

Code of practice

Relating to the sale and supply of memorialisation goods and services by cemetery trusts and other alternative suppliers in Victorian public cemeteries

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1. Introduction and purpose

The development of this code has been facilitated by the Victorian Government's Department of Human Services.

Section 112 of the *Cemeteries and Crematoria Act 2003* (the Act) clarifies that cemetery trusts may sell and supply memorials, providing them the opportunity to participate in the private market relating to memorialisation products and services.

This code of practice establishes a framework to promote a fair and equitable environment for the sale and supply of memorialisation goods and services by cemetery trusts as public entities, and other alternative suppliers (such as stone masons) in Victorian public cemeteries.

It should be noted that Victoria's Competitive Neutrality Policy applies to the sale and supply of all memorialisation goods and services by cemetery trusts where trusts are in direct competition with alternative suppliers from the private market, including those goods and services not covered by this code.

It is strongly recommended that all trusts who have formally adopted this code, incorporate monitoring of compliance with the code into their trust governance framework. This will ensure that the trust gives consideration to the requirements of the code, and its performance in meeting those requirements on a regular basis.

2. Objectives

The objectives of this code of practice are:

- (i) to encourage a fair and equitable environment for the sale and supply of memorialisation goods and services; and
- (ii) to promote industry compliance with applicable legislation and with the principles of competitive neutrality.

3. Scope of the code

The code covers activities relating to the promotion, sale, supply, establishment and alteration of memorials in public cemeteries in Victoria.

Items not covered by this code include organic forms of memorialisation such as memorial roses and structural aspects of major constructions for the interment of human remains within public cemeteries (such as niche walls or public mausolea).

Note that where trusts permit the establishment of private mausoleums within their cemeteries the code is applicable to all aspects of the establishment and construction of these structures, regardless of whether they are being established by the trust or by an alternative supplier.

In particular the code will assist cemetery trusts to meet their competitive neutrality obligations and to avoid breaches of these obligations as well as potential litigation or sanctions in relation to related breaches of the *Trade Practices Act 1974*.

There are five key areas of trusts' activities relating to the sale and supply of memorialisation goods and services that pose potential risks in relation to competitive neutrality requirements:

1. promotion of alternative suppliers' (eg stone masons) memorialisation goods and services
2. use of bereaved parties' personal information
3. processes for the establishment and alteration of memorials and places of interment
4. conditions relating to work on memorials and places of interment
5. cemetery trust fees relating to memorialisation products and services.

To ensure full compliance with competitive neutrality policy, trusts should comply with the guidelines provided in this code in relation to each of these matters.

4. Promotion of alternative suppliers' memorialisation goods and services

Cemetery trusts have a potential advantage over other alternative suppliers of memorialisation goods and services because all bereaved parties, or their agent, have to approach a trust for interment or cremation, and therefore a trust is often the first point of contact in relation to memorialisation goods and services.¹

4.1 Provision of advice regarding alternative suppliers

To comply with competitive neutrality requirements in this regard, trusts must provide advice about the existence of alternative suppliers when promoting their own memorialisation products and services.²

This requirement applies to all manner of promotional activities that trusts may engage in including:

- all written correspondence generated by the trust
- electronic media such as emails or trust websites
- verbal promotion, including in person and over the telephone. Note that where appropriate, trusts should direct persons towards the display space mentioned under point 4.2 of this code.

Note that the requirements outlined above apply equally where trusts have entered into arrangements with preferred suppliers, including those selected through a competitive tendering process. Note also that a trust can not compel a person to use their preferred supplier. Approval to use an alternative supplier (other than the trust's preferred supplier) can only be refused by the trust where the alternative supplier is unable to meet the trust's documented requirements or specifications.

4.2 Display space for alternative suppliers' promotional material

All cemetery trusts that engage in the sale and supply of memorialisation goods and services and which have a designated display or reception area within the cemetery

1 Note that any competitive advantage that is enjoyed by trusts in the memorialisation market is not weighed against competitive disadvantage created by the statutory role of the trust. The relevant issue is not the statutory role of the trust but rather the business component of the trust's activities.

2 Note that in order to satisfy competitive neutrality requirements this advice must be provided as soon as practicable during discussions regarding memorialisation products and services. Providing such advice at the conclusion of a discussion would not be considered as satisfying competitive neutrality requirements.

grounds, must provide space within that area for the display of alternative suppliers' promotional materials free of charge.³ This requirement also applies to areas within cemeteries where trusts have established sample or model memorials for the purposes of marketing and promotion.

