

|  |
| --- |
| Governance training for Victorian cemetery trusts |
| Class B cemetery trust training manual |
|  |



|  |
| --- |
| Governance training for Victorian cemetery trusts  Class B cemetery trust training manual |
|  |

|  |
| --- |
|  |
| To receive this document in another format, phone 1800 034 280, using the National Relay Service 13 36 77 if required, or [email the Cemetery Sector Governance Support Unit](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>.  Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.  © State of Victoria, Australia, Department of Health, May 2023.  ISBN 978-1-76131-142-0 (Print)  ISBN 978-1-76131-143-7 (pdf/online/MS word)  Available at [Cemetery trust training](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-training) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-training>  Printed by Hornet Press, Knoxfield |
|  |

Contents

[Introduction 7](#_Toc134540743)

[About the sector 7](#_Toc134540744)

[Key terms 8](#_Toc134540745)

[Theme 1: Legislative frameworks 10](#_Toc134540746)

[Current legislation 10](#_Toc134540747)

[Legal framework 12](#_Toc134540748)

[Theme 2: Class B cemetery trust members 15](#_Toc134540749)

[Trust member duties 15](#_Toc134540750)

[Trust members and personal liability 17](#_Toc134540751)

[Code of conduct 17](#_Toc134540752)

[Charter of human rights 18](#_Toc134540753)

[Conﬂicts of interest 18](#_Toc134540754)

[Trust member allowances 20](#_Toc134540755)

[Theme 3: Trust responsibilities 22](#_Toc134540756)

[Cemetery trust functions 22](#_Toc134540757)

[General powers of cemetery trusts 22](#_Toc134540758)

[Core reporting obligations 22](#_Toc134540759)

[Trust policies 22](#_Toc134540760)

[Trust member recruitment 23](#_Toc134540761)

[Trust member induction 24](#_Toc134540762)

[Records management 25](#_Toc134540763)

[Human resources management 27](#_Toc134540764)

[Occupational health and safety 28](#_Toc134540765)

[Environmental management 29](#_Toc134540766)

[Competitive neutrality 31](#_Toc134540767)

[Theme 4: Strategy, planning and risk management 32](#_Toc134540768)

[Setting strategic direction 32](#_Toc134540769)

[Strategic plans 33](#_Toc134540770)

[Key challenges and risks 33](#_Toc134540771)

[Strategic priorities 33](#_Toc134540772)

[Trends and external factors 33](#_Toc134540773)

[Regular risk reviews 33](#_Toc134540774)

[What is risk management? 34](#_Toc134540775)

[What are the components of risk management? 34](#_Toc134540776)

[What is the trust’s ongoing role in overseeing risk management? 35](#_Toc134540777)

[Theme 5: Stakeholder relations 37](#_Toc134540778)

[Role of government 37](#_Toc134540779)

[Accountability to stakeholders and the community 38](#_Toc134540780)

[Complaints management 39](#_Toc134540781)

[Natural justice and procedural fairness 40](#_Toc134540782)

[Changing community expectations and cultural sensitivities 41](#_Toc134540783)

[Theme 6: Governance 42](#_Toc134540784)

[Governance is important 42](#_Toc134540785)

[Trust charter 42](#_Toc134540786)

[Healthy governance 42](#_Toc134540787)

[Warning signs of ineffective governance 43](#_Toc134540788)

[Effective trust meetings 44](#_Toc134540789)

[Trust dynamics and teamwork 48](#_Toc134540790)

[Referring governance concerns to the department 48](#_Toc134540791)

[Delegation of trust powers 49](#_Toc134540792)

[Support from Class A trusts 50](#_Toc134540793)

[Reviewing the trust’s performance 50](#_Toc134540794)

[Ongoing improvement 51](#_Toc134540795)

[Theme 7: Financial governance 52](#_Toc134540796)

[Keys to effective ﬁnancial governance 52](#_Toc134540797)

[Monitoring the ﬁnancial condition of the trust 52](#_Toc134540798)

[Abstract of accounts 54](#_Toc134540799)

[Financial procedures and controls 54](#_Toc134540800)

[Tax 57](#_Toc134540801)

[Fundraising and other revenue 58](#_Toc134540802)

[Budgeting 59](#_Toc134540803)

[Perpetual maintenance obligations 60](#_Toc134540804)

[Pricing and fee structure 60](#_Toc134540805)

[Asset management and forecasting capital works 62](#_Toc134540806)

[Procurement/purchasing policies and tender procedures 62](#_Toc134540807)

[Maintenance standards 63](#_Toc134540808)

[Cemetery performance management 63](#_Toc134540809)

[Resources 65](#_Toc134540810)

[Departmental resources 65](#_Toc134540811)

[Other resources 67](#_Toc134540812)

# Introduction

This document provides an entrée into the knowledge and skills you’ll need to survive and thrive as a Class B cemetery trust member. The document will help you to:

* better understand your legal and ethical responsibilities as a trust member
* develop and strengthen your governance knowledge and skills
* know where to go if you need more information or help in fulfilling your role.

### Why does a trust member’s role matter?

Serving as a cemetery trust member is not a task to be undertaken lightly. You are taking on the responsibility of serving the government and your local community in overseeing an essential community asset. You are tasked with ensuring that dignity is given to the dead, that family members and other mourners are given due respect, and that your cemetery is safe, accessible, sustainable and well managed.

When you get it right as a trust member, you generate a great deal of self-satisfaction and immense community value. This is even more so when all trust members come together as part of a cohesive, productive team. To really get things humming requires an individual and shared understanding of what good governance looks like, and the practical steps you can take to bring that knowledge into your trust. This document will help set and keep you on that path.

## About the sector

### Cemeteries and crematoria in Victoria

In Victoria, 486 cemetery trusts, made up of ﬁve Class A trusts and 481 Class B trusts, are responsible for managing approximately 565 public cemeteries. Some Class B cemetery trusts are managed by local councils. There are nine crematoria in Victoria located within public cemeteries.

There are more than 3,200 cemetery trust members in Victoria. Trust members are appointed by the Governor in Council on the recommendation of the Minister for Health.

Class B trusts vary greatly in size and scale. All Class B cemetery trust members are volunteers, who are generally drawn from local communities. Large Class B cemetery trusts employ staff to undertake day-to-day operational activities. Small to medium size Class B cemetery trusts generally don’t employ staff and use contractors to assist with some tasks.

Class B trust members often perform day-to-day operational tasks as well as meeting their governance responsibilities. Operational activities in a cemetery include:

* processing and issuing rights of interment
* updating burial registers and cemetery maps
* maintaining cemetery grounds
* marketing cemetery services
* supervising interments and exhumations
* general accounting and record keeping.

### A history of the first cemeteries in Victoria

There was no official burial ground in Victoria until the 1830s. Public cemeteries were established on Crown land, with trustees appointed by the government. The *Act for the Establishment and Management of Cemeteries in the Colony of Victoria* was passed in 1854, forming the basis of cemetery administration as we know it today.

The state’s first recorded European death was that of free settler John Skelthorn, who was a member of an 1803 expedition led by Lieutenant Colonel David Collins. The party landed at Sorrento to establish a British settlement in Port Phillip.

Sorrento was briefly Victoria’s first European settlement. Skelthorn had been unwell during the voyage and died on 10 October 1803. There were 29 known deaths at the site, and most burials took place on the hill at the eastern end of Sullivan Bay, one of two points known as ‘The Sisters’. Four graves survive in a small reserve, but the origins of the deceased are unknown.

In 1826 some deaths also occurred at the short-lived Corinella settlement on Western Port. It is thought that other bodies, including sealers and whalers, rest in unmarked, unrecorded graves along the coastline.

Soon after Melbourne was permanently settled in 1835, the first European burials for the small community occurred on the southern slopes of what is now the Flagstaff Gardens, which was formerly known as Burial Hill. Six to 10 burials occurred at this site. A Gothic sandstone memorial was erected at the site many years later to commemorate the deceased pioneers.

There were two other known early burial grounds in Melbourne. A small Jewish cemetery at Merri Creek, Northcote was established on donated land. The other graveyard was at Point Ormond, beyond St Kilda and near what was known as the ‘Red Bluff’. When the ship *Glen Huntly* arrived in Port Phillip Bay on 17 April 1840 carrying passengers infected with smallpox and scarlet fever, it was quarantined at Point Ormond. Three men died at the quarantine station in May and were buried on the clifftop. Their remains were reinterred in St Kilda Cemetery in 1898.

Throughout the 19th century small private cemeteries were established on some homestead properties in addition to hundreds of lone graves across Victoria. It became apparent that a new cemetery for the growing population of Melbourne was required. The first official public burial ground, the Old Melbourne Cemetery, was opened in 1837 on the site currently occupied by the Queen Victoria Market.

## Key terms

The table below defines some useful terminology related to the Victorian cemetery sector.

| Term | Definition |
| --- | --- |
| Perpetuity | In Victoria, bodily remains are interred in public cemeteries forever or ‘in perpetuity’. |
| Limited tenure | In Victoria, cremated remains can be interred in public cemeteries for limited tenure (a term of 25 years) or in perpetuity (forever). |
| Place of interment | A place of interment is a location where bodily or cremated remains are placed. Examples include a plot or grave, mausoleum crypt or cremation niche. Some places of interment can hold more than one set of remains (e.g. a double crypt). |
| Right of interment | A right of interment relates to a specific place of interment in a public cemetery.  A right of interment is purchased and allows the holder to determine who can be interred in the 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).  There is a common misconception that the purchaser of a right of interment buys the land associated with a place of interment. However, this is not correct as all public cemeteries in Victoria are situated on Crown land. |
| Right of interment holder | The right of interment holder is recorded by the cemetery trust and has the right to determine who can be interred in the 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). There may be more than one right of interment holder for a place of interment. |
| Exhumation | Exhumation is the removal of human remains from a place of interment. An exhumation licence is required to move human remains (other than cremated human remains or body parts) from a place of interment. |
| Lift and re-position | A lift and re-position procedure enables a place of interment to be reused for additional burials. |
| Perpetual maintenance | Cemetery trusts have an obligation to maintain the cemeteries for which they are responsible in perpetuity. Ensuring sufficient funds are reserved to meet this obligation is a key consideration for cemetery trusts. |

# Theme 1: Legislative frameworks

## Current legislation

The *Cemeteries and Crematoria Act 2003* (the Act) and the Cemeteries and Crematoria Regulations 2015 (the Regulations) form the legislative framework under which all public cemeteries in Victoria operate.

The legislation provides the framework for administering the sector. It outlines the roles and responsibilities of cemetery trust members and details the powers and functions of cemetery trusts. It also provides the mechanisms for creating and abolishing cemetery trusts, creating cemeteries and appointing trust members.

### Cemeteries and Crematoria Act

The current Act began operation on 1 July 2005 and was amended in 2010, 2015 and 2021. Trusts should ensure they have an up-to-date copy of the Act which is available on the [Victorian Legislation website](https://www.legislation.vic.gov.au/in-force/acts/cemeteries-and-crematoria-act-2003) <https://www.legislation.vic.gov.au/in-force/acts/cemeteries-and-crematoria-act-2003>.

The objectives of the Act are to ensure:

* human remains are treated with dignity and respect
* all Victorians have access to cemetery and crematoria services
* cemetery trusts operate effectively and efﬁciently in accordance with the Act.

#### Powers of the Secretary of the department

The Department of Health is responsible for the administration of the Act. The department Secretary has a number of prescribed powers and functions.

| Section of the Act | Provision |
| --- | --- |
| 18 | May give directions to cemetery trusts about carrying out any function or exercising any power of the cemetery trust |
| 18A | May direct policies and plans in relation to providing cemetery and crematoria services to be developed and prepared |
| 21 | Approval to establish a crematorium |
| 22 | Approval to establish mausoleum 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 operation of the cemetery, accounts and records kept by the trust |
| 57 | Receive an annual report from a municipal council in relation to a cemetery that may be managed by that council |
| 84C | Vary or force surrender of a right of interment in certain circumstances |
| 121 | Issue an approval for interment other than in a public cemetery |
| 134 | Issue an approval for the cremation of bodily remains due to special circumstances noted in the Act |
| 136 | Issue an approval to cremate bodily remains other than in a crematorium at a public cemetery |
| 147 | Grant an approval to dispose of bodily remains by a method other than interment or cremation |
| 148 | Grant or refuse to grant an exhumation licence |

### Cemeteries and Crematoria Regulations

The current Regulations came into effect in June 2015. The Regulations are available on the [Victorian Legislation website](https://www.legislation.vic.gov.au/in-force/statutory-rules/cemeteries-and-crematoria-regulations-2015) <https://www.legislation.vic.gov.au/in-force/statutory-rules/cemeteries-and-crematoria-regulations-2015>.

