Exhumation of Human Remains

**Summary**  This document provides the policy to be observed by NSW Health in receipt of an application to seek permission for approval of the exhumation of human remains under clauses 69-72 of the Public Health Regulation 2012. This Policy Directive will provide the conditions on which approvals may be granted for exhumation of human remains.

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**Audience**  Authorised officers from Public Health Units and local councils
EXHUMATION OF HUMAN REMAINS

PURPOSE
This document provides the policy to be observed by Public Health Units located in Local Health Districts, on receipt of an application to seek permission for approval of the exhumation of human remains under the Public Health Regulation 2012. Common reasons for exhuming bodies include to repatriate the remains overseas or to relocate the body to another cemetery plot or vault.

MANDATORY REQUIREMENTS
Under Clause 69 of the Public Health Regulation 2012 a person must not exhume a body unless the exhumation of the remains has been approved by the Director-General.

An application for approval to exhume the remains of the body of a dead person may be made to the Director General by:

- An executor of the estate of the dead person
- The nearest surviving relative of the dead person
- If there is no such executor or relative available to make the application a person who, in the opinion of the Director-General, is a proper person may make the application.

An application is to be made in the approved form and it is to be accompanied by:

- A certified copy of the death certificate relating to the dead person
- A statutory declaration as to the relationship of the applicant to the dead person and the dead persons wishes, if any, regarding the disposal of his or her body
- An application fee.

Under Clause 71 of the Public Health Regulation 2012 the Director-General may:

- Grant an approval to exhume the remains of a body
- Refuse the application.

Under Clause 72, an exhumation cannot take place without an authorised officer or a Ministry of Health staff member present. A person must not proceed with an exhumation if the authorised officer or Ministry of Health staff member who is present at the exhumation, orders the exhumation to stop.

Under Clause 78, if the applicant seeks to have the exhumed body cremated a separate application can be made for an exemption from providing the required cremation documentation, provided the body has been buried for longer than 10 years. The minimum 10 year period is strictly enforced. An application under this clause is to be accompanied by a fee of $100.

IMPLEMENTATION
Authorised officers in Public Health Units of Local Health Districts are responsible for assessing applications for exhumation of human remains and either approving with a set of conditions or rejecting the application. Authorised officers should ensure that all of the required document has been submitted with the application fee and that an appropriate person has applied for the application. The approval granted is valid for a period of three months after the approval is granted.
REVISION HISTORY

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<th>Approved by</th>
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<td>December 2013</td>
<td>Deputy Director-General, Population and Public Health</td>
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1 BACKGROUND

1.1 Introduction

Exhumation of human remains may occur for a number of reasons, including:

- To satisfy family wishes, where the family of the deceased person may want the remains to be moved to another burial ground, to another part of the state or country or abroad, or even to have the remains cremated
- To obey Coronal orders requiring exhumation for forensic (criminal) investigation
- To enable the use of closed cemeteries for redevelopment or for the construction of new infrastructure such as a road or airport.

A variety of people, including authorised officers, cemetery authorities, and funeral directors are involved at different stages of exhumation procedures. Public Health Units (PHUs) of Local Health Districts (LHDs) in NSW facilitate the approval for an exhumation however there is no obligation to proceed with an exhumation once it has been approved.

The objectives of this document are:

- To assist authorised officers with processing applications to exhume
- To standardise the management of an exhumation so as to prevent a public health risk and protect community amenity in the handling of remains.

1.2 Key definitions

These definitions are repeated from the Public Health Act 2010 and Public Health Regulation 2012 for clarity:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Body</td>
<td>Means the body of a dead person, but does not include the cremated remains of the person</td>
</tr>
<tr>
<td>Burial</td>
<td>Includes putting the body in a vault</td>
</tr>
<tr>
<td>Cemetery Authority</td>
<td>Means the person or body that directs the operations of a cemetery</td>
</tr>
<tr>
<td>Coroner</td>
<td>Means a person who exercises or performs the functions of a coroner in accordance with the Coroners Act 2009</td>
</tr>
<tr>
<td>Dead person</td>
<td>Includes a still-born child (see definition of Still birth)</td>
</tr>
<tr>
<td>Exhumation</td>
<td>Means the removal of a dead person’s remains (not being cremated remains) from a grave or vault, but does not include their removal from one vault for immediate transfer to another vault in the same cemetery or their temporary removal for the purposes of reburial in the same grave or vault</td>
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**Funeral director**
Means a person (other than the operator of a mortuary transport service) who, in the conduct of the person’s business, engages, for the purpose of burial, cremation or transport, in the collection, transport, storage, preparation or embalming of bodies or engages in the conduct of exhumations.

