

Manual for Victorian Cemetery Trusts

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Department of Human Services

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Foreword

This manual has been updated by the Department of Human Services to assist cemetery trusts understand and meet their obligations under the *Cemeteries and Crematoria Act 2003*. The original manual was prepared by the Cemeteries and Crematoria Association of Victoria (CCAV) based on the former *Cemeteries Act 1958*.

The information contained in the manual is in summary form only, and is not intended to be a complete discussion of each subject. Independent advice should be obtained as necessary.

Any reference to the:

Cemeteries and Crematoria Act 2003 is noted as "the Act"

Cemeteries and Crematoria Regulations 2005 is noted as "the Regulations"

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Topic 1

The cemetery trust

Cemetery trusts in Victoria are statutory boards serving the community by providing cemetery services and maintaining public cemeteries. They are accountable for public money dedicated to cemetery purposes.

A cemetery trust in Victoria is a public entity, which is a board established under the *Cemeteries and Crematoria Act 2003* (the Act). The correct title for a member of a cemetery trust is "cemetery trust member".

General responsibilities of trust members

As a cemetery trust is incorporated, the responsibilities of a cemetery trust member can be likened to those of a company director, such as:

- **Acting diligently and prudently in regard to the business of the incorporated entity.** The members of a cemetery trust have legal obligations and duties under common law and under the constituting legislation, being the Act and the Regulations, and also under the *Public Administration Act 2004* and all other relevant state and Federal legislation. Trust members may wish to seek independent legal advice concerning their responsibilities and potential personal liabilities.
- **Profiting from the trust.** Trust members may not derive any direct or indirect profit from their office whether for themselves or for a third person. The trust may authorise payment or reimbursement of reasonable out-of-pocket expenses incurred during the performance of their duties as a trust member.
- **Disclosure of conflicts of interest.** Trust members are required to disclose pecuniary interests, or any other interests, which could conflict with the proper performance of their duties.
- **Keeping and rendering proper accounts and giving full information when required.** This includes meeting the applicable compliance and reporting requirements of both State and Federal legislation.

The State Services Authority (SSA) is responsible for providing advice on, and promoting, appropriate structures and governance arrangements for public entities, including cemetery trusts. The SSA aims to ensure that all public entities serve the Victorian community in a manner that is responsive, accountable and highly professional.

The SSA can provide trusts with information and advice on many trust governance issues. The SSA website has a 'public sector governance' section which has information for trusts, including a 'good practice' guide and other guidelines.

For more information contact

State Services Authority
3 Treasury Place Melbourne 3002
Phone: (03) 9651 1321
Fax: (03) 9651 1883
Web site: www.ssa.vic.gov.au, email: info@ssa.vic.gov.au

Functions and Powers of cemetery trusts

Section 12 of the Act provides advice regarding the functions of a cemetery trust, which can be broadly categorised as to:

- Properly and efficiently manage and maintain each cemetery for which the trust is responsible.

- Carry out any other function that may be required by legislation.
- In exercising its functions, a trust must have regard to the:
 - Funding of its perpetual maintenance obligations,
 - Cultural and religious values of the community,
 - Heritage values of the cemetery.

Section 13 of the Act provides for the cemetery trust to do anything necessary or convenient to enable it (the trust) to carry out its functions.

The Act gives the cemetery trust a number of powers. It is important that the decisions made and the actions taken by the trust can be justified as a bona fide and legitimate exercise of that power.

Cemetery trusts have duties implied by law to deal properly with funds that are the subject of a trust. The trust must deal with any funds strictly within the limits of the statutory powers under which that trust is permitted to act. When paying out funds in accordance with a power given by the legislation, it must be seen to be a bona fide and legitimate exercise of power.

Appointment and removal of cemetery trust members

Under section 6 of the Act trust members are appointed and removed by the Governor in Council pursuant to the recommendation of the Minister for Health. There must not be fewer than three or more than eleven trust members. Applications for appointment as a trust member are made according to the Guidelines for the appointment and remuneration of statutory board members issued by the Department of Premier and Cabinet.

The Department of Human Services' Cemeteries and Crematoria Program processes applications for appointment as a cemetery trust member. Information on the Guidelines and application forms can be obtained from the Cemeteries and Crematoria Program.

Appointment terms

Trust members appointed prior to 1 January 1996 remain in office until they resign or die, or are removed from office by the Governor in Council. Trust members appointed since 1 January 1996 hold office for a period not exceeding 5 years and they may apply for reappointment.

Appointment and nomination process

When seeking potential nominees for trust membership, the requirements of the position and the selection criteria should be clearly communicated to suitable candidates. All vacancies on cemetery trusts must be publicly advertised.

When considering making a nomination for the position of a trust member, cemetery trusts must be in a position to demonstrate that their selection process is both fair and reasonable. In accordance with Victorian Government policy, trusts are encouraged to:

- Ensure that due process and the principles of merit selection are observed in the nomination process
- Seek to increase the representation of women on the trust
- Build the capacity for increasing the participation and direct representation of indigenous Victorians across all levels of government
- Ensure that the membership of the trust and the services of the trust are responsive to and reflect Victoria's culturally diverse community
- Give young Victorians an opportunity.

Professional qualifications and practical skills relevant to the trust should be considered. Trusts should have members with an appropriate mix of expertise, experience and a range of perspectives. Emphasis should be placed on the skill mix and personal attributes required for effective performance by the trust.

Resignations

A trust member may resign from their position by means of a letter of resignation addressed to the Minister for Health, and delivered to the Cemeteries and Crematoria Program, Department of Human Services. The Governor in Council may at any time remove from office a trust member on the recommendation of the Minister for Health.

The potential for conflict of interest

Trust members are required to disclose pecuniary interests or other interests, which could conflict with the proper performance of their duties. Trust members may not derive any direct or indirect profit or benefit from their office whether for themselves or for a third person. However, the trust may authorise payment or reimbursement of reasonable out-of-pocket expenses incurred during the performance of their duties as a trust member.

The *Public Administration Act 2004* requires that members disclose any pecuniary interests or other interests which could conflict with the proper performance of their duties, and details certain procedures to be followed where disclosures occur. However, over time a person's circumstances may change, and a person who did not have a conflict of interest five years ago may have one now.

A trust is expected to administer the cemetery/or cemeteries, which it is responsible for in an equitable manner for the benefit of the whole community. Where a trust member has a personal interest in the outcome of a decision it is difficult, if not impossible, for them to be objective in discussion and decision making. If other trust members are aware of a member's personal interest it also makes it difficult for the trust as a whole to be open and honest in discussing all aspects of an issue.

Disclosure of conflict of interest of cemetery trust members

A member of a cemetery trust who has a direct or indirect pecuniary interest in a contract or other matter being dealt with by the trust must disclose the nature of that interest at a meeting of the trust as soon as possible after becoming aware of the interest. If a member has an interest that may be in conflict with their duties as a trust member they may have to excuse themselves from decisions that relate to that interest.

Trust members and personal liability

In carrying out a function or power under the Act, a member of a cemetery trust is not personally liable for anything they do or omit to do in good faith. However, liabilities that would result from the actions of individual trust members attach instead to the cemetery trust (refer to section 16 of the Act).

The common seal of the trust

As cemetery trusts in Victoria are incorporated, trust members, as a group of individuals, should not sign contractual documents. Rather, the common seal of the trust should be stamped on such documents and accompanied by the signatures of the persons authorised by the trust to sign, in accordance with resolutions of the trust.

The seal itself is usually a rubber stamp, made to order. The design of the seal is not prescribed, but generally the shape of a seal is circular, and it would enclose the words 'Common Seal of XYZ Cemetery Trust'.

After obtaining the common seal, the trust should formally resolve and minute that the seal is the common seal of the trust. The trust should then decide and formally minute who is authorised to sign documents when the common seal is used (see section 5(3) of the Act), with examples of signatory arrangements being:

- The chairman and the secretary, or
- The chairman and any one other trust member, or
- Any two members of the trust, or
- All members of the trust.

Although it is possible, and may be practical, for the trust to determine that two of these people can sign when the seal is used, two people alone cannot make a decision for the trust. Section

8(5) of Schedule 1 of the Act advises a majority of the members for the time being constitutes a quorum of a cemetery trust. Notice of a trust meeting and the business to be transacted at that meeting would need to be forwarded sufficiently in advance of the meeting date/time.

There are no rules as to when the common seal must be used. It is not necessary to use the common seal for all business. For instance, there is no need to use the common seal to approve the minutes of the previous meeting. The minutes will still be accepted in the usual way as determined by the trust. An instance where the common seal might be used is if the trust is signing contract documents in accordance with a resolution at a meeting of the trust.

Appeal of a decision of a trust

Any concerns with the decisions of a cemetery trust should be discussed initially between the complainant and representatives of the cemetery trust, and an attempt made to resolve the matter. However, there may be circumstances where this process is not satisfactory and a person or group wishes to appeal a decision of a cemetery trust.

Currently the avenues of formal appeal against a decision made by a cemetery trust are through a review of the decision by the Ombudsman for administrative review or by an appeal to the Supreme Court for judicial review.

Under Section 179 of the Act, a holder of a right of interment may appeal to the Victorian Civil and Administrative Tribunal for review of a decision of a cemetery trust to:

- Refuse to grant an approval to establish a memorial or a place of interment in the cemetery;
or
- Grant an approval to establish or alter a memorial or a place of interment in the cemetery subject to terms and conditions.

It is recommended that before a dispute becomes a legal matter that the trust attempt to seek resolution with the complainant through mediation or another form of conflict resolution.

Topic 2

Legislation

Cemetery trusts in Victoria derive their duties and powers primarily from legislation. This will usually be legislation of the Victorian Parliament, except in those matters where the Federal Parliament has jurisdiction (for example, income tax).

If there is conflict, the relevant legislation takes precedence over any local laws or rules that may have been made by a cemetery trust.

Copies of current Victorian legislation may be obtained from:

Information Victoria
356 Collins Street
Melbourne 3000
Phone 1300 366 356 Fax (03) 9603 9920
Internet: www.information.vic.gov.au
www.dms.dpc.vic.gov.au

Details of cost and postage can be quoted over the phone.

It is recommended that every cemetery trust have, as a minimum, a copy of the:

- *Cemeteries and Crematoria Act 2003 and*
- *Cemeteries and Crematoria Regulations 2005.*

Cemeteries and Crematoria Act 2003

The provisions of the Act commenced operation on 1 July 2005. Some of the principal provisions of the 2003 Act relating to the operation of cemetery trusts and the conduct of interments and cremations are listed in Appendix 1.

Cemeteries and Crematoria Regulations 2005

The Cemeteries and Crematoria Regulations 2005 were made by the Governor in Council under section 180 of the Act. Some of the principal provisions of the regulations are listed in Appendix 2:

Power to make cemetery trust rules

Section 26 of the Act conveys authority to the trust of any cemetery to make such rules and regulations, as may be necessary and proper for them to exercise their powers under the Act.

Section 27 requires that no rule or regulation shall be in force until it has been approved by the Governor in Council and published in the Government Gazette.

A copy of the rules and regulations of the trust is to be made available upon request to any person.

Model Rules

Section 25 of the Act provides for the introduction of model rules for cemetery trusts. A set of model rules is contained in Schedule 6 of the Regulations. These rules apply to all trusts. In addition to the model rules, trusts may make their own rules and regulations to do things necessary and proper for the purposes of the Act as long as those rules do not contravene existing legislation.

Any rules or regulations made by a cemetery trust must be submitted to the Governor in Council and published in the Government Gazette before they can be enforced.

Penalties

The Act and Regulations, together with the model rules, refer to a penalty or maximum penalty for an offence, which is expressed in penalty units. A Magistrate's Court may impose such a penalty, after a case before that court has been found proven.

A cemetery trust may not itself impose such a penalty directly without taking the matter before the Magistrate's Court.

Other legislation

Examples of Victorian legislation that has an impact on the operations of a cemetery trust are listed in Appendix 3.

Legal advice

Because a cemetery trust is incorporated, it may sue or be sued as a separate legal entity.

Due to the potentially high cost of legal advice, and any subsequent court proceedings, a cemetery trust may initially wish to discuss its intentions with the Cemeteries and Crematoria Program, Department of Human Services. Specific legal advice should be sought from a qualified and experienced source, at the expense of the trust. A trust may also be able to draw on the advice of other cemetery trusts that have had a similar experience.

Topic 3

The role of government

As prescribed by the Act, the Victorian Government manages public cemeteries through a structure of:

- The Governor in Council
- The Minister for Health
- The Secretary to the Department of Human Services
- Individual cemetery trusts.

Parliament may, from time to time, amend the Act or issue new Regulations as deemed necessary.

Governor in Council

The Governor of Victoria, in formal Council meetings with Ministers of the Victorian Government, has considerable powers under the Act; for example, the Governor in Council may;

Section	Provision
4	Establish a public cemetery.
5	Establish a cemetery trust.
6	On recommendation from the Minister, appoint members to a cemetery trust.
10	On the recommendation of the Minister, appoint an administrator to manage a public cemetery
27 & 28	Approve and revoke cemetery trust rules.

Minister for Health

The Minister for Health implements the policies of the Government concerning the management of public cemeteries, within the constraints of the Victorian State Budget and relevant Acts of Parliament.

