

Guidance for Disinterment License Applications - Burial and Cremation Act 1964

Introduction

- 1) The Minister of Health's powers to issue disinterment licences under section 51, Burial and Cremation Act 1964 ("the Act") have been delegated to the Director of Public Health. Section 51 of the Act provides that:

It shall not be lawful to remove from its burial place any body, or the remains of any body, buried in any cemetery, Māori burial ground, or other burial ground, or place of burial, without licence under the hand of the Minister and except in accordance with such conditions as he may prescribe.

- 2) Because the Act does not specify an administrative procedure for making an application and for the issue of a licence for disinterment, the Ministry of Health ("the Ministry") has developed the following guidelines to assist in assessing applications consistently and transparently.

Applications for a disinterment license

- 3) An application form for the applicants to complete when applying for a licence for disinterment is attached. Applications must be in writing and are usually made by:
 - a. person(s) related to the deceased;
 - b. the executor of the will of the deceased;
 - c. a funeral director acting on behalf of either of the above;
 - d. an iwi/Māori authority acting on behalf of the close relatives; or
 - e. a person acting for the family.
- 4) Applications should be submitted to the applicant's local District Health Board ("DHB") public health unit addressed to the health protection officer, who will assess the application and forward it, together with a report and recommendations, to:

The Director of Public Health
Ministry of Health
PO Box 5013
Wellington.

If the proposed disinterment is urgent, details of the disinterment may be e-mailed or faxed to the applicant's local DHB public health unit.
- 5) The fee (see clause 13) and all supporting papers (see clauses 9 to 12) must accompany the application.
- 6) **Please note that it is not usual to issue licences between one month and one year after burial because of decomposition during this period.** If a body has been embalmed, this limitation may not apply, depending on the drainage of the site, likely state of the casket and recommendation of the health protection officer. Applications to disinter within one month of interment may be deferred if the deceased died of an infectious disease.

- 7) **A licence is normally issued three working days after receipt by the Ministry of a complete application.** Unless otherwise indicated, the licence is issued to the applicant and copied to the local DHB public health unit health protection officer who reported on the application.
- 8) These guidelines are to assist the Ministry, health protection officers, and applicants. Application of the guidelines may depend on the circumstances of an individual application.

Disinterment application requirements

- 9) *Assessment of the application by a health protection officer:* The health protection officer will assess the submitted documentation to ensure that it is complete, review the application and prepare a report for the Ministry.
- 10) *Next of kin of the deceased:* Before a disinterment licence is issued, the wishes of all next of kin [e.g. spouse, parent(s)' children, sibling(s), guardian(s)] must be confirmed in writing. Each family or whānau member is required to:
 - a. indicate their consent (or otherwise); and
 - b. note their respective relationship with the deceased.

Any given authority for a person to speak for other next of kin must be specified in writing and signed by the person giving the authority.

The Ministry usually only approves applications for disinterment licences where there is absolute agreement among next of kin. Where there is no absolute agreement, the Ministry will not act as a negotiator.

For disinterments from an Urupa, the consent of the Trustees of the Urupa should be included. Consent from the Kaumatua/Kuia of the Urupa should be included after the consent of the Trustees has been obtained. If the remains are to be re-interred in another Urupa, the consent of the Trustees and Kaumatua/Kuia of that Urupa should also be shown.

For Pacific families, an elder may have authority to speak on behalf of the deceased, even though the elder may not be a close relative of the deceased. A representative nominated in writing by the extended family is acceptable.

- 11) *Reason for the disinterment:* The application must state the reason for the disinterment. Examples of reasons may include cultural reasons, burial in the wrong plot, relatives who have moved to another area, or mental anguish. Each reason will be assessed on its own merits. Frivolous reasons will not be accepted.
- 12) *Cause of death:* The original certificate of death or a certified copy (for example countersigned as a true and accurate copy by a Justice of the Peace or a health protection officer) is required with each application, so that the cause of death and other details can be confirmed to assist with determining the licence application. In cases where a death certificate cannot be obtained in time to submit with the application (e.g. the certificate has not yet been issued), the Ministry will accept a statement from the cemetery or burial ground authority identifying where the deceased is buried and a statement describing the cause of death.
- 13) *Licence fee:* A \$90.00 fee (including GST) made payable to the Ministry of Health is required for each licence applied for. Usually one licence is required for each body that is to be disinterred, although exceptions would include a common grave. The fee may be waived where special reasons make it appropriate to do so – for

example compassionate or hardship grounds). Any request for a waiver should be supported by documentary evidence of hardship or alternative justification.

Please make payment to the Ministry of Health's Westpac account (03-0049-0001805-00) by:

- Direct credit;
- Online banking; or
- Bank deposit.

- 14) *Application to be made under oath*: The licence application must include a sworn statement from the applicant that the information contained within it is true and correct, and be witnessed by a Justice of the Peace, serving Police Officer of Court official. An example of statutory declaration is attached.

