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| Manual for Victorian Class B  cemetery trusts |
| Revised April 2022 |
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| **Manual for Victorian Class B cemetery trusts**  Revised April 2022 |
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# 

# Introduction

The Department of Health has updated this manual to help Class B cemetery trusts to understand and meet their obligations under the Cemeteries and Crematoria Act 2003. It has been prepared on a good-faith basis by the Department of Health’s Cemetery Sector Governance Support Unit in consultation with the Cemeteries and Crematoria Association of Victoria, the Victorian Managed Insurance Authority and the department’s legal services and financial services branches.

The manual is in summary form, and so does not include a complete discussion of each subject. The information provided in this document is for general use and is not intended to constitute formal legal advice or be a definitive guide to the law and operations of a cemetery trust. Therefore, it is not a substitute for professional advice and does not take the particular needs and circumstances of an organisation into consideration.

If trusts are unsure or unclear about any information contained in this document, they should seek professional advice about their own particular circumstances before acting or refraining from acting.

Every effort has been made to ensure the accuracy and completeness of this document at the date of publication. The information contained in this document is accurate as of August 2021.

Please note that in this document:

* The Cemeteries and Crematoria Act 2003 is referred to as ‘the Cemeteries Act’.
* The Cemeteries and Crematoria Regulations 2015 is referred to as ‘the Cemeteries Regulations’.
* ‘Cemetery trust’ refers specifically to a Class B cemetery trust. Any reference to ‘the trust’ refers to a Class B cemetery trust.
* The Cemetery Sector Governance Support Unit is referred to as ‘the unit’.
* The Department of Health is referred to as ‘the department’.

# List of Victorian government departments and other relevant governmental organisations

The following information is correct as at April 2022.

## Victorian government departments

### Department of Education and Training

The Department of Education and Training delivers education and development services to children, young people and adults through government schools and early childhood services, non-government schools and training programs.

Visit the [department’s website](http://www.education.vic.gov.au) <http://www.education.vic.gov.au>.

### Department of Environment, Land, Water and Planning

The Department of Environment, Land, Water and Planning (DELWP) is responsible for sustainable management of water resources, climate change, bushfires, public land, forests and ecosystems.

Cemeteries must comply with land requirements established by DELWP, such as those concerning natural vegetation.

Visit the [department’s website](https://www.delwp.vic.gov.au/) <http://www.delwp.vic.gov.au>.

### Department of Families, Fairness and Housing

The Department of Families, Fairness and Housing is responsible for child protection, prevention of family violence, housing, disability, multicultural affairs, LGBTIQ+ equality, veterans and the offices for Women and Youth.

Visit the [department’s website](https://www.vic.gov.au/department-families-fairness-and-housing) <https://www.vic.gov.au/department-families-fairness-and-housing>.

### Department of Health

The objective of the Department of Health is to enhance and protect the health and wellbeing of all Victorians. The Cemetery Sector Governance Support Unit, which administers the Cemeteries and Crematoria Act, is within the Legal and Regulatory Reform and Policy branch of the Department of Health. Under the Cemeteries Act, the Secretary of the Department of Health has powers to gather information, request audits of individual trusts and approve fees set by trusts, as well as a limited power to direct trusts.

Visit the [department’s website](https://www.vic.gov.au/department-of-health) <http://www.health.gov.au>.

### Department of Jobs, Precincts and Regions

The objective of the Department of Jobs, Precincts and Regions is about sustainably developing the Victorian economy by growing employment and improving the lives and prosperity of all Victorians.

Visit the [department’s website](https://djpr.vic.gov.au/) <https://www.djpr.vic.gov.au>.

### Department of Justice and Community Safety

The Department of Justice and Community Safety encompasses a broad range of roles committed to administering justice. The department’s activities also cover drafting legislation and administering various programs and tribunals, including the Victorian Civil and Administrative Tribunal, to protect citizens’ rights.

Visit the [department’s website](https://www.justice.vic.gov.au/) <http://www.justice.vic.gov.au>.

### Department of Premier and Cabinet

The Department of Premier and Cabinet assists the government to create sustainable growth and a vibrant, innovative society by leading policy advice and implementing key projects and activities.

Visit the [department’s website](https://www.vic.gov.au/department-premier-and-cabinet) <http://www.dpc.vic.gov.au>.

### Department of Transport

The Department of Transport, along with VicRoads and other transport agencies, is responsible for public transport, roads and ports across Victoria.

Visit the [department’s website](https://transport.vic.gov.au/about) <http://www.transport.vic.gov.au>.

### Department of Treasury and Finance

The Department of Treasury and Finance provides the government with economic, financial and resource management policy advice to assist the government in delivering its policy outcomes.

Visit the [department’s website](https://www.dtf.vic.gov.au/home) <http://www.dtf.vic.gov.au>.

### Department of Veterans’ Affairs

The Department of Veterans’ Affairs’ role is to support those who serve or have served in defence of the Australian nation and commemorate their service and sacrifice.

Visit the [department’s website](https://www.dva.gov.au/) <http://www.dva.gov.au>.

## Other relevant government organisations

### Consumer Affairs Victoria

Consumer Affairs Victoria protects and promotes the interests of consumers. This includes registering and licensing businesses, conciliating disputes between consumers and traders, and ensuring compliance with consumer laws. As a trader of goods and services, trusts should be aware of the role of Consumer Affairs Victoria.

Visit the [Consumer Affairs website](https://www.consumer.vic.gov.au/) <http://www.consumer.vic.gov.au>.

### Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade provides foreign and trade policy advice to the Australian Government.

Visit the [department’s website](https://www.dfat.gov.au/) <http://www.dfat.gov.au>.

### Essential Services Commission

The commission is Victoria’s independent economic regulator of essential services. In addition to its regulatory decision-making role, the commission also provides advice to the Victorian Government on a range of regulatory and other matters.

Visit the [commission’s website](https://www.esc.vic.gov.au/) <http://www.esc.vic.gov.au/public>.

### Office of the Victorian Information Commissioner

The Office of the Victorian Information Commissioner (OVIC) is an independent regulator with combined oversight of information access, information privacy and data protection.

Visit [OVIC’s website](https://ovic.vic.gov.au/) <https://ovic.vic.gov.au/>.

### Victorian Public Sector Commission

The VPSC fosters development of an efficient, integrated and responsive public sector that is highly ethical, accountable and professional in the ways it delivers services to the Victorian community. It is responsible for the standards of the Victorian public sector and guidelines for statutory bodies such as cemetery trusts.

Visit the [VPSC’s website](https://vpsc.vic.gov.au/) <http://www.vpsc.vic.gov.au>.

### Valuer-General Victoria

The Valuer-General is the government’s authority on statutory valuations. The Valuer-General oversees valuations for state government property transactions and the making and return of council rating valuations. It also values government assets so departments and agencies can complete their financial reporting requirements.

Visit the [Valuer-General’s webpage](https://www.land.vic.gov.au/valuations/first-time-here/about-valuer-general-victoria) <https://www.land.vic.gov.au/valuations/first-time-here/about-valuer-general-victoria>.

### Victorian Auditor-General’s Office

The Victorian Auditor-General’s Office provides assurance to parliament on the accountability and performance of the Victorian public sector. The Victorian Auditor-General’s Office may be requested to audit any cemetery trust.

Visit the [Auditor-General’s website](https://www.audit.vic.gov.au/) <http://www.audit.vic.gov.au>.

### Victorian Managed Insurance Authority (VMIA)

The Victorian Government, through the VMIA, provides general insurance cover for all cemetery trusts. The VMIA also assists departments and participating bodies to establish programs to identify, quantify and manage risks.

Visit the [VMIA’s website](https://www.vmia.vic.gov.au/) <http://www.vmia.vic.gov.au>.

### Victorian Ombudsman

The Victorian Ombudsman investigates administrative actions taken by a government department, public statutory body or by any member of staff of a municipal council. The Ombudsman is independent and impartial and provides a free service.

Visit the [Ombudsman’s website](https://www.ombudsman.vic.gov.au/) <http://www.ombudsman.vic.gov.au>.

### Victorian Registry of Births, Deaths and Marriages

The primary role of Births, Deaths and Marriages is to record in perpetuity all births, deaths adoptions and marriages occurring in Victoria and to provide certificates of these events.

Visit the [BDM website](https://www.bdm.vic.gov.au/) <https://www.bdm.vic.gov.au/>.

# Topic 1. The cemetery trust

## The cemetery trust entity

A cemetery trust is an incorporated entity with perpetual succession as established under   
s. 5 of the Cemeteries Act.

For the purposes of the Public Administration Act 2004, a cemetery trust is also defined   
as a ‘public entity’. A Victorian public entity is a body that:

* is established by either
* an Act of Parliament
* the Governor in Council
* a government minister
* has a public function to exercise on behalf of the State or is wholly owned by the State
* in the case of a body corporate, may have at least one half of its members appointed by the Governor in Council or a minister.

Public entities are organisations established by the government to undertake a range of administrative, service delivery and regulatory functions outside government departments. As a public entity, trusts are subject to a range of legislative and compliance requirements under the Public Administration Act and other Victorian legislation, which is designed to ensure appropriate governance and accountability.

## The cemetery trust board

All public entities (including trusts) are controlled by a statutory board of appointed members. Cemetery trust boards comprise cemetery trust members appointed by the Governor in Council on the recommendation of the Minister for Health under s. 6 of the Cemeteries Act.

A Class B cemetery trust consists of between three and 11 members. Cemetery trust members are appointed for a five-year term and are eligible for reappointment.

Cemetery trusts serve the community by providing cemetery services and maintaining public cemeteries. They are ultimately accountable to the Minister for Health and are responsible for the conduct and performance of the cemetery trust entity.

A cemetery trust has a number of roles and responsibilities including:

* strategic – setting the overall operational direction of the cemetery trust in line with its obligations under legislation and in line with government policies
* stewardship – ensuring the cemetery trust’s activities reflect public sector values and employment principles
* compliance – ensuring a cemetery trust meets its statutory obligations
* operational – providing cemetery goods and services to the community.

Under the Public Administration Act, a cemetery trust board and its members are subject to the public sector values outlined in s. 7 and must comply with the [*Code of conduct for directors of Victorian public entities*](https://vpsc.vic.gov.au/resources/code-of-conduct-for-directors/) <https://vpsc.vic.gov.au/resources/code-of-conduct-for-directors/> issued by the Victorian Public Sector Commission (VPSC).

### The trust chairperson

Under clause 2 of schedule 1 of the Cemeteries Act, the members of the cemetery trust board must appoint one of the current members to be the trust chairperson.

It is up to the trust to decide the length of a chairperson’s appointment within their five-year term of membership. For example, some trusts prefer to rotate this role each year, while others appoint their chairperson for five years to tie in with their appointment tenure as a trust member. There are no limits on how many times, or for how many years, the same member can be reappointed as chairperson.

At a broad level, the role of the chairperson is to lead the cemetery trust board, ensure its performance and accountability, and to exercise procedural control over trust meetings.

Specific responsibilities of the chairperson will vary depending on the size and complexity of the cemetery trust and may include:

* building an effective trust with the necessary skills and capabilities
* leading trust members and developing them as a cohesive and effective team
* assisting trust members in their understanding of their role, responsibilities and accountability
* setting the trust’s agenda and ensuring key issues are discussed
* ensuring there are no potential conflicts of interest or duty
* ensuring interactive participation by all trust members
* arranging adequate support for trust members
* welcoming new trust members and leading the process for their induction
* representing the trust to external parties as an official spokesperson for the trust
* managing the principal relationships of the board – for example, relationships with cemetery managers and senior staff, committees of the board, the department and the minister
* ensuring relevant policies are brought to the attention of members of the board
* ensuring the board performs appropriately in relation to
* adhering to its objectives
* risk management
* accountability to the responsible minister
* assessing the performance of members
* adhering to the [*Code of conduct for directors of Victorian public entities*](https://vpsc.vic.gov.au/resources/code-of-conduct-for-directors/) <https://vpsc.vic.gov.au/resources/code-of-conduct-for-directors/>
* a conflicts of interest policy
* a gifts policy
* financial accountability.

## Cemetery trust entity status – opening or changing a trust bank account

A cemetery trust is a public entity controlled by a statutory board of appointed members (refer to [Topic 2. Cemetery trust members](#_Topic_2._Cemetery) for more details). From time-to-time trusts experience difficulties when trying to open a new bank account or change their banking arrangements. Generally, these difficulties occur because a bank forms sees cemetery trusts as trading trusts that hold property and have beneficiaries.

To avoid confusion when trusts try to set up a new bank account the trust should ensure it provides the following to its bank.

### Advice

* The name of the cemetery trust and advice that the trust is an independent statutory public body created under the Cemeteries Act that is managed by a board of trust members (not trustees) appointed by the Governor in Council on the recommendation of the Minister for Health.

### Documents

* A copy of pages 9–13 (ss. 4–8) of the Cemeteries Act, which set out the provisions that relate to creating a trust and appointing trust members to the boards of cemetery trusts.
* A copy of pages 147–148 (parts 3 & 4 of schedule 2) of the Cemeteries Act, which sets out the provision that confirms all cemetery trusts in existence on 1 July 2005 are deemed to be established as cemetery trusts under part 2 of the 2003 Act.
* Evidence that your trust was in existence before and after July 2005 such as a copy of two bills addressed to the trust – one dated before 1 July 2005 and one dated after 1 July 2005. Alternatively, a statutory declaration to this effect should meet most banks’ requirements.
* A copy of each trust member’s letter of appointment for each trust member nominated to be signatory to the new/updated bank account. The department can provide written confirmation   
  of a trust member’s appointment if required.

### General information

* While cemetery trusts have ‘trust’ in their name, they are actually a cemetery ‘board’, with ‘trust members’ appointed. The term ‘trust’ (for the board) and the now defunct reference to ‘trustees’ for trust members were used in the Cemeteries Act 1958.
* Class B trust members are appointed in line with s. 6 and schedule 1 of the 2003 Cemeteries Act. Evidence of a trust member’s term of appointment is outlined in their letter of appointment.

If a bank or other financial institution has any more queries specifically relating to the establishment of the trust, it can contact the unit on free call 1800 034 280.

## Good governance

Governance encompasses the processes by which organisations are directed, controlled and held to account. Governance also refers to the authority, accountability, leadership, direction and control exercised in an organisation and provides the foundation for high performance.

The VPSC has developed a range of information and materials to assist boards to better understand and apply good governance practices and principles. For more information on principles relating to governance visit the [VPSC website](https://vpsc.vic.gov.au/governance/) <https://vpsc.vic.gov.au/governance/>.

## Functions and powers of cemetery trusts

Section 12 of the Cemeteries Act sets out the functions of a Class B cemetery trust. These trusts must:

* properly and efficiently manage and maintain each public cemetery for which it is responsible
* carry out any other function that may be required by legislation.

In exercising its functions, a trust must consider:

* funding its perpetual maintenance obligations
* the cultural and religious values of the community it serves
* the heritage values of the cemetery.

Section 13 of the Cemeteries Act provides for the trust to do anything necessary or convenient to enable it to carry out its functions provided that the trust’s actions do not override other provisions of the Cemeteries Act.

The Cemeteries Act gives several powers to a trust. It is important that the decisions made and the actions taken, including the expenditure of trust funds, can be justified as a bona fide and legitimate exercise of those powers.

## The common seal of the trust

Under s. 5(2)(b) of the Cemeteries Act, a cemetery trust has a common seal. Whether a trust uses the common seal to execute documents is at the discretion of the trust. If the trust wishes to use its common seal, it should state this in the trust charter and include the names of those authorised to use it.

## Class A cemetery trusts’ advice and assistance to Class B cemetery trusts

In line with s. 18J of the Cemeteries Act, Class A cemetery trusts may provide assistance and advice to Class B cemetery trusts upon request from a Class B trust or the department.

Any assistance or advice provided by Class A trusts is on a good-faith basis, based on their own experiences, operations and functions, and in line with all relevant statutory guidelines and regulations.

### Types of assistance

As specified under s. 18J of the Cemeteries Act, the types of assistance and advice that Class A trusts may be expected to provide in their leadership role include, but are not limited to:

* operational and governance matters relating to cemeteries
* record-keeping systems suited to the requirements of trusts
* standard form documentation suitable for trust purposes
* complaint management
* tendering and contracting processes and requirements.

Where the advice or assistance requested relates to applying or interpreting the Cemeteries Act, the Class B trust should be directed to the department for assistance.

### Obligations and expectations of advice and assistance

Cemetery trusts (regardless of class) can seek advice or assistance from the department at any time. Therefore, while Class A trusts have a leadership role, it is important to note that assistance should only be provided where the Class A trust feels comfortable and capable of providing the assistance requested.

Where a Class A trust does not feel it can provide the assistance being sought, it should refer the Class B trust to the department.

Class B trusts that receive advice or assistance from Class A trusts are not obligated to act on the advice provided. If in doubt, trusts can contact the department at any time for assistance.

### Listed Class B cemetery trusts

Under s. 18K of the Cemeteries Act, the department can create lists specifying which particular Class A trusts that a Class B trust can seek advice and assistance from. It is not intended that such lists will be created (unless it is deemed to be in the interest of the cemeteries sector and the public to do so). Therefore, Class B trusts are free to approach any Class A trust they feel is appropriate to request advice and assistance.

If a list of Class B cemetery trusts is created, it will be published on the [department’s website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria> in line with s. 18K of the Cemeteries Act.

# Topic 2. Cemetery trust members

## Cemetery trust member responsibilities

Under s. 6 of the Cemeteries Act the Governor in Council appoints cemetery trust members on the recommendation of the Minister for Health. Cemetery trust members comprise the cemetery trust board. Because a cemetery trust is incorporated, the responsibilities of a cemetery trust member can be likened to those of a company director. These include **the following.**

* **Exercise power for proper purpose.** Trust members should exercise their power under the Cemeteries Act for the purpose it was provided.
* **Retain discretion.** Trust members must use their own discretion when voting at trust meetings. They should not allow themselves to be directed to adopt a particular position.
* **Avoid improper use of a position.** Trust members, trust officers and secretaries may not use their positions to gain personal benefits.
* **Exercise care, skill and diligence.** Trust members have a duty to make their decisions in good faith, for proper purpose, not have a material interest in the matter, adequately inform themselves about the matter and reasonably believe their judgement is in the best interest of the trust.
* **Act diligently and prudently in the business of the trust.** The members of a cemetery trust have legal obligations and duties under common law and under the constituting legislation, being the Cemeteries Act and the Cemeteries Regulations, as well as under the Public Administration Actand all other relevant state and federal legislation. Trust members may wish to seek independent legal advice concerning their responsibilities and potential personal liabilities.
* **Disclose conflicts of interest.** Trust members must disclose pecuniary interests or any other interests that could conflict with the proper performance of their duties.
* **Keep and render proper accounts and give full information when required.** This includes meeting the applicable compliance and reporting requirements of both state and federal legislation.

There is an expectation that cemetery trust members will act in good faith, fairly and impartially, with honesty and integrity, and in the best interests of the trust and its community.

## Diversity on cemetery trusts

The Victorian Government is committed to ensuring that government boards and committees reflect the rich diversity of the Victorian community.

Applications are encouraged from people of all ages, Aboriginal people, people with disability, people from culturally and linguistically diverse backgrounds and from lesbian, gay, bisexual, trans, gender diverse, intersex and queer people.

## Appointment of Class B cemetery trust members

### Advertising trust vacancies

All trust vacancies must be advertised, including those that arise due to a current members’ term of office expiring. Trusts should contact the unit to advise which local press they wish their advertisement to be placed in.

The department will place advertisements in local newspapers when a current trust member’s term of office is due to expire. Trusts will receive notification from the department before advertising occurs.

Advertising fulfils a number of purposes including that it:

* promotes the work of the trust in the local community
* provides an opportunity for trusts to implement succession plans
* fulfils government policy by providing the whole community with the opportunity to apply for appointment to a public board.

**Note:** Advertising vacant positions does not prevent a current trust member from reapplying for the position.

### Appointment terms

Before 1 January 1996, the Cemeteries Act 1958 made no provision for trust appointment tenure. Accordingly trust members appointed before 1 January 1996 remain in office until they resign, pass away or, under exceptional circumstances, are removed from office by the Governor in Council.

Post 1 January 1996, trust members are appointed in line with clause 1 of schedule 1 of the Cemeteries Act. Trust members may hold office for a period not exceeding five years and are eligible to apply for reappointment.

Trusts may have a minimum of three and a maximum of 11 members. To run a trust effectively, the department recommends appointing a minimum of six members.

### Appointment rounds

From January 2021 appointments are managed by the unit in four annual appointment rounds.

If a current member intends to seek reappointment for a consecutive term, the completed application will need to be submitted to the unit by a specified date to ensure their application is processed in the appropriate appointment round.

The following table shows the current member term of appointment expiry dates for any year and corresponding deadline for completed applications to be received by the unit:

|  |  |
| --- | --- |
| Term expiry date | Deadline for application to be received by the unit |
| 30 April | 5 February |
| 31 July | 14 May |
| 31 October | 13 August |
| 28 February | 10 December |

If an application for reappointment is received after the corresponding appointment round deadline, it will be processed in the following appointment round. This means that when the applicant’s current term of appointment expires, their trust membership will lapse and they will no longer be an ‘active’ trust member.

**Note:** If a trust member’s term of appointment lapses, they will not be eligible to vote at trust meetings but may continue to attend meetings if the trust agrees.

Members intending to seek reappointment should ensure they submit their completed application to the trust in a timely manner to avoid unnecessary delays.

Current trust member appointment dates and the current membership of each Victorian cemetery trust can be viewed by downloading the [*List of current members appointed to Victorian cemetery trusts*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments> from the department’s website.

### Application process

All applicants seeking appointment to a Class B cemetery trust are required to read the [*Class B cemetery trust applicant guidelines*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments> available on the department’s website. Applicants should declare on the application form that they agree to the application terms contained therein.

This document contains important information about the department’s use of personal information, probity checks and conflicts of interest. Applicants are required to declare on the application form that they have read the guidelines and agree to the application terms.

Applications must be completed on the current version of the [[*Application for appointment to a Class B cemetery trust*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) form](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments>.

The trust chairperson (or secretary or current trust member undertaking this role if the chairperson is not available) is responsible for ensuring:

* the applicant has completed all mandatory fields in Parts A–G of the current version of the form
* the trust has conducted at least one satisfactory referee check for all new applicants it wishes to nominate for appointment. It is not a departmental requirement for trusts to conduct referee checks on current members seeking reappointment. However, for those applicants seeking reappointment 12 months or more from the date their term of office on the trust lapsed, trusts will be required to conduct referee checks
* Part H, where applicable, and Part I have been completed
* the check box in Part I has been ticked to confirm referee check(s) have been conducted
* the application form has been endorsed by signing and dating it before submitting it to the department for processing.

The unit processes all applications for appointment as a Class B cemetery trust member.[[1]](#footnote-1) Once processed, the applications are forwarded to the Minister for Health for recommendation to the Governor in Council for formal appointment.

**Note:** Applications for appointment that are more than 12 months old should not be submitted to the department because the Governor in Council will not be accept these applications.

It is the responsibility of the trust to provide written advice to applicants it does not wish to nominate for appointment. The advice should include the trust’s rationale for non-endorsement and offer to provide feedback on the interview.

### Interview, selection and nomination process

When trusts seek potential nominees for trust membership, the requirements of the position and the selection criteria should be clearly communicated to suitable candidates.

The interview and selection process must be conducted in accordance with the *[Appointment and remuneration guidelines](https://www.vic.gov.au/guidelines-appointment-remuneration)* <https://www.vic.gov.au/guidelines-appointment-remuneration> issued by the Department of Premier and Cabinet and available on its website.

Cemetery trusts are expected to make adjustments to the recruitment process on request to address barriers to inclusion.

Trusts must be able to show that their interview and selection process is both fair and reasonable. Where there is a complaint about the process, the department will usually request copies of the trust’s paperwork relating to the interview and selection process in order to conduct a review.

Trusts should have members with an appropriate mix of expertise, experience and a range of perspectives.

### Referee checks

Referee checks provide the trust with the opportunity to confirm and verify information gathered during interviews.

As part of the selection process, at least one referee check for each suitable new candidate must be conducted to the satisfaction of the trust. This includes candidates seeking reappointment to a trust where 12 months or more has lapsed since the end of their previous term of appointment.

Referee checks can be conducted for those seeking reappointment within a 12-month period of their last term of office lapsing, but this is not a departmental requirement.

### Nomination and appointment of directly related family members

It is acceptable for cemetery trusts to nominate applicants who are directly related[[2]](#footnote-2) to a current trust member or another applicant if the advertising process was unsuccessful in attracting enough other applicants to fill these vacancies.

Those trusts wishing to nominate an applicant who is directly related to a current trust member or another applicant must ensure the applicant has identified the direct relationship in Part A of the application form and Part H is completed by the chairperson (or secretary or current trust member undertaking this role if the chairperson is not available).

Part H of the application requires the trust to give details of its rationale for nominating a directly related family member including:

* confirmation the nominated person will bring applicable skills and experience to the trust
* the number of applications the trust received
* if any applicants were considered unsuitable for recommendation for appointment (and, if so, why)
* if all trust members support the nomination.

**Note:** Noncompliance of this requirement will result in delays in processing these applications.

Where an applicant shares the same surname as an existing trust member but does not meet the definition of a directly related family member, the applicant should select ‘No’ in Part A on the application form.

### Expiry of existing appointments

To ensure continued participation on cemetery trusts, the unit encourages current trust members (who are not lifetime members) to apply for reappointment before their current term expires. It can take up to four months for the appointment process to be finalised. It may take longer if the unit has to follow up with trusts about incomplete application documentation.

Trusts need to ensure applications submitted to the department are on the correct form. Outdated application forms and forms that have been signed and dated 12 months or more before the department receives them cannot be processed and will be returned to the trust. Download the current[[*Application for appointment to a Class B Cemetery trust*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) *form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments> from the department’s website.

## Membership on more than one trust

Cemetery trust members may seek membership on more than one cemetery trust. There is no provision in the Cemeteries Act prohibiting cemetery trust members holding membership of more than one trust.

## Conflict of interest and duty to disclose

A cemetery trust is expected to administer the cemeteries for which it is responsible in an equitable manner for the benefit of the whole community. When a person signs the *Application form for appointment to a Class B cemetery trust*, they are declaring that they do not foresee any conflict of interest arising from their occupation or personal interests if they are appointed.

**Note:** Individuals who are directly employed by the cemetery trust are ineligible for appointment.

There may still be unforeseen circumstances where a trust member may have a conflict of interest.

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 discussions and decision making.

Under clause 9 of schedule 1 of the Cemeteries Act, trust members must disclose any interest (direct or indirect) that could conflict with the proper performance of their duties. The chairperson must ensure this disclosure is recorded in the minutes of the meeting in which the conflict is disclosed. A trust member who has disclosed a conflict of interest must not take any further part in the discussion of or vote on any matter relating to the conflict of interest.

In addition, the Public Administration Act requires that members disclose any pecuniary interests or other interests that could conflict with the proper performance of their duties. The Act details certain procedures to be followed where disclosures occur. It is important to bear in mind that, 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.

### Potential conflicts of interest

From time to time a trust may endorse and nominate for appointment a person who holds a profession for which there could be a potential conflict of interest (for example, a funeral director). Where this occurs, the chairperson must provide to the department a written explanation of how potential conflicts of interest will be managed. For example, the nominated trust member will:

* remove themselves from trust meetings when a subject discussed relates directly to their business and the provision of their services
* ensure trust correspondence is prepared only on trust-approved stationery/letterhead
* not solicit private business in their capacity as a trust member – for example, providing or displaying their business card or telephone number in the trust’s office.

This written explanation must be provided to the department when submitting the application. Failure to comply may result in delays in processing the application while this information is sought.

In addition, details of disclosures of possible conflicts of interest and how they will be managed by the trust should be clearly documented in the trust’s records.

The following situations are also considered possible conflicts of interest:

* A trust member owning property in a location where the trust is considering construction (if it is reasonably thought that the trust will affect property values in the locality, then there is a conflict of interest).
* A trust member who has a close relative who is a potential consultant, contractor or service provider for the trust.
* A trust member’s professional organisation that has provided services in the past to the trust (a conflict in itself) and a question on the quality of those services has arisen such that some action may be contemplated against the organisation.
* A trust member who is advocating on behalf of another person or entity who may derive advantage from a decision of the trust.

Wherever a conflict of interest may be perceived, the trust should always endeavour to resolve the matter in favour of the public interest rather than the individual trust member or vested interests.

### Roles within the community

Trust members may be actively involved in various groups within their community, which allows them to bring invaluable experience, local knowledge and connections to the role of trust member.

It is important to remember trust members are appointed as individuals, not as representatives of a particular group. If the trust is deliberating on a matter where a member’s other affiliations might create the perception of a conflict of interest, the member should disclose their affiliation, even if generally known, and remove themselves from the discussion.

When fulfilling other roles in the community, trust members should not hold themselves out as a representative of the trust without appropriate authorisation from the trust.

## Cemetery trust member conduct

There is an expectation that cemetery trust members will act in good faith, fair and impartially, with honesty and integrity, and in the best interests of the trust and its community.

As members of a public entity, cemetery trust members:

* are subject to the public sector values outlined in s. 7 of the Public Administration Act, which include responsiveness, integrity, impartiality, accountability, respect and leadership
* must comply with the Victorian *Charter of Human Rights and Responsibilities Act 2006*
* must comply with the [*Director’s code of conduct*](https://vpsc.vic.gov.au/) <https://vpsc.vic.gov.au/> issued by the Victorian Standards Commissioner.

A copy of the [Director’s code of conduct and a range of other useful governance materials](https://vpsc.vic.gov.au/) <https://.vpsc.vic.gov.au> are available on the VPSC’s website.

## Trust members and personal liability

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

## Resignations

Under clause 3 of schedule 1 of the Cemeteries Act, a trust member may resign their position by means of a letter of resignation addressed to the Minister for Health and forwarded to:

The Manager

Cemetery Sector Governance Support Unit

Department of Health

GPO Box 4057

Melbourne VIC 3001

Download a [resignation letter template](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments>.

Generally, upon receiving a letter of resignation from a trust member, the unit will advise the trust secretary and/or chairperson in writing.

## Updating trust member information

Where a trust member has resigned, retired, changed their contact details or passed away, the chairperson of the trust should take steps to ensure the unit is advised in writing as soon as possible. The updated information will ensure the unit’s database is maintained accurately and trust members can be contacted as required.

## Fees and allowances

Under clause 5(1) of schedule 1 of the Cemeteries Act, a member of a Class B cemetery trust, other than a member who is an employee of the public service, is entitled to receive travelling and other allowances from time to time, fixed by the Minister in respect of that member. Pursuant to clause 5(2) of schedule 1 of the Cemeteries Act, the travelling and other allowances payable to a member of a cemetery trust are to be paid from the funds of that trust.

Claims for expenses must be reasonable and necessary. An expense is deemed necessary if it is unavoidably incurred in the course of authorised work. Expenses can only be paid upon presentation of receipts and these must be endorsed by the chairperson of the trust. Where a chairperson claims expenses, receipts must be endorsed by a person delegated to perform this function by the trust, for example, the trust secretary.

The travelling and other allowances incurred in accordance with the below fee structure are payable up to a maximum of $4,000 per annum.

| Expense type | Amount |
| --- | --- |
| Travelling expenses per trust member | Up to $2,000 |
| Postage and administrative expenses per trust member | Up to $2,000 |

## Conflict between trust members

Conflict between trust members can occur and may be a normal part of trust dynamics. However, where conflict does occur, the chairperson must ensure 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 fellow trust members and taking all viewpoints into consideration before coming to a decision. All trust members, regardless of their original point of view, should be treated with courtesy and respect once decisions have been finalised.

Where conflict between trust members cannot be resolved and all reasonable attempts to resolve the conflict have been exhausted, including mediation by a third party such as the Dispute Settlement Centre of Victoria, trust members may raise their concerns with the unit (refer to [Referral to the department](#_Referral_to_the)under [Topic 24. Complaints management](#_Topic_24._Complaints)).

