

Manual for Victorian Class A Cemetery Trusts

Revised November 2017

Accessibility

To receive this publication in an accessible format, phone 1800 034 280 using the National Relay Service 13 36 77 if required, or <cemeteries@dhhs.vic.gov.au>

© Copyright, State of Victoria, Department of Health and Human Services 2017

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

© State of Victoria, department of Health and Human Services, November 2017

Available at www.health.vic.gov.au/cemeteries

(1712007)

Contents

Introduction	1
Topic 1. The cemetery trust	3
The cemetery trust entity	3
The cemetery trust board	3
Good governance	4
Annual report	4
Functions and powers of cemetery trusts	4
The common seal of the trust	5
Class A cemetery trusts' advice and assistance to Class B cemetery trusts	5
Types of assistance	5
Obligations and expectations of advice and assistance	5
Record keeping for Class A cemetery trusts	6
Listed Class B cemetery trusts	6
Topic 2. Cemetery trust members	9
Cemetery trust member responsibilities	9
Representation of women on cemetery trusts	9
Appointment of cemetery trust members	9
Appointment terms	9
Appointment process	9
Remuneration	10
Resignations	10
The chairperson	10
Appointment of chairperson	10
Updating trust member information	11
Conflict between trust members	11
Conflict of interest and duty to disclose	11
Declaration of private interests	12
Trust members and personal liability	12
Free rights of interment for trust members	12
Topic 3. Cemetery trust governance	15
Information and advice	15
Freedom of information data collection	15
Topic 4. Abolition and amalgamation of cemetery trusts	19
Applying for abolition/amalgamation	19
Topic 5. Cemetery fees	23
Annual consumer price index increase	23
Setting fees and charges	23
Approval of fees and charges	24
Publishing fees	24
Time period to approve cemetery trust fees	24
Applying the approved scale of fees	25
Exemption of fees and charges from approval	25
Topic 6. Legislation	29
<i>Cemeteries and Crematoria Act 2003</i>	29
<i>Cemeteries and Crematoria Regulations 2015</i>	29

Model rules	29
Penalties	30
Other legislation	30
Legal advice	30
Topic 7. The role of government	33
Governor in Council	33
Minister for Health	33
Department of Health and Human Services	34
Topic 8. Officers of the cemetery trust	39
Chief executive officer	39
Other officers of the cemetery trust	39
Delegation of trust power	39
Topic 9. Trust meetings	43
Meetings determined by the chairperson	43
Quorum of trust members	43
Voting at meetings	43
Meeting procedure	43
Meeting venue	43
Minutes of meetings	44
Resolution of matters	44
Annual meeting	44
Notice of annual meeting	44
Topic 10. Trust committees	47
Governance committees	47
Functions of governance committees	47
Membership of governance committees	47
Procedure of governance committees	47
Community advisory committees	47
Community advisory committee guidelines	47
Functions of community advisory committees	48
Membership of community advisory committees	48
Topic 11. Annual and strategic plans	51
Annual and strategic plan guidelines	51
Annual plan	51
Approval of the annual plan	51
Strategic plan	51
Approval of the strategic plan	51
Availability to the public	52
Topic 12. Conservation and planning	55
Conservation and planning legislation	55
Heritage	55
Native vegetation	55
Topic 13. Grants	59
Applying for a grant	59
Partial grants	59
Direct deposit form	59
Financial reporting and grants	60

Topic 14. Interments	63
General booking procedures and confirmation	63
Interment of bodily remains	63
Essential documentation	63
Transportation of bodily remains within a cemetery	64
Conducting an interment in a grave	64
As a guide	65
Depth of burial	65
Conducting an interment in a concrete-lined grave (vault)	65
Conducting an interment in a mausoleum crypt	65
The coffin or casket	66
Trust delegate responsibilities	66
Public safety	67
Interring bodily remains conducted by a family or other person without the assistance of a funeral director	67
Interring a stillborn child	67
Disposal of pre-viable tissue or body parts	68
Interring deceased poor persons	68
Request to place a memorial on a public grave by a relative or friend of the deceased poor person	69
Request to inter other family members in a public grave	69
Interring cremated remains	69
Process for interring bodily remains (flow chart)	71
Topic 15. Cremation	75
Legislative requirements for cremation	75
Cremation authorisation	75
Approval of cremation authorisation in exceptional circumstances	76
Reportable deaths	76
Cremation conducted by family or another person without using a funeral director	77
Dual cremation	78
Tenure for interring cremated remains	78
Memorials for cremated remains	78
Interring cremated remains of more than one person in the same grave	78
Options for interring cremated remains	79
Conversion of limited rights of interment	79
Authority required to remove cremated remains	79
Process for cremating bodily remains (flow chart)	81
Topic 16. Exhumations	85
Exhumation licences	85
Validity	86
Exhumation procedures	86
Notification	86
Charges	86
The funeral director	86
The cemetery trust	86
Leaving the cemetery	86
Re-interment of exhumed remains	86
Exhumed remains to be cremated	87
Comparison of exhumation and lift and reposition procedures (flow chart)	88

Topic 17. Lift and reposition procedures	91
Topic 18. Disposal of human remains other than interment or cremation	95
Topic 19. Cemetery monuments and memorials	99
Application to establish or alter a monument or memorial	99
Monument construction procedures and standards	99
Trust responsibilities concerning monument safety	100
Plaques and headstones for lawn area graves	101
Plaques	102
Granite headstones and monuments	102
Other materials	102
Code of practice and competitive neutrality	102
Memorial permit fees	103
Process for establishing or altering a memorial (flow chart)	104
Topic 20. Mausolea	107
Public mausolea	107
Private mausolea	107
Topic 21. Closure of a public cemetery	111
Reopening a closed cemetery	111
Historic cemetery parks	111
Topic 22. Perpetual maintenance obligations	115
Advance planning	115
The acceptable standard of maintenance	115
Cemetery trust fees	115
Use of funds set aside for perpetual maintenance	115
Funding proposed developments	116
Topic 23. Other maintenance obligations	119
Fences – building/establishing	119
Topic 24. The right of interment	123
Rights and responsibilities of the holder of the right of interment	123
Exercising the right of interment	123
Transfer of the right of interment	124
Surrender of an unexercised right of interment	124
Surrender of an exercised right of interment	124
Surrender of an exercised right of interment – more than one holder	125
Establishing the holder of the right of interment if trust records are disputed	125
Cancelling and discontinuing a right of interment	126
Reuse of an unused place of interment in a double grave (side by side only)	127
How to determine whether a right can be cancelled	127
What to do if the former holder of the cancelled right contacts the trust	127
Topic 25. Cemetery records	131
Register of interments	131
Register of cremation memorials	131
Cemetery plans	131
Computerisation of registers and plans	132
Security and back-up of registers and plans	132
Privacy considerations	132
Deceased persons	132
Availability of records to the public	132