Frequently used provisions of the Regulations for Class B cemetery trusts are outlined below.

| Key sections of the Regulations | Summary |
| --- | --- |
| Part 2  Cemetery trust records | * Prescribed information for:   + Interment of bodily remains, foetal remains and cremated human remains   + Places of interment   + Rights of interment   + Transfer, surrender and cancellation of rights of interment |
| Part 3  Applications for interment, cremation and exhumation | * Application for interment authorisation * Application for interment or cremation of body parts * Application for interment or cremation of body parts of unknown name with an identifier * Prescribed persons for interment or cremation of body parts * Application to Secretary for exhumation licence |
| Part 4  Interment | * Requirements for enclosure of bodily remains and body parts * Depth of burial requirements * Requirements for interment in concrete-lined graves |
| Part 6  Mausolea | * Construction of mausolea * Interment in mausolea * Sealing of crypt space in mausolea |
| Part 7  Behaviour and activities in public cemeteries | * Commercial activities * Information to purchasers of monuments * Funerals * Offence to cause disturbance * Danger to person or property * Offence to play sport in a public cemetery * Offence to fish or bathe in a public cemetery * Offence to hunt in a public cemetery * Offence to camp in a public cemetery * Offence to remove items from a place of interment or memorial in a public cemetery * Offence to damage plants in a public cemetery * Written approval of cemetery trust for certain activities * Ceremonial use of fire in a public cemetery * Use of vehicles in a public cemetery * Use of vehicles in public cemeteries contrary to signs |
| Schedule 2  Model rules | * Written approval of cemetery trust for certain activities * Opening hours * Funerals * Directions of cemetery trust * Approval for certain mementos * Items likely to cause harm * Items must remain within boundaries * Power to remove objects * Power to inspect memorials, places of interment and buildings for ceremonies * Access to and maintenance of work sites * Entry of animals into a cemetery * Control of animals in a cemetery * Offence to build within a cemetery * Offence to damage cemetery trust property * Offence to dig or plant * Obstruction of the exercise of the powers or functions of a cemetery trust |

## Legal framework

### Establishment

A cemetery trust is created by legislation (the Act). Members of the trust are referred to as ‘trust members’ and are appointed by an order of the Governor in Council on the recommendation of the Minister for Health.

A cemetery trust is a body corporate, which is its own legal entity with perpetual succession. Perpetual succession means that a corporation or other organisation will continue to exist despite the death or change in membership. A trust can:

* sue and be sued
* acquire, hold and dispose of property
* do anything a body corporate may legally do.

### Legislative requirements

As a public entity, a cemetery trust is subject to a range of legislative and compliance requirements under the *Public Administration Act 2004* and other Victorian and Commonwealth legislation.

#### Employment law

Most Australian workplaces are governed by national workplace laws set out in the *Fair Work Act 2009* (Cwlth). Where a trust has employees, it needs to comply with this Act. At a minimum, staff should have a job description, and the terms of employment should be provided to employees.

#### Consumer law

The *Competition and Consumer Act 2010* (Cwlth) applies to all of the trust’s commercial activities. Trusts need to be aware of their responsibilities regarding consumer laws. The law applies to consumer contracts including the purchase of a right of interment or a monument, and to suppliers of both goods and services.

#### Occupational health and safety

The trust’s obligations to people in its organisation and to those visiting its cemetery sites are set out in the *Occupational Health and Safety Act 2004* and the Occupational Health and Safety Regulations 2017. Trusts need to be aware of, and comply with, these laws.

#### Other relevant legislation

Other legislation relevant to cemetery trusts includes (but is not limited to):

* *Aboriginal Heritage Act 2006*
* *Australian Consumer Law and Fair Trading Act 2012*
* *Births, Deaths and Marriages Registration Act 1996*
* *Catchment and Land Protection Act 1994*
* *Charter of Human Rights and Responsibilities Act 2006*
* *Coroners Act 2008*
* *Equal Opportunity Act 2010*
* *Fences Act 1968*
* *Flora and Fauna Guarantee Act 1988*
* *Freedom of Information Act 1982*
* *Funerals Act 2006*
* *Health Records Act 2001*
* *Heritage Act 2001*
* *Land Act 1958*
* *Privacy and Data Protection Act 2014*
* *Planning and Environment Act 1987*
* *Public Records Act 1973*
* *Racial and Religious Tolerance Act 2001*
* *Victorian Civil and Administrative Tribunal Act 1998*
* *Victorian Managed Insurance Authority Act 1996*
* *Water Act 1989*
* *Wildlife Act 1975*
* *Workplace Injury Rehabilitation and Compensation Act 2013*

### The cemetery trust

Cemetery trusts serve the community by providing cemetery services and maintaining public cemeteries. They are ultimately accountable to the Minister for Health for the governance and operation of the cemeteries under their control.

A Class B cemetery trust consists of between three and 11 trust members. Class B cemetery trust members are appointed for a term of up to five years and may apply for reappointment. (Trust members appointed before 1 January 1996 are lifetime members and remain in ofﬁce until they resign, die or are removed from ofﬁce.)

A cemetery trust is different from other trust structures like discretionary or unit trusts. These are trusts that are used for tax planning or asset protection vehicles and have beneﬁciaries, and where a trustee or trustees are established by a trust deed.

### Official transactions

If a cemetery trust needs to open a bank account, apply for an ABN or apply for a community grant, it may need to provide information about its legal status. This often requires providing proof that the trust is a separate legal entity created by legislation (s. 5 of the Act). It can cause confusion if trust members refer to themselves as trustees. Trust members are public entity board members and should refer to themselves as trust members or board members.

The Governor in Council order establishing a cemetery trust is generally available on the Victoria Government Gazette website <http://www.gazette.vic.gov.au>. If a trust cannot find its establishment order, the trust should contact the department.

A copy of this order should be sufﬁcient evidence to allow the trust to open a bank account or apply for an ABN. If not, the department can provide the trust with a letter confirming the trust is a legal entity created by legislation.

### Model rules

A set of model rules is contained in the Regulations (Schedule 2), and these rules apply to all trusts.

If the model rules do not provide a trust with enough scope to manage the cemeteries under its control the trust can develop its own of specific set of rules under s. 50 of the Act. Any rules made under s. 50 of the Act must be consistent with the objectives of the Act, approved by the Minister for Health, submitted to the Governor in Council and published in the Victoria Government Gazette before they can be enforced.

Before new rules can be approved, trusts are required to consult with the department, local stakeholders and any other relevant parties that may be affected by the proposed rule change. Evidence of this consultation and the trust’s response to any concerns raised by stakeholders will need to be provided to the department along with the request to create specific trust rules.

### 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 regarding legal matters with the department.

# Theme 2: Class B cemetery trust members

## Trust member duties

Cemetery trust members have legal obligations, duties and responsibilities under:

* the Act, the Regulations, the Public Administration Act, and any other relevant legislation
* common law
* administrative law principles of natural justice and procedural fairness
* cemetery model rules (Schedule 2 of the Regulations)
* guidelines or directions issued by the government.

Cemetery trust members must always act in the trust’s best interests. The primary responsibility of a cemetery trust member is to carry out their duties with a degree of care and diligence that a reasonable person would exercise if they were a trust member in the same circumstance.

### Business judgement rule

A trust member will have met their duty of care and due diligence if they can demonstrate:

* their decisions are made in good faith for a proper purpose
* their decisions do not provide them with material benefit(s)
* they have taken reasonable steps to inform themselves about an issue before making a decision
* they rationally believe the decision they have made (based on their best judgement) is in the interest of the trust
* they exercise their powers and discharge their duties honestly, in the best interests of the trust, and for a proper purpose
* they do not use their position improperly to gain an advantage for themselves or someone else or cause detriment to the trust
* they do not use information that has been obtained by being a trust member improperly to gain an advantage for themselves or someone else or to cause a detriment to the trust
* they avoid conﬂicts of interest and do not allow personal interests to conﬂict with the interests of the trust by disclosing all potential, perceived or real conflicts of interest.

### Dos and don’ts for trust members

|  |  |
| --- | --- |
| Dos | * Do ask probing questions (for example, about the key assumptions behind a budget). * Do understand and properly value the trust’s liabilities. * Do ensure abstracts and reports are produced on time. * Do develop long-term strategies (to provide trust members with something to measure the trust’s performance against over time). * Do develop and implement risk management policies (risk management policies ensure risks are managed appropriately). * Do foster a positive culture because this will influence behaviour, and behaviour ultimately affects performance. |
| Don’ts | * Don’t ignore responsibility (attend meetings and consider issues). * Don’t hide, filter or play down unpleasant information. |

### Trust chairperson

The members of a Class B cemetery trust must appoint one of the current members to be the trust chairperson. The chairperson is responsible for:

* leading the cemetery trust
* ensuring the trust’s performance and accountability
* presiding 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 made up of members 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 accountabilities
* setting the trust’s meeting agendas and ensuring key issues are discussed
* managing conﬂicts of interest
* 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 as an ofﬁcial spokesperson for the trust
* managing the key relationships of the trust, for example, relationships with senior staff, the department and the Minister for Health
* ensuring relevant policies are brought to the attention of members of the trust
* ensuring the trust performs appropriately in relation to
  + its functions under the Act
  + risk management
  + accountability to the Minister for Health
  + the code of conduct for members
  + trust policies
  + ﬁnancial accountability.

### Trust secretary

A cemetery trust may appoint a person as secretary (sometimes referred to as cemetery manager or officer) to attend to routine business matters, provide administrative support and to perform those powers and duties delegated by the trust. The trust secretary’s duties may include:

* ensuring relevant information is shared among trust members
* helping to implement corporate strategies and ensure the trust’s decisions are acted on
* advising trust members on the obligations of members and of the trust
* facilitating inductions for new trust members
* taking meeting minutes
* undertaking a range of operational functions related to the cemetery services provided by the trust, such as
  + selling rights of interments and memorial permits
  + taking interment and funeral bookings
  + attending interment services as the trust’s delegate to check and receive documentation.

#### Member secretary

A member secretary is an appointed trust member who performs the role of the secretary in addition to their trust member responsibilities. A member secretary does not receive any payment for performing this role but can be reimbursed for reasonable expenses incurred in the course of authorised work with the trust’s approval.

#### Non-member secretary

A cemetery trust may decide to appoint someone who is not a member of the trust to undertake some or all of the secretary’s duties. This position, referred to as the non-member secretary, reports to the trust. The non-member secretary does not vote on trust decisions.

The decision to appoint a non-member secretary is usually based on the weight of the volunteer load, the number of interments per year at the cemetery and the trust’s financial position. A non-member secretary may be paid or an unpaid volunteer. A paid non-member secretary may be an employee or a contractor.

## Trust members and personal liability

In carrying out a function or power under the Act, a cemetery trust member is not personally liable for anything they do or fail to do in good faith. Any liabilities that come about from the actions of individual trust members attach to the cemetery trust, rather than the individual.

### Directors and ofﬁcers liability insurance

As the insurer for the state of Victoria, the Victorian Managed Insurance Authority (VMIA) provides insurance services to cemetery trusts and cemetery trust members. The coverage includes directors and ofﬁcers liability insurance of $20 million for any one claim and in the annual total plus legal costs and expenses.

This insurance provides cover for trust members and ofﬁcers of the trust against third-party claims for wrongful acts, including actual or alleged breach of duty, breach of trust, neglect, error misstatement, misleading statement, omission, breach of warranty or authority, or any other act wrongfully committed. The cover includes costs relating to investigations, inquiries and raids.

The cover provides ﬁnancial protection for personal assets in the event of a legal action arising from alleged breaches of their obligations while performing their duties as a director or ofﬁcer. Claims may be made by suppliers, customers or employees. The policy provides cover for advance payment of legal defence costs.

## Code of conduct

Trust members are expected to act in good faith, fairly and impartially, with honesty and integrity, and in the best interests of the trust and their community.

As members of a public entity, cemetery trust members are public ofﬁcials under s. 4 of the Public Administration Act and are subject to the public sector values, which include responsiveness, integrity, impartiality, accountability, respect and leadership, and must comply with the *Code of conduct for directors of Victorian public entities* issued by the Victorian Public Sector Commission (VPSC). The Code of conduct is available on the [VPSC website](https://vpsc.vic.gov.au/ethics-behaviours-culture/codes-of-conduct/code-of-conduct-for-directors-of-victorian-public-entities/) <https://vpsc.vic.gov.au/ethics-behaviours-culture/codes-of-conduct/code-of-conduct-for-directors-of-victorian-public-entities>.

As a member of a trust of a Victorian public entity you must do the following:

* Act with honesty and integrity. Be open and transparent in your dealings, use power responsibly, do not place yourself in a position of conﬂict of interest, strive to earn and sustain public trust of a high level.
* Act in good faith in the best interests of the public entity. Demonstrate accountability for your actions, accept responsibility for your decisions, do not participate in activities that may bring you or the public entity into disrepute.
* Act fairly and impartially. Avoid bias, discrimination or acting in self-interest. Demonstrate respect for others by acting in a professional and courteous way.
* Use information appropriately. Ensure information gained as a trust member is only used for proper purposes and is kept conﬁdential.
* Use your position appropriately. Do not use your position as a trust member to gain an undue advantage for yourself, family members or associates, or to cause detriment to the public entity. Ensure you refuse gifts or favours that may cast doubt on your ability to apply independent judgement as a trust member of the public entity.
* Act in a ﬁnancially responsible manner. Understand ﬁnancial reports, audit reports and other ﬁnancial material that comes before the trust; actively enquire into this material.
* Exercise due care, diligence and skill. Clarify all relevant information and make reasonable enquiries. Understand the ﬁnancial, strategic and other implications of decisions.
* Comply with the establishing legislation or its equivalent for your public entity. Act within the powers and the functions set out in the trust’s establishing legislation (the Act).
* Demonstrate leadership and stewardship. Promote and apply the Victorian public sector values. Honour the Code of conduct.

## Charter of human rights

Trust members must comply with the *Charter of Human Rights and Responsibilities*. The Charter sets out 20 fundamental human rights that belong to all people in Victoria. Human rights are basic entitlements that belong to everyone regardless of their background, location, differences or beliefs.

## Conﬂicts of interest

Trust members who have a potential, perceived or real conflict of interest, must disclose the conflict at a trust meeting as soon as possible after becoming aware of a conflict. A trust member who has a conﬂict of interest will be required to enter into a conflict of interest management plan. A conflict of interest management plan is a written document that specifies a trust member’s conflict/s and strategies for managing the conflict/s.

Both the trust member and the trust chairperson are required to sign the document and agree to a schedule for periodic review of the plan. The trust member is responsible for acting in accordance with the plan and implementing agreed management actions. The trust chairperson is responsible for reviewing the plan as per the agreed schedule.

