

Aboriginal Lands Trust
Policy & Guideline Series

For further information contact:

Land Branch
Department of Indigenous Affairs
Telephone: (08) 9235 8000

or

Executive Officer
Aboriginal Lands Trust
Telephone: (08) 9235 8000

Policy Burials on the ALT Estate



PO Box 7770 Cloisters Square Perth WA 6850
Ph: (08) 9235 8000 Fax: (08) 9235 8088
Website: www.dia.wa.gov.au



Department of
Indigenous Affairs



DEPARTMENT OF INDIGENOUS AFFAIRS

Policy

Burials on the ALT Estate

Aboriginal Lands Trust WA

Introduction

Burials in Western Australia are authorised through the Cemeteries Act 1986, which is administered by the Department of Local Government and Regional Development. The Act provides that a dead body is not to be buried in any place other than a public cemetery.

However, the Minister for Local Government (or his/her delegate) may authorise the burial of a dead body in a place other than a public 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 Cemeteries Act also permits the Minister for Local Government to delegate his/her power to authorise burials on land not proclaimed as a cemetery. *It is this part of the Act which is most likely to have application for burials occurring on ALT land.*

ALT Land

The ALT owns or controls 27 million hectares of land in Western Australia on behalf of Aboriginal people. This includes land held in the name of the Aboriginal Affairs Planning Authority (AAPA) which is managed by the ALT.

The ALT estate comprises reserves (set apart for the use and benefit of Indigenous people), pastoral leases, general leases (formerly known as special leases) and freehold.

Indigenous Burials

While most Western Australians are buried in public cemeteries, the diverse cultural practices of the Indigenous community usually result in burials occurring outside of public cemeteries, sometimes without the consent of the Minister for Local Government. 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 public cemetery.

In addition, it is recognised that Indigenous 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 are not likely to be proclaimed public cemeteries under the Cemeteries Act 1986.

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 public cemetery under the Cemeteries Act 1986, other approvals may also be required, including the consent of the landowner or any other party with an interest in the land. Evidence of these approvals should be provided to the Minister (or his/her delegate) when seeking permission to conduct a burial outside of a proclaimed cemetery. However, the Minister has sometimes granted his/her consent "subject to the approval of the landowner".

There is no need for local Indigenous incorporated bodies/corporations to seek the approval of the ALT for burials to occur on ALT/AAPA land. However, where burials occur on ALT land, and the ALT board is asked to make a decision, it will take into consideration the following principles:

1. Responsibility for authorising burials within easily recognisable community cemeteries should rest with local Indigenous incorporated bodies/corporations under delegated authority from the Minister for Local Government
2. Responsibility for authorising burials outside of recognised community cemeteries should rest with local Indigenous incorporated bodies/corporations under delegation from the Minister for Local Government, subject to statutory and cultural obligations being met
3. Where a dispute arises over the burial of an Indigenous person on ALT land, individuals, families and communities are encouraged to come to agreement with the recognised Traditional Owners of the land. In the absence of agreement, the ALT board will be strongly guided by the Traditional Owners and the cultural laws and practices observed in the region.

Future Intentions

As resources permit, it is the intention of the ALT and the Department of Indigenous Affairs to identify the number and location of community cemeteries on ALT land and to incorporate such areas wherever possible into community layout plans. In addition, the ALT will work with the Department of Local Government and Regional Development and local Indigenous incorporated bodies/corporations to ensure that administrative processes associated with the management of community cemeteries are known, understood and practiced.

In relation to burials occurring on ALT land, but outside of community cemeteries, efforts will be made to progressively record the location of these sites to ensure future protection.