

end game

WHEN SOMEONE DIES
THE FUNERAL
&
AFTERWARD

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AFTERWARD

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Law Consumers Association Limited



WHEN SOMEONE DIES THE FUNERAL & AFTERWARDS

FOREWORD

This booklet is intended to consolidate information from a variety of sources for those recently bereaved (or planning forward) and to dispel the urban myths surrounding death. The booklet will also provide an unambiguous factual guide as to the rights and responsibilities of next of kin/executors in these circumstances. The booklet will enable informed choices by consumers.

The primary message of the booklet is to *become informed and be prepared*.

Death is usually unexpected. Yet much can be done in anticipation of death so as to remove or reduce the burdens left on the survivors. This booklet offers practical suggestions on what you can do in anticipation of death and what to do if you are the survivor and where you can get help.

The information provided can be useful for those who wish to arrange a 'do-it-yourself' funeral. LawConsumers publish a DIY Funeral Kit.

The **Law Consumers Association Limited** was established in 1967 and is better known for the range of self-help legal kits which it publishes. These kits include conveyancing, probate, wills, family law, power of attorney and private real estate sales.

The **PROBATECOMPANY** and **COMMUNITYFUNERALS** are non-profit companies established by the **Law Consumers Association Limited**. Their objectives are to provide alternative services at a competitive cost.

ACKNOWLEDGEMENT

Material for the production of this booklet has been drawn from publications available from Centrelink, the Australian Taxation Office, the Prices Surveillance Authority, the Coroner's Court, Legal Fees & Costs Board, Australian Organ Donate Register and Community Funerals.

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THE FIRST DAY

Arrange for the Death Certificate

A Certificate of Death is signed by the doctor who pronounced death and its cause and must be lodged with the Registrar of Births Deaths & Marriages (BD&M). A Death Certificate is then generated by the Registrar and a Certified Copy is forwarded to the next of kin nominated usually by the funeral organiser. Generally, the person who organises the funeral gets the funeral director to send off a Notice of Death to BD&M together with the Certificate of Death signed by the doctor. This 'Certified Copy' becomes the document to be used as proof of death and is frequently referred to as the 'original' Death Certificate. The preliminary certificate issued by a doctor cannot be used to prove death in an application for probate.

People generally die at a hospital, rarely at home and sometimes as a result of an accident. If the death occurs at a hospital, they will take care of this formality. If the person dies at home, call the person's doctor who will then explain what is required. You may also have to call the police, particularly if the doctor is not immediately available.

If the person dies at an accident another authority, such as the police, will guide the events. Sometimes, where the person has not recently received medical advice or treatment or has been killed in an accident, the matter may be referred to the Coroner's Court for an Inquest. In this event there will be some delay in the issue of the Death Certificate or other permit to allow either burial or cremation. It may also be necessary for a near relative to identify the deceased person at the Mortuary.

Before the funeral can proceed, the death must be certified by the hospital or doctor or a Burial Order or Cremation Permit has been issued by the Coroner.

Look for the Will

Many people make provision in their will as to the type of funeral service and whether they prefer burial to cremation and as to the payment of the service. The next of kin should locate the will and hand it to the executor nominated in the will who will then act in accordance with the will. The executor does not necessarily arrange the funeral - any family member can do that. With the will you may find other documents which may indicate whether the deceased belonged to a funeral plan or had a funeral bond. Funeral costs can vary considerably. It is important to know what you are getting and how much it will cost. Don't let yourself be persuaded to spend more than you can afford. The funeral director should provide you with a written quotation.

Funeral plans generally involve paying in advance for a specific funeral service. This kind of service specifies the type of coffin or casket, flowers, hearse and any other arrangements wanted. If the person subscribed to one of these plans, there is generally no further cost for the service because the plan generally covers the cost of

the funeral service selected as it was at the time of purchase. Payment for this type of plan is generally made in a lump sum or by instalments over 2-3 years.

The deceased may have had a Funeral bond. The money in the bond is held in trust and is accessible only on the presentation of the Death Certificate. With the passage of time and inflation, some bonds will not cover the full cost of a service even after the addition of the bonuses earned. With a bond, no particular service is provided, only money. Bonuses paid on Bonds are not subject to personal income tax, provisional tax or capital gains tax, nor are benefits paid to the estate or to the funeral director assessable for tax.

In each scheme the money is protected by being held by a trustee company and is made available either to the funeral director, in the case of a funeral plan, or to the next of kin, in the case of a funeral bond on the death of the subscriber.

The deceased may also have left a pre-purchased cemetery plot. A person or couple is entitled to own one funeral pre-paid plan, funeral bond or pre-purchased cemetery plot valued at \$5,000 or less which is exempt from the Social Security Pensions Asset Test.

There is one other way in which a deceased person may have a right to a cemetery plot. These days, councils are adopting a policy to allow the burial of one person on top of another so as to conserve space within cemeteries. This applies generally only to spouses so the surviving spouse has an entitlement to be buried in the same plot as the predeceased spouse. The only cost then is for the digging of the grave.

Sometimes some private health insurance, sickness and accident or life insurance or club may pay funeral and death payments. If the deceased had such interest, the organisation should be contacted for confirmation of any benefit.

Organising the funeral

TIME

It must be recognised that to organise a funeral takes time.

1. The funeral must generally be conducted within 5 days of the date of death of the deceased;
2. The organiser is generally one of the next of kin and whether or not admitted, is in grief;
3. No matter what the circumstances of the death are, it is usually unexpected;
4. The organiser is generally not well informed on what steps to take;

5. Generally, it is difficult to make all the arrangements and organise a DIY funeral at the same time within 5 days, and
6. Time is where the professional funeral directors have the advantage.

Being informed is the only basis on knowing what choices are available and which choice to make.

What you need to know about the rules

Rule 5 of the Public Health (Disposal of Bodies) Regulation 2002 relates to the mortuary (or morgue), holding room and vehicles used for the preparation of bodies prior to burial or cremation. Subclause (5) and (6)(b) refer particularly to the facilities that are at hospitals and can become available for a DIY funeral. The subclauses say -

“5. Premises for handling of bodies

“ (5) A person must not, without the approval of the Director-General, use the facilities of a hospital for the purpose of the business of a funeral director or of the operator of a mortuary transport service except for the removal of bodies of persons who died in the hospital.