The cemetery trust does not have the power to remove any trust member.[[3]](#footnote-3) If the trust cannot function because of ongoing conflict, the chairperson should contact the unit.

## Free rights of interment for trust members

Trusts do not have the power under the Cemeteries Act to waive the gazetted fee for a right of burial for fellow trust members or former trust members. If you have any queries about this matter, please contact the unit.

# Topic 3. Cemetery trust governance

Governance is about how a public entity such as a cemetery trust is controlled and managed.   
It includes the authority, stewardship, leadership, direction and control exercised within the cemetery trust. It encompasses the relationships between the cemetery trust board and the responsible Minister, senior management (where applicable) and stakeholders, and the administrative arrangements that support these relationships.

Good governance provides the framework and foundation for a cemetery trust’s performance.   
It enables the trust to perform its functions and obligations efficiently and effectively, and to respond in an appropriate and strategic way to changing demands and conditions.

## Information and advice

The Victorian Public Sector Commission (VPSC) provides advice on, and promotes, appropriate structures and governance arrangements for public entities, including cemetery trusts. The VPSC aims to ensure all public entities serve the Victorian community in a way that is responsive, accountable and highly professional.

The VPSC can provide cemetery trusts with information and advice on general governance issues. Information about the [*Duties and responsibilities of boards and board directors*](https://vpsc.vic.gov.au/html-resources/integrity-guide-for-new-board-directors/duties-and-responsibilities-of-boards-and-board-directors/) <https://vpsc.vic.gov.au/html-resources/integrity-guide-for-new-board-directors/duties-and-responsibilities-of-boards-and-board-directors/> can be found on the VPSC website.

For more information contact:

Victorian Public Sector Commission  
3 Treasury Place  
Melbourne VIC 3002

Telephone: (03) 9651 1321  
Fax: (03) 9651 1883  
[Email](mailto:info@vpsc.vic.gov.au): <info@vpsc.vic.gov.au>  
[Website](http://www.vpsc.vic.gov.au): <www.vpsc.vic.gov.au>

## Freedom of information reporting

### A freedom of information request

A freedom of information (FOI) request is made under the *Freedom of Information Act 1982* and gives everyone a right of access to documents held by federal government agencies, such as cemetery trusts, subject to certain exemptions.

Each year Victorian Government agencies, including cemetery trusts, are required to provide data for the Freedom of information annual report. The annual report covers FOI activity in all Victorian Government agencies for the previous financial year and is tabled in the Victorian Parliament.

Cemetery trusts will receive a letter or email from the Office of the Victorian Information Commissioner (OVIC) in July each year. The letter will inform trusts about OVIC’s role and what information a trust is required to provide. In most cases a trust will just need to advise whether it has or has not received or processed an FOI request for that financial year. The information provided in OVIC’s letter will assist the trust with its response.

Previous surveys have shown that the vast majority of cemetery trusts do not receive FOI requests.

**Note:** Requests for cemetery records under Part 4 of the Cemeteries Act are not FOI requests and do not need to be reported.

Please contact OVIC directly if you have any queries or concerns about FOI reporting. Contact details for the responsible officer at OVIC will be provided in the letter or email. Further information is available on the [OVIC website](https://ovic.vic.gov.au/freedom-of-information) <https://ovic.vic.gov.au/freedom-of-information>.

# Topic 4. Abolition and amalgamation of cemetery trusts

Abolition/amalgamation of cemetery trusts generally occurs as a result of a voluntary agreement between two or more trusts that have elected to merge. There are many reasons why a trust may seek an amalgamation with another trust, including difficulty attracting the minimum number of trust members to form a quorum, low turnover or financial and operational security. In certain circumstances, generally related to governance or operational failure, the government may decide to abolish/amalgamate a cemetery trust or class of cemetery trust.

Under s. 8 of the Cemeteries Act, and on the recommendation of the Minister, the Governor in Council may abolish a cemetery trust and transfer all its assets and liabilities to another cemetery trust, a municipal council or another entity (including the State of Victoria). Accordingly, a statutory order would be made and the date of the order, published in the Government Gazette, is the date the order comes into effect. All applicable trust members would go out of office from the date of the order.

The amalgamation of cemetery trusts means that one or more cemetery trust(s) will no longer be in existence (be abolished) and one of the following will take place:

* a new cemetery trust will be created to take control of the assets and liabilities of the former trust(s) and become accountable for the management and operation of the cemeteries managed by the former trust(s), or
* the assets and liabilities of the abolished cemetery trust(s) will be amalgamated into an existing cemetery trust (the merged trust), which will become accountable for the management and operation of the cemeteries managed by the former trust(s).

## Trusts seeking abolition

Trusts seeking abolition should consult their local community. This consultation should include:

* outlining the trust’s intention and seek community feedback by placing an advertisement in the local paper(s)
* contacting ‘Friends of the Cemetery’ or other similar groups and posting information on the trust’s website or social media platforms such as Facebook
* arranging a public meeting to discuss the trust’s intention
* contacting the local council to outline the trust’s intention
* completing a due diligence report that includes information about the assets and liabilities, the condition of the cemetery/cemeteries under its control and any other matters that may be relevant to the new trust.

Once the trust has finalised its community consultation and has reached agreement with another trust for the proposed merger, it should write to the department, addressed to the Manager, Cemetery Sector Governance Support Unit, seeking approval from the Minister for Health for the abolition/merger of the trust. The letter should provide the following:

* the reason(s) why the trust should be abolished
* the level of trust members’ support for the abolition/amalgamation including the date of the trust meeting and agreement to seek approval for a merger
* a list of the assets and liabilities being transferred
* details of public consultation undertaken and the outcome of the consultation, including how the trust will manage any issues raised
* the identity of any other trust interested in the abolition/amalgamation process
* a copy of the trust’s due diligence assessment report[[4]](#footnote-4)
* any documents detailing agreements between the two trusts relating to the proposed merger
* any other information/documents that the trust considers relevant.

## The trust seeking a merger

The trust seeking the merger will need to provide a letter and due diligence report to the department, addressed to the Manager, Cemetery Sector Governance Support Unit, seeking approval from the Minister for Health for the merger.

The letter should outline the following:

* evidence that the trust supports the merger
* evidence of the trust’s own due diligence and identify any financial or community impacts of the proposed merger or potential issues associated with the proposed merger
* the outcome of community consultation relating to the merger
* the perpetual maintenance obligations of the former trust and transfer of its assets to meet these obligations
* advice about how the perpetual maintenance obligation will be managed.

Once this information is submitted, the unit will assess the documents and contact the trust(s). Generally, the process for abolition/amalgamation can take up to 12 months to complete.

## Council trusts

Council trusts seeking amalgamation with a community-operated trust or Class A trust will need to fully fund their existing perpetual maintenance obligations before an application for merger will be considered.

# Topic 5. Cemetery fees

Cemetery trusts are generally best placed to determine the services required by the communities they serve and the appropriate level of fees for those services.

Under s. 39 of the Cemeteries Act cemetery trusts have the power to set fees and charges. As self-funding entities cemetery trusts set fees to earn enough revenue to meet their obligations under the Act.

The department has the power under s. 40 of the Cemeteries Act to approve fees set by cemetery trusts. The approval process requires a trust to provide the department with a range of supporting evidence when seeking to increase its fees or create new fees.

The role of the department in approving fees for cemetery services is to review fees submitted by cemetery trusts outside the annual consumer price index (CPI) process to ensure they are consistent with the framework set out below.

## Annual consumer price index increase

Under s. 43 of the Cemeteries Act, all trust fees of $50 or more are adjusted annually in line with CPI, unless a trust specifically requests and provides an acceptable argument why the increase should not be applied. The CPI increase is based on the All Groups Consumer Price Index number (for Melbourne) for the current December quarter. Fees increased by CPI are effective from 1 July each year and are rounded to the nearest five-dollar unit.

Trusts are advised annually of the upcoming CPI increase for that year.

## Setting fees and charges

Trusts cannot charge any fee that has not been approved by the department and published in the Victorian *Government Gazette*.

Under s. 40 of the Cemeteries Act, a cemetery trust must make a formal application to the Secretary of the department for consent to make or vary its scale of fees. Three trust members must sign the application before lodging it with the department.

The department has developed a set of guidelines to assist trusts in determining the costs associated with providing cemetery services and to develop fees and charges that comply with current government policy.[[5]](#footnote-5) Download the [*Guidelines for developing fees and charges for Class B cemetery trusts*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance> from the department’s website.

In support of a fee application, trusts should submit the following documents to the department:

* a cover letter identifying the reason for the trust’s fee application and any relevant information
* a [*fee justification model*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance>, available on the department’s website. This model enables trusts to calculate the costs associated with providing cemetery services, provides trusts with standard fee descriptions and provides a breakdown of the total proposed fee amounts.

## Publishing fees

Under s. 41 of the Cemeteries Act, a notice of the approval of any amended or new cemetery trust fees must be published in the Victorian *Government Gazette* before the fees become effective. Trusts cannot charge any fee until a notice is published in the gazette. The department will organise publication of the approval notice in the gazette after the fees are approved. The department will also organise publication of the fee schedule on the department’s website.

## Time period to approve cemetery trust fees

The proposed fees are usually approved within six weeks of lodgement to the department, provided that the trust has provided all required information.

## Applying the approved scale of fees

Section 44 of the Cemeteries Act requires a cemetery trust to charge its approved fees. Fees can only be waived or reduced on the grounds of extreme hardship or other special circumstances.

## Exemption of fees and charges from approval

Under s. 40A of the Cemeteries Act, the Secretary may exempt certain fees and charges from requiring approval. However, such exemptions will require a regulatory impact statement to be prepared.

A regulatory impact statement is an assessment of the impact the proposal may have on the public. More information on how to prepare such a statement can be found on the ‘[Better Regulation Victoria](https://www.vic.gov.au/better-regulation-victoria)’ <https://www.vic.gov.au/better-regulation-victoria> page of the vic.gov website.

The annual application of CPI will not apply to any fees that are subject to an exemption under s. 40A of the Cemeteries Act.

# Topic 6. Legislation

The duties, powers and obligations of Victorian public cemetery trusts are derived primarily from legislation. The primary legislation that governs the activities of cemetery trusts is the Cemeteries and Crematoria Actand the Cemetery and Crematoria Regulations.

In many instances legislation that affects the activities of cemetery trusts will have originated from the Victorian Parliament. However, in certain matters, the Australian Parliament has overriding jurisdiction.

Legislation takes precedence over any local rules made by a cemetery trust.

[Victorian legislation](https://www.legislation.vic.gov.au/) <https://www.legislation.vic.gov.au/> can be downloaded from the Victorian Legislation website. Hard copies of Victorian legislation may be purchased online from the [Victorian Legislation website](https://www.legislation.vic.gov.au/purchasing-hard-copies-legislation) <https://www.legislation.vic.gov.au/purchasing-hard-copies-legislation> or in person from:

TIMG Bookshop  
Level 10, 575 Bourke Street  
Melbourne

Telephone: (03) 8621 6767   
[Email](mailto:VICLegislation@timg.com) <VICLegislation@timg.com>

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

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

* Cemeteries and Crematoria Act
* Cemeteries and Crematoria Regulations*.*

## Cemeteries and Crematoria Act

The Cemeteries and Crematoria Actbegan operation on 1 July 2005.

Note that significant amendments to the Cemeteries Act were implemented in March 2010. Trusts should ensure they have an up-to-date copy of the Act.

## Cemeteries and Crematoria Regulations

The Cemeteries and Crematoria Regulations were made by the Governor in Council under s. 180 of the Cemeteries Act.

## Model rules

Section 25 of the Cemeteries Act states that the Cemeteries Regulations may prescribe model rules. A set of model rules is contained in schedule 6 of the Cemeteries Regulations. These rules apply to all trusts.

In addition to the model rules prescribed under the Cemeteries Regulations, s. 26 of the Cemeteries Act conveys authority to a cemetery trust to make rules with respect to the general care, protection and management of a public cemetery for which the cemetery trust is responsible. However, any cemetery trust rule made must be done in line with s. 27 of the Cemeteries Act and must not be inconsistent with any Act or statutory rule.

Where a trust determines to have its own rules approved it should ensure that, where relevant, the general public and other relevant stakeholders are aware of them and that a copy of the rules are made available on request to any person.

## Penalties

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

A cemetery trust may not itself impose such a penalty directly without taking the matter before a magistrates court.

The monetary value of a penalty unit is updated annually in line with the Monetary Units Act 2004. For current penalty rates, [email the unit](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au> or call 1800 034 280.

## Other legislation

Examples of [other Victorian legislation](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/legislation/victorian-legislation) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/legislation/victorian-legislation> that affects cemetery trust operations can be found on the department’s website.

## 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 obtaining legal advice, and any subsequent court proceedings,   
a cemetery trust may initially wish to discuss its intentions with the department. However, the department cannot provide legal advice to trusts.

Where specific legal advice is required, it should be sought from a qualified and experienced source, at the expense of the cemetery trust. A trust may also be able to draw on the advice of other trusts that have had similar experiences.

# Topic 7. The role of government

The role of government in the Victorian cemeteries sector is to administer the Cemeteries Act. As independent public entities, trusts are the decision-makers in relation to their services, expenditure and employment decisions, provided these are lawful.

The government expects trusts to meet their obligations under the Cemeteries Act and the relevant legislative framework. Where trusts fail to meet these obligations, the government may intervene.

In addition to the powers that allow cemetery trusts to carry out their functions, the Cemeteries Act prescribes a range of powers to:

* the Governor in Council
* the Minister for Health
* the Secretary of the Department of Health.

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

It is important to note that while the legislation prescribes the functions and operations of trusts, it is the trust’s responsibility to ensure these functions are carried out.

## Governor in Council

The following is a non-exhaustive list of the powers available to the Governor in Council under the Cemeteries Act.

| Section | Provision |
| --- | --- |
| 4 | Establish a public cemetery, by order published in the Victorian *Government Gazette*. |
| 5 | Establish a cemetery trust, by order published in the Victorian *Government Gazette*. |
| 6 | On the recommendation of the Minister, appoint members to a Class B 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. |
| Schedule 1, clause 3(2) | In exceptional circumstances, and when other options have been exhausted, that is, where there has been an ongoing dispute between trust members that has affected the trust’s capacity to function effectively and deliver services, the Minister may recommend the removal of a trust member or members to the Governor in Council. |

## Minister for Health

The Minister for Health is accountable to the parliament and is responsible for administering the Cemeteries Act and the Cemeteries Regulations. The department supports the Minister in this role. This includes establishing and maintaining proper accountabilities and controls for overseeing trusts to ensure they fulfil their obligations under the Cemeteries Act.

The specific powers given to the Minister for Health under the Cemeteries Act are primarily administrative in nature. For example:

| Section | Provision |
| --- | --- |
| 31 | When requested by a cemetery trust, the Minister may purchase or compulsorily acquire land for cemetery and crematoria purposes generally where the trust provides the funds. |
| 36, 37 | The Minister may approve purposes for which trusts can grant leases or licences over cemetery trust land to ensure the land is used primarily for cemetery purposes. |

## Department of Health

By convention, the department is the extension of the Minister for Health and is the Minister’s principal source of advice on trusts, in particular, focusing on the performance of trusts and the processes associated with nominating and appointing trust members.

The department supports the Minister by undertaking a range of statutory and administrative functions related to the cemeteries sector and provides advice and assistance to trusts on a range of statutory, operational, administrative and governance matters.

The department facilitates communications between trusts and other government departments such as the Department of Premier and Cabinet and the Department of Treasury and Finance.

Under the Cemeteries Act, the Secretary of the Department of Health has broad policy-based review and investigative powers designed to help the cemeteries sector be effectively managed. These include powers to gather information, request audits of individual trusts and approve fees determined and fixed by trusts. The Secretary also has as a limited power to direct trusts.

The scope of the Secretary’s power regarding trusts is limited under s. 18(4) of the Cemeteries Act.   
It states that the Secretary cannot direct trusts in relation to:

* cemetery and/or crematoria services provided to a particular person
* decisions made under the Cemeteries Act by a cemetery trust in relation to a particular person
* trust decisions in relation to employing or engaging a particular person
* trust decisions in relation to purchasing goods and services.

A non-exhaustive list of the Secretary’s powers is outlined below.

| Section | Provision |
| --- | --- |
| 18 | May give directions to cemetery trusts in relation to carrying out any function or exercising any power of the cemetery trust |
| 18A | May direct that policies and plans in relation to providing cemetery and crematoria services be developed |
| 21 | Approval to establish a crematorium |
| 22 | Approval to establish mausolea facilities |
| 23 | May revoke approvals issued under ss. 21 and 22 |
| 40 | Approval or disapproval of a fee or scale of fees submitted for consideration by a cemetery trust |
| 40A | Exempting certain fees and charges from the approval process |
| 51 | Request an auditor to investigate a cemetery trust |
| 52 | Receive the annual cemetery trust report that includes particulars relating to the cemetery’s operation, 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 | Issue an approval for interment other than in a public cemetery |
| 134 | Issue an approval to cremate bodily remains due to special circumstances noted in the Cemeteries Act |
| 147 | Grant an approval to dispose of bodily remains by a method other than interment or cremation |
| 157 | Grant or refuse to grant an exhumation licence to an individual applicant |

The unit oversees administration of the Cemeteries Act. All relevant [forms and other information](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria> can be found on the department’s website.

Contact details are:

Cemetery Sector Governance Support Unit  
Department of Health  
Level 16, 50 Lonsdale Street  
Melbourne VIC 3000

PO Box 4057  
Melbourne VIC 3001

Telephone (free call): 1800 034 280  
[Email](mailto:cemeteries@dhhs.vic.gov.au): <cemeteries@dhhs.vic.gov.au>

# Topic 8. Officers of the cemetery trust

## Trust secretary or manager

Although there is no reference in the Cemeteries Act about the position of secretary or trust manager, the cemetery trust may appoint a person to attend to routine business matters and to perform those powers and duties as delegated by the trust.

Depending on the size and operations of the trust, the role of secretary or manager may be paid or voluntary. Where this is a paid position, the trust should ensure a [position description](#_Position_Description_-) (more information about developing a position description is located at the end of this topic), is created and an employment contract completed. Any payment made to the secretary should be commensurate with the duties of the position[. Information about appropriate pay and working conditions](https://www.fairwork.gov.au/) <https://www.fairwork.gov.au/> can be found on the Fair Work Ombudsman’s website.

**Note:** Trust members may be appointed to the role of trust secretary. However, they must not receive any payment for this role other than reimbursement of expenses as approved by the trust.

The trust secretary is to exercise care and diligence, act in good faith and use their powers for a proper purpose. The secretary may not use inside information gained through their position for their own benefit or to the detriment of the public entity.

## Other officers of the cemetery trust

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

At the time of their employment, a written specification of duties and conditions of employment should be prepared, taking account of government guidelines and agreed by both parties.

Any payment to a person employed in an executive role by a trust must comply with the policy on [*Victorian public entity executive employment*](https://vpsc.vic.gov.au/resources/victorian-public-entity-executive-employment/) <https://vpsc.vic.gov.au/resources/victorian-public-entity-executive-employment/> available on the VPSC’s website.

Under the Public Administration Act, all cemetery trust employees are deemed to be public sector employees and therefore are subject to the [*Code of conduct for Victorian public sector employees*](https://vpsc.vic.gov.au/resources/code-of-conduct-for-employees/) <https://vpsc.vic.gov.au/resources/code-of-conduct-for-employees/> available on the VPSC’s website. The purpose of the code is to promote adherence to the public sector values prescribed in s. 7 of the Public Administration Act, including responsiveness, integrity, impartiality, accountability, respect, leadership and human rights.

## Employing trust members

Appointed trust members should not be employed or contracted by the trust that they are appointed to, due to the potential for perceived and real conflicts of interest. This does not prevent a trust member from being employed by another unrelated trust.

## Managing employees

### Managing underperformance

The Fair Work Ombudsman has developed the [*Best practice guide – managing underperformance*](https://www.fairwork.gov.au/) <www.fairwork.gov.au> available on its website, which is a comprehensive guide that explains what is meant by underperformance, why this happens and sets out a plan to assist employees address and manage issues about underperformance.

### Courses for employers and employees

Free, short [online courses](https://www.fairwork.gov.au/) <https://www.fairwork.gov.au/> that teach skills and strategies to employers and employees relating to the workplace are provided by the Fair Work Ombudsman and are available on its website.

### Workplace bullying

#### Definition of bullying

In line with the information provided by the [Fair Work Commission](https://www.fwc.gov.au/) <https://www.fwc.gov.au/> and the *Fair Work Act 2009* s. 789FD(1), workplace bullying occurs when:

* an individual or group of individuals repeatedly behaves unreasonably towards a worker or a group of workers at work
* the behaviour creates a risk to health and safety.

Reasonable management action conducted in a reasonable manner does not constitute workplace bullying.

#### Reasonable management action

The following are examples of what may constitute reasonable management action:

* performance management processes
* ongoing meetings to discuss underperformance
* counselling or disciplining a worker for misconduct
* investigating alleged misconduct
* informing a worker about unsatisfactory work performance or inappropriate work behaviour
* asking a worker to perform reasonable duties in keeping with their job
* maintaining reasonable workplace goals and standards.

These actions must be conducted in a reasonable manner. If they are not, they could be considered bullying.

#### Examples of bullying

Depending on the nature and the context of the conduct, bullying behaviours can include, but are not limited to:

* making vexatious allegations against a worker
* spreading rude or inaccurate rumours about an individual
* conducting an investigation in a grossly unfair way.

The effects of workplace bullying often result in significant negative consequences for a person’s health and wellbeing.

## Delegation of trust power

Section 15 of the Cemeteries Act provides for a trust to delegate its powers and functions under the Act to authorised officers.

Section 15(1) sets out the powers the trust cannot delegate. This includes the power to:

* make cemetery rules
* establish a crematorium and/or mausolea
* fix fees and charges
* borrow and invest
* delegate.

It is important to note that, while the trust may delegate powers, duties and authority, it cannot delegate the trust’s responsibility. This means the trust continues to be accountable for exercising its powers and functions, including the actions of its delegates.

Delegations should be made formally by the cemetery trust at a trust meeting. The delegation of powers and duties must be in writing and recorded in the minutes of the relevant trust meeting.   
The chairperson of the cemetery trust must sign an instrument of delegation on behalf of the cemetery trust.[[6]](#footnote-6)

## Position description – secretary

Class B cemetery trust secretaries attend to routine business matters on behalf of the trust and perform powers and duties delegated by the trust. This may include the day-to-day administration of the cemetery, communication with cemetery stakeholders, general statutory obligations, financial management, assisting with funeral arrangements, memorial approvals and complaints management.

### Duties and responsibilities

#### Administration of the trust

* Inducting new trust members
* Preparing the trust’s meeting agendas
* Preparing draft meeting minutes for the trust chairperson and recording and circulating minutes, including follow-up on issues and actions raised by the trust
* Ensuring effective information flows within the trust
* Undertaking tasks and decisions set by the chairperson via the trust – for example, helping to implement corporate strategies and giving practical effect to the trust’s decisions
* Preparing and presenting the trust’s budget and financial information for consideration

#### General statutory obligations

* Submitting cemetery financial records for annual audit (where required)
* Preparing the *Abstract of accounts* for trust approval
* Preparing and updating the trust fee schedule
* Circulating advice from the department to trust members
* Maintaining and updating cemetery records

#### Financial management

* Preparing invoices for the sale of cemetery products and services
* Preparing receipts and recording funds received from the sale of cemetery products and services
* Daily deposit of trust income into the bank
* Preparing and presenting trust bank statements, cheques, invoices, sales and payment data for reconciliation by nominated trust members
* Preparing lists of invoices requiring payment approval by trust
* Preparing lists of invoices with amounts owed to the trust
* Maintaining appropriate records for audit purposes
* Ensuring the trust’s purchasing and expenditure policy is followed
* Ensuring a financial control policy is established and followed

#### Funeral and interment arrangements

* Sale of pre-need rights of interment to the public
* ensuring all relevant paperwork is provided and cemetery interment records, financial records, maps and registers are updated
* Sale of at-need rights of interment, interment services and memorials
* ensuring all relevant paperwork is provided and cemetery interment and financial records, cemetery maps and registers are updated
* ensuring someone is on call seven days per week to accept funeral arrangements (hours may vary as arranged by the trust and local funeral directors)
* Reviewing all paperwork relating to interments to ensure it meets the requirements of the current Cemeteries Act and Cemeteries Regulations
* Making all necessary arrangements with contractors/gravediggers for grave-digging services and ensuring interment services are provided to a satisfactory standard
* Where necessary and required by the trust, attending funeral/interment services as the delegate of the trust to provide access to the cemetery, receive and check documentation and to oversee the conduct of the service

#### Memorial approvals

* Reviewing applications to establish/alter a memorial before consideration by the trust
* checking that the holder of the right of interment has provided their permission to establish/alter the memorial
* ensuring the correct information and signatures are included in the application to establish/alter the memorial
* Taking payment and providing receipts for funds received
* Seeking trust approval (where required) to establish/alter the memorial
* Making arrangements for mounting or installing plaques
* Giving direction to contractors/stonemasons to ensure memorials are installed in the correct location in the cemetery

#### Investigations and complaints management

* Providing advice to the trust chairperson about any complaints raised by the local community about the operations or management of the cemetery
* Ensuring complaints are brought to the trust’s attention for consideration and response
* Ensuring written complaints are responded to in writing with details of the trust’s consideration of the complaint and the trust’s response. The trust’s response should clearly set out the trust’s decision in relation to the complainant’s concerns. It should detail what action (if any) the trust will undertake to rectify the complainant’s concerns. If no action is to be taken the trust should identify the reasons why
* Seeking legal and insurance advice at the direction of the trust
* Seeking advice from the department on behalf of the trust

### Desirable skills and experience

* Community member
* Clerical/administrative
* Financial management
* Information technology
* Knowledge of sector
* Community engagement

### Position terms and conditions

#### Conflicts of interest

Trust secretaries are required to disclose any pecuniary interests or other interests that could conflict with the proper performance of their duties.

#### Legal obligations

Trust secretaries have legal obligations and duties under common law and under the constituting legislation, being the Cemeteries Act, Cemeteries Regulations, Public Administration Actand other relevant state and federal legislation.

# Topic 9. Trust meetings

Cemetery trust meetings allow the trust to make decisions about its operations and the business of the cemeteries it is responsible for.

## Meetings determined by the chairperson

The cemetery trust chairperson is responsible for exercising procedural control over trust meetings. Under clause 8(1) of schedule 1 of the Cemeteries Act, meetings of a cemetery trust are determined by the chairperson. The chairperson of a cemetery trust may at any time convene a meeting but must do so when requested by at least two members of the cemetery trust, in accordance with clause 8(2) of schedule 1 of the Cemeteries Act.

The chairperson should ensure the place and time to convene a meeting is suitable for most trust members.

The role of the chairperson at trust meetings is to ensure business is conducted efficiently and that meeting rules are adhered to. The chairperson needs to facilitate discussions and keep members on track and on time. When a topic has been fully discussed, the chairperson should summarise the decision and seek agreement or a vote.

The chairperson should:

* ensure everybody has a say
* manage the meeting appropriately
* ensure decisions are properly understood and well recorded.

## Frequency of meetings

The department recommends that 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’ or email) may provide prompt consideration of pressing matters, but decisions reached must be ratified (and minuted) at a formal meeting of the trust to be held as soon as practicable.

## Use of technology to attend a meeting

Under clause 8(3) of schedule 1A of the Cemeteries Act, a cemetery trust may permit its members to participate in a particular meeting by:

* telephone
* closed-circuit television
* any other means of communication.

A member who takes part in this way is deemed to be present at the meeting.

## Participation at trust meetings

Trust members must attend 75 per cent of trust meetings held per year.

Trust members who cannot attend a meeting should notify the trust chairperson or secretary in writing, providing enough time, where possible, for the chairperson to reschedule the meeting if appropriate.

## Quorum of trust members

A quorum refers to the minimum number of members that must be present at a meeting to make the proceedings of the meeting valid.

A majority of the currently appointed trust members constitutes a quorum of a cemetery trust (clause 8(5) of schedule 1 of the Cemeteries Act). For example, if a trust has seven members, the trust would need four members to be present at a trust meeting to form a quorum.

The chairperson should ensure that as many trust members as possible can attend all meetings – for example, by giving reasonable notice of meetings and making sure all members are aware that they can attend remotely via telephone, online video or any other means. This is particularly important for meetings where the trust will make significant decisions such as decisions about major expenditure.

## Voting and resolution of matters at meetings

When trust members are required to vote at a meeting, the decision is determined by the majority of votes made from members present at the meeting and voting on that decision.

If the voting is equal, the chairperson or the trust member presiding over the meeting has a casting vote as well as a deliberative vote (clause 8(6) of schedule 1 of the Cemeteries Act).

## Meeting procedure

The members of a cemetery trust may adopt rules for convening meetings and other procedures that may be necessary for regulating their proceedings (clause 8(8) of schedule 1 of the Cemeteries Act).[[7]](#footnote-7) These guidelines should not be confused with the procedure to make rules for managing the cemetery, which are to be submitted to the Governor in Council and published in the Victorian Government Gazette (ss. 25–27 of the Cemeteries Act).

## Meeting venue

Trust meetings may be held at any venue determined by the chairperson that is satisfactory to trust members. Where major decisions are to be made, consideration should be given to holding some meetings onsite at the cemetery so matters can be inspected as they are discussed.

## Minutes of meetings

The chairperson, or where the chairperson is absent the trust member presiding over the meeting, must ensure accurate minutes are kept of each trust meeting, in particular:

* the date, time and venue of meeting
* names of trust members in attendance
* details of decisions made
* a list of payments approved.

The minutes should be adopted by resolution at the following trust meeting.

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 accuracy.

**Note:** The minutes of trust meetings are a matter of public record that may need to be produced as evidence of trust decisions.

## Cemetery trust decisions

The cemetery trust should ensure the decisions it makes are legally valid, comply with government policy and are ethically sound and fair. The trust must consider all aspects of an issue and, if necessary, seek professional advice to assist its members to understand the full implications of any decisions they make.

## Budget meeting

Consideration could be given by a trust to declaring that one of its meetings will be the annual ‘budget’ meeting in preparation for the coming year. For more information about the annual budget refer to [Topic 26. Financial management](#_Topic_26._Financial).

# Topic 10. Planning controls and conservation

All land within Victoria is covered by local planning schemes. Local planning schemes regulate what can and cannot be done on particular land. A planning scheme sets out the requirements for the use, development and protection of land. Planning schemes are administered by the local council but governed by the Department of Environment, Land, Water and Planning. The planning scheme will indicate if a planning permit must be obtained to construct a building, carry out works or make other changes to the land.

Building permits are an additional requirement for building construction and should be sought by a cemetery trust for any new proposed building. Trusts should be aware of mandatory compliance requirements about public construction procurement. More information is available on the [department’s website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement>.

## Zones and overlays

A zone is a planning control that determines the appropriate use of land. There are different uses such as residential, business, industrial, farming, conservation and public use. Cemeteries are generally zoned as Public Use – Cemeteries and Crematoria (PUZ5).

An overlay is a planning control indicating that the land has some special feature such as heritage values, environmental significance, native title or native vegetation that affects how land can be developed.

Cemetery trusts have an obligation to check for and be aware of any planning overlays that may apply to their cemeteries before undertaking any works or maintenance projects. Advice about such matters is available from your local council and your local Department of Environment, Land, Water and Planning office.

It is important that cemetery trusts consult with all relevant stakeholders when undertaking major projects. For example, where practicable, trusts should advise and consult with surrounding private residences when removing boundary trees or undertaking projects that may affect the amenity of residents living adjacent to the cemetery.

## Conservation and planning legislation

The legislation relevant to cemeteries for conservation and planning includes, but is not limited to, the:

* Catchment and Land Protection Act 1994
* Flora and Fauna Guarantee Act 1988
* Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)
* Heritage Act 2017
* Planning and Environment Act 1987
* Wildlife Act 1975.