Archiving records	132
Topic 26. Complaints management	137
Members of the public and other stakeholders	137
Banning people from the cemetery	137
Referral to the department	137
Fraud or serious mismanagement	137
Other complaints	138
Formal appeal procedures	138
Victorian Civil and Administrative Tribunal	138
Dispute Settlement Centre of Victoria	138
Topic 27. Risk management	141
Regular review to determine potential risks	141
Public and worker safety	141
Asset security	141
Interment registers and plans	142
Action to remove or diminish those threats	142
Insurances	142
The Victorian Managed Insurance Authority (VMIA)	142
Cemetery trust members and personal liability	143
Topic 28. Financial management	147
Accounting and financial reporting under the <i>Financial Management Act 1994</i>	147
Audit and risk committee	147
Finance committee	147
Annual levy	147
Preparing an annual budget	147
Financial reporting process	148
Paying commissions is considered inappropriate	148
Funds received	148
Financing development works	148
Perpetual maintenance fund	149
Purchasing or acquiring land	149
Purchasing and tender procedures	149
Partial rebate of water charges	150
Fundraising	150
Topic 29. Tax	153
GST exemption on fees and charges	153
Income tax exemption	153
Fringe benefits tax	153
Debits tax exemption	154
Payroll tax exemption	154
Charitable Tax Status	154
Application information	154
Topic 30. Conditions of work	159
Equal employment opportunity	159
Victorian Charter of Human Rights	159
Topic 31. Occupational health and safety	163
Reasonably practicable	163
An individual's responsibilities to ensure health and safety	163
No one may put another person at a workplace in danger	163

A safe workplace for all people, not only trust staff	164
Particular workplace hazards in a cemetery	164
Documentation of safe work requirements	165
Accidents and incidents to be reported to WorkSafe	165
Appendix 1: Industry associations and contacts	167
Appendix 2: Some of the frequently used provisions of the <i>Cemeteries and Crematoria Act 2003</i> for Class A cemetery trusts	169
Appendix 3: Some of the frequently used provisions of the <i>Cemeteries and Crematoria Regulations 2015</i>	171
Appendix 4: List of Victorian legislation that impact on the operations of a cemetery trust	172
Appendix 5: List of Victorian Government departments and other relevant governmental organisations	177
Victorian government departments	177
Other relevant government organisations	178
Appendix 6: Depth of burial – Regulation 14	181
Appendix 7: Information on cancelling unexercised rights of interment	184
Appendix 8: Documentation requirements for interments and cremations	189
Appendix 9: Weighted Scale – Surrender of a right of interment	192
Appendix 10: Examples of situations where an exhumation licence may or may not be required	193
Appendix 11: Copyright of trust records	194
Introduction	194
Maintaining copyright	194
Legal advice	194
Appendix 12: Reuse of an unused place of interment in a double grave (side-by-side only)	195
Updating a trust's records	195
Where a claim is received in relation to an unused place of interment	195
Where no claim is made in relation to the unused right of interment	196
Cancelling a right of interment under section 91	196
Appendix 13: Leasing and Licensing of cemetery land	197
Appendix 14: Mausoleum establishment and construction guidelines	198
Introduction	198
Market analysis (demand)	198
Actuarial analysis	198
Purchasing processes	198
Identification of project costs	198
Building and construction information	199
Further information	199
Appendix 15: Cemetery Land Development – Guidelines	200
Introduction	200
Market analysis (demand)	200
Purchasing processes	200
Identification of project costs	200
Building and construction information	201
Further information	201

Appendix 16: Code of practice	202
Appendix 17: Insurance – Victorian Managed Insurance Authority (VMIA)	203
Appendix 18: Further guidelines and policies	205
Appendix 19: Forms available on the departmental website	206
Appendix 20: Exhumation – process	207
1. Introduction	207
2. Obtaining an exhumation licence	207
3. Cemetery trust responsibilities	208
4. General responsibilities	208
5. Preparing the site prior to exhumation	209
6. Day of exhumation	210
7. Possible risks	211
Class A cemetery trusts	211
Acronyms and abbreviations	213

Introduction

This document has been prepared in good faith by the Department of Health and Human Services' Cemetery Sector Governance Support in consultation with the Cemeteries and Crematoria Association of Victoria, Victorian Managed Insurance Authority and the legal services, industrial relations, human resources and financial services branches of the Department of Health and Human Services.

The information provided in this document is intended for general use only and is not intended to constitute formal advice or be a definitive guide to the law and operations of a cemetery trust.

This document is not a substitute for professional advice and does not take into consideration the particular needs and circumstances of all cemetery trusts. If you are unsure or unclear about any information contained in this document, you should seek appropriate professional advice regarding your own particular circumstances before acting or refraining from acting.

Every effort has been made to ensure the accuracy and completeness of this document at the date of publication. The information contained in this document is accurate as of January 2013.

Please note that in this document:

- The *Cemeteries and Crematoria Act 2003* is referred to as 'the Act'.
- The Cemeteries and Crematoria Regulations 2015 are referred to as 'the Regulations'.
- 'Cemetery trust' refers specifically to a Class A cemetery trust under the Act.
- 'The program' refers to Cemetery Sector Governance Support.
- The Department of Health and Human Services is referred to as 'the Department'.

Topic 1. The cemetery trust

The cemetery trust entity

A cemetery trust is established under s. 5 of the *Cemeteries and Crematoria Act 2003* as a body corporate entity with perpetual succession.

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

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

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

The cemetery trust board

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

A Class A cemetery trust consists of between six and nine members. Cemetery trust members are appointed for a term of up to three years and are eligible for reappointment.

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

The role of the cemetery trust board is to steer the cemetery trust. This includes:

- a strategic role of setting the overall operational direction of the cemetery trust
- a stewardship role in ensuring that the cemetery trust's activities reflect the public sector values and employment principles, and that the cemetery trust has arrangements in place to meet its statutory obligations.