(6) The Director-General may give approval:

(a) under sub-clause (1), (2) or (3) - either generally or in a particular case, or

(b) under subclause (5) - in a particular case.”

The Director-General of the Department of Health therefore has the power to allow a person to have access to the mortuary facilities of a hospital for the purpose of arranging a funeral.

It should be noted that there is a mortuary transport service separate from that provided by funeral directors but which funeral directors use for the transport of bodies other than in a hearse. Private transport can be used provided it can carry a coffin with the body, is lined in that area with heavy plastic film and the duration of travel is less than 8 hours.

The Local Council generally controls the local cemeteries and application must be made to Council to get access to the cemetery of your choice. Council will also direct you to a contractor who will excavate the grave. If you intend to bury a body on private land, permission from the Council must also be obtained and the land must comply with rule 22 of the Public Health (Disposal of Bodies) Regulation 2002:

“22. Burial in certain areas prohibited

(1) A person must not place a body in any grave or vault unless that grave or vault is located:

- (a) in a public cemetery, or
- (b) in a private cemetery or other place approved for that purpose by a local authority, or
- (c) on private land, where the area of landholding is 5 hectares or more and the location has been approved for that purpose by a local authority.

(2) 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.”

Inquiries of Standards Australia, the body which sets standards for almost all products and services available in Australia, reveals there is no ‘standard’ for the production of coffins. The Public Health (Disposal of Bodies) Regulation, Rule 19 says,

“19. Bodies to be placed in coffins

Unless otherwise approved by the Director General generally or in a particular case, a person must not bury or cremate a body unless:

- (a) the body has been placed in a coffin, and
- (b) the lid of the coffin has been securely sealed.”

In the absence of the definition of a coffin (from the French *coffin*, a chest) a coffin of similar size and dimensions to that available commercially is the only present guide.

This rule appears to deny any opportunity for the re-use of coffins. However, it would be possible to have a disposable cardboard coffin liner which could fit into and be easily removed from an elaborate wooden or metal coffin which could be recycled almost indefinitely. This would be an economically and environmentally responsible proposition whilst remaining within the objects of rule 19.

With regard to cremations, the Public Health (Disposal of Bodies) Regulation 2002 provides in rule 31 the following:

“31. No refusal to cremate

A crematorium authority must not, without lawful excuse, refuse to accept a body for cremation.”

The “without lawful excuse” leaves it open to crematoriums to make it difficult for a person not being a funeral director, to refuse. Some of the grounds, mostly on occupational, health and safety issues, that may be cited are:

1. The lid of the coffin has not been securely sealed.
2. The coffin does not have adequate handles, etc
3. The coffin is not strong enough to carry the body, etc.

Within the scope of Occupational Health and Safety rules comes the construction of the coffin and any accessories or articles that may be placed with the body before cremation. Coffins must not have in or on the coffin metal liners, metal inserts, PVC or latex-based rubber materials because unacceptable emissions or residue can result. Yet the coffin must be lined with a waterproof membrane, generally of polythene.

Rule 36 says:

“36. Cremation application: dead persons other than still-born children

(1) An application for cremation of a dead person who is not a still-born child is to be made in the approved form to a medical referee or coroner.

(2) The form may require any information contained in the form to be supported by a statutory declaration.

(3) The application may be made by:

(a) an executor of the estate of the dead person, or

(b) a nearest surviving relative of the dead person, or

(c) where there is no such executor or relative available to make the application - a person who, in the opinion of the medical referee or coroner, is a proper person in all the circumstances to make the application.”

The Registrar of Births, Deaths & Marriages also requires formal notification of the death of any person in NSW. Rule 9 of the Births Deaths And Marriages Regulation 2001 states:

“9. Information concerning human remains

For the purposes of section 41 (1) (d) of the Act, the following information is required from a funeral director or other person who arranges for the disposal of human remains:

- (a) the date and place of death of the deceased,
- (b) the sex, date of birth (or age at death) and place of birth of the deceased,
- (c) the usual occupation of the deceased before death and whether or not the deceased was a pensioner or was retired immediately before death,
- (e) the date of disposal of the remains of the deceased,
- (f) the full name of the funeral director or other person who arranged for the disposal of the remains,
- (g) if the deceased was born outside of Australia, the period of residence in Australia of the deceased before death,
- (h) the marital status of the deceased immediately before death,
- (i) if the deceased married at any time, the date of marriage (or age of the deceased at the date of marriage), the place of the marriage and the full name (including maiden family name) of his or her spouse or, if the deceased had married more than once, the date of each marriage (or age of the deceased at the date of each marriage), the place of each marriage and the full name (including maiden family name) of each spouse.
- (j) the given names, sex and date of birth (or age) of the children (if any) of the deceased (including deceased children),
- (k) the full name, maiden family name and occupation of the mother of the deceased,
- (l) the full name and occupation of the father of the deceased.”

Before proceeding with a funeral the dead person must be seen by a doctor who can provide the “Medical Certificate of Cause of Death Certificate” and if required, an “Attending Practitioners Cremation Certificate” . A dead body can be kept at home (provided the correct temperature is maintained) or in a morgue for up to 5 days - longer requires permission from the Department of Health. A person who has died of an infectious disease cannot be kept at home.

Planning the funeral

(a) *The options for funerals*

1. Appointing the organiser - Funeral Directive
2. Advertising

3. The Method
 - (a) Professional Funeral Director, or **Community Funerals**
 - (c) DIY
4. The Coffin
 - (a) Making one
 - (b) Buying one
5. The Place
 - (a) Burial at home or on privately owned land
 - (b) Public Cemetery
 - (c) Private Cemetery
 - (d) At Sea
 - (e) Cremation
 - (i) Ashes in memorial box at Crematorium
 - (ii) Ashes in urn
 - (iii) Ashes scattered
6. The Transport
 - (a) Hired
 - (b) Private
7. The Ceremony
 - (a) The minimum
 - (b) Church/Hall/Graveside/Crematorium
8. The Wake
9. The Grieving Process

(b) Organising the event and the organiser

Every family could/should prepare a master plan - the **Funeral Directive**. This master plan could apply to any family member and be capable of rapid modification and execution.

