

Burial and cremation decision maker/s guide

Disclaimer

Nothing in this guide should be taken as legal advice. This guide is to be used as a helpful document only. We encourage you to seek independent legal advice about the contents of this guide if you require further assistance.

What this guide does

The purpose of this guide is to help you to identify the **decision maker** for a **deceased person**.

The **decision maker** will be the person with legal responsibility for decisions under the *Burial and Cremation Act 2022* (the Act), and will be one of the following:

- the **executor**; or
- the **administrator**; or
- the **senior next of kin**; or
- the **Public Trustee**.

Carefully consider the questions in this guide to help you identify the **decision maker**.

Terms used in this guide

This guide is to be read with the definitions contained within the Act. For the purpose of this guide:

Act is the *Burial and Cremation Act 2022*.

Administrator is a person appointed by a Court to manage the deceased person's estate.

Agency means the Northern Territory Department of the Chief Minister and Cabinet.

Deceased Person is the person who has recently died.

Decision Maker is the person(s) whose legal responsibility it is to make decisions about the deceased person's remains described in Step one of this guide.

Executor is a person(s) named in the deceased person's will, to carry out the wishes of the deceased.

Senior next of kin is a person described in Step two of this guide.

Will is the legal document that names the deceased person's **executor**, and has instructions on how to distribute their estate.

Step one: How to identify the decision maker/s

Does the deceased person have a will?

Yes – The **executor** of the will is the **decision maker**. If there is more than one executor named in the will, both are **decision makers**.

Note: If there is a dispute between the executors regarding the remains of the deceased person, an executor may;

- request the other parties to the dispute engage in mediation; or
- apply to [the Northern Territory Civil and Administrative Tribunal](#) (NTCAT) to determine which executor has the authority to make decisions.

OR

No – If an **administrator** of the estate has been appointed. Then, the **administrator** is the **decision maker**.

OR

I don't know – You may not know whether there is a will or whether an administrator for the estate has been appointed. You must check with the [Office of the Public Trustee \(Public Trustee\)](#) to ask whether the deceased had a will or whether an administrator of the deceased person's estate has been appointed. If the Public Trustee says there is no will or administrator, the **decision maker** may be the **senior next of kin**.

If you chose 'I don't know', go to Step two.

Step two: How to identify the senior next of kin

Is there a senior next of kin?

Yes - The **senior next of kin** is one of the following people in descending order:

- (a) if the deceased person is an Aboriginal or Torres Strait Islander person with strong cultural and traditional ties to a community or group, the **senior next of kin** is a person who, according to the customs and traditions of the community or group to which the person belongs, is most appropriate to perform that role;
- (b) if paragraph (a) does not apply and the deceased person was, immediately before death, both married (had a spouse) and in a de facto relationship, then the next **senior next of kin** is:
 - i. in the situation where the deceased person was in a continuous de facto relationship for at least two years immediately before their death, and did not during those two years live with the deceased person's spouse – the deceased person's de facto partner; or
 - ii. in the situation where the parent of the deceased person's youngest child is the deceased person's de facto partner, and the deceased person did not live with their spouse immediately before death – the deceased person's de facto partner; or
- (c) in any other situation – the deceased person's spouse;
- (d) if paragraphs (a) to (c) do not apply and the deceased person was immediately before death, in a de facto relationship – the deceased person's de facto partner;
- (e) if paragraphs (a) to (d) do not apply – the deceased person's eldest child who is 18 years of age or older who can be contacted within a reasonable period. If the eldest child cannot be contacted within a reasonable period, the next eldest child who is 18 years of age or older who can be contacted is the **senior next of kin** for the deceased person;

- (f) if paragraphs (a) to (e) do not apply – the deceased person’s parent;
- (g) if paragraphs (a) to (f) do not apply – the deceased person’s eldest sibling who is 18 years of age or older who can be contacted within a reasonable period. If the eldest sibling cannot be contacted within a reasonable period, the next eldest sibling who is 18 years of age or older who can be contacted is the **senior next of kin** for the deceased person.
- (h) if paragraphs (a) to (g) do not apply - a person who, immediately before the death of the deceased person, had a relationship with the deceased person.

The **senior next of kin** must not have previously been certified mentally unfit by 2 medical practitioners, and must be contactable within a reasonable period to undertake the necessary requirements of the **decision maker’s** role.

OR

No - If a **senior next of kin** cannot be identified, the **decision maker** may default to the **Public Trustee**.

If no senior next of kin can be identified, go to Step 3.

Step three: Is the Public Trustee the decision maker?

Contact the [Office of the Public Trustee](#) to ask if the **Public Trustee** has been appointed **decision maker**. The Public Trustee will be appointed where there is no executor or administrator of the deceased person’s estate, and no **senior next of kin**.

More Information

Please email burials@nt.gov.au or call (08) 8999 8589 if you have any questions about how to use this guide to identify the **decision maker**.

If you intend to bury the deceased person outside a cemetery, please notify the agency by:

- filling in an [online burial notification form](#); or
- downloading and filling in a burial notification form in [Word](#) or [PDF](#).

If the identity of the decision maker is disputed, it may be resolved by:

- mediation in accordance with section 12 of the Act;
- application to [NTCAT](#) in accordance with section 13(1)(b) of the Act; or
- appeal to the Supreme Court on question of law pursuant to section 141 of the *Northern Territory Civil and Administrative Act 2014*.