

Submission to the Victorian Law Reform Commission

Funeral and Burial Instructions

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Having practised law, especially in probate and administration, for some 42 years, I have encountered all manner of burial 'directives' in wills.

One was that 'any service held to mark my passing be of an irreligious nature'. But many seriously desire that their remains be cremated, and the ashes sprinkled in some spot varying from a favourite home or garden to Port Phillip Bay. One desired that his remains be emptied out into the River Ganges.

In my experience, most partners, spouses and family members desire to carry out the wishes of the deceased. But sometimes they disagree with the directions in the will.

I always explain to clients that their directions as to burial and disposal are not binding on the executor, and some become quite irritated or even angry about this.

Another common disposition is that the body be used for medical research. This is often resisted (without even considering certain religious sects which do not approve of such dispositions).

It seems to me that a reasonable and proper direction as to disposition of the remains ought to bind the executors. Thus, a direction that the remains be scattered at the summit of Mount Everest would not be reasonable, but a direction that they be spread over the deceased's garden would.

I believe that the time has come when the old and outdated rules about disposal of corpses should be themselves disposed of, and statutory recognition given to the right of testators to direct how their remains are to be disposed of.

By way of footnote, these issues are really quite rare, but the logic of modern law does really require us to recognise the rights of the deceased over those of the executor or relatives.

Yours sincerely,

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