Specific preplanning is for those when death is more predictable. Wills should be reviewed and the executor advised of the appointment so that there are no surprises. The organiser of the funeral should be consulted to preplan the arrangements. A Directive and a Check List is provided with this book. Much of the decision making

can be done at this stage so that the organiser is left with the minimum to do when the time comes. It can then be done comfortably within time with the minimum of stress.

In more professional terms, the organiser is the project manager and the same methodology applies regardless of which option of funeral is adopted.

(c) *The method*

(i) *Professional Funeral Director*

The Funeral Industry comprises two major players plus a few independents. It is an industry characterised by 'badge' or 'multiple' marketing. This means that many of the companies that you see advertising and offering different levels of service, price or appeal are, in fact, controlled by the one firm. The funeral organiser is confronted by a salesman determined to 'add value', meaning 'add cost', to what originally appeared to be a reasonable price for a service. "Emotional blackmail" is the term used by many "victims" when being sold a funeral service.

Quotations from funeral directors are often presented in three parts:

1. Professional fees
2. Coffin or casket
3. Disbursements.

The professional fees covers all of the cost of labour to provide the service. The Coffin or Casket price is that quoted from their catalogue. It is a retail price and includes a substantial mark-up from the supplier.

The disbursements are the costs of items or other services bought on the funeral organiser's behalf, such as flowers, a celebrant, etc. These items must be supplied at cost unless quoted to be otherwise, in which case the price may include a mark-up from the supplier. An advertisement is a disbursement and is as much an advertisement for the funeral director as it is for the funeral. There is no legal requirement to advertise.

As with all services you should get a written quote for any services and disbursements so that there are no hidden surprises (refer to the Funeral Quotation Check List).

There is much anecdotal evidence that many funeral directors add significant amounts to the costs of disbursements. This is a secret commission for the funeral director in addition to his professional fees. It is illegal to accept secret commissions.

The appendix contains a Funeral Quotation Check List. This is a list of many of the items which a funeral director can include in his services. This list will enable you to 'pin down' which items you want and 'pin down' what it will cost.

(ii) ***Doing it yourself***

The advertisement

There is no legal requirement to advertise a funeral. Advertisements are a courtesy to inform the public at large and also those who are not in close contact with the family but who may wish to pay their last respects to the deceased. The advertisement advises them of where and when the funeral will occur.

Where an advertisement is being placed by a person other than a funeral director, that person will generally be required to provide evidence of the death of the deceased to the newspaper. As a Death Certificate is not likely to be available until some weeks after the date of death and the funeral, the "Medical Certificate of Cause of Death Certificate" and if required, an "Attending Practitioners Cremation Certificate" from the medical practitioner who certified the death must be collected from the doctor (normally at a hospital or coroner) to disclose to the newspaper.

(iii) ***The coffin***

(a) ***Making one***

LawConsumers has a DIY Funeral Kit which includes working drawings and specifications of a typical coffin. You are on your own from there on!

(b) ***Buying one***

Coffin manufacturers seem to have a restrictive trade practice of only dealing with funeral directors. ***LawConsumers*** can offer a range of coffins through our associate company, ***Community Funerals***.

(iv) ***The place***

(a) ***Burial at Home or on Privately Owned Land***

This will certainly take more than 5 days to organise, so must be pre-planned. The forms for the local Council to approve are included with the ***LawConsumers*** DIY Funeral Kit.

(b) ***Public Cemetery***

The application forms can be obtained from the local Council in which the cemetery is located.

(c) ***Private Cemetery***

To bury in a private cemetery may also take more than 5 days and must be pre-

planned. The funeral organiser should approach the authority controlling the private cemetery to obtain the necessary application forms.

(d) **At Sea**

An application is made to the Commonwealth Department of Environment and Heritage. The cost is presently \$1,000 and a decision takes time. For most it is an objective but not a realistic option.

(e) **Cremation**

(i) Ashes in niche or memorial wall at Crematorium - this can be arranged by the funeral organiser.

(ii) Ashes in urn - the urn or simple container may be located anywhere at the choice of the family.

(iii) Ashes scattered - care should be taken as to the choice of location and whether any permission may be required.

(v) **Transport Contractors for the transport of a deceased person**

For a professional funeral director, transport must be in a dedicated vehicle which cannot be used for any other purpose. For a DIY funeral, any vehicle which can accommodate the coffin is compliant and can be used to transport a body from a morgue.

For those who wish to use a professional transport service to relocate a body for burial contact **LawConsumers** for a list of contractors.

For those who wish to use a dedicated vehicle (hearse) to take the body/coffin to the cemetery/crematorium **CommunityFunerals** can, subject to demand, make available such a vehicle.

(vi) **The ceremony**

The extent of the ceremony is only limited by the wishes of the family. There is a tendency emerging for more informal ceremonies. Cultural backgrounds also tend to set the style of ceremony regarded as appropriate.

(a) The minimum - its your choice.

(b) Church - this implies the participation of a minister/celebrant and is a matter of liaison with the minister/celebrant. It is usual for the coffin to be present in the church which presents some logistical problems. Pall bearers will be required and a trolley on which the coffin can be placed

may also be necessary.

(c) Hall - the arrangements would be much the same as for a church, excepting that a celebrant or family nominee may be involved instead of a minister.

(d) Graveside - this is preferred informal method. Prior to arriving at the cemetery the funeral organiser must co-ordinate the transport and grave digging and set up any additional facilities that may be required. Weather can play an important part in this part of the planning. The funeral organiser must take care that the gravesite has been secured to prevent a collapse should too many people approach the side of the grave or to restrict close access. The grave digger will be able to give advice as to whether this is necessary. A simple wooden frame is all that is required to retain the sides of the grave and serves a dual purpose to carry the coffin before it is lowered into the grave. To make the gravesite more tidy, carpet can be laid adjacent to and into the excavation. Two long straps or rope are used by the pall bearers to lift the coffin off the wooden bearers to enable the bearers to be removed and the coffin then lowered into the grave.

(e) Crematorium - all crematoriums have a hall within which the coffin is placed. Crematoriums generally have their own mechanical procedure for the removal of the coffin at the end of any ceremony that the family have requested or organised themselves. The coffin is generally located on an elevated platform containing a roller system which, by remote control, removes the coffin from sight at the end of any ceremony and delivers the body to the furnace.

