

Operational policy

SLM/2013/402
Formerly PUX/901/653
Version 4.02
11 October 2021

Burials on lands administered under the *Land Act 1994*

Purpose

To provide advice relating to requests for burials on land administered under the *Land Act 1994* (Land Act) other than recognised burial places.

Rationale

Although there may be no specific Queensland legislation that precludes burials on land outside of a recognised burial place, a local government may have a local law allowing burials on private land.

Land administered under the Land Act must generally be used for the purpose for which the land was granted or dedicated. This land is generally unsuitable for a burial site, with the exception of trust land allocated for cemetery purposes.

Burials on unallocated state land is inappropriate as the state has yet to make a decision about the most appropriate use of the land.

Burials on rural leasehold land may be supported after the department has considered whether a burial:

- requires approvals under other legislation
- would be appropriate for the land
- would compromise the present and future use of the land

In addition to any land use issues, other issues for consideration could include whether a burial outside of a recognised burial place would result in:

- access to the grave site being restricted or denied in the future, particularly as a lease or occupation licence may be later sold
- the grave site being damaged, or no longer being able to be identified (located) due to stock grazing/pastoral activities, exposure to the elements, erosion or someone's action, inadvertent or otherwise

These issues are less likely to apply to a burial in a cemetery, while approval for a burial on land administered under the Land Act may lead to future distress for relatives or friends. Burials are more appropriate in recognised burial places, consequently they are generally not supported on state land.

Policy

Native Title

The impact on any native title rights and interests and cultural heritage issues needs to be considered.

Lease, particularly rural lease of occupational licence

The department will only consider a request for a burial on a lease or occupation licence where there is evidence of existing grave sites on the lease or licence and:

1. the person requesting the burial is able to demonstrate to the satisfaction of the department:
 - a. why the burial in a recognised burial place is not appropriate; and
 - b. that the person proposed to be buried on the lease or licence had expressed a wish to be buried on the land; and
 - c. that person had a significant historical association to the land for example:
 - i. the person had a direct and continuous association to the land for at least three generations; and
 - ii. had resided on the land for at least 30 years as a lessee/licensee or employee; or
 - d. that person had a particularly significant traditional or cultural association to the land and the land is a demonstrated traditional burial place; and
2. subject to the following specific considerations for:
 - a. An existing grave site: For a burial request where it is proposed to re-open an existing grave site to accommodate a further burial on a lease or occupation licence, prior to any approval, considerations (as appropriate to the circumstances) will include the following:
 - i. whether further burials are appropriate for the lease or occupation licence;
 - ii. the likelihood of access to the grave site being restricted or denied to family or friends at a future date;
 - iii. that the grave site is clearly identified;
 - iv. the arrangements for maintaining the grave site;
 - v. the site will be able to be easily located in the future;
 - vi. that the grave site is not likely to be damaged e.g. due to stock grazing/pastoral activities, exposure to the elements, erosion or someone's action; and
 - vii. that all necessary consents/approvals are obtained, including that of
 - (1) the nearest living relative to the deceased;
 - (2) the nearest living relative of the deceased whose remains have been previously interred in the grave;
 - (3) the registered lessee or licensee of the land containing the grave; and
 - (4) the relevant local government.
 - b. A site in close proximity to an existing grave site: Where a burial is proposed in close proximity to an existing grave site, the same requirements as outlined above will apply, (except for the nearest living relative of the deceased whose remains have been previously interred in the grave).
 - c. A new site removed from an existing grave site: Where a burial is proposed for another site removed from an existing grave site, in addition to considerations similar to the above, the

person requesting the burial will also need to demonstrate why a new site is appropriate. It is mentioned though that any new site will not generally be supported, for the reasons as outlined in the Rationale.

- d. Future burials: If any burial is approved, the approval will be on the condition that such approval does not imply that permission will be given for a future burial on the lease or occupation licence.

A request for a burial on state land where there is no evidence of any existing grave site will not be supported.

The approval of the department is not required for a burial at sea, however the consent of any local government and the relevant state and/or commonwealth authorities which control the waters where the burial is to take place must be obtained.

Legislation

Land Act 1994

Native Title Act 1993 (Cth)

Related documents

[Policy - Cemeteries Exhumation \(SLM/2013/433 = PUX/901/227\)](#)

Human Rights

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

Approval

Position	Name	Effective Date
Executive Director, Operations Support	Mandy Downes	9 May 2018

Version history

Version	Date	Comments
2	24/12/1997	Endorsed
2.1	04/07/2005	Conversion Project – New WORD/XML Template
3	13/12/2007	Updated to reflect Land Act amendments Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
4	11/08/2015	Remove reference to Director, State Land Asset Management
4.01	08/05/2018	Update to new format and name change to DNRME

Further information

- Contact your nearest business centre (https://www.resources.qld.gov.au/?contact=state_land), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

This publication has been compiled by Land Operations Support of Lands Policy and Support, Department of Resources.

© State of Queensland, 2021

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 4.0 International (CC BY 4.0) licence.



Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms. You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

Note: Some content in this publication may have different licence terms as indicated.

For more information on this licence, visit <https://creativecommons.org/licenses/by/4.0/>.

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein. The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.

Interpreter statement:



The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding this document, you can contact us within Australia on 13QGOV (13 74 68) and we will arrange an interpreter to effectively communicate the report to you.