Under the PAA, cemetery trust members are subject to the public sector values outlined in s. 7 of the PAA and must comply with the *Director's code of conduct* issued by the Public Sector Standards Commissioner.¹

If a bank or other financial institution has any further queries specifically relating to the establishment of your entity, it can contact Cemetery Sector Governance Support on freecall 1800 034 280.

¹ A copy of the code and guidance notes are available at <<http://www.vpsc.vic.gov.au/products/view-products/directors-code-of-conduct-and-guidance-notes>>.

Good governance

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

The Victorian Public Sector Commission (VPSC) has developed a range of information materials to assist boards to better understand and apply good governance practices and principles, including the Good practice guide on governance for Victorian public entities.²

Annual report

Under Part 7 of the *Financial Management Act 1994*, a Class A cemetery trust must submit an annual report, incorporating operational and financial statements, to the Parliament of Victoria.

Functions and powers of cemetery trusts

Section 12A of the Act sets out the functions of Class A cemetery trusts. These trusts are required to:

- properly and efficiently manage and maintain each public cemetery for which the trust is responsible
- develop annual and strategic plans for the operation of the trust and monitor compliance with those plans³
- develop annual business plans, strategies and budgets to ensure the efficient and accountable provision of services and the long-term viability of the cemetery trust
- establish and maintain effective systems to ensure the services provided by the cemetery trust meet the needs of the communities it serves and that the views of those communities are taken into account
- oversee the organisational structure of the cemetery trust
- employ a chief executive officer (CEO) to effectively operate and manage the cemetery trust and each public cemetery for which the trust is responsible
- monitor the performance of the CEO
- ensure there are systems in place to enable effective and accountable risk management, financial management and records management of the cemetery trust
- provide leadership, assistance and advice (as requested) to Class B cemetery trusts
- establish committees and ensure those committees operate effectively
- ensure the Secretary to the Department of Health and Human Services is informed as soon as practicable of any significant issues of public concern in relation to the cemetery trust and its services or any significant risks that may affect the cemetery trust and its services
- develop a code of conduct for members of the cemetery trust and for staff of the trust
- ensure members of the cemetery trust receive adequate training in order to meet their obligations as trust members
- carry out any other function that may be required by legislation.

² This guide and other governance-related information is available at <www.vpsc.vic.gov.au>.

³ Under s. 18N and 18O of the Act, annual and strategic plans must be approved by the Secretary to the Department of Health.

In exercising its functions, a Class A cemetery trust must consider the:

- funding of its perpetual maintenance obligations
- cultural and religious values of the community
- heritage values of the cemetery
- effective and efficient use of its resources.

Section 13 of the Act provides for the cemetery trust to do anything necessary or convenient to enable it to carry out its functions.

The Act also gives a cemetery trust a number of powers. It is important that the decisions made and the actions, including the expenditure of trust funds, can be justified as bona fide and legitimate.

The common seal of the trust

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

Class A cemetery trusts' advice and assistance to Class B cemetery trusts

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

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

Types of assistance

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

- 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
- tendering and contracting processes and requirements.

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

Obligations and expectations of advice and assistance

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

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

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

Record keeping for Class A cemetery trusts

The department recommends and encourages Class A cemetery trusts to keep a record of the types and frequency of information requested by Class B cemetery trusts and the advice or assistance provided.⁴

Listed Class B cemetery trusts

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

If a list of Class B cemetery trusts is created, it will be published on the department's website in accordance with s. 18K of the Act.

⁴ A template register to record such information is available at <www.health.vic.gov.au/cemeteries>.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 2. Cemetery trust members

Cemetery trust member responsibilities

A cemetery trust member is appointed under s. 6A of the Act by the Governor in Council on the recommendation of the Minister for Health. Cemetery trust members make up the cemetery trust board. As a cemetery trust is incorporated, the responsibilities of a cemetery trust member can be likened to those of a company director. These include the following.

- **Acting diligently and prudently regarding the business of the incorporated entity.** The members of a cemetery trust have legal obligations and duties under common law and under the constituting legislation (the Act and the Regulations), as well as under the PAA and all other relevant state and federal legislation. Trust members may wish to seek independent legal advice concerning their responsibilities and potential personal liabilities.
- **Disclosing conflicts of interest.** Trust members are required to disclose pecuniary interests or any other interests that could conflict with the proper performance of their duties.
- **Keeping and rendering proper accounts and giving full information when required.** This includes meeting the applicable compliance and reporting requirements of both state and federal legislation.

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

Representation of women on cemetery trusts

Current government policy recommends that public bodies such as cemetery trusts be representative of the communities they serve and should seek to appoint women to half of all new appointments. Cemetery trusts are requested to encourage women to become members.

Appointment of cemetery trust members

Under s. 6A and schedule 1A of the Act, trust members are appointed by the Governor in Council on the recommendation of the Minister for Health. There must not be fewer than six or more than nine trust members. The appointment of trust members is made according to the *Appointment and remuneration guidelines for Victorian government boards, statutory bodies and advisory committees*, issued by the Department of Premier and Cabinet.⁵

Appointment terms

Under clause 1 of schedule 1A of the Act trust members hold office for a period not exceeding three years and are eligible to apply for reappointment.

Appointment process

The appointment process for Class A cemetery trusts is primarily conducted by the Minister for Health in conjunction with the Department of Health and Human Services and (where appropriate) the relevant trust. Candidates will be assessed according to a skills-based matrix to ensure the trust collectively has a broad set of skills to assist in performing its functions. The nominees will be appointed by the Governor in Council, on the recommendation of the Minister for Health.

Scheduled appointment rounds – Class A trust members are appointed for a specified term.

⁵ For a copy of the current guidelines go to <www.dpc.vic.gov.au>.

Appointment rounds are coordinated centrally by the department (based on the expiry appointment tenure) to ensure continuity of appointments to cemetery trust boards. The department will notify trusts when a scheduled appointment round is due to commence.

Occasionally vacancies occur on a Class A trust for reasons other than the expiry of appointment tenure, for example, the resignation of a trust member. If this occurs and the trust believes it is necessary to fill the vacancy prior to the next scheduled appointment round, it can write to the department seeking the appointment of additional members. Please note, however, that an unscheduled appointment round will only be conducted under exceptional circumstances, for example, where the trust has fewer than the minimum six members. Every attempt shall be made to incorporate these types of appointments into the scheduled appointment rounds.

