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| Exhumation licence policy |
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# Objectives

(1) To assist the decision-maker when considering applications for an exhumation licence while maintaining the flexibility to appropriately address various circumstances relating to applications, including complex family circumstances.

(2) To provide applicants and other parties with information about when an exhumation licence is required and the basis for assessing applications for an exhumation licence.

This policy does not limit the discretion of the Secretary to the department or the Secretary’s delegate.

# Scope

This policy applies to applications for an exhumation licence under the *Cemeteries and Crematoria Act 2003* (the Act) for the purpose of exhumations from a public cemetery in Victoria.

It is not intended to apply to applications for exhumations of remains interred outside of a public cemetery, as different considerations and complexities may apply to such exhumations. Potential applicants for a licence to exhume outside of a public cemetery should, in the first instance, contact the department to discuss their situation.

The *Coroners Act 2008* contains provisions for exhumation in certain circumstances. Such exhumations are managed by the Victorian Coroner and are outside the scope of this policy.

This policy should be read in conjunction with relevant provisions of the Act, the Cemeteries and Crematoria Regulations 2015, the [*Application to Secretary for exhumation licence* (Form 5)](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/exhumations/applying-for-an-exhumation-licence) and other information published by the department about exhumations, including the [*Making an application for an exhumation licence*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/exhumations/applying-for-an-exhumation-licence) checklist.

See page 2 for more information about when an exhumation licence is and is not required.

# Background

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

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

It is an offence under s. 155 the Act to exhume or remove human remains from any place of interment (except in accordance with the Act), with a penalty of 600 penalty units or five years’ imprisonment, or both. It is also an offence to knowingly make a false statement in an exhumation licence application (s. 158A, 240 penalty units or two years’ imprisonment, or both) or to fail to comply with the terms and conditions of an exhumation licence (s. 159, 240 penalty units or two years’ imprisonment, or both).

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

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

# When is an exhumation licence required?

The Act contains no definition of ‘exhumation’. Section 158 specifies that an exhumation licence is required to move human remains (other than cremated human remains or body parts) from one place of interment and reinter them at another place of interment, whether or not the two places are within the same cemetery. However, s. 158 is not an exhaustive statement as to when an exhumation licence is required.

As a matter of policy, the department considers that an exhumation licence is required whenever previously interred remains are to be disturbed by opening or moving the coffin, except as otherwise provided for in the Act. This is consistent with the Act’s objective of ensuring that human remains are treated with dignity and respect.

Therefore, an exhumation licence is required when:

* exhuming human remains for the purpose of cremation or overseas/interstate transport
* opening the place of interment for the purpose of opening the coffin (for example, to retrieve objects from the coffin)
* opening the place of interment for the purpose of reorientating the coffin within the same place of interment
* opening the place of interment for the purpose of lowering the remains to make space for further interments, where an existing interment occurred within the past 10 years and therefore is too recent for a ‘lift and reposition’ procedure.

An exhumation licence is **not** required for the following activities, although cemetery trusts should consult carefully with interested parties and obtain their written consent[[1]](#footnote-1) before allowing any action:

* a ‘lift and reposition’ procedure, as described in ss. 88–90 of the Act
* opening a place of interment to check an external nameplate on the coffin
* moving a coffin from an incorrect place of interment to the correct place of interment before the incorrect place of interment has been backfilled (for a grave) or sealed (for a mausoleum crypt)
* removing cremated remains from a place of interment in accordance with s. 77 of the Act.

Please contact the department if you are unsure whether an exhumation licence is required in your particular circumstances.

# Assessing applications for an exhumation licence

Relevant considerations for the decision-maker may include (but are not limited to):

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

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

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

### Reinterment

If reinterment in a Victorian public cemetery is planned, the applicant must obtain the signed consent of the holder of the right of interment for the place of interment, to give assurance that the proposed reburial in Victoria will be able to proceed.

If reinterment in Victoria outside of a public cemetery (for example, at a private burial ground) is planned, the applicant will need to seek approval for the interment under s. 121 of the Act. If the proposed place of reinterment is not within an established burial ground (that is, one with existing marked interments), the applicant should contact the department to discuss their proposal prior to submitting any application.

### Cremation

If cremation at a Victorian crematorium is planned, the applicant needs to consider whether a cremation approval from the departmental Secretary under s. 134 of the Act is required in the circumstances. Such an approval is required where the documentation required for a cremation authorisation by the relevant cemetery trust under s. 131 of the Act is not available.

If approval under s. 134 will be required, an appropriate application should be submitted along with the exhumation application.[[2]](#footnote-2)

If a cremation is proposed, regardless of whether approval under s. 134 is required, the applicant also needs to provide a statutory declaration mirroring the structure of the declaration at Part G of the form, to provide the department with assurance that surviving relatives have been appropriately informed of the proposed cremation and have no objections.

### Transport interstate or overseas

There are no restrictions on removing remains, including bodily remains, from the state. However, the applicant needs to indicate on the application form that this is the intention.

The applicant also needs to provide a statutory declaration mirroring the structure of the declaration at Part G of the form to provide the department with assurance that surviving relatives have been appropriately informed and have no objections. This statutory declaration needs to refer specifically to what will happen to the remains – for example, ‘transport to Tokyo Japan for cremation’.