### Examples of conflicts of interest

| Type | Conflict | Why is it a conflict? |
| --- | --- | --- |
| Financial conflict of interest | A trust member works in a profession directly related to the cemetery sector (funeral director, celebrant, gravedigger, stonemason, plaque manufacturer, florist) that delivers services at the cemetery. | A trust member who works in a profession directly related to the cemetery sector could use their position as a trust member to gain a competitive advantage over other businesses resulting in financial gain. |
| Financial conflict of interest | A trust member’s close personal friend works for a herbicide supplier that is seeking the trust’s business and has offered the trust member a discount on personal purchases. | The trust member may use their position to influence the trust’s procurement decisions in exchange for personal financial gain. |
| Financial conflict of interest | A trust member is paid by a funeral director for gravedigging services, and the cost is then on-charged to the trust by the funeral director. | While not receiving payment directly from the trust, the trust member may still use their position as a trust member to gain a competitive advantage over other businesses resulting in financial gain. |
| Non-financial conflict of interest | A trust member’s daughter is a funeral director, and the trust member has placed advertising materials for their daughter’s business in the cemetery trust office. Advertising for other business is not allowed. | The trust member’s actions result in an unfair competitive advantage for their daughter’s business and disadvantages other businesses. |
| Non-financial conflict of interest | A trust member’s brother owns a groundskeeping business bidding for a cemetery maintenance contract. | The trust member’s personal feelings about their brother influence the trust member’s decision-making during the procurement process and results in an unfair outcome. |
| Conflict of interest due to personal relationship | A trust member’s close personal friend has applied for a position as a paid trust secretary and the trust member wants to join the selection panel and participate in the interview process. | The trust member’s personal relationship with the applicant may influence the selection process and result in an unfair outcome. |
| Conflict of duty | A trust member is a member of a community group that is opposed to the removal of vegetation in public spaces and the trust is planning to develop a new section of the cemetery that will require vegetation removal. | The trust member’s duty to the community group conflicts directly with the trust’s strategy for future development which is required to enable the trust to continue to deliver services and meet community needs. |

### Conflict of interest management strategies

#### Trust meetings

* The trust member:
  + will disclose any conflicts of interest relating to agenda items at the beginning of trust meetings
  + will leave a trust meeting as soon as an agenda item related to the conflict comes up for discussion
  + will not initiate or engage in any discussions related to the conflict (including before and after meetings)
  + will not vote on an agenda item related to the conflict.

#### Procurement processes

* The trust member will not participate in any stage of procurement processes where:
  + the trust member owns or works for a business bidding for a contract
  + the trust member has shares in a business bidding for a contract
  + the trust member has a private interest in a business bidding for a contract
  + the trust member is a directly related family member or a close personal friend of a person who owns or works for a business bidding for a contract.
* The trust member will not be privy to commercial-in-confidence information relevant to a profession/business the trust member has a private interest in.

#### Promotion and advertising

* The trust member will not promote a business they have a private interest in to customers and other stakeholders.
* The trust member will not advertise a business they have a private interest in on cemetery premises or via trust communications (including online).
* The trust member will not be permitted to provide quotes in a private capacity for grant applications.

#### Recruitment and employment

* The trust member will not participate in the recruitment process for new trust members where an applicant is a directly related family member or a close personal friend of the trust member.
* The trust member will not participate in the recruitment of trust employees where an applicant is a directly related family member or a close personal friend of the trust member.
* The trust member will not participate in performance reviews and performance management of a trust employee who is a directly related family member.

## Trust member allowances

A member of a Class B cemetery trust is entitled to receive travelling and other allowances. Such allowances are to be paid from the funds of the trust.

Claims for expenses must be reasonable and necessary and incurred in the course of authorised work. Trust members must provide receipts for all expenses, and the chairperson must approve these before they will be reimbursed. Where a chairperson claims expenses, an authorised trust member must endorse the receipts.

The travelling and other allowances up to a maximum of $4,000 per annum can be paid as follows:

|  |  |
| --- | --- |
| Travelling expenses | Up to $2,000 per annum |
| Postage and administrative expenses | Up to $2,000 per annum |

These maximum allowances are subject to the ability of the trust to fund the expenses. All expenses paid to members should be recorded in the trust’s accounts records.

### No free rights of interment for trust members

Trusts should not waive the gazetted fee for a right of interment for fellow trust members or former trust members. Applying different rules for trust members to those of the public would not engender public conﬁdence in the impartiality and integrity of the trust. This would also go against the fundamental principles of good governance and would not be in the best interests of the trust.

# Theme 3: Trust responsibilities

## Cemetery trust functions

A cemetery trust:

* sets the overall strategic direction of the cemetery trust
* ensures the cemetery’s operations meet community expectations
* ensures that operations within the cemetery are performed safely
* provides stewardship for a community asset
* reﬂects public sector values and employment principles
* needs to meet its statutory obligations and safeguard the assets under its control.

Trust members collectively share the ultimate responsibility for the trust’s success. Individually, trust members must ensure the trust is performing its functions responsibly.

The functions of a cemetery trust include:

* properly, safely and efﬁciently managing and maintaining cemeteries under its control
* meeting its duties and obligations under the Act
* setting aside sufficient funds to meet perpetual maintenance obligations for cemeteries under its control
* delivering services that meet the diverse cultural, religious and spiritual values of the community
* protecting any listed heritage values associated with the cemeteries under its control.

## General powers of cemetery trusts

A cemetery trust may do anything that is necessary or convenient to enable the trust to carry out its functions. This general power should always be carried out with due diligence and as a reasonable response to a given situation or circumstance and cannot be contrary to the functions and requirements of the Act.

## Core reporting obligations

* Cemetery trusts must keep accounts and records (ss. 49, 50, 59 of the Act).
* Cemetery trusts must submit an annual abstract of accounts to the department (s. 52 of the Act).
* Any personal injury must be promptly reported to WorkSafe Victoria.
* Freedom of information reporting to the Office of the Victorian Information Commissioner (OVIC).
* Protective data security reporting to OVIC.
* There is a general obligation for any person who has reasonable grounds to believe that a reportable or reviewable death has not been reported, to report it without delay to a coroner or the ofﬁcer in charge of a police station (*Coroners Act 2008*).

## Trust policies

A cemetery trust can develop its own policies or procedures for the day-to-day management and operation of a cemetery. These policies must always be consistent with the requirements of the Act, Regulations, and departmental guidelines and government policy.

If a trust decides to create a new policy or amend an existing policy and it is likely to affect stakeholders (for example, right of interment holders, funeral directors, the broader community) the trust must undertake a consultation process. During this process stakeholders should have the chance to provide feedback on the policy and the trust must consider and address any concerns raised.

Trusts must ensure their memorialisation policies are clearly explained to customers before selling rights of interment. They should also be clearly explained to funeral directors who are acting as agents for people purchasing cemetery products and services.

The trust should regularly review its policies and procedures and take into consideration any concerns that have been raised about the fairness of a particular policy or procedure.

### Policy templates

The following policy templates are available on the department’s website <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>:

* Budget template
* Cash management policy template
* Complaints policy template
* Contractor policy template
* Gifts, benefits and hospitality policy template
* Instrument of delegation template
* Memorialisation policy template
* Monumental mason policy template
* Purchasing and tendering policy template

There are also many useful policy templates available on the Institute of Community Directors Policy Bank website <https://communitydirectors.com.au/tools-resources/policy-bank>.

## Trust member recruitment

Class B cemetery trusts are responsible for the recruitment, selection and nomination of candidates for appointment to the trust. The department advertises vacancies in publications across the state on behalf of trusts.

Trusts are responsible for:

* developing a position description
* reviewing the trust’s skills matrix
* setting selection criteria
* conducting interviews
* conducting referee checks.

Trusts should ideally have members with an appropriate mix of expertise, experience and a range of perspectives. Emphasis should be placed on the skills mix and personal attributes required for the trust to perform effectively. Trusts must also consider diversity when selecting candidates for appointment. The Victorian Government is committed to ensuring that government boards reflect the rich diversity of Victoria.

If the application is endorsed by the trust, the trust chairperson will finalise the application form and submit it to the department for processing. More information about the trust member recruitment process is available on the department’s website <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising>.

### Desirable trust member qualities and skills

|  |  |
| --- | --- |
| Qualities | Integrity and standing in the community  Demonstrated honesty  Tolerance of different views  A record of acting in good faith and in the best interests of an organisation  Ability to listen, analyse think clearly and work well with others  Willingness to attend meetings, ask questions and take responsibility  Ability to be a team player  Sound judgement |
| Skills | Strategic thinking  Leadership  Risk management  Reading and understanding ﬁnancial statements  Marketing and communication  Stakeholder management |
| Experience | Working on a board  Experience in management or business  Diverse lived experience  Community experience  Government experience |

## Trust member induction

Trust members need to be provided with an orientation regarding their role and responsibilities, so they are fully prepared to meet the demands of their position. Trust members themselves must take steps to understand the important aspects of the trust and its operations. Trusts should design and implement an effective induction program for new trust members and should encourage ongoing learning and development.

The induction program should be tailored to take account of the appointee’s knowledge and experience and will vary depending on the issues faced by the trust they join. The chairperson should take a role in ensuring a balanced induction that may include:

* trust information – strategic and business plans, ﬁnancial reports, trust history, product information and a tour of the cemeteries under the trust’s control
* governance framework – trust charter, annual agenda, details of other trust members, committee structures and previous minutes
* management information – names of staff and details of major contracts
* meeting schedule
* information about any outstanding issues relating to the operation or the governance of the trust.

### Checklist of information for new trust members

A new trust member should have access to the following information (the full checklist applies to larger Class B trusts):

* trust background/overview/stats (for example, number of interments per year)
* the history of the trust
* strategic and business plans (12 months to three years)
* trust legal structure (Act and Regulations)
* tax status
* trust rules/charter
* organisational structure, and trust and staff members’ skills/interests/contacts
* subcommittee structure and functions/terms of reference
* minutes of recent trust meetings
* summary of key decisions made by the trust in the past year (decision register)
* time commitment required
  + preparation for meetings = x hours
  + the meeting itself = x hours
  + post-meeting follow-up = x hours
  + subcommittee meetings = x hours
  + professional development = x hours
  + strategic planning = x hours
  + meetings with key stakeholders = x hours
* the trust’s expectations of members
* board calendar
* what a new trust member can expect in relation to induction, mentoring, handover
* code of conduct
* governance policies/charter
* financial control policies
* record-keeping processes
* complaints management process
* list of key stakeholders
* insurances
* finances – balance sheet
* how the trust communicates – access/logins/passwords
* where to go for more information/help.

## Records management

The Act requires that details of all interments within a cemetery, including bodily and cremated remains, are maintained in a register. The Regulations prescribe in detail the information that must be kept in relation to interments and rights of interment.

Trusts are public offices within the definition of the Public Records Act and as such create public records. Trust records are of value to the sector, the community and the Victorian Government.

The Public Record Office Victoria (PROV) has established the *Retention and disposal authority for cemetery and crematoria records* (RDA) to provide a mechanism for the disposal of public records in accordance with the Public Records Act.

If permanent records are no longer actively required by the cemetery trust for the delivery of its functions, they must be transferred to PROV. Permanent records must not be destroyed.

Permanent cemetery trust records include:

* meeting minutes, agendas and papers
* policies and procedures
* design plans for cemetery structures
* interment and right of interment registers
* cemetery plans
* land overlay registers and approvals
* memorialisation records.

Cemetery 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.

More information, including the RDA is available on the PROV website <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-cemetery-and-crematoria>.

### Privacy

Under the Privacy and Data Protection Act, trusts are required to protect the privacy of people from whom they collect personal information. 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.

The Privacy and Data Protection Act only protects the privacy of living people and so does not apply to deceased people. However, it is important to be aware that information about a deceased person may include personal information about the living. For example, coronial records may include information about the deceased’s family, employer, colleagues and relevant medical and police officers involved in the coronial inquiry.

More information is available on the OVIC website <https://ovic.vic.gov.au/privacy/resources-for-organisations>.

### Public access to trust records

A cemetery trust must make the information in its interment records available to the public for historical or research purposes. A cemetery 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.

Practical tip: In some instances, access to certain information should be refused. Consider the trust’s obligations under the Privacy and Data Protection Act. Initially, credentials of the person requesting the information should be checked, and the legitimacy of their enquiry considered by the trust.

### Information security

Information security is a risk management process that safeguards public sector information from unauthorised access, disclosure, and use. Information security is about making sure the right people have access to the right information at the right time.

All cemetery trusts are required to develop a Protective Data Security Plan every two years for submission to OVIC. The biennial submission date is 31 August of alternating years (Class B cemetery trust reporting commenced in 2020). If a cemetery trust undergoes significant change, then out-of-cycle reporting may be required.

More information is available on the OVIC website <https://ovic.vic.gov.au/information-security/agency-reporting-obligations-hub/class-b-cemetery-trust-stakeholders>.

## Human resources management

### Managing the performance of employees (where applicable)

For the larger Class B trusts that employ staff, one of the most important duties they have is to select and work with a manager. This requires a clear understanding of the role of the manager, and how it relates to the trust.

Managers are generally responsible for:

* interpreting and implementing the trust’s policy directives
* running the organisation in line with government and legislative requirements
* preparing and implementing policies and procedures
* efﬁciently and effectively allocating resources (budget management)
* developing and maintaining good relationships with the local community and other stakeholders
* alerting trust members to critical issues for the trust.

### The trust–manager relationship is a partnership

There should be a formal statement outlining the boundaries between trust and management responsibilities that includes what authorities the trust retains and what are delegated to management.

A high-performing trust will invest time and effort in constructing a productive partnership with its management, rather than one based on supervision, to achieve outstanding results.

A healthy trust–manager relationship is based on:

* a commitment to work together towards common goals
* a cooperative working relationship
* an acknowledgment of speciﬁc roles and responsibilities
* a sharing of leadership, work, support and information.

