

Exclusive rights of burial policy

Policy No. 8862.100.E.R

1 Purpose

The purpose of this policy is to outline how exclusive rights of burial are administered in City of Darwin managed cemeteries in accordance with the *Burial and Cremation Act 2022 NT* (the Act).

2 Scope

This policy applies to land declared as a cemetery by the Minister under Section 16(1) of the Act and controlled by the City of Darwin. The three cemeteries controlled by the City of Darwin are:

- Darwin General Cemetery
- Gardens Cemetery
- Palmerston (Pioneer) Cemetery.

3 Policy statement

3.1 Applying for an exclusive right of burial

A grantee with an exclusive right of burial holds the burial rights to an allocated plot in a City of Darwin managed cemetery. These include the right to:

- bury human remains in accordance with the terms and conditions for the exclusive right of burial for the allocated burial site
- appoint a personal representative to the exclusive right of burial once the grantee is deceased
- specify persons whose human remains are to be buried at the burial site
- stipulate conditions for the exercise of the exclusive right of burial.

To be granted an exclusive right of burial, the grantee needs to fill out an application form and pay the full fee for the exclusive right of burial.

An exclusive right of burial cannot commence until it has been approved by the cemetery manager. Upon approval, the grantee will receive a certificate of grant of exclusive right of burial.

An exclusive right of burial can be granted within 12 months following a burial or interment.

Exclusive rights of burial granted under the repealed Cemeteries Act 1952 are valid under the Act.

3.2 Register

When the City of Darwin grants exclusive rights of burial the information must be maintained within a register of all certificates granted for an exclusive right of burial. The register must include:

- the full name, address and contact details of the grantee
- details of the burial location for each exclusive right of burial
- information recorded on the certificate of grant of exclusive right of burial
- an expiry date for each exclusive right of burial granted
- the full contact details of the grantee's personal representatives, if applicable.

The register must not be accessible to the public.

3.3 Transfer and surrender

An exclusive right of burial granted under the Act is not transferable to another person.

An exclusive right of burial that has not expired and was granted under the repealed Cemeteries Act 1952 can be transferred once within 60 years of the commencement of the Act. Details and conditions of the transfer must be in accordance with regulation 18(2) of the repealed Cemeteries Regulations 1967.

Changes made to the exclusive right of burial must be recorded in the certificate granted for the exclusive right of burial and the cemetery register of exclusive rights of burial.

A grantee of an unexercised right of burial can surrender the right to the manager of the cemetery for which the right was granted.

After the surrender of an exclusive right of burial, a cemetery manager may:

- grant a new exclusive right of burial for the burial site
- approve the burial of human remains at the burial site
- use the area for a different purpose other than burying human remains.

3.4 Refunds

Upon surrender of the right, a refund can be issued for an unexercised exclusive right of burial.

3.1 Renewal of exclusive rights of burial

An exclusive right of burial can be renewed more than once for an additional maximum period not exceeding 50 years.

An application to renew an exclusive right of burial can be made by:

- the grantee
- the representative of the exclusive right of burial
- the decision maker for the grantee.

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A grantee, representative of an exclusive right of burial or decision maker should be notified about the impending expiry of the exclusive right of burial. The notification should be done by the cemetery manager between 12 months and 28 days before the expiry of the exclusive right of burial.

If an exclusive right of burial is renewed for an additional period, the applicant will need to:

- fill out a form to renew the exclusive right of burial
- pay the appropriate renewal fee.

Late applications may be accepted, but no later than 28 days after the expiration date of the exclusive right of burial.

3.2 Refused renewals

Under exceptional circumstances, the cemetery manager may refuse to renew an exclusive right of burial.

If the cemetery manager refuses to renew an exclusive right of burial, a written notice of refusal must be issued to the grantee.

If a right has not been renewed and no human remains are buried in the burial site, the exclusive right of burial is forfeited to the cemetery manager who may do any of the following:

- grant a new exclusive right of burial
- give a burial approval for the burial of human remains
- use the area for a different purpose other than burying human remains.

