

Guidance on Burying a Body on Private Land - Public Health Regulation 2012

Summary This document provides guidance to officers within Public Health Units on the conditions on which bodies may be buried on privately owned land.

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Applies to Local Health Districts, Environmental Health Officers of Local Councils, Ministry of Health, Public Health Units

Distributed to Public Health System, Environmental Health Officers of Local Councils, NSW Ambulance Service, Ministry of Health, Public Health Units

Audience Public Health Unit Director or authorised officer; Administration; Environmental Health Officers

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GUIDANCE ON BURYING A BODY ON PRIVATE LAND – PUBLIC HEALTH REGULATION 2012

PURPOSE

This document provides guidance to local authorities in their role as the approval authority under the *Public Health Regulation 2012* and explains the conditions under which approvals may be granted for burials on private land to those wishing to bury the dead on private land and to Public Health Unit's of Local Health Districts involved in the process.

KEY PRINCIPLES

Clause 66 (1) (c) of the *Public Health Regulation 2012* provides that "A person must not place a body in any grave or vault unless that grave or vault is located on private land where the area of landholding is 5 hectares or more and the location has been approved for that purpose by the local authority. Clause 66(2) states "A person must not bury a body in or on any land if to do so would make likely the contamination of a drinking water supply or a domestic water supply."

USE OF THE GUIDELINE

For burials on private land other than a private cemetery, the following requirements need to be met:

- The total landholding must be equal to or exceed five hectares
- Bodies must be buried at a minimum depth of 900 millimetres
- Bodies must be placed in a coffin prior to burial
- A geotechnical investigation may be considered if there is any likelihood of the contamination of ground waters and/or surface waters.

The Guideline also contains, as an attachment, a list of further considerations for local government authorities under other relevant legislation for the burial of a body on private land.

REVISION HISTORY

| Version | Approved by | Amendment notes |
|-----------------------------|--|--|
| December 2013 GL2013_016 | Deputy Director General, Population and Public Health | A revised guideline to reflect legislative changes under the <i>Public Health Regulation 2012</i> and the title of the document has been changed from 'Burials on Private Land – Approval by Local Authority' to 'Guidance on Burying a Body on Private Land - <i>Public Health Regulation 2012</i> '. The Guideline contains an Appendix outlining local government legislative requirements. |
| June 2006 GL2006_008 | Director-General | The first guideline for Local Council Officers, Public Health Unit Officers outlining requirements to be met when burying a body on private land |

ATTACHMENTS

1. Guidance on burying a body on private land – *Public Health Regulation 2012*:
Guideline

**Guidance on Burying a Body on Private Land – Public
Health Regulation 2012**



Issue date: December 2013

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1 BACKGROUND

This Guideline aims to provide guidance to:

- Public Health Unit authorised officers
- Local authorities in their role as the approval authority under the *Public Health Regulation 2012*, of locations to bury bodies on private land not being a public or a private cemetery
- Those wishing to bury the dead on private land.

1.1 Public Health Regulation 2012

Clause 66(1)(c) of the *Public Health Regulation 2012* (the Regulation) provides that "A person must not place a body in any grave or vault unless that grave or vault is located on private land where the area of landholding is 5 hectares or more and the location has been approved for that purpose by the local authority."

Further, clause 66(2) states "A person must not bury a body in or on any land if to do so would make likely the contamination of a drinking water supply or a domestic water supply."

1.2 General

It should be noted that the local authority is not approving of each instance of burial; rather it is approving of the burial location.

2 LEGISLATIVE EXPLANATIONS

Both the applicant (when preparing and submitting an application) and the local authority (local council) in determining an approval for a location for burial of a body on private land, should note the following requirements under the Regulation.

2.1 Landholding

The total landholding must be equal to or exceed five hectares.

This is a requirement of the Regulation and cannot be reduced. Burial on smaller landholdings cannot occur.

2.2 Geotechnical Report

A geotechnical investigation may be considered if there is any likelihood of contamination of ground waters and/or surface waters. It will also determine the suitability of the location in regard to the depth of soil, and the water table.

Clause 66 (2) of the Regulation prohibits burial where it is likely to contaminate a drinking or domestic water supply. A drinking water supply means a water supply which is, or could be, used for internal ingestion or consumption, food preparation or ablutions (showering, cleaning of teeth, etc). A domestic water supply means a water supply used for domestic purposes (apart from drinking) such as clothes washing and toilet flushing. A geotechnical report can give an indication of ground water movement and water tables, even in dry times. Further, an indication of the soil depth and underlying substrate will enable both the proponent and the council to be aware of problems, such as rock outcrops or rock floaters that may be encountered in digging a grave to a suitable depth.

2.3 Burial of bodies

Bodies must be buried at a minimum depth of 900 millimetres

Under Clause 64 of the Regulation a person who buries a body contained in a coffin must place the coffin so that its upper surface is not less than 900 millimetres below the natural surface level of the soil where it is buried.

2.4 Bodies to be placed in coffins

Bodies must be placed in coffin prior to burial.

Under Clause 63 of the Regulation bodies must be placed in a coffin and the lid of the coffin must be securely sealed. Approvals may be granted upon application to the Director General, Ministry of Health for exemptions under this clause of the regulation.

3 LOCAL GOVERNMENT AUTHORITY CONSIDERATIONS

In approving of a request to bury a body on private land local councils need to consider legislation outside of the Public Health Regulation, including the *Environmental Planning and Assessment Act 1979*.

Attachment 1 provides guidance to local councils on other issues that they may wish to consider relevant to the exercise of their powers under the *Public Health Act 2010*

4 LIST OF ATTACHMENTS

Attachment 1: Other Local Government Authority Considerations

Attachment 1: Other Local Government Authority Considerations

- **Planning Approval:** Internal Council approval should consider whether it is appropriate to include referral to the Council's Environmental Health section for related health comments and conditions of a planning approval under Section 149, *Environmental Planning and Assessment Act 1979*.
- **Concurrence:** The concurrence of adjoining property owners may be necessary in some instances.
- **Access:** Consideration as to whether public access to the area should be maintained, by direct access, or alternatively, by a right of way / easement, to take into account future access needs, such as if the property is sold or if the remains are to be exhumed or other interments made.
- **Fencing:** The area should be suitably fenced to delineate the boundaries of the location and secure the location.
- **Building Restriction:** A restriction on the immediate use of the area adjacent to the private burial ground should be considered, if warranted, to prevent building or disturbances of the grave sites.
- **Records:** Consideration should be given to whether the burial location site should be described and drawn by a registered land surveyor together with details of the location of the deceased buried in respective sites and a copy should be forwarded to the local authority for placement on the property file.
- **Register:** It is recommended that Council maintains a register of private burial locations.
- **Grave Markings:** It is recommended that each grave should be permanently marked with details of the deceased and the boundaries of the grave excavation should also be permanently marked.
- **Burial Chamber:** The provision of an above ground burial chamber should not be encouraged unless additional security precautions are taken.