The relevant legislation does not allow ignorance of applicable overlays as an excuse for not obtaining the appropriate permits before undertaking work. The onus is on each cemetery trust to be aware of the conservation legislation relevant to the particular cemeteries they are responsible for.

## Heritage

The trust should be sensitive to the increased public awareness in the heritage value and the need for conserving historic components of older cemeteries.

A heritage overlay may affect the trust’s ability to undertake relatively minor maintenance (such as repainting cemetery structures and buildings or resurfacing roads), especially if the work alters the visual appearance of the cemetery. For this reason, cemetery trusts should ensure they are fully informed of any overlays that apply to their cemeteries.

## Native vegetation

Where trusts believe there is a need to clear native vegetation including trees, they will need to contact their local council to get a permit. They may also need to discuss the proposed removal with their local Department of Environment, Land, Water and Planning office. Native vegetation offsets will generally be necessary before a council issues a permit to remove native vegetation.

Trusts may be permitted to remove native vegetation without a permit under special circumstances, such as when a tree is a danger to the public. Before taking any action to remove the tree, trusts should seek written authority from the local council.

A Class B trust can seek advice from a Class A trust if it is experiencing difficulty with the permit application process. A trust could also consider putting in an application for a cemetery grant to pay for any offset requirements. Refer to [Topic 11. Grants](#_Topic_11._Grants) in this manual for more information about the departmental grant program or to get an application form, or visit the [department’s website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants>.

# Topic 11. Grants

Trusts may apply to the department for a grant. Grants are for when trusts do not have funds available for the required expenditure.

The department assesses grant applications twice each financial year, in November and March. All applications will be assessed on the likely benefit it would bring to the cemetery, the number of applications received and the total grant money available for the current grant round.

Grants are prioritised based on need. Items relating to maintaining significant structures, such as fences, or issues that pose a threat to personal safety, such as dangerous trees, are generally prioritised. Standard items include equipment required for operating a cemetery. Items that may enhance the quality or amenity of the cemetery, but are not necessary to its function, are considered a low priority.

**Note:** The department does not provide financial assistance for: salary and wages of trust employees; ongoing ground maintenance; or repairs to, or restoration of, memorials – that is, monuments or plaques.

## Applying for a grant

To apply for a grant, a cemetery trust must submit a [*Cemetery grants program application form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants>, which is available from the department’s website. The department will not reimburse trusts that have expended funds in anticipation of receipt of a grant. Applications should include two quotes (GST inclusive) for the proposed expenditure and photos of the relevant area (where appropriate) before work begins. If a trust cannot obtain two quotes, a written explanation outlining why this is not possible must be submitted with the application.

The trust will be contacted if more information is required, although this is likely to delay the application. To avoid such delays please read the grant application information carefully and ensure all relevant sections of the application form are completed.

### Tree removal, destruction or lopping

When applying for a grant for tree removal, destruction or lopping, trusts need to provide information to show how they have addressed the necessary requirements (where appropriate). The [*Cemetery grants tree removal grant application form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants>, available on the department’s website, should be completed and submitted with the [*Cemetery grants program application form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants> and two quotes.

**Note:** Trusts need to have submitted all due *Abstracts of accounts*, have a suitable scale of fees (where appropriate) and have a current ABN before the department will consider a grant application.

The unit will acknowledge all grant applications it receives as well as the outcome of all applications in writing once the process is completed.

If a trust wishes to resubmit a grant application that has been declined, the application must be submitted with updated information and quotes. Applications with expired quotes will not be accepted.

## Partial grants

Depending on the total funds available and the nature of the applications received, the department is not always able to grant the full amount requested in the application.

Trusts that are provided with partial grants are expected to draw on their own funds to complete the proposed works. Top-up grants **will not** be provided for the same project in subsequent years.

## Direct deposit form

If a grant application is approved, the funds will be deposited into a nominated cemetery trust bank account. The details for the electronic funds transfer form included in the grant application form must be completed and submitted.

## Financial reporting and grants

Grant money transferred to a trust must be spent within four months of allocation and appear in the following year’s Abstract of accounts form. Trusts must fully account for the grant allocation by advising the department in writing when the grant is spent. For example:

* purchasing equipment – a letter with a copy of the invoice or receipt
* construction/repair – an invoice and a report/letter with photos, where appropriate
* removing hazards such as trees – an invoice and a report/letter with photos, where appropriate.

Where grants are not expended within four months of their allocation, the trust must advise the department in writing of the reasons for the delay in expenditure and include a revised completion date. For example:

* awaiting council approval or permit and/or equipment
* work delayed due to inclement weather or contractor not available.

# Topic 12. Interments

Under the Cemeteries Act, the term ‘interment’ means the interring, burial or placing of human remains in a place of interment such as a grave, mausoleum crypt or niche wall. Human remains are defined in the Cemeteries Act as bodily remains (a corpse of a human being or still-born child), cremated human remains and body parts.

## General booking procedures and confirmation

Cemetery booking systems should be designed to eliminate errors related to identifying, allocating and preparing interment locations, and should allow for timely and efficient funeral arrangements to be made.

Five working days is usually enough time to allow cemetery trusts to adequately put in place the necessary arrangements to conduct an interment service. However, at times it may be necessary to put these arrangements in place over a shorter timeframe.

Section 12A(2)(b) of the Cemeteries Act requires a trust to consider the cultural and religious values of the community when exercising its functions. Therefore, when collecting information about a forthcoming interment and associated funeral, the cemetery trust should find out if there are any specific cultural arrangements that need to be put in place for the service. Trusts should endeavour to meet these requirements as closely as possible and advise the funeral director or client making the booking of any anticipated problems.

## Example of a booking procedure

The following is an example of the procedure for confirming a booking for an interment.

* Record the details of the funeral director or applicant, the name of the deceased, the type of interment and the proposed date and time for the interment.
* Advise the person making the booking of the documentation requirements (refer to section below).
* Confirm with the funeral director or applicant that the right of interment holder for the place of interment, as recorded in the trust’s records, consents to the interment taking place.
* If the recorded right of interment holder is deceased, the trust will require documentation to establish who the current right of interment holder is so it can update its records and ensure the current holder consents to the interment taking place (refer to [Topic 22. The right of interment](#_Topic_22._The)).
* On receiving the required documentation from the funeral director or applicant, the trust should undertake a physical inspection of the place of interment to check:
* the proposed place of interment matches the trust’s records
* the receptacle (for example, coffin, casket, urn) will fit inside the interment location
* if there is an existing memorial at the place of interment or an existing interment in the place of interment
* the place of interment can be accessed safely with equipment required to conduct the interment.
* After the site inspection and before the interment booking is accepted and confirmed, any issues relating to erecting monuments, placing ledgers or confirming the dimensions of the receptacle should be communicated to the funeral director in writing.
* The trust should advise the funeral director of all costs associated with the booking, including the cost of the right of interment (if it is being purchased at-need), the interment service and any other related costs charged by the trust. The trust should also advise of their preferred method for receiving payment.

Before issuing confirmation for an interment booking, the trust should determine:

* if any part of the proposed funeral ceremony and/or interment (for example, motorcycle escort, music, public address system) may cause disturbance to other funerals or cemetery visitors
* if the receptacle will need to be opened at the place of interment
* whether the funeral director or the trust will be providing a lowering device for an interment of bodily remains (if the trust is providing the lowering device, this should be in place before the funeral begins)
* whether the trust will be expected to provide equipment to enable a receptacle to be hand-lowered into a grave for an interment of bodily remains.

Once all the above information has been verified, the interment booking should be confirmed in writing, listing all relevant details and be provided to the funeral director or applicant.

## Interment of bodily remains

The interment of bodily remains includes interments in graves, vaults (concrete-lined graves) and mausoleum crypts. The key requirements for interring bodily remains are contained in ss. 113–120 of the Cemeteries Act. Additional requirements under the Cemeteries Regulations apply depending upon whether the interment is to take place in a grave, a vault or a mausoleum crypt (refer to rr. 24–25, 33–34 of the Cemeteries Regulations).

## Interment of a still-born child

A still-born child is defined in the *Births, Deaths and Marriages Registration Act 1996* as a child of 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 grams at birth, that exhibits no signs of respiration or heartbeat or other sign of life, after birth.

It is the responsibility of the hospital/doctor to determine if the deceased is a still-born child or foetal tissue and complete the relevant death certificate. A still-born child is regarded as bodily remains and therefore must be interred in a public cemetery or cremated.

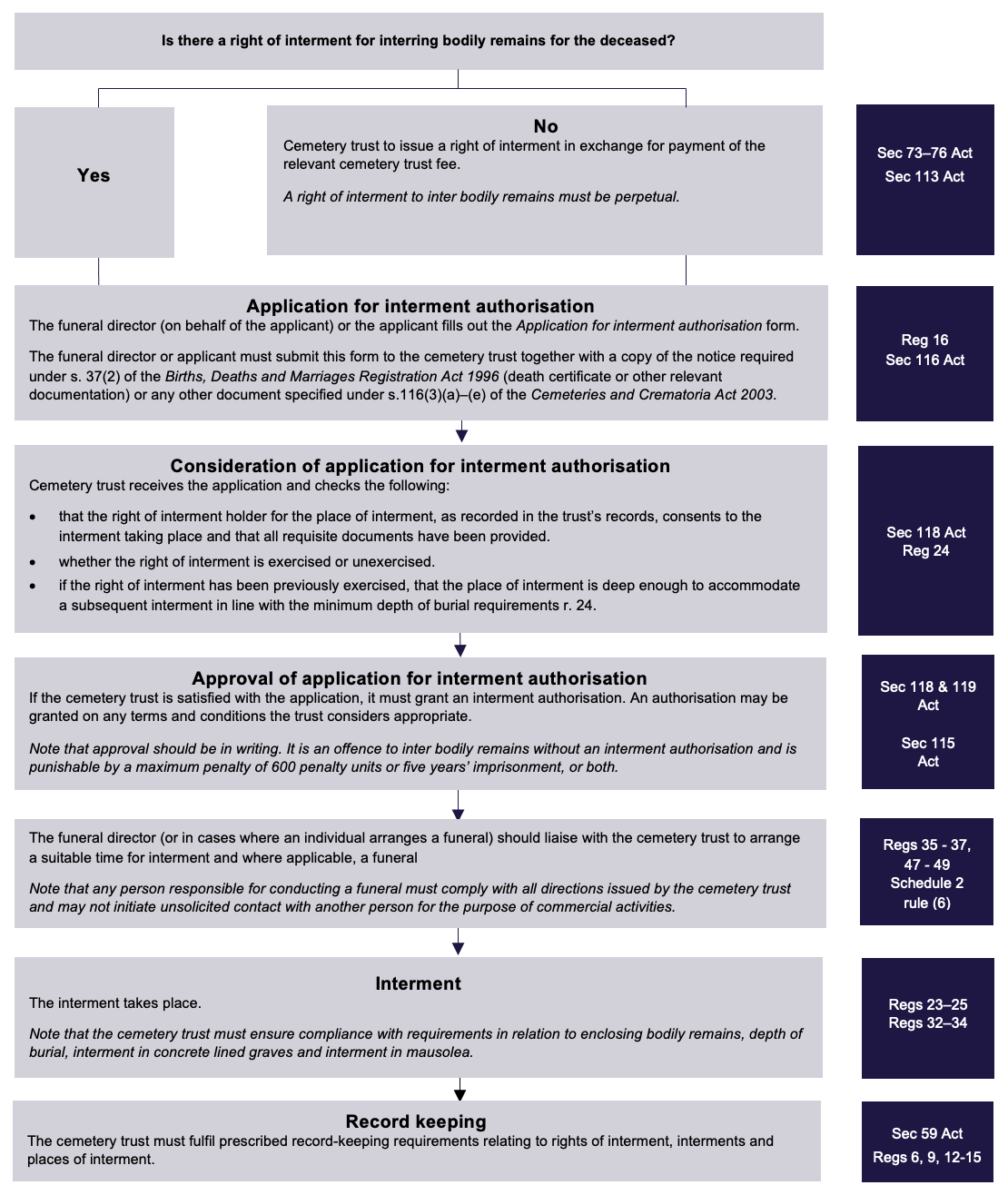
## Interment of body parts or foetal remains

There is no requirement for body parts to be interred in a public cemetery. Body parts means human tissue or a part of a person where that tissue or part is not part of a corpse. The definition of body parts in the Cemeteries Act includes foetal remains which are not a still-born child.

Foetal remains which are not a still-born child means a child of less than 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 less than 400 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, after birth.

Process for interring bodily remains (flow chart)

(An accessible version of this flow chart is available in the ‘[Appendix: Transcripts of flow charts in this manual](#_Appendix:_Transcripts_of)’) section.



## Interment of cremated remains

There is no legal requirement that cremated remains must be interred in a public cemetery. However, many cemetery trusts provide places of interment for cremated remains such as niche walls and rose bushes. Cremated remains may also be interred in a grave subject to the approval of the holder of the right of interment and the cemetery trust. (Refer to [Topic 13. Cremation](#_Topic_13._Cremation) for more information about the interment of cremated remains.)

## Interment documentation required

The documentation requirements necessary for a trust to approve an interment differ depending on whether the remains are:

* a deceased person aged 28 days or older
* a live-born child who dies within 28 days after birth
* a still-born child
* foetal remains that are not a still-born child
* body parts that are not foetal remains.

Note that required documentation must be provided to the cemetery trust either before or, at the latest, on delivery of the remains to the cemetery for interment.

### Documentation requirements for the interment of bodily remains

Applications for authorisation to inter bodily remains of a deceased person or still-born child in a public cemetery must be made using the [[*Application for interment authorisation*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/interment-of-bodily-remains) *form* (Form 1)](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/interment-of-bodily-remains) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/interment-of-bodily-remains> prescribed under Schedule 1 of the Cemeteries Regulations. The prescribed form must be accompanied by the required documentation detailed in the following table:

| Deceased | Prescribed form | Documentation accompanying the prescribed form |
| --- | --- | --- |
| A person aged 28 days or older | Application for interment authorisation | One of the following:   * Medical certificate of cause of death of a person aged 28 days or older * Order for release of body issued by coroner * If the deceased died outside Victoria, a document corresponding to a Medical certificate of cause of death of a person aged 28 days or older from the jurisdiction where the deceased died |
| A live-born child who dies within 28 days after birth | Application for interment authorisation | One of the following:   * Medical certificate of cause of perinatal death * Order for release of body issued by coroner * If the deceased died outside Victoria, a document corresponding to a Medical certificate of cause of perinatal death from the jurisdiction where the deceased died |
| A still-born child[[8]](#footnote-8) | Application for interment authorisation | One of the following:   * Medical certificate of cause of perinatal death * Order for release of body issued by coroner * If the still-birth occurred outside Victoria, a document corresponding to a Medical certificate of cause of perinatal death from the jurisdiction where the still-birth occurred |

If the required accompanying documentation listed in the table above cannot be provided, the funeral director or applicant must provide a statutory declaration stating that owing to special circumstances (as detailed in the declaration), it is not possible to submit the required documentation. In such cases, the cemetery trust must notify the Secretary of the Department of Health in writing that it has authorised an interment where the application was accompanied by a statutory declaration.

A *Medical certificate of cause of death of a person aged 28 days or older* or *Medical certificate of cause of perinatal death* may be completed by hand or electronically then printed. It must be signed by the medical practitioner who attended the deceased after the death occurred, and an original should be provided to the delegate of the cemetery trust for examination when applying for interment authorisation. A trust may keep a copy of the medical certificate of cause of death on record. However, it must ensure privacy considerations are addressed (refer to [Topic 23. Cemetery records](#_Topic_23._Cemetery) for more information).

If the death was reported to the Coroners Court of Victoria, an original of the *Order for release of body* signed by a coroner should be provided to the delegate of the cemetery trust for examination. A trust may keep a copy of the order; however, it must ensure privacy considerations are addressed.

Information provided in the ‘Application for interment authorisation’ form is to be recorded in the cemetery trust’s records in accordance with s. 59 of the Cemeteries Act and rr. 6–15 of the Cemeteries Regulations.[[9]](#footnote-9)

## Documentation requirements for the interment of foetal remains or body parts

There is no form prescribed for applications for authorisation to inter foetal remains that are not a still-born child or to inter body parts that are not foetal remains. However, certain information must be provided to the cemetery trust and the application must be made by a prescribed person as detailed in the table below:

| Deceased | Documentation requirements | Prescribed persons |
| --- | --- | --- |
| Foetal remains that are not a still-born child[[10]](#footnote-10) | The following information must be provided to the cemetery trust in writing:   * the name of the person and the organisation (if any) making the application * the category of prescribed person to which the person making the application belongs | * A registered medical practitioner who treated the person to whom the foetal tissue belonged * A registered medical practitioner of the hospital where the person to whom the foetal tissue belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Secretary of the Department of Health |
| Body parts that are not foetal remains[[11]](#footnote-11) | The following information must be provided to the cemetery trust in writing:   * if known, the full name of the person or persons to whom the body parts belong * if known, the type of body part to be interred * the name of the person and the name of the organisation (if any) making the application * the category of prescribed person to which the person making the application belongs | * A registered medical practitioner who treated the person to whom the body parts belonged * A registered medical practitioner of the hospital where the person to whom the body parts belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Secretary of the Department of Health |

## Trust delegate responsibilities

For all interments the cemetery trust’s delegate should:

* check that all documentation requirements have been met and that the information on the nameplate on the receptacle agrees in all respects with the information provided in the documentation (including accurate spelling)
* receive payment of the trust’s fees for the interment and any related services
* direct the funeral director to the correct interment location
* facilitate any cultural requirements requested for the interment as agreed with the trust at the time the interment was booked.

There is no legal obligation for the trust’s delegate or other cemetery trust personnel to help move the receptacle in the cemetery. This is at the discretion of the cemetery trust and the staff involved and will require consideration of all relevant OHS matters.

It is also recommended that the trust’s delegate:

* supervises, together with the funeral director, the safety of members of the public (particularly children, if any) in the vicinity of all places of interment and especially open graves
* remains at the place of interment at least until they have observed the receptacle being placed in the place of interment
* ensures the place of interment is backfilled or sealed as soon as practical after mourners have left the area.

Trusts should have a number of delegates so at least one is available to attend to daily requirements of the cemetery (refer to [Topic 8. Officers of the cemetery trust](#_Topic_8._Officers)).

## Transporting bodily remains and body parts within a cemetery

All bodily remains and body parts being transported into and within a public cemetery for interment must comply with r. 23 of the Cemeteries Regulations. The bodily remains or body parts must be enclosed in a coffin, container or other receptacle that:

* is clean and hygienic
* is constructed of wood, metal or other substantial material
* from which no offensive or noxious emissions or matter will escape.

Note that while being required for transportation into and within the cemetery, the coffin, container or receptacle is not required for the interment itself under the Cemeteries Regulations. This allows for shrouded burials to occur.

## Applications made without the assistance of a funeral director

A trust may be approached by a person considering conducting a funeral without the assistance of a funeral director and seeking information about the legal and procedural requirements for interments.

In Victoria, the role and duties of a funeral director are not prescribed by legislation. The professional associations for funeral directors 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 someone cannot perform some or all of the arrangements necessary before the body of the deceased is delivered for interment. The cemetery trust needs to ensure 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 want responsibility for all aspects of the funeral. Consideration could then be given to seeking details from one or more funeral directors who could provide the level of assistance the family requires.

## Coffins and caskets

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

A standard adult coffin or casket has external dimensions of approximately 2,000 mm long, 600 mm wide (including handles) and 400 mm high. If the dimensions of the proposed coffin or 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 or casket must be approved by the cemetery trust before the grave is dug.

It is recommended that the cemetery trust require coffins and caskets to have:

* At least four strong and securely affixed handles capable of bearing the required weight. These handles are necessary to help carry and manoeuvre the receptacle, and to feed tapes through if the receptacle is to be hand-lowered 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 deceased’s name on the nameplate should be identical to the name listed on all relevant documentation.

## Standard grave dimensions

As at January 2021, the accepted industry standard dimensions for an adult interment in a grave in Victoria are:

| Place of interment | Dimension requirements |
| --- | --- |
| Land allocation | 2,400 mm long by 1,200 mm wide |
| Grave as dug | 2,100 mm long by 650 mm wide with square corners. A coffin-shaped grave may be dug if requested. If there is a requirement for a grave to exceed the standard dimensions, the trust may charge an oversized grave fee if the fee has been approved and gazetted. |

## Depth of burial

Regulation 24 of the Cemeteries Regulations sets out the minimum depth of earth cover up to ground level required for interments in unsealed graves, graves with a sealed cap and graves with a sealed cap and sides.

### Depth of burial for an unsealed grave

If a grave is unsealed following an interment, a minimum of 750 mm of earth is required between the receptacle and the normal level of the ground as shown below:

Diagram of unsealed burial showing a minimum of 750 mm earth cover

### Depth of burial for a grave with a sealed cap

If a grave is to be sealed following an interment it must be sealed with a substantial layer of stone, concrete or similar material, and a minimum of 500 mm of earth is required between the sealed cap and the normal level of the ground as shown below:

Diagram of sealed cap burial. Minimum of 500 mm earth cover

### Depth of burial for a grave with a sealed cap and sides

Following an interment in a grave where an interment has previously taken place at least once before 28 July 1998, the grave must be sealed with a substantial layer of stone, concrete or similar material and the sides of the grave above the level of the sealed cap must be lined with brick, stone, concrete or other similar material. A minimum of 300 mm of earth is required between the sealed cap and the normal level of the ground as shown below:

Diagram of sealed cap and sides burial. Minimum of 300 mm earth cover

### Interment in a vault

Regulation 25 of the Cemeteries Regulations sets out the requirements for interments in vaults (fully concrete-lined graves). A vault must be sealed by placing or pouring a substantial layer of stone, concrete or similar material over the receptacle as soon as is practicable after the interment.

An interment in a vault does not need to comply with the depth of burial requirements outlined under r. 24 of the Cemeteries Regulations. Vaults may be located above ground or at any depth below the ground as approved by the cemetery trust.

### Interment in a mausoleum crypt

Under r. 33 of the Cemeteries Regulations, bodily remains and body parts to be interred in a mausoleum crypt must be interred in a coffin, container or other receptacle that:

* is clean and hygienic
* is constructed of wood, metal or other substantial material
* from which no offensive or noxious emissions or matter will escape.

Under r. 34 of the Cemeteries Regulations, following an interment of bodily remains in a mausoleum crypt, the crypt must be sealed with a slab of impervious material to prevent the escape of offensive or noxious emissions or matter, and then faced with a substantial slab of stone, slate or iron.

### Recommended minimum depth of single, double and triple graves

| Grave type | Recommended minimum depth at first interment |
| --- | --- |
| Single-depth grave | 1,700 mm |
| Double-depth grave | 2,200 mm |
| Triple-depth grave | 2,700 mm (subject to mechanical digging) |

It is usual procedure for a new adult grave to be dug to double-depth, unless there is a physical impediment (such as rock) or the cemetery trust receives other instructions.

A grave for the interment of a child would usually be dug to single-depth, with the width and length of the grave to be determined by the cemetery trust.

## Public safety

As part of its risk management procedures (refer to [Topic 28. Occupational health and safety](#_Topic_28._Occupational)), the cemetery trust must pay close attention to all aspects of public safety in connection with conducting interments.

### Public safety relating to graves

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

* internal shoring inside the grave and timber on the ground around the edge 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 edge of the grave
* 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 before the participants of the funeral arrive at the graveside).

The trust’s delegate, together with the funeral director, should supervise the activities of mourners (particularly children) in the vicinity of the grave to ensure that, where practicable, they remain safe for the duration of the funeral.

Backfilling or sealing of the place of interment should start as soon as is practicable once all members of the public have left the immediate area of the place of interment. 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 case work should 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 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. The cemetery trust is not required to provide personnel to assist with lifting and carrying the coffin in the cemetery or lowering it into the grave.

### 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 important that the tapes are regularly inspected to ensure they are in sound condition with no signs of fraying or deterioration. The tapes should be replaced regularly to ensure they do not break during the lowering of a heavy coffin.

If a lowering device is in position over the open grave, the pallbearers will usually 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 and another person will remove the bars from over the grave to enable the pallbearers to lower the coffin into the grave.

## Interring deceased poor persons

Sections 142–145 of the Cemeteries Act provide that a cemetery trust must, upon an order signed by a magistrate or coroner, permit any poor person to be interred within a public cemetery or cremated free of charge. The order is often referred to as a Part 10 Order.

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

An order that a magistrate or coroner may make under s. 143 of the Cemeteries Act may also require a cemetery trust to place a plaque on the place of interment of the deceased poor person.

Before any arrangements are made by the trust to inter a deceased poor person, the trust should ensure it has a copy of the magistrate’s or coroner’s order so it is clear what the trust must do.

Cemetery trusts generally inter poor persons in a public grave. This is a grave provided and dug by the cemetery trust at the trust’s expense. The right of interment for a public grave is held by the cemetery trust. The trust may decide to inter bodily remains of a number of other unconnected deceased poor persons in the same grave. All interments in a grave must be recorded in the trust’s records.

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.

**Note:** The trust has control over this right of interment for interring human remains in a public grave and may or may not permit memorials to be established as they see fit.

### Request to place a memorial on a public grave by a relative or friend of the deceased poor person

After an interment in a public grave, the family of the deceased person may approach the cemetery trust seeking to establish a memorial on the grave. There is no legal requirement that any funds then available to the deceased’s family must first be paid to the cemetery trust to offset the costs associated with the interment of the poor person. However, the trust may request that the applicant submits an application to establish a memorial and pays the relevant fee in accordance with s. 98 of the Cemeteries Act.

It is up to the trust to decide whether to allow a relative or friend of the deceased poor person to establish a memorial on a public grave. When making this decision the trust should consider:

* whether the grave will be used for future public interments (if this is the case and permission is granted, the trust should advise the family that the proposed memorial may need to be temporarily removed in future to enable additional public burials)
* the size and type of the proposed memorial
* requirements for approving or refusing an application for the establishment of a memorial under s. 99 of the Cemeteries Act
* ownership of the memorial and terms and conditions about future management of the memorial if it needs to be repaired or removed
* any relevant trust memorialisation policies.

After the trust has considered all relevant matters it has the authority to approve or refuse the establishment of a memorial. All decisions should be documented in the trust’s records.

### Requests to inter family members of a poor person in a public grave

It may not be possible for an additional member of the family of a deceased poor person who is interred in a public grave to be interred in the same grave. Whether they can or not may depend on:

* availability
* whether the trust has an approved and gazetted fee for interment in a public grave
* if an order is made by a magistrate or coroner (ss. 142–145 of the Cemeteries Act).

# Topic 13. Cremation

Under s. 131 of the Cemeteries Act, a person who wishes bodily remains or body parts to be cremated in a Victorian crematorium may apply to the responsible cemetery trust for authorisation.

## Cremation authorisation documentation requirements

The documentation requirements necessary for a trust to approve a cremation differ depending on whether the remains are:

* a deceased person aged 28 days or older
* a live-born child who dies within 28 days after birth
* a still-born child
* bodily remains of unknown name
* foetal remains that are not a still-born child
* body parts that are not foetal remains
* body parts of unknown name with an identifier.

Note that required documentation must be provided to the cemetery trust either prior to or, at the latest, upon delivery of the remains to the cemetery for cremation.

## Documentation requirements for the cremation of bodily remains

Applications for authorisation to cremate bodily remains of a deceased person or still-born child must be made using the *Application for cremation authorisation for deceased persons of known identity* (Form 3).[[12]](#footnote-12) The prescribed form must be accompanied by the required documentation detailed in the following table.

|  |  |  |
| --- | --- | --- |
| Deceased | Prescribed form | Documentation required to accompany the prescribed form |
| A person aged 28 days or older | Application for cremation authorisation for deceased persons of known identity | Both of the following documents:   * certificate of registered medical practitioner authorising cremation[[13]](#footnote-13) * medical certificate of cause of death of a person aged 28 days or older   Or, if the death was investigated by a coroner, either of the following documents:   * order for release of body issued by a coroner under s.47 of the *Coroners Act 2008* * if the deceased died outside Victoria, an authority to cremate under the hand of the coroner or other person permitted by the law of the jurisdiction where the deceased died to authorise cremation |
| A live-born child who dies within 28 days after birth | Application for cremation authorisation for deceased persons of known identity | Both of the following documents:   * certificate of registered medical practitioner authorising cremation * medical certificate of cause of perinatal death   Or, if the death was investigated by a coroner, either of the following documents:   * order for release of body issued by a coroner under s. 47 of the Coroners Act * if the deceased died outside Victoria, an authority to cremate under the hand of the coroner or other person permitted by the law of the jurisdiction where the deceased died to authorise cremation |
| A still-born child[[14]](#footnote-14) | Application for cremation authorisation for deceased persons of known identity | Either of the following documents:   * medical certificate of cause of perinatal death * if the still-birth occurred outside Victoria, a document corresponding to a notice of still-birth from the jurisdiction where the still-birth occurred |

In exceptional circumstances, when the prescribed documentation requirements outlined above cannot be met, a person may apply to the department for cremation authorisation under s. 134 of the Cemeteries Act. Refer to ‘[Cremation approval granted by the department’s Secretary when prescribed documentation requirements cannot be met](#_Cremation_approval_granted)’ below for more information.

A *Medical certificate of cause of death of a person aged 28 days or older* or *Medical certificate of cause of perinatal death* may be completed by hand or electronically then printed. It must be signed by the medical practitioner who attended the deceased after the death occurred, and an original should be provided to the delegate of the cemetery trust for examination when applying for cremation authorisation. A trust may keep a copy of the medical certificate of cause of death on record; however, it must ensure privacy considerations are addressed.

The *Certificate of registered medical practitioner authorising cremation* (Form 4) can be completed by any medical practitioner registered under the *Medical Practice Act 1994* provided they are not the registered medical practitioner who signed the *Medical certificate of cause of death of a person aged 28 days or older* or *Medical certificate of cause of perinatal death* for the deceased and:

* are not in partnership[[15]](#footnote-15) with any registered medical practitioner who professionally attended the deceased
* will not derive any professional remuneration from any registered medical practitioner who professionally attended the deceased
* has not acquired, and does not anticipate acquiring, directly or indirectly, any property or pecuniary or other benefit of any description by reason of the death of the deceased (apart from any fee payable for providing the *Certificate of registered medical practitioner authorising cremation*).

If the death was reported to the Coroners Court of Victoria, the order to release the body signed by a coroner should be provided to the delegate of the cemetery trust for examination. A trust may keep a copy of the order; however, it must ensure privacy considerations are addressed.

### Documentation requirements for the cremation of bodily remains of unknown identity

If bodily remains to be cremated are of unknown name or have an identifier,[[16]](#footnote-16) an application for cremation authorisation must be made using the *Application for cremation authorisation of bodily remains of unknown name or with an identifier* (Form 3A).[[17]](#footnote-17)

The prescribed form must be accompanied by a written cremation approval granted by the department’s Secretary under s. 134 of the Cemeteries Act.

|  |  |  |
| --- | --- | --- |
| Deceased | Prescribed form | Documentation required to accompany the prescribed form |
| Bodily remains of unknown name or with an identifier | Application for cremation authorisation of bodily remains of unknown name or with an identifier | Written cremation approval granted by the department’s Secretary under s. 134 of the Cemeteries Act |

To seek cremation approval from the department’s Secretary, the applicant must submit a completed *Application for cremation authorisation of bodily remains of unknown name or with an identifier* (Form 3A) to the department.

When granted, the Secretary’s cremation approval is attached to the completed prescribed form (Form 3A) and both documents are submitted to the cemetery trust by the applicant.

