

Why can't I locate my ancestor's place of burial?

The 1882 Cemeteries Act and burial details, by David Verran.

I have been researching Auckland's Symonds Street and other early Auckland cemeteries since the early 1990s, and, I believe that an understanding of the 1882 Cemeteries Act is crucial when trying to locate the burial places of early New Zealanders. In particular, it was that Act that brought local government into the administration of public cemeteries, which hitherto were largely the preserve of the various denominations represented in New Zealand.

Note that while I am talking almost exclusively about New Zealand, some of the general principles may also apply to Australia and Britain/Ireland. Regarding Australia, and in particular early Sydney, I recommend Keith Johnson and Malcolm Sainty's '*Sydney burial ground 1819-1901 ... and history of Sydney's early cemeteries from 1788*' (2001).

In November 2004, Stephen Deed presented a Master of Arts Thesis to the University of Otago entitled '*Unearthly landscapes: the development of the cemetery in nineteenth century New Zealand*'. That thesis notes the nineteenth century was "*a time of transition for British burial practices, with the traditional churchyard burial ground giving way to the modern cemetery*". Deed noted in his Thesis that Parish churchyard cemeteries had been the pattern in Britain for a thousand years. However, other sources describe private burial grounds as well – in 1835 there were around 14 such burial grounds in London alone.

From 1832 (Kensal Green was the first) to 1841, there were seven commercially managed private garden cemeteries established on the then fringe areas of the London metropolitan area, Highgate for example was opened in 1839. However, in 1850 the British Parliament then decided to enact the Metropolitan Interment Act to allow the Board of Health to establish publicly funded cemeteries in London. This authority was extended across the rest of England in 1853 and Scotland in 1855. The 1852 Burial Act further empowered London vestries to form Burial Boards with their own burial grounds. If you are interested in more details, read '*London cemeteries*' by Hugh Meller and Brian Parsons (2008).

To get back to Stephen Deed and his thesis, he defines at least ten categories of cemeteries in nineteenth century New Zealand: Maori urupa, pre-1850s Pakeha burial grounds, Church Mission Station burial grounds, churchyards, urban/municipal cemeteries, rural (small town) cemeteries, goldfield cemeteries (mainly Otago and West Coast), cemeteries from the New Zealand Wars, family cemeteries (on private land) and lone/individual graves (often unmarked). There are other cemeteries as well, for example on quarantine islands. The degree of details concerning those buried in those different types of cemeteries varies widely, especially before 1882.

Recently, the New Zealand Law Commission issued a paper calling for a re-examination of the current legal framework surrounding burials and cremation. This included the possibility of 'independent providers' running cemeteries, the extension of the right to bury on private land and possible licensing of the funeral sector. Regarding the latter, in the nineteenth century those working as undertakers were likely carpenters or cabinetmakers who provided the coffin and arranged transport for the body to the cemetery, but this is outside the scope of my talk. I am concentrating on how the 1882 Cemeteries Act, still the basis of present legislation, came into being, and how it and its successors currently assist family historians.

Symonds Street Cemetery – case study one.

According to the 'New Zealand Observer' of 4 August 1938 (pages 6-7), the earliest headstone in Symonds Street Cemetery was that of a boy aged nine who was buried in 1841. From the St Paul's Anglican Church register, we can identify him as nine-year-old William Mason, who died 11 September 1841 and was buried 13 September 1841. He was the son of William and Sarah Mason.

However, his wasn't the first grave dug. We understand the first person buried there was a child from a soldier's family - sometime from September 1840 to February 1841? The body was carried from the waterfront to the fern covered slopes of Grafton Gully (possibly an Anglican burial), but some time later the burial party couldn't locate the grave due to the rapid growth of fern.

The first actual burial from St Paul's Church is a male named Emmerson, aged about 40, who was buried 1 February 1841. The second burial from St Paul's was a soldier from the 80th Regiment named Callagher - actually a Roman Catholic and "*buried by one his persuasion*" sometime in 1841. There was no separate Catholic section until September 1852.

What does this tell us? We have some unidentified or partially unidentified lone graves, in a remote part of the new town of Auckland, which was founded by Governor Hobson in September 1840. However, it wasn't until 12 July 1842 that Governor Hobson granted around nine acres of land to the Anglican Church for a churchyard cemetery, and that land was consecrated within a fortnight. In 1843, another acre was added to the Anglican cemetery and in November 1843 a further acre set aside for the Jewish community. Other denominations were buried to the south of the Jewish cemetery in an unofficial General cemetery and from 1852 on the east side of Symonds Street to the north of the Anglican cemetery. The Presbyterian cemetery wasn't formalised until 1869 and the Wesleyan or General cemetery until 1872.

Thus, the lone graves of the early 1840s were soon joined by other graves in what became denominationally based cemeteries. These are not churchyard cemeteries but cemeteries associated with churches. In the case of the Catholic cemetery, those churches were St Patricks, St Benedicts and St Francis de Salles burial chapel.

The first traceable piece of legislation potentially affecting Symonds Street and other cemeteries in Auckland Province was the central government's 1871 Auckland Burial Ground Act, with the intent of closing the "*various burial grounds in Symonds Street*" and "*acquiring suitable burying grounds, as convenient as possible to the city*". The replacement cemetery was to be administered by the Auckland Provincial Council, rather than the churches. Note the notion of the transfer of cemetery administration from something for which churches took responsibility, to something that public bodies administered. However, disagreements as to site nullified the intent of this legislation. Symonds Street Cemetery was eventually closed for any new plots in 1886 by Order in Council, under the 1882 Act.

Dunedin Cemeteries – case study two.