Remuneration

Under clause 5 of schedule 1A of the Act, Class A trust members are eligible for remuneration. Members of each of the Class A cemetery trusts will receive remuneration in accordance with the *Appointment and remuneration guidelines for Victorian government boards, statutory bodies and advisory committees* that sets a remuneration scale linked to the size and turnover of the statutory body.

Resignations

Under clause 3 of schedule 1A of the Act, trust members may resign from their positions by means of a letter of resignation addressed to the Minister for Health, and forwarded to:

The Manager
Cemetery Sector Governance Support
Department of Health and Human Services
PO Box 4057
Melbourne VIC 3001

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

The chairperson

The role of the chairperson is to lead and assist trust members in understanding their role and their responsibilities and accountabilities. Chairpersons are also responsible for ensuring that all trust members actively participate in the governance of the trust.

In order to achieve this, chairpersons need to manage meetings appropriately, by facilitating discussion to ensure all trust members have a say and ensure that decisions are fully understood and properly recorded/minuted.

Appointment of chairperson

Under clause 2 of schedule 1A of the Act, one of the existing trust members must be appointed as a chairperson by the Governor in Council. The chairperson holds office for a period not exceeding three years and is eligible to apply for reappointment.

Updating trust member information

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

Conflict between trust members

Conflict between trust members can occur and may be a normal part of trust dynamics. However, where conflict does occur, the chairperson must ensure that trust members respect other members' points of view and that all members conduct themselves in a fair and professional manner. Often this requires listening to fellow trust members and taking all viewpoints into consideration before coming to a decision. All trust members, regardless of their original point of view, should be treated with courtesy and respect once decisions have been finalised.

Where conflicts between trust members cannot be resolved and all reasonable attempts to resolve the conflict have been exhausted, including mediation by a third party such as the Dispute Settlement Centre of Victoria, trust members may raise their concerns with the department's Cemetery Sector Governance Support (see Topic 26 Complaints management under Referral to the department).

A cemetery trust does not have the power to remove a trust member.⁶ If the trust cannot function because of ongoing conflict, the chairperson should contact the department.

Conflict of interest and duty to disclose

A cemetery trust is expected to administer the cemeteries for which it is responsible in an equitable manner for the benefit of the whole community. Where a trust member has a personal interest in the outcome of a decision it is difficult, if not impossible, for them to be objective in discussions and decision making.

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

In addition, the PAA requires that members disclose any pecuniary interests or other interests that could conflict with the proper performance of their duties and details. Certain procedures are to be followed where disclosures occur. However, over time, a person's circumstances and conflicts of interest may change. For this reason, the *Appointment and Remuneration guidelines for Victorian government boards, statutory bodies and advisory committees (July 2012)* require that each cemetery trust member submits a *Declaration of private interest* form to the department each year.

⁶ Under clause 3 of schedule 1A, the Governor in Council, on the recommendation of the Minister, may at any time remove a member of a Class A cemetery trust from office. This would only occur in exceptional circumstances.

Declaration of private interests

Members of Class A cemetery trusts are required to provide completed annual *Declaration of private interest* forms to the department. Trust members who have been appointed for more than 12 months are required to submit the forms to the department by 30 June of each year.⁷

Trust members and personal liability

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

Free rights of interment for trust members

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

⁷ Copies of *Declaration of private interest* forms are available at <www.health.vic.gov.au/cemeteries> or may be provided by the unit on request.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 3. Cemetery trust governance

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

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

Information and advice

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

The VPSC can provide cemetery trusts with information and advice on general governance issues. The VPSC website has a public sector governance section that has information relevant for cemetery trusts, including the Good practice guide on governance for Victorian public entities.

For more information contact:

Victorian Public Sector Commission
3 Treasury Place
Melbourne VIC 3002

Telephone: (03) 9651 1321

Fax: (03) 9651 1883

Email: info@vpsc.vic.gov.au

Website: www.vpsc.vic.gov.au

Freedom of information data collection

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

In most cases trusts will just need to advise whether they have received or processed FOI requests for that financial year. Previous surveys have shown that the vast majority of cemetery trusts do not receive FOI requests.

Requests for cemetery records under Part 4 of the Cemeteries and Crematoria Act are not FOI requests and do not need to be reported. The data collection letter or email you receive will explain this and provide other information to assist with your response.

Class A trusts are required to complete a survey online. Details of where the survey can be located will be forwarded to you in the email or letter sent in July.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 4. Abolition and amalgamation of cemetery trusts

Abolition/amalgamation (one cannot take place without the other) of cemetery trusts is generally a voluntary decision made by a trust and can occur because a trust can no longer meet its statutory obligations under the Act, for example, it cannot maintain the minimum number of members or it has significantly low financial operating capacity to function effectively.

However, in certain circumstances, the government may decide a cemetery trust, or a class of cemetery trust, should be abolished/amalgamated.

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

The amalgamation of cemetery trusts means that one or more cemetery trusts will no longer be in existence (be abolished) and either:

- a new cemetery trust will be created to take control of the assets and liabilities of the former entity and manage all of the cemetery sites formally under the control of the abolished cemetery trusts, or
- the abolished cemetery trust(s) will be merged into an already existing cemetery trust, which will take control of the assets and liabilities of the former cemetery trust(s) and manage the cemetery sites of the former cemetery trust(s).

Applying for abolition/amalgamation

Trusts that apply for abolition/amalgamation should consult their local community. Possible avenues for arranging community consultation include:

- placing an advertisement in the local papers advertising a public meeting to discuss the trust's intentions
- contacting the local council
- contacting 'Friends of the Cemetery' or other similar groups or organisations.

Where a cemetery trust(s) has made a decision to apply to the Minister under s. 8 of the Act to abolish/amalgamate the trust(s), it should write to the manager of Cemetery Sector Governance Support. The letter should provide the following:

- the reason(s) why the trust should be abolished/amalgamated
- the level of trust members' support for abolition/amalgamation
- a list of the assets and liabilities being transferred
- details of public consultation undertaken
- the identity of any other trust interested in the abolition/amalgamation process
- a copy of the trust's due diligence assessment⁸
- any other information/documents that the trust considers relevant.

⁸ A trust interested in amalgamating with another trust must complete a due diligence assessment. This assessment should identify any shortfall in perpetual maintenance funding as a result of the amalgamation, along with advice about how the shortfall would be managed.

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

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 5. Cemetery fees

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

Under section 39 of the Act, cemetery trusts have the power to set fees and charges. As self funding entities cemetery trusts are responsible for setting fees to earn sufficient revenue to meet their obligations under the Act.