The funeral organiser is the person who instructs the crematorium on what to do with the ashes. These can be collected later and kept in any container or urn. Arrangements can also be made with the crematorium to have the container placed in a niche or memorial wall.

(vii) *Cultural requirements*

In Australia, we are one of many races. Each race has a different attitude to death, ritual and burial/cremation.

For example, Australians of Italian and Greek descent following the teachings of the Catholic and Orthodox Churches welcome a dead person into their home. The funeral director will deliver the coffin to the home the day before the funeral and take it, usually to a church, sometimes a crematorium, where the congregation at the funeral will file past the opened coffin to pay their last respects. Australians of Pacific Island descent also follow a similar ritual.

Jewish and Muslim communities endeavour to bury or cremate their dead within 24 hours. Whilst the law provides the dead must be buried in a coffin the Muslim community uses a recycled coffin for transport of the body and then bury the body in a shroud with the whole process being conducted by only muslim practitioners.

(vii) *The celebrant*

Celebrants are listed in the Yellow Pages. Many Ministers of Religion will conduct various levels of ceremonies ranging from the full church service to attendance only at the graveside. **CommunityFunerals** has a list of participating Ministers.

(viii) *Embalming*

Modern embalming is a specialised para-medical process by which most of the body's venous system is drained and replaced with a chemically formulated compound solution to ensure hygienic preservation of the body's tissue thus preventing accelerated deterioration and odours.

Embalming is mandatory in all cases where a body is to be transferred overseas or is to be brought in from overseas and when the body is to be entombed in a vault or in an above ground Mausoleum within any of our own cemeteries in Australia.

Normally, where a body is to be buried or cremated, the mortuary maintains the body at such temperature that any deterioration of the body is retarded until a funeral service is concluded and, therefore, embalming is not necessary.

(viii) *The role of the Coroner*

Coroners inquire into the circumstances surrounding deaths which are reported to them. These deaths may occur within the State, or on journeys to or from the State. The deceased person is normally a resident of the State.

The Coroner's role is a very public one, and the community relies on the Coroner to:

- determine the identity of the deceased person
- inquire into the time, place, cause and manner of death
- refer the matter to the Department of Public Prosecutions where, during the course of an inquest, it appears that a known person has committed an indictable offence in connection with the death
- bring to the notice of the relevant authorities any practices, policies or laws which could be changed to prevent similar deaths in the future
- expose other matters of public importance.

Apart from inquiring into deaths, the Coroner has jurisdiction to inquire into fires and

explosions where property has been destroyed or damaged or where people have been injured.

Generally, spouses, parents and executors have a duty to bury the deceased person if they have the funds available. Where no relative or other person is able to do so, the Coroner may order the burial at public expense.

Before making the order for destitute burial a Coroner must be satisfied by a police report that all reasonable efforts have been made to locate relatives and ascertain their wishes. Because of these inquiries, there may be a delay in obtaining an order of destitute burial.

You can obtain information about burial arrangements by contacting the government contractor for your area, a firm of funeral directors whose tender for that appointment is accepted by the government. The Coroner can provide the name and address of the local contractor.

A death must be reported to the Coroner where:

- a person has a violent or unnatural death
- a person has died suddenly and the cause is unknown
- a medical practitioner has not issued a certificate stating the cause of death
- the deceased person has not been attended by a medical practitioner within three months before death
- a person has died within 24 hours, or as a result of, administration of an anaesthetic (not including a local anaesthetic used for resuscitation)
- a person has died within one year and one day of any accident to which the cause of death may be attributable
- a person has died, while in, or while temporarily absent from, any of the following establishments while receiving care, treatment and assistance:
 - a hospital within the meaning of the Mental Health Act, 1990
 - a facility within the meaning of the Community Welfare Act, 1987
- a residential centre licensed under the Youth and Community Services Act, 1973
- a residential child care centre licensed under the Child (Care and Protection) Act 1987
- a person has died whilst in the custody of a police officer or while they were in, or temporarily absent from, a prison within the meaning of the Prisons Act, 1952 or a detention centre within the meaning of the Children (Detention Centres) Act, 1987. The State Coroner or his deputy must conduct an inquest where a death is in custody.

AFTERWARD

The wake

The wake is the memorial of the deceased. People relax and memories are recalled. Many wakes reveal to the deceased's family sometimes unknown recollections of the deceased by others which help to complete the memory. Wakes are an important social gathering for all concerned.

Meeting the costs of the estate

Relatives and friends do not have to pay the debts of the deceased person *unless* the debts are in joint names. Any debts can be paid from the estate or remain unpaid ('written off') if the estate has no money or assets. Rights of legal action by the deceased for the recovery of money, property or damages against another person or organisation generally survive after death.

The executor or the next of kin can speak with his bank manager, or the bank manager of the deceased, if you have any concerns regarding their financial affairs.

If you would like help in working out a budget or managing your financial matters, you can speak to a financial counsellor, The Department of Fair Trading, the Federal Bureau of Consumer Affairs, Centrelink, Citizens' Advice Bureau or Welfare Rights Centre should be able to put you in touch with one.

Financial counsellors not only help people who are in trouble but advise them before the situation becomes difficult. They can also advocate on your behalf with creditors.

The funeral service itself is normally a cost of the estate. Funerals can be very expensive. It is important to know what you are getting, how much each part of it will cost and when you will have to pay (refer to the Funeral Quotation Check List).

Help from Centrelink

Centrelink does not pay a funeral benefit but has a number of payments which can help during this difficult time. The tables which follow show the payments available and who qualifies for them. You should check with Centrelink to confirm the current status of the benefits.