Powers conveyed to the Minister by the Act include:

Section	Subject
31	May purchase or compulsory acquire land for cemetery and crematoria purposes.
36 & 37	May approve purposes for which trusts can grant leases or licences over cemetery trust land.
45	May direct a trust how to invest its money.
Schedule 1	May recommend the removal of a trust member to the Governor in Council.

Department of Human Services

Powers given to the Secretary to the Department of Human Services (or their delegate) in the Act include:

Section Provisions

18	May give directions to cemetery trusts in relation to the: <ul style="list-style-type: none">• Manner in which a trust is to manage and maintain a public cemetery for which it is responsible.• Records to be kept by the cemetery trust.• Expenditure of funds of the cemetery trust.• Carrying out of any other function or the exercise of any other power under any Act, Regulations and/or cemetery trust rules.
21	May approve the establishment of a crematorium.
22	May approve the establishment of mausolea facilities.
23	May revoke approvals issued under Sections 21 and 22.

- 40 May approve or disapprove a fee or scale of fees submitted for consideration by a cemetery trust.
- 52 Receive the annual cemetery trust report that includes particulars relating to the operation of the cemetery, accounts and records kept by the trust.
- 57 Receive an annual report from a Municipal Council in relation to a cemetery that may be managed by that Council.
- 121 May issue an approval for interment other than in a public cemetery
- 134 May issue an approval for the cremation of bodily remains due to special circumstances noted in the Act.
- 136 May grant an approval to cremate bodily remains in other than a crematorium at a public cemetery
- 147 May grant an approval to dispose of bodily remains by a method other than interment or cremation.
- 157 May grant or refuse to grant an exhumation licence.

Staff within the Cemeteries and Crematoria Program of the Department of Human Services, have responsibility for the administration and management of the Act. All relevant forms and other information can be found at the cemeteries and crematoria program website.

Contact details are:

The Cemeteries and Crematoria Program
Department of Human Services
14th Floor, 50 Lonsdale Street
MELBOURNE VIC 3000

PO Box 4057
MELBOURNE VIC 3001

Phone: (03) 9096 5160
Toll free 1800 034 280
Fax: (03) 9096 9186
Email: Cemeteries&Crematoria@dhs.vic.gov.au
Website: www.health.vic.gov.au/cemeteries

Topic 4

Officers of the trust

Trust secretary or manager

The trust may appoint a person to attend to routine business matters and perform those powers and duties delegated by the trust. There is no reference in the Act to the position of secretary or manager.

At the time of their appointment, a written specification of duties and conditions of appointment should be prepared, taking account of government guidelines, and agreed by both parties. The secretary may receive payment for this role, commensurate with the duties of the position, which could (for example) be calculated on the basis of an agreed rate per month or per hour worked. Any payment to a person employed in an executive role by a trust must comply with the Government Sector Executive Remuneration Policy (GSERP). (Refer to <http://www.gserp.vic.gov.au/>)

A trustee may be appointed as secretary of a cemetery trust, on condition that he/she does not receive payment other than reimbursement of expenses as approved by the trust.

The trust may appoint other administrative officers (permanent, part-time or casual), as it considers necessary to administer the cemetery efficiently within the constraints of prudent financial management.

It is important to note that, while the trust may delegate powers, duties and authority, it cannot delegate the responsibility of the trust members for performance of those powers and duties.

Delegation of trust power

The cemetery trust should appoint at least one delegate to the trust in accordance with Section 15 of the Act.

Under Section 15(1) of the Act, a cemetery may delegate to a member of the trust, the secretary of the trust or any other employee of the trust its power or functions under the Act, other than those powers and functions listed at 15(1), (a) – (g), it is appropriate for the trust to delegate its powers and functions to either a trust member or a paid officer.

Section 15(1), (a) – (g) includes a range of powers and functions, including those in relation to land, fixing fees, investments and borrowing and the power of delegation itself. This means these powers and functions cannot be delegated to anyone other than the trust.

Topic 5

Trust meetings

Frequency of meetings

It is recommended by the Department of Human Services that:

- Cemetery trusts meet at least four times a year
- At least one of these meetings should be an open meeting, with members of the public invited to attend.

If a cemetery receives very few or no interments in a year, the trust may decide to meet less frequently. Informal discussion between all trust members (possibly by means of a telephone 'ring around') may provide prompt consideration of pressing matters, but decisions reached must be ratified at a formal meeting of the trust to be held as soon as practicable.

Quorums of trust members

A majority of the members constitutes a quorum of a cemetery trust (Clause 8(5) of Schedule 1 of the Cemeteries and Crematoria Act 2003). The minimum number of trust members required to constitute a quorum is three.

Meeting procedure

The members of a cemetery trust may adopt rules for convening meetings and such other rules, as may be necessary regulating their proceedings (Clause 8(8) of Schedule 1 of the Act).

This should not be confused with the procedure to make rules for the management of the cemetery, which are to be submitted to the Governor in Council and published in the Government Gazette (Sections 25-27 of the Act).

A standard textbook on meeting procedure, which the trust may consider using, is *Australian meeting law and procedure*, Joske 2001 (Law Book Company; www.lawbookco.com.au/academic).

Meeting venue

Trust meetings may be held at any venue satisfactory to trust members. Consideration should be given to holding some meetings on-site at the cemetery, to enable inspection of relevant matters as they are being discussed.

Minutes of meetings

The secretary of the trust should maintain accurate minutes of each trust meeting, in particular:

- Date, time and venue of meeting
- Names of trust members in attendance
- Details of decisions made
- A list of payments approved.

As the minutes of trust meetings are a matter of public record, which may need to be produced as evidence of trust decisions, the minutes should be maintained in book format (either loose-leaf or bound if hand-written) with pages numbered. They should be retained and stored in accordance with the directions of the Public Records Office.

Assuming the minutes of a trust meeting are adopted by resolution at the subsequent meeting, the chairperson should then initial each page of the adopted minutes as confirmation of their correctness.

Budget meeting

Consideration could be given by a trust to declaring that one of its meetings be the annual 'budget' meeting in preparation for the coming year. Actions may include:

- Electing the trust chairperson for the coming year

- Reviewing the adequacy of the trust's insurance coverage (refer to topic 18)
- Preparing the budget for the coming financial year, which ends on 30 June (refer to topic 19)
- Arranging for the financial report, for the year to 30 June, to be submitted to Department of Human Services by 1 September (Section 52(3) of the Act).

Topic 6

Procedure for an interment

Booking procedure and confirmation

Cemetery booking systems should be designed to eliminate errors that may lead to the digging of a grave in the wrong location or with the wrong dimensions, and should allow for timely and efficient funeral arrangements to be made with funeral directors. Information collected at the time of the booking should ascertain the cultural requirements of the funeral service. Trusts should endeavour to meet these requirements as best they can and advise the person making the booking of any anticipated problems. Note that section 12 (2) (6) of the Act requires a trust to have regard to the cultural and religious values of the community when exercising its functions.

An example of a booking and confirmation procedure is as follows:

- Keep telephone messages to a minimum, with first contact providing the name of the funeral director, names of deceased and required interment date and time.
- Funeral director to complete an Application for Interment Authorisation form (Regulation 6 Schedule 1 (Form 1) containing all relevant details, including coffin dimensions and any special requirement, and fax to the cemetery trust's booking office.
- It is preferable that minimum notice of two clear working days should be the usual requirement of cemetery administration, however, at times it may be necessary to grant permission to bury in a shorter time frame.
- On receipt of the relevant information, a physical inspection of the grave site should be carried out by trust representatives and particular attention paid to ensuring that:
 - The proposed coffin/casket can fit inside the kerb and foundations of any existing monument on the grave, with sufficient clearance so that it can be lowered horizontally
 - The monument (if any) on the grave does not present a hazard to cemetery staff
 - The cemetery trust's backhoe (if used) will be able to access and dig the grave.
- After the site inspection and before the funeral booking is accepted and confirmed, any concerns regarding monuments, ledgers or coffins/casket dimensions should be faxed to the funeral director.
- Inform the funeral director of the cost of the grave, the interment fee and other services available from the trust, and the trust's preferred method for receiving payment.

Before issuing confirmation for a funeral booking, the trust should seek to be made aware of:

- Whether the funeral director or the trust will be providing a lowering device which the trust will place over the open grave before the funeral arrives at the graveside, or whether the trust will provide steel bars over the grave and webbing tapes to enable the pallbearers to hand-lower the coffin.
- Whether any part of the proposed funeral plans at the cemetery (for example, motorcycle escort, bagpipes, jazz band, p.a. system) may cause disturbance to other funerals or cemetery visitors
- Any part of a religious interment procedure where it is intended the coffin will be opened at the graveside and/or mourners propose to get into the (adequately shored) grave to position the body/coffin.

When all information has been verified as correct, confirmation and a copy of the information should then be faxed to the funeral director.

Grave digging can then commence.

The grave

As at August 2003, the accepted industry standard dimensions for an adult interment in Victoria are:

Task	Dimension Requirements
Land allocation	2400 mm long by 1200mm wide
Grave as dug	2100mm long by 650mm wide with square corners, however a coffin shape grave may be dug as circumstances dictate. If the grave required is of larger dimensions, the trust may charge an "oversize fee" if the fee has been approved and gazetted).
Coffin or casket	2000mm long by 600mm wide (including handles by 400mm high.)

As a guide:

Recommended minimum depth at first Interment	In a single grave – grave depth is 1700mm. In a double grave – grave depth is 2200mm. In a triple grave – grave depth is 2,700mm (If available, subject to mechanical digging).
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Depth of burial

Part 4 Regulation 14 of the Regulations sets out the depth of burial requirements for interment in a public cemetery. If the ground above the place of interment is unsealed, a minimum of 750mm of earth is required between the coffin/casket and the normal level of ground. If the ground above the place of interment is sealed with a layer of stone, concrete or similar material, a minimum of 500mm of earth is required between the coffin/casket and the normal level of ground. Refer to Appendix 5 for further details.

If the dimensions of the proposed coffin/casket (inclusive of the extra width created by the handles) preclude it from fitting into a grave of standard dimensions, then the dimensions of the proposed coffin/casket must be approved by the cemetery trust **before it commences to dig the grave.**

It is usual procedure for a new adult grave to be dug to double-depth, unless:

- There is physical impediment (such as rock)
- Other instructions are provided.

A grave for the interment of a child would usually be dug to single-depth. Other dimensions are as determined by the trust, but 600 mm wide by 1200 mm long could be taken as a guide.

The coffin

A coffin is a shaped interment container, wider at the shoulders and tapering in at the feet. A casket is a rectangular interment container.

Although a coffin or casket is not required for interment, the regulations require that a body be transported into and within a cemetery enclosed in a coffin, container or receptacle:

- That is clean and hygienic, or
- That is constructed of wood, metal or other substantial material; and
- From which neither offensive nor noxious emissions nor matter from those remains or body parts will escape.

If it is to be a custom-made coffin or receptacle, this should be no larger than necessary.

A standard size adult coffin has external dimensions of approximately 2000 mm long, 600 mm wide (including handles) and 400 mm high. With the agreement of the cemetery, at the time of booking, the coffin may be larger and/or be rectangular (casket) shape. The external finish on the coffin may be decorative or plain.

It is recommended the cemetery trust have other requirements of the coffin, such as:

- The provision of (at least) four strong and securely affixed handles capable of bearing the required weight. These handles are necessary to aid the carrying and manoeuvring of the coffin, and to feed the tapes through in the case of hand-lowering the coffin into the grave,
- A metal or plastic nameplate affixed to the lid of the coffin. Engraved into this plate should be the name of the deceased and the date of death. The spelling of the names of the deceased on the nameplate should be identical with that on all the necessary documentation.

Essential documentation

The following is a summary of the documentation to be provided to the cemetery trust at or before the time of delivery to the cemetery of the body of a deceased person for interment.

(1) (a) **'Medical Certificate of Cause of Death of a Person aged 28 days or over'**,
Or

(If appropriate) **'Medical Certificate of Cause of Perinatal Death'**, in the case of a deceased child of at least 20 weeks gestation who either did not live or who lived for less than 28 days. (Note: Non-viable foetal tissue of less than 20 weeks gestation requires a letter only, signed by a medical practitioner or hospital, identifying the tissue to be buried by the trust).

Such a certificate must be signed by the medical practitioner who attended the deceased after the death occurred, and an original thereof should be produced to the delegate of the trust for examination when submitting a request for interment under the Act. A trust may keep a copy of the medical certificate however it will need to ensure privacy concerns are addressed.

Or

(b) If the death was reported to the State Coroner for Victoria, an original of the **'Certificate Permitting Interment, Cremation or Other Disposal'**, signed by the Coroner, should be produced to the trust for examination. A trust may keep a copy of the certificate permitting interment however it will need to ensure privacy concerns are addressed

Or

(c) An original **statutory declaration**, made by the funeral director or other person arranging the interment, stating that owing to special circumstances (to be detailed in the declaration) it is not possible to submit the required documents outlined above.

(2) The cemetery trust's **'Application for Interment Authorisation'** is to be completed and signed by the person who is the originator of the application for interment. The information from this form will subsequently be included in the records of the trust, which must be kept in accordance with Section 59 of the Act and Section 5 of the Regulations. If required by the trust, a bound Right of Interment and Interment Register is available from department.

An Electronic copy of the AFIA form is available to download from the Cemeteries & Crematoria website at: <http://www.health.vic.gov.au/cemeteries>.

The Interment

The requirements for the interment of bodily remains are contained in Sections 113-120 of the Act.