The department has the power under section 40 of the Act to approve fees set by cemetery trust. The approval process requires a trust to provide the department a range of supporting evidence when seeking to increase its fees.

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

Annual consumer price index increase

Under s. 43 of the Act, all trust fees of \$50 or more are adjusted 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 Consumer Price Index number (for Melbourne) for the current December quarter. Fees increased by CPI are effective from 1 July each year and are rounded to the nearest five-dollar unit.

Setting fees and charges

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.

When setting fees and charges, trusts should ensure there is a direct relationship between the fees charged for cemetery services and the actual cost of these services. Establishing a direct relationship between the fees charged and the service provided will ensure trusts fees are transparent and can be easily justified to the community by the trust.

The following framework can assist trusts when reviewing their current scale of fees and charges.

- **Sufficient and sustainable:** Prices should be sufficient to cover costs and provide for appropriate standards of service, as well as being commensurate with levels required to meet 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 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.⁹

The Department of Treasury and Finance developed guidelines to clarify the government's policy principles underpinning cost recovery arrangements. The guidelines provide a rigorous framework for government entities to use when considering, developing and reviewing user charges and regulatory fees. They ensure cost recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and consistent with government policy.¹⁰

Approval of fees and charges

A cemetery trust must make a formal application to the Secretary to the Department of Health and Human Services

(s. 40 of the Act) for consent to make or vary its scale of fees.

Fee submissions should be accompanied by relevant documentation generated from the trust's *Common chart of accounts costing worksheet* tool.

The costing worksheet tool was developed as part of the trusts *Common chart of accounts* management system and is a tool which assists trusts to more accurately determine the costs of their services and in turn to set appropriate and transparent fees for their services.

In determining appropriate fees for their services, Class A cemetery trusts are required to use the costing worksheet to provide a breakdown of costs associated with each fee submitted for approval. Specifically, trusts must include a copy of the costing worksheet with each fee application submitted to the department. The trust may also be required to provide a *Service cost sheet* and the *Fee setting sheet* if the information provided in the costing worksheet is not sufficiently transparent.

Where applications are submitted without the necessary documentation attached, the department will be unable to process the application and it will be returned to the trust.⁹

Publishing fees

Under s. 41 of the Act, a notice of the approval of any amended or new cemetery trust fees must appear in the Victorian Government Gazette and on the department's website before the fees become effective.

The department has developed, in consultation with the Cemeteries and Crematoria Association of Victoria (CCAV), a set of standard fee descriptors, which are available from the cemeteries and crematoria website.

Time period to approve cemetery trust fees

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.

⁹ Refer to: State Services Authority – *Review of cemetery trusts, final report*, June 2007, pp. 29–30.

¹⁰ For a copy of the guidelines go to <www.dtf.vic.gov.au/CA25713E0002EF43/pages/publications-regulation-guidelines>.

Applying the approved scale of fees

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

Exemption of fees and charges from approval

Under s.40A of the Act, the Secretary to the Department of Health and Human Services may apply for an exemption for certain fees and charges; however such exemptions will require a Regulatory Impact Statement to be prepared.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 6. Legislation

Cemetery trusts in Victoria derive their duties and powers primarily from legislation. This will usually be legislation of the Victorian Parliament, except in those matters where the Federal Parliament has overriding jurisdiction.

If there is conflict, the relevant legislation takes precedence over any local laws or rules that may have been made by a cemetery trust.

Copies of current Victorian legislation may be obtained from:

Victorian Government Bookshop
Level 20/80 Collins Street
Melbourne VIC 3000

Telephone: 1300 366 356

Fax: (03) 9208 3316

Website: http://www.bookshop.vic.gov.au/contact_us.php

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

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

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

Cemeteries and Crematoria Act 2003

The provisions of the Act relating to Class A cemetery trusts commenced operation on 1 March 2010. Some of the commonly used provisions of the Act relating to the operation of cemetery trusts and the conduct of interments and cremations are listed in Appendix 2.

Cemeteries and Crematoria Regulations 2015

The Cemeteries and Crematoria Regulations 2015 were made by the Governor in Council under s. 180 of the Act. Some of the commonly used provisions of the Regulations are listed in Appendix 3.

Model rules

Section 25 of the Act states that the regulations may prescribe model rules. A set of model rules is contained in schedule 2 of the Regulations. These rules apply to all trusts.

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

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

Penalties

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

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

The monetary value of a penalty unit is updated annually in accordance with the *Monetary Units Act 2004*. For current penalty rates contact the unit.

Other legislation

Examples of Victorian legislation that impacts on a cemetery trust's operations are listed in Appendix 4.

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; however, the department does not provide legal advice to cemetery trusts.

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

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 7. The role of government

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

The government expects cemetery trusts to meet their obligations under the Act and the relevant legislative framework. Where trusts fail to meet these obligations, the government may intervene (in line with the Act) if required.

The Act prescribes a range of limited powers to:

- the Governor in Council
- the Minister for Health
- the Secretary to the Department of Health and Human Services.

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

Governor in Council

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

Section	Provision
4	Establish a public cemetery by order published in the Government Gazette.
5	Establish a cemetery trust by order published in the Government Gazette.
6A	On recommendation from the Minister appoint members to a Class A cemetery trust.
10	On recommendation of the Minister appoint an administrator to manage a public cemetery.
27, 28	Approve and revoke cemetery trust rules.

Minister for Health

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

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

Section	Provision
31	When requested by a cemetery trust, the Minister may purchase or compulsorily acquire land for cemetery and crematoria purposes generally where the trust provides the funds.
36, 37	The Minister may approve purposes for which trusts can grant leases or licences over cemetery trust land to ensure the land is used primarily for cemetery purposes. Further details are available at appendix 13.

Section	Provision
Schedule 1A, clause 3 (2)	In exceptional circumstances, and when other options have been exhausted, that is, where there has been an ongoing dispute between trust members that has impacted on the trust's capacity to function effectively and deliver services, the Minister may recommend that the Governor in Council remove a trust member or members.

Department of Health and Human Services

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

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

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

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

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

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

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

Section	Provision
18	Giving directions to a cemetery trust with respect to carrying out any function or exercising any power of the cemetery trust.
18A	For the purposes of long-term planning, developing policies and plans regarding how cemetery and crematoria services should be provided.
18L	Approval of the terms and conditions, including remuneration, of the CEO of a Class A cemetery trust before a person is employed as CEO, to ensure compliance with the Government Sector Executive Remuneration Panel.
21	Approval to establish a crematorium.
22	Approval to establish mausolea facilities.
40	Approval or disapproval of a fee or scale of fees submitted for consideration by a cemetery trust.