IF YOUR PARTNER HAS DIED

If you are:	You are eligible for:	What to do:	What will happen:
<p>* a pensioner and your partner was also a pensioner or had been receiving an allowance for the past 12 months or</p> <p>* if you have been receiving an allowance for the last 12 months and your partner was either a pensioner or had also been receiving an allowance for the past 12 months</p>	<p>* in addition to your continuing entitlement you may be eligible for a lump sum payment</p>	<p>* tell Centrelink as soon as possible about the death</p> <p>*You don't have to fill out an application</p> <p>*It helps if you have the pension or allowance number and date of birth of the person who died when you tell Centrelink</p>	<p>* your rate of payment will be increased to the single person's rate</p> <p>*The difference between your new rate and the previous combined rate over the 14 week period will be paid as a lump sum</p>
<p>* partnered with no dependent children and neither of you was receiving a payment from Centrelink</p>	<p>* a payment called Bereavement Allowance</p>	<p>* claim at your nearest Centrelink Office within 4 weeks of the date of death</p>	<p>* depending on your income and assets, you may receive a payment every second Thursday for a maximum of 14 weeks from the date of your partner's death</p>
<p>* a woman and your partner has died after you turned 50, and you have not worked recently</p>	<p>* a payment called Widow Allowance (certain conditions apply - ask about this as Centrelink</p>	<p>* complete a claim form, available from any Centrelink office or by calling Centrelink Call Service on 13 2850</p>	<p>*depending on your income and assets, you may receive Widow Allowance, paid at the same rate as Newstart Allowance. It will be paid fortnightly</p>

<p>* partnered to a person receiving a payment from the Department of Veteran's Affairs and you are a pensioner or have been receiving an allowance for the past 12 months</p>	<p>* you may be eligible for a funeral payment from Social Security * you may also be eligible for the funeral payment from the Dept of Veterans' Affairs</p>	<p>* ring the Department of Veteran's Affairs * Tell Centrelink about the death as soon as possible</p>	<p>* the Veteran's Affairs officer can give you information from the Department of Veteran's Affairs * Your rate of payment will be adjusted to the single person's rate</p>
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IF A SINGLE PARTNER HAS DIED

If you are:	You are eligible for:	What to do:	What will happen:
<p>* the executor of a single pensioner's Will</p>	<p>* the estate will be entitled to the next full pension payment after the person's death</p>	<p>* tell Centrelink of the death as early as possible, so as no payments beyond the one additional payment are made. *There is no need to claim because it will be paid automatically</p>	<p>* the payment will be made into the bank account of the person who died * Centrelink will seek to recover any extra payments from the estate</p>
<p>* receiving a Carer Payment for a single person</p>	<p>* your pension for a further 14 weeks after death *a lump sum payment</p>	<p>* tell Centrelink as soon as possible about the death *You don't have to fill out an application because payment will be made automatically *It helps if you have the pension number and date of birth of the person who died when you tell the Centrelink</p>	<p>* you will continue to receive your pension for a maximum of 14 weeks from the date of death *You will receive a lump sum payment</p>

OTHER HELP

If you are:	You are eligible for:	What to do:	What will happen:
<p>* responsible for a child (other than an adopted child): - whose parents are dead; or - who has one parent who is dead and the other parent's whereabouts are unknown or he/she is in jail for more than 10 years or in a psychiatric or nursing hospital indefinitely</p>	<p>* Double Orphan Pension as well as Family Payment - there is no income or assets test on Double Orphan Pension</p>	<p>* Contact Centrelink and ask for a claim form</p>	<p>* Payments will be made to your bank, credit union or building society account every fortnight with the Family Payment (if you meet income and assets test for that payment - if no, you will just receive the Double Orphan Pension</p>

IF A CHILD HAS DIED

If you are:	You are eligible for:	What to do:	What will happen:
<p>* a Parenting Payment (single) Pensioner whose only qualifying child has died</p>	<p>* continuing payment for 14 weeks following the child's death</p>	<p>* tell Centrelink as soon as possible. *There is no need to claim, although you will need to talk to Centrelink about what sort of financial support you can get after 14 weeks. This will give you some time to adjust to your loss and consider your future. Centrelink has social workers who can help</p>	<p>* You will continue to receive payments for 14 weeks after the child's death</p>

* the parent of a child for whom you were receiving Family Allowance who has died	* you may receive a lump sum Bereavement Payment	* tell Centrelink as soon as possible. There is no need to lodge a claim form	* the money will be paid into your bank, building society or credit union
* the parent of a child, for whom you were not receiving Family Allowance, who died soon after birth	* you may receive a lump sum Bereavement Payment and Maternity Allowance	* fill in a Maternity Allowance claim form. This also serves as your Bereavement Payment. The hospital should have claim forms or you can call the Family Payments on 131305	* the money will be paid into your bank, building society or credit union account
* The parent of a stillborn child	* Depending on your income and assets, you may be able to get a Maternity Allowance	* Fill in a Maternity Allowance claim form. The hospital should have claim forms or you can call the Family Hotline on 131305	* The money will be paid into your bank, building society or credit union account

Coping with life and the grieving process

Adjusting to life after you have lost someone close is never easy. There are many resources available to help you make the necessary adjustments.

Social Security has trained social workers who can help you if you need someone to talk to or have any issues you need to deal with after the death of someone close to you. Social workers are available by calling 12 2468 (or 13 2300 if you are an age pensioner) for the cost of a local call unless calling from a mobile phone in which case calls are charged at mobile phone rates. The Department's social work is free.

The Department's social workers can help with:

- *counselling and support
- *advice about Centrelink payments and services
- *advice about community services

- *organising referrals to other support services; and
- *talking about options for the future, such as employment, training or volunteer activities.

If you can't go to your local Social Security office, social workers may be able to visit you at home. They can also arrange for an interpreter to be present if you need one.

It is a fact that a grieving process occurs. It is different for everyone. It can be instantaneous or delayed but it does occur. Getting on with life should be the objective of all the survivors of a bereavement. Grieving is a natural part of losing someone close to you, so adjusting to your new circumstances may take time. If you would like some help from a grief counsellor, or one of the community organisations specifically established to assist the bereaved, a doctor, Minister of Religion or some funeral directors can advise you on this.

Loneliness may make it difficult at first to fit into social groups and activities. You may or may not want people around you. With time, however, the company of others may help you develop new interests. The Citizen's Advice Bureau, your local community centre or a Centrelink social worker can put you in touch with community organisations, like Rotary, Apex and Senior Citizens, which would value your help as a volunteer.

Taking care of your health with attention to diet and exercise can help you establish a routine. Visits by a community nurse can be arranged if necessary. Many community groups or local councils can arrange services to help care for your house or garden. Not all of these services are free, however, and some may be provided only after your needs have been assessed.

