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| Minor and technical amendments to the *Cemeteries and Crematoria Act 2003* |
| Commencing 1 March 2022 |
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# Introduction

The *Cemeteries and Crematoria Amendment Act 2021* made a number of minor and technical amendments to the *Cemeteries and Crematoria Act 2003* (the Act) to clarify ambiguity and correct inconsistencies in the Act.

These amendments commence on **1 March 2022**.

# Details of amendments[[1]](#footnote-2)

## Section 13 – General powers of cemetery trusts

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| Section 13 enables a cemetery trust to do anything necessary or convenient to enable it to carry out its functions. | Additional wording has been added to the Act to clarify that the general powers in s. 13 do not override other provisions of the Act as follows -  ***Subject to this Act,*** *a cemetery trust may do anything necessary or convenient to enable it to carry out its functions.* | Trusts to note the limitations of s. 13. |

## Section 15 – Power to delegate

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| Section 15 provides a trust with a power of delegation.  A trust may delegate its powers and functions to a member of the trust, the secretary or an employee of the trust except for certain specified powers.  Under the current provision the power to approve applications for a lift and reposition procedure can only be delegated to a member of the trust or a person approved by the Secretary to the Department of Health. | Section 15(2) is repealed to remove the limitation that a trust must delegate the power to approve applications for lift and reposition procedures to a member of the trust or a person approved by the Secretary to the Department of Health.  Section 15(1) is amended so the trust can rely on its general delegation power to delegate this function to members of the trust, the secretary of the trust or any other employee of the trust.  This amendment avoids the need for a trust to seek approval from the Secretary to the Department of Health for the delegation of this power. | Current delegations related to this power remain valid.  If trusts want to delegate this power more broadly, they may do so after **1 March 2022**, by revoking and replacing their existing delegation. |

## Section 74 – How long does a right of interment last?

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| Section 74(2) provides that the tenure for a right of interment for cremated remains may be either perpetual or for a limited period of 25 years. | A new s. 74(3) has been inserted to clarify that trusts who offer rights of interment for the interment of cremated remains only, **must** offer perpetual tenure and **may also**, at the trust’s discretion, offer limited tenure for a period of 25 years. | This amendment only impacts trusts that offer rights of interment specifically for cremated remains. When trusts introduce any new services, they must seek approval from the Secretary to the Department of Health under s. 40 of the Act to charge fees for these services. |

## Section 78 – Exercising a right of interment

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| A right of interment that is jointly held by more than one person can be exercised jointly by all holders and severally (individually) by each right holder. | Section 78(2) has been replaced with a new  s. 78(2) and a new s. 78(3) has been inserted.  These new sections provide that jointly held rights must be exercised jointly unless one or more joint holders cannot be found after diligent enquiries have been made. The holder/s who can be found must exercise the right in accordance with the Act.  This ensures that jointly held rights can still be exercised where one or more joint right holders cannot be located.  Diligent enquiries include attempting to contact holders via contact details on record, searching the White Pages directory and placing an advertisement in a local newspaper or other prominent local publication.  This change is not intended to alter trusts’ current practices in relation to the arrangement of funerals where a joint right holder dies. Refer to the department’s factsheet [Managing a right of interment following the death of a right holder](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment) for further information. | Update trust policies and procedures and ensure trust Secretaries and/or relevant staff understand this change. |

## Section 82 – Surrender to cemetery trust of unexercised right of interment by sole holder

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| The Act currently provides for a sole right holder to surrender an unexercised right of interment and receive a refund.  The Act does not currently provide for a refund to be paid if an unexercised right of interment is jointly held and surrendered by all joint holders. | Section 82 has been amended to enable joint right holders to receive a refund where **all** the right holders agree to surrender an unexercised right of interment.  The heading for s. 82 has been amended to *Surrender to cemetery trust of unexercised right of interment.*  This amendment provides consistent entitlements to sole and joint right holders who voluntarily surrender an unexercised right. | Update trust policies and procedures and ensure trust Secretaries and/or relevant staff understand this change.  It is recommended that trusts require joint right holders to nominate a bank account or representative to receive the refund, as part of their process for handling requests to surrender an unexercised right. |