Section	Provision
40A	Exempting certain fees and charges from the approval process.
51	Request an auditor to investigate a cemetery trust.
121	Issue an approval for interment other than in a public cemetery.
134	Issue an approval to cremate bodily remains due to special circumstances noted in the Act.
147	Grant an approval to dispose of bodily remains by a method other than interment or cremation.
157	Grant or refuse to grant an exhumation licence to an individual applicant.

Cemetery Sector Governance Support has responsibility for overseeing the administration of the Act. All relevant forms and other information can be found on the departmental website.

Contact details are:

Cemetery Sector Governance Support
Department of Health and Human Services
Level 14, 50 Lonsdale Street
Melbourne Vic 3000

PO Box 4057
Melbourne Vic 3001

Telephone (freecall): 1800 034 280

Fax: (03) 9096 9186

Email: Cemeteries&Crematoria@health.vic.gov.au

Website: www.health.vic.gov.au/cemeteries

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 8. Officers of the cemetery trust

Chief executive officer

Under s. 18L of the Act, a Class A cemetery trust must employ a CEO for the effective operation and management of the cemetery trust. The CEO holds office according to the terms and conditions determined by the cemetery trust. The Secretary to the Department of Health and Human Services is required to approve such appointments in order to ensure the CEO's contract complies with Government Sector Executive Remuneration Panel (GSERP) requirements.

Section 18M of the Act sets out the functions of a CEO, which are to:

- prepare material to be considered and approved by the cemetery trust, including
 - draft annual plans
 - draft strategic plans
 - draft business plans and strategies
 - budgets
- manage the cemetery trust in accordance with the plans approved by the cemetery trust
- provide the cemetery trust with relevant and timely information to enable the cemetery trust to fulfil its functions and objectives efficiently and effectively
- ensure the cemetery trust's decisions are implemented efficiently and effectively
- ensure the resources of the cemetery trust are used effectively and efficiently
- inform the cemetery trust of any significant issues of public concern relating to the cemetery trust or any significant risks that may affect the cemetery trust.

Other officers of the cemetery trust

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

Any payment to a person employed in an executive role by a trust must comply with the Government Sector Executive Remuneration Panel guidelines.¹¹

Delegation of trust power

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

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

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

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

11 Refer to http://www.vpsc.vic.gov.au/images/stories/product_files/483_GSERP_Policy.pdf

Delegations should be made formally by the cemetery trust at a trust meeting. The delegation of powers and duties must be in writing and recorded in the minutes of the relevant trust meeting. The chairperson of the cemetery trust must sign an instrument of delegation on behalf of the cemetery trust.¹²

12 A sample delegation instrument is available from the Cemeteries and Crematoria website at: www.health.vic.gov.au/cemeteries. If you require a hard copy please contact the unit on 1800 034 280.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 9. Trust meetings

Meetings determined by the chairperson

Under clause 8(1) of schedule 1A of the Act, meetings of a cemetery trust are determined by the chairperson. The chairperson of a Class A cemetery trust may at any time convene a meeting but must do so when requested by at least two members of the cemetery trust (clause 8(2) of schedule 1A of the Act).

The department recommends that Class A cemetery trusts meet at least once a month.

Quorum of trust members

A quorum refers to the minimum number of members that must be present at a meeting to make the proceedings of the meeting valid. A majority of the currently appointed trust members constitutes a quorum of a cemetery trust (clause 8(5) of schedule 1A of the Act).

Under clause 8(3) of schedule 1A of 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 participates in a meeting in this way is deemed to be present at the meeting.

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

Voting at meetings

A question arising at a meeting must be determined by a majority of votes from members present at the meeting and voting on that question.

If the voting is equal, the person presiding (as defined in clause 7 of schedule 1A of the Act) has a casting vote as well as a deliberative vote (clause 8(6) of schedule 1A of the Act).

Meeting procedure

The members of a cemetery trust may adopt guidelines for convening meetings and such other procedures that may be necessary for regulating their proceedings (clause 8(8) of schedule 1A of the Act).

These guidelines should not be confused with the procedure to make rules for managing the cemetery, which are to be submitted to the Governor in Council and published in the Government Gazette (ss. 25–27 of the Act).¹³

Meeting venue

Trust meetings may be held at any venue determined by the chairperson that is satisfactory to trust members. Consideration should be given to holding meetings at one of the cemetery sites that the trust manages so matters can be inspected as they are being discussed.

¹³ A standard textbook on meeting procedure that the trust may consider using is: *Magner ES 2012, Joske's law and procedure at meetings in Australia*, 11th edn, Thomson Reuters, Australia.

Minutes of meetings

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

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

As the minutes of trust meetings are a matter of public record that may need to be produced as evidence of trust decisions, the minutes should be maintained in book format (either loose-leaf or bound if hand-written) with pages numbered. They should be retained and stored in accordance with the directions of the Public Record Office.¹⁴

Assuming the minutes of a trust meeting are adopted by resolution at the subsequent meeting, the chairperson should then initial each page of the adopted minutes as confirmation of their correctness.

Resolution of matters

Under clause 8(6) of schedule 1A of the Act, a question arising at a trust meeting must be determined by a majority of votes of members present and voting on that question. If the voting is equal, the chairperson (or person presiding) has a casting vote as well as a deliberative vote.

Annual meeting

Under s. 18H of the Act, a Class A cemetery trust must hold an 'annual meeting' before 30 December each year. An annual meeting is to be open to the public.

At an annual meeting, a Class A cemetery trust must:

- report to the public on the operation of that cemetery trust for the preceding financial year
- make the cemetery trust's most recent annual report available
- report to the public on the accounts of the cemetery trust
- report to the public on the activities of the trust's community advisory committee.

Notice of annual meeting

A reasonable time before the date of the annual meeting, the cemetery trust must publish a public notice in a local newspaper (s. 18I of the Act). This public notice must state the time, date and place of the annual meeting and that it is open to the public.

¹⁴ See **Topic 25 (Cemetery records)** for Public Record Office contacts.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 10. Trust committees

Governance committees

A Class A cemetery trust must establish committees concerning the governance of the cemetery trust. Under s. 18B of the Act, a cemetery trust must have a finance committee and an audit and risk committee. The cemetery trust may also establish any other governance committee as it sees fit.