### Employment contracts

A cemetery trust must ensure the terms and conditions of all employees are lawful.

The following legal and industrial frameworks may govern a worker’s employment with a cemetery trust:

* the Fair Work Act
* the applicable modern award
* an enterprise agreement
* a common law contract of employment.

All cemetery trusts must act within the principles set out in the *Public sector industrial relations policies* <https://www.vic.gov.au/public-sector-industrial-relations-policies-2015>.

This is in addition to laws prescribed in Victorian legislation regarding occupational health and safety (OHS), superannuation, WorkCover, discrimination and long-service leave.

### Equal employment opportunity

Under Victoria’s Equal Opportunity Act, it is unlawful to discriminate against people on the basis of various personal attributes, and unlawful to harass, including sexually harass, another individual or individuals, including job applicants, employees, co-workers and contract workers. Sexual harassment is unlawful, regardless of a person’s status as employer or employee, and regardless of whether or not they work for the same employer.

### Victorian Charter of Human Rights and Responsibilities

The *Victorian Charter of Human Rights and Responsibilities* (the Charter) 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 rules, set policies and provide services.

Cemetery trusts are required to act in a way that is consistent with the human rights protected under the Charter, comply with the Charter and take human rights into account in their day-to-day operations.

## Occupational health and safety

The Occupational Health and Safety Act makes it clear that every individual involved in the workplace has a responsibility to prevent injury or ill health. It provides a broad framework for improving standards of workplace health and safety to reduce work-related injury and illness.

The Occupational Health and Safety Act aims to:

* secure the health, safety and welfare of employees and other people at work
* protect the public from the health and safety risks of business activities
* eliminate workplace risks at the source.

The trust has a duty of care to all members of the public who enter the cemetery. See Topic 28 – Occupational health and safety of the Manual for Victorian Class B cemetery trusts for more information <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance>.

## Environmental management

Victorian cemeteries are a signiﬁcant link to Victoria’s heritage and are places of cultural, historical and ecological signiﬁcance.

A cemetery trust must always take these different functions into consideration, particularly when erecting a new structure, removing native vegetation and any other key works that have a signiﬁcant impact on the character of the cemetery.

Trusts have an obligation to check for and be aware of any heritage or other planning overlays that may apply to their cemeteries before undertaking any works (including maintenance).

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

### Conservation and planning legislation

The legislation relevant to cemeteries regarding conservation and planning includes (but is not limited to) the following:

* *Catchment and Land Protection Act 1994*
* *Flora and Fauna Guarantee Act 1988*
* *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)*
* *Heritage Act 1995*
* *Planning and Environment Act 1987*
* *Wildlife Act 1975*

If in doubt, trusts should get advice from local councils and the Department of Energy, Environment and Climate Action.

Ignorance of applicable overlays is not an acceptable excuse for not obtaining the appropriate permits prior to undertaking work. The onus is on each cemetery trust to be aware of the legislation relevant to the public cemeteries they manage.

### Heritage

The trust should be aware of its responsibilities (if any) under the Heritage Act and the Planning and Environment Act and be sensitive to the increased public awareness of the heritage value and the need to protect the historic components of older cemeteries.

If a heritage overlay applies to a particular cemetery, this may affect the trust’s ability to undertake what would otherwise be considered relatively minor maintenance. For example, repainting cemetery structures and buildings or resurfacing roads may alter the visual appearance of the cemetery.

### Native vegetation

Native vegetation is protected by legislation. Management practices such as well-timed mowing, grazing or burning that have in the past enhanced the native vegetation in the cemetery, need to be retained where possible to protect native vegetation remnants. Trust members and contractors need to be aware of legislation that protects native vegetation.

#### What is native vegetation?

Native vegetation means all plants (trees, shrubs, orchids, lilies, groundcover plants and grasses) that were growing naturally in Victoria before European arrival. It does not include plants that originate from other parts of Australia or from other countries.

#### Legislation protecting native vegetation in cemeteries

Native vegetation has been protected under Victorian legislation since 1989. People working in cemeteries need to be aware of their responsibilities to protect native vegetation under current native vegetation legislation.

Various legislation effects burials, conservation of historic graves, monuments and surrounds, native vegetation, wildlife and weed and pest animal control. If trust members, ofﬁcers of cemetery trusts and contractors do not comply with the legislation they may be exposed to personal liability.

Legislation is often revised or updated. Trust members should check with the local council and their local Department of Environment, Energy and Climate Action office whether a permit is required to remove vegetation. This will ensure that if any vegetation is native, subject to an overlay or protected under specific legislation, the appropriate planning permits can be obtained.

Approval from council may be necessary for the following activities (not limited to):

* Mowing and slashing native grasses
* Lopping and pruning for maintenance
* Removing dead trees
* Weeds and pest animal burrows
  + Weeds and rabbits have a big impact on the native vegetation in some cemeteries and rabbits also undermine graves and other structures. It is important to obtain advice on the best ways to control weeds and rabbits to avoid damaging native vegetation. Widespread use of herbicide may damage native vegetation and culturally important introduced plants. Overuse may lead to herbicide resistance, which makes weeds harder to kill and results in a new suite of weeds taking over the area.
* Removing areas of native vegetation
  + Any trust considering the removal of native vegetation must first consult the local council. Work that requires removing native vegetation, such as new lawn cemetery sections, niche walls, other structures and car parks, may need a planning permit. In addition to protection under Victorian legislation, some native plants, animals and plant communities are also protected under Commonwealth Government legislation.
* Emergency works (vegetation that presents an immediate risk of personal injury or damage to property)

#### Planning

Trusts should consider developing a site management plan for the cemetery. This will help the cemetery trust members to know where the native vegetation is located, what management techniques should be used, and to plan when and where works should be carried out. It can also form the basis of an application for a permit that can cover multiple works over a period of up to 10 years, avoiding the need for multiple permits.

The plan does not have to be a big document but needs to include:

* a scaled site map
* the location of graves, buildings, gardens and other structures
* the location of the native vegetation, including different plant communities and trees, and the location of any threatened plants
* works that need to be done and how and when to do it
* a full list of the legislation and permits that need to be considered
* areas that are degraded and can be used for dumping soil, burning rubbish and stacking branches, and where future buildings can be placed
* issues and guidelines relating to safe working practices.

## Competitive neutrality

Cemetery trusts may sell and supply memorials; however, they must comply with the principles of ‘competitive neutrality’ to encourage a fair and equitable environment for selling and supplying memorialisation goods and services. Competitive neutrality means that government-owned organisations must operate on a level playing field with similar privately run businesses.

The department has developed the *Cemetery trust code of practice - sale and supply of memorialisation goods and services by cemetery trusts and other suppliers in Victorian public cemeteries* to establish a framework for competitive neutrality for cemetery trusts <https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice>.

Permit fees for work on memorials or places of interment should be based on the actual costs of approving this work such as:

* administrative costs associated with processing the application
* costs related to a technical assessment of the application and inspecting the memorial or place of interment before, during and after construction
* a component of the trust’s perpetual maintenance costs.

A list of recommended memorial permit fee prices is available on the department’s website, as well as a user guide and fee justification model to assist trusts which would prefer to set fees higher than the recommended prices <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting>.

# Theme 4: Strategy, planning and risk management

## Setting strategic direction

Although Class B cemetery trusts are not formally required to develop annual and strategic plans, it is a good idea to do so and will certainly assist the larger Class B trusts.

Developing annual and strategic plans is a helpful exercise in itself – leading trust members to discuss, prioritise and determine areas of focus. Strategic plans are also useful for communicating objectives and priorities to stakeholders.

For the larger Class B trusts, corporate or strategic plans form an agreement between the trust members and their senior management team. The documents are designed to outline the cemetery trust’s strategic directions and performance targets over the planning period.

Trusts should ensure their plans are consistent with their functions as speciﬁed under the Act.

Figure 1: Key strategic planning questions

The department has prepared *Strategic and annual plan guidelines for Class A cemetery trusts*, which may be a useful base from which Class B trusts can develop a strategic plan, or to identify areas of strategic focus <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-governance>.

The strategic plan template contains three key sections that Class A trusts must complete:

* an overview of the organisation’s corporate proﬁle and operating environment
* information about the organisation’s mission, vision, values, priorities and key organisational policies
* an outline of the organisation’s strategic priorities.

## Strategic plans

Information about a Class B cemetery trust’s operations could include its:

* structure
* business characteristics (an outline of the cemetery sites that your trust manages)
* scale of business (a high-level overview of anticipated growth of the business/demand over the next three years)
* basis of charging (an outline of general payment arrangements for customers)
* regulatory environment (an outline of legislation/regulations that govern the cemetery operations)
* inventory of plots available for sale (for both developed and undeveloped areas)
* average annual workload (such as burials and/or cremations per year)
* organisation and stafﬁng requirements
* trust members (current trust members and their terms of appointment).

## Key challenges and risks

Trusts should identify any:

* external or internal inﬂuences that may affect the services and/or operations the trust provides
* trends in the sector that may relate to the trust’s operations or capabilities.

## Strategic priorities

Trusts should identify any strategic priorities it needs to put in place over the next three years. When identifying these priorities trusts should consider how to:

* build a viable and sustainable organisation (including ﬁnance and assets)
* develop the skills of trust members and employees
* enhance relationships with the community, clients and stakeholders
* improve trust governance and accountability
* provide leadership to the organisation.

## Trends and external factors

External factors affect the future of any business, including cemetery trusts. ‘PESTLE’ is a common framework for identifying and analysing these factors. A PESTLE analysis template is provided in the *Class B cemetery trust training workbook*.

## Regular risk reviews

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

* pinpoint potential risks and monitor in a risk register
* take action to remove or reduce potential threats, harm and loss
* monitor risk controls
* ensure a culture of risk management is in place.

## What is risk management?

Risk management involves:

* protecting the trust from the chance of something happening that will impact negatively on achieving its objectives
* putting controls in place to manage risk throughout the organisation by developing tailored risk management plans and policies.

Risk management begins with ﬁve basic questions:

1. What can go wrong?
2. How likely is it to go wrong?
3. What will be the consequences if it goes wrong?
4. What will we do to prevent it?
5. What will we do if it happens?

Risk management has a negative connotation to many people because it is associated with hazards and unfortunate events. Risk taking can also be associated with rich rewards. It is this risk–reward dynamic that lies at the heart of efforts to create a functioning organisation-wide risk management system. Risk management should enable well-informed risk taking so that decision making occurs within the broader risk parameters set by an organisation. This applies equally to cemetery trusts.

Risk management is only effective when management and employees take direct responsibility. Trust members must recognise that they are responsible for managing risk and can make a signiﬁcant contribution to the risk management culture within the organisation. Trust members should look at whether there are appropriate processes to proactively identify, assess and manage signiﬁcant risks, and ensure growth objectives are balanced with considerations of risk.

## What are the components of risk management?

A risk framework is an overarching system that identiﬁes, assesses and acts on business risks. A trust should implement a risk management framework that suits the size and needs of their trust and its risk proﬁle. The trust should encourage and oversee initiatives to:

* spell out a clear risk management policy that deﬁnes the organisation’s expectations and internal accountabilities for managing risk
* where staff are employed by the trust, position risk management as the responsibility of each manager and employee as they go about their duties
* establish a robust approach to risk management, providing a framework for
  + identifying the risks (in the various categories) related to the organisation’s objectives, any new risks as they emerge and changes in previously identiﬁed risks
  + measuring its potential impact and determining how likely it is that the risk will eventuate and what the likely consequences will be for the organisation both internally and externally (determine if the level of risk is acceptable)
  + deciding what actions are needed to deal with the risks in a proactive and cost-effective way (determining how the likelihood or consequence could be reduced and what the organisation would do if the risk were to eventuate)
  + identifying controls to ensure the actions are carried out as planned
  + ensuring systems are in place to report on risks and strategies to address them
  + monitoring the process.

## What is the trust’s ongoing role in overseeing risk management?

A public body (which includes cemetery trusts) is required to maintain a register of the assets it holds or manages, and to develop and periodically review a risk management strategy (s. 44B of the Financial Management Act).

Under the Public Administration Act (s. 81(1)(b)) a board of a public entity governed by Division 2 of Part 5 of the Public Administration Act must inform the responsible minister and the relevant department head of:

* known major risks to the effective operation of the public entity
* the risk management systems it has in place to address those risks.

Trust members need to understand the risks and liabilities potentially affecting their organisation and must exercise care, skill and diligence in dealing with them. They should ensure that effective risk management strategies are developed, including appropriate internal controls.

Risk management is closely linked to a trust member’s duty of care. If the trust members do not ensure that risk is managed they are not fulﬁlling their duties.

The trust is responsible for evaluating and approving the organisation’s level of risk. In short, the trust is responsible for risk management. It must ensure areas of signiﬁcant risk are identiﬁed and that the trust has arrangements in place for managing those risks.

Risks can be grouped into various categories. The following groups are used by the Cemeteries and Crematoria Association of Victoria (CCAV):

* **Strategic risks** are risks to the organisation’s direction or achievement of its plans.
* **Governance and compliance risks** are risks relating to governance frameworks and risks to meeting regulatory obligations.
* **Financial and systems risks** are risks with ﬁnancial controls and systems, for example, market risk (gains/losses from changes in ﬁnancial and physical market prices), liquidity risk (risk that an organisation cannot fund its operations or convert assets into cash) and credit risk (gains/losses from the failure of a counterparty to fulﬁl all of their obligations under contract).
* **Operational and technical risks** are risks to core business activities, for example, physical damage to assets or threats to personal safety, risks of not managing assets appropriately and loss of public money through misappropriation or expenditure (inadequate internal controls).
* **Customer risks** are risks of not communicating or listening to customer feedback resulting from poor advice provided by staff.
* **People risks** are risks of not having adequate human resources.

