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| Code of practice |
| Sale and supply of memorialisation goods and services by cemetery trusts and other suppliers in Victorian public cemeteries |
| OFFICIAL |



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# 1 Introduction

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

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

It should be noted that Victoria’s Competitive Neutrality Policy applies to the sale and supply of all memorialisation goods and services by cemetery trusts where trusts are in direct competition with alternative suppliers from the private market, including fees for goods and services that do not require prior approval from the department.

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

This code of practice has been reviewed by Better Regulation Victoria for compliance with the Competitive Neutrality Policy.

# 2 Objectives

The objectives of this code of practice are to:

* encourage a fair and equitable environment for the sale and supply of memorialisation goods and services
* promote industry compliance with applicable legislation and with the principles of competitive neutrality.

# 3 Scope

The code covers activities relating to the promotion, sale, supply, establishment and alteration of memorials in all public cemeteries in Victoria. Under the Act, a memorial is defined as a monument, tombstone, headstone, ledger, cenotaph, plaque or other method of memorialising a deceased person where that memorial is within a public cemetery.

Items not covered by this code are the parts of memorials that are the responsibility of the trust to establish and maintain such as structural aspects of major constructions for the interment of human remains (such as niche walls or public mausolea) and some organic forms of memorialisation (such as memorial roses).

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

The code will assist Class A and Class B cemetery trusts to meet their competitive neutrality obligations and to avoid breaches of these obligations as well as potential litigation or sanctions in relation to related breaches of the Competition and Consumer Act 2010 (Cth).

There are five key areas of trust activities relating to the sale and supply of memorialisation goods and services that pose potential risks to competitive neutrality:

1. Promotion of alternative suppliers’ (e.g. stone masons) memorialisation goods and services
2. Use of personal information
3. Processes for the establishment and alteration of memorials and places of interment
4. Conditions relating to work on memorials and places of interment
5. Cemetery trust fees relating to memorialisation products and services

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

# 4 Promotion of alternative suppliers’ memorialisation goods and services

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

## 4.1 Provision of advice regarding alternative suppliers

To comply with competitive neutrality requirements, trusts must provide advice about the existence of alternative suppliers when promoting their own memorialisation products and services. This advice must include a statement that contact details for alternative suppliers may be found in the telephone directory or online.

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

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

* all written correspondence generated by the trust including emails
* electronic media such as trust websites and social media
* verbal promotion, including in-person and over the telephone.

Note that where appropriate, trusts should direct persons towards the display space mentioned under point 4.2.

Trusts should ensure that all promotional activities undertaken by third parties on behalf of the trust also provide advice about the existence of alternative suppliers.

Note also that a trust cannot compel a person to use their preferred supplier. Approval to use an alternative supplier (other than the trust’s preferred supplier) can only be refused by the trust where the alternative supplier is unable to meet the trust’s documented requirements or specifications.

## 4.2 Display space for alternative suppliers’ promotional material

All cemetery trusts that engage in the sale and supply of memorialisation goods and services and which have a designated display area to promote these goods and services, must provide space within those areas for the display of alternative suppliers’ promotional materials. This includes both physical display spaces (e.g. within the cemetery grounds) and digital display spaces (e.g. on the trust’s website or social media).

To ensure compliance with the *Competition and Consumer Act 2010 (Cth)* and the National Competition Policy, trusts should provide display space for alternative suppliers’ promotional materials that is of equivalent size and prominence to their own displays. For example, in some cemeteries it may be necessary to locate a display stand for the promotion of alternative suppliers’ products and services, whereas in other cemeteries it may be sufficient to locate a display book of alternative suppliers’ products on the trust’s front counter.

The display space should comply with the following minimum requirements:

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

Physical display space within cemetery grounds is to be made available for use by alternative suppliers free of charge. Cemetery trusts may display a statement on or near the alternative suppliers’ display space noting that the space is provided free for alternative suppliers to advertise their products and services, and that suppliers using the space have no connection with and are not endorsed by the trust.