Under the *Financial Management Act 1994*, the audit and risk committee must comply with the requirements of audit committees outlined in the *Standing directions of the Minister for Finance* under the *Financial Management Act*.¹⁵

Functions of governance committees

A governance committee must consider any matters that are referred to it by the cemetery trust. The committee may investigate and make enquiries about any matter referred to it by the cemetery trust and must report back to the trust as required. The governance committee must carry out any other functions conferred on it by the cemetery trust or by legislation.

Membership of governance committees

The membership and conditions of appointment to any governance committee is to be determined by the cemetery trust in accordance with any relevant legislation and guidelines.

Procedure of governance committees

Except as otherwise determined by the cemetery trust, the procedure of any governance committee is to be determined by the committee subject to relevant legislation.

Community advisory committees

Under s. 18D of the Act, a cemetery trust must appoint a community advisory committee for the purpose of liaising with its local community. A cemetery trust may appoint any additional community advisory committees it considers appropriate.

It is expected that the community advisory committee will assist the cemetery trust to facilitate community engagement and ensure it is attuned to the needs and preferences of the communities it serves. It will also assist in ensuring the trust's services and policies are informed by community input, such as local knowledge, as well as religious, cultural and heritage perspectives.

Community advisory committee guidelines

The Secretary has provided cemetery trusts with guidelines as required under s. 18G. The *Community advisory committee guidelines for Class A cemetery trusts* provides a detailed overview of the requirements for cemetery trusts in establishing and operating its community advisory committee. In particular, the guidelines cover the composition, roles, functions and procedure of community advisory committees, as well as the appointment of its members.¹⁶ These guidelines are designed to assist cemetery trusts to establish effective community advisory committees that can inform on consumer and community views in relation to providing cemetery trust services.

¹⁵ These directions can be found at: [http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/StandingDirectionsOfTheMinisterforFinance-May2012Update\(DOCfile\)/\\$File/Standing%20Directions%20of%20the%20Minister%20for%20Finance%20-%20May%202012%20Update%20\(DOC%20file\).DOC](http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/StandingDirectionsOfTheMinisterforFinance-May2012Update(DOCfile)/$File/Standing%20Directions%20of%20the%20Minister%20for%20Finance%20-%20May%202012%20Update%20(DOC%20file).DOC).

¹⁶ The Community advisory committee guidelines can be found at www.health.vic.gov.au/cemeteries.

Functions of community advisory committees

Section 18E of the Act lists the functions of a community advisory committee, which can be broadly categorised as to:

- consider and report on any matters that are referred to it by the cemetery trust that established the committee
- raise with the cemetery trust any issues of concern or matters of interest of the community
- carry out any other functions conferred on it under the Act or by the community advisory committee guidelines and/or by the cemetery trust.

Membership of community advisory committees

Under s. 18F (1) of the Act, the cemetery trust appoints the members of the community advisory committee, having regard to the community advisory committee guidelines and the requirements set out under s. 18F(2) of the Act.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 11. Annual and strategic plans

Class A cemetery trusts are required to develop annual and strategic plans.

Annual and strategic plan guidelines

In conjunction with Class A cemetery trusts, the department has prepared *Strategic and annual plan guidelines for Class A cemetery trusts*.

These guidelines provide an overview of the annual and strategic planning requirements for cemetery trusts and contain strategic and annual plan templates that cemetery trusts are expected to complete and submit to the department for the Secretary's approval.¹⁷

Annual plan

Under s. 18N of the Act, a cemetery trust must prepare an annual plan for each financial year. The annual plan must specify:

- the objectives, priorities and key performance outcomes to be met by the cemetery trust for that year
- the cemetery trust's key performance indicators
- how and when the cemetery trust is to report on its performance in relation to the specified objectives, priorities and key performance outcomes.

The annual plan may include any other matters agreed to by the Minister and the cemetery trust from time to time.

Approval of the annual plan

A cemetery trust must give a copy of the proposed annual plan to the Secretary to the Department of Health and Human Services on or before 30 September each year for approval (s. 18N(3) of the Act). The Secretary may approve the annual plan or refer it back to the cemetery trust for amendment (s. 18N(4) of the Act). If the Secretary refers an annual plan back to a cemetery trust, the cemetery trust must make the amendments required and deliver the completed annual plan to the Secretary within three months from the cemetery trust's original submission date (s. 18N(5) of the Act).

Strategic plan

Under s. 18O of the Act a cemetery trust must prepare a strategic plan for managing and operating the cemetery trust. The Secretary will direct when a strategic plan must be prepared. The strategic plan must be completed in accordance with the guidelines.

Approval of the strategic plan

The cemetery trust must submit the strategic plan to the Secretary for approval (s. 18O(3) of the Act). The Secretary may request amendments before approving the strategic plan or refusing to approve the plan. A cemetery trust must advise the Secretary if it wishes to exercise its functions in a manner inconsistent with its approved strategic plan (s. 18O(4) of the Act).

¹⁷ A copy of these guidelines and templates are available at <www.health.vic.gov.au/cemeteries>.

Availability to the public

A cemetery trust must ensure that an approved annual plan and an approved strategic plan are available to members of the public on request (s. 18N(7) and s. 18O(5) of the Act respectively) and made available on the cemetery trust's website where applicable.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 12. Conservation and planning

Victorian cemeteries fulfil a number of functions. They are a place to inter deceased people, a significant link to Victoria's heritage, and are areas of cultural, historical and ecological significance. A cemetery trust must always take these different functions into consideration when undertaking any works or maintenance within the cemetery. This includes erecting a new structure, removing native vegetation and any other key works that could have a significant impact on the character of the cemetery.

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 or maintenance. Advice regarding such matters is available from local councils and the National Trust of Australia (Victoria).

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

Conservation and planning legislation

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

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

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

Heritage

The trust should be aware of its responsibilities (if any) under the *Heritage Act 1995* and the *Planning and Environment Act 1987*, and be sensitive to the increased public awareness in the heritage value and the need for conserving historic components of older cemeteries.

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

Native vegetation

Cemetery trusts need to be aware of their obligations under the *Flora and Fauna Guarantee Act 1988*. Where trusts believe there is a need to clear native vegetation or remove trees they need to contact the Department of Environment and Primary Industries, which has a pamphlet

specifically relating to cemeteries and native vegetation,¹⁸ and can advise the trust about any native vegetation they wish to remove/clear, and whether a permit or conditions apply. If the Department of Environment and Primary Industries believes a permit is required, the trust will need to submit a planning permit application to its local council. Trusts cannot begin removing native vegetation at the cemetery without first consulting with the Department of Environment and Primary Industries.