Risks are typically managed in one of four ways:

1. Terminating the activity causing the risk
2. Reducing the risk by adopting appropriate mitigation procedures
3. Passing on the risk to another party
4. Accepting the risk

Risks can be viewed and mapped in terms of probability and consequences (see Figure 2).

Figure 2: Risk probability and consequences

|  |  |  |  |
| --- | --- | --- | --- |
| Probability of risk occurring | High | * Active awareness of governance with an agreed risk mitigation plan * Proactive communication with stakeholders to ensure understanding | * Strong governance required with very tight mitigation controls * Proactive assurance of relevant stakeholders to sustain reputation |
| Low | * Routine monitoring * Ongoing assessment of risk proﬁle | * Clear understanding of consequences by the trust, with agreed and appropriate mitigation plans |
|  |  | Minimal | Severe |
|  |  | Impact/consequence | |

### Beneﬁts of risk management

The beneﬁts of risk management include:

* protecting your organisation from legal liability
* improving the perception of your organisation
* better information for decision making
* better asset management and maintenance
* protecting stakeholder relationships.

Practical tips to help deliver good practice risk management:

* Learn to think about the risks of all actions the trust is contemplating. Identify and implement ways to control the risks.
* The trust should decide the risk proﬁle it can bear and then ensure all unacceptably high risks have been addressed and brought down to acceptable levels.
* Don’t be risk averse – but do be risk aware.

# Theme 5: Stakeholder relations

## Role of government

Figure 3: Government stakeholder responsibilities

**Trust members**

The department is the extension of the Minister and is the Minister’s principal source of advice on cemetery trusts, particularly focusing on the performance of trusts and the processes associated with the nomination and appointment of cemetery trust members.

The Secretary to the department has a number of broad policy-based review and investigative powers that are designed to help the cemetery sector run efficiently.

**Department**

The Minister is accountable to parliament and is responsible for administering the Act and Regulations. The Act has legislated speciﬁc powers including:

* purchasing or compulsorily acquiring land for cemetery and crematoria purposes
* approving purposes for which trusts can grant leases or licences over cemetery trust land
* making recommendations to the GIC for orders and appointments.

**Minister for Health**

**Governor in Council**

GIC has an administrative ‘formalising’ role including:

* the power to establish a public cemetery or cemetery trust via an order published in the Victoria Government Gazette
* appointing members to cemetery trusts
* legislative powers to appoint an administrator to manage a public cemetery
* approving and revoking cemetery trust rules.

Trust members are appointed by GIC on the recommendation of the Minister. The trust is:

* responsible for the proper and efficient management and maintenance of the cemetery
* accountable to the community and other stakeholders.

## Accountability to stakeholders and the community

### Stakeholder management

A stakeholder is any person who perceives themselves to be affected by the activities of an organisation. Cemetery trusts often interact with funeral directors, stonemasons and various family members who may still be grieving. When trusts make decisions, it is important that they consider the interests of these stakeholders. Stakeholder groups for cemetery trusts include:

* regulators and government
* employees and unions
* members of a grieving family
* suppliers (funeral directors, stonemasons)
* local communities
* environmental groups.

Managing these stakeholders is critical to a trust’s good reputation. Trusts cannot ignore their concerns.

Stakeholders have a varying level of interest in a trust. It is useful to categorise stakeholders using the matrix below.

Figure 4: Stakeholder power and interest matrix

|  |  |  |  |
| --- | --- | --- | --- |
| Power | High | Keep satisfied | Key players |
| Low | Minimal effort | Keep informed |
|  |  | Low | High |
|  |  | Level of interest | |

### Stakeholder engagement

A trust’s involvement with key stakeholder groups may be limited to the chairperson, or all members may become involved in engagement activities and communication. Trust members should report any engagement with key stakeholders to the trust.

A proactive strategy is to develop a stakeholder engagement plan. This will improve the trust’s understanding and oversight of key stakeholders. The plan could include:

* establishing policy positions (for example, on how to deal with various community issues/disputes)
* monitoring community concerns and sensitivities and developing actions to address them
* regular, appropriate communications with all stakeholders through appropriate channels
* keeping up to date with government and association bulletins/initiatives/guidelines/consultations.

## Complaints management

No trust should disregard any complaint. Any stakeholder can make a complaint, and it is important that their point of view is acknowledged and discussed. The trust must make every attempt to resolve complaints and concerns.

The cemetery trust needs to consider all complaints made, whether internal between trust members, or from external stakeholders. Where complaints relate to trust policies or decisions, these must be reviewed, giving consideration to procedural fairness.

Any concerns with the decisions of a cemetery trust should first be discussed between the complainant and representatives of the trust, and an attempt should be made to resolve the issue. Regardless of the outcome of these discussions, the trust should provide the complainant with a written response to their concerns.

A trust’s policies and decision making cannot be arbitrary and must be based on reasonable governance and administrative principles. Cemetery trusts are responsible public bodies and need to ensure they have adequate complaints management policies and procedures in place.

Trusts should log all complaints received and monitor the approach taken to resolve them. Trust members should ensure ‘one-off’ complaints do not point to a systemic problem that requires deeper consideration.

Practical tip: Add a ‘complaints received’ item on the agenda. All trust members will then be aware of any dissatisfaction voiced by the community and be able to act on this. The trust’s reputation could be negatively affected if the trust is not seen to be acting and responding appropriately.

### Complaints management policy

An effective complaints management policy should help the trust:

* guide day-to-day operations and decision-making
* support prompt, consistent, fair and objective complaints management
* streamline internal processes
* review the way it does business
* respond to evolving consumer requirements and changes in environments.

### Strategies for managing complaints

Useful strategies for managing complaints include:

* Listen and acknowledge the person’s perspective
* Identify the person’s underlying concerns
* Manage expectations and then follow through
* Provide a response
* Mediation

### Escalation of complaints

If a customer is not satisfied with the trust’s attempts to resolve a complaint, the customer should be advised that they can escalate their complaint by contacting the [Victorian Ombudsman](https://www.ombudsman.vic.gov.au).

The Victorian Ombudsman deals with complaints about Victorian public organisations including cemetery trusts. If a complaint cannot be easily resolved, the Victorian Ombudsman may decide to undertake an investigation.

Cemetery trusts are required to cooperate with investigations and should be prepared to attend interviews and produce documents. It is an offence to fail to attend or produce any documents when summonsed.

### Role of the department

As trust’s are independent statutory bodies, the department does not have the power to direct a trust’s day-to-day business activities. For this reason, if a customer wishes to escalate a complaint, the trust should refer them to the Victorian Ombudsman rather than the department.

If someone has serious concerns about governance failings within a trust, for example fraud or misappropriation of trust funds, they should inform the department. If a customer is not satisfied with the trust’s attempts to resolve a complaint, the trust is encouraged to contact the department for advice.

## Natural justice and procedural fairness

The common law principles of natural justice consist of two fundamental rules:

* the hearing rule, which requires a decision-maker to hear a person before making a decision affecting that person’s rights or interests
* the rule against bias, which requires that a person be given a fair and unbiased hearing before a decision is made (if a bias is shown, the decision-maker should be disqualified).

If the rules of procedural fairness are not complied with, an aggrieved person will (usually) be able to get a legal review of the administrative decision.

The Act states that a holder of a right of interment may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of a cemetery trust’s decision to grant or refuse to grant an approval to establish or alter a memorial or a place of interment in the cemetery. Refer to s. 179 of the Act regarding appeals to VCAT.

Cemetery trusts should ensure:

* decision-makers hear a person before making a decision that affects that person’s rights or interests
* everyone is given a fair and unbiased hearing before a decision is made, and that no trust member with a bias of conflict of interest is involved in the decision making.

### Family disputes over a right of interment

The trust must ensure it remains independent of family disputes. It should:

* establish who is the actual holder of the right of interment based on evidence
* provide clear advice about what evidence the trust will consider when making a decision about a dispute over who is the holder of a right of interment.

## Changing community expectations and cultural sensitivities

Together with changing population demographics, a number of other changing trends will affect services offered by cemetery trusts into the future. For example:

* The ‘greening’ of our society and greater understanding of environmental issues has made alternative services such as natural burials available.
* Ageing infrastructure means that maintenance must be prioritised.
* Increasingly stringent regulations and more rigorous monitoring of disability access, risk management and OHS may call for increased resourcing, maintenance and associated costs.
* Changing technology and its application is likely to impact on all aspects of cemetery operations and service provision.

Cemetery trusts need to acknowledge and recognise that community attitudes and expectations about cemetery trusts and public cemeteries change over time. This is often driven by advances in knowledge and demands by community members based on changing cultural requirements. Cemetery trusts need to be able to adapt to meet changing community expectations.

Class A trusts are required to have a community advisory committee. Larger Class B trusts may also consider establishing this formal link to the community.

# Theme 6: Governance

## Governance is important

Good governance strengthens community confidence in public entities and helps ensure their reputations are maintained and enhanced. It should enable public entities to perform efficiently and effectively and to respond strategically to changing demands.

Governance encompasses the processes by which public entities are directed, controlled and held to account. It includes the processes where decisions that are important to the future of a public entity are taken, communicated, monitored and assessed. The Victorian Public Sector Commission notes that a public entity board must comply with statutory obligations under the legislation that affects it, relevant government policies and ministerial directions.

Governance in the public sector is built on:

* constitutional, legal and government frameworks
* government decision making and reporting
* authorisations and delegations in decision making
* accountability, transparency, integrity, stewardship, efficiency and leadership
* values and codes of conduct
* effective risk management
* the integrity bodies – protecting public entities against crime and misconduct.

## Trust charter

The trust charter is an important corporate governance policy document that deﬁnes the respective roles, responsibilities and authorities of the trust and sets the direction, the management and control of the organisation.

The trust charter should be:

* a one-source reference that clearly sets out how the trust and trust members are to perform their role and how that performance is assessed
* used as an induction tool for new trust members and staff
* an aid for team development.

Development and review of the trust charter is a good time to discuss those ‘not mentioned’ issues that are often left unattended and can lead to conﬂict and poor corporate governance and practices.

## Healthy governance

The following are indicators of healthy governance (not a comprehensive list):

* A trust charter is in place.
* An annual budget is prepared.
* Financial accounts are easily accessible or are reported in detail at trust meetings.
* Liabilities are understood, valued and disclosed.
* A review of trust ﬁnances is regularly undertaken.
* The trust has a culture of ethical and responsible decision making.
* There is a general absence of conﬂicts of interest, or where conﬂicts do exist they are declared and managed appropriately.
* There are regular discussions by the trust on key strategic issues (such as budgeting, fees, asset management).
* The trust meets core reporting obligations.
* The trust is alert to all areas of risk within their operations, which are managed by appropriate control measures.
* The trust understands OHS regulations related to the sector and their speciﬁc work practices and manages OHS.
* The trust encourages continuing professional development.
* The trust regularly liaises with its communities and stakeholders.

## Warning signs of ineffective governance

|  |  |
| --- | --- |
| Decision making | * Discussions at the trust level are superﬁcial. * The trust chairperson dominates trust decision making. * Trust members are reluctant to ask questions. * The trust relies on the expertise of a single individual in crucial areas of its governing role. * On key strategic issues, the trust is pressured to accept the position of an individual or a subcommittee without trust members fully understanding the issue. * The trust continually needs to remind employees to follow up on issues that need further consideration. * Some trust members arrive at trust meetings under-prepared. * Decisions are regularly deferred to later meetings. * Alternatives and other important considerations are not included in the trust papers. * The trust suffers from ‘group think’. * The trust chairperson selects employees without consulting all trust members. * Trust policies are driven by one group of dominant stakeholders without reference to any others. |
| Relationships between the trust and its employees | * Employees control the trust agenda, not the trust. * Employees only bring good news to the trust; bad news is discovered through other sources. * Employees only present plans to the trust for approval and do not ask for input or advice during the development stage. * Employee recommendations are always accepted with very little critical questioning. * The trust is entirely dependent on its employees. * The trust chairperson and employees have an excessively close relationship. * There is lack of respect by employees for the skills and expertise of the trust. |
| Performance | * There is a concerning number of internal and external complaints. * Staff turnover is too high (higher than the sector average or from previous years). * The code of conduct has not been reviewed recently. * The trust does not review its own performance. * Auditors never meet with the trust privately. |

## Effective trust meetings

### Frequency of meetings

The department recommends that cemetery trusts meet at least four times a year including:

* an open meeting with members of the public invited to attend
* a budget and planning meeting, usually held in April or May.

If a cemetery receives very few or no interments in a year, the trust may decide to meet less frequently.

Under the Act, meetings of a cemetery trust are determined by the chairperson. The chairperson of a cemetery trust may at any time convene a meeting and must do so when requested by at least two members of the cemetery trust. Trust meetings should be scheduled in advance to ensure trust members have sufficient notice.

### Meetings – when and where?

Trust members are expected to attend at least 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.

If the chairperson is unable to attend a meeting that cannot be rescheduled, the trust must select a trust member to act as chairperson and preside over that meeting.

Under the 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.

Trust meetings may be held at any venue determined by the chairperson. The venue must be accessible to all trust members.

The chairperson should ensure that as many trust members as possible can attend trust meetings. This is particularly important for meetings where the trust will make significant decisions such as decisions about major expenditure and policies.

### Quorum

A quorum refers to the minimum number of members that must be present at a meeting to make the proceedings of the meeting valid. Votes cannot be carried without a quorum.

A majority of the currently appointed trust members constitutes a quorum of a cemetery trust. For example, if a trust has seven members, the trust needs at least four members to be present at a meeting to form a quorum.

### Decision-making and voting

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 trust members in understanding the full implications of any decisions they make.

Trust decisions are determined by a majority of votes of the members participating in the meeting (provided there is a quorum). If a trust member chooses not to vote on an issue for any reason their decision should be recorded in the meeting minutes as an abstention.

