

Funeral and Burial Instructions

Number	9
Name	Marta Sandberg
Date	26 November 2015

Question 1	If you have been involved in a funeral and burial dispute, can you tell us about your experience?
Response	No
Question 2	Is the law on funeral and burial instructions satisfactory as it is?
Response	The biggest problem is that ordinary people don't know anything about it – until it is too late
Question 3	Should the common law position on funeral and burial instructions be enshrined in legislation?
Response	Only if it is a very good law
Question 4	Should the law oblige a person with the right to control the disposal of a body to make appropriate funeral and burial arrangements after taking into account: (a) the wishes of the deceased (b) the views of the family (c) the deceased's cultural or religious background (d) the need to dispose of the deceased without undue delay (e) the capacity of the estate to cover the reasonable costs of disposal and/or (f) any other factors?

Response	<p>The most important concern is only obliquely mentioned here. If there is any health risk to the rest of the community, then this is the prime concern. Our reverence for a dead body should not take precedence over our need to safeguard the living. This may be what (d) refers to. ON the other hand, if the need for hast is due to religious reasons then this is covered by (a) and(c)</p> <p>Then (a) is the second most important concern. This includes (c) as it can be assumed that the deceased best knows his religion.</p> <p>On the other hand (b) is dangerous if the person have had a split with his family. Think in terms of children when they grow up changing their religion or marrying somebody their family don't approve of. There can also be bitter disputed within families and that means that the funeral - that should be a healing experience for everybody - becomes a legal bunfight instead.</p> <p>Finally, (e) is pretty self-evident. If there is no money for the funeral, then something simple must be arranged.</p>
Question 5	<p>If the law obliges a person with the right to control the disposal of a body to make an appropriate decision after taking into account certain factors, should that person have a duty to seek out the views of people close to the deceased before making a decision?</p>
Response	<p>I do not feel that the family should have any rights enshrined in law to determine the funeral arrangement of a person. As I said in the last question, this is inviting problems. What happens when grown children have changed their religion away from their families? Or is part of a gay marriage that the parents or children strongly disprove of? Or any form of divorce followed by a re-marriage and more children? What happens when there is disagreement amongst the family on how the body should be disposed of? Please remember that death tends to bring out strong emotions and often sees people at their worst. Fighting over cremation can be a way to avoid having to deal with grief but that does not mean that legislation should be enacted that encourages this avoidance option.</p> <p>Only if there are no other instructions given should the family be given a right to have a say.</p> <p>Having said all of that, it is obviously best to allow the family to feel they have a hand in the funeral arrangements and if they aren't different from what the deceased wanted - or the deceased made no preferences known - then their suggestions should be taken into account. Just be aware of the potential problems in allowing them to have a legally binding say in what will happen.</p>
Question 6	<p>Should people be able to leave legally binding funeral and burial instructions?</p>
Response	<p>Y-E-S (unless there is health or overwhelming community concerns that overrides the wishes of the deceased - for example</p>

	allowing the body to be exposed to the sky so birds of carrion can eat it)
Question 7	<p>If people are able to leave legally binding funeral and burial instructions:</p> <p>(a) in what circumstances should a person controlling the final disposal of a body be exempt from carrying out the instructions?</p> <p>(b) should there be a requirement that the instructions be:</p> <p style="padding-left: 40px;">(i) contained in a will</p> <p style="padding-left: 40px;">(ii) in written form or</p> <p style="padding-left: 40px;">(iii) in any form as long as the expression of intention is reliable?</p> <p>(c) should children be allowed to leave instructions and, if so, at what age and/or in what circumstances?</p>
Response	<p>(a) If there is overriding health of community concern about the proposed disposal of the body. Shooting the body out of a cannon on Australia Day might be a last patriotic gesture, but the body part will rain down on the rest of the neighbourhood so it is not appropriate.</p> <p>(b) Any form should be acceptable, preferably written. A will is not a good way of doing this as wills are often not read until after the funeral is over.</p> <p>(c) I am disinclined for any family member to be able to have legally binding rights to decide on funeral arrangements. Imagine what happens in mixed marriages with children, step-children and adopted children around. The potential for strife is huge.</p>
Question 8	Should people be able to appoint a funeral and burial agent to control the final disposal of their body?
Response	Yes - unless there is health or overwhelming community concerns that overrides the wishes of the deceased
Question 9	<p>If people are able to appoint a funeral and burial agent:</p> <p>(a) should they be required to obtain the agent's consent for the appointment to be valid?</p> <p>(b) in what circumstances should the agent forfeit the right to control the disposal of the body?</p> <p>(c) who should be liable for the costs of disposal and what, if any, measures are needed to make the arrangement practical?</p>
Response	<p>(a) Yes, if the agent has not agreed to act for the deceased, then it hard to see how he can be an agent.</p> <p>(b) I don't know, but I expect there will be some such</p>

	<p>circumstances. I leave the to wiser heads to figure out</p> <p>(c) The estate should be responsible for the cost of disposal. There will be some exceptions to that, for example of the body is highly contagious and the Health Dept. decides that special precautions have to be put in place.</p> <p>I'm not sure what you mean by 'making the arrangements practical'?</p>
Question 10	Do you have an alternative option for reform (other than those identified in Questions 3, 4, 6 and 8) that you would like to see adopted in Victoria?
Response	No response
Question 11	Which court/s and/or tribunal should have jurisdiction over funeral and burial disputes and why?
Response	I know very little about this aspect, so i can't comment
Question 12	How accessible and effective are low-cost mediation services for people involved in funeral and burial disputes, and how could they be made more accessible and effective?
Response	Once again, I know little about this aspect but I assume that low-cost mediation service would be helpful