

# Cemeteries and Crematoria Program Newsletter

September 2009

## Introduction

Welcome to the September 2009 edition of the Cemeteries and Crematoria Program (the program) Newsletter. This edition provides important information about the financial management of trusts, an update on changes to the *Cemeteries and Crematoria Act 2003* (the Act), the model rules, and reminders about the program's current requirements and activities.

## REMINDERS

### Maintenance Grants

Funds approved for maintenance grants will now be deposited directly into the trust's bank account, not via cheque. The *Application for Department of Health Maintenance Grant* form has been updated to include the latest requirements for when trusts apply for a maintenance grant.

This form is available on the Cemeteries and Crematoria website. Alternatively, trusts can contact the program to request a form.

### Fees

The program is in the process of developing a new fees framework for **small to medium** cemetery trusts. The framework will consist of guidelines to assist trusts when applying for fee increases outside the annual application of the Consumer Price Index (CPI). These guidelines will be developed in conjunction with the CCAV and will be trialed with a number of small trusts before general release.

The framework will replace the current application process, however until the new framework has been released, trusts can continue to apply for fee increases using the existing *Fee Application Form*.

The *Fee Application Form* is available for download from the Cemeteries and Crematoria website. Alternatively trusts can contact the program and request a form be forwarded to them.

## New Fees and Fees Increase

All applications for new fees or fee increases above CPI must be accompanied by a written justification detailing why the new fee or fee increase is necessary. A complete break down of the cost elements that contribute to the fee amount must also be provided. All applications for a fee increase or new fee that does not have an appropriate justification and breakdown will be returned to the trust with a request for further information.

### CPI Increase: July 2009

The application of CPI for fee increases has been completed. Any trusts that have not received a CPI increase should contact the program immediately.

### Trust member information

If a trust member has recently retired, changed their contact details or passed away the Chairperson should advise the program about the trust's changed membership in writing as soon as possible. This information is required to ensure that the Cemeteries and Crematoria database is kept relevant and up-to-date.

### Departmental investigations

Over the last few years the department has been involved in investigations into the conduct and operation of cemetery trusts. These investigations relate to fraud, poor management practices, and conflict between trust members.

**Fraud** – Over the last few years there have been a number of instances where trusts have reported misappropriation of their funds to the department. In such instances the trust must always contact the police and then the department.

The subsequent investigations into these are often distressing for all involved. Misappropriation of cemetery funds often occurs where the trust does not have appropriate financial controls in place.

The program is in the process of developing a comprehensive set of guidelines to assist trusts establish appropriate financial controls and

practices.

**Poor management practices** – Over the last few years a number of poor management practices have been brought to the attention of the department. Broadly, these practices relate to poor record keeping, poor decision making and review, or a poor understanding of the requirements of the legislation.

### **Record keeping**

A number of trusts are not keeping records in accordance with the *Cemeteries & Crematoria Act 2003* and the *Cemeteries & Crematoria Regulations 2005* (see Topic 17 in the Manual for Victorian Cemetery Trusts).

Poor record keeping has resulted in some trusts having legal action taken against them. The program recommends that trusts follow the requirements set out in the Manual for Victorian Cemetery Trusts. If after checking the manual, trusts are still unsure about their record keeping requirements and obligations, they should contact the program for advice.

### **Trust decision making and review**

Under the *Cemeteries & Crematoria Act 2003* trusts are given wide-ranging powers in relation to the administration of cemeteries under their control. However, these powers are limited and trusts may not make unreasonable or capricious decisions.

Over the last few years, the department has investigated a number of complaints from the public regarding decisions made by trusts.

These decisions often relate to either the nature or the type of objects that can be placed in the cemetery.

In some cases departmental investigations found that trusts had acted beyond their power, making arbitrary decisions about what could or could not be placed in cemeteries under their control without any consultation with their local communities.

In these situations where complaints were made to trusts, the complainants' concerns were often ignored or dismissed without review. Nor was an explanation for the trusts decision ever provided. Ultimately these matters were brought to the attention of the department and upon investigation and after careful review, some of the initial decisions of these trusts were reversed.

When trusts receive complaints about their policies and decisions, it is the trust's responsibility to review these policies or decisions and provide an explanation for their position in

writing to the complainant. When reviewing its policies or decisions trusts must give consideration to procedural fairness. If the trust requires advice on these matters it should contact the department.

**Conflict between trust members** – Conflict between trust members can occur and is often a normal part of trust dynamics. However, where conflict does occur the chair must ensure that trust members respect other members' points of view, and that all members conduct themselves in a fair and professional manner. Often this requires listening to the views of other trust members, taking in to consideration all view points before coming to a decision, and treating fellow trust members with courtesy once decisions have been made.

There is an expectation that trust members will: act with honesty and integrity; in good faith; in the best interests of the trust and their community. They are expected to: act fairly and impartially; use information and their position appropriately; and comply with the *Cemeteries & Crematoria Act 2003* and *Cemeteries & Crematoria Regulations 2005*.