If a vote results in a tie, the chairperson of that meeting has the casting vote. In the event of a tie, the chairperson may decide to postpone the decision to allow for further discussion and information gathering rather than using their casting vote.

### Meeting rules

Cemetery trusts have some discretion over how they run their meetings outside of the requirements outlined above. It is important that trusts agree on the procedures and rules they will use for their own meetings.

Establishing meeting rules ensures that trusts can fully concentrate on the decisions they need to make, rather than how to make decisions. Meeting rules are sometimes called standing orders.

When developing meeting rules trusts may consider and determine the following:

* Should a motion be tabled before voting at a trust meeting?
* Does a motion need to be seconded before it is voted upon?
* How many amendments can be made to a motion?
* If someone decides not to vote, should their abstention be counted as a “no” vote or not be counted?
* Should the chairperson allocate a specified amount of time for trust members to speak at meetings?

A meeting rules template and sample standing orders are available on the [Institute of Community Directors Australia website](https://communitydirectors.com.au/policies/conduct-of-meetings-policy) <https://communitydirectors.com.au/policies/conduct-of-meetings-policy>.

### Chairperson’s role

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 plays a vital role in managing trust member behaviour during trust meetings. Chairpersons should employ the following strategies during trust meetings as necessary:

* Remind trust members of the expected standards of behaviour as outlined in the *Code of conduct for directors of Victorian public entities*.
* Call out inappropriate behaviour at the time it occurs and advise trust members that it is not acceptable.
* Establish an agreed approach for trust meeting agenda items, making it clear when individual members will make uninterrupted presentations and when items are open for discussion.
* Keep discussions to allocated time limits to avoid conversations going off track.
* If a trust member is being ignored or spoken over, direct other trust members to give them the opportunity to speak without interruption.
* Pay attention to non-verbal cues that may indicate someone is hesitant about expressing their opinion and reassure them that their contribution is valued.
* If one trust member is monopolising the meeting, encourage them to keep their comments short and give others a chance to speak.
* Close down unhelpful or harmful conversations by calling the trust meeting to order and redirecting the discussion.
* If discussions become heated, direct the trust to take a short break.
* If a trust member behaves in an aggressive or threatening manner, ask them to leave the meeting. If the trust member refuses to behave in a reasonable manner the chairperson may need to bring the meeting to a close and reconvene at a later date.

The chairperson is expected to maintain control over the meeting without dominating the debate.

### Meeting agenda

Preparing a meeting agenda helps the meeting flow smoothly and the trust make informed decisions. A trust meeting agenda can include:

* Scheduled start and finish times
* Minutes of previous meeting (presented for endorsement)
* Outstanding major action items
* Declarations of conflicts of interest
* Standing agenda items such as OHS
* Matters for decision, which may include recommendations and reports from committees
* Strategic, operational and performance issues
* Financial reports including year-to-date budget and expenditure, and financial forecasts
* Correspondence/complaints received (including recommended actions, if relevant)
* Other items for discussion

### Meeting minutes

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, including:

* Name of the trust
* Place, date, start and finish time
* Those present including the name of the chairperson
* Apologies (the names of members who have said they cannot attend)
* Trust members’ declarations of conflicts of interests
* Notes about discussions and decisions
* Action plans and the names of people who are responsible for implementation

The minutes should be adopted by resolution at the following trust meeting. When the minutes have been adopted, the chairperson should then initial each page of the adopted minutes as confirmation of their accuracy.

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

### Other meeting papers

Other meeting papers may include:

* Finance report
* New information and advice issued by the department
* Reports and briefing papers providing background information
* Quotes to be considered
* Policy documents to be reviewed
* Copies of significant correspondence

### Making decisions without holding a meeting

In exceptional circumstances, a trust may need to make a decision on an urgent matter but is unable to hold a meeting. If consideration of a particular matter is urgent and cannot be postponed, members can address the matter by communicating via email. This is called a circular resolution.

In such cases, trust members can make a decision by casting votes in writing provided that the number of members participating in the circular resolution constitutes a quorum.

More information about circular resolutions is available on the [Institute of Community Directors Australia website](https://communitydirectors.com.au/policies/circular-resolution-policy) <https://communitydirectors.com.au/policies/circular-resolution-policy>.

### Trust-member-only discussions

For cemetery trusts that employ staff, trust-member-only sessions are an opportunity for open and frank discussions without staff present. They are often held just before a regular trust meeting. Topics discussed may include:

* staff pay and salary packages
* staff performance management
* relationships between trust members
* conﬁdential issues
* conﬂicts of interest
* sensitive matters affecting management or providers of professional services such as legal or financial advice.

During these sessions, the chairperson should keep notes to ensure any actions decided upon are followed up. These notes are conﬁdential trust records and do not form part of the meeting minutes.

## Trust dynamics and teamwork

Successful trusts work as a team. To be effective team players, trust members must have the ability to work as a team. Individual trust members must act in the best interests of the trust and a healthy team dynamic can encourage sound decision making. The effectiveness of a trust is inﬂuenced by the quality, values and behaviours shown by trust members.

Factors that contribute to developing an effective trust team include the following:

* The skills mix of the trust is appropriate to its role and tasks.
* There is agreement that the trust will ‘speak with one voice’ about all policy matters.
* There is a healthy and productive partnership with staff in which both good and bad news is shared openly and in a timely way.
* There is a positive and constructive trust culture in which all trust members know their contribution is valued.
* There is a good balance between talking and listening. Trust members are willing to suspend judgement until an issue is fully canvassed and all perspectives are aired.
* The chairperson manages the meeting processes so the trust has enough time to adequately discuss and consider issues.
* Legitimate opposition and diversity are healthy components in discussions. These are encouraged so the full range of views, opinions and experience are heard in all trust decisions.
* Trust members always keep an open mind and try to understand other members’ concerns or points of view.

### Managing poor trust member behaviour

On occasion trust members behave poorly and this can have a significant impact on other trust members and the ability of the trust to function effectively.

Poor trust member behaviour includes behaviour that is disrespectful, inconsiderate, improper, hurtful, threatening, aggressive, fraudulent, or corrupt. If poor behaviour is not managed appropriately, it can have a negative effect on trust member communication, relationships, organisational culture, and service delivery.

The trust chairperson is responsible for managing poor trust member behaviour. This responsibility extends to trust activities outside of trust meetings and email communications, for example events, casual gatherings, and interactions with employees and members of the public.

Poor behaviour should be managed promptly and effectively to prevent matters from escalating and to minimise the impact on the trust. This may require the chairperson to take formal action in accordance with the department’s [*Trust member conduct and managing poor behaviour*](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance) factsheet <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance>.

## Referring governance concerns to the department

Signiﬁcant governance matters that may need to be investigated by the department include:

* fraud, such as misuse of trust funds
* poor management practices
* poor record-keeping practices
* complex conflicts of interest.

Under normal circumstances where trust members have concerns about the function of the trust, they should meet with the chairperson (if appropriate) and discuss their concerns. These concerns should be clearly documented and be supported by clear evidence.

Trust members can raise general issues with the trust by requesting their concerns be included on the next trust meeting agenda for discussion. If the matter is urgent, two trust members may ask the chairperson to convene an urgent meeting to discuss the issue. If significant issues are unable to be managed, the chairperson should approach the department either on their own or at the request of a trust member.

In the case of suspected fraud, a trust member should report their concerns to the chairperson immediately. The chairperson must act on these concerns without delay. They should, at a minimum, contact the department and if necessary report the suspected fraud to the police and the VMIA. Under no circumstances can a chairperson ignore allegations of this nature.

## Delegation of trust powers

The Actimposes a range of statutory powers and functions on cemetery trusts. Many of these powers and functions can be delegated to enable appropriate and efficient operations and decision making. A delegation authorises a person to exercise powers and perform functions specified in an instrument of delegation.

A trust may delegate its powers and functions to a member of the trust, secretary or other employee of the trust other than the powers for:

* making cemetery trust rules
* buying or selling land
* leasing or licencing land
* establishing crematoria
* establishing mausolea facilities
* fixing fees and charges
* borrowing and investing
* delegating.

Delegation of a power or function does not remove a cemetery trust’s accountability for the exercise of a power or function. When delegating, a cemetery trust should consider the skills required to perform the powers or functions and select the delegate accordingly. Cemetery trusts should ensure they have policies and procedures in place to support delegates and regularly review their actions.

### Instrument of delegation

Trust delegations must be recorded in an instrument of delegation that is signed by the trust chairperson and trust secretary on behalf of the trust and recorded in the minutes of the relevant trust meeting. An instrument of delegation contains:

* the authority or legislative power for the power or function
* a description of the power or function
* any limitations/conditions on the exercise of the power or function
* the permitted delegated position (who may exercise the delegated power).

A sample instrument of delegation is available on the department’s website <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance>.

## Support from Class A trusts

Class A cemetery trusts may be available to provide help and advice to Class B cemetery trusts if requested by a Class B trust or the department.

### Types of assistance

In their leadership role Class A trusts may be able to provide the following assistance and advice:

* operational and governance matters relating to cemeteries
* record-keeping systems suited to the requirements of cemetery trusts
* standard form documentation suitable for cemetery trust purposes
* policies, procedures and protocols.

Class B trusts may approach any Class A trust they feel is appropriate to request advice and assistance. Where the advice or assistance relates to the application or interpretation of the Act, then Class B trusts should speak with the department.

## Reviewing the trust’s performance

An effective trust makes an enormous positive contribution to the communities it serves, so it is vital that the trust reviews its own effectiveness. Evaluating the trust’s performance as a group is a fundamental ingredient of a robust governance framework.

Set out below is an example framework of how a cemetery trust might review the trust as an organisation, staff and the trust members themselves.

Figure 5: Performance review framework

**How**

**Who**

Most team evaluation processes are based on self-review where members complete a review questionnaire. The results are then collated, analysed, compiled into a report and discussed. It is becoming more common for members of boards to also evaluate their peers and their own performance in addition to an overall board review.

An annual evaluation will help the trust to focus on opportunities for improved performance, gain a better understanding of its role and to assess whether it is meeting its objectives.

### The beneﬁts of undertaking a review

The beneﬁts of undertaking a review include:

* helping the trust to identify ways to improve its effectiveness and efﬁciency
* helping the trust to develop a sense of teamwork and foster better rapport
* for larger trusts, encouraging discussion with staff to improve working relations.

When designing an evaluation, the trust should consider the type of assessment and evaluation process to be used (for example, qualitative or quantitative responses), the scope of the assessment, whether the process should be independently facilitated, and the timing and frequency of evaluations. The evaluation and resulting recommendations for improvement need to be tailored to the speciﬁc circumstances and maturity of the trust.

### Trust review checklist

|  |  |  |  |
| --- | --- | --- | --- |
| Topic | Question | Yes | No |
| Trust’s role and accountabilities | Is the trust focusing enough on long-term strategic issues? |  |  |
| Is the trust adequately monitoring business performance and performance of staff? |  |  |
| Governance | Are the trust’s formal policies satisfactory for good governance? |  |  |
| Is the trust involved in decisions at the appropriate level? |  |  |
| Processes | Are trust meetings effective? |  |  |
| Does the trust use time effectively? |  |  |
| Does the trust balance time appropriately on strategic, operational and compliance issues? |  |  |
| Capabilities and quality of contribution from trust members | Does the trust have the right mix of skills and capabilities? |  |  |
| Do trust members make informed and timely decisions? |  |  |
| Do all trust members contribute to the group’s effectiveness? |  |  |
| Culture | Does the trust operate as an effective team? |  |  |
| Are different points of view heard at trust meetings? |  |  |

Conducting regular trust evaluations sends a signal to the community that the trust is serious about good governance and enhancing its performance.

## Ongoing improvement

One of your obligations as a trust member is to ensure you’re staying up to date with changes to relevant legislation, and that your own governance and (where relevant) operational skills are kept up to date as well.

Your membership to the Institute of Community Directors Australia (provided as part of Class B training) is one way you can refresh your knowledge of good governance. Make the time to read the newsletter when it comes out and hop onto the website or the forum when you hit a snag or need a second opinion. The department’s grants program can help you get access to professional development and training (for example, grave safe training, financial literacy training).

# Theme 7: Financial governance

## Keys to effective ﬁnancial governance

Financial governance is made up of the policies and processes that trust members follow to meet their accountability obligations for the trust’s ﬁnancial sustainability. Good ﬁnancial governance requires that the trust ensures the organisation is ﬁnancially sound, but its greatest responsibility is to ensure ﬁnancial resources are used appropriately.

Three keys to effective ﬁnancial governance are:

* establishing key performance indicators that guide the development of the budget or ﬁnancial plan
* a plan that establishes the basis for the trust’s ﬁnancial wellbeing (the level of sustainable surplus it must achieve)
* monitoring processes that provide the trust with enough ﬁnancial information to be satisﬁed that the organisation’s ﬁnances are being appropriately managed towards achieving its strategic objectives and ensuring adjustments are made that are necessary to keep the ﬁnances on track.

## Monitoring the ﬁnancial condition of the trust

The cemetery trust is responsible for managing its income and expenditure, assets and liabilities.

The trust should ensure it receives ﬁnancial statements in a format that the trust members can understand. It is helpful if the person who prepared the report presents the statements to the trust members. Small Class B cemetery trusts may use cash accounting whereas bigger Class B cemetery trusts may find it more useful to use accrual accounting. A cemetery trust should ensure that it has an annual budget (discussed later) but also focuses on long term planning (giving consideration to perpetual maintenance, the master plan for the cemetery, ensuring liquidity and appropriateness of fees).

The nature of systems and reporting requirements varies according to a cemetery’s size and complexity. However, no matter the size of the cemetery, all cemeteries should have in place reporting and monitoring systems that match the scope and scale of their operations. It is better to generate reports from accounting software rather than using manual spreadsheets.