The delegate's responsibilities are to:

- Be present when the funeral arrives at the cemetery entrance, to check that the essential documentation is present and correct and that the name on the coffin nameplate agrees in all respects with the name of the deceased on the documentation (check that names and spelling are identical)

- Receive payment of the trust's fees for the interment, unless the trust has agreed in advance to terms of credit
- If all the required documentation is present and correct, direct the funeral and coffin to the correct open grave
- Facilitate and provide for the cultural requirements requested by the applicant for the interment, and agreed by the cemetery trust at the time of confirming the funeral booking.

There is no legal obligation for the delegate, or other personnel of the cemetery trust, to assist with lifting and carrying the coffin in the cemetery or with lowering it into the grave. This is at the discretion of the cemetery trust and the staff involved, having regard to issues of health and safety in the workplace.

It is recommended that the delegate:

- Supervise, together with the funeral director, the safety of members of the public (particularly children, if any) in the vicinity of the lip of the grave
- Remain at the graveside at least until he/she has observed the coffin being lowered into the grave
- Ensure that the grave is backfilled as soon as practical after mourners have left the area.

It is desirable that a trust has a number of delegates so that at least one such person is available to attend to daily requirements of the cemetery (refer to topic 4).

Public safety

As part of its risk management procedures (refer to topic 22) the cemetery trust must pay close attention to all aspects of public safety in connection with an interment in a grave.

An open grave dug prior to an interment must be made safe so that there is no risk of any person (including trust staff) falling into the grave. Safety measures that may be taken include some or all of the following:

- Internal shoring inside the grave and timbers on the ground around the lip of the grave, to prevent the sides of the grave collapsing under the weight of mourners
- A temporary barricade around the grave, at least one metre back from the lip of the grave, and
- A temporary cover over the grave (clearly marked to indicate the potential danger), sufficient to hold the weight of an adult, and temporary signage erected near the grave, indicating the potential danger. (The temporary barricade and grave cover would generally be removed just prior to the funeral arriving at the graveside).

The delegate of the trust attending the funeral, together with the funeral director, should supervise the public safety of mourners (particularly children) in the vicinity of the grave. Following the lowering of the coffin into the grave, attention must still be paid to making the grave safe during the time until it is backfilled. The temporary barricade and cover could be reinstalled during this time.

Backfilling the grave using machinery must not commence until all members of the public have left the immediate area of the grave. This situation requires a degree of sensitivity and discretion to ensure mourners are not unnecessarily distressed. Staff involved must remain alert to the potential for people to unexpectedly return to the graveside, in which situation backfilling must cease until they have left the area.

Carrying the coffin

It is usual practice for the funeral director's hearse to park as close as practicable to the graveside.

The coffin is usually then carried to the grave by pallbearers, being people selected for this purpose by the family and/or the funeral director. The funeral director may give them instructions as to what they are expected to do.

Whether the selected pallbearers are fit and able to perform their duties, particularly if a heavy coffin is to be hand-lowered into the grave using tapes, is generally an issue in which the cemetery trust has no involvement. Accordingly, the trust should closely consider its position in regard to any claim it receives from a person who says they were injured in the cemetery when lifting, carrying or lowering a coffin.

The cemetery trust is under no legal obligation to provide personnel to assist with lifting and carrying the coffin in the cemetery, or lowering it into the grave. This is at the discretion of the cemetery trust and its personnel involved, having regard to issues of health and safety in the workplace.

Lowering the coffin

After preparing the grave for the interment, the trust will usually place over the open grave either

- A lowering device (provided by the trust or the funeral director), or
- Steel bars, with webbing tapes to enable the pallbearers to hand-lower the coffin.

If webbing tapes are used, either as part of the lowering device or for hand lowering, it is most important that the tapes are regularly inspected to ensure they are in sound condition, not frayed and without any cuts. The tapes should be replaced regularly to ensure they do not break and fail during the lowering of a heavy coffin.

If a lowering device is in position over the open grave, the pallbearers will walk three each side of the grave, and then lower the coffin onto its tapes with the head of the coffin closest to the headstone-end of the grave. At the appropriate time during the interment service, the funeral director will release the brake mechanism of the lowering device and the coffin will begin to lower into the grave.

If steel bars and tapes for hand lowering are in position over the grave, the pallbearers will similarly place the coffin after walking three each side of the grave. Usually six pallbearers and three tapes will be required. Once the coffin has been lowered onto the steel bars, each tape will be passed through a coffin-handle, under the coffin, and through the handle on the other side of the coffin.

At the appropriate time during the interment service:

- The pallbearers will, using the tapes, lift the coffin above the bars
- Another person will remove the bars from over the grave and thereby enable the pallbearers to lower the coffin down into the grave.

Topic 7

Interment conducted by a family

A trust may be approached by an individual or family, who:

- Indicates they are considering conducting a funeral without the assistance of a Funeral Director, and
- Seeks information as to the legal and procedural requirements for interment or cremation.

In Victoria the role and duties of a funeral director are not prescribed by legislation. The professional associations for funeral directors do have minimum requirements for membership, and the town planning requirements of local government regulate the location and operation of their premises.

There is no reason why a family (or other individuals) cannot perform some or all of the arrangements necessary prior to the body of the deceased being delivered for interment. The cemetery trust needs to ensure that all statutory requirements for interment have been met.

Sometimes a person has planned for their own funeral to be conducted by family, yet when their death occurs the family members decide they don't really want responsibility for all aspects of the funeral. Consideration could then be given to seeking details from one or more commercial funeral directors who could provide the amount of assistance the family requires.

Topic 8

Interment of a stillborn child

A stillborn child is defined in the *Births, Deaths and Marriages Act 1996* as 'a child that reaches at least 20 weeks gestation or, if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, with a body mass of at least 400 g at birth, that exhibits no signs of respiration or heartbeat or other signs of life, after birth'. A stillborn child is regarded as a birth, but does not have a death certificate and must be buried (or cremated) in a public cemetery – refer to Section 114 of the Act.

Disposal of pre-viable tissue

There is no requirement for pre-viable tissue (being pre-20 weeks gestation) or body parts to be disposed of in a public cemetery. This is a discretionary decision for a cemetery trust. If a trust is requested, and agrees, to bury or cremate pre-viable tissue or body parts, the trust will usually require a statement from the treating doctor or hospital that clearly identifies the person from whom the tissue or body part has come.

Documentation required prior to interment

The necessary documentation must be provided to the cemetery trust before the body of a stillborn child can be interred in a cemetery (refer to Topic 6 Procedure for a interment - essential documentation).

Topic 9

Interment of poor persons

Part 10 of the Act provides that a cemetery must, upon an order signed by a magistrate or coroner, permit any poor person to be interred in the cemetery or cremated at a public cemetery that has a cremator free of any charge whatsoever.

The Act further provides that every magistrate or coroner, before signing any such order, shall satisfy themselves that such person died without sufficient means to pay interment or cremation expenses, and that his relatives and friends are unable to pay the charge.

Where there are multiple interments in a single grave, the cemetery trust is encouraged to consider the sequence of interments. When mourners attend the interment of a poor person and there are to be multiple interments in the grave at the same time, the interment should occur in a dignified manner with subsequent interments occurring after the mourners depart. The trust may also be ordered to place a small memorial on or near the grave by the magistrate.

No right of interment is issued for a public grave

If a grave is provided and dug at public expense, without the cemetery trust receiving any fees, no Right of Interment is issued by the trust for such a 'public' grave; in which case, the Right remains with the trust. The trust may determine to inter the bodies of a number of otherwise unconnected deceased persons in the same grave, over a period of years.

Practical considerations

It could be that, some time after the interment, the family or friends of the deceased person approach the cemetery trust seeking to provide a memorial on the public grave. There is no legal requirement that any funds available must first be paid to the cemetery trust to offset the costs associated with providing the grave and the interment.

After seeking permission from the trust a family may place a modest memorial on a public grave, provision should be made for multiple memorials if there are multiple interments in the grave.

It may not be possible for a member of the family of a person whose body is interred in a public grave to be interred in that same grave, depending on the availability and whether the trust has a gazetted and approved fee for interment in a public grave.

Topic 10

Cemetery monuments

No work without trust approval

Section 98 of the Act requires that an application to establish a memorial plan of proposed monument works must be submitted to and approved by a delegate of the trust before work may commence (refer to topic 10).

The trust may withhold their permission if the intended work is considered to be inappropriate, unsafe or dangerous. The trust may wish to seek advice from a consulting engineer, at cost to the applicant, concerning structural aspects of the proposed work and whether it will comply with Australian Standard AS-4204 Headstones and Cemetery Monuments.

Section 39 of the Act allows the trust to make and publish a fee (as previously approved by the delegate to the Secretary to the Department of Human Services) in regard to any monument being erected. Section 98 requires the payment of the published fees.

If permission is given, the trust should retain the original application and give an appropriately endorsed copy to the applicant.

Trust responsibilities concerning monument safety

The trust has a duty of care to:

- All members of the public who enter onto cemetery property
- Provide healthy and safe working conditions to all persons who work in the cemetery (including contractors, community volunteers, funeral directors, monumental masons, and trust staff) (refer to topics 18 and 22).

Sections 12 and 13 of the Act detail the powers of a cemetery trust. It does not authorise a trust to expend its funds on ensuring the continuing structural integrity of all the monuments in its cemetery. The responsibility for the maintenance of monuments and memorials remains with the holder of the Right of Interment (refer to topic 15) – refer section 104 of the Act.

Section 106 of the Act gives power to the trust to repair or, with the approval of the Secretary to the Department of Human Services, to take down and remove any monument that is in a state likely to cause damage to life or limb or is not in proper condition. The trust may also recover the cost for this work from the person who holds the Right of Interment.

Monument construction procedures and standards

Section 98 of the Act provides details of the process for making application to a trust for the establishment or alteration of a monument. A cemetery trust may either approve or refuse the application within 45 days of the application being made. The Application to Establish or Alter a Memorial or Place of Interment is available on the CCAV website at www.cav.org.au

It is important that the trust exercises this responsibility, if necessary to the point of measuring and pegging the location for a monument on a site. This will prevent the monument being constructed on an incorrect grave.

An applicant may lodge an appeal against the decision of the trust with the Victorian Civil and Administrative Tribunal.

It is recommended that the trust adopt a procedure which requires monumental masons:

- To submit a work schedule to the trust outlining the timing of works, including any inspection times

- To keep a copy of the permit issued by the trust with them at all times when working in the cemetery.

Part 4 of Model Rules, Schedule 6 of the Regulations provide power to the cemetery trust to inspect memorials, places of interment and buildings for ceremonies in the cemetery. It also recommends that materials used in that work is as far as practicable prepared off-site.

During the course of construction a monument should be inspected by a representative of the trust who if considered necessary, could be a consulting engineer or other appropriately qualified person. A full monument constructed on concrete pier-and-beam foundations should be inspected a number of times to ensure construction is proceeding in accordance with the permit and the Australian Standard, for example:

- After excavation for foundations and placement of steel reinforcement, but before concrete for foundations is poured
- During construction to ensure all dowels are correctly positioned
- On completion, but while the masons are still at the site, to ensure the finished monument is of a standard acceptable to the trust and that the site is left tidy.

Larger cemetery trusts have found it prudent to pre-install concrete pier-and-beam foundations for multiple graves. This should provide a superior end result, as the trust has improved control over quality (compared to individual foundations being constructed for the same graves), and the foundations of the multiple graves are tied together as one unit to provide increased stability.

The suggested standards for all monument construction in Victorian cemeteries are the Australian Standards, specifically:

Australian Standard AS-4204 Headstones and Cemetery Monuments
AS-4425 Above ground interment structures (Mausoleums),

These publications are available from:

Standards Australia
P.O Box 5420
SYDNEY NSW 2001
Phone 1300 654 646

The objective of the Australian Standards is to enable cemetery authorities and monumental masons to specify minimum structural design criteria, performance, installation and renovation requirements for headstones and cemetery monuments so that these may have a minimum service life of 50 years.

Code of Practice/Competitive Neutrality

Section 112 of the Cemeteries and Crematoria Act 2003 provides for cemetery trusts to sell and supply memorials. Any cemetery trust that engages in these activities must ensure that they are informed about and comply with the principles of competitive neutrality to encourage a fair and equitable environment for the sale and supply of memorialisation goods and services.

To assist cemetery trusts to meet these obligations, the Department of Human Services has facilitated the development of a code of practice for the sale and supply of memorialisation products and services in Victorian public cemeteries. Adoption and implementation of the code is mandatory for all trusts that engage in these activities.

Copies of the "Code of Practice relating to the sale and supply of memorialisation products and services by cemetery trusts and other alternative suppliers in Victorian public cemeteries" can be downloaded from <http://www.health.vic.gov.au/cemeteries/code.htm> or obtained by contacting the Cemeteries & Crematoria Program on 1800 034 280.

Topic 11

Plaques and headstones for lawn area graves

Range of options

Lawn interment areas have become very popular in Victoria. They are attractive to the public as the trust maintains the grass to a standard it considers appropriate, and the cost of an approved memorial will usually be lower than that of a full monument.

It is usual for a particular style of memorial to be approved by the trust for each lawn area, but a cemetery may have two or three lawn areas in operation at the one time, thereby offering a choice, for example:

- Metal plaques of approved material (usually bronze) dimensions and styles
- Headstones such as sawn granite (on a granite base) within approved maximum dimensions and style
- Restricted monuments, such as sawn granite within maximum approved dimensions but permitting some variety of designs.