**Prescribed infectious diseases**
Means any one of the following diseases: avian influenza in humans, diphtheria; plague, respiratory anthrax; smallpox; severe acute respiratory syndrome, tuberculosis and any viral haemorrhagic fever (including Lassa, Marburg, Ebola, and Congo-Crimean fevers).

**Proper person**
The Director General has the power to decide whether a person is a ‘proper person’ to make an application to exhume the remains of a dead person.

**Nearest surviving relative**
Means:
(a) In relation to a still-born child a parent, or sibling at or above the age of 16 years, of the child
(b) In relation to a dead person who is not a still-born child – the spouse or de facto partner of the dead person immediately before death, a parent of the dead person, a child at or above the age of 16 years of the dead person or any relative of the dead person who was residing with the dead person when he or she died.

**Still-birth**
Consistent with the *Births, Deaths & Marriages Act 1995*, means the birth of a child that exhibits no sign of respiration or heartbeat, or other sign of life, after birth and that:
(a) Is of at least 20 weeks’ gestation
(b) If it cannot be reliably established whether the period of gestation is more or less than 20 weeks, has a body mass of at least 400 grams at birth.

### 1.3 Legal and legislative framework

**Public Health Regulation 2012**

Division 4 of Part 8 of the Public Health Regulation 2012 provides specific regulation for the exhumation of bodies.

*Clause 69 Exhumation without approval prohibited*

(1) A person must not exhume the remains of a body unless the exhumation of those remains has been:

(a) Ordered by a coroner

(b) Approved by the Director-General.
(2) However, a funeral director may, without a coroner’s order or Director-General’s approval, transfer a coffin from a vault in a cemetery to a mortuary for the purpose of the coffin being immediately repaired and returned to the vault.

(3) A funeral director must return the coffin to the cemetery within 24 hours of its transfer.

Clause 70 Application to exhume remains

(1) An application for approval to exhume the remains of the body of a dead person may be made to the Director-General by:

(a) An executor of the estate of the dead person

(b) The nearest surviving relative of the dead person

(c) If there is no such executor or relative available to make the application a person who, in the opinion of the Director-General, is a proper person in all the circumstances may make the application.

(2) An application is to be made in the approved form and is to be accompanied by:

(a) A certified copy of the death certificate relating to the dead person

(b) A statutory declaration as to the relationship of the applicant to the dead person and the dead person’s wishes, if any, regarding the disposal of his or her body (so far as any such wishes are known to the applicant)

(c) An application fee (please check with the PHU for the current fee).

(3) In this clause, death certificate means a certificate given by a medical practitioner as to the cause of death or issued under the Births, Deaths and Marriages Registration Act 1995.

All applications to exhume remains must be made in writing using an approved form to the Director of the local Public Health Unit that acts on behalf of the Director-General of the NSW Ministry of Health. The application fee may increase periodically in line with the Consumer Price Index.

Clause 71 Approval to exhume remains

(1) The Director-General may:

(a) Grant an approval to exhume the remains of a body, subject to any conditions specified in the approval

(b) Refuse the application.

(2) An approval granted under this clause remains valid for three months from the date of the approval or for a period agreed to by the Director-General.

The PHU is not bound to approve the application. The PHU may approve, subject to conditions, or refuse the application. An approval is normally given for 3 calendar months and this date will be specified in a schedule of conditions attached to the approval document. Any further extension of time may require re-application and re-approval. An approval initially for longer than three calendar months should be negotiated with the PHU.
Clause 72 Exhumation not to take place without authorised officer present

(1) A person must not proceed with an exhumation unless an authorised officer or a member of staff of the Ministry of Health is present at the exhumation.

(2) A person must not proceed with an exhumation if the authorised officer or Ministry staff member who is present at the exhumation orders the exhumation to stop.

The grave may be excavated to the lid of the coffin but nothing must be disturbed until the arrival of the authorised officer. An authorised officer must be present at the exhumation to ensure that the correct interment is opened, to ensure that all of the remains are exhumed and to enforce the protection of public health should this be necessary. The authorised officer has the power to order that the exhumation be stopped immediately under adverse circumstances. An example of where this may occur is where the weather is very poor with heavy rain. The initial order to stop is to be given verbally and then confirmed in writing to all parties involved, within 24 hours.

Division 5 of Part 8 of the Public Health Regulation 2012 provides for cremation of deceased persons.