Any fit-out required for a physical display is to be provided and paid for by the alternative suppliers electing to utilise the space. This requirement also applies to areas within cemetery grounds where trusts have established sample or model memorials for the purposes of marketing and promotion.

For digital display spaces, trusts may charge alternative suppliers a fee to utilise space on trust websites and social media for advertising memorialisation goods and services that the trust also sells and supplies, however this fee should do no more than recoup costs, such as the cost of hosting the page.

Trusts may make provision on their websites for the advertising of goods and services not sold or supplied by the trust. In such instances, as the cemetery trust has no competitive advantage the question of competitive neutrality does not arise. A cemetery trust would be at liberty to charge a fair market price for advertising of goods and services that it does not sell or supply.

For digital display spaces, trusts should place a disclaimer on their website in relation to advertising by third party suppliers. A sample disclaimer is provided at **Appendix 1**.

# 5 Use of personal information for marketing purposes

Information Privacy Principle 2 (IPP2) of the *Privacy and Data Protection Act 2014* requires that an organisation must not use or disclose personal information about an individual for a purpose other than the primary purpose of collection unless the individual has consented to the use or disclosure.[[1]](#footnote-1)

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

To ensure compliance with the Privacy and Data Protection Act, trusts should ensure that they do not use personal information, such as contact details, for the purposes of marketing or promotion unless they have obtained the explicit consent of the individual.

All statutory forms prescribed under the Act that are used by trusts include an appropriate privacy statement that complies with this requirement. A sample privacy statement that trusts may wish to include on other correspondence that they generate is provided at **Appendix 2**. Trusts with a privacy policy may refer to their policy as well as the *Privacy and Data Protection Act 2014* in the privacy statement.

# 6 Establishment and alteration of memorials and places of interment

## 6.1 Trusts’ competitive tendering arrangements

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

These contract arrangements however cannot be used by trusts to:

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

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

## 6.2 Trusts’ consideration of complete applications

When considering whether to approve or refuse an application to establish or alter a memorial or place of interment, trusts should give consideration to s. 99 of the Act. Under this section, applications may be refused if the proposed memorial is deemed to:

* be unsafe, dangerous or not of a sufficiently permanent nature, or
* be incompatible with the trust’s policy regarding the general nature and standard of surrounding memorials or the nature and character of the cemetery (these policies should be documented by the trust and be publicly available), or
* not comply with the prescribed requirements, model rules, or the cemetery trust rules or for any reason the trust sees fit.

Upon receipt of a complete application, trusts must provide documentation to the applicant stating the outcome of their application within a reasonable timeframe, and where approval is granted, detail any conditions relating to the approval.[[2]](#footnote-2) Under s. 99(4) of the Act, a cemetery trust must make a decision on an application within 45 days after receipt of the application, or 45 days after the trust has received further information it requests from the applicant. Where an application is refused, a trust must provide reasons for its decision.

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

### 6.2.1 Application forms

There is no prescribed statutory form to be used when making an application to establish or alter a memorial or place of interment. However, the Cemeteries and Crematoria Association of Victoria, in conjunction with the department, has developed a standard form for this purpose that complies with the relevant competitive neutrality and privacy requirements. This form is available on the [health.vic website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/memorials) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/memorials>.

For those trusts that choose not to use this standard form and to determine their own format for this purpose, the following points under 6.2.2 and 6.2.3 should be noted.

### 6.2.2 Contracts

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

### 6.2.3 Indemnities

Cemetery trusts cannot require applicants to indemnify the trust in relation to work undertaken by a third party (e.g. a stone mason).[[3]](#footnote-3) Trusts can however require the third party undertaking the work on behalf of an applicant to provide an indemnity against injury or damage arising from their work.

A cemetery trust should not assume any liability for the construction of a monument by a third party.