3.3 Fees and charges

Fees for an exclusive right of burial are outlined in City of Darwin's annual Fees and Charges available on City of Darwin's website. Any fees related to the purchase and issue of the certificate must be paid at the time of application.

3.4 Certificate of grant of exclusive right of burial

A grantee must be issued with a certificate upon approval of an application for the exclusive right of burial. The certificate must clearly have the following information:

- name of the responsible entity and granters names
- name and location of the burial site
- full name of the grantee
- date the right was issued
- duration period of the exclusive right of burial
- any conditions set out by the cemetery manager on the grant of the right
- full names of the personal representative for the grantee
- names of person/s specified to be buried at the site

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- additional terms and conditions specified by the grantee for the exercise of the right.

A certificate can be duplicated on the condition that the original certificate is lost, misappropriated, or destroyed. Duplicating a certificate may have an associated cost.

3.5 Amending certificate

The grantee issued with the certificate is entitled to amend information under the exclusive right of burial. If the grantee amends information, the cemetery manager must:

- update the certificate of the grant with the amended information
- re-issue the certificate of the grant to the grantee with the original duration of the right or the new duration of the right if the exclusive right of burial is renewed.

3.6 Complaints

All complaints received concerning the operations and administration of this policy are to be managed in accordance with City of Darwin's complaints policies and/or procedural documents.

4 Definitions

A **decision maker** for a deceased person means:

- a) the executor or administrator of the estate of the deceased person; or
- b) if there is no executor or administrator of the estate of the deceased person – the senior next of kin (see definition below);
- c) in any other case – the Public Trustee.

A **senior next of kin** for a deceased person is the most senior person in the following hierarchy:

- a) if the deceased person is an Aboriginal or Torres Strait Islander person with strong cultural and traditional ties to a community or group – a person who is appropriate to perform that role from their community or group
- b) a spouse
- c) a de facto partner
- d) a child over 18 years of age – from eldest to youngest
- e) a parent
- f) a sibling over 18 years of age – from eldest to youngest
- g) a person who, immediately before the death of the deceased person, had a relationship with the deceased person – for example, a grandparent or a friend.

Burial means the following:

- a) natural burial in the ground without a shroud or funerary box

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- b) burial in the ground in a shroud
- c) burial in the ground in a funerary box
- d) interment in a structure
- e) any other funerary practice for burial or interment.

Burial fee means a fee charged for the following:

- a) use of a burial plot
- b) digging of a grave
- c) any other fee for a service required to undertake a burial.

Cemetery means an area of land declared to be a cemetery by the Minister under section 16(1) of the Act.

Cemetery manager is the Chief Executive Officer (CEO) of the responsible entity for the cemetery or the CEO's delegate.

Cemetery plan means a plan required for a cemetery under section 24(1) of the Act.

Certificate of grant of exclusive right of burial means a certificate issued to a grantee under section 52 of the Act.

Grantee means the individual to whom an exclusive right of burial is granted under the Act.

Human remains means the body, or part of a body, of a deceased person, but does not include a body, or part of a body that is cremated or undergoes any other process of disposal prescribed by the *Burial and Cremation Regulations 2022*.

Responsible entity (for a public or independent cemetery) is an organisation, such as a local government council or a corporation that is responsible for the management of a public or independent cemetery in accordance with section 22 of the Act.

5 Legislative references

Burial and Cremation Act 2022 (NT)

Burial and Cremation Regulations 2022 (NT)

Cemeteries Act 1952 (NT)

Cemeteries Regulations 1967 (NT)

Work Health & Safety (National Uniform Legislation) Act 2011 (NT)

6 Procedures / related documents

City of Darwin Municipal Plan

2118296 Complaints Handling and Review of Decisions

Darwin General Cemetery Plan

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7 Responsibility / application

This policy will be reviewed every four years, or as required.

The Executive Manager Operations is responsible for implementation and review of this policy. All City of Darwin workplace participants are responsible for adhering to this policy.

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