Clause 78 No cremation without documentation

Clause 78 does not apply to a cremation of the body of a dead person that has been buried for at least 10 years if the cremation is carried out in accordance with an exemption granted by the Director-General following an application by:

1) An executor of the estate of the dead person
2) The nearest surviving relative of the dead person
3) If there is no such executor or relative available to make the application a person who, in the opinion of the Director-General, is a proper person in all the circumstances to make the application.

This is a new addition to the Exhumation section of the Regulation that may be used where a person makes a separate application to have the exhumed body cremated following the exhumation.

Note: The Director-General’s authority under Clause 78 (4) of the Public Health Regulation 2012 (Delegations Manual page 8.66, delegation (PH590)) is the power to decide whether a person is a “proper person” to make an application in the absence of an executor or surviving relative.

Work Health and Safety Act 2011


**Heritage Act 1977**

The *Heritage Act 1977* and Guidelines for the Management of Human Skeletal Remains under the *Heritage Act 1977* applies to relic burials. Any burial site over 50 years old is considered to be relic under the *Heritage Act*. If the site is listed on the State Heritage Register then approval is required from the Heritage Council of NSW.

An application must be made to the Heritage Office before any disturbance, removal or work commences on the site. Approval for an exhumation under the Public Health Regulation 2012 does not obviate the necessity to obtain approval under the *Heritage Act 1977*. For further information contact the Heritage Office of NSW or visit: [http://www.heritage.nsw.gov.au](http://www.heritage.nsw.gov.au).

**Coroner’s Act 2009**

A coroner may order an exhumation for the purposes of forensic investigation or a criminal investigation. Such an order is outside the ambit of the Public Health Regulation 2012. The Police may request that an authorised officer from the Ministry of Health or the local Public Health Unit be present at the coronial exhumation.

**Births, Deaths and Marriages Registration Act 1995**

Section 41(2) of the *Births, Deaths and Marriages Registration Act 1995* requires that if human remains (other than cremated remains) are removed from NSW, the funeral director or other person who arranges for the removal of the remains from NSW must, within 28 days of disposal of the remains outside NSW, give the Registrar notice of the new location of interment. The act is available at: [http://www.austlii.edu.au/au/legis/nsw/consol_act/bdamra1995383/](http://www.austlii.edu.au/au/legis/nsw/consol_act/bdamra1995383/) The Registry of Births, Deaths and Marriages may be contacted via: [http://www.bdm.nsw.gov.au](http://www.bdm.nsw.gov.au).

## 2 APPLICATION REQUIREMENTS

An application for permission to exhume the remains of a deceased person is to be made to the PHU on the approved form which is contained at the NSW Ministry of Health website at [http://www.health.nsw.gov.au/environment/dotd/Documents/form-c70-application-to-exhume.pdf](http://www.health.nsw.gov.au/environment/dotd/Documents/form-c70-application-to-exhume.pdf)

The application must be made by either:

- An executor of the estate of the deceased
- The nearest surviving relative
• If there is no such executor or relative available to make the application a person who, in the opinion of the Director-General, is a proper person in all the circumstances to make the application.

The application must be accompanied by:

• A certified copy of the death certificate (death certificate issued by the Registry of Births, Deaths and Marriages)
• A statutory declaration that states:
  • The relationship between the applicant and the deceased or the reason the applicant is the proper person to make the application
  • If the deceased left any instructions regarding the disposal of their body/remains if known
  • In addition to the above an applicant should declare that he or she has consulted each nearest surviving relative and that they have no objection to the proposed exhumation
  • An application fee (please check with the PHU for the current fee).

Note: If there is no agreement amongst nearest surviving relatives, the applicant should seek independent legal advice regarding this issue. The applicant should advise if there is an intention to cremate the body following the body being exhumed, and the appropriate form completed.

3 APPROVAL BY PUBLIC HEALTH UNITS

Approval by PHUs for an exhumation must be given by formal correspondence.

3.1 Delegation

The Director-General’s authority under clauses 69(1), 70(1)(c) and 71 of the Public Health Regulation 2012 has been delegated to the Chief Health Officer, Director Health Protection, Public Health Officer or Public Health Unit Director as appointed under Section 121 of the Act (delegation PH/308, PH309).

3.2 Special Considerations on Exhumation Approval

Special consideration should be given to the approval of an exhumation if the deceased was infected with a prescribed infectious disease. For example if the deceased was infected with diphtheria or tuberculosis, exhumation should not permitted in the first year of interment.