All trust members should make every effort to learn to understand the language and concepts of ﬁnancial reporting.

The numerical ﬁnancial data, proﬁt/surplus and loss account and statement of ﬁnancial position should be available as supporting data. The trust members, assured that the ﬁnancial policies are followed, can then use the ﬁnancial statements as a snapshot of the trust’s ﬁnancial position and use them to analyse trends, and make decisions.

Trust members must be assured that:

* the overall ﬁnancial condition of the trust is capable of meeting its long-term commitments in the form of achieving strategic objectives
* the current ﬁnancial position is consistent with the requirements to meet short-term liquidity and operating requirements without threatening long-term viability.

### Financial statements

Financial statements provide speciﬁc information about a trust’s ﬁnancial position and performance. They consist of statements of:

* ﬁnancial performance
* ﬁnancial position
* cash ﬂows.

A statement of ﬁnancial performance (the proﬁt/surplus and loss statement) reports the revenue, expenses and proﬁt/surplus (or loss) that has been made over a given period. The statement shows how an entity’s revenue was obtained and how the expenses were incurred. This report allows the trust to evaluate its past performance and assess its prospects for the future.

Questions a trust member could ask on the statement of ﬁnancial performance:

* At what point is income recognised?
* When are expenses recognised?
* Does the income statement include all the expenses incurred by the end of the reporting period?
* Are there any invoices that have not been paid?
* Are the proﬁt/surplus and loss report and balance sheet dated the same day?
* How does this period compare with last year? Are we in budget? Check for variances, trends and understand the differences.

A statement of ﬁnancial position (balance sheet) is a statement of the ‘book value’ of the trust at a particular point in time. The statement lists the assets or resources controlled by the trust, its debts, and its equity. It shows what the trust owns and what it owes.

Questions a trust member could ask on the statement of ﬁnancial position:

* Do all the assets on the balance sheet exist?
* Does the trust own all the assets shown (not a different entity)?
* Are there any assets of the trust not shown?
* Are the assets reasonably valued? Are they not overvalued?
* Is there evidence that any asset might be impaired? Have they been tested for impairment?
* Have any bad debts been identiﬁed and written off?
* How long will it take to collect outstanding debts?
* When was the last stocktake done on the inventory?
* Are all the trust’s liabilities shown on the balance sheet?
* Are the liabilities accurately valued?
* What is the extent of our prepayment liabilities?

A statement of cash ﬂows reports the effects of all transactions involving a ﬂow of cash into or out of the trust, whether those transactions are operational, ﬁnancial or investment in nature.

* Operating activities involve receipts and payments for the production, sale and delivery of goods and services.
* Investing activities involve receipts and payments in relation to acquiring and disposing of non- current assets.
* Financing activities relate to the size and composition of the ﬁnancial structure of the trust.

Questions a trust member could ask on the statement of cash ﬂows:

* What is the bank balance?
* Will the cash position be OK when expenditure and income for the next period is taken into account?

Operating cash ﬂow warning signs include:

* negative cash ﬂows from operating activities
* payments to suppliers and employees higher than budgeted
* net operating cash ﬂows are lower than proﬁt after tax (normally higher because of depreciation of non-cash items).

No entity can sustain negative operating cash ﬂows or payments to suppliers being larger than receipts from customers over long periods of time without additional sources of funding.

## Abstract of accounts

The Act requires that an abstract detailing the ﬁnancial transactions for the ﬁnancial year be signed as correct by three trust members, witnessed and lodged with the department by the following 1 September. Copies of bank statements with balances of accounts and investments for that year must be included.

Each year the department provides trusts with advice about the earning thresholds that trigger a financial review or audit. Trusts are advised of these thresholds when the abstract of accounts is requested by the department. Trusts must submit a copy of the required review or audit report, together with the bank and investment statements, to the department.

## Financial procedures and controls

The aim of ﬁnancial controls is to ensure all transactions are properly recorded and all assets safeguarded. Please refer to the Financial Guidelines for Class B cemetery trusts. All revenues owing to the trust should be recorded and all payments properly authorised. Trusts should ensure that there is more than one signatory for electronic banking. Trusts should have an Instrument of Delegation that gives the authority to make payments. Large trust purchase decisions should be recorded in the trust’s minutes (for example, a record of a trust decision to purchase a tractor).

Without proper ﬁnancial controls, the trust opens itself up to fraud, errors in recording, failure to meet its objectives and loss of stakeholder conﬁdence in the organisation.

The following is a list of questions your trust may like to consider in assessing whether the controls are adequate. If your trust has sound ﬁnancial management practices, you would answer ‘yes’ to most questions:

| Topic | Question | Yes | No |
| --- | --- | --- | --- |
| General | Is a chart of accounts used? |  |  |
| Is the chart of accounts detailed enough to give adequate management information? |  |  |
| Are budgets and cash projections:   * + compared to actual results?   + investigated if there are major discrepancies? |  |  |
| Are comparative ﬁnancial statements produced? |  |  |
| Are the books and records kept up to date and balanced? |  |  |
| Is ﬁnancial information produced regularly? |  |  |
| Are storage facilities safe from ﬁre and other potential hazards? |  |  |
| Is access to accounting records restricted when appropriate? |  |  |
| Is insurance coverage regularly reviewed and used (trusts are currently insured via the Victorian Management Insurance Agency)? |  |  |
| Are records of expenditure regularly presented to the trust members? |  |  |
| Does an administration person manage day-to-day processing of receipts and payments but a separate person signs the cheques? |  |  |
| Does a trust member oversee or perform the monthly bank and cashbook reconciliation and check ﬁnancial information to be provided to trust meetings? |  |  |
| Revenues | Are all sales orders recorded on pre-numbered forms and are all numbers accounted for? |  |  |
| Are sales invoices recorded promptly? |  |  |
| Are monthly statements for outstanding balances reviewed? Are they mailed by a responsible employee other than the bookkeeper? |  |  |
| Are write-offs and other adjustments to customer accounts authorised? |  |  |
| Cash receipts | Does a responsible employee other than the bookkeeper or person who maintains the accounts open the mail and pre-list all cash receipts before providing them to the bookkeeper? |  |  |
| Are cash receipts deposited daily? |  |  |
| Are cash receipts posted promptly to the appropriate journals? |  |  |
| Are cash sales controlled by cash registers or pre-numbered cash receipts forms? |  |  |
| Cash disbursements | Are all disbursements except for petty cash made by cheque? |  |  |
| Are cheques pre-numbered and all numbers accounted for? |  |  |
| Are all cheques recorded when issued? |  |  |
| Are all unused cheques safeguarded, with access limited? |  |  |
| Are all cheques signed by two employees? |  |  |
| Are supporting documents, processed invoices, receiving reports and purchase orders presented with the cheques and reviewed before the cheques are signed? |  |  |
| Are cheques payable ‘To cash’ prohibited? |  |  |
| Are bank statements and cancelled cheques reviewed by someone before they are given to the bookkeeper? |  |  |
| Are bank reconciliations prepared:   * + monthly for all accounts?   + by someone other than the person authorised to sign cheques? |  |  |
| Are all disbursements from petty cash funds supported by approved vouchers? |  |  |
| Are petty cash funds:   * + kept in a safe place?   + reasonable in amount so that the fund usually requires reimbursement at least monthly?   + controlled by one person?   + periodically counted by someone other than the custodian? |  |  |
| Accounts payable | Are supplier invoices:   * + matched with applicable purchasing orders?   + matched with applicable receiving reports?   + reviewed for correctness? |  |  |
| Is there written evidence that invoices have been properly processed before payment? |  |  |
| Are expense reimbursement requests:   * + submitted properly?   + adequately supported?   + approved before payment? |  |  |
| Goods received | Are all materials inspected for condition and independently counted, measured or weighed when received? |  |  |
| Are receiving reports used and prepared promptly? |  |  |
| Employees | Do employees have a job description? |  |  |
| Are all job references checked before hiring? |  |  |
| Are individual personnel ﬁles maintained? |  |  |
| Is access to personnel ﬁles limited to a designated person who is independent of the payroll or cash functions? |  |  |
| Are wages, salaries, commissions and rates approved and in accordance with the correct award? |  |  |
| Is proper authorisation obtained for payroll deductions? |  |  |
| Is gross pay determined using authorised rates and adequate time records for employees paid by the hour? |  |  |
| Are time records for hourly employees approved by a supervisor? |  |  |
| Is the clerical accuracy of the payroll checked? |  |  |
| Are payroll registers reviewed? |  |  |

For all those questions in the checklist that have not been answered ‘yes’, review which ones are applicable to your organisation and make a plan for implementing them. The trust should review this checklist annually.

## Tax

### GST exemption on fees and charges

Fees and charges for certain cemetery products and services are exempt from GST under Division 81 of the *Goods and Services Tax Act 1999*. This determination came into effect on 1 January 2011.

The following fees and charges under the Act have been GST free since 1 January 2011:

* right of interment (for graves, cremation memorialisation and mausolea)
* memorialisation permits and approvals
* permits (relating to memorial permits and other permits)
* other miscellaneous fees and charges such as search fees and other regulatory fees that don’t apply to the above categories.

### 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 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 Australian Taxation Office (ATO) to be ‘rebateable employers’ (charities) for the purposes of the fringe benefits tax legislation.

Trusts should contact the ATO to clarify any matters relating to fringe benefits tax.

### Debits tax exemption

The *Debits Tax Act 1990* applies to all debit transactions on bank accounts that have a cheque-drawing facility attached. Cemetery trusts may seek exemption from this state tax. Trusts should contact the State Revenue Office regarding any matters related to debit tax.

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 State Revenue Ofﬁce. Normally, employers in Victoria with an annual gross payroll, including gross fringe beneﬁts and employer contributions to superannuation exceeding $700,000 from 1 July 2021 onwards, are liable to pay state payroll tax.

## Fundraising and other revenue

Cemetery trusts can run fundraising activities other than lotteries, rafﬂes and bingos without registering with Consumer Affairs Victoria if they do not expect to raise more than $20,000 in any ﬁnancial year (subject to the conditions stated in the *Fundraising Act 1998*).

Rather than relying purely on fees and department grants, it’s recommended that all community groups consider which of the following seven pillars of fundraising might be feasible, achievable and profitable for them:

* **Grants:** Significant funding is provided each year by local, state and federal governments, as well as philanthropic, community and corporate trusts and foundations. Cemeteries may be eligible for many of them. Grants are most commonly provided for distinct projects with a defined beginning and end date.
* **Donations:** Cemeteries are often beloved community assets, meaning they’re a good candidate for attracting donations and bequests. Getting donations is a matter of ensuring you have the right administration processes in place, being clear from the outset about what you would like to do with any donations you receive and learning the right way to ask.
* **Crowdfunding:** Crowdfunding involves running an online fundraising campaign for a specific project. It usually involves setting a distinct target, with the amount pledged/donated released to the fundraiser only if the target is reached. Crowdfunding takes energy and creativity, but it can bring in much-needed funding and attract a whole new group of supporters.
* **Events:** Special fundraising events are the lifeblood of many community groups, though they can take a lot of time and energy to be truly profitable. A once-a-year event is usually enough for most community groups to handle.
* **Other income:** Other than the gazetted fees for cemetery services, there may be opportunities for a cemetery trust to earn money from other items such as flowers or a lease of part of the cemetery land (noting that a lease requires approval from the Minister for Health).
* **Community–business partnerships or sponsorships:** Creating linkages with business can bring benefits to both the business and your cemetery trust, and often for the wider community as well. Sponsorships are just one type of community–business partnership. Other models include volunteering, provision of in-kind, pro bono or discounted goods or services, and sharing/donation of premises/infrastructure, including office space, meeting space or storage space.

More information on ways you can make money for your cemetery trust through fundraising is available on the [Funding Centre website](http://www.fundingcentre.com.au) <www.fundingcentre.com.au>.

## Budgeting

### Preparing an annual budget

Every year trusts should prepare a budget statement for the coming ﬁnancial year. The budget statement should detail:

* proposed expenditure on maintenance and development works
* anticipated revenue from the trust’s fees and charges, based on the anticipated number of cemetery services
* GST collected on anticipated sales, less credit for GST on the anticipated purchases (a trust must be registered for GST and have an ABN if it incurs revenues over $250,000 per annum – refer also to the earlier section for list of GST-free items)
* funds and investments on hand, in both the general account and perpetual maintenance account.

As part of the budget process, the trust should review whether its current fees and charges are appropriate to meet its upcoming expenditure. A realistic level of fees should be charged to reﬂect the actual cost of operating the cemetery, including funds to meet the trust’s perpetual maintenance obligations under the Act.

### Payment/receiving of commissions

It is inappropriate for a trust to pay a commission (for example, tips, rewards or discounts) to any third party (for example, a funeral director) for selling rights of interment, plaques, cremation memorials or any other items on its behalf. Further to this under the Act, only a trust or its delegate is authorised to grant a right of interment. It is also inappropriate for a trust to receive a commission from a third party (for example, a memorial supplier or stonemason).

### Funds received

It is appropriate for a cemetery trust to spend funds it receives from selling its products and services on the general operations of the cemetery. However, it must also ensure that a portion of its earnings is set aside for the perpetual maintenance of the cemetery. Funds should be conservatively invested where possible with an adequate balance remaining in cash at bank.

When setting new fees for areas within the cemetery that have been recently developed, such as new lawn areas, the trust should ensure it sets its fees at appropriate levels to enable it to recoup its original investment, in addition to sufﬁcient returns to meet its 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.

## Perpetual maintenance obligations

### Advance planning

The Act provides that the interment of bodily remains in Victoria is for perpetuity. For this reason, s. 12(2)(a) of the Act requires trusts to fund the perpetual maintenance of their public cemeteries.

Trusts should give careful consideration to how each of its cemeteries will be maintained once full capacity has been reached. The fees that the trust sets for its products and services should take into account this ongoing perpetual maintenance obligation.