You might want to stay in your family home. If this is difficult, however, consider all the options carefully before you take any action. Moving too quickly may not be the best solution for you in the long term. It is a good idea to talk over the alternatives first. Centrelink has Financial Information Service (FIS) Officers who can give you information about how your choice will affect any Centrelink payments you receive. You can contact an FIS Officer on the numbers mentioned above. The Centrelink booklet, Home and Residence Choices for Older People, gives you more information on the subject. Copies are available from your nearest Centrelink office.

If you no longer wish to manage your own affairs, you can authorise another person to act on your behalf by giving your power of attorney to another person. That person may be a close friend or a relative who you can trust absolutely. There are two types of power of attorney - a general power of attorney for a person to act generally on your behalf and a limited power of attorney, for a person to act on your behalf in specific circumstances. A power of attorney can also be qualified so that even in the event you become of unsound mind and incapable of acting rationally, the power to act remains with your attorney. It is generally good practise for married couples to give each other their power of attorney. For some, the appointment of an enduring

guardian should also be considered.

The purpose of a power of attorney is to make sure that essential financial matters are attended to by a trusted person at the right time in your absence. A power of attorney becomes effective as soon as it is signed and given to your attorney. A guardian is a person who makes decisions about health and welfare issues when the donor loses capacity to do so. **LawConsumers** can give you more information and assistance about powers of attorney and guardianship.

Planning for the future can save your family and friends a lot of heartache in the distressing time after the death of a loved one. Many people arrange to have their property, which includes bank accounts, etc, put into their joint names. This means that upon the death of one, the survivor automatically is the owner of that property. Sometimes this is not always feasible because your finances have been arranged so as to maximise the benefits from Centrelink and Taxation. First consult your accountant. **LawConsumers** can give advice and assistance in respect of changing the title to real estate for this purpose.

The role of the executor

An executor (or executrix) is a person nominated by another making a will (the testator) to look after their affairs after they have died. Generally the first choice of executor is the other spouse with provision that if that spouse pre-deceases the testator, another family member or close friend is nominated. Frequently the will is left at another location such as with a solicitor, accountant or bank. Generally, the executor knows of his appointment and it is his duty to obtain the original of the will as soon as practicable after the death has occurred so that he can implement the wishes of the deceased, particularly if there are instructions regarding the funeral.

If the will is with a solicitor, do I have to use that solicitor? The answer is NO. The executor is the only person entitled to hold the original will and no fee can be charged for handing it over. Some wills have a clause which says, for example, 'Solicitors Smith & Co should do all work associated with my estate.' This is not binding and you can still take the will and either administer it yourself or give it to another solicitor or a trustee company. **LawConsumers** can provide further information on how to administer an estate and assistance if required.

Another viable alternative for executors is to use the services of **THE PROBATE COMPANY LIMITED** (ACN 086 993 393) which is a not-for-profit company limited by guarantee established by the **Law Consumers Association Limited**. This company provides 'executor assist' services similar to that provided by solicitors but at lower cost and puts performance at a premium.

When assessing how to administer the estate of a deceased person the costs of doing so must be specifically obtained for whilst these costs are a cost of the estate the beneficiaries will inherit either more or less according to those costs. Both of these

interests should be considered by an executor.

Professional costs in probate are divided into two parts - the making of the application for probate and, once probate is granted, the administration of the estate. Solicitors have a scale of costs approved by the Legal Fees and Costs Board and once a matter has been commenced there is no right of negotiation and the estate may be charged costs beyond that which was originally anticipated. Some estates, particularly in the days when death duties were applicable, had to be sold to pay the costs. Always obtain a quotation for costs before deciding to instruct a solicitor and then obtain a fixed costs agreement in writing. Beware, most costs agreements contain 'slip' clauses which allow costs to rise at the whim of the solicitor.

For an estate valued at \$200,000 the scale of cost for obtaining a grant of probate is \$1,700.00. To administer the estate, which requires considerable unpaid input by the executor, the cost will vary according to the size and complexity of the estate and will be calculated by reference to the following 10 items:

- Drawing (of documents)
- Typing and checking
- Letters
- Telephone calls
- Perusal of documents
- Copying
- Time reasonably spent by solicitor
- Time reasonably spent by clerk
- Specific skill, care and responsibility (*the highest level and cost*)
- Skill, care and responsibility (*Higher than normal level and cost*)

Most of these items are time driven. Solicitors routinely charge \$350 per hour. As a rule of thumb, solicitors costs for the typical probate total about 2% of the value of the estate (this is a combination of the application and administration costs). To these costs are added the filing fee at the Supreme Court and the cost of any disbursements.

The Trustee companies are another alternative where typical costs are about 4% of the value of the estate.

For an executor who has access to the original Death Certificate and the original will and personally makes the application for probate the time taken to obtain probate will normally amount to five weeks. This comprises the 14 days which you have to wait after the publication of the notice in the newspaper and during which the application forms are completed, plus about three weeks for the Supreme Court to process the application.

For further information on applications for probate, applications for Letters of Administration (where there is no will), the administration of estates, wills and power of attorney contact **LawConsumers**.

Capital Gains Tax

If you have inherited assets from a deceased estate or were appointed executor of a deceased estate on or after 20 September, 1985, then you should obtain a copy of the book 'Capital Gains Tax and the Assets of a deceased estate' from the *Australian Taxation Office*. It explains the special capital gains tax rules that apply to a person's assets after their death. You may have to pay capital gains tax on any gains you make when you dispose of any assets that formed part of the estate.

As a general rule, capital gains tax must be paid on gains made from the disposal of assets that were acquired on or after 20 September, 1985 unless they are being bequeathed to a tax-exempt body such as a church or a charity. Special capital gains tax rules apply to those persons to whom the assets are transferred after death - either the executor or a beneficiary.

These special rules only apply to assets which were owned at the time of death. They do not apply to assets acquired by an executor to satisfy, for example, a specific bequest in the person's will. The normal capital gains tax rules apply to these assets.

AUSTRALIAN ORGAN DONOR REGISTER

SIGN ON TO SAVE A LIFE

YOUR INFORMATION AND DISCUSSION GUIDE

"The ultimate gift", the donation of life-saving and life-enhancing organs and tissue, gives back to those receiving those gifts, from people like you.