### **The Chairperson**

The role of the Chairperson is to lead and assist trust members in understanding their role and their responsibilities and accountabilities. Chairs are also responsible for ensuring that all trust members are able to actively participate in all trust business.

In order to achieve this, Chairs need to facilitate discussions at trust meetings by ensuring that everybody has a say, managing meetings appropriately, and ensuring that decisions are properly understood and well recorded.

If you would like further information on the roles and responsibilities of trust members please contact the program.

### **Mausolea - Public**

Trusts require the written approval of the Secretary of the department before any public mausolea can be constructed in a cemetery.

The *Mausoleum establishment & construction requirements* can be found on the Cemeteries and Crematoria website.

### **Mausolea - Private**

Where a family wishes to construct an above-ground facility (mausoleum) for the interment of family members, under section 98 of the Act, they need to apply to the cemetery trust for permission to establish such a structure.

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## Cemetery trust manual

The *Manual for Victorian Cemetery Trusts* is available on the Cemeteries and Crematoria website.

## APPOINTMENTS

### The Forms

Cemetery trusts must use the most current application forms when applying for reappointment or appointment of new members to cemetery trusts.

These forms are available on the Cemeteries and Crematoria website. Alternatively, trusts can contact the program to request a form.

### Completion of application forms

When completing an application form, please ensure that the following points are followed:

- a current application form is being used;
- all relevant sections of the form are completed – these are marked by an asterix;
- the applicant signs and dates the form;
- the Chairperson signs and dates the form;
- if the Chairperson is unable to sign and date the form, this should be done by the Acting Chairperson, or Secretary.

### Expiry of existing appointments

The department has introduced a new procedure for notifying existing trust members of the upcoming expiry of their current terms of appointment. This notification is sent to both the Secretary and trust members approximately six months before the expiry of their current term.

If a trust member wishes to reapply for an additional term when their appointment expires, they should discuss their reappointment with the Chairperson.

If the selection panel of the trust endorses the application for reappointment, an application form should be completed and sent to the program **as soon as possible**.

To ensure continued participation on cemetery trusts, the program encourages all current trust

members (who are not life members) to apply for reappointment *before* their current term expires.

## Trust appointments

Trusts may have a minimum of three members and a maximum of eleven members. In order to run the trust effectively the department recommends that they appoint a minimum of five members.

All trust vacancies should be advertised. This can be arranged through the program area. New applicants and reappointments use the same application form for appointment.

## FINANCIAL MANAGEMENT

### Preparing your Trust's annual budget

It is recommended that your 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 your 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.

Your trust would then be 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.

## Accounting and financial reporting

Cemetery trusts are responsible for the stewardship and proper accounting of their 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 Health 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.

## LEGISLATION

### Model Rules

Section 25 of the Act provides for the introduction of model rules for cemetery trusts. These rules apply to all trusts. The objective of these model rules is to provide for the general care, protection and management of a public cemetery by a cemetery trust. A set of model rules is contained in Schedule 6 of the Cemeteries & Crematoria Regulations 2005.

Please note: all cemetery rules and regulations drafted prior to the introduction of the 2005 regulations and model rules are no longer valid. These rules and regulations contravene existing legislation.

Trusts may make their own rules and regulations as required to do things necessary and proper for the purposes of the Act.

Any rules or regulations made by a cemetery trust must be submitted to the program for review prior to being presented to the Governor in Council for approval and gazettal.

### Freedom of information

As in previous years, the Department of Justice will be collecting data from cemetery trusts for the Freedom of Information (FOI) Annual Report. The Annual Report is tabled in Parliament by the Attorney-General each year, and covers FOI activity across Victorian Government agencies for the previous financial year.

All cemetery trusts will be contacted during July to September as part of the FOI Annual Report data collection process.

The FOI Act provides a right of access to documents held by government agencies,

subject to limitations that protect the interests of third parties and the efficient running of government.

Requests for cemetery records under Part 4 of the *Cemeteries and Crematoria Act 2003* are not FOI requests and do not need to be reported to the Department of Justice.

Sharon Wills from the Department of Justice will be contacting trust secretaries or nominated contact persons to find out if trusts have received any FOI requests in the 2008/09 financial year.

If a trust has not received an FOI request in the 2008/09 financial year, it need only advise Sharon accordingly when contacted.

If a trust has received an FOI request in 2008/09, Sharon will confirm the trust's address details and forward a FOI Annual Report form for completion. The form should then be completed and returned to the Department of Justice within 14 days of receipt.

If you have any questions in relation to this matter please contact Sharon Wills on 03 8684 0088 or Richard Kemp on 03 8684 0078.

## CONTACT DETAILS

**Phone:** 1800 034 280

**Fax:** 9096 9186

**Web:** [www.health.vic.gov.au/cemeteries](http://www.health.vic.gov.au/cemeteries)

### Postal Address

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PO Box 4057  
MELBOURNE VIC 3001

### Street Address

50 Lonsdale Street Melbourne  
(Please phone ahead for an appointment)

*This newsletter will be available to download on our program website.*