When preparing its annual budget and reviewing its fees, the trust must work out how much it needs to set aside from its future earnings for its perpetual maintenance fund; 15–20 per cent of total proﬁt is a reasonable benchmark.

The accumulated funds, including interest (which has been set aside for perpetual maintenance), will be used to ﬁnance the continuing maintenance of the cemetery after all available interment locations have become full and the site has little or no further potential to generate income.

Also consider how the trust will ﬁnance the purchase and development costs of its next cemetery site (if appropriate and required).

## Pricing and fee structure

Cemetery trusts are best placed to determine the services required by the communities they serve and the appropriate level of fees for those services. The role of the department in approving fees for cemetery services is to review trust fee schedules to ensure they have undertaken an appropriate process (see department fee model) in setting fees outside the annual CPI process.

### Annual CPI increase

All trust fees of $50 or more are increased annually in accordance 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 CPI number (for Melbourne) for the December quarter of the previous year. Fees increased by CPI are effective from 1 July each year and are rounded to the nearest ﬁve-dollar unit.

If a trust wishes to increase fees outside of the CPI increase process, a separate fee application using the fee justification model must be submitted.

### Setting fees and charges

A cemetery trust may ﬁx fees and charges for its services. In ﬁxing fees, a cemetery trust must consider the costs of operating and managing the public cemeteries under its control, including the need to provide for the maintenance of the public cemeteries in perpetuity.

Revenue raised by cemetery trusts through approved fees and charges is expected to:

* encompass current cemetery operational costs
* cover repairs or replacement costs associated with cemetery facilities and equipment
* ensure adequate ﬁnancial reserves for future operation.

Establishing a direct relationship between the fees charged and the service provided will ensure a trust’s fees are transparent and can be justiﬁed to the community it serves.

The following framework can assist when trusts review their scale of fees and charges. Trusts should check that prices are:

* sufﬁcient and sustainable – prices should be sufﬁcient to cover costs and provide for appropriate standards of service, as well as meeting essential operating and capital needs
* efﬁcient – prices should cover only necessary costs and avoid waste
* not excessive – prices need to be accessible for Victorian families in line with community expectations
* consistent and equitable – prices for equivalent services at similar sites managed by the trust should be consistent
* commensurate with services received – customers should be provided with correct pricing signals by removing (where possible) any cross-subsidies included in cemetery prices
* simple and transparent – information on the components of prices should be easy to obtain (such as via itemised billing) and easy for families to understand and compare
* competitively neutral – prices should be competitively neutral where there are alternative non- government providers.

### Approval of fees and charges

Cemetery trusts cannot charge any fee that has not been approved by the department and published in the Victoria Government Gazette. These fees are available on the department’s website via the cemetery search <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-search>.

A cemetery trust must make a formal application to the department to vary or add a new fee. Three trust members must sign the department’s fee justification model spreadsheet before it is lodged with the department. The trust must provide a justiﬁcation for any proposed new or adjusted fees and a breakdown of the total proposed fee amounts.

The department has developed guidelines to assist Class B cemetery trusts in determining the costs associated with providing cemetery services. This ensures fees and charges are compliant with current government policy.

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

* a cover letter addressing why the proposed fee increases or new fees are necessary
* a completed fee justification model (Excel spreadsheet) signed by three current trust members.

The proposed fees should be approved within six weeks of lodgement to the department, providing the department does not need additional information from the trust regarding its application.

### Publishing fees

A notice of the approval of any amended or new cemetery trust fees must be published in the Victoria Government Gazette before the fees become effective. Cemetery trusts cannot charge any fee until a notice is published in the gazette. The fees are also published on the department’s website.

### Applying the approved fees

A cemetery trust must charge its approved fees. Cemetery trusts are never to provide any service before payment. Fees are only to be waived or reduced on the grounds of extreme hardship or other special circumstances. Cemetery trusts need to be able to explain to the community why their fees are set at the price they are if asked.

### Exemption of fees and charges from approval

The Secretary to the department may exempt speciﬁed fees and charges, or scales of fees and charges, if there is no public beneﬁt in those fees and charges being approved. Trusts will be notiﬁed of any exemption made.

## Asset management and forecasting capital works

Asset management strategies adopted by trusts vary with the size and asset base of the trust. In some cemeteries, land will be the only asset. The number of interments may dictate the future demand for the cemetery and the land that may need to be set aside for expanding the cemetery in the future.

Cemetery trusts need to plan and implement a program for dealing with the maintenance and acquisition of assets over the longer term, looking at the cemetery’s existing assets and the maintenance required.

Any major capital projects need to be effectively monitored and managed on a daily basis.

A trust must consider the return on investment and community benefit of land purchases, construction of a mausoleum or development works. For large trust expenditure an actuarial analysis may be required. Please note that the approval of the Minister is required for a trust to purchase land or construct a mausoleum. These matters must be discussed with the department.

## Procurement/purchasing policies and tender procedures

Cemetery trusts should ensure procurement and purchasing policies are in place. Procurement activities must be consistent with the Victorian Government Purchasing Board guidelines. Trusts should have purchasing, tendering and ordering policies and procedures to ensure purchases represent value for money, are made in a fair and contestable manner, and that goods and services purchased are necessary for the trust to function efficiently.

Trusts must ensure all procurement activity meets the following principles:

* **Value for money:** A balanced judgement of a range of financial and non-financial factors, taking into account the mix of quality, cost and resources; fitness for purpose; total cost of ownership; and risk.
* **Accountability:** The accountable officer has the flexibility to conduct procurement activities using appropriate capability to provide value-for-money outcomes.
* **Probity:** High standards of behaviour and actions in the conduct of procurement processes. Equity, confidentiality, avoiding conflicts of interest, and consumer/supplier confidence in the integrity of government procurement processes.
* **Scalability:** The relationship between the complexity of a procurement project and the capability of the organisation to conduct it to achieve a good procurement outcome.

Purchases and tenders for public construction must be made in accordance with the Victorian Government Purchasing Board’s guidelines and the Ministerial Directions for Public Construction Procurement (MDPCP), which apply to public construction in excess of $50,000.

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.

|  |  |  |  |
| --- | --- | --- | --- |
| Estimated purchase value | Minimum requirement | Authorised by | MDPCP applies |
| $50,000 up to $500,000 | Invite three potential tender participants to participate in a limited tender | Trust | Yes |
| More than $500,000 | Open tender | Trust | Yes |

More information, including guidelines developed for cemetery trusts, is available on the department’s website <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures>.

## Maintenance standards

### The acceptable standard of maintenance

Trusts should consider the standard of maintenance that is acceptable in a cemetery that has reached capacity and is closed to further interments. The standard of maintenance between an operating cemetery and a closed cemetery may vary, and this difference should be taken into account when trusts set their fees and charges.

### What is an acceptable standard of maintenance?

Community expectations will influence the maintenance standards set for both active and closed cemeteries.

### Maintenance grants

Where a cemetery trust has insufﬁcient or no funds available to maintain its cemeteries, they may apply to the department for a monetary grant.

Grant applications can be submitted for a range of items and maintenance issues (including IT equipment, grave covers and lawn mowing).

## Cemetery performance management

Each public entity is required to have in place appropriate operating and business systems. For larger and medium-sized cemeteries, key reporting should include:

* the corporate health of the trust (indicators include stafﬁng levels and turnover, sick leave taken, WorkCover claims and client complaints)
* progress on asset investments
* monthly ﬁnancial summary reports indicating income, expenditure, funds for investment and an annual audit
* audit and risk management reports
* reporting against strategic and corporate indicators and targets.

Other key reporting indicators could include:

* operational statistics such as the number of cremations and interments
* net proﬁt compared with the budget (monthly and year to date)
* average client spend
* customer satisfaction (if a survey is undertaken)
* employee satisfaction
* administration costs as a percentage of revenue
* margins
* other ﬁnancial ratios such as liquidity (the ability of the trust to service its ﬁnancial obligations) and proﬁtability (the strength of the trust’s operations and proﬁt/surplus margins and how effectively the trust uses its capital)
* benchmarking against other trusts on some or all of these indicators.

Monitoring key ﬁnancial performance indicators helps trust members to judge how the trust is tracking. Key measures of ﬁnancial viability include:

* cash and short-term investments on hand
* net proﬁt (monthly, annually, comparison to budget)
* margin on plaques (benchmarked with other neighbouring cemeteries)
* volume of business and comparison to prior years.

The trust’s role in monitoring performance is to determine what indicators they want to monitor, to develop targets and to track the measures over time. If indicators are not tracking to plan, the trust should encourage changes to its operations to bring the indicators back into line with its targets.

# Resources

## Departmental resources

The following resources are available on the [department’s website](https://www.health.vic.gov.au/public-health/cemeteries-and-crematoria) at <https://www.health.vic.gov.au/public-health/cemeteries-and-crematoria>.

### Guidelines and advice

* Manual for Victorian Class B Cemetery Trusts
* Secretary's handbook
* Application guidelines for appointment to a Class B cemetery trust
* Your introduction to being a Victorian cemetery trust member
* Code of practice – sale and supply of memorialisation goods and services by cemetery trusts and other suppliers in Victorian public cemeteries
* Managing the limited tenure cremated remains of veterans’ guidelines
* Depth of burial - Regulation 24
* Mausoleum establishment and construction guidelines
* Mausoleum construction finance model user guide
* Managing complaints – a guide for cemetery trusts
* Cemetery grants program guidelines
* Guidelines for developing fees and charges for Class B cemetery trust
* Fee justification model user guide
* Cemetery land development costing model user guide
* Checklist for abstract of accounts
* Cemetery trust financial budget strategy guidelines
* Financial guidelines for Class B cemetery trusts
* Class B cemetery trust guidelines for public construction procurement in Victoria
* Cemetery Sector Governance Support Unit newsletters

### Factsheets

* Right of interment permit fact sheet
* Managing the voluntary surrender of a right of interment
* Managing a right of interment following the death of a right holder
* Updating historical right of interment records
* Minor and technical amendments to the *Cemeteries and Crematoria Act 2003*
* Reuse of an unused place of interment in a double grave
* Process for interment of bodily remains
* Lift and reposition procedure
* Comparison of exhumation and lift and reposition procedures
* Process for the establishment or alteration of a memorial
* Process for the cremation of bodily remains
* Leasing and licensing cemetery land
* Establishing or replacing cemetery fences
* Property acquisition checklist
* Trust member conduct and managing poor behaviour
* Diversity on boards
* Unconscious bias in recruitment
* Cultural change in organisations
* Position descriptions
* Skills matrix
* Selection criteria
* Advertising vacancies
* Community networking
* Recruiting volunteers online
* Social media
* Interviews
* Referee checks

### Templates

* Interment register template – PDF and Excel
* Right of interment permit
* Notification of interment authorisation
* Instrument of delegation template
* Fee justification model
* Recommended memorial permit fee application form
* Abstract of accounts
* Cemetery land development – costing model
* Mausoleum construction finance model
* Budget template
* Cash management policy template
* Complaints policy template
* Contractor policy template
* Gifts, benefits and hospitality policy template
* Instrument of delegation template
* Memorialisation policy template
* Monumental mason policy template
* Purchasing and tendering policy template
* Class B cemetery trust skills matrix template
* Class B cemetery trust position description – Chairperson
* Class B cemetery trust position description – Secretary
* Class B cemetery trust position description – Trust member
* Letter of resignation template

### Forms

* Application for right of interment (Form A)
* Application for approval to inter cremated human remains (Form B)
* Application for interment authorisation (Form 1)
* Application to establish or alter a memorial or place of interment (CCAV)
* Cemetery grants program application form
* Removing, destroying or lopping vegetation – grant application attachment
* Application for appointment to a Class B cemetery trust

### Reports and accounting policies

* National Competition Policy Review of the *Cemeteries Act 1958* and government response
* Costing study for cemeteries and crematoria
* Evaluation of the ﬁnancial viability of Victoria’s cemetery trusts and the development of fee models August 2002
* Victorian Auditor General Review of cemetery trusts – final report
* Victorian cremation industry viability – report
* Review of Class A cemetery trusts and government response
* Asset capitalisation threshold
* Change in asset capitalisation thresholds process
* Cost of inventory
* Cemetery land accounting policy
* Q&A: cemetery land accounting policy – implementation issues
* Methodology for the valuation of Victorian cemeteries for ﬁnancial reporting purposes
* Cemeteries Common Chart of Accounts – user manual
* Project Review – The Implementation of the Common Chart of Accounts for Cemeteries and Crematoria
* Develop and Carry Out Implementation Plans – Implementation of CCA Project
* Modelling the ﬁnancial impact of the application of AASB 102 inventories to cemetery land
* Accounting Treatment for Pre-paid Fees – Provision for Loss on Prepaid Fees – findings

## Other resources

* [Cemeteries and Crematoria Association of Victoria](http://www.ccav.org.au) <www.ccav.org.au>
* [Institute of Community Directors](http://www.communitydirectors.com.au) <www.communitydirectors.com.au>
* [Department of Premier and Cabinet](https://www.vic.gov.au/guidelines-appointment-remuneration) <www.vic.gov.au/guidelines-appointment-remuneration>
  + Appointment and remuneration guidelines
  + Diversity on Victorian government board guidelines
* [Victorian Managed Insurance Authority](http://www.vmia.vic.gov.au) <www.vmia.vic.gov.au>
* [Victorian Public Service Commission](http://www.vpsc.vic.gov.au) <www.vpsc.vic.gov.au>
* [Office of the Victorian Information Commissioner](https://ovic.vic.gov.au/) <www.ovic.vic.gov.au>
* [Public Records Office Victoria](https://prov.vic.gov.au/recordkeeping-government/document-library/pros-0701-common-administrative-functions) <www.prov.vic.gov.au>