### Documentation requirements for the cremation of foetal remains

There is no form prescribed for applications for authorisation to cremate foetal remains that are not a still-born child. The application must contain prescribed information and can only be made by a prescribed person as detailed in the table below.

|  |  |  |
| --- | --- | --- |
| Deceased | Prescribed information | Prescribed persons |
| Foetal remains that are not a still-born child[[18]](#footnote-18) | The following information must be provided to the cemetery trust in writing:   * the name of the person and the organisation (if any) making the application * the category of prescribed person to which the person making the application belongs | * A registered medical practitioner who treated the person to whom the foetal tissue belonged * A registered medical practitioner of the hospital where the person to whom the foetal tissue belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Secretary of the Department of Health |

### Documentation requirements for the cremation of body parts

Applications for authorisation to cremate body parts that are not foetal remains must be made by a prescribed person and include certain information as detailed in the table below.

|  |  |  |
| --- | --- | --- |
| Deceased | Prescribed information | Prescribed persons |
| Body parts that are not foetal remains[[19]](#footnote-19) | The following information must be provided to the cemetery trust in writing:   * if known, the full name of the person or persons to whom the body parts belong * if known, the type of body part to be cremated * the name of the person and the name of the organisation (if any) making the application * the category of prescribed person to which the person making the application belongs | * A registered medical practitioner who treated the person to whom the body parts belonged * A registered medical practitioner of the hospital where the person to whom the body parts belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Secretary of the Department of Health |

In some cases, body parts of unknown name will have an identifier. For example, cadaveric material imported for the purposes of surgical teaching may be identified by a reference number and no personal details will be provided.

Applications for authorisation to cremate body parts of unknown name with an identifier must be made using the *Application for cremation authorisation of body parts of unknown name with an identifier* (Form 3B).[[20]](#footnote-20) The application must be made by a prescribed person as detailed in the table below.

|  |  |  |
| --- | --- | --- |
| Deceased | Prescribed form | Prescribed persons |
| Body parts of unknown name with an identifier | Application for cremation authorisation of body parts of unknown name with an identifier | * A registered medical practitioner who treated the person to whom the body parts belonged * A registered medical practitioner of the hospital where the person to whom the body parts belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Secretary of the Department of Health |

## Cremation approval granted by the department’s Secretary when prescribed documentation requirements cannot be met

In exceptional circumstances, an applicant for cremation may apply to the department for a cremation approval under s. 134 of the Cemeteries Act. Exceptional circumstances include when the prescribed documentation requirements outlined above cannot be met – for example, if the deceased died overseas and their bodily remains have been transported into Victoria for cremation.

When seeking a cremation approval under s. 134 of the Cemeteries Act because prescribed documentation requirements cannot be met, the funeral director is generally responsible for liaising with the department and, where necessary, the relevant interstate or international authorities on behalf of the deceased’s family or representative.

An application for cremation approval must be made using the *Application for cremation authorisation for deceased persons of known identity* (Form 3).

The form must be accompanied by additional documentation to enable the department to be satisfied that:

* a medical cause of death has been confirmed by a relevantly qualified person
* the circumstances surrounding the death were appropriately and thoroughly investigated by the authorities in the jurisdiction in which the deceased died
* the department is satisfied that the cause of death does not need to be reported to a coroner for investigation.

The funeral director should provide the department with all available supporting information and documentation relating to the above matters when seeking a cremation approval. It is mandatory for certified translations of original documents to be provided for any foreign language documents.

Where the department cannot satisfy itself regarding the matters outlined above, it is likely that the death will be considered a reportable death under the Coroners Act and will need to be reported as such to the Coroners Court of Victoria.

Where a notification of a reportable death is made to the Coroners Court, the department will not provide a cremation approval until a coroner has made a determination regarding the death.

The time the department takes to provide a cremation approval will vary depending on the circumstances and documentation available in each particular case. For this reason, cremation bookings should not be made before receiving written cremation approval from the department.

### Reportable deaths

Under the Coroners Act, there is a general obligation for any person who has reasonable grounds to believe that a reportable or reviewable death[[21]](#footnote-21) has not been reported, to report it without delay to a coroner or the officer in charge of a police station. A death may be considered reportable for a number of reasons, as outlined in s. 4 of the Coroners Act.

Most applications for cremation approval received by the department relate to people whose death occurred overseas, and normally live in Victoria.

In considering such applications, the department needs to determine if the death is reportable under the Coroners Act. The absence of clear documentation authorised by an appropriate authority in the jurisdiction where the death occurred will raise questions about the death.

Any funeral director who does not have appropriately authorised documentation about a death that occurred interstate or overseas should discuss this matter with Coronial Admissions and Enquiries (CA&E) of the Coroners Court of Victoria on 1300 309 519.

CA&E is open 24 hours a day, seven days a week and can assist in determining whether a death   
is reportable. More information about how to report a death is available on the [Coroners Court of Victoria website](https://www.coronerscourt.vic.gov.au/report-death-or-fire/how-report-death) <https://www.coronerscourt.vic.gov.au/report-death-or-fire/how-report-death>.

The department will be unable to finalise its consideration of a cremation application until the Coroners Court has made a determination about the reportable death.

## Transporting bodily remains and body parts for cremation

All bodily remains and body parts being transported into and within a public cemetery for cremation must comply with r. 26 of the Regulations. The bodily remains or body parts must be enclosed in a coffin, container or other receptacle:

* with a flat base
* that is clean and hygienic
* that is constructed of wood or other substantial material that is combustible and that will not impede the cremation process or cause damage to the cremator
* that will not give rise to noxious emissions when burnt
* from which neither offensive nor noxious emissions nor matter from the bodily remains or body parts will escape.

These requirements are important for treating remains with dignity and respect, workplace health and safety, and the proper operation of crematoria.

Where a cardboard coffin is being used, a cemetery trust must consider whether this type of coffin meets the requirements of the Regulations. If a cemetery trust determines that a receptacle does not or will not satisfy any of the above criteria, the trust has the discretion to refuse to accept the receptacle for cremation.

## Applications made without the assistance of a funeral director

A trust may be approached by a person considering conducting a funeral without the assistance of a funeral director and seeking information about the legal and procedural requirements for cremations.

In Victoria, the role and duties of a funeral director are not prescribed by legislation. The professional associations for funeral directors 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 someone cannot perform some or all the arrangements necessary before the body of the deceased is delivered for cremation. The cemetery trust needs to ensure all statutory requirements for cremation have been met.

## Dual cremation

Due to exceptional circumstances, a trust may receive a request to cremate the bodily remains of more than one deceased person in the same receptacle at the same time.

The Cemeteries Act does not prohibit dual cremations and does not specify how many bodies or bodily remains may be placed in the same receptacle for cremation at the same time.

The funeral director or applicant arranging the cremation will need to check with the relevant cemetery trust to determine if the trust is prepared to cremate more than one body or bodily remains in a crematorium at the same time. If the trust agrees, cremation authorisation documentation requirements must be met for each deceased person.

At the cemetery trust’s discretion, the trust may charge cremation fees for each of the bodies or bodily remains to be cremated. The trust may also consider waiving or reducing the cremation fees in line with s. 44 of the Cemeteries Act.

## Cremating deceased poor persons

Sections 142 to 145 of the Cemeteries Act provide that a cemetery trust must, upon an order signed by a magistrate or coroner, cremate the bodily remains of a deceased poor person and inter those cremated human remains free of charge. The order is often referred to as a Part 10 order.

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

An order that a magistrate or coroner may make under s. 143 of the Cemeteries Act may also require a cemetery trust to place a plaque on the place of interment of the deceased poor person’s cremated remains.

Before any arrangements are made by the trust to cremate a deceased poor person, the trust should ensure it has a copy of the magistrate’s or coroner’s order so it is clear what the trust is required to do.

**Note:** The trust has control over the right of interment for the place of interment of the cremated remains and may or may not permit memorials to be established as they see fit.

## Release of cremated remains

Cemetery trusts should have processes in place to ensure they comply with their obligations under the Cemeteries Act and Regulations in relation to cremated remains. This includes having processes in place in relation to ‘proof of identity’ that specifies what documents, or combination of documents, a person may provide to prove their identity to the trust when collecting cremated remains. More information about identity proofing is available in the *National identity proofing guidelines* issued by the Department of Home Affairs.[[22]](#footnote-22)

Trusts should also ensure their process for releasing cremated remains includes appropriate record keeping as to the basis upon which remains have been released to a particular person.

### Meaning of cremated human remains

In accordance with r. 30 of the Regulations, references made to cremated human remains in this section do not include cremated human remains that have been disinterred under the Cemeteries Act after a limited tenure interment has expired. Rather, it refers to remains that have been cremated but not yet collected from the crematorium.

### Release of cremated human remains

Under r. 30(2) of the Regulations, subject to any order by a court, a cemetery trust may release cremated remains only to the applicant or the applicant’s agent. Where the applicant and the applicant’s agent are both deceased, the trust may only release the cremated human remains to the nearest surviving relative of the person who was cremated.

### Releasing remains to an applicant

Under r. 30(3) of the Regulations, an applicant is the person who applied for the cremation authorisation or cremation approval or, in the case of body parts, the person who applied for authorisation to cremate body parts under s. 150 of the Cemeteries Act.

Before releasing remains to an applicant, the trust should:

* refer to the relevant application documentation to confirm the identity of the applicant
* sight proof of identity documents to confirm that the person collecting the remains is the applicant.

### Releasing remains to an applicant’s agent

Under r. 30(3) of the Regulations, an applicant’s agent is the person authorised in writing by the applicant to be the applicant’s agent for the purposes of the release of cremated human remains. In many cases, the applicant’s agent will have been nominated on the prescribed application form.

If an agent was not previously nominated on the prescribed application form, an agent can be nominated by providing the trust with written authorisation that is signed by the applicant and refers specifically to the collection of clearly identified cremated human remains. For example: ‘I, John Brown, appoint Fred Smith of Smith Funerals as my agent for the purpose of collecting the cremated remains of Jane Brown (deceased 22 March 2022) from West Cemetery Trust’.

Trusts should sight proof of identity documents to ensure that the person collecting the remains is the appointed agent.

### Releasing remains pursuant to a court order

The requirements for releasing cremated remains under the Regulations apply subject to any order of a court. When releasing remains pursuant to the order of a court, trusts should ensure:

* they sight a copy of the court order
* the court order provides for the release of the cremated remains to a particular person[[23]](#footnote-23)
* they sight proof of identity documents confirming that the person collecting the remains is the same person referred to in the court order.

### Releasing remains where the applicant and the applicant’s agent are both deceased

Where the applicant and the applicant’s agent are both deceased, the trust can release the cremated remains only to the nearest surviving relative of the person who was cremated. The nearest surviving relative is determined according to the hierarchy set out in the definition in r. 5 of the Regulations.

When releasing remains in these circumstances, trusts should ensure they:

* sight appropriate evidence that the applicant is deceased, such as a death certificate
* refer to the original application form and other records held by the trust to confirm whether the applicant appointed an agent
* if the applicant appointed an agent, sight appropriate evidence that the agent is deceased, such as a death certificate
* sight appropriate evidence that the person seeking to collect the remains is the nearest surviving relative of the person who was cremated (for example, by sighting appropriate evidence of the death of other people who would, if living, be above or at the same level in the hierarchy as the person seeking to collect the remains)
* if there are other living people at the same level in the hierarchy as the person seeking to collect the remains, request appropriate evidence that all of these nearest surviving relatives are in agreement regarding the release of the remains to a specific relative (if there is a dispute between multiple nearest surviving relatives about the release of the cremated remains, the trust should encourage the parties to seek dispute resolution assistance).

Note that this exception only applies where the applicant and agent are deceased. It does not apply where they are unavailable or incapacitated, or for any other reason.

## Interring cremated remains in a public cemetery

Cremated human remains may be interred in a public cemetery; however, there is no legal requirement that cremated remains must be interred in a public cemetery. The applicant or the applicant’s agent who collects the cremated remains from the crematorium can do with them largely what they wish.

### Options for interring cremated remains

Garden memorials tend to be both the most popular and the most expensive places for interring cremated remains for trusts to maintain. Examples of places of interment include:

* along the borders of rose or shrub gardens
* at the base of individual plants in a garden bed
* around the base of individual trees or shrubs in a lawn setting
* beside features such as bench seats, birdbaths or sculptures.

Interment positions in 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.

Subject to the approval of the holder of the right of interment and payment of the relevant trust fee, cremated remains may 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 are not disturbed if the grave is subsequently reopened to permit another interment.

Under s. 78 of the Cemeteries Act, a right of interment is exercised if human remains are interred in the place of interment. This includes cremated human remains.

### Tenure for interring cremated remains

Under s. 128 of the Cemeteries Act, a cemetery trust that offers rights of interment for the interment of cremated remains only must offer perpetual tenure and may, at their discretion, also offer a 25-year limited tenure option.

### Conversion of limited rights of interment

When a 25-year right of interment is due to expire, the responsible cemetery trust must take reasonable steps to notify the holder of that right of interment at least 12 months before the expiry (s. 85 of the Cemeteries Act). The cemetery trust should make this notification in writing and may specify the timeframe that the right of interment holder has to reply. The notification must advise that the holder, by a request to the cemetery trust in writing, may extend the tenure for another 25 years or convert it to a perpetual right of interment. If no action has been taken by the right of interment holder within the timeframe specified, then under s. 86 of the Cemeteries Act, the cemetery trust may remove the cremated human remains and its memorial.

### Managing the limited tenure cremated remains of veterans

The Cemeteries Act was amended in 2015 to ensure identified veterans’ cremated remains are not scattered upon expiry of a limited tenure interment, but rather are preserved in perpetuity.

When a trust is identifying 25-year rights of interment that are due to expire, cremated remains interred within those places of interment may be identified as the remains of a deceased veteran. Trusts might identify cremated remains of deceased veterans by reference to:

* the memorial – for example, a Rising Sun emblem or other service badge inscribed on the memorial
* the trust’s records – for example, war-related causes of death on the death certificate
* notification by family members or interested community members.

The approach trusts take to managing a veteran’s limited tenure cremated remains will depend on the right of interment holder’s response to the notification that the right of interment is due to expire.

If the right of interment holder agrees to take action in response to the expiry notification, the trust should manage the veteran’s cremated remains as requested by the right of interment holder on receipt or waiver of the appropriate fee. The right of interment holder may choose to:

* convert the right of interment to a perpetual right of interment
* extend the right of interment for a further period not exceeding 25 years
* allow the right of interment to lapse and request the ashes be scattered, released to a specified person, or reinterred elsewhere.

If the right of interment holder does not respond to the expiry notification or responds but refuses to take action, trusts should leave the cremated remains of an identified veteran in place where possible. The right of interment would then be converted to a perpetual right and the trust would become the right of interment holder.

If it is not possible or viable to leave the remains interred in perpetuity at their original location, trusts may relocate the cremated remains of identified veterans to another place of interment. The right of interment for the new place of interment would be a perpetual right and the trust would be the right of interment holder.

If a trust relocates an identified veteran’s cremated remains, the trust is also permitted to relocate any other cremated remains interred in the identified veteran’s place of interment or any cremated remains of family members interred in the vicinity to ensure they aren’t separated.[[24]](#footnote-24) These other cremated remains may only be moved after appropriate notice to the right of interment holder(s) for those remains.

If a trust relocates the cremated remains of an identified veteran, it should also relocate any associated memorial where practicable. Where this is not practicable the trust should establish a new equivalent memorial. It is expected that trusts would bear the costs of memorialisation associated with relocating the cremated remains of identified veterans, such as repairing a plaque that is damaged during the relocation, or establishing a new equivalent memorial for a plaque that is damaged beyond repair or does not fit the new location.

More information about [managing the limited tenure cremated remains of veterans](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/veterans-cremated-remains) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/veterans-cremated-remains> is available on the department’s website.

### Interring cremated remains of more than one person in the same grave

It is at the trust’s discretion to grant requests to inter cremated remains of more than one person in the same grave. It is also at the trust’s discretion to determine the maximum number of cremated remains that can be interred in one grave together with the applicable fees. The trust should ensure all interments (cremated or otherwise) are recorded in the trust’s records and permission to inter has been granted by the right of interment holder.

Cremated remains do not necessarily have to be contained within an urn or receptacle to be interred; however, the right of interment holder must be advised that scattering cremated remains is an irreversible action compared with interring cremated remains within an urn or receptacle.

### Authority required to remove cremated remains

An exhumation licence is not required to remove or re-inter cremated remains. However, no person should remove cremated remains in a cemetery without the prior written approval of the trust.

The following should be considered prior to the trust providing written approval to remove cremated remains from within a cemetery for which it is responsible:

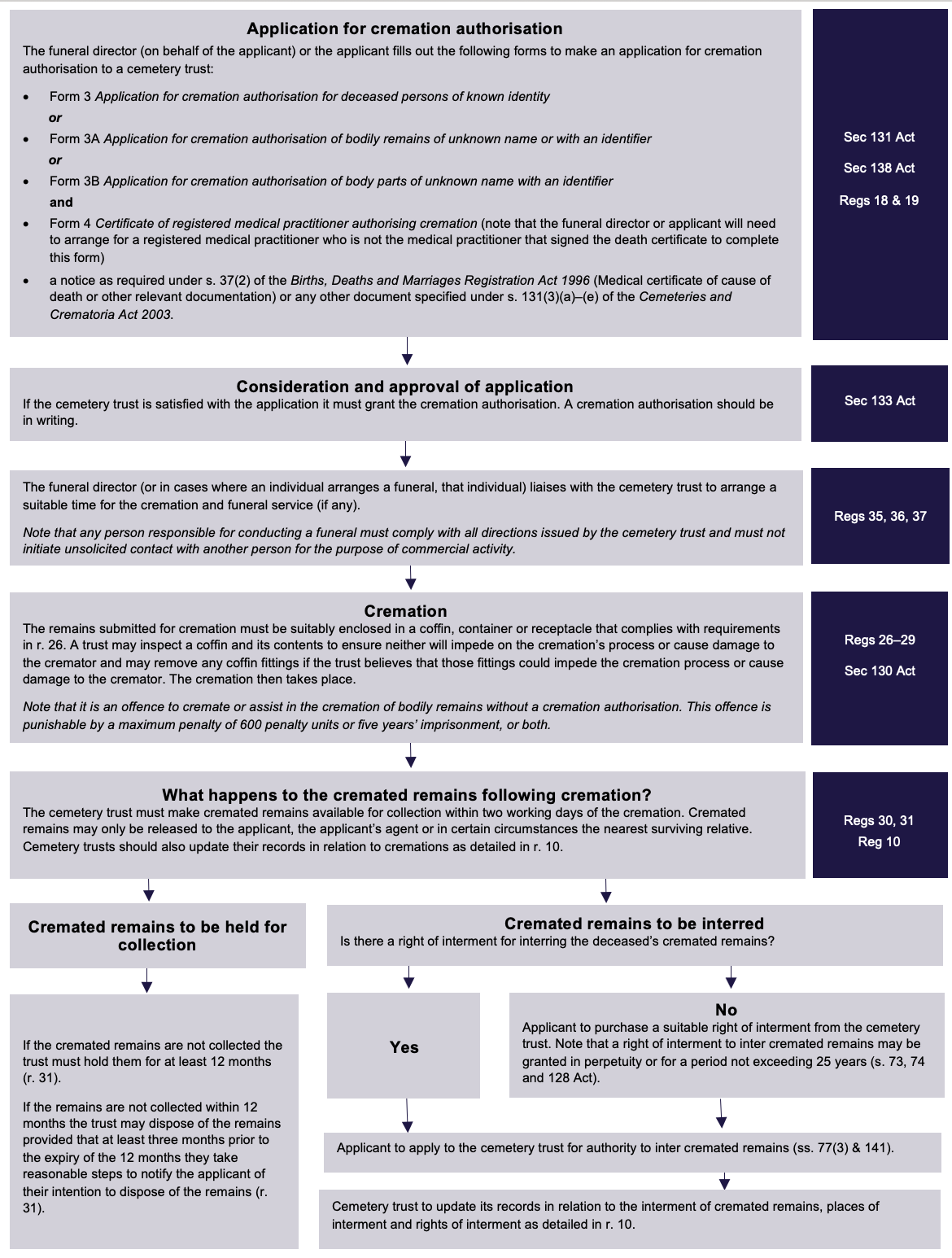
* Establish who holds the right of interment.
* If a request to remove cremated remains is made, written consent from all right of interment holders is required, preferably on a statutory declaration, confirming who they are and what they wish to do.
* If the trust has any concerns about granting its approval to remove cremated remains (for example, the trust has prior knowledge that other family members do not wish the removal to occur), it is recommended that the trust contacts the department for advice before issuing written approval.
* Clearly document all trust decisions in the trust’s records.

**Note:** Where cremated human remains are to be removed from a grave, and their removal is likely to disturb any bodily remains that are interred in the same grave, the trust may need to apply for an exhumation licence to remove the cremated remains. Refer to [Topic 14. Exhumations](#_Topic_14._Exhumations) for further information.

It is not advisable for the trust to become involved in family disputes. Where possible, families should be encouraged to resolve their differences before making a formal written request to the trust to remove cremated remains. If this is not possible, family members concerned should be advised to seek independent legal advice.

Process for cremating bodily remains (flow chart)

(An accessible version of this flow chart is available in the ‘[Appendix: Transcripts of flow charts in this manual’](#_Appendix:_Transcripts_of)) section.



# Topic 14. Exhumations

## Exhumation licence

Section 156 of the Cemeteries Act allows a person to apply to the departmental Secretary for an exhumation licence to exhume or remove human remains from any place of interment. There is no restriction on who may apply.

Section 157 states that after considering an application for an exhumation licence, the Secretary may either grant or refuse to grant an exhumation licence. A licence may be granted subject to conditions. The Secretary’s power under s. 157 is currently delegated to the manager of the Cemetery Sector Governance Support Unit.

It is an offence under s. 155 of the Cemeteries Act to exhume or remove human remains from any place of interment (except in accordance with the Cemeteries Act). It carries a penalty of 600 penalty units or five years’ imprisonment or both.

The Cemeteries Act does not provide any criteria for considering applications for an exhumation licence. However, exhumation applications take place in the broader context of the Cemeteries Act. One of the objectives of the Cemeteries Act is to ensure human remains are treated with dignity and respect (s. 2A (a)).

Exhumations do not occur only in a legislative context but also the context of the deceased’s life and circumstances. Each family will have its own unique dynamics and complexities. The department’s exhumation policy is flexible to appropriately take account of these circumstances.

Under s. 156 of the Cemeteries Act, a request for an exhumation licence must include:

* an application to the Secretary of the Department of Health for an exhumation licence
* the consent of the holder of the right of interment to the current place of interment
* payment for the relevant amount as indicated on the departmental website
* a letter from the relevant cemetery trust:
* indicating it has no objection to the proposed exhumation taking place
* identifying the current holder of the right of interment. The current holder of the right of interment cannot be the deceased. If the trust records show the deceased as the right of interment holder, the trust will need to update its records. For more information, refer to [Topic 22. The right of interment](#_Topic_22._The).

And one of the following:

* an original or certified copy of the deceased’s death certificate
* a copy of a coroner’s report releasing the body of the deceased to a specified person
* if the deceased died in another state or territory of the Commonwealth or overseas, a medical certificate of cause of death from the jurisdiction where the deceased died.
* If the licence is for a still-born child, a notice of still-birth under the Births, Deaths and Marriages Registration Actis required. If the still-birth occurred in another state or territory of the Commonwealth or overseas, a document corresponding to a notice of still-birth under the Births, Deaths and Marriages Registration Act from the jurisdiction where the still-birth occurred is required.

If the applicant cannot produce the required documents, they may make a statutory declaration that, owing to special circumstances, it is not possible to produce the required documents.

### Expiry of an exhumation licence

An exhumation licence is valid for one year from the date of issue.

## Assessing applications for an exhumation licence

Relevant considerations for the Secretary may include (but are not limited to):

* assurance that any further management of the remains within Victoria will not breach the Cemeteries Act
* dignity and respect for the deceased
* the views of the parties connected with the deceased
* the views of the parties connected with the site of the proposed exhumation (such as the right of interment holder or the cemetery trust)
* any wishes documented by the deceased about the management of their remains.

### Assurance that any further management of the remains within Victoria will not breach the Cemeteries Act

The Cemeteries Act prohibits interment or cremation of bodily remains in Victoria without appropriate authorisation by the relevant cemetery trust or the departmental Secretary. Interment in a public cemetery also requires the approval of the holder of right of interment for the particular place of interment. Therefore, the prescribed form requires the applicant to identify where any proposed reinterment or subsequent cremation will occur.

### Dignity and respect for the deceased

Victoria’s cemetery services are premised on the concept of ‘resting in peace’. Bodily remains are interred in perpetuity (forever) and it is an offence to disturb them without authorisation. In this sense, dignity and respect for the deceased weighs against the granting of an exhumation licence.

Nevertheless, it is recognised that in some cases dignity and respect may be best served by an exhumation – for example, for the purpose of interring in a more culturally and spiritually appropriate location, or to relocate the deceased closer to family who wish to pay their respects by visiting the place of interment. Members of the deceased’s family will generally be best placed to determine what dignity and respect means in their particular culture, faith and circumstances.

When the views of family members concerning the proposed exhumation are in conflict, it may be difficult for the applicant to show that the outcome to be achieved by the exhumation outweighs the dignity and respect associated with undisturbed interment.

### The views of the parties with a connection to the proposed exhumation

The department seeks information about the views of various parties, through the prescribed form, to help understand the context of the proposed exhumation, particularly:

* *The right of interment holder for the current place of interment*. The right of interment holder cannot be a deceased person. If the original holder of the right is the deceased, the applicant will need to work with the cemetery trust to have the trust’s records updated to reflect the current holder of the right of interment who can provide written consent.
* *Family members*. Underpinning the application process is the premise that all direct family members should, at a minimum, be informed of the exhumation and the subsequent relocation or cremation of remains. To this end, applicants must sign a declaration that they have informed the deceased’s surviving parents, children (who are older than 18 years including stepchildren) and siblings (over the age of 18 years) of the proposed exhumation.
* *Objectors*. Objections to the proposed exhumation, depending on the circumstances, may be relevant (although not necessarily determinative) in the decision to grant or refuse to grant an exhumation licence. Therefore, the prescribed form requires the applicant to declare whether any of the informed direct relatives have an objection to the proposed exhumation and to also declare if the applicant is aware of any other relatives with an objection.

### Any wishes documented by the deceased in relation to managing their remains

The deceased’s documented wishes will carry significant weight. While uncommon, a deceased’s documented wish that they never be exhumed would weigh significantly against the grant of an exhumation licence.

The extent to which the proposed management of the remains following a proposed exhumation aligns with the deceased’s documented wishes will be a relevant (although not necessarily determinative) consideration, particularly where the applicant and family members have conflicting views.

## Exhumation procedures

### Notification

The department must be notified in advance about the time and date when the proposed exhumation will take place. The cemetery trust must send to the department a report providing the details of the exhumation within 20 days of completing the exhumation.

### Charges

The cemetery must charge a fee that has been approved and gazetted for exhuming remains and any additional administrative or operational fees for the exhumation. The department will not pay any charges arising from the exhumation.

### The funeral director

The applicant may nominate a funeral director to help. The funeral director must supply at least three people (plus the funeral director) who can assist. If a lifting device is used, two people would be sufficient.

### The cemetery trust

The exhumation is only to take place in the presence of a person authorised by the cemetery trust to supervise exhumations.

Any monument is to be removed before the exhumation, if deemed necessary by the cemetery trust.

### Leaving the cemetery

Exhumed remains are not to leave the cemetery unless in a closed coffin, which has been soundly constructed of wood or metal or in a closed receptacle or container. The coffin, receptacle or container must not be in a state that would allow offensive liquids and noxious gases to escape.

A suitable replacement coffin or container must be provided by the nominated funeral director for use on side if deemed necessary by the person authorised by the cemetery trust to supervise exhumations.

### Re-interment of exhumed remains

The exhumed remains may be re-interred, either in the same cemetery or in another cemetery, in either a grave, vault or mausoleum.

The applicant should arrange the re-interment with the relevant cemetery trust before applying to the department for an exhumation licence. Ordinary interment charges should apply to re-inter the exhumed remains.

### Exhumed remains to be cremated

If the exhumed remains are to be cremated, the applicant must apply to the department for a separate cremation authorisation. Under s. 134 of the Cemeteries Act, the Secretary may grant an approval for the cremation of bodily remains if the requirements of s. 131(3) of the Cemeteries Act cannot be met. To assess the cremation application, the following documentation is required:

* an [*Application for cremation authorisation for deceased persons of known identity*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation>, available on the department’s website
* a letter from the funeral director on company letterhead requesting authorisation from the Secretary of the Department of Health under s. 134 for a cremation approval
* the death certificate of the deceased.

In most cases where exhumed remains are to be cremated, it is not possible to meet the documentation requirements set out under s. 131 of the Cemeteries Act. However, under s. 134 of the Cemeteries Act, the Secretary may grant an approval to cremate bodily remains if the normal requirements cannot be met due to special circumstances. In such instances, the death certificate and any other relevant information must be provided to the department.

### Examples of situations where an exhumation licence may or may not be required

The following table has been developed to assist trusts to identify when an exhumation licence may or may not be required.

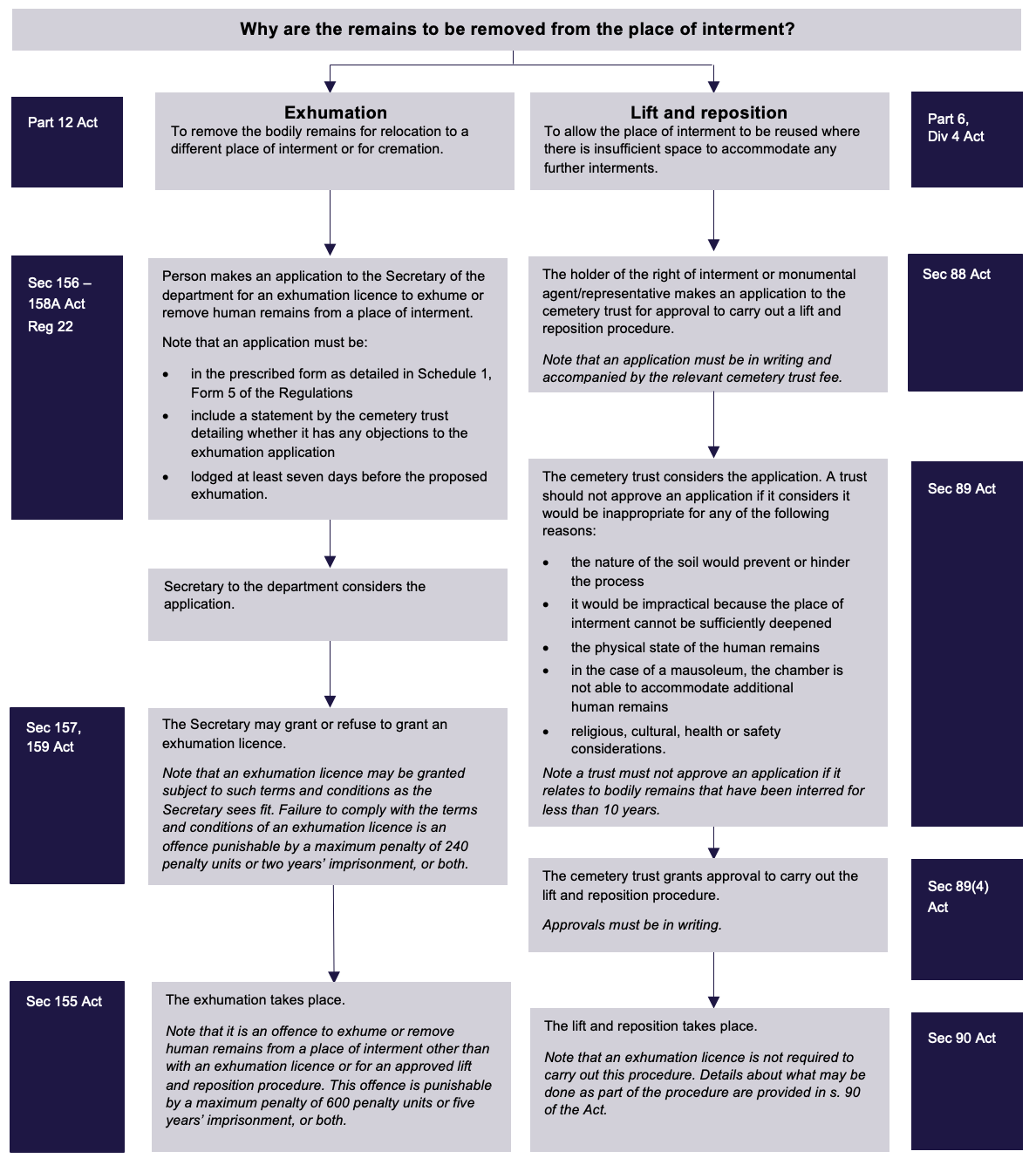
The following examples are not intended to be an exhaustive list and trusts should contact the department for advice if they are unclear about any aspects of exhumation requirements under the Cemeteries Act.

|  |  |  |
| --- | --- | --- |
| Request | Exhumation licence required? | Lift and reposition procedure |
| Where a trust is asked to remove bodily remains from a grave – for example, to transfer the remains from one site to another or other circumstances where it is likely that bodily remains will be removed | **Yes** | No |
| Where a trust has to check a nameplate on the outside of a coffin and can ensure the bodily remains **will not** be removed from the grave | No | No |
| Where a trust has provided written approval for cremated remains to be removed from a place of interment[[25]](#footnote-25) | No | No |
| Where a trust has to reposition a coffin within a burial plot and can ensure the bodily remains **will not** be removed from the grave area | No | No |
| Where a trust receives a request to lift a coffin and deepen a place of interment to accommodate another interment[[26]](#footnote-26) | No | **Yes** |
| Where a trust is moving a coffin from an incorrect place of interment to the correct place of interment before the incorrect place of interment has been backfilled (for a grave) or sealed (for a mausoleum crypt) | No | No |
| Where the trust is opening the place of interment for the purpose of opening the coffin – for example, to retrieve objects from the coffin | **Yes** | No |

The flow chart below titled ‘Comparison of exhumation and lift and reposition procedures’ has been created as a quick reference guide to assist trusts by summarising the required processes, identifying the applicable sections of the Cemeteries Act and Cemeteries Regulations, and differentiating between the processes of an exhumation and a lift and reposition procedure.