One day, either you or a member of your family may require a transplant. The more Australians who decide to donate, tell their families and record their decision, the greater will be the chance that, should your turn come, suitable organs or tissue will be available.

Organs such as kidneys, hearts, lungs, livers and pancreas, and tissue such as corneas of the eye, heart valves, shin and bone mean new or greatly improved life to those receiving them.

Every donation is highly valued by recipients and the community. Your donation can help up to 10 people to enjoy improved quality of life, or life itself.

- There is a shortage worldwide of donated organs and tissues. Some patients awaiting transplantation will die before a suitable organ becomes available.
- Waiting times for suitable organs and tissues vary from 3 months to 3 years and longer.

- Some of those awaiting transplantation are children whose condition has been with them since birth.
- The majority of those who receive transplants can lead productive lives.
- Some transplants are unsuccessful, and may need to be repeated.
- Organs and tissues are allocated to those people with the greatest medical need.

Organ and tissue donors come in all shapes and sizes, and all ages from infancy to 80 and more.

Donations can involve:

- **Organs**, including kidneys, heart, lungs, liver and pancreas and/or
- **Tissue**, which includes heart valves, bone tissue, skin and eye tissue.

You can register your wish to become a donor by joining the Australian Organ Donor Register.

Registration forms can be obtained by phoning **1800 777 203** during business hours, e-mailing **aodr@hic.gov.au/organ** or by visiting any Medicare office.

- After registering as a donor, you should make sure that you **discuss your intentions with your family**.
- Uncertainty by your family about your wishes may mean that donation will not proceed.
- Age-limits have applied in the past, but the condition of your organs and tissues is assessed at the time of your death, regardless of age.
- It is possible to donate tissue such as corneas, heart valves and bone, whether or not you die in hospital.
- Notification of your death and removal of tissue must, however, occur as quickly as possible after you die.
- In Australia, there are clear laws governing organ and tissue donation.
- Payment for any human tissue is illegal.
- There is no “black market” for organs and tissue in Australia.
- Hospital staff will do their utmost to save your life after your admission.

- To be an organ donor, you must die in hospital.
- Death occurs **either** when the heart has stopped beating and breathing has stopped permanently, **or** when there is irreversible loss of brain function - referred to as brain death.
- Coma and brain death are different. A coma is an unconscious state from which you may recover, because your brain keeps working even when you are not conscious. Brain death occurs when your brain has been so badly damaged that blood and oxygen can't reach it, and so your brain stops functioning permanently.
- Brain death is diagnosed and certified by two doctors acting independently. They will perform tests which will show whether your brain is functioning or whether blood is reaching your brain. If there is no blood flow, your brain dies.
- Remember that it may be hard for your grieving family to understand that you are dead, since the ventilator will artificially push air into your lungs thereby delivering oxygen through the bloodstream to your beating heart and your body. Your body will also be kept warm.
- Your family will be consulted on your wishes about donating organs and tissues for transplantation.
- This is why you should discuss all issues about donation with your family, quietly and calmly, using any extra information to help make your decision.

For answers to any questions, please use the sources of helpful information nearest to you, listed at the end of this brochure.

At the time of your death your family will be asked to confirm your wish to become a donor.

- After you have died (confirmed by the tests), your family will be asked about your wishes to become an organ/tissue donor.
- It will help them and staff if your family knows of your wish to donate.
- It is rare for a family to go against the **known** wishes of an intending donor.
- Where those wishes are **not known**, your family must decide on your behalf.
- Research shows that this decision is hard for families, and if there is no prior decision, families frequently say no to donation.
- Should your family consent on your behalf to donation of your organs and

tissues, a Donor Coordinator is almost always available to help them through the donation process.

- Some medical conditions can prevent you from becoming a donor, because of the risk of transferring disease to recipients.
- Donations cannot proceed if you have or at high risk of infectious diseases such as HIV, some cancers, or have had treatment with human pituitary hormone, or suffer from untreated severe infections,

During organ or tissue donation, your body will be treated with respect and your family will be treated with dignity and care.

Once you are assessed as a medically suitable donor, the following will occur:

- The ventilator machine will continue to deliver air to your lungs, which will keep your heart beating for a short time.
- Although you have been pronounced dead, drugs will continue to be given to perform the tasks which your brain cannot now do, like maintaining blood pressure.
- A Donor Coordinator is almost always available to answer your family's questions, and attend to their needs.
- When suitable recipients are identified, surgeons will then remove organs and tissue which you have agreed to donate.
- Organ removal is performed in an operating theatre in a professional manner, respecting your body and dignity.
- Should they wish, your family may view your body following donation.
- Funeral or other arrangements may then be made. They are not interrupted by donation.
- Those arrangements may - if required - include a viewing.
- If the circumstances of your death involve a Coroner, organ and tissue donation may still occur. A Coronial post-mortem may be performed.
- Organ donation does not disfigure your body.

You may wish to consider religious issues when deciding whether or not to donate.

Pope John Paul II said of organ donation:

“It is the decision to offer without reward, a part of one’s body for the health and wellbeing of another person.

We rejoice that medicine, in its service of life, has found in organ transplantation, a new way of serving the human family.”

Many people might be surprised to learn of the position their religion has on organ and tissue donation for transplantation. In fact, most of the world’s major religions actively support organ and tissue transplantation to save or improve lives. Many of the other religions and beliefs leave it to the individual to make their own choice.

If you are unsure of your religion’s position, you should discuss any concerns that you may have with your religious adviser or for further information call **(08) 8351 5222**.

The first successful Australian transplant - of a cornea (of the eye) - was undertaken in 1942. Since then, more than 30,000 Australians have received transplants.

- Transplantation dramatically improves the lives of recipients.
- Transplantation has enabled some to have families and contribute to the community.
- Through Transplant Australia - a support group for recipients of donated organs and tissue - many celebrate their lives by taking part in events like Transplant Games here and overseas.
- Not all recipients feel comfortable about meeting or contacting the family of their donor. Not all donor families favour contact with recipients of their family member’s donated organs/tissue.
- Donor Coordinators will pass cards or letter between recipients and donor families, providing that neither party is identified.

