

Policy & Guidelines

Burials on the Aboriginal Lands Trust Estate

Introduction

Burials in the State of Western Australia are governed by the *Cemeteries Act 1986*, which is administered by the Department of Local Government, Sport and Cultural Industries (DLGSC). The *Cemeteries Act 1986* effectively provides that a person cannot be buried in a place other than a proclaimed cemetery.

However, the Minister for Local Government (or his/her delegate) has the power to authorise a burial in a place other than a proclaimed cemetery where:

1. The burial is to take place on land that is reserved under the *Land Administration Act 1997* for the purpose of burials but is not a cemetery; or
2. The Minister is satisfied that the burial is to take place in an area that is visibly set apart for, and distinguishable as, a burial place

The Minister for Local Government can exercise his discretion in exceptional circumstances (see DLGSC under "Advice and Support" *Burials outside a Proclaimed Cemetery Policy*).

Aboriginal Lands Trust

The Aboriginal Lands Trust (ALT) is a significant landholder with responsibility for approximately 24 million hectares or 10 per cent of the State's land mass. This land comprises different tenures including, reserves, leases and freehold properties. A significant proportion of this land comprises reserves that have Management Orders with the ALT (generally having the power to lease), with their purposes mostly being for "the use and benefit of Aboriginal inhabitants".

The ALT is constituted under section 20 of the *Aboriginal Affairs Planning Authority Act 1972* (the AAPA Act). Its functions are set out in section 23 of the Act. These include:

1. To acquire and hold land and to use and manage that land for the benefit of persons of Aboriginal descent.
2. To ensure that the use and management of the land held by the ALT, or for which the ALT is in any manner responsible, shall accord with the wishes of the Aboriginal inhabitants of the area so far as that can be ascertained and is practicable.
3. To consult, negotiate, enter into financial arrangements, contract, and to undertake or administer projects, either directly or in association with other persons or bodies, as may be necessary or desirable for the development of the land for which the ALT is responsible.
4. Generally, on behalf of and as the corporate entity representing the interests of the Aboriginal inhabitants of the area to which the matter relates, to take, instigate or support any action that may be required to ensure the most beneficial use of the land.

Aboriginal Burial Practices

While most Western Australians are buried in proclaimed cemeteries, the diverse cultural practices of the Aboriginal community may result in burials occurring outside of proclaimed cemeteries.

It is also appreciated that many people may not be aware of the need to gain approval before proceeding with a burial outside of a proclaimed cemetery. In addition, it is recognised that Aboriginal burials occur in remote areas and that cultural obligations may preclude widespread knowledge of the burial event and location.

In most large communities, particularly on ALT land, burials occur in specific and easily identifiable areas which are regarded as "community cemeteries". However, these areas may not be proclaimed public cemeteries under the *Cemeteries Act 1986*. It is this part of the *Cemeteries Act 1986* which is most likely to have application for burials occurring on ALT land.

Approval Process

It is important to note that while the approval of the Minister for Local Government (or his/her delegate) is necessary to undertake a burial outside of a proclaimed cemetery under the *Cemeteries Act 1986*, other approvals may also be required. According to the DLGSC *Burials outside a Proclaimed Cemetery Policy*, the applicant requires written consent of all the parties with claim over the land.

The DLGSC Burials outside a Proclaimed Cemetery Policy states that 'Written consent of all of the parties with claim over the land. If the land is privately owned, this is by the landholders. In the case of Indigenous burials on Aboriginal Lands Trust estate, this will be by the local Indigenous bodies/corporations with responsibility for the management of the land. If there are multiple Indigenous bodies or corporations with interest in or ownership of the land, it is important to gain consent from all parties involved to ensure that the burial has community support.'

Where DLGSC requests the ALT board provide consent as the landholder for a burial to occur on ALT land, the following principles will be taken into consideration:

1. Where the ALT is required to give its consent as a landholder over land that is unleased and Native Title has been determined then the ALT will defer to the Native Title Prescribed Body Corporate (PBC) for consent. In this instance, applicants should seek the views of the relevant PBC before coming to the ALT for consent. In these circumstances the ALT will not grant its consent unless it receives written confirmation from the relevant PBC.
2. Where the ALT is required to give its consent as a landholder over land that is leased and Native Title has been determined then the applicants will need to seek the views of the leaseholder/s and the relevant PBC before seeking the consent of the ALT. In these circumstances the ALT will not grant its consent unless it receives written confirmation from the leaseholder/s and the relevant PBC.

3. Where the ALT is required to give its consent as a landholder over land that is leased and Native Title has not been determined, then the applicants will need to seek the leaseholder/s views prior to seeking the ALT's consent.
4. Where the ALT is required to give its consent as a landholder and the land is neither leased to an Aboriginal corporation nor has Native Title been determined, then the ALT will be guided by the views of the Aboriginal inhabitants of the land where the burial is proposed to take place.

The ALT will work with DLGSC, PBCs, Aboriginal Land and Sea Councils and community councils to ensure that the approvals process for burials outside of a proclaimed cemetery is clearly understood and practiced.

The ALT and the DLGSC will also make an effort to progressively record the location of burials to ensure future protection.

Further information on the *Burials on the Aboriginal Lands Trust Estate Policy* can be obtained from the Department of Planning, Lands and Heritage (DPLH) via telephone or email on 08 6551 8000 or alt@daa.wa.gov.au.

Please note this policy does not apply to the repatriation of ancestral remains. DPLH coordinates the return and reburial of full, partial or fragment sets of Aboriginal ancestral remains under the Ancestral Remains Repatriation Strategy. Further information can be obtained via telephone on 08 6551 8000.