



Burial rights and Aboriginal customary law

For many Aboriginal people, being able to die and be buried in their traditional homelands is very important. Under Aboriginal customary law, the deceased person's family usually has the right to bury the body of their relative. The family's wishes about how and where the body will be buried will therefore come before the wishes of the deceased person's spouse or de facto partner.

Burial rights and Australian law

Australian law says that the right to bury the deceased person lies with the person who has the highest entitlement to inherit any property the deceased person has left behind (or if the deceased person made a will, the executor of the will). In Western Australia, the person with the highest entitlement is the surviving spouse (or de facto partner) followed by the children of the deceased person, the deceased person's parents, the deceased person's brothers or sisters, then other specified family members.

Resolving conflict between Aboriginal customary law and Australian law

Because of the difference between customary law and Australian law, there are sometimes disputes about who has the right to bury an Aboriginal deceased person. Usually the conflict will be between the Aboriginal deceased person's family (who wish to bury the person in their traditional Aboriginal homelands) and the deceased person's non-Aboriginal spouse (who may wish to bury the person close to their home so that they and any children can visit the grave).

There have also been cases where an Aboriginal family and an Aboriginal spouse have different views about where the deceased person should be buried. Sometimes there are two competing cultural or religious beliefs or two different sets of Aboriginal customary law that may be relevant and the family