The form, size and location of the display area (for the alternative supplier) should generally be proportionate to that of the trust and will vary from cemetery to cemetery.⁴

The display space should comply with the following minimum requirements:

- Be made available to those alternative suppliers within the local area that provide the same types of memorialisation products and services that are offered by the trust. This would also include peak bodies of alternative suppliers such as the Master Stone Masons Association of Victoria (MSMAV).
- Be consistent with the nature and character of the display or reception area in which it is located.
- Be proportionate in size to the area in which it is located and be located in a prominent position
- Not unreasonably encroach on trusts' display or reception areas or obstruct the normal activities of persons within that area
- Be maintained in a reasonable condition by the alternative suppliers electing to utilise the space.

Cemetery trusts may display a statement on or near the alternative suppliers' display space noting that the space is provided free for alternative suppliers to advertise their products and services, and that suppliers using the space have no connection with and are not endorsed by the trust.

3 To ensure compliance with the *Trade Practices Act 1974* and the Competition Policy Agreement, trusts should provide display space for alternative suppliers' promotional materials that is of equivalent size and prominence to their own displays. Any fit-out required to the display space that is made available by the trust is to be provided and paid for by the alternative suppliers electing to utilise the space.

4 For example in some cemeteries it may be necessary to locate a display stand for the promotion of alternative suppliers' products and services, whereas in other cemeteries it may be sufficient to locate a display book of alternative suppliers' products on the trust's front counter.

5. Use of bereaved parties' personal information for marketing purposes

Information Privacy Principle 2 (IPP2) of the *Information Privacy Act 2000* requires that an organisation must not use or disclose personal information about an individual for a purpose other than the primary purpose of collection unless the individual has consented to the use or disclosure.⁵

Cemetery trusts collect a range of information from bereaved parties in the course of discharging their statutory functions in relation to the provision of interments and cremations.

To ensure compliance with the Information Privacy Act, trusts should ensure that they do not use bereaved parties' information, such as their contact details, for the purposes of marketing or promotion unless they have obtained the explicit consent of the bereaved party.

All statutory forms prescribed under the Act that are used by trusts include an appropriate privacy statement that complies with this requirement.

A sample privacy statement that trusts may wish to include on other correspondence that they generate is provided on the department's website at www.health.vic.gov.au/cemeteries

⁵ IPP2 also provides a range of other bases for disclosure, for example for research purposes, or to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare; or a serious threat to public health, public safety, or public welfare. These are not considered relevant to the matters addressed by this code.

6. Establishment and alteration of memorials and places of interment

6.1 Trusts' competitive tendering arrangements

Trusts may enter into arrangements through a competitive tendering process to source goods and services that are provided by the trust, from a supplier of its choice (preferred supplier).

These contract arrangements however **cannot** be used by trusts to:

- compel people to use the trust's preferred supplier
- preclude other alternative suppliers from providing the same services
- charge higher fees or refuse services where the trust's preferred supplier is not used.

Further information about the setting of trust fees in relation to memorialisation activities is included in section 8 of this code.

6.2 Application forms

There is no prescribed statutory form to be used when making an application to establish or alter a memorial or place of interment. However the Cemeteries and Crematoria Association of Victoria (CCAV), in conjunction with the department, has developed a standard form for this purpose that complies with the relevant competitive neutrality and privacy requirements. This form is available from the CCAV's website at <http://www.ccav.org.au/association/> or can be accessed via a link from the department's website at www.health.vic.gov.au/cemeteries.

For those trusts that choose not to use this standard form and to determine their own format for this purpose, the following points under 6.2.1 and 6.2.2 should be noted.

6.2.1 Contracts

Where an alternative supplier is engaged to establish or alter a memorial or place of interment a trust cannot require a copy of the contract between the alternative supplier and the bereaved party as part of their application process.

Previously trusts required copies of these contracts as they charged a percentage fee based on the total contract amount. However with effect from 1 July 2006 all percentage based 'masons permit fees'⁶ are no longer permitted.

⁶ 'Masons permit fees' are fees charged by trusts in relation to memorials and monuments established by alternative suppliers.

