorise the erection of a memorial (e.g. tombstone) in accordance with council policies. It is a matter for council whether, what kind and on what conditions memorials are allowed.

If a memorial becomes unsafe (likely to cause physical danger to a person) the council 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 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, the council must repair it and may not recover costs.

## Depths of graves

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.

## Exhumations

Permission from the CEO of the Department of Housing and Community Development is required for exhumations. This does not apply when human remains are removed for the purpose of deepening the grave to allow for another burial, and those remains are immediately returned into the grave.

Any exhumation guidelines issued by the Chief Health Officer must be followed.

## Fees and charges

Councils may choose to set fees and charges for cemetery services.

## 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, (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 the council on the results.

If the department suspects an irregularity in the management or control of a cemetery, it may direct an inspector to conduct an investigation.

The minister can issue an enforcement order to require the council to comply with the legislation. If council does not comply, the minister may consider semi-closing or closing the cemetery.

The minister can revoke semi-closure and closure orders if the contraventions of the Act have been remedied.