## Section 83 – Surrender to cemetery trust of exercised right of interment by sole holder

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| The Act currently provides for a sole right holder to surrender an exercised right of interment and receive a refund **provided no human remains are interred**.  The Act does not currently provide for a refund to be paid if an exercised right of interment **that does not contain interred remains**, is jointly held and surrendered by all joint right holders. | Section 83 is amended to allow joint right holders to receive a refund where **all** the right holders agree to surrender an exercised right of interment **provided no human remains are interred**.  The heading for s. 83 has been amended to *Surrender to cemetery trust of exercised right of interment.*  This amendment provides consistent entitlements to sole and joint right holders who voluntarily surrender an exercised right where no human remains are interred. | Update trust policies and procedures and ensure trust Secretaries and/or relevant staff understand this change.  It is recommended that trusts require joint right holders to nominate a bank account or representative to receive the refund, as part of their process for handling requests to surrender an exercised right of interment where no human remains are interred. |

## Section 84 – Surrender to cemetery trust of right of interment – more than one holder

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| Section 84 allows for a joint holder of a right of interment to surrender their entitlement to the trust. No refund is payable by the trust, and the person has no further entitlements or responsibilities under that right of interment. | A new note has been added at the end of s. 84 to clarify the operation of ss. 82 and 83 as follows -  Section 84 allows a joint holder of a right of interment to surrender their entitlement where one or more of the other joint holders do not agree to surrender. No refund is payable.  A refund will only be paid where all joint right holders acting in agreement surrender the right of interment. | Update trust policies and procedures and ensure trust Secretaries and/or relevant staff understand this change. |

## Section 110 – Cemetery trust may repair or maintain from other funds

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| Section 110 allows a cemetery trust to maintain, repair or restore a memorial or place of interment, with the consent of the Secretary to the Department of Health if the holder of the right of interment cannot be found.  The trust must use funds other than the cemetery trust funds. | New subsection (1A) has been inserted into section 110(1) to support the operation of the new Secretary’s directions power.[[2]](#footnote-3)  With the consent of the Secretary to the Department of Health, a trust can use funds, other than cemetery funds, to repair, maintain or restore a place of interment where –   * a cemetery trust becomes a right holder because of a direction made by the Secretary under new s.84C; and * the trust is either the sole holder or a joint right holder where the other holders cannot be located after diligent inquiries.   This provides consistency with a trust’s power to repair or maintain a place of interment where the trust is unable to find the holders of rights of interment. | No action required. |

## Section 116 – Application for interment authorisation

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| Section116(3) provides that an application for interment authorisation must be accompanied by one of a number of specified documents that provide evidence of death. | A new subsection 116(3)(ca) has been inserted to include an additional document that can be used to provide evidence of death.  Where a person dies outside of Victoria, a document equivalent to a Victorian Coroner’s release that is issued by the jurisdiction where the deceased died, can accompany an application for interment authorisation as evidence of the deceased’s death.  This amendment provides consistency with 131(3)(c) of the Act regarding evidence of death required to accompany an application for a cremation authorisation. | Update trust policies and procedures and ensure trust Secretaries and/or relevant staff understand this change. |

## Section 143 – Magistrates’ Court may make order

| Current provision | Amendment effective 1 March 2022 | Action for trusts |
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| Part 10 of the Act enables the Magistrate’s Court or a Coroner to order a trust to inter or cremate a deceased poor person free of charge.  Section 143(2) provides that an order should only be made where the Magistrate or Coroner is satisfied that the deceased died with insufficient funds to pay their interment or cremation expenses and their relatives and friends are unable to pay those expenses. | Section 143 has been amended to remove references to a deceased person’s friends.  This removes the obligation of the deceased’s friends to pay for interment or cremation expenses, if they were able, which was difficult to enforce. | No action required.  The department will advise the Magistrate’s Court and the Coroner of the change as they are responsible for making the relevant orders. |

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1. The section references in this factsheet refer to sections of the *Cemeteries and Crematoria Act 2003* (in force as at February 2022). [↑](#footnote-ref-2)
2. More information about the new Secretary’s directions power is available on the [health.vic website](https://www.health.vic.gov.au/cemeteries-and-crematoria/seeking-variation-or-forced-surrender-of-a-right-of-interment-held-by) <https://www.health.vic.gov.au/cemeteries-and-crematoria/seeking-variation-or-forced-surrender-of-a-right-of-interment-held-by>. [↑](#footnote-ref-3)