*If a trust has restrictions about the types of memorials permitted in a particular part of the cemetery these must be clearly documented and made publicly available.

Such memorials can be mounted back-to-back on reinforced concrete beams, the top of these beams are flush with the surface of the lawn.

The trust must endeavour to price lawn graves at a level that will provide for the cost of maintenance of the grass area of the grave in the future.

Plaques

The trust may offer its services and charge fees (as approved) to:

- Arrange the supply and delivery of metal plaques (usually bronze) from a foundry
- Affix each plaque at the required location.

In pricing its plaques, a trust must have regard to its competitive neutrality obligations that is, to factor into these prices its real costs for providing this service, including perpetual maintenance contributions, in order for the trust to demonstrate it is fairly competing with private enterprise operators who may be offering the same service.

The trust should make it clear that it is not the only supplier of plaques to the cemetery. If a family wishes to source a plaque other than through the trust, the trust may:

- Specify the material (usually bronze), dimensions and style of plaque
- Require a permit procedure with an approved permit fee that reflects the cost of the foundation (if any) provided by the trust. Such fee should also apply to plaques purchased through the trust.

Granite headstones and monuments

Where a cemetery trust has a designated lawn area where headstones can be erected, then it is usual that headstones and monuments are arranged, through a stonemason to whom the trust may give a permit to work in its cemetery. The permit procedure (with fee) would be similar to that described in topic 11.

Other materials

If a trust is considering approving other materials to be used in the construction of memorials, the durability of those materials should be assessed. Monuments incorporating the use of timber may not be considered appropriate for this reason. However, a trust may decide to permit temporary markers to be placed on the grave for a limited time until a longer lasting approved memorial is installed.

Topic 12

Mausolea

Construction

The written approval of the Secretary to the Department must be obtained before the construction of any mausolea facility.

Aboveground interment or 'entombment' of a body in a mausoleum crypt in Victoria is in perpetuity. It is necessary for a mausoleum to be constructed and maintained in such a way that it will last forever.

Experience on the subject of mausoleum construction is now available within the cemetery industry in Victoria. There is an Australian Standard on aboveground interment structures concerning the construction of mausolea.

Australian Standard AS-4425 Above-ground interment structures is available from:
Standards Australia
PO Box 5420
SYDNEY NSW 2001
Phone 1300 654 646

Any trust that is planning to develop a mausoleum could contact other cemeteries with mausolea with a view to arranging inspections of existing facilities, and should discuss its plans with the Department of Human Services (Cemeteries and Crematoria Program) and its local town planning authority.

Regulation 22 of the Regulations provides details of the requirements for the construction of mausolea.

A body interred in an aboveground mausoleum crypt has the right of perpetual occupancy, which necessitates that the mausoleum is to last forever, it is strongly recommended that

- The Australian Standard be followed (as a minimum)

Aboveground interment procedures

Regulations 23 and 24 prescribe requirements for interment in mausolea and sealing of the interment chamber. The body must be in a closed coffin that is clean and hygienic, and made of metal or wood or other substantial material. The coffin must also be properly sealed to ensure neither offensive or noxious emissions nor matter from the bodily remains will escape.

As the interment may be occurring at a height of six or eight crypts above the floor, and in the presence of a large number of mourners, trained staff using specialised equipment will be required to complete the procedure.

Topic 13

Memorials for cremated remains

There is no legal requirement that cremated remains must be memorialised in a public cemetery. The person who authorised the cremation is able to collect the remains from the crematorium, and do with them largely as they wish.

Cemetery trusts may view the provision of attractive memorial areas for cremated remains as a potential source of revenue, through sale of both the memorial position and an accompanying plaque. Further, cremated remains may be interred in a grave (subject to the approval of the Holder of the Right of Interment) and the details entered into the trust's register upon payment of the (approved) fee.

Range of options

A cemetery trust must make the option of either a limited tenure for 25 years or perpetual tenure for cremated remains available to the applicant.

Garden memorials tend to be both the most popular and the most expensive for the trust to maintain. These include, for example, positions:

- On the borders of rose or shrub gardens or at individual plants in a garden bed
- Individual trees or shrubs in a lawn setting
- Items such as bench seats, birdbaths, sculpture.

Positions at niches, whether in a wall or ground presentation, have the advantage of very low maintenance costs to the trust.

A cemetery might also have an attractive garden area where, acting under the written instructions of the person who authorised the cremation, the trust could scatter cremated remains for the approved fee.

Interment of cremated remains in a grave

Subject to the approval of the holder of the Right of Interment, the person who signed the Application for Cremation Authorisation (refer to topic 10 Cremation) may instruct that cremated remains be interred in an existing family grave in a cemetery. If this is to be done, care should be taken to position the cremated remains so they need not be disturbed if the grave is subsequently reopened to permit another interment.

It should be noted that interment of cremated remains in an otherwise unused grave is not regarded as having exercised the Right of Interment (refer to topic 16 The Right of Interment).

Authority required to remove cremated remains

The cemetery trust should seek to ensure that no person remove cremated remains from the cemetery without the prior written approval of the trust. Such a provision could be included in the model rules of the trust.

Topic 14

Closure of a public cemetery

Under Section 62 of the Act, the Governor in Council can issue an order to close a public cemetery or part of a public cemetery if:

- a. There has been no interment of human remains at the cemetery or in that part of the cemetery for at least 25 years; and
- b. The cemetery trust responsible for the public cemetery has not granted a right of interment in relation to the cemetery or part of the cemetery for at least 25 years.

Section 63 of the Act advises that on the closing of cemetery or part of a cemetery:

- a. The order applies to the cemetery or the part of the cemetery that is named in the order.
- b. No further interments may take place in that cemetery or in the part of the cemetery that was closed regardless of whether there are any existing rights of interment.

Section 64 of the Act advise that the holder of an unexercised right of interment that cannot be exercised due the closure of the cemetery or part of a cemetery may request:

- a. A refund based on the trust fee for the same type of right of interment immediately before the closure of the cemetery, less the relevant cemetery trust fee for administration from the cemetery trust which is responsible for managing the closed cemetery; or
- b. The Secretary to direct the cemetery trust which is responsible for the management of the closed cemetery to grant the holder a right of interment in another cemetery for which that cemetery trust is responsible either fee of charge or at a reduced rate.

Historic cemetery parks

Section 66 of the Act advises that a cemetery trust responsible for the management of an eligible cemetery may apply to the Minister to convert the cemetery or part of the cemetery to a historical cemetery park. Further information regarding historic cemetery parks is available in Part 5 of the Act.

Topic 15

Perpetual maintenance obligations

Advance planning

Section 75 of The Act provides that interment of bodily remains in Victoria is perpetual (forever). Accordingly, cemeteries in Victoria have a finite capacity for interments, whereas some other Australian states have limited tenure and permit reuse of graves. All cemetery trusts have a responsibility to maintain their cemetery in perpetuity.

From the time a trust starts developing a new cemetery site, consideration should be given to how the site will be maintained once full capacity has been reached and there is little prospect of it generating further funds. The fees that the trust sets for its products and services should take account of this perpetual maintenance obligation.

Section 74 of the Act provides for:

- Interment of human remains to be perpetual; and
- Interment of cremated remains to be either perpetual or for a tenure of 25 years.

Care should be taken by the trust to fully document the conditions of tenure for its cremation memorials. This should include obtaining the applicant's signature on a copy of the conditions before the tenure commences.

The acceptable standard of maintenance

The trust should consider the standard of maintenance acceptable in a cemetery that has reached capacity and is closed for further interments. This will be reflected in the maintenance costs. The maintenance schedule should also reflect the expectations of the community and people who have relatives and friends buried in the cemetery.

Monument safety

Section 104 of the Act provides for the holder of the right of interment to be responsible for the structural safety of the monument. However Section 106 of the Act places the obligation on the cemetery trust to take action to ensure that any monument does not become a hazard to public safety, and the legislation provides a procedure by which this is to occur. However, the trust does not have power to spend its funds on the upkeep and maintenance of individual monuments.

Heritage conservation

The trust should be aware of its responsibilities (if any) under the *Heritage Act 1995* and the *Planning and Environment Act 1997*, and be sensitive to the increased public awareness in the heritage value and the need for conservation of historic components of older cemeteries. Advice in this regard is available to the trust from the local council and from the National Trust of Australia (Victoria).

Topic 16

The right of interment

There is a common misconception that a grave, that is, the land used for interment, can be purchased. This is not so, as all public cemeteries in Victoria are situated on Crown land. What can be purchased is the right to determine who can be buried in that grave, that is, the Right of Interment.

Some trusts choose to make available as an option, and at a fee, a formal Certificate of Right of Interment. This is not compulsory, but sufficient information should be included on the receipt issued at the time of purchasing the Right if a certificate is not being issued.

It is possible for a Right to be issued in the name of more than one person however the trust needs to be aware of the possibility of receiving conflicting instructions in the future.

Rights and responsibilities of the holder of the right

Subject to the Act and the rules and regulations of the cemetery trust, a 'Right of Interment' gives the holder (owner):

- The right to authorise the interment of human remains in the grave
- The right to decide if a monument or memorial may be erected on the site
- The obligation to maintain the monument (if any)
- The right to apply for a licence for an exhumation
- The right to transfer or bequeath the right of interment to another party.

The trust must make clear to the holder of the right of interment their responsibility to promptly inform the trust of any change to their name and address or any transfer of the Right to another party, so that the trust can maintain an accurate register.

Exercising the right

Section 78 of the Act advises that a right of interment is considered exercised, if

- a. Human remains, which include bodily remains and cremated remains, are interred at the place of interment to which the right of interment applies.
 - b. The holder of a right of interment creates a memorial at that place of interment.
- An Application for Interment Authorisation must be completed by the applicant seeking to make arrangements for the interment of human remains and submitted to the cemetery trust in a timely manner.

The trust should always satisfy itself that the person wishing to use the grave is the holder of the right of interment or has the permission of the holder to bury a body of a deceased person in the grave.

Transfer of the Right of Interment

Section 79 of the Act provides for the transfer of a right of interment to another person providing the consideration for the right does not exceed the current cemetery trust fee payable for the same type of right of interment in the cemetery.

A right of interment may also be transferred to the beneficiary of a will if the right holder is deceased.

If no such arrangements have been made, the Right is transferred in accordance with the rules of intestacy. This could mean transfer to one or to multiple people. In the case of transfer to multiple people or intergenerational inheritance, the Right to use a grave becomes very complicated and unclear. In these situations, the cemetery trust should endeavour to seek clarification from the applicants for interment.

To affect the transfer, the consent of the trust must be obtained together with the written consent of the person to whom the transfer is being made. Refer to fee under section 80 (1) (b).

Surrender of an unexercised right of interment

Section 82 of the Act provides for a right of interment holder to surrender an unexercised right of interment to the cemetery trust that granted the right. The trust must pay the right of interment holder the current fee for the right, less an administrative charge calculated on a sliding scale.

Cancellation and discontinuance of a right of interment

Section 91 of the Act provides a mechanism for the trust to cancel a Right of Interment under certain circumstances if:

- It has been in existence for more than 25 years and has never been exercised
- When the person who holds the Right of Interment cannot, after diligent enquiry by the cemetery trust, be found.
- At least 14 days before cancelling the right of interment, the trust must publish notice of its intention to do so in a daily or weekly newspaper circulating generally in the area in which the public cemetery to which the right of interment applies.

If a trust wishes or not, to cancel a right of interment, they should contact the department for advice on these provisions. Refer to Appendix 4 for information on the cancellation of unexercised rights of interment.

Topic 17

Cemetery records

Register of interments

Section 59 of the Act requires that details of all interments including bodily and cremated remains within a cemetery shall be maintained in a register.

Section 5 of the Regulations provides details of specific information that must be maintained in the register and to assist trusts, the department has available an Interment register for trusts to use. The register is available in bound book or in electronic form.

Trusts may also wish to maintain the following additional information to that which is included in the register

- Details of pre-payments to trust for the grave or interment
- Last known address of deceased
- Brief biographical information
- Name of funeral director
- Details of monument or plaque.

It is recommended that the Application for Interment Authorisation form be maintained indefinitely and, if necessary, be microfilmed. It may be helpful to have on file the signature of the holder of the Right of Interment (refer to topic 16).

Register of cremation memorials

The Departments interment register also includes provision for records related to cremated remains (if any) are interred in the cemetery. Such remains may either be:

- Placed in a memorial garden or wall niche position (possibly with limited tenure, depending on the policy of the trust)
- Interred in a grave
- Scattered in the cemetery (with the approval of the trust).

Where a cremation memorial is for a 25-year period, details of the expiry date of the tenure period should also be maintained in the register.

Cemetery plans

It is imperative that the trust maintains plans of its cemeteries that are accurate to scale, current and complete (as far as possible).

The location of all graves and cremation memorials should be detailed on the plans and these locations should be cross-referenced to the registers.

The ultimate plans would detail the location of all principal fixtures within the cemetery (buildings, roads, garden beds, niche walls, taps, power poles), together with plotting the course of any underground services (such as water pipes).

Computerisation of registers and plans

Although the majority of interment registers are in hard copy, it is common practice among trusts for their registers and plans to be maintained electronically on a computer.

If a trust is considering computerising its registers and plans, there is little point in starting from scratch to develop software. Consideration should be given to inspecting what is already available and used by other trusts.