Although not prohibited, an exhumation of the remains of a body that was buried without a coffin will be approved only where the cemetery authority and funeral director have agreed to proceed with the exhumation, especially during the first three years of interment.
3.3 Conditions of Approval

After due consideration of the application and the statutory declaration(s), the PHU should then consider applying appropriate conditions to facilitate an approval. There are two standard sets of approval conditions which can be applied as appropriate:

- Appendix 2 – Schedule A - Conditions of Approval for Exhumation from a Grave
- Appendix 3 – Schedule B - Conditions of Approval for Exhumation from an Above Ground Structure

Any other additional conditions that are deemed necessary to permit the exhumation may be added to schedule A or B based on the individual circumstances of the exhumation. If some conditions are unwarranted they may be removed from the relevant schedule.

3.4 Approval Instrument

An approval must be in writing and must be signed the Director General or their delegate. A template to assist in the approval process can be found at Appendix 4. This template is to be completed by the Authorised Officer in order to facilitate approval by the delegate.

3.5 Notification of Approval

The approval instrument is retained on file as a record that approval was granted by the Director General or their delegate. Therefore it is necessary to advise the applicant, the cemetery authority and the funeral director of the approval. The attached letter templates may be used for approval notification of the exhumation to the applicant, funeral director and Cemetery Authority.

- Appendix 5 – Sample Letter to Applicant
- Appendix 6 – Sample Letter to the Cemetery Authority and Funeral Director

3.6 Refusals

If after due consideration the application is to be refused then the applicant should be notified in writing specifying the reasons for refusal. Ideally the applicant should consult the PHU in the first instance to discuss the requirements and possible restrictions on an application to exhume.

3.7 Cremation of Remains

Division 5 of Part 8 of the Public Health Regulation 2012 sets out the requirements for documentation for cremations in NSW and includes the requirement for a cremation application form, a cremation certificate and the cremation permit. The documentation confirms the identity of the body to be cremated and the cause of death and ensures that a coroner’s investigation has been conducted where necessary.

After the body is exhumed the next of kin may wish to have the body cremated. However there may be cases whereby the body does not have the required paperwork necessary for cremation. Clause 78 of the Public Health Regulation 2012 provides an exemption for
the required documentation for cremation where the body has been buried for longer than 10 years. An application under this clause is to be accompanied by a fee.

The Director General has the power to approve an exemption and the executor or the nearest surviving relative or another proper person may make application on form 'Application for Exemption by the Director – General to the Requirement for Documentation for Cremation to Proceed: Permission for Cremation of Exhumed Remains of a Body Buried more than 10 years ago with statutory declaration'. The minimum 10 year period will be strictly enforced and this matter should be clarified prior to any exhumation approval where it is planned for the remains to be subsequently cremated. The application form is available at: http://www.health.nsw.gov.au/environment/dotd/Documents/form-c78-application-for-exemption.pdf
**APPENDIX 1**

Schedule A

**CONDITIONS OF APPROVAL FOR EXHUMATION FROM GRAVE**

1. The exhumation is to be carried out in the presence of a Public Health Unit's authorised officer or other authorised officer of the NSW Ministry of Health or Local Council authorised Officer and person appointed by Cemetery Authority.

2. At least 48 hours notice of the exhumation arrangements shall be given to the Public Health Unit.

3. Day and time of the exhumation shall be arranged by the participating parties and agreed to by the Public Health Unit.

4. The approval granted is valid for a period of three months and shall lapse on ___ /___/_____, unless a further approval is granted.

5. The presence of any relative of the deceased at the exhumation is strictly prohibited.

6. No animals are to be permitted within the exhumation site.

7. The cemetery authority and funeral director shall be responsible for the work health and safety of all persons involved in the exhumation and shall ensure that all NSW WorkCover requirements are complied with.

8. If, during the course of the exhumation, it is determined necessary to stop the exhumation by either the exhumation supervisor / cemetery manager or authorised Officer, for any valid reason e.g. work health and / or public health risk, then the exhumation must cease.

9. The remains of the deceased shall be enclosed in a body bag and placed into a new coffin with a name plate attached inscribed with the name of the deceased.

10. The remains of the original coffin are to be placed in the new coffin where possible. Where there is an excess of remains of the original coffin, these remains should be disposed in a sanitary and agreed manner.

11. Excavated soil should be back filled. The soil that was removed from immediately above and around the coffin should be replaced first.

12. If the exhumed remains are to be transferred to another cemetery, a funeral director shall be contracted to transfer the remains from the cemetery grounds or carry out preparatory work for the safe reinterment of the remains.

13. The exhumation will not proceed during or following a period of heavy rainfall within the preceding 24 hours of the appointed time of exhumation. The cemetery manager is to confirm that satisfactory conditions exist for the exhumation to proceed two hours prior to the commencement of the exhumation.