## Dignity and respect for the deceased

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

However, it is recognised that in some cases dignity and respect may be best served by an exhumation. For example, exhumation for the purpose of reinterring in a more culturally or spiritually appropriate location, or exhumation for the purpose of moving the deceased closer to family who wish to pay their respects by visiting. The deceased’s family will generally be best placed to determine what dignity and respect means in their particular culture, faith (if any) and circumstances.

This means that when the views of family members about the proposed exhumation conflict, it might be difficult for the applicant to demonstrate that the outcome to be achieved by the exhumation outweighs the dignity and respect associated with undisturbed interment. In these situations, the department recommends that the applicant seek the assistance of a dispute resolution service such as the [Dispute Settlement Centre of Victoria](https://www.disputes.vic.gov.au/) <https://www.disputes.vic.gov.au/> to resolve these differences before making an application.

## The views of parties with a connection to the matter

The department seeks information about the views of various parties, through the prescribed form, to assist in understanding the context of the proposed exhumation.

### Right of interment holder for the current place of interment

The prescribed form requires the applicant to obtain the signed consent of the right of interment holder for the current place of interment (grave, crypt or vault) from which it is proposed to exhume the deceased. This is because the right of interment holder is the person with the right to make decisions about the place of interment.

Therefore, it would be extremely unusual for an exhumation licence to be granted without the signed consent of the right of interment holder.

Please note that the right of interment holder cannot be a deceased person. If the original holder of the right is deceased, the applicant needs to work with the cemetery trust to have the trust’s records updated to reflect the current, living, holder of the right of interment.

### Informing family members

Underpinning this process is the premise that all direct family members should, at a minimum, be informed of the exhumation prior to the exhumation and the subsequent re-disposal occurring.

To this end, applicants for an exhumation licence are required by the prescribed form to declare that they have informed the deceased’s surviving parents, children (who have attained the age of 18 years, including stepchildren) and siblings (who have attained the age of 18 years) of the proposed exhumation.

Applicants are also required to inform any parent or guardian of any minor child (including stepchild) or minor sibling of the deceased of the proposed exhumation so that the parent or guardian may inform the minor as the parent or guardian deems appropriate.

### Managing objections

Objections to the proposed exhumation may, depending on the circumstances, be relevant (although not necessarily determinative) in deciding whether to grant an exhumation licence. Therefore, the prescribed form requires the applicant to declare whether any of the informed relatives have an objection to the proposed exhumation and to also declare if they are aware of any other indirect relatives with an objection.

Depending on the circumstances, an exhumation licence might be granted contrary to the wishes of one or more objectors. Below are some non-exhaustive examples of such situations; however, the circumstances of each application will always be considered individually:

* where there is evidence to show that the interment was not properly authorised
* where the estate remains under probate or administration and the executor or administrator seeks an exhumation
* if the objection is from one or more indirect relatives but direct relatives do not object
* if an objector is unable to give reasons for their objection.

If a licence is granted where there has been one or more objections, the licence will be granted subject to a condition that it may not be exercised prior to 60 days after the date of issue. This 60-day period is designed to allow the objector(s) the opportunity to seek legal advice and/or initiate any applicable legal action, recognising that the disturbance associated with an exhumation is irreversible.

### Applicant for the original interment

The Secretary’s delegate may, at their discretion, seek information as to the identity and views of the applicant for the original interment, if the delegate considers that this information might assist when considering the application.

## Wishes documented by the deceased in relation to managing their remains

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

The extent to which the proposed management of the remains following a proposed exhumation aligns with the deceased’s documented wishes will be a relevant consideration (although not necessarily determinative), particularly where different parties have competing views. A party who requests that the remains should be managed in a manner not consistent with the deceased’s documented wishes should ensure they provide reasons for the proposed departure from the deceased’s documented wishes.

# Review of decisions to grant or refuse to grant an exhumation licence

A person who is dissatisfied with a decision to grant or refuse an exhumation licence may seek a judicial review of the decision and may wish to seek independent legal advice about this option.

# Further information

For further information about this policy or the exhumation licence application process, email the Cemetery Sector Governance Support Program <cemeteries@health.vic.gov.au> or phone 1800 034 280.

If you are experiencing a dispute in relation to a proposed exhumation, the Dispute Settlement Centre of Victoria’s free dispute resolution services can be contacted on 1300 372 888.

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| To receive this document in another format email the Cemetery Sector Governance Support Program <cemeteries@health.vic.gov.au>.Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.© State of Victoria, Australia, Department of Health, April 2021.ISBN 978-1-76096-342-2 (pdf/online/MS word)Available at [health.vic](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/exhumations) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/exhumations> |

1. If there is a dispute between interested parties about the proposed action, or the trust is not sure who to consult, the trust should seek independent legal advice. [↑](#footnote-ref-1)
2. An application for cremation should include a letter from the applicant or their funeral director setting out the reasons why a cremation approval is sought, as well as all available documentation about the deceased’s death (for example, a death certificate). While the form *Application for cremation authorisation* is not prescribed for this purpose, the department prefers that applicants complete this form to ensure all relevant information is provided. [↑](#footnote-ref-2)