

Australian Capital Territory

# Public Trustee and Guardian (Disposal of Unclaimed Deceased Person) Guidelines 2021

Disallowable instrument DI2021–282

made under the

**Public Trustee and Guardian Act 1985, s 13A (Appointment as person responsible for disposal of unclaimed deceased person)**

---

## 1 Name of instrument

This instrument is the *Public Trustee and Guardian (Disposal of Unclaimed Deceased Person) Guidelines 2021*.

## 2 Commencement

This instrument commences on the day after it is notified.

## 3 Declaration

I make the *Public Trustee and Guardian (Disposal of Unclaimed Deceased Person) Guidelines 2021* as set out in Schedule 1.

Shane Rattenbury MLA  
Attorney-General  
9 December 2021

# Public Trustee and Guardian (Disposal of Unclaimed Deceased Person) Guidelines 2021

## 1. Introduction

Under section 13 (1) (i) of the *Public Trustee and Guardian Act 1985* (the Act), the Public Trustee and Guardian may be appointed and act under that name as the person responsible for the disposal of the body of an unclaimed deceased person.

Where the Public Trustee and Guardian is responsible for the disposal of the body of an unclaimed deceased person, section 13A provides that the Public Trustee and Guardian may:

- make arrangements for the disposal of the body,
- investigate whether there is a solvent estate, and
- administer the estate of the unclaimed deceased person.

For the avoidance of doubt, the Public Trustee and Guardian may make payment out of the estate of an unclaimed deceased person without administering the estate.

Section 13A makes clear however that the role of the Public Trustee and Guardian does not extend to arranging the removal of the unclaimed deceased person's body from the place where the person died.

Section 13A (3) requires the Public Trustee and Guardian to comply with any guideline made by the Minister, and section 13A (4) clarifies the guideline is a disallowable instrument. These guidelines aim to further define the scope of the Public Trustee and Guardian's role in disposing of the body of an unclaimed deceased person and explain the process surrounding this function.

## 2. Defining an 'unclaimed deceased person'

The term 'unclaimed deceased person' is defined in section 13A (5) of the Act as being a person:

- whose death is registerable under the *Births, Deaths and Marriages Registration Act 1997*; and
- the executor of whose estate, or whose next of kin:
  - has not been found, despite reasonable inquiries by the police; or
  - is unwilling or unable to make funeral arrangements for the person, and
- whose body:
  - is held at a place in the ACT; and
  - has not been claimed by anyone who has a right to claim the body under the law of another State or Territory.

This definition is intended to include the bodies of people whose deaths occur in the ACT, and deaths which occur outside the ACT, in particular circumstances. For example, where a person dies in an area of New South Wales which is in close proximity to the ACT, the registration of the person's death may occur in the ACT and the body may be held in an ACT facility. In these circumstances, it may be appropriate for the ACT Public Trustee and Guardian to assume responsibility for disposal of the body if the person's body is unclaimed.

This definition is not intended to prevent another jurisdiction, such as New South Wales, from claiming and moving an unclaimed body into a facility in that jurisdiction.

### **3. Defining 'next of kin'**

There is no legal definition in the ACT for 'next of kin'.

This term is intended to have a broad interpretation and can include family members, as well as entities who have a strong connection with the deceased, such as friends, customary families, religious organisations and community groups/organisations.

### **4. Defining 'unable' or 'unwilling'**

There is no definition in the Act on what it means for a next of kin to be unable or unwilling to make funeral arrangements for the deceased person. The Public Trustee and Guardian may consider the following scenarios in assessing whether this element is satisfied.

A next of kin may be 'unable' to make funeral arrangements if the person considers themselves to be in financial hardship or paying for a basic cremation would put the person in financial hardship. This could include a person who has not been eligible for the ACT Funeral Assistance Program but paying for a basic cremation may put the person in financial hardship.

A next of kin may be 'unwilling' to make funeral arrangements if, for example, the person had little contact with the deceased person in the years before their death, or as a result of family dysfunction arising from but not limited to indifference, conflict, fraud or abuse.

### **5. Role of the Public Trustee and Guardian**

The role of the Public Trustee and Guardian will commence upon notification from ACT Policing, Canberra Health Services or the Forensic Medicine Centre that a deceased person is unclaimed.