14. Used disposable protective equipment and materials are to be placed in a sealed plastic bag and disposed of in a sanitary manner.
APPENDIX 2

Schedule B

CONDITIONS OF APPROVAL FOR EXHUMATION FROM ABOVE GROUND STRUCTURE

1. The exhumation is to be carried out in presence of a Public Health Unit authorised officer or other authorised officer of the NSW Ministry of Health or Local Council authorised Officer and person appointed by Cemetery Authority.

2. At least 48 hours notice of the exhumation arrangements shall be given to the Public Health Unit.

3. Date and time of the exhumation shall be arranged by the participating parties and agreed to by the Public Health Unit.

4. An approval granted is valid for a period of three months and shall lapse on ____/____/____, unless a further approval is granted.

5. The cemetery authority and funeral director shall be responsible for the work health and safety of all persons involved in the exhumation and shall ensure that all NSW WorkCover requirements are complied with.

6. If, during the course of the exhumation, it is determined necessary to stop the exhumation by either the exhumation supervisor / Cemetery Manager or authorised officer, if for any valid reason e.g. worker health and/or public health risks, then the exhumation must cease.

7. Used disposable protective equipment and materials are to be placed in a sealed plastic bag and disposed in a sanitary manner.
APPENDIX 3

{LETTERHEAD}

APPROVAL INSTRUMENT TEMPLATE

Public Health Unit
Environmental Health Section

File Number: [XXXXX]

PURPOSE: To approve of the exhumation of the late ____________________________

RECOMMENDATION:

Approval is granted by the Director General pursuant to clause 71(1)(a) Public Health Regulation 2012 to [NAME OF APPLICANT] to exhume the remains of the late [NAME OF DECEASED].

KEY ISSUES:

[DETAILS OF THE APPLICATION, STATUTORY DECLARATION, RELEVANT ISSUES, MANAGEMENT PLAN AND JUSTIFICATION OF SUGGESTED CONDITIONS ARE TO BE INCLUDED HERE]

BACKGROUND: (TO BE COMPLETED BY PHU)

CONSULTATION: (TO BE COMPLETED BY PHU WHERE APPROPRIATE)

The approval be subject to compliance with the conditions specified in *Schedule A / Schedule B and to expire on _______/_____/_______.

Signature: Authorised officer

Author: Telephone: Date:

1 Authorised officer

2 Public Health Unit Director/ Public Health Officer [SIGN AND DATE]:
Approved via delegation from the Director-General PH308, PH309 page 8.63 Public Health Delegations Manual under clause 69(1) and 70(1) (C) Public Health Regulation 2012.

3 Authorised officer
APPENDIX 4

{LETTERHEAD}

SAMPLE LETTER TO APPLICANT

[APPLICANT’S NAME]
[ADDRESS]

Dear [APPLICANT’S NAME]

Reference is made to your application of [DATE] requesting approval to exhume the remains of late [NAME OF DECEASED] from *grave / vault / crypt No: ______, Section ______, [NAME OF PLACE OF INTERMENT OR CEMETERY] for the purpose of re-interment to [NAME OF PLACE FOR RE-INTERMENT].

Approval has been granted by the Director-General pursuant to clause 71 (1) (a) Public Health Regulation 2012, subject to compliance with the conditions specified in *Schedule A / Schedule B attached.

The funeral director and cemetery authority have been advised of the approval.

Should you have any inquiries please contact the authorised officer [EHO] on [TELEPHONE] or (EMAIL ADDRESS).

Yours sincerely,

[NAME]
Public Health Unit Director/Public Health Officer
APPENDIX 5

{LETTERHEAD}

SAMPLE LETTER TO CEMETERY AUTHORITY AND FUNERAL DIRECTORS

[NAME]
[ADDRESS]

[DATE]

Dear [NAME]

EXHUMATION OF THE REMAINS OF THE LATE [NAME OF DECEASED]

Approval has been granted for the exhumation of the late [NAME OF DECEASED] from *grave / vault / crypt No: ________, Section ________, [NAME OF PLACE OF INTERMENT OR CEMETERY] in accordance with clause 71(1) (a) of the Public Health Regulation 2012, and subject to compliance with the conditions specified in Schedule A / Schedule B attached.

A copy of the approval letter is attached for your information.

Should you have any inquiries please contact [Authorised Officer] on [TELEPHONE] or email address.

Yours sincerely,

[NAME]
Public Health Unit Director/Public Health Officer