



Who has the right to make decisions about a deceased's body?

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When a loved one passes away, emotions run high, and decisions about the deceased's body can become a source of confusion or even conflict. Understanding who holds the legal right to make these decisions about what happens to the body of the deceased is essential for ensuring the deceased's wishes are respected and avoiding disputes during an already difficult time.

Decisions about the deceased's body if there is a valid Will

If the deceased passed away with a valid Will in place, the answer to who has the right to make decisions about a body is fairly clear: the [executor appointed under the Will](#) has the duty to arrange the burial or cremation.

The executor's decision in relation to the deceased's body is generally prioritised over the views of the deceased's family members. However, sometimes the Court may refuse to uphold the executor's authority if it is shown that the executor acted unreasonably or against the deceased's wishes. In doing so, the Court may also have regard to the deceased's and the family's cultural, spiritual and religious considerations.

Generally, the decisions the executor is responsible for making include whether the body is buried or cremated, the choice of funeral service, and where the burial is to take place or where the ashes are to be scattered.

Dealing with the deceased's body if there is no Will

Where the deceased passed away without a Will, it is often considered less clear as to who has the right to make decisions about the body. However, in *Phillips v The State Coroner & Anor [2024] SASC 134*, the Court

was clear in its position that this right falls on the person most entitled to a [formal grant for administration of the Estate](#).

Without a Will to specify who the executor is, the person with the right to make decisions about the deceased's body is the person who has the most interest in the estate. This may be a spouse or children, depending on the family circumstances.

Disputes between decision-makers when determining what should happen to the body of the deceased

Where there are multiple executors, or in the absence of a Will, there are multiple children with the right to make decisions, disputes can arise between the decision-makers.

Due to the sensitivity of the decision, these disputes can escalate quickly. In some instances, it may be necessary for the Court to settle the dispute.

Whilst you cannot completely prevent the possibility of a dispute, there are several things that can be done to ensure your wishes are respected and reduce the likelihood of a dispute.

Prepare a Will

Writing a valid Will and appointing one or more executors assists in mitigating conflict regarding who has the right to make the decision about the body of the deceased.

Whilst this may not impact the likelihood of disputes amongst your executors, it will clearly outline who the decision-makers are.

Document your wishes

Outlining your specific wishes, for example, whether you would prefer to be buried or cremated, where you want to be buried or have your ashes scattered, and so on, will also help limit disputes.

Documenting these wishes does not make your executors bound to them, however, it would make it clear what your wishes were and reduce the chance of disagreements regarding those wishes. If there were a dispute, the Court tends to take your expressed wishes into account.

We offer a complimentary funeral wishes checklist when you are preparing your Will or other estate planning documents.

Tell your family what your wishes are

Apart from writing the wishes down, you should also talk to your family as to what are your wishes. This would certainly be appropriate where members of your family are not your appointed executors.

Who pays for the costs of the funeral?

Generally, the estate is responsible for paying the costs of a funeral and either the burial or the cremation.

However, the executor should ensure that the costs are reasonable and proportionate to the value of the estate.

If the executor attends to payment of the costs out of their own pocket, they would be reimbursed by the estate when the estate is in the position to do so.

What else might be included in your wishes?

A question often arises as to who should pay for the wake, the extent of the expected wake (including what extent of food and drink to be served, and maybe where it should be held) and even what music and hymns should be played. Our complimentary funeral wishes checklist can include your intentions on these and other matters.

Get help from an estate planning lawyer

Navigating legal responsibilities after losing a loved one can be difficult.

Doing what you can now to make these decisions easier for your loved ones later may provide you with the peace of mind that you have assisted in mitigating the risk of a dispute between loved ones after you pass.

If you have any concerns or would like to discuss your estate planning options, including your Will and any statement of wishes, please don't hesitate to contact us.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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