(An accessible version of this flow chart is available in the [‘Appendix: Transcripts of flow charts in this manual’](#_Reason_1:_Exhumation)) section.

Comparison of exhumation and lift and reposition procedures (flow chart)



# Topic 15. Lift and reposition procedure

The Cemeteries Act sets out a framework that allows the holder of the right of interment to re-use a place of interment for additional burials (if additional burials are permissible). This procedure is known as a ‘lift and reposition’.

Sections 88–90 of the Cemeteries Act sets out the process for the lift and re-position procedure. These sections of the Cemeteries Act outline the application process, the trust approval process and the lift and re-position procedure. An exhumation licence is not required to conduct a lift and re-position procedure.

**Note:** The flow chart at the end of [Topic 14. Exhumations](#_Topic_14._Exhumations) compares the lift and re-position process with the exhumation process. It sets out the key steps in the process, linking them to the relevant sections of the Cemeteries Act.

## Application process

### How to apply

Section 88 of the Cemeteries Act provides that the holder of the right of interment (or representative of the holder)[[27]](#footnote-27) can make an application to the relevant cemetery trust. The application must be in writing and accompanied by the relevant cemetery trust fee.

### Assessment of applications

Upon application, a person can request that the trust determines if a lift and re-position procedure is possible at the proposed plot.

To determine if a lift and re-position procedure is possible, the trust would need to consider whether:

* the applicant is the holder of the right of interment
* the holder of the right of interment has given permission
* the remains have been interred for at least 10 years (s. 89(3) of the Cemeteries Act).

Under s. 89(2) of the Cemeteries Act, an approval must not be granted if the cemetery trust considers that the lift and re-position procedure is inappropriate for any of the following reasons:

* the nature of the soil prevents or hinders the process
* it would be impracticable to undertake the procedure because the place of interment cannot be made deep enough
* the physical state of the human remains in the place of interment are such that a lift and re-position is unlikely to be successful
* in the case of a mausoleum, the chamber cannot accommodate additional human remains
* religious, cultural, health or safety considerations.

## Lift and re-position procedure

A cemetery trust that has approved a lift and re-position procedure may authorise a person to:

* open a place of interment
* lift any existing human remains that are interred in the place of interment
* deepen or enlarge the place of interment if necessary
* re-position the existing human remains in the place of interment, whether contained in a receptacle or not, to provide space for a further interment in that place of interment
* remove human remains from any receptacle and place them in another receptacle.

Practical constraints mean that in most circumstances a place of interment can only be re-used for up to a maximum of three interments. When planning a lift and re-position procedure, trusts should refer to Part 4 s. 24 of the Cemeteries Regulations, which set out the depth of burial requirements for the uppermost interment in a grave in a public cemetery.

There are some circumstances where neither an exhumation licence or a lift and re-position procedure is required. An example is where a trust has to re-position a coffin within a burial plot and can ensure the bodily remains will not be removed from the grave area.

If the application satisfies the trust’s requirements and the procedure is suitable, the trust must give written approval to the applicant to carry out a lift and re-position procedure.

It is expected that a lift and re-position procedure, including the re-interment of bodily remains, would occur on the same day.

**Note:** It is not considered a ‘lift and re-position procedure’ where the trust is required to check the nameplate on interred remains. Please refer to ‘Examples of situations where an exhumation licence may or may not be required’ in [Topic 14. Exhumations](#_Topic_14._Exhumations) for examples of situations where an exhumation licence may or may not be required.

# Topic 16. Disposal of human remains other than interment or cremation

Section 146 of the Cemeteries Act states that, with the Secretary’s prior approval in writing, a cemetery trust may dispose of bodily remains by a method other than interment or cremation in a public cemetery for which it is responsible.

Where a trust wishes to make a formal application to dispose of human remains other than interment or cremation, it should submit a written detailed proposal to the departmental Secretary, addressed to:

The Manager  
Cemetery Sector Governance Support Unit

Department of Health  
PO Box 4057  
Melbourne VIC 3001

The proposal should address how the proposed service aligns with the cemetery trust’s functions prescribed under the Cemeteries Act, namely the proper and efficient management of the cemeteries under its control, its obligations for funding the perpetual maintenance of the cemeteries under its control and recognising the cultural and religious values of the community.

The proposal should also include:

* a market analysis outlining the likely community demand for the type of disposal of human remains
* all project costs associated with installing and operating the required equipment
* the estimated return on investment, including proposed fees the trust will charge
* relevant building or planning controls that may apply
* environmental considerations
* strategies to deal with the waste product produced by the process
* an actuarial analysis undertaken by a registered actuary to support the financial assumptions outlined in the submission
* any other relevant information.

It may take up to six months for the department to review and assess this type of application, and trusts should factor the assessment into their planning timelines.

For more information, contact the department on 1800 034 280 or [email](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au> before submitting your proposal.

# Topic 17. Cemetery monuments and memorials

## Application to establish or alter a monument or memorial

Under s. 98 of the Cemeteries Act, prior to establishing or altering a monument or memorial, a person must apply to the relevant cemetery trust for approval. Application must be accompanied by the relevant cemetery trust fee.

Under s. 99 of the Cemeteries Act, the cemetery trust may withhold its permission if the intended work is inappropriate, unsafe or dangerous. The trust may wish to seek advice from a consulting engineer concerning structural aspects of the proposed work and whether it will comply with Australian Standard AS-4204: Headstones and cemetery monuments. Refer to the ‘[Monument construction procedures and standards](#_Monument_construction_procedures)’ section below for more information about Australian Standards.

Generally, the cost of consulting an engineer will be borne by the applicant. However, the cemetery trust must seek the applicant’s written approval before seeking professional advice.

If the cemetery trust gives permission to proceed with the works (based on the advice of the consulting engineer), the trust should file the original application and give an appropriately endorsed copy to the applicant.

The exception to these requirements is the establishment or alteration of official Office of Australian War Graves (OAWG) memorials as outlined below.

## War graves and memorials

The OAWG provides and maintains official OAWG memorials in public cemeteries throughout Australia for those Australians who died in conflict or who die post war as a result of causes related to their war service.

### Official OAWG memorials

OAWG memorials are supplied, installed and maintained by the OAWG. These fall into two categories:

1. Memorials provided to war veterans who died in a war or conflict
2. Memorials provided to war veterans who died post war from an injury or illness directly attributed to their service

The OAWG provides category 1 veterans with a perpetual right of interment for bodily or cremated remains and an official memorial at either the place of interment or in an OAWG Garden of Remembrance. The OAWG maintains these memorials in perpetuity.

The OAWG provides category 2 veterans with an official memorial either in an OAWG Garden of Remembrance or at a place of interment where the right of interment is supplied by the deceased’s family/surviving relatives. Rights of interment for veterans in this category may be perpetual and relate to either bodily or cremated remains or limited tenure in the case of cremated remains, depending on the preference of the deceased’s relatives supplying the right of interment. The OAWG will maintain official memorials for these veterans consistent with the tenure of the right of interment (including any extension of limited tenure). Where the right of interment expires, the OAWG will transfer the official commemoration to an OAWG Garden of Remembrance.

### Other war veteran memorials

Public cemeteries may also contain other war veterans’ memorials as identified by the relevant service badge on a private memorial. For example, where:

* a returned war veteran is not eligible for an official OAWG commemoration and the family choose to acknowledge the veteran’s war service by including the relevant service badge on their private memorial, or
* the style of memorial provided by the OAWG does not satisfy the family’s requirements, so the veteran is officially commemorated in an OAWG Garden of Remembrance and the family are granted permission to use the appropriate service emblem on their private memorial at the place of interment.

Permission must be sought from the OAWG to use a service emblem on a private memorial. However, the responsibility for establishing and maintaining such memorials lies with the holder of the ROI.

### Establishment of official OAWG memorials

Under the Defence Force Regulations 1952, the OAWG has extensive powers that exempt them from complying with relevant state or territory laws when establishing, maintaining or replacing official OAWG memorials. This means that the OAWG does not need approval from a cemetery trust before starting work on an official OAWG memorial. However, the OAWG has agreed a process for establishing official memorials (including replacing existing memorials) in Victorian cemeteries that ensures such memorials are properly authorised in accordance with Victorian requirements as follows:

* The ‘Application to establish or alter a memorial’ form is provided to all OAWG clients in addition to the OAWG’s ‘Application for official commemoration’ form. This ensures the consent of the holder of the right of interment is obtained before establishing an official OAWG memorial.
* Signed copies of both forms are given to OAWG monumental masons to present to the cemetery trust before establishing or replacing official OAWG memorials.

The exception to this process is the establishment of official OAWG memorials for veterans who died more than 50 years ago and whose family can no longer be contacted. Under these circumstances the Director of OAWG will complete and sign the application form in lieu of the holder of the right of interment.

### Maintenance of official OAWG memorials

The OAWG maintains official OAWG memorials in perpetuity (or for the duration of a limited tenure right of interment). Maintenance works undertaken by the OAWG include:

* annual/biannual inspection
* cleaning, tidying and, where necessary, polishing
* repainting plaques every seven to 12 years (repainting requires the plaque to be sanded, which affects the prominence of the lettering, meaning the plaque has to be replaced after three paints)
* sanding of marble headstones every two to four years.

The frequency of maintenance within these ranges varies depending on the location of the memorial. The OAWG engages contractors to undertake this routine maintenance work on their behalf. As noted above, the OAWG has extensive powers under the Defence Force Regulations 1952 for undertaking work on memorials. However, OAWG masons undertaking work in Victorian cemeteries must comply with trust’s requirements and processes – for example, to ensure areas of key risk such as OHS, public amenity and site access are addressed.

### Victorian Office of the OAWG

The OAWG provides monumental masons with guidelines that direct the conduct of their work. These guidelines are consistent with the agreed process outlined above. Cemetery trusts should phone the Victorian Office of the OAWG on (03) 9547 1991 if they have any concerns about work being undertaken by OAWG monumental masons.

## Monument construction procedures and standards

Section 98 of the Cemeteries Act provides details of the process for making an application to a cemetery trust for establishing or altering a monument. Under s. 99 of the Cemeteries Act a cemetery trust has 45 days from receiving the application and all relevant information to either approve or refuse the application.

Under s. 179 of the Cemeteries Act, an applicant may lodge an appeal against the decision of the trust with the Victorian Civil and Administrative Tribunal.

The CCAV has developed an [[*Application to establish or alter a memorial or place of interment*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/memorials) form](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/memorials) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/memorials> to use when applying to establish or alter a memorial.

It is important that the cemetery trust provides clear advice about the location of the grave to ensure a memorial is constructed on the correct grave.

It is recommended that the cemetery trust adopts a procedure that requires monumental masons to:

* submit a work schedule to the trust outlining the timing of all works, including any inspection times
* keep a copy of the permit issued by the cemetery trust with them at all times when working in the cemetery.

Part 4 of the model rules under schedule 2 of the Cemeteries Regulations provides 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 are (as far as practicable) prepared off site.

The cemetery trust has the power to inspect the construction of a memorial and, where appropriate, seek advice from a consulting engineer or other appropriately qualified person.

The trust can inspect the memorials to ensure they conform with its specifications. Generally, a trust will not have responsibility to ensure a memorial is constructed in accordance with any other industry standards. Unless otherwise indicated, a cemetery trust is not liable for the construction of a monument by a third party.

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

* AS-4204 Headstones and cemetery monuments
* AS-4425 Above ground burial structures.

These publications are only available, at cost, from:

Standards Australia

Telephone: 1800 035 822

[Email](mailto:success@standards.org.au): <success@standards.org.au>

[Website](https://www.standards.org.au/search-for-a-standard): <https://www.standards.org.au/search-for-a-standard>

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.

A quick reference guide [*Process for the establishment or alteration of a memorial*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/memorials) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/memorials> has been created to assist trusts by summarising the required processes and identifying the applicable sections of the Cemeteries Act and the Cemeteries Regulations.

## Trust responsibilities concerning monument safety

The cemetery trust has a duty of care to:

* all members of the public who enter cemetery trust property
* provide healthy and safe working conditions to those who work in the cemetery, including contractors, community volunteers, funeral directors, monumental masons, and trust staff.

(refer to [Topic 27. Conditions of work](#_Topic_27._Conditions) and [Topic 28. Occupational health and safety](#_Topic_28._Occupational)).

Under s. 104 of the Cemeteries Act, the holder of the right of interment must ensure any monument or memorial is maintained in a safe and proper condition. The Cemeteries Act does not authorise a cemetery trust to spend its funds on ensuring the continuing structural integrity of all the monuments in its cemetery.

Under s. 106 of the Cemeteries Act, if the holder of the right of interment fails to comply with a request to make the place of interment safe and proper, a cemetery trust may repair or, with the approval of the Secretary of the Department of Health, take down and remove any monument or memorial that is in a state likely to be dangerous, or that is not in proper condition. The cemetery trust may also recover the cost for this work from the person who holds the right of interment (s. 108 of the Cemeteries Act). If the cemetery trust cannot locate the holder of the right of interment, the trust may:

* send a letter to the last known address
* search for their name in the white pages or similar directory
* place an advertisement in a local newspaper.

Under ss. 109 and 110 of the Cemeteries Act, where a monument or memorial poses a safety risk and cannot find the holder, if it has funding (other than cemetery trust funds), the trust should write to the department and advise that it intends to repair the monument or memorial to remove the safety risk. With the consent of the Secretary, the trust may take down, remove and dispose of the memorial.

Under s. 111 of the Cemeteries Act, a cemetery trust may enter into an agreement with a holder of a right of interment to maintain a memorial that the holder of the right of interment would otherwise be responsible to maintain. Such an agreement must not exceed an initial 10-year term. It may be renewed for another 10 years.

## Plaques and headstones for lawn area graves

Before establishing lawn areas, cemetery trusts should ensure they have enough access to water to maintain this type of area within the cemetery.

It is usual for a cemetery trust to approve a particular style of memorial for each lawn area. But a cemetery may have two or three lawn areas operating at one time, thereby offering a choice of memorialisation, 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. Note that 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 where the top of the beams are flush with the surface of the lawn.

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

### Plaques

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

* arrange the supply and delivery of metal plaques from a foundry
* affix each plaque at the required location.

In pricing its plaques, a cemetery trust must consider its competitive neutrality obligations and factor into its fees the real costs for providing this service. The trust must not cross-subsidise the cost of the plaque from other cemetery fees. It must incorporate into its fee structures any exemptions from taxes (for example, GST) that it receives to show that it fairly competes with private enterprise operators that may be offering the same products or services.

The cemetery 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 cemetery trust, the cemetery trust may:

* specify the material, 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 cemetery trust. This fee should also apply to plaques purchased through the cemetery trust.

### Granite headstones and monuments

If a cemetery trust has a designated lawn area where headstones can be erected, then it is usual that the task of erecting headstones and monuments is arranged through a stonemason. The stonemason is generally required to obtain a permit from the cemetery trust allowing them to work in the cemetery before constructing such memorials.

### Other materials

The trust should consider the durability of materials used for memorials; for example, monuments that use timber may not be appropriate for this purpose because timber is not as durable as concrete. Trusts may decide to allow temporary markers made of a less durable material to be placed on the grave until such time as a more permanent memorial is placed on the site.

## Code of practice and competitive neutrality

Under s. 112 of the Cemeteries Act, cemetery trusts may sell and supply memorials. Any cemetery trust that does so must ensure it is informed about, and complies with, the principles of competitive neutrality to encourage a fair and equitable environment for supplying memorialisation goods and services.

To help cemetery trusts meet their obligations in the sale and supply of memorial products and services in Victorian public cemeteries, the department has developed the [*Code of practice – sale and supply of memorialisation goods and services by cemetery trusts and other suppliers in Victorian public cemeteries*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/code-of-practice) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/code-of-practice>, available on the department’s website.

Implementing the code is mandatory for all cemetery trusts that engage in these activities.

## Memorial permit fees

Cemetery trust permit fees for 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.

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 for the approval
* technical costs related to the technical assessment of the application by the cemetery trust, and inspection of the memorial or place of interment before, during and after construction
* a component of the cemetery trust’s perpetual maintenance costs.

To help cemetery trusts with setting memorial permit fees, the department has developed the [*Recommended memorial permit fee application form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance>, available on the department’s website.

# Topic 18. Mausolea

Under the Cemeteries Act, all interments in mausolea or above-ground crypts are for perpetuity. Therefore, it is necessary for the trust to ensure such structures are soundly constructed.

Regulations 32 and 33 of the Cemeteries Regulations prescribe requirements for interment in mausolea. 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 emissions or matter from the bodily remains do not escape.

Interments in both public and private mausolea may require specialised equipment and appropriately trained staff due to the design of these structures.

Trusts considering building mausolea should be aware of mandatory compliance requirements regarding public construction procurement. Information about requirements can be obtained from the [Class B cemetery trust compliance for public construction procurement page](file:///C:\Users\cper0204\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\TBGKCTGN\Class%20B%20cemetery%20trust%20compliance%20for%20public%20construction%20procurement) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement> on the department’s website.

## Public mausolea

A public mausoleum is a facility constructed and funded by a cemetery trust where individual rights of interment for crypt spaces are purchased by the public. Under s. 22 of the Cemeteries Act, a cemetery trust is required to obtain the departmental Secretary’s written approval before constructing a mausoleum.

Cemetery trusts must prepare a detailed proposal based on the department’s mausoleum establishment and construction requirements for the Secretary’s consideration. More information and the [*Mausoleum establishment and construction guidelines*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/establishing-a-mausoleum) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/establishing-a-mausoleum> are available on the department’s website.

## Private mausolea

A private mausoleum is constructed and paid for by a third party separate to the cemetery trust, usually a family. Applications are made to the responsible cemetery trust for approval to establish this as a place of interment under s. 98 of the Cemeteries Act.

In line with s. 3(1) of the Cemeteries Act, the definition of ‘place of interment’ means a grave, vault, mausoleum, niche wall or any other structure or plot used for interring human remains.

**Note:** Very few cemetery trusts permit the establishment of private mausolea due to a range of issues and problems that have occurred in ongoing management, maintenance and administration of these structures. Under the Cemeteries Act, cemetery trusts are not required to allow the construction of private mausolea in cemeteries under their control.

# Topic 19. Closure of a public cemetery

Under s. 62 of the Cemeteries Act, at the request of the entity responsible for managing a cemetery, and with the approval of the minister, the Governor in Council can issue an order to close a public cemetery or part of a public cemetery if:

* there has been no interment of human remains at the cemetery or in that part of the cemetery for at least 25 years
* 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.

Under s. 63 of the Cemeteries Act, when a cemetery trust is closed:

* the order applies to the cemetery or the part of the cemetery that is named in the order
* 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.

Under s. 64 of the Cemeteries Act, the holder of an unexercised right of interment that cannot be exercised due the closure may request in writing either:

* 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 that is responsible for managing the closed cemetery, or
* that the Secretary directs the cemetery trust that is responsible for managing the closed cemetery to grant the holder a right of interment in another cemetery for which that cemetery trust is responsible, either free of charge or at a reduced rate.

## Reopening a closed cemetery

Under s. 64A of the Cemeteries Act, at the request of the entity responsible for managing a cemetery, and with the approval of the minister, the Governor in Council, by order published in the Victorian *Government Gazette*, may reopen a closed cemetery or part of a closed cemetery if it is in the public interest.

## Historic cemetery parks

Under s. 66 of the Cemeteries Act, a cemetery trust that is responsible for managing an eligible cemetery may apply to the minister to convert the cemetery or part of the cemetery to a historical cemetery park. More information about historical cemetery parks is available in ss. 65–72 of the Cemeteries Act.

# Topic 20. Perpetual maintenance obligations

## Perpetuity

Bodily remains in Victoria are interred in perpetuity in line with ss. 74 and 113 of the Cemeteries Act. For this reason, s. 12(2)(a) of the Cemeteries Act requires a cemetery trust, in exercising its functions under the Act, to consider its obligations for funding the perpetual maintenance of the public cemetery for which it is responsible.

Cemetery trusts should carefully consider how each of its cemeteries will be maintained once full capacity has been reached. Trusts should take account of this ongoing perpetual maintenance obligation when setting its fees for products and services they provide.

Under s. 74 of the Cemeteries Act:

* interment of human remains is perpetual
* interment of cremated remains is to be either perpetual or for a tenure of 25 years.

The cemetery trust should take care 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 begins.

## The acceptable standard of maintenance

The cemetery trust should consider the standard of maintenance acceptable in a cemetery that has reached capacity and is closed to more interments. The standard of maintenance between an operating cemetery and a closed cemetery may vary, and this difference should be considered when trusts set their fees and charges. Community expectation will also play a role in the maintenance standards set for closed cemeteries.

## Cemetery trust fees

Under the Cemeteries Act, when setting fees, cemetery trusts must consider the costs of operating and managing a public cemetery, and the need to provide for immediate and ongoing maintenance (for example, roads, paths, gardens, fences, buildings, water, security, park establishment and replacement) of the public cemetery. All cemetery trust fees should include an appropriate perpetual maintenance component, and perpetual maintenance should not be charged as a separate fee.[[28]](#footnote-28)

As a general guideline, the department recommends that 15 to 20 per cent of the total costs associated with service provision should be included in the trust’s fee submission to contribute to costs associated with perpetual maintenance obligations.

## Use of funds set aside for perpetual maintenance

Under s. 39 of the Cemeteries Act, when fixing fees and charges, cemetery trusts must consider the costs of operating and maintaining the cemetery into perpetuity. Trusts may consider allocating a portion of its income into an investment fund to cover the cost of future perpetual maintenance obligations.

These investments can be set up to assist trusts to maintain cemeteries when they are closed or partially closed. Ideally, trusts will be in a position to use the ‘interest’ from these investments to fund the maintenance of the cemetery into perpetuity. Perpetual maintenance funds should not be expended on general maintenance or cemetery operations until the cemetery is closed.

However, under limited circumstances, trusts can expend their perpetual maintenance funds before closing the cemetery or sections of a cemetery. This should only occur when no other method of funding is available.

## Funding proposed developments

A trust must be satisfied that any proposed development project will earn a sufficient return on investment before it uses its perpetual maintenance reserves to fund the project. A ‘sufficient return’ is determined by the extent to which the trust can:

* recover the borrowed perpetual maintenance funds with interest[[29]](#footnote-29)
* meet any future financial obligations created by undertaking the project.

Acceptable uses of perpetual maintenance funds can include:

* creating new places of interment in the cemetery[[30]](#footnote-30),[[31]](#footnote-31)
* constructing public mausolea[[32]](#footnote-32)
* purchasing new land to expand cemetery services within a community.[[33]](#footnote-33)

Where the trust decides to expend its perpetual maintenance funds, it must document its decision and ensure it has undertaken an appropriate evaluation of the proposed project before drawing down on the perpetual maintenance funds.

If your trust is considering using perpetual maintenance funds for a particular project, it should consider discussing the proposal with the department on 1800 034 280. The department will assist the trust determine if the project is viable.

# Topic 21. Other maintenance and construction requirements

## Fences – building/establishing

The requirements for establishing/replacing fences are set out under the Fences Act 1968 and not the Cemeteries Act.

Generally speaking, under the Fences Act, the responsibility for building/establishing fences is an equal and shared responsibility between neighbours.

However, under certain circumstances, cemetery trusts and other managers of Crown land are exempt from the requirements outlined under the Fences Act. This exemption is outlined under s. 31 of the Fences Act and applies in situations where a cemetery trust manages and maintains the ‘entirety’ of the cemetery land, which is the case for most cemetery trusts.

It should be noted, however, that where a cemetery trust has leased or provided a licence in respect of any public cemetery land then the exemption under s. 31 of the Fences Act does not extend to the person to whom the lease/licence has been provided.

## Public construction procurement

In 2018 the Minister for Finance issued Directions for Public Construction Procurement in Victoria (the directions). The directions relate to any construction in excess of $50,000 (current April 2022).

Under the directions Class B cemetery trusts are required to establish processes in line with procurement principles. To assist trusts the department has developed the [*Class B cemetery trust guidelines for public construction procurement*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement>, which are available from the department’s website.

Public construction may relate to the construction of chapels, mausolea, crematoria, roadways, fences, drainage, retaining/niche walls, administration/storage buildings, excavation, grading, engineering design, surveying construction and project management. If a trust is considering seeking funding to assist with the costs of such a project, more information about the department’s grant program is located in [Topic 11. Grants](#_Topic_11._Grants).

To assist Class B cemetery trusts meet the requirements of the directions, the department has also developed [contractor, purchasing/tendering and complaints policy template](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/policy-templates)s <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/policy-templates> available for download on the on the department’s website.

# Topic 22. The right of interment

## What is a right of interment?

A right of interment permits the right holder to determine who can be interred in a place of interment and the type of memorialisation (if any) to be established at the place of interment (subject to any cemetery trust memorialisation policies or specifications).

A right of interment relates to a specific place of interment – for example, a grave, mausoleum crypt or ashes niche. Right of interment holders do not own the land associated with the place of interment as all Victorian public cemeteries are situated on Crown land.

## Who is the right of interment holder?

The right of interment holder is the person identified in cemetery trust records as the right of interment holder for a specific place of interment within a public cemetery.

The right of interment holder is not necessarily the same person as the applicant who completed and signed an application form or the person who paid the relevant fee to purchase the right of interment.

There can be one right of interment holder (sole holder) or multiple right of interment holders (joint holders) for a place of interment.

## Selling a right of interment

When selling a right of interment, the cemetery trust issues a right of interment permit to the holder(s) containing information about the right of interment, the place of interment and the conditions of the permit. A [right of interment permit template](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit) is available on the department’s website <https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit>.

When a right of interment is purchased, the cemetery trust should advise the holder(s) of the following:

* The rights and obligations of right of interment holders (refer to ‘[Rights and obligations of right of interment holders](#_Rights_and_obligations)’).
* If there are any memorialisation policies that apply to the place of interment that specify or restrict the types of memorials that may be established.
* That if a memorial is not maintained in a safe and proper condition by the right of interment holder and the trust is unable to contact the right of interment holder, the trust may seek approval from the department to repair or remove and dispose of the memorial.
* That if the right of interment is unexercised after 25 years, the trust may take steps to cancel the right of interment in certain circumstances (refer to ‘[Cancelling a right of interment](#_Cancellation_of_a)’).

It is recommended that cemetery trusts provide right of interment holders with a copy of the [*Right of interment permit fact sheet*](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment) <https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment>, available on the department’s website.

## Rights and obligations of right of interment holders

Subject to the approval of the cemetery trust, a right of interment gives the holder(s) the right to:

* authorise the interment of human remains in the place of interment
* establish or alter a monument or memorial at the place of interment
* endorse or object to an application to exhume bodily remains from the place of interment
* authorise the removal of body parts or cremated remains with the approval of the cemetery trust in accordance with the Cemeteries Act.

The cemetery trust must make it clear that a key obligation of right of interment holders is to promptly advise the trust of any change to their contact details, or of the transfer of the right to another party, so that the trust can maintain accurate and up-to-date records.

## Length of a right of interment

A right of interment for a place of interment that can accommodate both bodily remains and cremated remains (for example, graves, vaults and mausoleum crypts) must be perpetual (forever).

A right of interment for a place of interment that can accommodate cremated remains only (such as a niche wall or rose bush) can be either perpetual (forever) or limited to 25 years. The length of the right of interment is to be specified at the time the right is granted.

Cemetery trusts that offer rights of interment for interring cremated remains only **must** offer perpetual tenure and may also, at the trust’s discretion, offer limited tenure for a period of 25 years.

### Limited tenure rights of interment

The holder of a limited tenure right of interment may at any time during the 25-year period request that the cemetery trust extends the right for a further 25 years or convert the right to a perpetual right, subject to paying the relevant fee.

At least 12 months before a limited tenure right of interment is due to expire, the cemetery trust must take reasonable steps to notify the right holder (in writing) that:

* the right is due to expire
* the holder may request that the cemetery trust extends the right for a further 25 years (subject to paying the relevant fee)
* the holder may request that the cemetery trust converts the right to a perpetual right (subject to paying the relevant fee).

If the holder of the limited tenure right does not act in response to the notice within the time specified by the cemetery trust, the trust may disinter the cremated remains, dispose of the remains within the cemetery grounds and remove any memorial relating to the remains.

**Note:** The Cemeteries Act was amended in 2015 to ensure identified veterans’ cremated remains are not scattered upon expiry of a limited tenure interment, but rather are preserved in perpetuity. Refer to [Topic 13. Cremation](#_Topic_13._Cremation) for more information about managing the limited tenure cremated remains of veterans.

## Exercising a right of interment

Under s. 78 of the Cemeteries Act, a right of interment is considered exercised if:

* human remains, which include bodily remains and cremated remains, are interred at the place of interment to which the right of interment applies
* the holder of the right of interment creates a memorial at that place of interment (regardless of whether any remains have been interred).

An [*Application for interment authorisation*](https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-of-bodily-remains) <https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-of-bodily-remains> 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 before an interment takes place. Refer to [Topic 12. Interments](#_Topic_12._Interments) for more information.

The trust should always satisfy itself that the right of interment holder(s) agree to inter remains in the place of interment.

A right of interment that is jointly held by more than one person must be exercised jointly by all joint holders unless one or more joint holders cannot be found after diligent enquiries have been made. Diligent enquiries include attempting to contact holders via the contact details on record, searching the White Pages directory and placing an advertisement in a local newspaper or other prominent local publication.

## Managing a right of interment following the death of a right holder

### The interment of a deceased right holder

When a right holder dies a trust will generally receive a request from a funeral director, executor or family representative to inter the deceased in the plot they purchased. At the time of the funeral, it is unlikely that the funeral director or family representative will be able to provide the trust with enough information to allow the trust to update its right of interment records with the name of the new right of interment holder.

#### Sole holder

Where the deceased was the sole right holder, the following people can give the trust instructions on using the place of interment, depending on the circumstances:

* a person nominated to administer the deceased’s estate (such as an executor) because the right of interment forms part of the estate[[34]](#footnote-34)
* a representative nominated by the deceased’s family to manage the funeral arrangements, including a funeral director, family friend or member of the family.

