



## Wills & Deceased Estates Team

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### Burials – is there any other way?

How we are laid to rest is not something that is front of mind for many of us until we are nearing the end. It is important to some people how their body is dealt with after they have passed away. For others, it is very much a 'I'm not here so it doesn't matter' matter.

In South Australia, you must either be buried or cremated but there are lots of options that come with these two choices. This article discusses some of the ways you can be buried (or not) in South Australia.

Before we go further, it is important to note that any wishes expressed in your will regarding the disposal of your body are not binding on your executor. This is because your will is usually not found until after you die or even after your funeral or memorial service. Your executor, however, does have a duty to dispose of your body. It is a good idea to let your executor, or family or other people close to you know what your wishes are when it comes to your burial and funeral arrangements.

#### Burials

The traditional approach is just to be buried. You will need to be buried in a cemetery or a natural burial ground.

Being buried in a cemetery will involve a coffin of some sort and your body will be lowered into the ground at the cemetery. A standard burial site in South Australia can accommodate up to three adults, one on top of the other. If you want to have more than one person buried in a plot, the plot will need to be deeper to accommodate the number of persons wanted.

You may want to be buried on private property, like a family farm or your own home. Burials on private property are only allowed outside of a township or metropolitan Adelaide. If the burial site is not outside of those areas, you will need approval before going ahead with the burial.

For any burial on private property, you will need the landowner's permission and council approval before being buried on such a property. The body will need to be buried at a depth of at least one metre, and 20 metres away from any buildings, structures or water sources on the land. The burial site also cannot be in an area prone to flooding. Finally, the GPS coordinates of the burial site will need to be provided to Births, Deaths and Marriages.

Burials on private property come with risks such as your family not being able to visit your grave (at least not without the landowner's permission) and your body being exhumed if the land is ever sold.

Maybe you have a close connection with your pet. Because pets are technically property, in your will, you can express the wish that your pet be buried with you. You may need council approval before burying your pet with you. In fact, some councils do not allow pets to be buried in human cemeteries. Loxton Waikerie Council, for example, has decided not to allow pets to be buried with their human owners because 'determining what bones are actually human and what are animal if the bones are ever dug up' may cause confusion. If your pet has died before you and has been cremated, you will most likely be allowed to have their ashes buried with you.

You can even be buried at sea. However, a permit and approval from the Attorney-General is needed before you can do this. To be considered for burial at sea, you must have a 'demonstrated connection to the sea', such as serving in the navy or being a fisherman. The permit can be quite costly, not to mention then chartering a boat or a plane. Your body will need to be interred in the sea at a depth of 3,000 metres and cannot intrude on any other uses for the area (eg fishing). A permit is not required to scatter your ashes at sea but permission from the captain or boat owner will be required if your ashes are scattered from a boat.

#### Cremation

A traditional burial site in a cemetery can accommodate up to 10 lots of cremated remains. Your ashes can also be placed in a memorial within the cemetery or elsewhere. Your ashes do not have to be buried or kept in a cemetery. Your loved ones can even choose to keep your ashes at home.

The law is not as strict about scattering ashes. However, if you want your ashes scattered at a private property, you will need the landowner's permission. You should also seek council approval if you want your ashes scattered in a public place. Some places may require a permit, like the Botanic Gardens, before you can scatter the ashes. You do not need a permit to scatter ashes in Australian waters or oceans.

Some people have had their ashes scattered at their favourite sporting grounds. Before doing so, you should seek approval

from the relevant authorities. The Melbourne Cricket Ground, for example, discourages people from scattering ashes there. Some Sydney Swans fans scattered their grandmother's ashes at the Sydney Cricket Ground when other fans swarmed the oval after Buddy Franklin scored his 1,000th goal. It is not clear whether there were any repercussions from this but from the pictures, they were pretty close to a lot of other people. A lesson we can take from this is to be mindful of others when scattering ashes.

It seems like there are endless options of what you can do with ashes – you can have them turned into jewellery, added to tattoos or planted with a tree. You can even have them made into a fireworks display! Of course, you should speak with the local council before setting off any fireworks, whether they are a memorial for a loved one or not.

## Conclusion

There are many ways to be buried or to have your ashes scattered after cremation, and most involve council approval. A funeral director will best be able to help you achieve a loved one's wishes when it comes time to lay them to rest. Remember, it is a good idea to make others aware of your wishes before your death, so they are better placed to carry out your wishes.

Sometimes conflict may arise within a family over what should happen to the body of loved one. If the family cannot reach agreement, the Supreme Court can decide what will happen.

The disposal of your body is something that is likely to come up as part of any estate planning that you undertake. Our Wills and Deceased Estates Team can assist you with your estate planning and is also able to assist you with any dispute over what should happen to a loved one's body.

*Remember, it is a good idea to make others aware of your wishes before your death, so they are better placed to carry out your wishes.*

## Disclaimer

This newsletter is merely an overview and accordingly it is not to be relied on as legal or other advice or on any other basis whatsoever. All legal liability arising from use of information contained in this newsletter is disclaimed to the maximum extent permitted by law. Readers should obtain independent legal and other professional advice suitable to their individual circumstances.

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