Security and back up of registers and plans

The trust should ensure it has one or more back-up sets of its interment registers and plans, and other principal records, stored at locations different to the working set, in case of fire. This is

particularly necessary if records and plans are maintained by computer, which can be subject to equipment malfunction or burglary.

Public access and privacy considerations

Under the provisions of the *Information Privacy Act 2000* (Victoria), cemetery trusts are required to protect the privacy of persons for whom they collect personal information from:

- The deceased
- The holder of the Right of Interment
- The person who signs the Application for Interment form to authorise the interment taking place.

Personal details should be kept confidential by the trust, however section 60 of the Act requires that the trust make the information it is required to keep (as outlined under Regulation 5), available on request to the public.

Particular care should be taken not to release information concerning:

- The cause of death of the deceased
- The name and address of the next of kin, or the holder of the Right of Interment, particularly to commercial business who may seek to profit by contacting these persons.

Further, the person who authorises the interment may have private reasons for not advertising the funeral arrangements in the press and not wanting them made public.

A trust may charge a fee (as approved) to any applicant who seeks information from its records concerning the grave location and date of death of a nominated person.

Topic 18

Risk management

Regular review to determine potential risks

The cemetery trust has an obligation to regularly review all aspects of its cemetery and operations to:

- Identify potential risks
- Take action to remove or diminish potential risks, harm and loss.

Matters for such a review include:

Public safety

The trust has a duty of care to all members of the public who enter onto cemetery property. Potential hazards include open graves, unstable monuments, plant and machinery operations, tripping and falling.

Worker safety

The trust's responsibility for the health and safety of workers in the cemetery extends beyond its own staff to all persons who work there, including:

- Contractors appointed by the trust
- Community volunteers working in the cemetery with the approval of the trust
- Funeral directors, their staff, contractors and sub-contractors
- Monumental masons, their staff, contractors and sub-contractors.

In particular, the trust should ensure that:

- All plant and equipment brought into the cemetery, no matter by whom, is in safe and sound condition
- The persons who are to operate this plant and equipment in the cemetery have had sufficient training and hold the necessary qualification for its safe operation
- All work in the cemetery, no matter by whom, is performed in a manner which is healthy and safe for the workers involved and members of the public who may be affected by it (refer to topic 18).

Asset security

The trust has the obligation to safeguard from damage or other loss all assets that are the property of the trust, including:

- Buildings, fixtures and fittings
- Plant and equipment
- Cash and investments.

The measures to be taken in this regard (as appropriate) include fences, security systems with locks and alarms, neighbourhood watch, staff training, asset registers, stock takes, audit and insurance.

Interment registers and plans

The trust should ensure it has one or more back-up sets of its interment registers and plans and other principal records, stored at locations different to the working set in case of fire. This is particularly necessary if the records and plans are maintained by computer, which can be subject to equipment malfunction or burglary.

Action to remove or diminish those risks

When the cemetery trust (including its members and officers) become aware of potential risks within their cemetery and its operations, it is obliged to take prompt action to remove or diminish those risks.

Insurances

Although a cemetery trust may hold a number of insurance policies to cover various risks, these should be viewed as only one element of an effective risk management plan.

It is possible that a trust may be found legally liable for a personal injury claim that occurs in circumstances where a trust was aware of the existence of a potential risk but neglected to take all reasonable steps to prevent or diminish that risk.

Cemetery trusts in Victoria have insurance cover in regard to:

- Public and products liability (subject to the exclusion for construction works)
- Directors' and officers' liability/professional indemnity
- Personal accident (covers trust members, volunteer workers)

As arranged by:

Victorian Managed Insurance Authority (VMIA)

30/35 Collins Street

Melbourne Vic 3000

Phone: (03) 9911 6900

Fax: (03) 9911 6949

<http://www.vmia.gov.au/>

This is the general insurance cover for all cemetery trusts, as arranged by the Department of Human Services.

A cemetery trust is expected to arrange, at its own expense, suitable insurance cover for:

- Buildings, fixtures and fittings
- Plant and equipment
- Other insurable assets of significant value.

Registered vehicles including machinery are not insured by the VMIA policy. Motor vehicle insurance needs to be taken out by the trust to cover the vehicle, third party property damage and so on. Personal injury claims arising out of the use of a registered vehicle are covered by the Transport Accident Commission.

Legal liability arising out of the use of unregistered vehicles, including machinery, is insured under the VMIA policy in respect of third party, personal injury and/or property damage claims. However, tractors, mowers and other items of plant driven on the public roads in the cemetery are required to be registered.

Work Cover insurance is compulsory for a cemetery trust that is an employer, as defined by the relevant legislation (refer to topic 18).

Cemetery trust members and personal liability

Cemetery trust members in Victoria are, in effect, the directors of the incorporated entity being the cemetery trust. Because it is incorporated, the trust may sue and be sued in its own right.

In carrying out a function or power under the Act, a member of a cemetery trust is not personally liable for anything they do or omit to do in good faith. However, this limited liability protection:

- May not extend to any other legislation under which legal action may be brought against a cemetery trust and/or its members and officers as individuals
- Does not extend to officers employed by the trust.

This possible exposure to some personal liability provides considerable incentive for trust members and officers of cemetery trusts to discharge their powers and duties in a prudent and conscientious manner, and in compliance with all relevant legislation.

Topic 19

Financial management

Accounting and financial reporting

The cemetery trust is responsible for the stewardship and proper accounting of its income and expenditure, assets and liabilities.

The financial year for trusts ends on 30 June. Section 52 of the Act requires that an Abstract detailing the financial transactions for that year be signed as correct by three trust members and lodged with the Department of Human Services by the following 1 September. This is to be accompanied by copies of bank statements with balances of accounts and investments for that year.

The Department requires those trusts with reserves in excess of \$25,000 to also submit an audited statement of their accounts.

The larger cemetery trusts, as determined by Department of Treasury & Finance, are required to:

- Prepare their annual financial statements in accordance with the Standing Directions of the Minister for Finance, and the provisions of the *Financial Management Act 1994*
- Have those statements audited by the Victorian Auditor-General's Office
- Submit an Annual Report, incorporating those statements, to the Parliament of Victoria by 30 September.

Preparing an annual budget

It is recommended that each trust prepare for its own use a budget statement for the coming financial year, to be considered at a budget meeting held in April or May.

This budget statement should detail:

- Proposed expenditure on both maintenance and development works
- Anticipated revenue from the trust's fees and charges, based on the anticipated number of funerals.
- Goods and services tax (GST) collected on anticipated sales, less credit for GST on the anticipated purchases, assuming (as is recommended, depending on the revenue of the trust) the trust is registered for GST and has an Australian Business Number
- Funds and investments on hand, in both the general account and perpetual maintenance account.

The trust is then in a position to determine whether its current fees and charges are appropriate to its requirements for income. It is recommended that a realistic level of fees be charged to reflect the actual cost of operating the cemetery including the provision of funds for the perpetual maintenance obligations under the Act.

Setting fees and charges

Most trusts are well able to ensure that they have adequate funds to meet their annual obligations, but too often the fees charged are not adequate to enable the trust to meet their perpetual maintenance obligations.

Revenues must not only cover current operational costs, but also:

- Enable necessary or desirable repair or replacement of cemetery facilities and equipment
- Ensure adequate financial reserves for future operation, including unforeseeable urgencies and long-term viability, including expansion of the cemetery.

There are various methods by which businesses may set their prices. Some of those available to cemetery trusts are:

- **Cost-plus** – a simple pricing method of adding a standard mark-up to the cost of providing products (goods and services).
- **Target surplus** – a variation on breakeven pricing, which aims to not just break even but to also achieve a specific target surplus
- **Perceived value** – a method using buyers' perceptions of value, rather than the seller's cost
- **Going rate** – a method of using competitors' prices as a basis, rather than actual costs or market demand.

It is suggested that target surplus pricing is perhaps the fairest and most appropriate method for not-for-profit utilities, including cemeteries, and this may be achieved as follows:

1. Identify all anticipated costs for the coming year.
2. Add contributions required to build any financial reserves for future projects, including the Perpetual Maintenance fund.
3. Proportion total target revenue to specific types of products provided (for example, greater or lesser costs may be apportioned to lawn graves than to monumental graves).
4. Divide proportioned target revenue by the numbers of particular services anticipated.

A cemetery trust's regular costs may be administrative, operational and developmental.

Administrative costs may include taxes, insurances, government compliance issues, secretary remuneration/reimbursement, employment costs, staff and trust member training and development, association membership, financial reserves, printing, telephone, electricity, gas and water consumption, consultancies, legal expenses, accounting and auditing expenses.

Operational costs may include labour, machinery, and materials involved in digging, gardening, maintenance, rubbish removal and so on.

Developmental costs may include land purchases, infrastructure (drains, irrigation, power, roads, fences, earthworks), development of new interment or memorial areas, amenities (seating, shelter, water, office toilets, information), consultancies, machinery, and computer hardware and software.

Consent for proposed scale of fees

The trust must make formal application to the Secretary (s. 39 of the Act) for consent to make or vary its scale of fees. Such application must be signed by three trust members and lodged by the trust with the Department of Human Services. It should be accompanied by some documentation to justify the extent of the increases sought – a comparison with the trust's fees as currently apply, together with a copy of its current annual budget, may be helpful in this regard.

The time taken from lodgement with the Department until approval of the fees by the Secretary is approximately 3-6 weeks providing the department does not need additional information from the trust regarding its application. This includes the advertisement of the fees in the Government Gazette.

Application of approved scale of fees

Section 44 of the Act requires the trust to charge its approved fees, and only allows these to be waived or reduced on grounds of extreme hardship or other special circumstances.

When a cemetery trust is advised by the applicant for an interment that there are not sufficient funds available to pay all funeral expenses, including the full-gazetted fees of the trust in regard to interment, the trust can only:

- Suggest that an application be made to a magistrate under s. 142 of the Act in regard to the interment of poor persons.

CPI increase to fees

Under section 43 of the Act, all trust fees of \$50 or more are increased annually in accordance with the CPI. The CPI adjustments come into effect on 1 July each year.

Where a trust needs to introduce new fees or increase existing fees above CPI, a separate application must be made to the Cemeteries and Crematoria Program. Fee application forms are available from the program's website at: <http://www.health.vic.gov.au/cemeteries>

All applications for new fees or increased fees must be accompanied by a written justification outlining why the fee or increase is necessary. A complete break down of the cost elements that contribute to the fee amount must also be provided.

Payment of commissions is considered inappropriate

It is inappropriate that any third party be paid a commission (tips, rewards, discounts) by the trust for selling rights of interment, plaques, cremation memorials or any other items on its behalf. Further to this under the Act, only a trust or its delegate is authorised to grant a right of interment.

Funds received pre-need

NOTE; this section will be updated following a review by the Accounting Policy Working Group.

For other smaller trusts, which account on a cash basis, all funds received (whether for at-need or pre-need sales) are immediately taken up as cash receipts.

It is reasonable that a cemetery trust should be able to expend both the at-need and pre-need funds it receives on its development works, and thereby provide for its future income streams. However, a trust that proposes to invest in major infrastructure items (such as a mausoleum) must be able to clearly demonstrate to the Department of Human Services its fees and charges are sufficient to:

- Recover the capital and operational cost of the investment, and
- Earn a rate of return over the life of the facility that is equal to or better than the equivalent rate of return through investing in the market.

The alternative would be for the trust to attempt to finance such works from borrowed funds, for which it is very difficult to get Treasury approval, at rates of interest higher than the trust can earn on its investments.

The financing of development works

Section 46 of the Act empowers a cemetery trust, subject to the approval of the Treasurer, to borrow funds. As a trust has no real estate or rates income to mortgage, the only security available to offer the lender is the guarantee of repayment issued by the Treasurer. In practice this guarantee is very difficult to obtain.

Perpetual maintenance fund

When preparing its annual budget and reviewing its scale of fees, the trust should consider making appropriate annual allocations to its perpetual maintenance fund.

The accumulated funds, including interest, will be used to finance the continuing maintenance of the cemetery after all available graves have become full and the site has little or no further potential to generate income.

Consideration also needs to be given as to how the trust will finance the purchase (by the Crown) and development costs of its next cemetery site.

Purchasing and tender procedures

Minimum recommended procedures are:

For purchases up to \$100,000

- Always consider value for money, not just lowest price.

- For purchases up to \$5000, obtain three verbal quotes.
- For purchases from \$5,000 to \$15,000, obtain at least three verbal or written quotes.
- For purchases from \$15,000 to \$100,000, obtain three written quotes, the trust should prepare a document outlining its requirements before seeking quotes.
- Purchases should be approved by officers with appropriate financial delegation or by the cemetery trust or a delegated committee of the trust.

For purchases over \$100,000

- Public tenders should be called by means of advertisement in the local press.
- The cemetery trust should follow the appropriate tender processes before approving expenditure.

If tenders are called, the trust must provide a procedure, facilities and safeguards to ensure secrecy and security of tenders received, until the date and time when they are to be officially opened in accordance with the trust's requirements.

If the trust wishes to seek further information on appropriate purchasing procedures guidelines can be found at VGPB (Victorian Government Purchasing Board) at <http://www.vgpb.vic.gov.au/>

Partial rebate of water charges

A cemetery trust (being a not-for-profit organisation), which receives water assessments in its own name, may make application to its local water authority for the \$260 per annum rebate offered by the State Government in regard to each assessment.