#### Joint holder

Where a right is owned jointly by one or more people (for example, husband and wife) and one of the joint owners dies, the deceased’s interest will pass to the remaining owner(s) by virtue of **the right of survivorship** and the remaining joint holder may direct the trust regarding the interment and exercise of the right.

If a right is owned by multiple holders, the remaining joint holders may give the trust instructions regarding the interment and exercise of the right.[[35]](#footnote-35)

#### Disputes

Under normal circumstances a funeral should proceed as directed by the family or their representative. However, if there is a dispute about the exercise of a right relating to a proposed interment, placement of a memorial, transfer of the right or any other matter relating to the exercise of the right, the trust should recommend the family seek mediation to settle the dispute before taking directions regarding the right.

#### Executor

The cemetery trust should note the executor or administrator of an estate will not necessarily become the new right holder. Cemetery trusts should not update their records to reflect new right holder(s) without clear supporting evidence.

### Identifying the new right holder(s)

Identifying the new right holder(s) is a crucial part of the cemetery trust’s record validation process. If done properly, this step will clearly establish who is authorised to give the trust directions about the right and the place of interment regarding future interments, memorials and exhumations.

Where the right was jointly held, according to the right of survivorship, the deceased right holder’s interest in the right is extinguished and the right remains with the surviving right holder(s).

Where the deceased was the sole right holder, the right will form part of their estate to be inherited by their beneficiaries or by the laws of intestacy, meaning a new sole right holder or new joint right holders may be identified once the deceased’s estate has been settled.

The process of distributing a deceased estate can take several months and be finalised long after an interment has taken place. Generally, the right of interment will form part of the deceased’s estate.

Once the estate has been settled the new right holder(s) is/are likely to be one or a number of beneficiaries. They should be able to provide the trust with documentary evidence showing they are the new right holder(s) (for example, a certified copy of the will or statutory declarations from the nearest surviving relatives of the deceased). If there are multiple beneficiaries, they become joint holders of the right of interment.

The cemetery trust should contact the executor or family representative at a reasonable time after the funeral to confirm the identity of the new right of interment holder(s) and update the cemetery trust records accordingly.

### Evidence for updating the cemetery trust’s records

#### The deceased holder was the sole identified right holder (in the cemetery trust’s records) and leaves a will

The cemetery trust will need a certified copy of the will that identifies the beneficiaries of the deceased’s estate or, alternatively, the beneficiaries nominated to manage the right of interment. Where multiple beneficiaries are identified in the will, the cemetery trust will need to record each beneficiary as a right holder.

#### The deceased holder was the sole identified right holder (in the cemetery trust’s records) and did not have a will

In circumstances where the deceased right holder did not leave a will, prospective beneficiaries will generally apply to court for Letters of Administration. The cemetery trust will require a certified copy of the Letter of Administration granted by the court as evidence confirming the new right holder(s).

Where a new right holder is not identified through a court-issued Letter of Administration the cemetery trust will need a statutory declaration from anyone claiming to be a new right holder. The statutory declaration must:

* address why they believe they have a claim
* confirm that to the best of their knowledge there are no other beneficiaries who can make claim to the right of interment
* note that if any legitimate claimants come forward the cemetery trust reserves the right to update its right of interment records to recognise them.

A cemetery trust is not obliged to update its records if it is not satisfied that the information provided by an applicant is sufficient to have the right of interment record updated. When rejecting an application, the cemetery trust should provide the reasons for its decision in writing and, where possible, be clear about what additional information is required to enable it to update its records.

## Transferring a right of interment

The sole holder of the right of interment may transfer that right to another person, providing that the amount paid for the right of interment does not exceed the current cemetery trust fee payable for the same type of right of interment in that cemetery, less the cemetery trust fee for recording the transfer. It is an offence to receive payment above this amount and penalties apply.

For a transfer to take effect, a person to whom the right of interment is transferred must notify the cemetery trust in writing of the transfer and pay the relevant fee. The cemetery trust should also seek written confirmation from the original right holder(s) that they consent to the transfer.

Where the sole holder of the right of interment is deceased, the right of interment may be transferred to the beneficiary of a will, or if no such arrangements have been made, the right of interment is transferred in accordance with the rules of intestacy. This could mean a transfer to one or to multiple people.

In the case of a transfer to multiple people or intergenerational inheritance, the right to use a place of interment can become complicated and unclear. Accordingly, sole holders of a right of interment wanting to be interred in that place of interment should consider arranging for the right to be transferred to the person they wish to manage the right or name the inheritor of the right of interment in their will.

Where a joint holder of a right of interment is deceased, the right of interment will likely be transferred to the surviving holder(s) of the right of interment in accordance with the right of survivorship.

## Voluntary surrender of a right of interment

Under the Cemeteries Act, a right of interment holder may choose to surrender their right of interment to the cemetery trust that issued the right.

How a cemetery trust manages the voluntary surrender of a right of interment will differ depending on the status of the right of interment (unexercised, exercised with no human remains interred or exercised with human remains interred) and whether there is a sole right of interment holder or multiple joint holders.

### What is the status of the right of interment?

When managing the surrender of a right of interment it is important to determine the status of the right of interment to determine if a refund is payable by the cemetery trust. The table below defines each status:

| Status | Definition |
| --- | --- |
| Unexercised | Human remains have not been interred at any time **and** a memorial has not been established at the place of interment at any time |
| Exercised with no human remains interred | Human remains have not been interred but a memorial has been established at the place of interment and may or may not remain at the place of interment  **or**  Human remains have been interred and subsequently disinterred from the place of interment (with or without a memorial) |
| Exercised with human remains interred | Human remains are interred at the place of interment (with or without a memorial) |

### Is a refund payable?

In addition to determining the status of the right of interment, it is also necessary to identify whether the right is being surrendered by a sole holder, all joint holders or one joint holder to determine if the cemetery trust is required to pay a refund.

The tables below show when a refund is due and what happens to the right of interment once it has been surrendered.

#### Surrender by a sole holder of the right of interment

| Status | Does the cemetery trust pay a refund? | What happens to the right of interment once it has been surrendered? |
| --- | --- | --- |
| Unexercised | Yes | The cemetery trust may resell the right of interment |
| Exercised with no human remains interred | Yes | The cemetery trust may remove the memorial (if any) and resell the right of interment |
| Exercised with human remains interred | No | The cemetery trust becomes the right of interment holder |

#### Surrender by all joint holders of the right of interment

| Status | Does the cemetery trust pay a refund? | What happens to the right of interment once it has been surrendered? |
| --- | --- | --- |
| Unexercised | Yes | The cemetery trust may resell the right of interment |
| Exercised with no human remains interred | Yes | The cemetery trust may remove the memorial (if any) and resell the right of interment |
| Exercised with human remains interred | No | The cemetery trust becomes the right of interment holder |

**Note:** It is recommended that cemetery trusts require joint right of interment holders to nominate a bank account or representative to receive the refund.

#### Surrender by one joint holder of the right of interment

| Status | Does the cemetery trust pay a refund? | What happens to the right of interment once it has been surrendered? |
| --- | --- | --- |
| Unexercised | No | The person has no further entitlements or responsibilities under that right of interment |
| Exercised with no human remains interred | No | The person has no further entitlements or responsibilities under that right of interment |
| Exercised with human remains interred | No | The person has no further entitlements or responsibilities under that right of interment |

### How is the refund calculated?

If a refund is due, it is calculated by determining the current fee for that type of right of interment, less an administrative charge (if gazetted) and any maintenance costs incurred by the cemetery trust. If any restoration costs (for example, the removal of a memorial) are incurred, these costs are also deducted from the refund.

Maintenance costs are calculated using sliding scales developed by the department for rights of interment for the interment of bodily remains and rights of interment for cremated remains. Refer to the applicable scale and example below.

#### Sliding scale for the surrender of a right of interment for bodily and cremated remains (perpetual tenure)

| Year | Maintenance charge |
| --- | --- |
| 1 | 3.00% |
| 2 | 4.75% |
| 3 | 6.50% |
| 4 | 8.25% |
| 5 | 10.00% |
| 6 | 11.75% |
| 7 | 13.50% |
| 8 | 15.25% |
| 9 | 17.00% |
| 10 | 18.75% |
| 11 | 20.50% |
| 12 | 22.25% |
| 13 | 24.00% |
| 14 | 25.75% |
| 15 | 27.50% |
| 16 | 29.25% |
| 17 | 31.00% |
| 18 | 32.75% |
| 19 | 34.50% |
| 20 | 36.25% |
| 21 | 38.00% |
| 22 | 39.75% |
| 23 | 41.50% |
| 24 | 43.25% |
| 25 | 45.00% |

#### Example – Surrender of a right of interment for bodily remains (perpetual)

| Item | Amount |
| --- | --- |
| Current value of right of interment | $10,000 |
| Purchased 10 years previously – maintenance rate | 18.75% |
| Maintenance fee | ($10,000 × 0.1875) = $1,875 |
| Current gazetted administration charge | $75 |
| Refund payable | ($10,000 – $1,875 – $75) = $8,050 |

**Note:** The maximum a cemetery trust can charge for maintenance is 45 per cent (25 years).

#### Sliding scale for the surrender of a right of interment for cremated remains (limited tenure)

|  |  |
| --- | --- |
| Year | Maintenance charge |
| 1 | 4.00% |
| 2 | 8.00% |
| 3 | 12.00% |
| 4 | 16.00% |
| 5 | 20.00% |
| 6 | 24.00% |
| 7 | 28.00% |
| 8 | 32.00% |
| 9 | 36.00% |
| 10 | 40.00% |
| 11 | 44.00% |
| 12 | 48.00% |
| 13 | 52.00% |
| 14 | 56.00% |
| 15 | 60.00% |
| 16 | 64.00% |
| 17 | 68.00% |
| 18 | 72.00% |
| 19 | 76.00% |
| 20 | 80.00% |
| 21 | 84.00% |
| 22 | 88.00% |
| 23 | 92.00% |
| 24 | 96.00% |
| 25 | 100.00% |

#### Example – Surrender of a right of interment for cremated remains (limited tenure)

| Item | Amount |
| --- | --- |
| Current value of right of interment | $10,000 |
| Purchased 10 years previously – maintenance rate | 40% |
| Maintenance fee | ($10,000 × 0.4) = $4,000 |
| Current gazetted administration charge | $75 |
| Refund payable | ($10,000 – $4,000 – $75) = $5,925 |

**Note:** The maximum a cemetery trust can charge for maintenance is 100 per cent (25 years). If the surrender is in the final year the following percentages could be used:

* 97 per cent for the first three months
* 98 per cent for the first six months
* 99 per cent for the first nine months
* 100 per cent anything over the first nine months.

## Variation or forced surrender of a right of interment

In March 2021 the Victorian Parliament passed the *Cemeteries and Crematoria Amendment Act 2021*, which amended the Cemeteries Act to provide the Secretary of the Department of Health with a discretionary power to direct the variation or forced surrender of a right of interment under certain circumstances.

An affected person or someone acting on their behalf may apply to the Secretary seeking the variation or forced surrender of a right of interment held by another person.[[36]](#footnote-36)

Where the Secretary makes a direction to vary or force the surrender of a right of interment, the department will notify the relevant cemetery trust in writing. The cemetery trust has a role in ensuring the right is exercised in accordance with the direction and notifying the department if a right holder does not comply with a direction.

When a cemetery trust is notified of a Secretary’s direction, it will need to update the trust’s records to reflect the details of the direction and manage the exercise of the right of interment in accordance with the direction.

In addition, under certain circumstances of forced surrender, a cemetery trust may be required to become a joint right holder or provide a refund. Further details about specific trust responsibilities and managing a right following a direction by the Secretary is provided below.

### Variation

A direction to vary a right of interment may include placing conditions on the exercise of certain entitlements or alter the way a right of interment has previously been exercised. For example, a direction to vary a right of interment may restrict or alter the wording used on a memorial or prevent a particular person from being interred in a place of interment.

The Cemeteries Act enables the Secretary to vary a right by imposing conditions with respect to:

* who may be interred in the place of interment
* establishing or altering a memorial at the place of interment
* removing cremated human remains or body parts from the place of interment
* transferring the right of interment to another person
* providing or withholding consent for exhuming human remains from the place of interment.

Where the Secretary directs the variation of a right of interment, the cemetery trust will be responsible for:

* updating cemetery trust records to reflect the details of the direction
* ensuring where possible that the right of interment is exercised in accordance with the Secretary’s direction
* notifying the department if a right holder does not comply with a direction issued by the Secretary.

Where a direction varies the exercise of a right of interment and exercising that right has already occurred, the cemetery trust will not be responsible for giving effect to the direction, rather this is the right holder’s responsibility. The cemetery trust will, however, be responsible for reporting to the department any noncompliance with a direction.

If the right holder does not comply with a direction to vary a right of interment, the affected person can make a supplementary application to the Secretary for the right to be forcibly surrendered.

### Forced surrender

Where the Secretary makes a direction to force the surrender of a right of interment, the previous holder[[37]](#footnote-37) of that right has no further entitlements or responsibilities under that right of interment.

The responsible cemetery trust will become either a sole or joint right holder to ensure ongoing management of the right in accordance with the Secretary’s direction; however, the cemetery trust will **not** be subject to the requirements in ss.104 and 106 of the Cemeteries Act to maintain the memorial or place of interment.

There are four scenarios that could apply when a direction for forced surrender is made, depending on whether human remains are interred at the place of interment and whether the right is held by sole or joint right holders. The following tables provide detailed information for each scenario.

#### Human remains are NOT interred – joint holder

| Legislative provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84I | Where one joint holder is forced to surrender their entitlement, the trust will become a joint right holder with the remaining right holders.  If all joint holders are known and forced to surrender their entitlement, the trust will become the sole right holder. | Where one joint holder is forced to surrender their entitlement in the right of interment no refund is payable.  If all joint holders are known and are forced to surrender their entitlement, the trust will become a sole right holder and a refund will be payable based on the current trust fee for the same or similar right of interment, less any gazetted administration, maintenance, or restoration costs. | Where the trust becomes a joint holder:   * Update the trust’s records. * Consult with other joint holders before exercising the right as appropriate – the trust may exercise the right of interment with or without the consent of the other holders. * Ensure the right is exercised in accordance with the Cemeteries Act and consistent with the Secretary’s direction. * The trust may transfer the right of interment to the remaining joint holders; however, the Secretary’s direction will specify a minimum period before this can occur. The reasons for this transfer must be clear and noted in the trust’s records. * The trust is not subject to the requirements in ss.104 and 106 of the Cemeteries Act to maintain the memorial or place of interment.   Where all joint holders are forced to surrender the right and the trust becomes a sole right holder:   * Update the trust’s records. * Pay a refund to the previous holders. * If a memorial has been established at the place of interment the trust may remove and dispose of it. * The trust may grant (re-sell) a new right of interment in accordance with s. 73 of the Cemeteries Act. |

#### Human remains are NOT interred – sole holder

| Legislative provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84I | Trust becomes the sole holder of the right of interment. | Yes – the previous holder is refunded the current trust fee for the same or similar right of interment, less any gazetted administration, maintenance or restoration fees. | * Update the trust’s records. * Pay a refund to the previous holder. * If a memorial has been established at the place of interment the trust may remove and dispose of it. * The trust may grant (re-sell) a new right of interment in accordance with s. 73 of the Cemeteries Act. |

#### Human remains ARE interred – joint holder

|  |  |  |  |
| --- | --- | --- | --- |
| Legislative provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| Section 84H | Trust becomes a joint right holder with the other remaining joint holders. | No refund is payable because the right cannot be re-sold by the trust. | * Update the trust’s records. * Consult with other joint holders before exercising the right as appropriate – the trust may exercise the right of interment with or without the consent of any other holders. * Ensure the right is exercised in accordance with the Cemeteries Act and consistent with the Secretary’s direction. * The trust may transfer the right of interment to the remaining joint holders; however, the Secretary’s direction will specify a minimum period before this can occur. The reasons for this transfer must be clear and noted in the trust’s records. * The trust is not subject to the requirements in ss.104 and 106 of the Cemeteries Act to maintain the memorial or place of interment. |

#### Human remains ARE interred – sole holder

| Legislative provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84H | Trust becomes the sole holder of the right of interment. | No refund is payable because the right cannot be re-sold by the trust. | * Update the trust’s records. * Upon request from a relative or associate of the deceased person interred in the place of interment, exercise the right in accordance with the Cemeteries Act and consistent with the Secretary’s direction. * The trust may transfer the right of interment to a relative or associate of the deceased; however, the Secretary’s direction will specify a minimum period before this can occur. The reasons for this transfer must be clear and noted in the trust’s records. * The trust is not subject to the requirements in ss.104 and 106 of the Cemeteries Act to maintain the memorial or place of interment. |

## Cancelling a right of interment

Section 91 of the Cemeteries Act provides a mechanism for the trust to cancel certain rights of interment under certain circumstances if it has been in existence for more than 25 years, has never been exercised, and the person who holds the unexercised 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 have published 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.

Upon cancelling a right of interment, a cemetery trust may then re-sell that 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 resale 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.

**Note:** Not all types of rights of interment can be cancelled. If a trust wishes to cancel an unexercised right of interment, refer to ‘[Information on cancelling unexercised rights of interment](#_Information_on_cancelling)**’ below** for specifics and/or contact the department for advice on those provisions that are specific to the circumstances.

### How to determine whether a right can be cancelled

To assist trusts to identify potential sites for cancellation and subsequent re-sale, the department has prepared advice in the section ‘[Information on cancelling unexercised rights of interment](#_Information_on_cancelling)**’** below that provides information about:

* what types of rights can be cancelled under s. 91 of the Cemeteries Act
* refunds payable to the holder of a right where the right has been cancelled by a cemetery trust (s. 92 of the Cemeteries Act).

Trusts should follow the four steps outlined below to determine the current status of, and potential for, cancelling 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.
2. Determine the date that the right was granted.
3. Determine whether the right was granted on any terms and conditions, and whether these terms and conditions are consistent with the Cemeteries Act.
4. Using the type of right and date granted, refer to ‘[Information on cancelling unexercised rights of interment](#_Information_on_cancelling)**’** below for information about the cancellation and refund applicable to that type of right.

### What to do if the former holder of the cancelled right contacts the trust

Under s. 92 of the Cemeteries Act, if a person establishes to the cemetery trust that they are the previous holder of the cancelled right of interment, the cemetery trust must either:

* pay that person a refund based on the current cemetery trust fee payable for the same type of right of interment, less the relevant cemetery trust fee for administration, or
* grant that person a right of interment in respect of another place of interment at the cemetery to be determined by the cemetery trust on the payment of the relevant cemetery trust fee fixed for the purposes of this paragraph. If charged, this would be the gazetted administration fee for recording the location of the new right of interment.

It is at the discretion of the previous holder which option they take.

This provision is conditional on when they received the right of interment. Please refer to ‘[Information on cancelling unexercised rights of interment](#_Information_on_cancelling)**’** below to determine if this avenue is applicable to the previous holder of the right of interment.

### Information on cancelling unexercised rights of interment

Under s. 91 of the Cemeteries Act, subject to a range of conditions, a cemetery trust may cancel certain rights of interment and/or burial (referred to here as a ‘right’) where it has not been used within 25 years of their original grant. Please refer to the table below to assist with identifying potential sites for cancellation and subsequent resale.

#### Exclusive right of burial or interment

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Date granted | Is the right current under the Cemeteries Act? | If the right is expired, is a refund payable? | Can the right be cancelled under the Act? | If the right is cancelled, is a refund payable? | Additional information |
| Prior to 17 December 1974 | Yes(refer to note 1).  Provided that the right was not previously cancelled by the trust under s. 25(2) of the Cemeteries Act 1958. | Not applicable(refer to note 2). | Yes(refer to note 3). | Yes(refer to note 4). | Refer to note 5 and the end of these tables. |
| 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 more 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 this type of right was to be exercised within 25 years, otherwise they expired (subject to renewal). | 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. | 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. | Exclusive rights of burial or interment acquired between 17 December 1974 and 30 June 2005 were, in line with s. 25(5) of the 1958 Cemeteries 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 repurchase a further right to the same location, otherwise the original right ended. |
| On or after 1 July 1980 and before 1 July 2005  Note this includes rights repurchased during this period under s. 25(5) of the 1958 Act. | Yes (refer to note 1). | Not applicable (refer to note 2). | Yes(refer to note 3). | Yes(refer to note 4). | The 1958 Act specified that this type of right must be exercised within 25 years or they expired (subject to renewal).  However, the transitional provisions of the 2003 Act deem this type of right to be a right under s. 75(a).  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.  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.  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. |

#### Agreement for the interment of human remains not for a limited period

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Date granted | Is the right current under the Cemeteries Act? | If the right is expired is a refund payable? | Can the right be cancelled under the Cemeteries Act? | If the right is cancelled is a refund payable? | Additional information |
| Prior to 1 July 2005 | Yes(refer to note 1). | Not applicable (refer to note 2). | Yes(refer to note 3). | Yes(refer to note 4). | Refer to note 5. |

#### Agreement for the interment of human remains for a limited period

| Date granted | Is the right current under the Cemeteries Act? | If the right is expired is a refund payable? | Can the right be cancelled under the Cemeteries Act? | If the right is cancelled is a refund payable? | Additional information |
| --- | --- | --- | --- | --- | --- |
| Prior to 1 July 2005 | This depends on the original period for which the right was granted.  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 it was granted for. | No.  If the right expired before 1 July 2005 no refund is payable because the right was for a limited period. | No.  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. | Not applicable. | Under the Transitional Provisions of the 2003 Act, the holder continues to hold their right for the remainder of the original period.  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 s. 85 of this Act.  The holder of the right is entitled to either convert or extend that right pursuant to s. 87 of the 2003 Act. |

#### Notes:

1. The transitional provisions of the Cemeteries Act provide that such rights are deemed to be current rights of interment under s. 75(a) of the 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 s. 75(a) of the Cemeteries Act is perpetual and therefore will not expire.
3. If a right of interment under s. 75(a) of the Cemeteries Act has not been exercised within 25 years of its grant, then the trust may cancel the right in line with s. 91 of the Act. Section 91 of the Act requires a cemetery trust to undertake diligent enquiries to locate the holder of a right and requires the trust to follow a particular notification process before cancelling a right. Trusts should note that if the holder of a right can 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 s. 92 of the Cemeteries Act. Note that a refund under s. 92 of the Act 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 regarding that right under the new Cemeteries 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 such terms and conditions still apply.

## Reusing an unused place of interment in a side-by-side double grave

Cemetery trusts may issue a single right of interment for a double grave that has two separate places of interment side-by-side. A right of interment is exercised when human remains are interred and/or a memorial is established at the place of interment. This means that if one side of a side-by-side double grave has no remains interred and no memorial established, the right of interment for the unused side of the grave is still considered to be exercised.

As explained above in ‘[Cancelling a right of interment](#_Cancelling_a_right)’, the Cemeteries Act provides a mechanism for cemetery trusts to cancel certain rights of interment in certain circumstances and then re-sell that right at the current market value applicable to that right or an equivalent right.

In the case of a side-by-side double grave with one side unused, the single right of interment for the double grave cannot be cancelled under s. 91 of the Act because it has been exercised. However, the trust may take steps to alter the existing right of interment so it no longer relates to the double grave, only the used grave on one side. The trust can then issue a new right of interment for the unused grave.

This information applies to double graves that are side-by-side only. Trusts cannot seek to reuse an unused place of interment in a grave that is intended for multiple interments at different depths (for example, a grave that is dug to double depth to accommodate a second interment above the first interment).

If a trust has in the past allowed the construction of a double monument on a double grave it will be unable to use this process to reclaim the unused place of interment.

Before a trust can update its records, it will need to place an advertisement in a local news publication requesting members of the public notify the trust if they believe they have a claim to the unused place of interment within the cemetery. The trust should ensure the advertisement provides as much information about the original right of interment as practicable and specifies:

* the trust is seeking to update its records in relation to unused places of interment in double graves
* the family name of the holder of the right of interment for the double grave
* the date the right of interment was purchased and the date it was exercised
* the time period for responding to the advertisement (it is recommended that trusts allow at least six weeks from the publication date to give members of the community enough time to respond)
* the trust’s contact details.

The trust may need to place multiple advertisements during this time to ensure it can obtain as much information as possible to update its records.

### Where a claim is received in relation to an unused place of interment

The trust should evaluate any claims made. Where a person can demonstrate to the trust’s satisfaction that they have a valid claim to an unused place of interment, the trust should issue a new right of interment to the claimant.[[38]](#footnote-38)

Where practicable, a new right of interment should be reissued on the same terms and conditions and issue date of the original.

Once a new right of interment has been issued the trust should ensure its records are updated. The holder of this ‘new’ right of interment has the same rights and obligations as any other right of interment holder over that place of interment.

There is a common misconception that the purchaser of a right of interment buys the land associated with a cemetery plot, grave, crypt or cremation niche when a right of interment is purchased. This assumption is incorrect because all public cemeteries in Victoria are situated on Crown land. What is purchased is the right to determine who can be interred in that grave (or other type of place of interment) and the type of memorialisation (if any) to be established at the place of interment (subject to any cemetery trust memorialisation policies or specifications).

A right of interment rests only with the holder(s) of the right of interment. Possessing a right of interment permit does not of itself give anyone the right to make decisions in relation to the right of interment.

### Where no claim is made in relation to the unused right of interment

In this case, the trust can:

* amend its records and issue a separate right of interment for the unused place of interment to the original owner of the right
* determine if it is going to cancel the right in accordance with s. 91 of the Cemeteries Act.

Once the trust’s records have been updated and if the trust determines that it will cancel the reissued right of interment, it can follow the normal process for cancelling a right set out above in ‘[Cancelling a right of interment](#_Cancellation_of_a)’.

## Updating right of interment records

### Establishing the holder of the right of interment if trust records are disputed

Occasionally a member of the public will approach a cemetery trust claiming that they are the ‘actual’ holder of the right of interment rather than the person named in the trust’s records. This can occur because:

* an error has occurred when applying for the right
* the right should be a joint right
* there is dispute over who paid for the right
* the executor of the estate has not nominated a holder.

When this situation occurs and the matter cannot be resolved between the current named holder (in the trust’s records) and the person claiming to be the holder of the right of Interment, the following process is suggested:

* The trust advises the family to seek support to resolve the dispute through the free Dispute Settlement Centre of Victoria (DSCV). Contact details for services in your region can be located on the [DSCV website](https://www.disputes.vic.gov.au) <https://www.disputes.vic.gov.au>.
* The person seeking to make a claim to the right of interment must provide to the trust (in writing) reasons and supporting documentation as to why they believe they are the holder of the right of interment. The trust cannot change its records unless it is presented with enough evidence to support the change.
* It is not advisable for the trust to provide any party with suggestions of evidence that would satisfy the trust to amend its records. Any evidence should be considered on a case-by-case basis depending on the circumstances. However, the type of documentation the trust may take into consideration when assessing a request to change its records include:
* evidence identifying who actually paid for the right of interment (generally the person who pays for a product or service is the owner)
* where the right has been paid for by the estate, written advice from the executor of the estate, identifying the holder of the right of interment.
* After this information has been provided, the trust should write to the named holder of the right of interment (as it appears in the trust’s records). This is to advise them of the situation, allow them a ‘right of reply’, and provide an opportunity for them to appeal the decision and present their own information to the trust.
* When a response has been received from the currently named holder of the right of interment, the trust will then have to consider all the information provided and decide who the trust, based on careful consideration of the information provided, determines is the actual holder of the right of interment. If the trust is in doubt, it should seek its own legal advice.
* Whatever the trust decides, it should ensure both parties are provided with written notification of the decision and keep a record of all correspondence.
* The trust should always advise the Victorian Managed Insurance Authority where this type of dispute occurs.

**Note: The trust should not take instructions from any person about the place of interment until the matter has been resolved.**

### Updating right of interment records when contact details are out of date or incomplete

It is the responsibility of the right holder to advise the trust when their contact details have changed; however, it is not uncommon for cemetery records to contain out-of-date or incomplete information about right holders. The following steps may help trusts contact a right of interment holder where records are out of date or incomplete.

1. Attempt to contact the holder in writing by sending a letter to the address documented in the trust’s records. Allow 21 days for the holder to respond.
2. If a response is not received, attempt to contact the holder via any other contact methods documented in the trust’s records (for example, telephone or email). If a second contact method is attempted, allow an additional seven days for the holder to respond.
3. If a response is not received, search the [White Pages](http://www.whitepages.com.au) <www.whitepages.com.au> for the holder’s current contact details. If this search successfully identifies contact details, return to the first step and attempt to contact the holder in writing.
4. If all efforts to contact the holder fail, place an advertisement in a local newspaper and/or other prominent local publication seeking expressions of interest from anyone who believes they may be the current holder. The advertisement should contain the following information:
   * + Name of the cemetery
     + Location of the place of interment within the cemetery
     + Names and dates of death of the deceased interred within the place of interment
     + The trust’s contact details
     + End date (for example, submissions close three weeks from the date of publication)
5. If submissions are received, the trust should advise interested parties that they are responsible for making a case to the trust demonstrating why they believe they are the current holder. This may involve providing documentary evidence including wills, instructions left by the deceased and/or statutory declarations. If the trust is satisfied that an interested party has provided enough evidence to show they are the holder, the trust can update its records accordingly (this may involve a fee). This process may result in identifying multiple holders. If no submissions are received, the trust can document in its records that the holder cannot be found.

# Topic 23. Cemetery records

Class B cemetery trusts manage a range of important records including:

* right of interment and interment registers
* cemetery plans
* applications for rights of interment
* applications for interment authorisations
* applications for approval to inter cremated human remains
* applications to establish or alter memorials or places of interment
* trust records such as meeting minutes, correspondence, financial statements, policies and procedures.

## Prescribed information

Under s. 59 of the Cemeteries Act, cemetery trusts are required to keep records of interments, places of interment, cremations and rights of interment for the cemeteries for which they are responsible. Part 2 of the Cemeteries Regulations details the specific prescribed information that must be recorded.

Cemetery records must be secured to maintain the confidentiality, integrity and availability of the records for future generations. Access to cemetery records must only be granted to those deemed eligible and suitable by the trust.

## Interment register

The department has developed an interment register that captures the prescribed information about interments and rights of interment to assist trusts in meeting their record-keeping obligations. The register is available in a bound book (hard copy) or in electronic form.[[39]](#footnote-39)

Trusts should store interment registers and copies securely and, if necessary, scan and save them electronically. Interment registers are permanent public records. If permanent records are no longer actively required by the trust to help deliver its functions, they must be transferred to the Public Record Office Victoria. Permanent records must not be destroyed.

## Cemetery plans

It is imperative that trusts maintain cemeteries plans 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 trust’s interment register.

It is recommended that the plans include the location of all principal fixtures within the cemetery (buildings, roads, garden beds, niche walls, taps and power poles) and plot the course of any underground services such as water pipes.

## Other records

Trusts need to establish and maintain other records to assist with their management and administration functions beyond what is required under the Cemeteries Act. Examples include:

* pre-payments to the trust for rights of interment and interments
* receipts
* names of funeral directors
* details of memorials established and altered
* justifications for not approving applications.

Trusts should store copies of completed *Application for interment authorisation* forms indefinitely and, if necessary, scan and save them electronically. It may also be helpful to have on file the signatures of all holders of rights of interment.

## Digitising records

Although most interment registers and plans are in hard copy, it is becoming increasingly common for these records to be maintained electronically on a computer (digitised). If a trust is considering digitising its registers and plans, there is little point in starting from scratch to develop software. Consider inspecting what is already available and used by other trusts.

Before shifting to a digital or computerised record-keeping system, trusts should perform an information security risk assessment, including consideration of any third parties (including software providers or administrators).

## Copyright of trust records

Many trusts, either themselves or via a third party, have been converting hard copy records into an electronic version either by scanning the hard copy documents or by transcribing them.