## 6.3 Specifications

Trusts may introduce specifications that limit the types of memorials or places of interment the trust will permit in specific areas within the cemetery or in the cemetery as a whole. Specifications may relate to a range of options including but not limited to type, size, quality, design, or colour.

Trusts should ensure they have a clear rationale for each specification that is documented in trust records.

### 6.3.1 Communicating specifications to consumers

Memorial specifications must be clearly documented by the trust and provided to consumers in writing before the purchase of a right of interment is finalised. The specifications should also be available to alternative suppliers. When a right of interment is issued, the relevant specifications should be included in the right of interment documentation.

### 6.3.2 Introducing or changing specifications that will impact existing right of interment holders

New or revised trust specifications cannot be applied retrospectively. Where trusts have granted an approval to establish or alter a memorial and subsequently introduced or revised specifications, the original approval remains valid.

Trusts should carefully consider their plan to introduce or revise specifications that apply to an area of the cemetery with existing memorials and strive for consistency. For example, introducing a new specification that headstones cannot be established in a lawn area that has existing headstones previously approved by the trust would require a strong and reasonable justification to be an appropriate step for the trust to take.

### 6.3.3 Notice period for changes to specifications

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

**The minimum notice period does not apply if specifications have been altered to address public safety issues.**

At a minimum this notice should advise that the trust proposes to introduce or amend specifications, how further details about proposed changes can be obtained and that feedback may be submitted to the trust within a specified timeframe. Any feedback received must be considered by the trust and responded to in writing.

Trusts should take the following steps to ensure the community is appropriately consulted:

* Place a public notice in a local news publication.
* Inform right of interment holders who will be impacted by the proposal in writing.
* Place a notice in a clearly visible location within the cemetery grounds.
* Place a notice on the trust’s website or community notice boards as appropriate.
* Inform alternative suppliers who regularly provide services in the cemetery and their representative organisations in writing.

# 7 Work on memorials and places of interment

## 7.1 Maintenance of worksites

Worksites must be kept in a safe and secure condition in accordance with the requirements of the *Occupational Health and Safety Act 2004*. More information is available on the [WorkSafe website](https://www.worksafe.vic.gov.au/safety-in-and-around-graves) <https://www.worksafe.vic.gov.au/safety-in-and-around-graves>.

All materials must, as far as practicable, be prepared off-site.

Persons carrying out work within a public cemetery must take all necessary precautions and have appropriate work practices in place to protect any property on cemetery grounds from any damage arising from the work and to protect any person present in the cemetery from harm.

Persons carrying out work must comply with cemetery trust directions on access to and maintenance of worksites.

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

Unless otherwise provided for by the relevant cemetery trust, weekend work and work outside of the trust’s standard operating hours to establish or alter memorials is permitted only by prior arrangement. Processes for applying for permission to work during these times and conditions under which approval might be granted should be documented and made available by trusts. Trusts may charge additional gazetted fees for granting a permit to establish or alter a memorial out of standard hours.

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

## 7.3 Completion of work

Alternative suppliers must notify the trust when work to establish or alter a memorial has been completed.

The trust should inspect the completed memorial to ensure it is compliant with the terms and conditions of the trust’s memorial approval.

If the trust is satisfied that the memorial has been established or altered in accordance with the trust’s terms and conditions, the trust should provide written confirmation to the alternative supplier or the applicant (as appropriate) within an appropriate timeframe.[[4]](#footnote-4) An email from the trust would be sufficient to meet this requirement.

If the trust is not satisfied with the work done, it must inform the alternative supplier and/or applicant (as appropriate) in writing as soon as possible to:

* advise that the memorial does not meet the trust’s requirements
* identify the unsatisfactory elements of the work undertaken
* request that the alternative supplier and/or applicant (as appropriate) contact the trust as soon as possible to arrange a time to alter the monument to the trust’s satisfaction.