Topic 20

Taxes

The matters summarised in this topic are complex, and it is recommended that advice be obtained from a professional qualified in the subject, or from the Australian Taxation Office (ATO) (www.ato.gov.au). For ATO contact phone numbers, refer either to the website or to the front of your local telephone directory; see Government Section, then the 'Tax' subject heading.

A small cemetery trust that performs few funerals annually and has no staff, might have little or no requirement to deal with the ATO. However, for bigger trusts, with considerable funerals and staff, the matter of tax compliance creates a considerable obligation that requires increasing resources.

Cemetery trusts in Victoria are considered by the ATO to be not for profit organisations and, as such, are exempt from the payment of income tax on the income they derive from their usual cemetery and related activities, as authorised by the Act. However, they are not exempt from complying with legislation regarding GST, Pay As You Go (PAYG) and Fringe Benefits Tax (FBT).

Goods and Services Tax (GST)

As cemetery trusts in Victoria are considered by the ATO to be not for profit organisations, a trust with annual income from \$100,000 upwards **must** (or with annual income less than \$100,000 **may**) register and obtain an Australian Business Number (ABN) and register to collect and pay GST, but will also then be able to claim most of the input tax credits for the GST it pays on its supplies.

A trust in the under \$100,000 income category will make its decision based on its individual circumstances:

- If it does not have an ABN, or does not provide that number to other businesses (for example, funeral directors on behalf of their clients) to whom the trust 'supplies' goods or services, those other businesses ordinarily will be required to deduct PAYG withholding tax from their payments to that trust, at the highest marginal tax rate plus the Medicare levy (currently 48.5%).
- If it does not register to collect and pay GST, the trust will not be able to claim most of the input tax credits for the GST it pays on its supplies.

As a general rule, cemetery trusts, as with other commercial entities, should register for an ABN even if they do not register for GST.

The ABN is an 11 digit unique identifier that enables organisations in Australia to deal with the ATO and will, in time, be used as the sole business identifier by all government departments.

A cemetery trust registered for GST will need to show its ABN on all tax invoices, together with an indication that the total of the invoice is GST inclusive. Without the ABN, the document will not constitute a tax invoice (even if so described) and the trust's GST registered customers will be unable to claim input tax credits for supplies related to that document.

Payroll deductions of income tax (PAYG)

A cemetery trust, which is an employer, is required to register as such with the ATO. It must then withhold specified amounts of income tax from salary, wages, allowances and leave loading it pays to its employees, and forward these amounts to the ATO on behalf of those employees.

At the conclusion of each tax year, the employer will issue to each employee a Pay As You Go (PAYG) Payment Summary (formerly known as a group certificate), which certifies gross earnings paid and tax instalments deducted, plus fringe benefits if more than \$1000 (see below).

Fringe Benefits Tax (FBT)

FBT is payable on benefits (as defined) other than wages provided by a cemetery trust to its employees (as defined), but not on the employer's share of its contributions to employees' superannuation. Neither is it payable on benefits provided by the trust to business associates or to voluntary (unpaid) trust members.

If the trust provides non-compulsory uniform to its employees, attention should be paid to the ATO requirement that the uniform and logo must be approved and registered. Otherwise, FBT may be payable at the highest marginal rate on the cost of that uniform.

If an employee receives fringe benefits as defined (not including meals and entertainment) of more than \$1000 in any tax year, there is a requirement that the grossed-up value (including tax added back) of these benefits are to be recorded on the employee's PAYG Payment Summary.

Due to its income tax exempt status, a cemetery trust does not receive an exemption in regard to the provision of minor benefits of less than \$100 in value.

Cemetery trusts in Victoria are not regarded by the ATO to be 'rebateable employers' (charities) for the purposes of the FBT legislation.

Debits Tax exemption

The *Debits Tax Act 1990* has application to all debit transactions on bank accounts that have a cheque drawing facility attached.

Cemetery trusts may seek exemption from this state tax. Contact the State Revenue Office on 13 21 61.

Accounts without a cheque drawing facility are not taxable accounts so the debits tax has no application. This includes savings accounts, investment accounts and term deposits.

Payroll Tax exemption

Employers in Victoria with an annual gross payroll (as defined, including gross fringe benefits and employer contributions to superannuation) exceeding \$550,000 for 2002–03 are liable to pay state payroll tax.

Employers that are cemetery trusts may seek exemption as a charitable organisation. Contact the State Revenue Office on 13 21 61.

Topic 21

Conditions of work

Employee or contractor?

A cemetery trust must ensure that the terms and conditions under which any person (whether employee, contractor or community volunteer) performs work for it are appropriate, correct and (preferably) documented in advance.

If a person performing work for the trust should correctly be engaged as an employee, the trust should not consider paying that person as an independent contractor. There are significant ramifications for the trust including, in particular:

- Taxation obligations
- Work Cover insurance in the event that a worker is injured.

If in doubt, this matter should be referred to the ATO and WorkSafe Victoria or to the trust's WorkCover insurance agent.

The common law has always emphasised the nature and degree of control exercised by the hirer over the worker. So, while an employee is directed as to what to do and how to do it, an independent contractor is only told what work to do.

In determining the relationship (employer or contractor) a range of factors will need to be considered, including:

- Whether the worker supplies the tools or equipment
- Whether the worker can work for other employers at the same time
- Whether the worker carries the risk of loss or chance of profit
- Whether the worker is able to delegate the performance of the work to someone else
- The mode of remuneration
- The obligation of work
- The hours of work
- Provision for holidays
- Deduction of income tax
- The delegation of work.

Merely describing the worker as an independent contractor will carry little weight if all the other evidence indicates that the relationship is essentially one of employer/employee.

Employees' conditions of service

Some or most of the following will govern employees' conditions of service:

- *Workplace Relations Act 1996*
- Cemetery employees award
- A collective bargaining agreement (CBA), being a collective agreement covering the employment of a number of staff, and certified by the Australian Industrial Relations Commission (AIRC)
- An Australian Workplace Agreement (AWA), being an individual contract certified by the AIRC
- A common law contract of employment

Acts and Regulations including:

- Occupational health and safety
- Superannuation
- WorkCover
- Long service leave.

The contract of employment should be stated in writing and agreed between the parties, as indicated by the signatures of the employee and the employer, prior to the employment commencing. The contract may contain special conditions appropriate to the particular employment relationship, such as those relating to remuneration and other benefits. The content will be influenced by agreements between relevant unions and the employer, particularly at industry and local level. In some cases these agreements may be implied in the contracts of individual employees in the industry.

On the commencement of employment, it is strongly recommended to have in place an agreed period of probationary employment. The purpose of this is principally to ascertain whether the employee has the skills, knowledge and attitude to carry out the job satisfactorily. The probationary period should be for a minimum period of three months, but may be of greater duration depending on the circumstances of employment. During the probationary period, employees are not entitled to the protection afforded by the Workplace Relations Act 1996.

Most employment is for an indefinite period of time; with the expectation of both parties being that the employment will continue as long as both parties consider that it is in their individual interest to do so. Exceptions to this would be in the case of a fixed term contract or where a casual work relationship exists.

Cemetery Employees Award

The minimum terms and conditions of employment for employees of cemetery trusts in Victoria are as prescribed in the Cemetery Employees Award.

This award (AW 772620) may be accessed through the website of AIRC at www.airc.gov.au (see catalogue, documents, current awards). However, this may not have been updated with the most recent changes to pay rates.

A trust that is a member of VECCI (Victorian Employers Chamber of Commerce and Industry, phone 8662 5333) can arrange to subscribe to a loose-leaf update service of:

- Cemetery Employees Award
- Employee Relations manual.

Negotiations towards improved flexibility

A trust is able to negotiate with its staff towards an agreement that achieves both:

- Flexible improvements in the conditions of employment of the staff, and
- Productivity improvements in the workplace.

Cemetery trusts are established under statute and are required to comply with a range of government policies. **The government's policy concerning industrial agreements is that only collective, and not individual, agreements are to be entered into.**

Employment agreements must operate in conjunction with, but not reduce any of, the terms and conditions as stated in the current Cemetery Employees Award. Conditions specified in an agreement may vary from those of the award but, in general, the employee is not to be disadvantaged as a result of the variation. The two types of acceptable agreements are:

1. **Collective Bargaining Agreement (CBA)** – negotiated between the combined employees, who may be represented by their respective trade union, and management. A CBA must be approved by the AIRC and will operate for a determined period (such as three years). Examples of CBAs presently in operation may be available from larger cemeteries or www.airc.gov.au (catalogue, documents, agreements list search-cemetery industry).
2. **Australian Workplace Agreement (AWA)** – similar to a CBA, except agreement is offered directly to each individual and subject to approval by Employment Advocates Office (EAO).

WorkCover insurance

As at August 2003, an employer must have WorkCover insurance if:

- The total annual remuneration (including employer contributions to superannuation, and gross fringe benefits) of workers is expected to exceed \$7,500
- If apprentices or trainees are employed, regardless of total remuneration.

For the purposes of this requirement:

- Workers do not have to be full-time, but can be part-time or casual
- Contractors may be deemed to be workers. If a person operates their own business but primarily works for a cemetery trust (that is, for more than 90 days per annum, or to derive at least 80 per cent of their income), then they may be deemed to be a worker employed by the trust.

If in doubt, seek advice from WorkSafe Victoria or from your WorkCover claims agent.

An employer with WorkCover insurance obligations in regard to its employees is required to display the 'If you are injured' poster in a prominent position in the workplace (such as in the employees' lunchroom). This poster provides information and direction to employees concerning the procedure to make a report and, if necessary, to make a WorkCover claim concerning an injury sustained at work. The poster is available from your WorkCover claims agent.

In regard to workplace injuries, the employer should also provide for use by employees:

- A register of injuries, in which the employer is to be notified of any and all injuries sustained at work
- A supply of WorkCover claim forms.

If an employee is off work for 20 days or more due to a work-related injury, the employer must prepare a return to work plan for the employee. Further information is available from your WorkCover claims agent.

Superannuation guarantee

A cemetery trust, which is an employer (as defined), is required by superannuation guarantee legislation to contribute a prescribed amount (9 per cent as at August 2003) of the gross ordinary-time wages of each employee who earns more than \$450 in a calendar month, into a superannuation fund on behalf of that employee. This is not to be a deduction from the employee's wages; it is an additional amount paid by the trust.

If the trust is respondent to the *Local Authorities Superannuation Act 1988*, then this employer contribution would be paid to:

Local Authorities Super
 PO Box 7424
 St. Kilda Road
 MELBOURNE 8004
 Phone 9869 7777
 Fax 9820 0552

Different requirements apply in regard to an employee who was a member of Local Authorities Superannuation prior to 1 January 1994.

Long service leave

Every person employed by an employer to do any work for reward, and whether or not covered by an award, is entitled under state legislation to long service leave.

Since 1965, the basic entitlement has been 13 weeks leave after 15 years of continuous service, and then 4.33 weeks leave for each succeeding five years of continuous service. Workplace agreements at some cemetery trusts have reduced the length of continuous service required to entitle an employee to such periods of leave.

Equal employment opportunity

Under Victoria's *Equal Opportunity Act 1995*, it is illegal to discriminate against people on the basis of various attributes and various areas of public life (see list below), and illegal to sexually harass another individual or individuals, including job applicants, employees, co-workers and contract workers.

It is illegal to discriminate in employment on the basis of:

- Age
- Breastfeeding
- Care status
- Disability
- Gender identity
- Industrial activity
- Marital status
- Parental status
- Physical features
- Political activity/belief
- Personal association
- Pregnancy
- Race refer to *Racial and Religious Tolerance Act 2001*
- Religious belief or activity
- Sex
- Sexual orientation/lawful sexual activity.

In the area of employment, sexual harassment is unlawful whether committed by or against:

- Employees
- Employers or prospective employers
- Partners in firms
- Members of industrial organisations and qualifying bodies.

Sexual harassment is unlawful, regardless of a person's status as employer or employee and regardless of whether or not they work for the same employer.

Topic 22

Occupational health and safety

Occupational Health and Safety Act 1985

The Occupational Health and Safety Act 1985 requires employers to provide and maintain, **so far as is practicable**, a working environment that is safe and without risks to health. Employees are required to take reasonable care of their own health and safety and the health and safety of anyone else who may be affected by their actions.

'Practicable' involves doing what can be done in the light of:

- a) The severity of the hazard or risk in question
- b) The state of knowledge about that hazard or risk and any methods of removing or mitigating that hazard or risk
- c) The availability and suitability of ways to remove or mitigate that hazard or risk
- d) The cost of removing or mitigating that hazard or risk.

Sections 21 and 25 of the Act refer to the responsibilities of both employers and employees and provide some practical advice on how general compliance with the Act can be obtained.

A range of educational material, generally free of charge, can be obtained from WorkSafe Victoria. See your local telephone directory for contact details.

A safe workplace for all persons, not only trust staff

The cemetery trust is responsible to ensure that **all work** in its cemetery, **no matter by whom**, is performed in a healthy and safe manner and without risk to the public or any other person. This responsibility includes work in the cemetery by:

- Employees of the trust
- Contractors, including their staff and sub-contractors, appointed by the trust
- Community volunteers
- Monumental masons, including their staff and sub-contractors
- Funeral directors, including their staff and sub-contractors.
- This responsibility extends to trust work performed by its employees when they are outside the cemetery.