Section 13A (1) requires the Public Trustee and Guardian to accept an appointment as the person responsible for the disposal of the body of an unclaimed deceased person. To accept this appointment, the Public Trustee and Guardian must be

satisfied that the unclaimed deceased person satisfies the definition in section 13A (5) of the Act, including that reasonable inquiries have been undertaken by police to locate a next of kin, and where a next of kin is located, that the next of kin is unable or unwilling to make arrangements for the disposal of the deceased person's body.

Canberra Health Services, the Forensic Medicine Centre and any other relevant agencies are responsible for liaising with ACT Policing, to ensure reasonable inquiries to locate a next of kin have been undertaken prior to notifying the Public Trustee and Guardian of the unclaimed deceased person.

If a Funeral Director is in possession of a body of a suspected unclaimed deceased person, they must contact ACT Policing to undertake reasonable inquiries to locate a next of kin. In these circumstances, ACT Policing will notify the Public Trustee and Guardian directly of the outcome of their inquiries.

Written evidence of ACT Policing's inquiries into locating a next of kin must be provided to the Public Trustee and Guardian upon notification of an unclaimed body. This evidence must be provided in accordance with the agreed information sharing processes between Canberra Health Services, the Forensic Medicine Centre, ACT Policing and Public Trustee and Guardian and any other relevant agency.

## **6. Notification to the Public Trustee and Guardian**

Notification to the Public Trustee and Guardian of an unclaimed deceased person should occur no later than three months following the person's date of death unless special circumstances exist.

This three-month deadline to inform the Public Trustee and Guardian of an unclaimed deceased person intends to ensure bodies are managed within an appropriate timeframe and provide ACT Policing with sufficient time and opportunity to conduct reasonable inquiries to locate a next of kin or for a next of kin to come forward to claim the deceased person's body.

## **7. Arrangements for disposal of the body**

Section 13A (2) (a) (i) allows the Public Trustee and Guardian to make arrangements for the disposal of the body of the unclaimed deceased person. This includes arranging and meeting the costs for a basic cremation or burial of the body, including the cost of transporting the body from the current location to the crematorium.

In limited circumstances, the Public Trustee and Guardian may pay the reasonable costs for other basic funeral arrangements, including:

- a basic burial; and/or
- associated costs of observing religious and cultural sensitivities.

The Public Trustee and Guardian may pay for these other basic funeral arrangements where:

- the Public Trustee and Guardian has knowledge of any cultural or religious sensitivities involving the unclaimed deceased person; and/or
- the Public Trustee and Guardian is complying with any directions from the ACT Coroner or Court.

The Public Trustee and Guardian is not obliged to carry out its own investigations to ascertain whether there may be any cultural or religious sensitivities in carrying out arrangements for the disposal of an unclaimed deceased person's body.

In undertaking the function, the Public Trustee and Guardian may consider, but is not required to act upon, any wishes of, or be influenced by, the unclaimed deceased person's next of kin or executor.

## **8. Costs of Arrangements**

Expenditure by the Public Trustee and Guardian for the disposal of an unclaimed deceased person's body is limited to the following costs:

- Transportation and logistics in moving the body to a crematorium or funeral director;
- Disposal of the body; and
- Associated administrative arrangements.

The following items are examples of costs that the Public Trustee and Guardian may, but is not required to, procure when undertaking the function:

- Headstones
- Plaques
- Religious services
- Funeral services
- Embalment
- Celebrant/clergy services
- Flower arrangements
- Repatriation of remains (except in relation to returning the remains of an indigenous person back to country)
- Funeral notices
- The disposal of ashes, other than by scattering in a garden of the crematorium

## **9. Investigation into and administration of an estate**

Section 13A (2) (ii) and (iii) allows the Public Trustee and Guardian to investigate whether the unclaimed deceased person has a solvent estate and administer the estate of the deceased person for the purpose of recovering expenses associated with the disposal of the unclaimed deceased person's body.

The Public Trustee and Guardian has the power to pay for arrangements for the disposal of an unclaimed deceased person using funds drawn from an estate without administering the estate itself.

Where the Public Trustee and Guardian chooses to administer the estate of the deceased person, it will be responsible for the person's estate for the purposes of recovering funds in relation to the disposal of their remains. However, if certain circumstances arise, the Public Trustee and Guardian may elect to administer the full estate pursuant to general estate administration powers under the Act.