# 8 Cemetery trust fees

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

## 8.1 Transparency of cemetery trust fees

There should be a direct relationship between the fees charged for goods and services and the actual cost of these items. The fee must include all direct costs associated with the activity and a proportion of indirect costs incurred by the trust.

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

Trust invoices to customers should include all separate gazetted cemetery trust fees (relating to distinct cemetery trust products and services) that contribute to the total cost to the customer. This includes any charges imposed by the trust associated with using alternative suppliers.

Trusts are not required to provide a detailed breakdown of how each individual fee has been ‘built up’ to customers unless requested. Trusts should be able to provide such detail to the department as part of an application to establish or alter fees, and on request.

## 8.2 Fees charged in relation to work undertaken by alternative suppliers

Trust fees relating to work by alternative suppliers on memorials or places of interment must not be based on a percentage of the alternative supplier’s total contract value. Instead, trusts may charge a fixed cost ‘memorial permit fee’ based on the actual costs associated with granting the approval such as:

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

## 8.3 Equivalent costs to be factored into trust-supplied product fees and alternative supplier fees

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

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

Under the Act, when setting fees, trusts must also have regard to the costs of operating and managing the public cemetery and the need to provide for maintenance of the public cemetery in perpetuity. All cemetery trust fees including fees relating to work by alternative suppliers on memorials or places of interment should include an appropriate perpetual maintenance component.

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

# 9 Complaints

Concerns about potential breaches of the code should be raised in the first instance with the department:

Cemetery Sector Governance Support Unit

Department of Health

GPO Box 4057

MELBOURNE VIC 3001

Telephone: 1800 034 280

Email: cemeteries@health.vic.gov.au

Complaints regarding potential breaches of Victoria’s Competitive Neutrality Policy should be directed to [Better Regulation Victoria](https://www.vic.gov.au/competitive-neutrality-complaints) <https://www.vic.gov.au/competitive-neutrality-complaints>.

# Appendix 1 – Sample disclaimer use on trust websites

Advertising by third party suppliers on this website is for information only. The **[insert name of cemetery trust]** has no connection with and does not endorse any supplier, product or service advertised on its website nor does advertising by a third party supplier constitute or imply endorsement by the cemetery trust of the supplier, its products or services. The **[insert name of cemetery trust]** is not responsible for the accuracy of the information contained in advertisements by third party suppliers nor for information that might be accessed from links provided by third party suppliers to other websites.

# Appendix 2 – Sample privacy statement

**If you wish to receive information from us about memorialisation goods and services please check this box**

Tick

Any personal information you provide will be treated in accordance with the principles set out in the *Privacy and Data Protection Act 2014*. You may request access to the information we hold about you and you may request its correction if necessary.

The information you provide is required to enable us to perform our functions, comply with our obligations and exercise our rights under the *Cemeteries and Crematoria Act 2003*. Except for the information you are required to submit under that legislation, you are not obliged to provide any personal information. However, should you choose not to provide this information, we may not be able to provide the services for which the information is required.

Under the *Cemeteries and Crematoria Act 2003*, we are also required to keep records containing certain information regarding interments, cremations and rights of interment. Members of the public are entitled to access those records.

1. Note: IPP2 allows the use and disclosure of personal information in certain circumstances for other secondary purposes. More information is available on the [Office of the Victorian Information Commissioner website](https://ovic.vic.gov.au/) <https://ovic.vic.gov.au>. [↑](#footnote-ref-1)
2. Consultation with the MSMAV has indicated that as a guide a reasonable timeframe would usually be between 5 and 20 working days, depending on the complexity of the application. [↑](#footnote-ref-2)
3. Note that in some cases the applicant may also be the person that will be undertaking the work. In these cases, the indemnity will also apply to the applicant by default. [↑](#footnote-ref-3)
4. Consultation with the MSMAV has indicated that as a guide a reasonable timeframe would usually be between 5 and 20 working days, depending on the complexity of the application. [↑](#footnote-ref-4)