The only percentage based fees now permitted are those which relate to trust supplied products and services and which are based on the cost (to the trust) plus a percentage calculated by the trust to account for overheads, return on effort etc.

Further information in relation to cemetery trust fees is provided in section 8 of this code.

6.2.2 Indemnities

Trusts' application forms to establish or alter memorials or places of interment must not require applicants to indemnify trusts in relation to the work that is undertaken on their behalf by a third party such as a stone mason.⁷

Trusts can however require the person undertaking the work on behalf of the applicant (for example the stone mason) to provide an indemnity against injury or damage arising from their work. An example of an appropriate indemnity clause is provided on the department's website at www.health.vic.gov.au/cemeteries.

6.3 Trusts' consideration of complete applications

When considering whether to approve or refuse an application to establish or alter a memorial or place of interment, trusts should give consideration to the matters outlined in section 99 of the Act.

Upon receipt of a complete application, trusts must provide documentation (to the applicant) stating the outcome of their application within a reasonable timeframe⁸, and where approval is granted, detail any conditions relating to the approval. Where an application is refused, a trust must provide reasons for their decision.

A trust's decision in relation to an application to establish or alter a memorial or place of interment may be appealed by the holder of a right of interment to the Victorian Civil and Administrative Tribunal. Details regarding this appeals process are provided under section 179 of the Act and in the *Victorian Civil and Administrative Tribunal Act 1998*.

⁷ Note that in some cases the applicant may also be the person that will be undertaking the work and in these cases the indemnity will also apply to the applicant by default.

⁸ Consultation with the MSMAV has indicated that as a guide a reasonable timeframe would usually be between 5 and 20 working days, depending on the complexity of the application.

6.4 Specifications

Trusts may determine specifications regarding memorials or places of interment that are permitted within cemeteries or within particular areas of cemeteries. Specifications may relate to a range of matters including but not limited to type, size, quality, design, colour or inscriptions.

Specifications, particularly those that may form the basis for decisions to approve or refuse applications, should be clearly documented by the trust and be made available to consumers and alternative suppliers. Trusts should ensure they have a clear rationale for each specification.

6.4.1 Application of new or revised specifications

New or revised trust specifications can not be applied retrospectively. Where trusts have granted an approval to establish or alter a memorial or place of interment, and specifications subsequently change or new specifications are introduced, the original approval remains valid and trusts must permit construction to proceed on the same conditions specified in the original approval.

6.4.2 Notice period for changes to specifications

Trusts must provide advance notice prior to introducing new specifications or altering existing specifications. The minimum period for providing notice should be 60 working days (12 weeks) before the changes are to take effect. This timeframe reflects the minimum lead time required for imported monuments.

Note that the minimum notice period does not apply if specifications have been altered to address public safety issues.

At a minimum this notice should advise that the trust intends to amend its specifications and how further details about proposed changes can be obtained.

Notice should be provided to:

- alternative suppliers that regularly provide services in the cemetery and their representative organisations in writing
- the general public by placing a notice to this effect within a clearly visible location or designated area within the cemetery grounds, and where appropriate on the trust's website.

7. Work on memorials and places of interment

7.1 Maintenance of worksites

- all materials must, as far as practicable, be prepared off-site
- worksites must be kept in a safe and secure condition in accordance with the requirements of the *Occupational Health and Safety Act 2004*
- persons carrying out work within a public cemetery must take all necessary precautions and have appropriate work practices in place to protect any property on cemetery grounds from any damage arising from the work and to protect any person present in the cemetery from harm
- persons carrying out work must comply with cemetery trust directions on access to and maintenance of work sites.

7.2 Access to work in cemeteries on weekends or out of standard hours

Unless otherwise provided for by the relevant cemetery trust, weekend work and work outside of the trust's standard operating hours on memorials or places of interment is permitted only by prior arrangement. Processes for applying for permission to work during these times and conditions under which approval might be granted should be documented and made available by trusts.

If trusts refuse applications by alternative suppliers for permission to work on weekends or out of standard hours, they must provide reasons for their decision.

7.3 Completion of work

Alternative suppliers must notify the trust when work on a memorial or place of interment has been completed.

Trusts are required to provide the alternative supplier or the applicant (as appropriate) with documentation certifying that the memorial or place of interment has been built in accordance with trust requirements within an appropriate timeframe.⁹ An email from the trust would be sufficient to meet this requirement.