Procedures should be in place to ensure that work is not commenced in the cemetery by any of these persons without the prior knowledge and approval of the trust. This approval should not be given until the trust or its experienced delegate is satisfied with all safety aspects of the proposed work. This may include, for example:

- Structured and documented induction and training sessions for new employees of the trust
- The trust's delegate performing a visual inspection of a plant item intended to be used (by a contractor or stonemason or by trust staff) in the cemetery, to see if it has any obvious defects
- A requirement to produce the trust's delegate documents providing details of approved safety inspection/testing reports for that plant item (for example, details of maximum load limits in the case of a monumental mason's crane with lifting slings or hooks)
- A requirement for the proposed operator of the plant item to produce to the trust delegate documentation verifying their training and competency in the operation of that plant item
- Directions issued by the trust delegate as to how members of the public are to be alerted to, but kept isolated from, safety hazards associated with the proposed work.

Particular workplace hazards in a cemetery

Hazards to the health and safety of workers and the public in a cemetery include open graves, monuments that are unstable or under construction, plant and machinery operations, trees and shrubs that might drop limbs, tripping and falls.

Open graves are a particular cemetery hazard. The safety of the mourners attending at the open grave for an interment is addressed at topic 18 'Public safety'.

It is a legal requirement that no person enters a grave of depth greater than 1.5 metres, which has not first been adequately shored with sufficient ground support. This applies even if the entering of the grave is intended to be only for a moment, say to retrieve car keys that have fallen into the open grave.

If cemetery staff must enter a grave of depth greater than 1.5 metres, they can only be permitted to do so if:

- The grave has been appropriately shored to the required standard
- Appropriate staff and equipment (including a ladder to get in and out of the grave) are on hand at the graveside.

Training in the shoring and safety of graves is available as part of the Certificate III course in Grave digging Operations.

Documentation of safe work requirements

The documents that a cemetery trust should use in its staff training sessions include the following:

- **Occupational Health and Safety Act and WorkSafe guidebooks**

- **Codes of practice**

The employer should provide those codes relevant to the worksite, including:

- Manual handling
- Hazardous substances
- First aid, which specifies requirements for trained first-aiders and first aid kits.

Material safety data sheets (MSDS)

- An MSDS is available from the manufacturer or importer of each hazardous substance used in the workplace. The code of practice on hazardous substances requires that all such substances are identified and listed in a register, and accompanied by the relevant MSDS, to be kept at the workplace.

Plant hazard assessments

- Employers are required to identify and document the hazards, and assess and control the risks, associated with the operation of each item of plant in their workplace. Review of this process is to be continuous.

Guidelines and safety policy manuals for the workplace, prepared by the employer

WorkCover documents

- *If you are injured* poster
- Notification of injuries book
- Worker's claim forms

Operator's manuals for plant items, provided by manufacturers

Accidents and incidents to be reported to WorkSafe

Under the Occupational Health and Safety (Incident Notification) Regulations, the employer with management or control of the workplace is responsible for notification to WorkSafe Victoria of

serious incidents, regardless of whether or not the person who has been killed, injured or exposed to serious immediate risk is an employee.

PHONE WORKSAFE
Ph 13 23 60
To report serious accident and incidents

Notification is required where an incident at a workplace or equipment site results in death or a specified serious injury. That is, if an injured person requires:

- Medical treatment within 48 hours of being exposed to a substance
- Immediate hospital treatment as an inpatient
- Immediate medical treatment for:
 - Amputation
 - Serious head injury
 - Serious eye injury
 - Separation of skin from underlying tissue (for example de-gloving or scalping)
 - Electric shock
 - Spinal injury
 - Loss of bodily function
 - Serious laceration.

Notification is also required of dangerous occurrences, which seriously endanger the lives or the health and safety of people in the immediate vicinity. Such dangerous occurrences include:

- Collapse, overturning, failure or malfunction of, or damage to, certain items of major plant
- Collapse or failure of an excavation or the shoring support of an excavation
- Collapse of part of a building or structure
- Implosion, explosion or fire
- Escape, spillage or leakage of substances
- The fall from a height of dangerous or heavy objects.

The deadlines for notification to WorkSafe are:

- **First deadline - immediate.** Employers in charge of prescribed equipment at an equipment site must notify WorkSafe immediately they become aware of a notifiable incident at their workplace or equipment site,
- **Second deadline - within 48 hours.** Written details of the incident must subsequently be sent to WorkSafe within 48 hours.

While there may be occasions when an employer is not aware of an incident until some time later, procedures should be in place to ensure swift notification as soon as the employer becomes aware.

For more information on occupational health and safety and WorkSafe Victoria contact:

Victorian WorkCover Authority
Telephone (03) 9641 1444 or 1800 136 089 (Toll Free)
Email: info@workcover.vic.gov.au
Web site: <http://www.workcover.vic.gov.au>

Topic 23

Industry associations and contacts

	Organisation	Phone	Fax	Website	Notes
CCAV	Cemeteries and Crematoria Association of Victoria Inc. Lv11/ 281 Lygon St Brunswick East 3057	(03) 9381 4877	(03) 9381 4677	www.ccav.org.au	The representative association of the operators of public cemeteries and crematoria in Victoria.
ACCA	Australasian Cemeteries and Crematoria Association Lv1 1/ 281 Lygon St Brunswick East 3057	(03) 9381 4166	(03) 9381 4677	www.accaweb.com.au	The representative association of the operators of both public and private cemeteries and crematoria in Australasia.
AFDA	Australian Funeral Directors Association 700 High Street (PO Box 291), Kew East. Vic 3102	(03) 9859 9966	(03) 9819 7390 (03) 8327 0899	www.afda.org.au	A professional association of funeral directors upholding a code of ethics.
AWU	Australian Workers Union Victorian Branch 685 Spencer Street West Melbourne 3003 Call Centre 1300 362 298	(03) 8327 0888		www.awu.net.au	The union-covering workers employed in cemeteries and crematoria in Victoria.
VIFD	Victorian Independent Funeral Directors Association (Inc) 89 Balcombe Rd Mentone 3194	(03) 9625 4168			A professional association of funeral directors upholding a code of ethics.
MSAV	Master Stonemasons Association of Victoria	(03) 9855 8833			A professional association of stonemasons upholding a code of ethics.
NALAG	National Association for Loss and Grief East Melbourne Lvl 1 Ste4 182 Victoria Pde 3002 FREECALL 1800 100 023	(03) 9650 3000	(03) 9650 5777 (03) 9265 2150	www.nalagvic.org.au	Offers loss and grief training for professionals, volunteers and organisations.
	Australian Centre for Grief & Bereavement Inc. McCulloch House Monash Medical Centre 246 Clayton Road, Clayton Vic 3168 FREECALL 1800 642 066	(03) 9265 2100		www.grief.org.au	Provides and promotes grief education, consultancy, counselling and research.
DSCV	Dispute Settlement Centre Victoria 4/456 Lonsdale St Melbourne VIC 3000 FREECALL 1800 658 528	(03) 9603 8370	(03) 9603 8355	www.justice.vic.gov.au/disputes	Provides a free dispute settlement service and can help with practical advice on resolving disputes or conflicts without legal action.

Appendix 1 - Some of the key provisions of the Cemeteries & Crematoria Act 2003.

Section	Provision
4	The Governor in Council, by order published in the Government Gazette, may establish a public cemetery.
5(1)	The Governor in Council, by order published in the Government Gazette, may establish a cemetery trust.
5(2)	A cemetery trust is a separate legal entity, being a body corporate having perpetual succession.
6	A cemetery trust consists of not less than 3 and not more than 11 members appointed by the Governor in Council.
8	The Governor in Council may appoint a trust to manage one or more public cemeteries.
10	The Governor in Council, on recommendation of the Minister, may appoint an administrator to manage a public cemetery.
11	Membership of a cemetery trust is not office for profit.
12	Functions of a cemetery trust.
13	General powers of a cemetery trust.
14	A cemetery trust responsible for the management of more than one cemetery may manage all the cemeteries as if they were one cemetery.
15	Trusts may delegate certain powers to trust members and/or employees.
16	In carrying out a function or power under the Act, a member of a cemetery trust is not personally liable for anything done or omitted to be done in good faith.
25	Model Rules – see Schedule 6 of <i>Cemeteries and Crematoria Regulations (2005)</i> .
26	Trusts may make rules to assist in the management of the cemetery.
27	Any rules must be approved by the Governor in Council and published in the Government Gazette.
36 & 37	Trusts may grant leases/licences over cemetery land but must have the prior approval of the Minister.
39	Trusts may set fees and charges and must submit them to the Secretary for approval.
40	The Secretary may approve or not approve trust fees.
41 & 42	The Secretary must publish fees in the Government Gazette and on the internet.
43	Fees and charges to increase by CPI on 1 July of each year.
49	Cemetery trusts to keep accounts and records.
59 & 60	Cemetery trusts records must be made available to members of the public.
74	A right of interment is perpetual where remains are interred, or can be for 25 years or perpetual if ashes are interred.
78	A right of interment is exercised if human remains are interred or a memorial is created at the place of interment.
79	A right of interment can be transferred to another person for a fee not less than the current fee payable for the same right of interment.
82	An unexercised right of interment can be surrendered to the cemetery trust.
85	At the expiry of a limited tenure for ashes, the cemetery trust must offer a further period of limited tenure or permanent tenure for the ashes.

88	A right of interment holder may apply in writing and submit to the trust with the relevant cemetery trust fee a request for the lift and reposition of bodily remains to enable re-use of the place of interment.
89	The cemetery trust may either approve or not approve the carrying out of a lift and reposition procedure.
98	A person may apply to the cemetery trust for approval to establish or alter a memorial or a placement of interment.
104	The right of interment holder is responsible for the maintenance of a memorial at the place of interment in a safe and proper condition.
104	A cemetery trust may require a right of interment holder to make the memorial safe and proper or carry out repairs specified in the notice.
108	A trust may recover the cost of repairing a monument or place of interment from the right of interment holder or person responsible for the establishment or alteration of the memorial.
113	Bodily remains interred in a public cemetery are interred for perpetuity.
114	Bodily remains must not be interred in a place other than a public cemetery unless the Secretary has granted an interment approval for that interment.
128	Cremated remains may be interred for a limited tenure not exceeding 25 years or for perpetuity.
129	Cremation must take place in a public cemetery or in accordance with an approval given by the Secretary.
143	A Magistrate or the Coroner may make an order requiring a cemetery trust to either cremate or inter the remains of a poor person at no cost.
155	Except in accordance with Act, a person must not exhume or remove any human remains from any place of interment.
156	A person may apply to the Secretary for an exhumation licence to exhume or remove human remains from a place of interment.
179	A right of interment holder may apply to the Victorian Civil and Administrative Tribunal for a review of the cemetery trusts decision to either grant or refuse an approval to establish or alter a memorial or place of interment.

Appendix 2 - Some of the key provisions of the Cemeteries & Crematoria Regulations 2005.

Section	Regulation
5	Provides details of the prescribed information that must be kept by a cemetery trust
13	A person must not bring bodily remains or body parts to be interred into a cemetery except in accordance with this section.
14	Provides details of the depth of interment requirements.
16	Provides information on the requirements for the enclosure of bodily remains or body parts where cremation is to take place.
22	Advises that mausolea must be constructed to the standard noted in the regulations.
25-39	Regulates behaviour and activities in public cemeteries.

Appendix 3 – List of the Victorian legislation that has an impact on the operations of a cemetery trust.

Occupational Health and Safety Act 2004

A cemetery trust has a duty to provide a safe and healthy worksite for workers, including voluntary workers and contract workers (for example, gravediggers and monumental masons) whether or not employed by the trust. Any incident that results, or may have resulted, in personal injury must be promptly reported to WorkCover.

Particular care should be taken to determine whether the trust has responsibility to arrange WorkCover insurance for part-time or contract workers, for example, contract gravediggers.

Road Safety Act 1986

Cemetery trusts vehicles (including tractors and trailers) driven on public roads are required to be registered. If a cemetery is on Crown land, its defined roads are considered to be public roads.

Public Administration Act 2004

Part 5 of this Act deals with the operations and governance of public entities, such as cemetery trusts.

Coroners Act 1985

A certificate signed by a coroner is one of three acceptable forms of authority that must be produced to an officer of the cemetery trust before an interment may proceed (section 116 of the Act).

Births, Deaths and Marriages Registration Act 1996

A certificate signed by a registered medical practitioner is another of the acceptable forms of authority that must be produced to an officer of the cemetery trust before an interment may proceed (section 116 of the Act).

Financial Management Act 1994

The largest 14 cemetery trusts are required to report under provisions outlined in the *Financial Management Act 1994*.

Planning and Environment Act 1996

The planning scheme of the local municipality should contain a reference to and indicate that land designated for cemetery purposes is zoned in a public use zone (PUZ). Trusts are advised to liaise with the relevant planning authority concerning their development proposals and before commencing any major works.

Information Privacy Act 2000

Trusts are required to comply with this legislation as it relates to the collection, dissemination, and storage, of personal information.

Public Records Act 1973

This Act outlines requirements for the preservation and management of public records, such as burial records.

Heritage Act 1995

The trust should be aware of its responsibilities (if any) relating to the conservation of historic components of older cemeteries. Information on this is available from the local council.

Planning and Environment Act 1987

This Act provides a framework for the use and development of land in Victoria. Planning advice is available from the local council.