For further information on the Australian Organ Donor Register:

Visit any Medicare office

Phone: 1800 777 203 during business hours

E-mail aodr@his.gov.au

Web site: www.hic.gov.au/organ

Write to GPO Box 711 HOBART, TAS 7001

TTY: 1800 552 152 (hearing impaired)

TIS: 131 450 (Translating and Interpreting Service)

EXTRA READING

Four National Health and Medical Research Council publications under the title “Ethical issues in organ donation”, and a fifth entitled “Recommendations for the donation of cadaveric organs and tissues for transplantation”. All are available from AUSINFO in your capital city.

other organisations affiliated with Law Consumers Association Ltd

Community Funerals Pty Ltd



1300 794 500

The latest initiative by LawConsumers to moderate the virtual monopoly in the funeral industry

The Probate Company Ltd



1300 725 871

The alternative for those who do not wish to use the Public Trustee, a solicitor or do-it-themselves in getting grants of probate and letters of administration

LawCona Conveyancing Company



02 9564 3088

The successor of the first conveyancing company in NSW started by LawConsumers in 1979

OTHER SERVICES PROVIDED BY



Self-help kits

Conveyancing for vendors, purchasers

Probate applications

Wills

Guide for Executors

Living Wills - Medical Care Directives

Power of Attorney

Guardianship

Private sales of real estate

DIY Funeral

Each of these kits is supported with a back-up service

Check our website, www.lawconsumers.org for more details

PLANNING FORWARD

Logically, this section should be at the beginning but it will be only after experiencing the death of another that planning forward becomes relevant. Other than preplanning for the funeral itself using the Family Funeral Directive the following should be considered.

Planning forward for the death of a family member is also linked with financial planning. Not only are the costs and distress of a funeral minimised, but the income from the assets of an estate are maximised during life and should also result in having the best result for the beneficiaries.

One simple device to use is to ensure the family home is held as joint tenants. Joint tenancy is where, usually, *the proprietors of the land*, a husband and a wife own the property and are shown on the Certificate of Title together *as joint tenants*. The other form of tenancy is one in which people can own a *share* of a property in their own right and the Certificate of Title shows each name and share *as tenants in common*.

The technical difference is that with joint tenancy, the property automatically becomes the property of the survivor. Whereas, when a tenant in common dies, that share is disposed of according to the deceased's will or according to the rules of intestacy if there is no will and is independent of the other tenants in common. This means that the survivor of a joint tenancy does not have to go to the expense and inconvenience of making an application for a grant of probate, whereas the executor of a deceased tenant in common does.

It is a simple inexpensive exercise to convert from one name to a joint tenancy.

The next device is to make a will. A will gives you the right to dispose of your assets on death as you wish. Where there is no will the assets are divided up according to the rules of intestacy which are quite fair but may not be quite what the deceased may wish. A will appoints an executor and the executor should be advised of the appointment.

So that anyone's financial affairs may be properly managed in all circumstances it is wise to have a back-up for when you may not be able to function. This can be achieved by appointing an attorney. Powers of attorney may be limited to specific tasks and it can be general or enduring. A general power of attorney remains active up to the point the donor loses full mental capacity whereas an enduring power of attorney remains active up to the moment of death of the donor. It is normal for married couples to exchange enduring powers of attorney with one another and/or with others in other circumstances. Powers of attorney are limited to financial matters.

Guardianship is normally obtained when a person has no close relatives and wishes to appoint someone to look after their health/living arrangements when they become no longer capable of doing so. Not everyone needs to appoint a guardian.

A Medical Directive or Living Will sets out the circumstances in which a person defines when life support systems should be withdrawn for them and death be allowed to occur naturally. Palliative care will still be maintained so that the dying person remains comfortable. Donations of organs/tissue should also be considered in the pre-plan.

FAMILY FUNERAL DIRECTIVE

Family Names:
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Appointing the organiser

Nominee:

Alternative Nominees:

.....
.....
.....

Nominee provided with DIY Funeral Kit: Yes No

Overall budget: \$ as at / / 20

Club/Funeral Bond Yes No Value: \$

Pre-paid funeral Yes No

If yes, then with:

Advertising

Yes No

If yes, then with:

Text:

.....

.....

Budget: \$ as at / / 20

The Method

(a) Professional Funeral Director Yes No

If yes, then with:

(b) Community Funerals (CF) Yes No

(c) DIY Yes No

The Coffin

(a) Making one Yes No

(b) Buying one Yes No

If yes, then with:

Type:

Budget: \$

The place

(a) Burial at home or on privately owned land Yes No

If yes, then consent of Council obtained Yes No

(b) Public Cemetery Yes No

Availability of plot confirmed Yes No

(c) Private Cemetery Yes No

Plot pre-purchased Yes No

(d) At Sea Yes No

Application prepared Yes No

(e) Cremation Yes No

If yes, then where:

(i) Ashes in memorial box at Crematorium Yes No

(ii) Ashes in urn Yes No

(iii) Ashes scattered Yes No

Medical Directive prepared (Living Will) Yes No

Attorney appointed (Power of Attorney) Yes No

Guardian appointed Yes No

Organs/Tissues donated Yes No

Particular Invitees

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as at (date): / / by (name):

FUNERAL QUOTE CHECK LIST

COMPANY:

ADDRESS:

PHONE NUMBER:

DECEASED:

DATE OF DEATH: .../.../.....

DATE OF SERVICE: .../.../.....

ORGANISER:

ADDRESS:

RELIGIOUS DENOMINATION: BURIAL / CREMATION

LOCATION OF SERVICE:

LOCATION OF BURIAL / CREMATION:

SERVICES REQUIRED:

1. Standard funeral director services \$

which includes:

.....

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..... (delete from below if included)

2. Supply coffin, description: \$

3. Essential mortuary care and logistics \$

4. Transfer of deceased \$

5. Flowers yes/no \$

6.	Advertisement	yes/no	\$
7.	Mourning car hire	yes/no number:	\$
8.	Crematorium fees		\$
9.	Celebrant fee	yes/no	\$
10.	Certified copy of Death Certificate		\$
11.	Doctor's fee - Medical Referee		\$
12.	Doctor's fee - Cremation Certificate		\$
13.	Cemetery application fee		\$
14.	Grave opening fee		\$
15.	Administration fee		\$
16.	Sundries, being		\$
.....			
.....			
TOTAL:			\$

pay by: ... / ... /



rrp: \$5.00