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| Applications for interment approval other than in a public cemetery |
| Guidelines |
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# Background

The *Cemeteries and Crematoria Act 2003* (the Act) provides that burial outside public cemeteries is prohibited in Victoria except with the prior written approval of the Secretary to the department (the Secretary). This provision has been drafted to ensure that human remains are interred legally, appropriately and with dignity and that these remains can be traced and identified regardless of whether they are interred in a private or public cemetery. Under s. 114 of the Act it is an offence to bury a body in a place other than a public cemetery without this approval. This offence may attract a penalty of up to $60,000 or five years imprisonment, or both.

# Are burials in religious or indigenous burial grounds allowed?

Under s. 121 of the Act the approval of the Secretary is required for burials in existing religious or indigenous burial grounds, as these are not public cemeteries. Applications for burial in a religious or indigenous cemetery must be made on the prescribed form ‘Application for interment approval for interment other than in a public cemetery’ and comply with these requirements for burials on private property. This application form must be completed in full and the exact location of the grave must be provided. Please note that approval must be granted prior to burial.

If approval is granted, s. 126 of the Act requires that the Secretary lodge a notice of approval for burial outside a public cemetery with the Victorian Registrar of Titles. These burial approvals are then registered on the folio to which the land title relates so that people who search the title for that property are aware that there is a burial and can identify its location.

# Are burials on private property allowed?

Under s. 121 of the Act the approval of the Secretary is required for burials on private property. Generally, such applications are not approved. There are a number of reasons why the department has adopted this position. A Parliamentary Joint Select Committee recommended in 1987 that burials not be permitted on private property due to:

* no one having responsibility for the creation and preservation of an adequate burial record
* no one being responsible for ongoing maintenance of the grave
* there being no guarantee that ownership of land will not change hands in the future, and that the land will not be used in a way which compromises the integrity of any grave
* difficulties in ensuring compliance with appropriate legislation regarding burials.

This is why the law requires the approval of the Secretary for burials in places other than public cemeteries, and why approval will ordinarily be provided only in the special circumstances outlined in this document. Public cemeteries are administered by cemetery trusts appointed by the Governor in Council to manage and maintain cemeteries on behalf of the Victorian government and the community. This framework ensures that the historical significance of cemeteries and burial records is preserved, and that burials comply with the appropriate legislation.

# When would an approval be granted for burial outside a public cemetery?

Normally permission for burial of a body outside a public cemetery will only be considered if there are pre-existing burials on that land. This means that if there is a record of another person or persons having already been buried on the land, and the relevant grave or graves are clearly marked and identifiable, the Secretary will consider granting an interment approval.

On the rare occasion when permission for burial of a person on private land has been granted in the past, the burial has been made in an established, defined and properly maintained burial site that contains:

* physical evidence of pre-existing burials such as headstones and fencing
* documented records of other burials that have taken place
* an on-going tradition of such burials.

Section 124 of the Act specifies that the Secretary may grant approval subject to conditions. These conditions might include consideration of:

* the size and zoning of the land
* the depth of the interment
* the standards of construction for any memorial or monument to be erected on the burial site
* what arrangements exist for the care of the proposed burial site
* the connection of the deceased to the land
* the proposed location of the new grave in relation to existing grave(s)
* the condition of the ground.

# Are there any other options?

While approval is required for the burial of bodily remains outside a public cemetery, there is no impediment to the burial of cremated remains on private property. If you decide to cremate a loved one, it is important to discuss the details and requirements with your funeral director and your local crematoria.

# I still want to make an application for burial outside a public cemetery, what should I do?

If you have considered the above information and requirements and wish to apply for approval for interment outside a public cemetery you will need to complete the prescribed application form available on the department’s website.

The completed application form must be accompanied by a notice under s. 37(2) of the *Births, Deaths and Marriages Registration Act 1996* (e.g. Medical Certificate of Cause of Death) or an order made by a coroner under s. 47 of the *Coroners Act 2008*, and documents relating to consent of the land owner/manager where required.

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