Building regulations

All buildings and structures erected in the cemetery must comply with the relevant building regulations. New structures or additions must be constructed in accordance with a valid building permit.

Other Acts that may be relevant to the operations of a cemetery trust are:

Health Records Act 2001

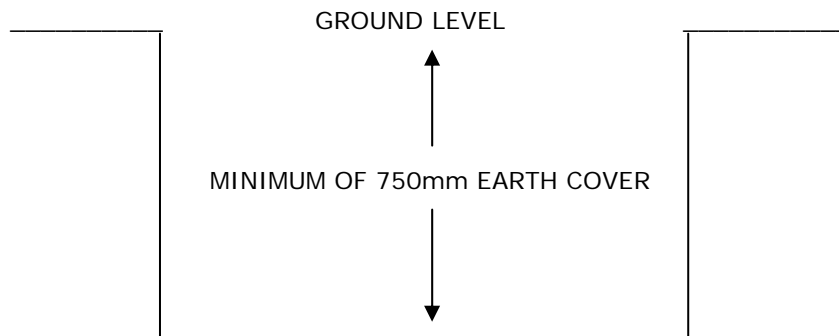
Racial and Religious Tolerance Act 2001

Flora and Fauna Guarantee Act 1988

Equal Opportunity Act 1995

In addition, Commonwealth legislation that may also have an impact on a cemetery trust includes the Trade Practices Act 1974, taxation (PAYE, GST, FBT) and employment law.

Appendix 4 - Depth of Burial – Regulation 14

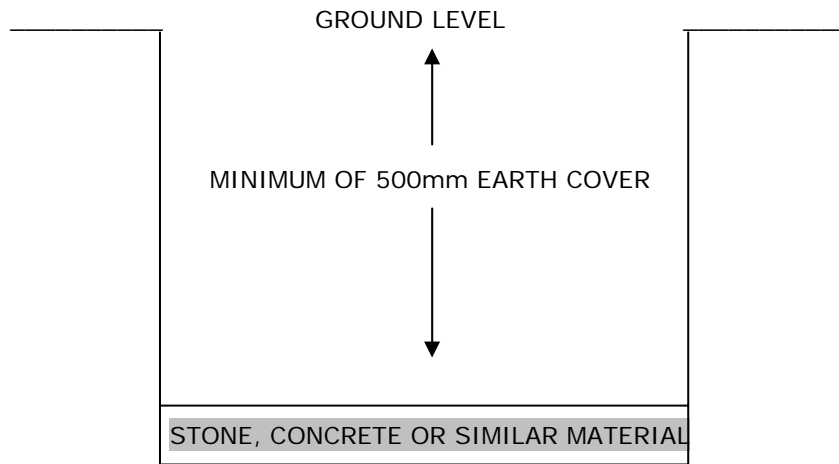


14. Depth of burial requirements

(1) Subject to sub-regulations (2) and (3), if human remains other than cremated remains are interred in a place of interment in a public cemetery, the cemetery trust responsible for that cemetery must ensure that –

(b) if the ground above the place of interment is unsealed, there is at least 750 millimetres of earth between the coffin, container, receptacle or those remains and the normal level of the ground.

Penalty: 10 penalty units



14. Depth of burial requirements

(1) Subject to sub-regulations (2) and (3), if human remains other than cremated remains are interred in a place of interment in a public cemetery, the cemetery trust responsible for that cemetery must ensure that –

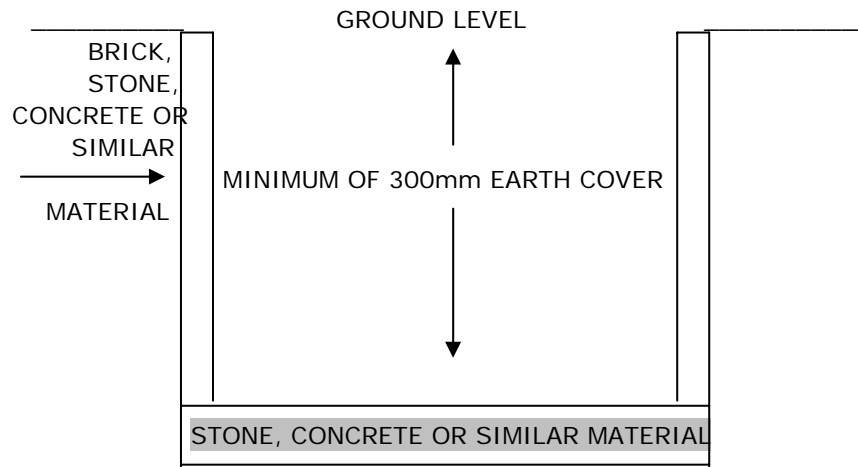
(a) if the ground above the place of interment is sealed with a substantial layer of stone, concrete or similar material –

(i) of earth between the coffin, container, receptacle or those remains and the normal level of the ground.

(ii) there is at least 500 millimetres of earth between that layer of stone, concrete or similar material and the normal level of ground; or

(b) if the ground above the place of interment is unsealed, there is at least 750 millimetres of earth between the coffin, container, receptacle or those remains and the normal level of ground.

Penalty: 10 penalty units



14. Depth of burial requirements

(1) Subject to sub-regulations (2) and (3), if human remains other than cremated remains are interred in a place of interment in a public cemetery, the cemetery trust responsible for that cemetery must ensure that –

(2) Despite sub-regulation (1), a right of interment may be exercised to inter human remains other than cremated remains in a place of interment if –

(a) the right of interment has been exercised in relation to that place of interment at least once before 28 July 1998; and

(b) in interring those remains by the current exercise of that right –

(i) the place of interment is resealed with a substantial layer of stone, concrete or similar material placed or poured over the coffin, container, receptacle or those remains as soon as practicable after the interment; and

(ii) the sides of the place of interment above the level of that layer are lined with brick, stone, concrete or other similar material; and

(iii) there is at least 300 millimetres of earth between that layer of stone, concrete or similar material and the normal level of ground.

Penalty: 10 penalty units

Appendix 5 - Information On The Cancellation Of Unexercised Rights Of Interment

Introduction

Under section 91 of the *Cemeteries and Crematoria Act 2003* (2003 Act), subject to a range of conditions, a cemetery trust may cancel a right of interment and/or burial (referred to in this document as a 'right') where it has not been used within 25 years of its original grant.

A similar provision was included in section 25(2) of the *Cemeteries Act 1958* (1958 Act), however this provision only applied to particular types of rights depending on the conditions on which they were granted.

Upon cancelling a right, a cemetery trust may then resell that particular right at the current market value applicable to that right or an equivalent right.

The intent of such provisions is to provide trusts with a process that facilitates the re-sale of old unexercised rights, and the subsequent use of the places of interment to which such rights relate, thereby preventing cemetery land from remaining unused.

How to determine whether a right can be cancelled

To assist trusts in identifying potential sites for cancellation and subsequent re-sale, the department has prepared advice in a table format that provides information about

- What types of rights are still current under the 2003 Act;
- What types of rights can be cancelled under section 91 of the 2003 Act; and
- Refunds payable to the holder of a right where the right has been cancelled by a cemetery trust.

Trusts should follow the four steps outlined below to determine the current status of, and potential for, cancellation of a particular right –

1. Determine what type of right is proposed for cancellation, this information should be noted on the documentation held by the holder of the right or should be available in the trust's records.

The 2003 Act provides for the existence of the following three different types of rights of interment granted under the 1958 Act -

- (i) 'Exclusive rights of burial or interment';
- (ii) 'Agreements for the interment of human remains not for a limited period'; and
- (iii) 'Agreements for the interment of human remains for a limited period'.

Trusts should note that each of these three types of rights are treated separately under the Transitional Provisions (Schedule 2) of the 2003 Act, and therefore different requirements apply to each in relation to their current status and cancellation. For these reasons a trust must be clear about what type of right that they are dealing with in each particular case.

2. Determine the date that the right was granted.
3. Determine whether the right was granted on any particular terms and conditions other than those specified in the 1958 Act, and whether these terms and conditions are consistent with the 2003 Act and therefore still current.
4. Using the type of right and date granted, refer to the table over the page for information regarding the cancellation and refund applicable to that type of right.

INFORMATION ON THE CANCELLATION OF UNEXERCISED RIGHTS OF INTERMENT

Date Granted		Is the right current under the 2003 Act?	If the right is expired is a refund payable?	Can the right be cancelled under the 2003 Act?	If the right is cancelled is a refund payable?	Additional Information
Exclusive right of burial or interment	Prior to 17 Dec 1974.	Yes ¹ Provided that the right was not previously cancelled by the trust under section 25(2) of the 1958 Act.	Not applicable ²	Yes ³	Yes ⁴	Refer endnote ⁵ .
	Granted after 17 December 1974 and before 1 July 1980.	Maybe Exclusive rights of burial or interment acquired in this period were granted for a limited period of 25 years. Refer to the 'Additional Information' column for further details. If the holder of a right did not repurchase the right at the expiry of 25 years the right expired. Where the holder did repurchase the right at the expiry of 25 years this right is still current. For repurchased rights refer to the information in the next row relating to rights purchased or renewed on or after 1 July 1980 and before 1 July 2005.	No The 1958 Act was clear that these types of rights were to be exercised within 25 years otherwise they expired (subject to renewal).	For repurchased rights refer to the information in the following row relating to rights purchased or renewed on or after 1 July 1980 and before 1 July 2005		Exclusive rights of burial or interment acquired between 17 December 1974 and 30 June 2005, were, in accordance with section 25(5) of the 1958 Act, subject to the condition that the right must be exercised within 25 years of the date of purchase, If the right was not exercised within this time the holder had the option to re-purchase a further right to the same location otherwise the original right ended.

Date Granted		Is the right current under the 2003 Act?	If the right is expired is a refund payable?	Can the right be cancelled under the 2003 Act?	If the right is cancelled is a refund payable?	Additional Information
Exclusive right of burial or interment continued	<p>On or after 1 July 1980 and before 1 July 2005.</p> <p>Note this includes rights repurchased during this period under section 25(5) of the 1958 Act.</p>	Yes ¹	Not applicable ²	Yes ³	Yes ⁴	<p>The 1958 Act specified that these types of rights must be exercised within 25 years or they expired (subject to renewal).</p> <p>However the transitional provisions of the 2003 Act deem this type of right to be a right under section 75(a).</p> <p>The terms and conditions on which a right was originally granted, such as requiring the right to be exercised within 25 years or it expired, are only preserved under the 2003 Act where they are consistent with the provisions of this Act.</p> <p>Therefore if the original right was for the interment of bodily remains, the condition that the right must be exercised within 25 years or it expired (subject to renewal) is inconsistent with the 2003 Act (which provides for burials in perpetuity) and therefore does not apply.</p> <p>If the right was for the interment of cremated remains, the 25-year condition is consistent with the 2003 Act which provides for limited tenure in relation to cremated remains, and therefore this condition would continue to apply.</p>
Agreement for the interment of human remains not for a limited period	Prior to 1 July 2005	Yes ¹	Not applicable ²	Yes ³	Yes ⁴	Refer endnote 5.

Date Granted		Is the right current under the 2003 Act?	If the right is expired is a refund payable?	Can the right be cancelled under the 2003 Act?	If the right is cancelled is a refund payable?	Additional Information
Agreement for the interment of human remains for a limited period	Prior to 1 July 2005	<p>This depends on the original period that the right was granted for.</p> <p>If the right was current on 30 June 2005 then the transitional provisions of the 2003 Act deem the right to be a current right of interment for a period not exceeding the original period that it was granted for.</p>	<p>No</p> <p>If the right expired prior to 1 July 2005 no refund is payable as the right was for a limited period.</p>	<p>No</p> <p>This type of right was granted for a limited period, and is now deemed to be a right of interment for the remainder of the original period that it was originally granted for.</p>	<p>Not applicable</p>	<p>Under the Transitional Provisions of the 2003 Act, the holder continues to hold their right for the remainder of the original period.</p> <p>However as this right is now deemed to be a right of interment under the 2003 Act, at least 12 months before the right is due to expire the cemetery trust must offer to convert or extend such a right expire pursuant to section 85 of this Act.</p> <p>The holder of the right is entitled to either convert or extend that right pursuant to section 87 of the 2003 Act.</p>

ENDNOTES

1. The transitional provisions of the 2003 Act provide that such rights are deemed to be current rights of interment under section 75(a) of this Act. Note that the holder of such a right is not required to pay any further fee to secure the ongoing tenure of the right.
2. A current right of interment under section 75(a) of the new Act is perpetual and therefore will not expire.
3. If a right of interment under section 75(a) of the new Act has not been exercised within 25 years of its grant then the trust may cancel the right in accordance with section 91 of the Act. Section 91 of the Act requires a cemetery trust to undertake diligent inquiries to locate the holder of a right and requires the trust to follow a particular notification process prior to cancelling a right. Trusts should note that if the holder of a right is able to be contacted and indicates a desire to retain, convert or surrender their right, the right cannot be cancelled.
4. The holder of a cancelled right may subsequently seek a refund or alternative right of interment from the trust that cancelled the right pursuant to section 92 of the Act. Note that a refund under section 92 is to be based on the current fee payable for the same type of right less the trust's gazetted administration fee.
5. Any terms and conditions on which a right was originally granted still apply in respect of that right under the new Act provided they are not inconsistent with the provisions of the new Act. Trusts need to be aware of any terms and conditions in relation to rights previously granted to understand whether or not such terms and conditions are still applicable.