Trusts hold copyright of all original trust records because they are the owner of the records. Problems may arise in relation to copyright when a new version of the original trust records is created and the person who created the new version is claiming ownership over the work.

Before a trust engages a person or organisation to create a new version of or to edit existing records (whether that person holds a position on the trust or not), it is suggested that the trust:

* discusses the nature of the arrangement with the person who is going to undertake the work, including the purpose, scope and costs
* performs an information security risk assessment considering the Victorian Protective Data Security Standard requirements for Class B trusts
* formalises the arrangement in a legally binding document that includes
  + that the trust will retain all intellectual property rights (including copyright) of all trust records and materials
  + that the trust will own the copyright over all new records created or existing records amended by the person
  + that the person gives consent in writing in relation to all rights that are necessary for the trust to have copyright over all versions of the trust’s records
  + whether the person will be paid for the work and, if so, the amount that the person will be paid.

The trust may wish to seek legal advice when creating an agreement or if it is unclear who has copyright over documents.

## Security and back-up of registers and plans

Trusts should ensure they have one or more back-up copies of interment registers, plans and other principal records stored in a different location from the working set, in case of fire, flood or other damage or destruction of records. In addition, electronic records should be backed up electronically (for example, on an external hard drive or cloud servers) in case of computer malfunction or theft.

## Privacy considerations

Under the provisions of the Privacy and Data Protection Act 2014, trusts are required to protect the privacy of people from whom they collect personal information including:

* the holder of the right of interment
* the person who signs the *Application for interment* *authorisation* form.

Personal information is information or an opinion that is recorded in any form about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Personal information managed by trusts includes:

* names and contact details of the holder of the right of interment
* names and contact details of applicants seeking trust approval for a range of actions
* funeral arrangements
* payment details.

When managing personal information, trusts must act in accordance with the Information Privacy Principles (IPPs) established under the Privacy and Data Protection Act. The IPPs set out the minimum standard for how Victorian public sector organisations should manage personal information.

There are 10 IPPs: collection; use and disclosure; data quality; data security; openness; access and correction; unique identifiers; anonymity; transborder data flows; sensitive information. The full text of the IPPs is available on the [Office of the Victorian Information Commissioner (OVIC) website](https://ovic.vic.gov.au/privacy/information-privacy-principles-full-text/) <https://ovic.vic.gov.au/privacy/information-privacy-principles-full-text/>. The first two IPPs, collection and use and disclosure, are particularly relevant to trusts.

Care should be taken when considering the release of personal information to ensure the information is only used and disclosed where it is for the same purpose as the purpose for which the information was collected, or for a secondary purpose in accordance with the IPPs.

### Deceased persons

The Privacy and Data Protection Act protects the privacy of living persons and therefore does not apply to deceased persons.

It is important to be aware that information about a deceased person may include personal information about the living. For example, a completed *Application for interment* *authorisation* form contains information about the deceased and personal information about the applicant, the right of interment holder and the funeral director (or other person arranging the interment).

## Making records available to the public

Under s. 60 of the Cemeteries Act, trusts must make the information about interments, places of interment, cremations and rights of interment contained in the records available to the public for historical or research purposes. A trust may charge a reasonable fee for providing the information sought or for making copies or extracts of information from the records, provided the department has approved and gazetted this fee.

Trusts must ensure the release of any information has been carefully considered and complies with the IPPs.

## Archiving records

Trusts are public offices within the definition of the Public Records Act 1973 and as such create public records. Trust records are of value to the sector, the community and the Victorian Government.

As a public office, trusts must securely archive their permanent records with the Public Record Office Victoria (PROV) once these records have finished their active use.

PROV has established the *Retention and disposal authority for cemetery and crematoria records* (RDA) available on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-cemetery-and-crematoria) <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-cemetery-and-crematoria>.

The RDA:

* identifies records that are worth preserving permanently as part of Victoria’s archival heritage
* prevents the premature destruction of records that need to be retained for a specified period to satisfy legal, financial and other requirements of public administration
* authorises the destruction of those records not required permanently.

If permanent records (as identified in the RDA) are no longer actively required by the trust to help deliver trust functions, they must be transferred to PROV. Permanent records must not be destroyed.

Examples of permanent trust records include:

* meeting minutes, agendas and papers
* policies and procedures
* interment registers
* cemetery plans
* memorialisation records.

More information about permanent trust records is available in the *Class B cemetery trusts – records required as state archives fact sheet* on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-fs1-class-b-cemetery-trusts-records-required) <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-fs1-class-b-cemetery-trusts-records-required>.

Trusts are required to keep other records, such as records of long-term administrative value or significance, for between seven and 50 years. Requirements for these records are detailed in the RDA.

Some trust records (for example, bank statements) are not covered in the RDA. Trusts should refer to the *Retention and disposal authority for records of common administrative functions* on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/document-library/pros-0701-common-administrative-functions) <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-0701-common-administrative-functions> for guidance about disposal actions for administrative records not explicitly covered in the RDA.

All enquiries about archiving public records should be directed to PROV via the online contact form on the [PROV website](https://prov.vic.gov.au/contact-us) <https://prov.vic.gov.au/contact-us>.

## Lost plans or records

### Unable to locate historical unmarked graves due to loss of cemetery plans and records

If a trust wishes to locate unmarked graves due to the loss of cemetery plans and records, it should contact a Class A cemetery trust. If the Class A trust is unable to assist, please contact the department.

### Loss of current plans or records

The loss of current plans or records may be considered an information security incident, as the records would no longer be available. Depending on the circumstances, there may also be confidentiality concerns relating to the lost information. The nature and extent of the incident will inform whether notification is required to relevant authorities (the department, OVIC and Victoria Police).

## Information security

OVIC has developed the *Victorian protective data security standards* as required under the Privacy and Data Protection Act. Part 4 of the Privacy and Data Protection Act sets out the standards and associated requirements that trusts must adhere to and sets out mandatory measures designed to protect trust information.

### What is information security?

Information security is a risk management process that protects public sector information from unauthorised access, disclosure and use. This ensures the right people have access to the right information at the right time.

The right people means that the information is only accessed or viewed or spoken about by and with authorised people. The right information means that the information is accurate, complete and up to date. The right time means that people have timely and reliable access to information.

### Information security across the record life cycle

Information security focuses on maintaining the confidentiality (right people), integrity (right information) and availability (right time) of the information throughout its life cycle.

This includes capturing, collecting, recording or registering information in a secure way, securely using and storing it, and securely disposing of the information when it is no longer needed.

### Information security areas

Trusts need to be aware of the following five information security areas.

**Information security** considers the protection of trust information across its life cycle, from the point it is created, until it is no longer needed. Consistent identification and security risk assessment of trust information is essential in maintaining its confidentiality, integrity and availability.

**Personnel security** aims to mitigate an organisation’s personnel security risks and provides a consistent approach for managing access to trust information and systems. This includes assessing each individual’s continued eligibility and suitability.

**Information and communications technology (ICT security)** seeks to maintain a secure environment by protecting trust information and systems using ICT security controls. This is sometimes referred to as cybersecurity.

**Physical security** includes establishing and maintaining a secure physical environment to protect trust information and systems, including secure facilities, equipment and services.

**Governance** includes sponsorship and endorsement of the trust’s information security program, and well-defined processes and procedures to manage information security risks.

### Information security risk assessment

Under Part 4 of the Privacy and Data Protection Act, trusts are required to undertake a comprehensive information security risk assessment to identify information security risks and help select security measures to protect the information and systems they manage. Trusts need to keep a register of the risks identified and mitigation strategies and update it regularly.

This risk-based approach to information security helps trusts consider the likelihood and consequence of a compromise of the confidentiality, integrity or availability of the information or systems in their care, as demonstrated in the following example:

|  |  |
| --- | --- |
| Risk | No copies or back-ups of documents that are destroyed by fire |
| Likelihood | Possible |
| Consequence | Lack of confidence by the local community in the trust |
| Mitigation | The trust will create copies or back-ups of the documents in order to address a lack of availability of those documents if the risk ever eventuated |

### Protective data security plan

In addition to conducting an information security risk assessment, Part 4 of the Privacy and Data Protection Act requires trusts to develop a protective data security plan (PDSP). A PDSP outlines the minimum data security measures the trust will implement to ensure its information is managed in a risk-informed way.

OVIC has created a custom PDSP template for all Class B trusts. OVIC does not expect that every activity required in the PDSP template will be fully implemented by the trust at this stage. However, to fulfil the reporting obligations under Part 4 of the Privacy and Data Protection Act, trusts must complete the PDSP template and submit a copy to OVIC.

Reporting requirements and timeframes

Trusts operate under a reporting cycle that requires the trust to complete the necessary deliverables in accordance with the Privacy and Data Protection Act and the standards. The following table sets out the reporting cycle with associated timeframes and deliverables.

| Reporting requirement | Description/deliverables | Timeframe |
| --- | --- | --- |
| Security risk profile assessment | Undertake (and/or) update an information security risk assessment for the trust. | Annual  (at least) |
| Attestation | Provide OVIC with an attestation by the chairperson. | Annual |
| Protective data security plan | Submit a PDSP (including an attestation) by the chairperson every two years.  A copy of the PDSP must be sent to OVIC by 31 August of the reporting year.  **Note:** The PDSP reporting requirement is separate from the abstract of accounts reporting submitted to the department by 1 September every year. | Biennial  (every two years) |
| Significant change | If a trust undergoes significant change, an out-of-cycle PDSP submission may be required. A significant change could include:   * significant alterations to the operating environment of the trust (for example, trust administration is transferred to another trust through a merger) * new or updated information security risks that are considered significant enough for the trust.   If this is the case, an updated PDSP must be submitted to OVIC within an agreed timeframe. | In consultation with OVIC |
| Incident notification | In the case of an information security incident involving sensitive information (for example, information loss or unauthorised disclosure), the incident should be reported to the department and OVIC at the earliest opportunity by:   * [emailing the department’s Privacy team](mailto:privacy@health.vic.gov.au) <privacy@health.vic.gov.au> * [emailing the OVIC Information Security Team](mailto:security@ovic.vic.gov.au) <security@ovic.vic.gov.au>. | As required |

### Supporting resources

More information about trust reporting obligations, tools and templates is available on the [OVIC website](https://ovic.vic.gov.au/agency-reporting-obligations-hub/class-b-cemetery-trust-stakeholders/) <https://ovic.vic.gov.au/agency-reporting-obligations-hub/class-b-cemetery-trust-stakeholders>.

# Topic 24. Complaints management

Cemetery trusts are given wide-ranging power over the administration of cemeteries under their control. The policies and decision making of a trust cannot be arbitrary and must be based on reasonable governance and administration principles. As a responsible public body, it is recommended that cemetery trusts have an approved policy and process for managing complaints.

Cemetery trusts need to consider all complaints made, including complaints between trust members (refer to [Topic 2. Cemetery trust members](#_Topic_2._Cemetery)), the public and external stakeholders. Trusts should ensure that the way it deals with complaints is fair, respectful and prompt. Trusts also need to be clear about what they can and cannot do.

When managing complaints trusts should avoid legalistic, defensive responses that may undermine confidence in the trust or inflame the matter.

## Good practice guide for handling complaints

The department has prepared the fact sheet [*Managing complaints – a guide for cemetery trusts*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/complaints)<https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/complaints> to help cemeteries manage complaints from initial contact through to resolution.

Trusts can also read the [Victorian Ombudsman’s *Guide to dealing with challenging behaviour*](https://www.ombudsman.vic.gov.au/learn-from-us/practice-guides/dealing-with-challenging-behaviours/) <https://www.ombudsman.vic.gov.au/Publications/Guides/guide-to-dealing-with-challenging-behaviour> when handling complaints, available on the Victorian Ombudsman’s website. The Ombudsman’s guide provides advice about how to deal with challenging behaviour that is sometimes associated with complaints. It includes tips for dealing with common situations and detailed recommendations for a graduated response.

## Members of the public and other stakeholders

Where complaints relate to trust policies or decisions, these must be reviewed. When reviewing policies or decisions, cemetery trusts must consider procedural fairness. If the trust needs advice on these matters, it should contact the department. No trust may disregard a complaint and consider it to be trivial or unnecessary to review.[[40]](#footnote-40)

Trusts must make every attempt to resolve complaints and concerns. Regardless of the outcome of these discussions, trusts should provide the complainant with a written response to their concerns.

## Banning people from the cemetery

From time to time, a cemetery trust may have legal disputes with people who use the cemetery. Often these disputes relate to the activities of funeral directors, monumental masons and contract gravediggers. Occasionally, disputes arise from members of the public. When such disputes occur, a trust cannot simply ban a person from working in the cemetery – it must follow due process.

If a cemetery trust believes it has grounds to ban a person from the cemetery, it should seek independent legal advice before taking any action. A ban should be a last resort and only used where there is a risk to health, safety, equity or resources of the parties. Any restriction of a person’s access to the cemetery must be in writing and cite the reason, the duration and the power the trust is relying on to apply the ban. Any ban must allow a right of reply from the affected party for the trust to review its decision. The trust should also review any restriction of access at least once every 12 months. The trust should advise the department before introducing any ban.

## Fraud, serious mismanagement and protected disclosure

All cemetery trusts are required to have a documented fraud and protected disclosure policy. The department has prepared a template, *[Fraud, corruption control and protected disclosure framework](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/fraud-and-protected-disclosures)* <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/fraud-and-protected-disclosures>, available on the department’s website.

### Referral to the department

There are limited circumstances in which the department can review the conduct of cemetery trusts.

The department can investigate significant matters relating to cemetery trust governance and financial affairs. These may include:

* fraud such as misappropriation of trust funds
* poor governance and/or management practices
* poor record-keeping practices
* conflicts of interest.

In the case of suspected fraud, a person should report their concerns immediately to the chairperson of the relevant cemetery trust. The chairperson must act on the concern and decide whether to investigate it further internally or report the suspected fraud to the police and the department.

### Protected disclosure (formerly referred to as ‘whistleblowing’)

Cemetery trusts are unable to receive protected disclosures. These should be referred to the Independent Broad-based Anti-corruption Commission.

For more information refer to the[[*Fraud, corruption control and protected disclosure framework*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/fraud-and-protected-disclosures) template](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/fraud-and-protected-disclosures) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/fraud-and-protected-disclosures>.

## Other complaints

If a cemetery trust has made a decision that a person considers is not consistent with the trust’s powers under the Cemeteries Act, the department can, if it agrees with that view, ask the cemetery trust to review the decision.

If a trust is not prepared to change its decision after the department has asked for a review, a person can consider further options to address the disputed decision. Options include:

* dispute settlement (discussed below – Dispute Settlement Centre of Victoria)
* complaining to Consumer Affairs Victoria, or
* formal appeal procedures to a tribunal or court (discussed below – Victorian Civil and Administrative Tribunal).

### Formal appeal procedures

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.

### Victorian Civil and Administrative Tribunal

In addition, under s. 179 of the Cemeteries Act, there is a specific appeals process for a holder of a right of interment to appeal to the Victorian Civil and Administrative Tribunal to review 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.

### Dispute Settlement Centre of Victoria

Before a dispute becomes a legal matter or escalates to a formal appeal process, the trust should try to resolve the issue with the complainant through mediation or another form of conflict resolution.

The Dispute Settlement Centre of Victoria provides a fresh and fair approach to dispute management and may be able to assist in mediating an amicable outcome. If a dispute is complex, they may not be able to assist. The centre may also be able to arrange for meetings to take place in rural areas.

Contact the Dispute Settlement Centre of Victoria:

Level 4, 456 Lonsdale Street  
Melbourne VIC 3000

Telephone: 1300 372 888  
[Email](mailto:dscv@justice.vic.gov.au) <dscv@justice.vic.gov.au>  
[Website](http://www.disputes.vic.gov.au) <www.disputes.vic.gov.au>

# Topic 25. Risk management

## Regular review to determine potential risks

Cemetery trusts have an obligation to regularly review all aspects of their cemeteries and operations to:

* identify potential risks
* take action to remove or diminish potential threats, harm and loss.

Matters for such a review include:

* asset management
* financial management and fraud
* human resource management
* the needs of different communities
* record and information management
* relationship management of funeral directors and stonemasons
* customers of, and visitors to, the cemetery
* cemetery trust employees.

## Public and worker safety

Trusts have a duty of care to all members of the public who enter onto cemetery property. Potential hazards include open graves, paths or roads in disrepair, unstable monuments, overgrown vegetation and machinery operations.

The trust’s responsibility for the health and safety of workers in the cemetery extends beyond its own staff to all those 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 subcontractors
* monumental masons, their staff, contractors and subcontractors.

In particular, the trust should ensure:

* all plant and equipment brought into the cemetery is in a safe and sound condition
* those who operate plant and equipment in the cemetery are trained and hold the necessary qualification for its safe operation
* all work in the cemetery, no matter by whom, is performed in a manner that is healthy and safe for the workers involved and members of the public who may be affected by it (refer to[Topic 28. Occupational health and safety](#_Topic_28._Occupational)).

The Wrongs Act 1958 and the OHS Act provide some guidance on how to make balanced and weighted decisions affecting all stakeholders including clients, family members, staff and volunteers.

## Asset security

Trusts have an obligation to safeguard their assets from any damage or loss. Assets of the trust include:

* buildings, fixtures and fittings
* plant and equipment
* cash and investments.

Safeguard measures for protecting assets include installing fences, lockable shed/storage areas, security systems (for example, locks and/or alarms), neighbourhood watch, staff training, maintaining updated asset registers, conducting regular stock takes, and arranging audit checks and insurance programs.

## Interment registers and plans

Trusts should ensure they have one or more back-up sets of their interment registers and plans and other principal records, stored at locations different to the working set, in case of fire. In addition, electronic records should be backed up, in case of computer malfunction or burglary (refer also to ‘Cemetery plans’ in [Topic 23. Cemetery records](#_Topic_23._Cemetery)).

## Action to remove or diminish those threats

When a trust (including its members and officers) becomes aware of a potential threat within its cemetery and operations, it is obliged to take prompt action to remove or diminish that threat.

## 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.

WorkCover insurance is compulsory for a cemetery trust that is an employer, as defined by the relevant legislation (refer to [Topic 28. Occupational health and safety](#_Topic_28._Occupational)).

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 threat but neglected to take   
all reasonable steps to prevent or diminish that threat.

## The Victorian Managed Insurance Authority (VMIA)

The Department of Health has arranged a suite of insurance policies with the VMIA for all public cemetery trusts in Victoria.

Victorian Managed Insurance Authority (VMIA)  
Level 10 South, 161 Collins Street  
Melbourne VIC 3000

PO Box 18409  
Collins Street East VIC 8003

Telephone: (03) 9270 6900  
Fax: (03) 9270 6949

[Email](mailto:contact@vmia.vic.gov.au) <contact@vmia.vic.gov.au>  
[Website](http://www.vmia.vic.gov.au) <http://www.vmia.vic.gov.au>

The policies include cover for:

* industrial special risks
* public and products liability
* directors’ and officers’ liability
* professional indemnity
* cyber indemnity
* personal accident (which covers trust members and volunteer workers).

The VMIA offers optional cover to all cemetery trusts for motor vehicle insurance, business travel insurance and construction all risk insurance. The Department of Health does not fund the premiums for these optional products.[[41]](#footnote-41)

The VMIA Healthcare and Community Services teams provide day-to-day advice on general insurance enquiries, risk management and claims services. All enquiries can be directed to the VMIA’s cemetery trusts’ client relationship manager, account manager, insurance advisor or risk management advisor on (03) 9270 6900.

For more information go to the [cemetery trusts policies page](https://www.vmia.vic.gov.au/insurance/policies-and-cover/cemetery-trusts) <https://www.vmia.vic.gov.au/insurance/policies-and-cover/cemetery-trusts> on the VMIA website.

**Note:** It is essential that trusts first lodge a claim with VMIA to determine if specific damage to cemetery trust property is covered under the insurance policy and can be claimed. If it is determined that the damage to cemetery trust property is not covered under the insurance policy, then cemetery trusts may be eligible for a departmental grant. (Refer to [Topic 11. Grants](#_Topic_11._Grants) **for information.)**

## Immunity from personal liability

All trust members are provided with personal liability protection in line with s. 16 of the Cemeteries Act. This section of the Act provides that a member of a cemetery trust is not personally liable for an act or omission done in good faith while the trust member is, or reasonably believes they are, exercising a power or function under the Cemeteries Act or the Cemeteries Regulations. Liability for such acts of omission rests with the cemetery trust.

For example, a cemetery trust member would be acting in good faith if they made reasonable efforts to inform themselves of the legal requirements that apply to a cemetery trust and to trust members and complied with those requirements.

However, the OHS Act places obligations on a cemetery trust in its capacity as an employer. For instance, a cemetery trust has an obligation to provide and maintain a safe working environment for employees. It must also take reasonable steps to ensure people (other than employees) who are visiting or working in the cemetery are not exposed to health and safety risks, and it must notify the Victorian WorkCover Authority about any incidents. A cemetery trust may be liable for a criminal offence if it fails to carry out these obligations. Trust members could also be liable in circumstances where they failed to take reasonable care.

Under the *Workplace Injury and Rehabilitation Act 2013*, a trust member may be criminally liable in respect of an employee’s return to work, hindering or obstructing an inspector and knowingly making a false or misleading statement in connection with a dispute referred for conciliation.

That said, a cemetery trust member will be protected to the maximum extent possible if, when carrying out their functions and exercising their powers, they act in good faith, exercise reasonable care in carrying out obligations under the OHS Act and act with due diligence in carrying out obligations under the Workplace Injury and RehabilitationAct.

# Topic 26. Financial management

## Accounting and financial reporting

Cemetery trusts are responsible for the stewardship and proper accounting of their income and expenditure, assets and liabilities.

The department has developed the [*Financial guidelines for Class B cemetery trusts*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance> to help trust members understand their financial responsibilities and to implement appropriate financial controls relevant to their trust. These guidelines can be implemented in a way that is relevant to the size and scale of the operations of the trust.

The financial year for trusts ends on 30 June. The Cemeteries Act requires that a cemetery trust must keep proper accounts and records of its financial affairs (s. 49 of the Cemeteries Act) and that a financial report (known as the abstract of accounts) on cemetery operations and accounts must be lodged with the department by 1 September each year. The abstract must be accompanied by copies of bank and/or investment statements for that financial year.

All trusts must verify the information contained in the abstract by signing the statutory declaration on the last page of the abstract form.

## Review or audit of the abstract of accounts

Trusts with income or expenditure[[42]](#footnote-42) of between $250,000 and $1 million must also ensure their abstract:

* is prepared in line with the Australian Accounting Standards
* has a ‘review statement’ prepared in line with the Australian Auditing Standards on Review Engagement by a professionally recognised accountant (who is a member of the Institute of Chartered Accountants of Australia, or of CPA Australia, or of the National Institute of Accountants).

Trusts with earnings or expenditure above $1 million must ensure their abstract:

* is prepared in line with the Australian Accounting Standards
* has an ‘audit report’ prepared in line with the Australian Auditing Standards by a registered auditor or professionally recognised accountant (a member of the Institute of Chartered Accountants of Australia, or of CPA Australia, or of the National Institute of Accountants).

### Council-managed trusts

Section 57 of the Cemeteries Act requires that a municipal council responsible for managing a public cemetery must submit a report in respect of the exercise of its powers and functions under the Cemeteries Act to the departmental Secretary each financial year.

The report (being the abstract of accounts) must be in a form and contain the particulars required by the Secretary including:

* any accounts and records kept under the *Local Government Act 1989*, to the extent they relate to the exercise of any powers and functions under the Cemeteries Act
* any audit of these accounts
* reports to the operation of the public cemetery and crematoria for which the municipal council is responsible.

## Australian Business Number (ABN)

Cemetery trusts are required to have an ABN in order to receive a grant from the department.

The Australian Tax Office (ATO) is responsible for providing ABNs. The ATO maintains a website where business entities, which includes cemetery trusts, can register to receive an ABN. The site is known as [ABN Lookup](https://abr.business.gov.au) <https://abr.business.gov.au>. Trusts can also check if they have an existing ABN on this website. Trusts can also contact the ATO by telephoning 13 92 96 for help with registration.

Trusts should advise the ATO that they are a ‘not-for-profit’ incorporated entity type of trust, similar to a committee of management and not a financial/investment corporate trust entity. This is to ensure the trust receives the appropriate information from the ATO about the registration process.

Registration requires that a trust member, as the nominated representative of the entity applying for an ABN, provides basic contact details. When completing the registration process online, cemetery trusts should select the following:

* For ‘organisation type’, select ‘other incorporated entity’. When prompted, select ‘an incorporated association’.
* For ‘nature of your activity’, select ‘in the form of a business’.
* For the ‘income tax exempt’ category, select ‘yes’.
* For ‘not-for-profit organisation’, select, ‘yes’.
* If more information about the nature of the business activity is required, this can be stated as ‘cemetery operations’.

## Preparing an annual budget

It is recommended that cemetery trusts prepare their own budget statement for the coming financial year and discuss this at a trust budget meeting held in April or May. This budget should detail:

* proposed expenditure on maintenance and development works
* anticipated revenue from the trust’s fees and charges, based on the anticipated number of burials/cremations
* GST collected on anticipated sales, less credit for GST on the anticipated purchases, assuming the trust is registered for GST and has an ABN
* funds and investments on hand, in both the general account and perpetual maintenance account.

Once a budget has been agreed, a trust would be in a position to determine whether its current fees and charges are appropriate to meet its forward expenditure. It is recommended that fees and charges be set to reflect the actual cost of operating a cemetery, including funds to meet the trust’s perpetual maintenance obligations under the Cemeteries Act.

## Commissions and in-kind benefits

It is not permitted for any third party to be paid a commission or receive an in-kind benefit (tips, rewards or discounts) from the trust for selling rights of interment, plaques, cremation memorials or any other items on its behalf. Under the Cemeteries Act, only a trust or its delegate is authorised to grant a right of interment.

## Funds received

At times a cemetery trust will need to expend a portion of the funds received from the sale of products and services on the general operations of the cemetery. However, a trust also needs to ensure a portion of its earnings is set aside for the perpetual maintenance of the cemetery.

When setting new fees and charges for areas within a cemetery that has been recently developed (for example, a new lawn area), a trust is to ensure it sets the fees at a level that enables it to recoup its original investment, in addition to sufficient returns, to meet current and future maintenance obligations. To do this, the trust will need to identify:

* the capital and operational cost of the development
* an appropriate rate of return over the life of the development that is equal to, or better than, the equivalent rate of return through investing the funds used in the development of the cemetery in Commonwealth bonds.

The department has developed the [*Fee justification model user guide*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance> and the [*Cemetery land development costing model user guide*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/land-development-costings) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/land-development-costings> to assist in this process.

Pre-paid revenue should be invested and only used when the trust provides the actual product or service to the purchaser.

## Perpetual maintenance fund

When preparing its annual budget and reviewing its scale of fees, the trust must determine how much is needed to be set aside from its future earnings for its perpetual maintenance fund. Between 15 and 20 per cent of total revenue is a reasonable benchmark.

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

## Purchasing and tender procedures

All cemetery trusts are subject to a purchasing process as set out in the Victorian Government Purchasing Board (VGPB) procurement policies. Information and guidelines can be located on the Victorian government’s [‘Buying for Victoria’ website](http://www.procurement.vic.gov.au/Buyers/Policies-Guides-and-Tools) <http://www.procurement.vic.gov.au/Buyers/Policies-Guides-and-Tools>.

The following information provides guidance for the usual process a trust is required to follow when purchasing goods and service:

* When purchasing goods and services less than $25,000, get a minimum of one written quote.
* When purchasing goods and services valued between $25,000 and $50,000, get two written quotes.
* When purchasing goods and services valued between $50,000 and $500,000, invite three potential tenderers to submit to a limited tender.
* For purchases over $500,000 an open tender is required.

To assist trusts, the department has developed templates for purchasing and tendering and contractor engagement. [Policy templates](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/policy-templates) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/policy-templates> are available on the department’s website.

**Note:** When planning a request for tender, trusts should prepare a written scope/specification of the work required in the cemetery. The documentation should then be provided to those companies expressing interest in submitting a response to the tender to ensure quotations will be comparable.

More information and guidelines on appropriate [Governance – goods and services policies](https://www.buyingfor.vic.gov.au/governance-goods-and-services-policy) <https://www.buyingfor.vic.gov.au/governance-goods-and-services-policy> are available on the VGPB website or by contacting VGPB directly:

Level 4, 1 Macarthur Street

Melbourne VIC 3000

Telephone: (03) 7005 9138

[Email](mailto:vgpb@dtf.vic.gov.au) <vgpb@dtf.vic.gov.au>

## Partial rebate of water charges

A cemetery trust (being a not-for-profit organisation) that receives water assessments in its own name may make an application to its local water authority for the $260 per annum rebate offered by the state government for each assessment.

## Fundraising

Cemetery trusts can undertake fundraising activities, other than lotteries, raffles and bingos, without registering with Consumer Affairs Victoria if they:

* receive less than $20,000 gross in a financial year from fundraising
* are not paid for conducting the fundraising
* use only unpaid volunteers.

If they have raised or expect to raise more than $20,000 in a financial year, they will need to register with Consumer Affairs Victoria as a fundraiser operating in Victoria. Registration requires completing an online form and a criminal record and personal insolvency declaration.

Further information about fundraising activities and the registration process is available on the [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/clubs-and-fundraising/fundraisers/registration) <https://www.consumer.vic.gov.au/clubs-and-fundraising/fundraisers>.

For more information, contact Consumer Affairs Victoria directly:

Consumer Affairs Victoria  
GPO Box 123  
Melbourne VIC 3001

Telephone: 1300 558 181

## Borrowing funds

Section 46 of the Cemeteries Act enables a cemetery trust to borrow money to carry out its functions, for example, to finance a cemetery development project. A trust cannot borrow money without first receiving approval from the Treasurer to do so and must comply with any conditions imposed by the Treasurer.

A trust will need to be able to put forward a robust and detailed business case to support its application for a loan.

**Note:** For the purposes of the Cemeteries Act, a lease does not constitute a loan – for example, a novated car lease or leasing of equipment such as a photocopier.

## Tax

The matters summarised below are complex and so we recommend getting advice from a person professionally qualified in this subject or from the ATO or State Revenue Office (SRO):

Australian Taxation Office

PO Box 9990

Melbourne VIC 3000

Telephone: 13 28 66

[Website](https://www.ato.gov.au/) <https://www.ato.gov.au/>

State Revenue Office

GPO Box 1641

Melbourne

Telephone: 13 21 61

[Website](hhtps://www.sro.vic.gov.au) <https://www.sro.vic.gov.au>

## Goods and services tax (GST) and business activity statements (BAS)

Cemetery trusts with annual turnover of more than $150,000 must register for GST with the ATO.

Trusts earning below $150,00 can register for GST. Get further advice from a financial services professional when considering registration.

Direct enquiries about GST or BAS recoup matters to the ATO or a financial services professional.

## GST exemption on fees and charges

As of 1 January 2010, the following cemetery products and services have been exempt from GST under Division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*.

The following is an extract from A New Tax System (Goods and Services Tax), (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1), Volume 4, Part 3, Items 10.10–10,13 for cemeteries and crematoria.

| Item | Australian tax, fee  or charge | Australian law | Notes |
| --- | --- | --- | --- |
| 10.10 | Issue a right of interment | Cemeteries and Crematoria Act 2003 | Rights of places of interment for graves, memorials and mausolea |
| 10.11 | Memorialisation permits and approvals | Cemeteries and Crematoria Act 2003 | Fees relating to memorialisation permits and approvals |
| 10.12 | Permits | Cemeteries and Crematoria Act 2003 | Fees relating to memorial permits and other permits |
| 10.13 | Miscellaneous fees and charges | Cemeteries and Crematoria Act 2003 | Search fee and other regulatory fees that don’t apply to the above categories |

As a consequence of these exemptions, cemetery trusts cannot charge customers GST for any of these products or services.

## Income tax exemption

As a public entity, cemetery trusts are exempt from income tax pursuant to ss. 50–25 of the Income Tax Assessment Act 1997.

