

Senior Next of Kin Information Sheet

May 2021

Introduction

Prior to 2019, the meaning of Senior Next of Kin (SNK) was in regulation 3 of the *Burial and Cremation Regulations 2015* (the Regulations). The definition of SNK is used to identify who can legally make decisions about the body of a person who has died. For example who can decide whether the body of a person is to be buried or cremated and who will be the funeral director and take control of the body once it leaves the place of death.

The SNK definition is used by, but is not limited to, funeral directors, the Registrar of Births Deaths and Marriages, cemetery managers, managers of regulated businesses and crematoria, nurses, midwives, police, medical practitioners, officers of the Ambulance Service and the Coroner's Office.

The *Burial and Cremation Act 2002* (the 2002 Act) was reviewed in 2018 and targeted amendments were made to protect cemeteries due to the increase in cemeteries being sold. As part of these amendments the meaning of SNK was moved from the Regulations to section 3B of the Act 2002, but the definition remained unchanged. The relocation of the definition to the 2002 Act came into effect in December 2018.

Following this, a new *Burial and Cremation Act 2019* (the current Act) was introduced in December 2019. At this time the meaning of SNK was changed and it is now located in section 6 of the current Act. The change in the definition means the SNK is no longer the spouse of the person who died (as it was previously), but is now the executor or administrator of the estate of the person who has died.

This change respects a person's right to decide who they want to make decisions about what happens to their body when they die rather than the authority going automatically to the spouse or a close relative.

If there is no executor or administrator then section 6 of the Act 2019 provides a descending list of appropriate people who can be legally named as the SNK.

Another new addition to the meaning of SNK, in 2019, is section 6(4) which gives a person the authority to decide what happens to a part of their body if it is detached or cremated.

Below is copy of section 6 of the Act 2019. Section 6(1)(a) and 6(4) are underlined and are the amendments that were added and took effect from December 2019.

Section 6 of the *Burial and Cremation Act 2019* - Meaning of senior next of kin

- (1) Subject to subsection (4), a person is the senior next of kin in relation to a deceased person, including the cremated remains of the deceased person, for the purposes of this Act, if –
- (a) the person is the executor or administrator of the estate of the deceased person, if the administration of the estate is not complete; or
 - (b) if there is no person within paragraph (a) in respect of the deceased person – the person was the spouse of the deceased person immediately before the death of the deceased person; or
 - (c) if there is no person within paragraph (a) or (b) in respect of the deceased person – the person is the deceased person's eldest available child, within the meaning of section 3(13) of the *Evidence Act 2001*, if that child has attained the age of 18 years; or
 - (d) if there is no person within paragraph (a), (b) or (c) in respect of the deceased person – the person was in a caring relationship, within the meaning of the *Relationships Act 2003*, with the deceased person immediately before the death of the deceased person; or
 - (e) if there is no person within paragraph (a), (b), (c) or (d) in respect of the deceased person – the person is a parent of the deceased person; or
 - (f) if there is no person within paragraph (a), (b), (c), (d) or (e) in respect of the deceased person – the person is the eldest available sibling of the deceased person, if that sibling has attained the age of 18 years; or
 - (g) if there is no person within paragraph (a), (b), (c), (d), (e) or (f) in respect of the deceased person – the person is the personal representative of the deceased person; or
 - (h) if –
 - (i) there is no person within paragraph (a), (b), (c), (d), (e), (f) or (g) in respect of the deceased person; and
 - (ii) the deceased person is an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995* –

the person is a person who is an appropriate person according to the customs and traditions of the community or group to which the deceased person belonged; or
 - (i) if there is no person within paragraph (a), (b), (c), (d), (e), (f), (g) or (h) in respect of the deceased person – the person is a person approved under subsection (3) as the senior next of kin of the deceased person.

- (2) For the purposes of subsection (1) or (3), there is no person within the paragraph in respect of a deceased person, or a person referred to in the paragraph is not available, if the person referred to in that paragraph –
- (a) is unable to be contacted after all reasonable steps to contact the person have been taken; or
 - (b) has declined to act as the senior next of kin of the deceased person; or
 - (c) is, in the opinion of a medical practitioner, unable to perform adequately, or competently, the duties of senior next of kin.
- (3) For the purposes of subsection (1)(i), the regulator may approve, by notice in writing to a person, that person as the senior next of kin of the deceased person.
- (4) Despite subsection (1), a reference to senior next of kin in respect of human remains, or cremated remains, of a person who is not yet deceased is taken to be a reference to the person if the person has legal capacity.

Further information

To view the current Act 2019 and the Regulations please go to *Tasmanian Legislation - Tasmania's consolidated legislation online* at this link: <https://www.legislation.tas.gov.au/>.

If you require further information please contact the Local Government Division either by telephone on 03 6232 7022 or by email to localgovernment@dpac.tas.gov.au or visit the Division's webpages at this link: http://www.dpac.tas.gov.au/divisions/local_government/burial_and_cremation_act_2019.