⁹ Consultation with the MSMAV has indicated that as a guide a reasonable timeframe would usually be between 5 and 20 working days, depending on the complexity of the application.

8. Cemetery trust fees

Cemetery trust fees must be transparent and must be based on the actual cost of the goods or services to which the fees relate.

8.1 Transparency of cemetery trust fees

When setting fees and charges, trusts must not combine two or more products and/or services and assign one fee to the combined product. Trust fees must be set on the basis of one fee per good or service, such that distinct fees apply to each distinct product or service provided by the cemetery trust.

8.2 Direct relationship between fees for goods and services and actual cost

There should be a direct relationship between the fees charged for goods and services and the actual cost of these items. The exact cost will depend on the cost allocation method used by the trust, but must include:

- all direct costs associated with the activity
- a proportion of indirect costs incurred by the trust.

Where relevant under Victoria's Competitive Neutrality Policy, equivalent costs (including taxes) should be factored into the fees set for trust-supplied memorials and other products sold by trusts on a commercial basis.

For example the equivalent cost of the 'mason's permit fee' to establish or alter a memorial or any inspection fees that would be required if an alternative supplier established a memorial or place of interment must be factored into the price of the same or similar trust-supplied memorial.

8.3 Fees charged in relation to work undertaken by alternative suppliers

Any charges imposed by a trust associated with using alternative suppliers should be clearly documented.

Trust invoices to customers should include all separate gazetted cemetery trust fees (relating to distinct cemetery trust products and services) that contribute to the total cost

to the customer. Examples of appropriate levels of itemisation on invoices to consumers are provided on the department's website: www.health.vic.gov.au/cemeteries

Trusts are not required to provide a detailed breakdown of how each individual fee has been 'built up' to customers, however they should be able to provide such detail to the department or other relevant government agencies on request.

Trust fees relating to work by alternative suppliers on memorials or places of interment must not be based on a percentage of the alternative supplier's total contract value. Instead, the fee should be based on the actual costs associated with granting the approval such as:

- administrative costs associated with processing the application including providing documentation relating to the approval
- technical costs related to the technical assessment of the application by the trust, and inspection of the memorial or place of interment prior to, during and after construction
- a component of the trust's perpetual maintenance costs.

Further advice regarding the setting of trust fees can be obtained by contacting the department on (03) 9096 5159.

8.4 Perpetual maintenance costs in cemetery trust fees

Under the Act, when setting fees, trusts must have regard to the costs of operating and managing the public cemetery and the need to provide for maintenance of the public cemetery in perpetuity.

All cemetery trust fees including fees relating to work by alternative suppliers on memorials or places of interment should include an appropriate perpetual maintenance component.

The perpetual maintenance component of the total fee applying to memorials supplied by alternative suppliers should be comparable to the perpetual maintenance component of fees applying to the same or similar trust-supplied memorials.

9. Complaints and dispute resolution

Concerns or complaints regarding potential breaches of the code and/or competitive neutrality requirements should be directed in the first instance to the Cemeteries and Crematoria Program within the Department of Human Services as detailed below.

Manager Cemeteries and Crematoria Program

Level 14/50 Lonsdale Street

Melbourne, VIC 3000

Telephone: 03 9096 5160

Email: cemeteries&crematoria@dhs.vic.gov.au

Code related issues that have implications for the cemeteries sector as a whole may be raised with either the Funeral Industry Consultative Committee as detailed below, or with the Cemeteries and Crematoria Program as outlined above.

Funeral Industry Consultative Committee

C/o Cemeteries and Crematoria Association of Victoria Secretariat

P.O.Box 193

Surrey Hills 3127

Telephone: 03 9895 4462

Email: ccav@pams.org.au

The Competitive Neutrality Unit within the Victorian Competition and Efficiency Commission undertakes investigations in relation to breaches of Victoria's Competitive Neutrality Policy.

The Office of the Small Business Commissioner offers dispute resolution services in relation to matters concerning small business.

The next review of this code is scheduled for June 2010.

10. Further information

For further information on this code please contact the Department of Human Services' Cemeteries and Crematoria Program on telephone 1800 034 280 or (03) 9096 5160.

Additional copies of the code may be obtained by contacting the department on the numbers listed above or may be downloaded from the department's website at www.health.vic.gov.au/cemeteries