## Fringe benefits tax

Fringe benefits tax is payable on benefits other than wages provided by a cemetery trust to its employees but not on the employer’s share of its contributions to employees’ superannuation. It is not payable on benefits provided by the trust to business associates or to voluntary (unpaid) trust members.

If the trust provides a non-compulsory uniform to its employees, pay attention to the ATO requirement that the uniform and logo must be approved and registered. Otherwise, fringe benefits tax 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 $2,000 in any tax year, it is required that the grossed-up value (including tax added back) of these benefits be recorded on the employee’s PAYG payment summary.

Due to its income tax-exempt status, a cemetery trust does not receive an exemption from providing minor benefits of less than $300 in value.

Cemetery trusts in Victoria are not regarded by the ATO to be ‘rebateable employers’ (charities) for the purposes of the fringe benefits tax legislation.

Contact the ATO for more information about fringe benefits tax.

## Debits tax exemption

The Debits Tax Act 1990 is Victorian Government legislation and applies to all debit transactions on bank accounts that have a cheque-drawing facility attached. Cemetery trusts may seek exemption from this **state** tax. For more information, contact the SRO.

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

Cemetery trusts receive a payroll tax exemption from the SRO. Normally, employers in Victoria with an annual gross payroll, including gross fringe benefits and employer contributions to superannuation exceeding $550,000 from 1 July 2010 onwards, are liable to pay state payroll tax. For more information, contact the SRO.

## Charitable tax status

On 1 January 2014 the Commonwealth Government updated the *Charities Act 2013*. The changes excluded state government–appointed not-for-profit entities (such as cemetery trusts) from receiving charitable tax status.

Trusts requiring more advice on the changes can contact the Australian Charities and Not-for-Profits Commission:

GPO Box 5108  
Melbourne VIC 3001

Telephone: 13 22 62 (8:00 am to 8:00 pm, Monday to Friday)  
Fax: 1300 232 569  
[Emai](mailto:communications@acnc.gov.au)l <communications@acnc.gov.au>  
[Website](https://www.acnc.gov.au/) <https://www.acnc.gov.au/>

# Topic 27. Conditions of work

A cemetery trust must ensure the terms and conditions under which any person performs work for it are lawful.

The legal and industrial frameworks that may govern a worker’s employment with a cemetery trust include:

* the Fair Work Act
* an applicable modern award
* an enterprise agreement
* a common law contract of employment.

All cemetery trusts must act in line with the principles set out in the [*Public sector industrial relations policies 2015*](https://www.vic.gov.au/public-sector-industrial-relations-policies-2015/industrial-action) <https://www.vic.gov.au/public-sector-industrial-relations-policies-2015/industrial-action>.

This is in addition to laws prescribed in Victorian legislation about OHS, superannuation, WorkCover, bullying, discrimination and long service leave.

Cemetery trusts should familiarise themselves with the [[information on the Fair Work Ombudsman’s](https://www.fairwork.gov.au/) website](https://www.fairwork.gov.au/) <https://www.fairwork.gov.au>. Any questions about these matters should be directed to the office of the Fair Work Ombudsman:

GPO Box 9887  
Melbourne VIC 3001

Telephone: 13 13 94  
Fax: 1800 618 366  
[Website](https://www.fairwork.gov.au/) <www.fairwork.gov.au>

## Equal employment opportunity

Under Victoria’s Equal Opportunity Act 2010, it is unlawful to discriminate against people on the basis of various personal attributes, and unlawful to harass individuals, including job applicants, employees, co-workers and contract workers. Sexual harassment is unlawful.

## Victorian Charter of Human Rights

The Victorian Charter of Human Rights and Responsibilities Act is an agreed set of human rights, freedoms and responsibilities protected by law. Government departments and public bodies, including cemetery trusts, must observe these rights when they create laws, set policies and provide services.

Cemetery trusts are required to act in a way that is consistent with the human rights that are protected under the Charter, comply with the Charter and take human rights into account in their day-to-day operations.[[43]](#footnote-43)

# Topic 28. Occupational health and safety

The *Occupational Health and Safety Act 2004* (the OHS Act) is the main workplace health and safety law in Victoria. It sets out key principles, duties and rights about OHS. The OHS Act seeks to protect the health, safety and welfare of employees and other people at work. It also aims to ensure the health and safety of the public is not put at risk by work activities.

The Occupational Health and Safety Regulations 2017 (the OHS Regulations) build on the OHS Act. They set out how to fulfil duties and obligations, and particular processes that support the OHS Act.

There are other Victorian laws and regulations that cover particular areas of health and safety. A full list of relevant Acts, Regulations and Statutory Rules is available on the [WorkSafe Victoria website](https://www.worksafe.vic.gov.au) <https://www.worksafe.vic.gov.au>.

It is an offence, without lawful excuse, for any person to recklessly engage in conduct that exposes, or may expose, a person at a workplace to the risk of serious injury.

## Principles

Key health and safety principles that underpin the OHS Act are that:

* all people – employees and the general public – should have the highest level of protection against risks to health and safety
* those who manage or control activities that may create health and safety risks in the workplace are responsible for eliminating those risks (where they cannot be eliminated, they are responsible for reducing those risks so far as is reasonably practicable)
* employers should be proactive in promoting health and safety in the workplace
* information and ideas about risks and how to control them should be shared between employees and employers.

## Responsibilities

Employers, so far as is reasonably practicable, must provide and maintain a working environment that is safe and does not pose health risks to themselves and others.

In determining what is reasonably practicable, cemetery trusts must take into account:

* the probability of a person being exposed to harm
* the potential seriousness of injury or harm
* what is known, or should be known, about the risk and how to eliminate it (people responsible for health and safety must inform themselves of current and relevant information)
* the availability, suitability and cost of eliminating or reducing the risk.

Cemetery trusts are responsible for ensuring all work in their cemeteries is performed in a healthy and safe way. This responsibility includes work in the cemetery undertaken by:

* employees of the trust
* contractors, including their staff and subcontractors, engaged by the trust
* community volunteers
* monumental masons, including their staff and subcontractors
* funeral directors, including their staff and subcontractors.

Procedures should be in place to ensure no one undertakes work in the cemetery 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:

* induction and training sessions for new employees of the trust
* requiring documentation of safety inspections/testing reports for equipment/items to be reviewed by the trust’s delegate
* requiring the proposed operator of equipment/items to show the trust’s delegate documentation verifying their training and competency to operate the equipment/item
* issuing the trust’s delegate with directions as to how members of the public are to be alerted to, but kept isolated from, safety hazards associated with the proposed work.

## Duties

The OHS Act imposes general OHS duties on employers, the self-employed, employees, designers, manufacturers, suppliers and others.

OHS duties, in most instances, require a person to ensure health and safety as far as is reasonably practicable. If it is not reasonably practicable to eliminate risks to health and safety, a person must reduce those risks as far as reasonably practicable.

Cemetery trust duties include, so far as is reasonably practicable:

* providing and maintaining safe plant and safe systems of work
* ensuring safe use, handling, storage and transport of plant and substances
* maintaining the workplace in a safe condition (for example, ensuring graves are covered or secured when not in use)
* providing necessary information, instruction, training and/or supervision so employees and contractors can work safely.

Specific duties in the OHS Regulations relevant to cemetery trusts include:

* prevention of falls (Part 3.3)
* plant (Part 3.5)
* confined spaces (Part 3.4)
* hazardous manual handling (Part 3.1).

## Workplace hazards in cemeteries

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 and vegetation that might drop limbs.

Open graves are a key cemetery hazard. Risks associated with graves include:

* grave collapse
* falls from height
* employees, contractors and others falling into excavated graves, risking injury or death
* loads falling while being lifted or suspended.

More information about safety in and around graves is available on the [WorkSafe Victoria website](https://www.worksafe.vic.gov.au/safety-in-and-around-graves) <https://www.worksafe.vic.gov.au/safety-in-and-around-graves>.

The safety of mourners attending an open grave for an interment is addressed under ‘Trust delegate’s responsibilities’ in [Topic 12. Interments](#_Topic_12._Interments).

### WorkSafe Victoria resources

The following resources are available on the [WorkSafe Victoria website](https://www.worksafe.vic.gov.au/safety-in-and-around-graves) <www.worksafe.vic.gov.au>:

* OHS Act and OHS Regulations
* safety topics
* asbestos
* bushfires
* confined spaces
* cranes and lifting equipment
* fall prevention
* hazardous manual handling
* hazardous substances
* plant
* slips, trips and falls
* sun protection
* compliance codes
* confined spaces
* excavation
* first aid in the workplace
* hazardous manual handling
* hazardous substances
* plant
* removing asbestos in workplaces
* workplace amenities and work environment
* safety in and around graves
* plant hazard checklist.

## Additional resources

* Safety data sheets (SDSs)
* SDSs are issued by the manufacturer or importer of hazardous substances or dangerous goods and provide health and safety information about products, substances or chemicals. Employers using or storing hazardous substances or dangerous goods on their premises should ensure they obtain an up-to-date SDS for each of these products and that employees, contractors and emergency services personnel have access to the SDSs.
* Adhere to manufacturer/operator manuals for plant
* Radiation pharmaceuticals safety information
* Bodily remains containing therapeutic amounts of radiopharmaceuticals are rarely encountered because treatment with radiopharmaceuticals is usually only given to patients who are not expected to die shortly after treatment. However, cemetery and crematorium workers, funeral directors, embalmers and coroners may occasionally be required to handle the remains of deceased persons who have recently been treated with a therapeutic radiopharmaceutical. Information about [radiation risks, recommended work practice and current radiation legislation in Victoria](https://www2.health.vic.gov.au/public-health/radiation) <https://www2.health.vic.gov.au/public-health/radiation> is available on the department’s website.

## Accidents and incidents to be reported to WorkSafe

Under the OHS Act, the employer with management or control of the workplace is responsible for notifying 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.

**To report serious accidents and incidents phone WorkSafe on 13 23 60**

If the situation is still dangerous or high-risk, call emergency services immediately on Triple Zero (000).

You must report incidents resulting in:

* death
* a person needing medical treatment within 48 hours of being exposed to a substance
* a person needing immediate treatment as an inpatient at a hospital
* a person needing immediate medical treatment for one of the following injuries: amputation, serious head injury or serious eye injury, removal of skin, electric shock, spinal injury, loss of a bodily function, serious lacerations.

You must report incidents involving:

* registered or licensed plant collapsing, overturning, falling or malfunctioning
* collapse or failure of an excavation, or shoring supporting an excavation
* collapse of a building structure (or partial collapse)
* implosion, explosion or fire
* escape, spillage or leakage of any substance
* plant or objects falling from high places.

Notify WorkSafe Victoria immediately by calling 13 23 60. WorkSafe will email a link to an online incident notification form and the incident must be reported in writing 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 OHS visit the [WorkSafe Victoria website](http://www.worksafe.vic.gov.au) <http://www.worksafe.vic.gov.au>, [email WorkSafe](mailto:info@worksafe.vic.gov.au) <info@worksafe.vic.gov.au> or phone 1800 136 089.

# Topic 29. Acquiring land and development

## Purchasing or acquiring land

Section 30(1) of the Cemeteries Act allows cemetery trusts to purchase or acquire land, with the approval of the minister, for the purposes of a public cemetery for which it is responsible. A cemetery trust cannot purchase or acquire land for any other purpose.

As a Victorian government agency, cemetery trusts must act in line with the[*Victorian Government Landholding Policy and Guidelines*](https://www.land.vic.gov.au/government-land/resources-and-tools/government-land-management-policies) and the[*Victorian Government Land Transactions Policy and Guidelines*](https://www.land.vic.gov.au/government-land/resources-and-tools/government-land-management-policies) <https://www.land.vic.gov.au/government-land/resources-and-tools/government-land-management-policies> when acquiring land.

Land planning for cemeteries is also influenced by other legislative and policy frameworks including native title and traditional owner law, state and local government land use and planning policies, native vegetation regulation and heritage law.

Generally, any purchase or acquisition of land to be reserved for cemetery purposes will take approximately six to 12 months for the processes and procedures to be completed.

A formal letter of application is required from the chairperson of the cemetery trust, seeking the minister’s approval, to be addressed to the Manager of the Cemetery Sector Governance Support Unit (the unit). The letter must include a detailed business case supporting the acquisition and a valid valuation from the Valuer-General. Requests for valuations can be submitted directly to the unit via [email](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>. The trust will be invoiced for the valuation.

Once land has been acquired, it will need to be included in an existing cemetery or established as a new cemetery under the Cemeteries Act before it can be used as a cemetery. It is also necessary for the trust to obtain appropriate zoning for use as a cemetery from the relevant council, normally Public Use – Cemeteries and Crematoria (PUZ5).

The [*Property acquisition checklist*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/land-acquisition) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/land-acquisition> is a detailed guide to cemetery land acquisition processes in compliance with Victorian government policies, including guidance for writing a business case and obtaining a valuation and is available on the department’s website.

## Cemetery land development – guidelines

From time to time trusts need to develop new areas of their cemeteries in response to market demand.

Before starting a new development, the trust should confirm there is enough demand for the new area to recover the cost of the project within a reasonable time. For large projects or projects that will use a significant proportion of the trust’s funds, it is strongly recommended that trusts engage an independent actuary to assess the project’s financial viability.

To identify project costs, the trust can use the Cemetery land development costing model user guideand the Microsoft Excel spreadsheet ‘Cemetery land development costing model’available on the [department’s website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/land-development-costings) *<*https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/land-development-costings>. The costing model can also assist trusts in pricing rights of interment for any new development, or to evaluate the current pricing of existing areas to ensure their products are priced appropriately.

Trusts should be aware of mandatory compliance requirements for public construction procurement. [Visit the department’s website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement> for more information.

Some development works will require planning and/or building permits. Trusts should obtain advice from their local council to ascertain any specific requirements.

Information about the development of mausolea is located in [Topic 18 ‘Mausolea](#_Topic_18._Mausolea)’.

More information

Contact the unit for more information:

Telephone: 1800 034 280

[Email](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>

Cemetery Sector Governance Support Unit

Department of Health

PO Box 4057

Melbourne VIC 3001

# Topic 30. Leasing and licensing of cemetery land

## Approval process

Under s. 37(1) of the Cemeteries Act, a cemetery trust may grant **a lease** of any land in a public cemetery for which it is responsible. The Minister for Health must approve the purpose of the lease and its terms and conditions.

Under s. 36(1) of the Cemeteries Act a cemetery trust may grant **a licence to enter and use** any part of the land and buildings in a public cemetery for which it is responsible. This must also have the minister’s approval.

The minister must approve the purpose of a lease or licence to ensure cemetery land is not used in a way that may be detrimental to the purposes for which the land is reserved (cemetery purposes).

The Cemeteries Act also specifies that a licence must be granted for a period not exceeding three years, and a lease must be for a specified term not exceeding 21 years.

Requests for ministerial approval should be submitted directly to the unit for processing. When submitting a request, please provide:

* a summary of the transaction, including rental rate, term and any special conditions
* a copy of the draft lease or licence agreed between the parties (before entering into an agreement)
* a valid valuation from the Valuer-General Victoria (for a lease)
* details of a market rate assessment for rental rate if conducted for a licence (for example, a tender has been undertaken for a catering licence)
* any other relevant information.

Trusts should allow enough time for the approval process, which may take three months or longer.

## Precedent lease and licence

Cemetery trusts must use the [precedent lease or precedent licence document](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/leasing-and-licencing-cemetery-land) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/leasing-and-licencing-cemetery-land> if they are considering granting a lease or licence for general purposes such as grazing, agistment, operation of a temporary flower stall, or permitting transport access.

The [*Precedent lease specific to installing a telecommunications tower*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/leasing-and-licencing-cemetery-land) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/leasing-and-licencing-cemetery-land> is for trusts considering granting a lease to install, alter or continue using a telecommunications tower.

Trusts should seek independent legal advice when considering whether to enter into an agreement. Trusts should also check with their local council if a planning permit is required (for example, for a mobile base station).

## Rental rates

Victorian Government policy requires that a grant of a lease must be at the current market value assessed by the Valuer-General Victoria.

In exceptional circumstances, the Minister for Health may approve a rental rate below market value (a non-commercial lease). When considering whether to approve a non-commercial lease, the minister will consider the estimated loss of revenue and the public or community benefits arising from the lease.

Valuations can be arranged via the department. Please email the unit to arrange a valuation.

## Lease or licence?

A lease is appropriate when the tenant requires exclusive use of land and/or premises for the permitted use.

Under a licence, the licensee does not have the right to exclusive use of land and/or premises and may have to share occupation with the licensor and third parties or may only be able to use the licensed area at certain times.

More information

For more information please contact the unit:

Telephone: 1800 034 280

[Email](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>

# Appendix: Transcripts of flow charts in this manual

Process for interring bodily remains (in Topic 12)

1. If there is no right of interment for interring bodily remains for the deceased

Cemetery trust to issue a right of interment in exchange for payment of the relevant cemetery trust fee. [Sections 73–76 Act, section 113 Act]

*Note that a right of interment to inter bodily remains may only be granted in perpetuity. The right of interment to inter cremated remains only must be offered in perpetuity and at the trust’s discretion can also be offered for 25 years.*

2. Application for interment authorisation

The funeral director (on behalf of the applicant) or the applicant fills out the *Application for interment authorisation* form. [r. 16, s. 116 of the Act]

The funeral director or applicant must submit this form to the cemetery trust together with a copy of the notice required under s. 37(2) of the *Births, Deaths and Marriages Registration Act 1996* (death certificate or other relevant documentation) or any other document specified under s.116(3)(a)–(e) of the *Cemeteries and Crematoria Act 2003*.

3. Consideration of application for interment authorisation

Cemetery trust receives the application and checks the following [s. 118 of the Act, r. 24]:

* that the person making the application has the appropriate authority to do so
* that all requisite documents have been provided
* whether the right of interment is exercised or unexercised
* if the right of interment has been previously exercised, that the place of interment is deep enough to accommodate a subsequent interment in accordance with the minimum depth of burial requirements.

4. Approval of application for interment authorisation

If the cemetery trust is satisfied with the application, it must grant an interment authorisation. An authorisation may be granted on any terms and conditions the trust considers appropriate. [s. 115, 118 and 119 of the Act]

*Note that approval should be in writing. It is an offence to inter bodily remains without an interment authorisation and is punishable by a maximum penalty of 600 penalty units or five years’ imprisonment, or both.*

5. Arrange a time for the interment

The funeral director (or in cases where an individual arranges a funeral) should liaise with the cemetery trust to arrange a suitable time for interment and, where applicable, a funeral. [rr. 35–37 and 47–49]

*Note that any person responsible for conducting a funeral must comply with any directions issued by the cemetery trust and may not initiate unsolicited contact with another person for the purpose of commercial activities.*

6. Interment

The interment takes place. [rr. 23–25 and 47–49]

*Note that the cemetery trust must ensure compliance with requirements in relation to enclosing bodily remains, depth of burial, interment in concrete-lined graves and interment in mausolea.*

7. Record keeping

The cemetery trust must fulfil prescribed record-keeping requirements relating to rights of interment, interments and places of interment. [s. 59 of the Act, rr. 6, 9, 12–15]

Process for cremating bodily remains (in Topic 13)

1. Application for cremation authorisation

The funeral director (on behalf of the applicant) or the applicant fills out the following forms to make an application for cremation authorisation to a cemetery trust [ss. 131 and 138 of the Act, rr. 18 and 19]:

* Form 3 – Application for cremation authorisation
* Form 4 – Certificate of registered medical practitioner authorising cremation (note that the funeral director or applicant will need to arrange for a registered medical practitioner who is not the medical practitioner that signed the death certificate to complete this form)
* a notice as required under s. 37(2) of the *Births, Deaths and Marriages Registration Act 1996* (death certificate or other relevant documentation) or any other document specified under s. 131(3)(a)–(e) of the *Cemeteries and Crematoria Act 2003*.

2. Consideration and approval of application

The cemetery trust must check that the person making the application has the appropriate authority to do so. If the cemetery trust is satisfied with the application, it must grant the cremation authorisation. A cremation authorisation should be in writing. An approval cannot be granted if s. 137 of the Cemeteries and Crematoria Act applies. [s. 133 of the Act]

3. Arrange a time for the interment

The funeral director (or in cases where an individual arranges a funeral, that individual) liaises with the cemetery trust to arrange a suitable time for the funeral service (if any). [rr. 35, 36 and 37]

*Note that any person responsible for conducting a funeral must comply with any directions issued by the cemetery trust and must not initiate unsolicited contact with another person for the purpose of commercial activity.*

4. Cremation

The remains submitted for cremation must be suitably enclosed in a coffin, container or receptacle that complies with requirements in r. 16. A trust may inspect a coffin and its contents to ensure neither will impede on the cremation’s process or cause damage to the cremator. The cremation then takes place. [rr. 26–29, s. 130 of the Act]

*Note that it is an offence to cremate or assist in the cremation of bodily remains without a cremation authorisation. This offence is punishable by a maximum penalty of 600 penalty units or five years’ imprisonment, or both.*

5. What happens to the cremated remains following cremation?

The cemetery trust must make cremated remains available for collection within two working days of the cremation. Cremated remains may only be released to the applicant, the applicant’s agent or in certain circumstances the nearest surviving relative. Cemetery trusts should also update their records in relation to cremations as detailed in r. 5. [rr. 10, 30 and 31]

Option 1: Cremated remains to be held for collection

If the cremated remains are not collected, the trust must hold them for at least 12 months (r. 21).

If the remains are not collected within 12 months the trust may dispose of the remains provided that at least three months prior to the expiry of the 12 months they take reasonable steps to notify the applicant of their intention to dispose of the remains (r. 21).

Option 2: Cremated remains to be interred

If there is no right of interment for interring the deceased’s cremated remains:

* Applicant to make application to cemetery trust for the right to inter cremated remains.
* Cemetery trust to issue a right of interment. Note that a right of interment to inter cremated remains may be granted in perpetuity or for a period not exceeding 25 years (s. 73, 74 and 128 Act).
* Applicant to apply to the cemetery trust for authority to inter cremated remains. (ss. 77(3) and 141).
* Cemetery trust to update its records in relation to the interment of cremated remains, places of interment and rights of interment as detailed in r. 5.

Comparison of exhumation and lift and reposition procedures (in Topic 14)

Why are the remains to be removed from the place of interment?

#### Reason 1: Exhumation

1. To remove the bodily remains for relocation to a different place of interment or for cremation. [Part 12 of the Act]

2. Person makes an application to the Secretary of the department for an exhumation licence to exhume or remove human remains from a place of interment. [ss. 156 to 158A of the Act, r. 22]

Note that an application must be:

* in the prescribed form as detailed in Schedule 5 of the Regulations
* include a statement by the cemetery trust detailing whether it has any objections to the exhumation application
* lodged at least seven days before the proposed exhumation.

3. Secretary of the department considers the application.

4. The Secretary may grant or refuse to grant an exhumation licence. [ss. 157 and 159 of the Act]

*Note that an exhumation licence may be granted subject to such terms and conditions as the Secretary sees fit. Failure to comply with the terms and conditions of an exhumation licence is an offence punishable by a maximum penalty of 240 penalty units or two years’ imprisonment, or both.*

5. The exhumation takes place. [s. 155 of the Act]

*Note that it is an offence to exhume or remove human remains from a place of interment other than with an exhumation licence or for an approved lift and reposition procedure. This offence is punishable by a maximum penalty of 600 penalty units or five years’ imprisonment, or both.*

#### Reason 2: Lift and reposition

1. To allow the place of interment to be reused where there is insufficient space to accommodate any further interments. [Part 6, Div 4 of the Act]

2. The holder of the right of interment or monumental agent/representative makes an application to the cemetery trust for approval to carry out a lift and reposition procedure. [s. 88 of the Act]

*Note that an application must be in writing and accompanied by the relevant cemetery trust fee.*

3. The cemetery trust considers the application. A trust should not approve an application if it considers it would be inappropriate for any of the following reasons:

* the nature of the soil would prevent or hinder the process
* it would be impractical because the place of interment can’t be sufficiently deepened
* the physical state of the human remains
* in the case of a mausoleum, the chamber is not able to accommodate additional human remains
* religious, cultural, health or safety considerations. [s. 89 of the Act]

*Note a trust must not approve an application if it relates to bodily remains that have been interred for less than 10 years.*

4. The cemetery trust grants approval to carry out the lift and reposition procedure. [s. 89(4) of the Act]

*Note that this procedure can only be approved by delegated trust members. Approvals must be   
in writing.*

5. The lift and reposition takes place. [s. 90 of the Act]

*Note that an exhumation licence is not required to carry out this procedure. Details about what may be done as part of the procedure are provided in s. 90 of the Cemeteries Act.*

1. [Information on the guidelines and application forms](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments> can be obtained on the department’s website. If you need hard copies, please contact the unit on free call 1800 034 280. [↑](#footnote-ref-1)
2. A direct relationship is defined to be parents, husband, wife or domestic partners (defacto), siblings and children. [↑](#footnote-ref-2)
3. Under clause 3(2) schedule 1 of the Cemeteries Act, only the Governor in Council, on recommendation by the Minister for Health, may remove a trust member from office. This will only occur under exceptional circumstances. [↑](#footnote-ref-3)
4. A trust interested in amalgamating with another trust must complete a due diligence assessment report. This assessment should identify any shortfall in perpetual maintenance funding as a result of the amalgamation, along with advice about how the shortfall would be managed. To request a copy of a template due diligence report, phone us on 1800 034 280 or [email the unit](mailto:cemeteries@dhhs.vic.gov.au) <cemeteries@health.vic.gov.au>. [↑](#footnote-ref-4)
5. The department’s guidelines align with the Department of Treasury and Finance’s guidelines, which clarify the government’s policy principles underpinning cost recovery arrangements. The Treasury guidelines provide a rigorous framework for government entities to use when considering, developing and reviewing user charges and regulatory fees. They ensure cost recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and in line with government policy. [↑](#footnote-ref-5)
6. A [sample delegation instrument](https://www2.health.vic.gov.au/about/publications/FormsAndTemplates/delegation-instrument-class-b-trusts-with-no-paid-staff) <https://www2.health.vic.gov.au/about/publications/FormsAndTemplates/delegation-instrument-class-b-trusts-with-no-paid-staff> is available the department’s website. [↑](#footnote-ref-6)
7. A standard textbook on meeting procedures that the trust may consider using is: Magner ES 2012, *Joske’s law and procedure at meetings in Australia*, 11th edn, Thomson Reuters, Pyrmont. [↑](#footnote-ref-7)
8. A still-born child means a child of 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 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, after birth. [↑](#footnote-ref-8)
9. A [‘Right of interment and interment register’](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/interment-register) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/interment-register> that complies with the record-keeping requirements under the Cemeteries Act and Cemeteries Regulations is available on the department’s website. [↑](#footnote-ref-9)
10. Foetal remains that are not a still-born child are defined as a child of less than 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 less than 400 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, after birth. [↑](#footnote-ref-10)
11. Body parts which are not foetal remains are defined as human tissue or a part of a person where that tissue or part is not part of a corpse or foetal remains. [↑](#footnote-ref-11)
12. The [‘Application for cremation authorisation for deceased persons of known identity’](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation-authorisation) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation-authorisation> is available on the department’s website. [↑](#footnote-ref-12)
13. The [‘Certificate of registered medical practitioner authorising cremation’](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation-authorisation) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation-authorisation> is available on the department’s website. [↑](#footnote-ref-13)
14. A still-born child means a child of 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 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, after birth. [↑](#footnote-ref-14)
15. ‘Partnership’ refers to a legal relationship of persons carrying on a business with a view to profit. Partners are jointly and severally liable for the debts incurred in connection with the partnership. It does not include, for example, two doctors who work in a hospital and share the same employer. [↑](#footnote-ref-15)
16. Bodily remains of unknown name may have an identifier in some circumstances, for example a cadaver imported as part of an overseas voluntary body donor program for the purposes of surgical teaching that is identified by a reference number with no personal details. [↑](#footnote-ref-16)
17. The [*Application for cremation authorisation of bodily remains of unknown name or with an identifier*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/remains-of-unknown-identity) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/remains-of-unknown-identity> is available on the department’s website. [↑](#footnote-ref-17)
18. Foetal remains that are not a still-born child are defined as a child of less than 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 less than 400 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, after birth. [↑](#footnote-ref-18)
19. Body parts which are not foetal remains are defined as human tissue or a part of a person where that tissue or part is not part of a corpse or foetal remains. [↑](#footnote-ref-19)
20. The [*Application for cremation authorisation of body parts of unknown name with an identifier*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/remains-of-unknown-identity) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/remains-of-unknown-identity> is available on the department’s website. [↑](#footnote-ref-20)
21. Refer to s. 5 of the Coroners Act for a definition of reviewable death. [↑](#footnote-ref-21)
22. Available on the [Department of Home Affairs website](https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/cybercrime-identity-security/identity-security) <https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/cybercrime-identity-security/identity-security>. [↑](#footnote-ref-22)
23. If in doubt as to the meaning of a court order, trusts should seek legal advice. [↑](#footnote-ref-23)
24. ‘Family member’ in relation to a deceased identified veteran is defined in s. 4 of the Cemeteries Act. [↑](#footnote-ref-24)
25. The trust must provide written approval before the removal. [↑](#footnote-ref-25)
26. The trust must comply with ss. 88–90 of the Cemeteries Act. [↑](#footnote-ref-26)
27. Where a representative (such as a funeral director) acts on behalf of the holder of the right of interment, written authorisation from the holder of the right of interment must accompany the application. [↑](#footnote-ref-27)
28. The department will continue to work with the sector to identify key cost drivers associated with perpetual maintenance. [↑](#footnote-ref-28)
29. The interest rate for such projects should be calculated at a risk-adjusted rate for the period the funds were used. [↑](#footnote-ref-29)
30. Such projects must be evaluated in line with financial risk management principles. [↑](#footnote-ref-30)
31. The department has developed a tool that trusts can use to assess the financial viability of any projects. [↑](#footnote-ref-31)
32. A trust needs to seek approval from the Secretary of the Department of Health to construct public mausolea. [↑](#footnote-ref-32)
33. Trusts need permission from the Minister for Health before new land can be purchased. Before taking any action in relation to a purchase, the trust should provide a detailed proposal to the department for discussion. [↑](#footnote-ref-33)
34. There might not be clear documentation available about the person’s nomination (for example, if the will has not yet been located or if the deceased did not leave a will). If the matter is in dispute, the trust may need to obtain evidence to its satisfaction (for example, through a statutory declaration) to confirm the identity of the administrator of the deceased estate. [↑](#footnote-ref-34)
35. If more than one joint holder remains, the trust may request a signed authority from all joint holders confirming their nominated representative. [↑](#footnote-ref-35)
36. [Information about the application process](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> is available on the department’s website. [↑](#footnote-ref-36)
37. A previous holder means a person whose right of interment is forcibly surrendered. [↑](#footnote-ref-37)
38. If a person can demonstrate they have a legitimate claim on the unused place of interment, the trust should also ensure it updates its records to reflect this person’s rights in relation to the exercised place of interment. [↑](#footnote-ref-38)
39. An electronic copy of the [interment register](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/interment-register) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/interment-register> is available on the department’s website or hard copies can be requested by [emailing the unit](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>. [↑](#footnote-ref-39)
40. General information regarding dispute management and the dispute management framework is available on the [Dispute Settlement Centre of Victoria’s website](http://www.disputes.vic.gov.au) <http://www.disputes.vic.gov.au>. [↑](#footnote-ref-40)
41. The [terms and conditions of the policies and insurance manual](http://www.vmia.vic.gov.au) <https://www.[vmia.vic.gov.au>](http://www.vmia.vic.gov.au) are available on the VMIA website. [↑](#footnote-ref-41)
42. Excludes funds in the bank, funds in investment accounts and grants. [↑](#footnote-ref-42)
43. For more information visit the [Victorian Equal Opportunity and Human Rights Commission website](https://www.humanrights.vic.gov.au/) <https://www.humanrights.vic.gov.au/>. [↑](#footnote-ref-43)