Supervision of a disinterment

- 15) Disinterment occurs whenever a casket (or body) is uncovered, even if only partially uncovered. A health protection officer must supervise the disinterment unless that requirement is specifically waived in the issued licence. Supervision of the disinterment by a health protection officer is to ensure that the disinterment is carried out with due respect to the deceased and in a sanitary manner so as to prevent any public health risk arising or any offence being created to the body and any family/next of kin that may be present. The licence will be copied to the health protection officer to whom the application was first lodged.

- 16) The person(s) undertaking the disinterment are responsible for ensuring that the disinterment is legally, safely and properly carried out, with decency and due respect to the deceased and adjacent burial sites.

- 17) WorkSafe New Zealand has published an 'Approved Code of Practice for Safety in Excavations and Shafts for Foundations' and, in particular, the following extract is relevant:

Excavations shallower than 1.5 metres: Excavations shallower than 1.5 m have been known to collapse. If an employee is in the trench and bending over at the time of the collapse, he or she may suffer serious injury. Employers are to consider such excavations and determine if special precautions or work methods are necessary.

Excavations 1.5 metres or deeper: Excavations greater than or equal to 1.5 m deep are particularly hazardous and must be shored unless:

- a. The face is cut back to a safe slope and the material in the face will remain stable under all anticipated conditions of work and weather; or
- b. Shoring is impracticable or unreasonable, and safety precautions certified by a registered engineer to be adequate, have been taken.

- 18) Such work may be notifiable under health and safety at work legislation.



Registrar to be notified when body removed or disposed of

- 19) Where the body is not returned to the same plot, the licence holder must give full details as to where and how the body was disposed of to the Registrar for Births, Deaths, and Marriages at the Department of Internal Affairs (as required by section 51 of the Births, Deaths, Marriages and Relationships Registration Act 1995).

Application for Disinterment Licence

This application form must accompany all applications for a disinterment licence and is to be sent to the health protection officer at the District Health Board public health unit. Also ensure the following are included with the application form:

- Original certificate of death or a certified copy (e.g. countersigned as a true and accurate copy by a Justice of the Peace or a Health Protection Officer)
- Declaration of support from next of kin
- Declaration under the Oaths and Declaration Act
- Licence Fee (\$90.00 includes GST) made out to the 'Ministry of Health'.

Name of applicant or agent		
Relationship to Deceased		
Postal Address		
Street address (if different from above)		
Phone number		
		
Email		
Full name of deceased		
Cause of death		
Date of death		

Burial location		
Consent of Urupa Trustees Sight documentation showing appointment as Trustee		
Burial date		
Reason for disinterment		
Next of kin	Name	Relationship
	1.	
	2.	
	3.	
	4.	
	5.	
	6.	
	7.	
	8.	
	9.	
	10	
	11.	
	12.	
Kaumatua/Kuia (if deceased is buried in an urupa)	Name	Authority

Dated at _____ this _____ day of _____, 20____
 (insert location) (insert number) (insert month) (insert year)

Signature of applicant/agent: _____

Declaration in support of disinterment

I, _____, have been consulted on this application

(Insert your full name)

to disinter my _____, _____

(insert relationship to deceased)

(insert name of deceased)

and I hereby advise I support this application.

Signed:

Date:

Declaration in support of disinterment

I, _____, have been consulted on this application

(Insert your full name)

to disinter my _____, _____

(insert relationship to deceased)

(insert name of deceased)

I hereby advise the application is supported.

Signed:

Date:

Make as many copies of the declaration form that are needed for all next of kin to complete.

Note: Any given authority for a person to act for other next of kin must be specified in writing and signed by the person giving that authority. For Pacific families, an elder may have authority to act on behalf of the deceased, even though the elder may not be a close relative of the deceased. A representative nominated in writing by the extended family is acceptable.

Canterbury

District Health Board

Te Poari Hauora o Waitaha

Statutory Declaration – Oaths and Declaration Act 1957

I, _____, _____,
(insert full name of applicant/agent/authorised person) (insert occupation)
of _____, and _____,
(insert location where you reside) (insert relationship to deceased)

do solemnly and sincerely declare that the statements made in the accompanying application are true and correct.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at _____ this _____ day of _____, 20____
(insert location) (insert date) (insert month) (insert year)

Signature of Applicant

Declared before me:

Name: _____

A person authorised under section 9 of the Oaths and Declarations Act 1957 to take this declaration.

Designation: _____ **Stamp:** (Optional)

Signed: _____ **Date:** _____

A declaration made in New Zealand must be made before:

- a) A barrister or solicitor of the High Court
- b) A Justice of the Peace
- c) A notary public
- d) The Registrar or a Deputy Registrar of the Supreme Court
- e) The Registrar or a Deputy Registrar of the Court of Appeal
- f) The Registrar or a Deputy Registrar of the High Court or a District Court
- g) Some other person authorised by law to administer an oath
- h) A member of Parliament
- i) A person who is a fellow of the New Zealand Institute of Legal Executives and is acting in the employment of a practising barrister and solicitor of the High Court
- j) An employee of the New Zealand Transport Agency authorised for that purpose by the Minister of Justice or an employee of Public Trust authorised or an officer in the service of the Crown or of a local authority authorised for that purpose.