The Southern Dunedin Cemetery was formed in 1858 by the Otago Provincial Council and Andersons Bay Cemetery in 1862. Both were, along with most other early Pakeha

cemeteries, organised along denominational lines. The Southern Cemetery for example had Anglican, Catholic, Jewish, Chinese and Presbyterian (General) sections.

On the other hand, the North Dunedin Cemetery was formed under its own Act of Parliament in 1872 and from the outset was administered by the Dunedin City Council. The 1872 Act allowed the Council to organise the cemetery along denominational lines, but instead the cemetery was organised non-denominationally, in three classes – with a price differential between each. Class One plots were the most expensive, while Class Three the least expensive and where the Council could bury ‘paupers’ free of charge. North Dunedin Cemetery has a full register of burials from 1872, but the denomination of the person buried isn’t included in the register.

Bolton Street Cemetery, Wellington - case study three.

In 1874 central government enacted the Burial-Ground Closing Act to enable Provincial Superintendents to close cemeteries in their Province on public health grounds, especially the denominationally based Bolton Street Cemetery in inner Wellington (the Anglican was opened in 1851, the Jewish in 1852 and the General in 1854) – see “*Unquiet earth*” by the late Margaret Alington. Also in 1874, the Auckland Provincial Council enacted their Private Burials Prevention and Regulation Act. That Act restricted the burial of remains on private land, again as a public health measure. Further, central government’s 1875 Plans of Towns Regulation Act also made illegal any cemetery reserves within town borders, which would have affected any new churchyard cemeteries. The Wellington Provincial Council had already prohibited burials within the borders of the then Whanganui Township and surrounds from 1855. These Acts all confirm public health concerns with cemeteries, particularly in urban areas.

As an example, the cemeteries in Symonds Street were close to wells sunk for drinking water on the north side of Karangahape Road. Note the 1874 Burial-Ground Closing Act also allowed for cremation, but this didn’t become a real option until the twentieth century. Across New Zealand, the dead were buried rather than there being an option for cremation. The crematorium at Waikumete Cemetery was operating from August 1923, but it wasn’t until 1948 that cremations first outnumbered burials at that major cemetery.

The Provinces were abolished in 1876 and central government’s 1877 Cemeteries Management Act enabled government to make appointments to Boards of Trustees to administer cemeteries as required. At the time, cemeteries were almost exclusively Church run. However, nothing in this legislation included provision for registers of plots or similar. The Cemeteries Management Bill of 1878 and the Cemeteries Bill of 1880 (both withdrawn) made no provision either. To 1882, most cemeteries had no official rules as to compilation of registers, plot maps or similar – it appears the authorities administering Symonds Street and other cemeteries didn’t see them as necessary. The churches did keep records of services for the departed, but many of those registers didn’t survive. For example, the first St Benedicts Catholic Church burnt down with the loss of some early records. The Auckland City Council didn’t have administration of Symonds Street Cemetery until the end of 1909.

The 1882 Cemeteries Act

The 1882 Act allowed for direct local government management of cemeteries without the need for an individual enabling Act. After all, local authorities can only do what central

government enables them to do. Section 57 of the 1882 Act for the first time allowed for full registers of burials, a real boon for family historians.

Section 57. All burials within any cemetery or burial-ground shall be registered in a book or register to be provided and kept for that purpose by the Trustees or Managers of such cemetery or burial-ground respectively, and such register shall be distinguished in what parts of the cemetery or burial ground the several bodies are buried, and a proper description of every grave shall be given, so that the situation thereof can be ascertained; and such register shall be indexed so as to facilitate searches for entries therein, Every register shall be open for inspection at all reasonable hours in the day-time upon payment of a fee of one shilling for every such inspection.

The 1872 North Dunedin Cemetery Act, for example, had only specified a register of permissions for monuments or tombstones, but fortunately for researchers from the outset the Dunedin City Council compiled a register for all burials. The administrators of the General (non-Anglican, Catholic or Jewish) section of Bolton Street Cemetery in Wellington created a register following the 1882 Act and even tried to retrospectively include burials as far back as 1849. The various administrators of Symonds Street Cemetery on the other hand had a mixed response to documenting burials. The Wesleyan section was mapped around 1882 and the Anglican section in 1887, but no formal register compiled, only a snapshot of who was believed to have been buried there at the time.

The 1882 Cemeteries Act also codified existing legislation regarding private burials. *Section 83. It shall not be lawful to inter any body upon any land whatsoever not being a cemetery or burial-ground Or' burial-vault if there shall be any such cemetery or burial-ground or burial-vault within five miles of the place where the death shall have taken place, or of the 'place whence such body shall be taken for the purpose of being interred.*

Every person who shall offend against the provisions of this section shall be liable to a penalty not exceeding fifty pounds.

There were and are some exceptions to this, with dispensation able to be sought from a Magistrate, or Justices of the Peace or Mayor or Councillors – I suspect there was some variation in how this was applied in practice.

Today.

Thus, from 1882 people essentially had to be buried in a cemetery, unless they were in the rural back blocks of New Zealand, and that cemetery had to have a register. Not all pass the latter test. Death certificates prior to 1876 didn't and don't include place of burial. Even after 1876 the information as to place of burial may be wrong, due to clerical or informant error or re-burial. The place of burial could be a burial on private land without any other documentation, or only documented in church records. Often those church records don't include the name of the cemetery where they might be buried and certainly such records don't give plot details. This is particularly so if it wasn't a churchyard burial.

We are used to the post 1882 situation where local Councils or Trusts administer more recent cemeteries and mostly have readily available plot maps and registers – often online these days. Auckland Libraries pioneered here with our Symonds Street Cemetery database that went online in 1999. Overall, the provisions of the 1882 Act remain more or less in place today.