Department of Environment and Primary Industries
8 Nicholson Street
East Melbourne VIC 3002

Telephone: 136 186

Email: customer.service@depi.vic.gov.au

Website: www.depi.vic.gov.au

¹⁸ An electronic copy of the pamphlet is available at www.health.vic.gov.au/cemeteries.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 13. Grants

Cemetery trusts may apply to the department for a grant. The grants are intended for when cemetery trusts do not have funds available for the required expenditure.

The frequency of processing these grants may vary depending on available funds. The trust will be contacted if additional information is required, although this is likely to delay the application. To avoid such delays please read the grant application information carefully and ensure all relevant sections of the application form are completed.

All requests will be assessed on the basis of the likely benefit they would bring to the cemetery, the number of applications received and the total grant money available for the current year. Preference will be given to grants that are required to deal with occupational health and safety issues.

Applying for a grant

To apply for a grant, a cemetery trust must submit an *Application for Department of Health and Human Services grant form*. Applications should include two quotes (GST inclusive) for the proposed expenditure and photos of the relevant area before work commences. If a trust is unable to obtain two quotes, a written explanation outlining why this is not possible must be submitted with the application.

When applying for a grant for tree removal, trusts need to demonstrate how they have addressed the necessary requirements (where appropriate), in the Application for removal of trees from cemetery grounds form. This form must be completed and submitted with the Application for Department of Health and Human Services grant form and two quotes.

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

Should a trust wish to resubmit a grant application that has been declined, a new application must be submitted with updated information and quotes.

Partial grants

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

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

Direct deposit form

If a grant application is approved, the funds will be deposited into a nominated cemetery trust bank account. The details for the *Electronic transfer of payments* form must be completed with the application and sent to the address specified on the form.

Financial reporting and grants

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

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

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

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

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 14. Interments

Under the Act, the term interment means the interring, burial or placing of human remains¹⁹ in a place of interment such as a grave, mausoleum crypt or niche wall.

General booking procedures and confirmation

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

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

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

Interment of bodily remains

The interment of bodily remains includes interments in graves, concrete-lined graves (known as vaults) and mausoleum crypts. The key requirements for interring bodily remains are contained in ss. 113–120 of the Act; however, additional requirements under the regulations may also apply, depending upon whether the interment is to take place in a grave, a vault or a mausoleum crypt (see regulations 24, 25, 33, 34).

Essential documentation

The documentation requirements necessary for a cemetery trust to approve an interment of bodily remains are the same regardless of whether the interment is to take place in a grave, vault or crypt. Please see Appendix 8 for documentation requirements for interments.

Note that this documentation must be provided to the cemetery trust either prior to or, at the latest, upon the delivery of the deceased person to the cemetery for the interment. The documentation includes the following.

- 1. a) Medical certificate of cause of death of a person aged 28 days or over or (if appropriate) Medical certificate of cause of perinatal death** in the case of a deceased child of at least 20 weeks' gestation who either did not live or who lived for less than 28 days. (Note: Non-viable foetal tissue of less than 20 weeks gestation requires a letter only, signed by a medical practitioner or hospital, identifying the tissue to be buried by the trust.)
Such a certificate may be completed by hand or electronically then printed. It must be signed by the medical practitioner who attended the deceased after the death occurred, and an original should be produced to the delegate of the trust for examination when submitting a request for interment under the Act. A trust may keep a copy of the medical certificate; however, it must ensure privacy concerns are addressed.

¹⁹ Human remains means bodily remains (a corpse of a human being or stillborn child), cremated human remains and body parts.

or

- b) If the death was reported to the State Coroner for Victoria, an original of the **Certificate permitting interment, cremation or other disposal**, signed by a coroner should be produced to the trust for examination. A trust may keep a copy of the certificate permitting interment; however, it must ensure privacy concerns are addressed.

or

- c) An original **statutory declaration**, made by the funeral director or other person arranging the interment, stating that, owing to special circumstances (to be detailed in the declaration), it is not possible to submit the required documents outlined above. Note that when a cemetery trust grants an interment authorisation where the application is accompanied by a statutory declaration, the cemetery trust must notify the Secretary to the Department of Health and Human Services in writing.
2. The cemetery trust's **Application for interment authorisation** is to be completed and signed by the person who is the originator of the application for interment. The information from this form will subsequently be included in the records of the cemetery trust, which must be kept in accordance with s. 59 of the Act and Part 2 of the Regulations. If required by the cemetery trust, a bound Right of interment and interment register book in which to record the cemetery's records is available from the department.²⁰

Transportation of bodily remains within a cemetery

All bodily remains being transported for interment within a public cemetery must comply with r. 23 of the Regulations. Bodily remains must be enclosed in a coffin or other receptacle that is clean and hygienic and constructed of substantial material that prevents any offensive or noxious emissions or matter escaping.

Conducting an interment in a grave

As at June 2010, the accepted industry standard dimensions for an adult interment in Victoria are:

Task	Dimension requirements
Land allocation	2,400 mm long by 1,200 mm wide
Grave as dug	2,100 mm long by 650 mm wide with square corners; however, a coffin-shaped grave may be dug as circumstances dictate. If the grave required is of larger dimensions, the trust may charge an oversize fee if the fee has been approved and gazetted.
Coffin or casket	2,000 mm long by 600 mm wide (including handles) by 400 mm high.

²⁰ A copy of the register is available to download at <www.health.vic.gov.au/cemeteries>.

As a guide

Recommended minimum depth at first interment
In a single grave – grave depth is 1,700 mm
In a double grave – grave depth is 2,200 mm
In a triple grave – grave depth is 2,700 mm. (if available, subject to mechanical digging)

Depth of burial

Regulation 24 of the Regulations sets out the depth of burial requirements for interment in a grave in a public cemetery. If the ground above the place of interment is unsealed, a minimum of 750 mm of earth is required between the coffin or casket and the normal level of ground. If the ground above the place of interment is sealed with a substantial layer of stone, concrete or similar material, a minimum of 500 mm of earth is required between the coffin or casket and the normal level of ground. Refer to Appendix 6 for further details.

If the dimensions of the proposed coffin or casket (inclusive of the extra width created by the handles) preclude it from fitting into a grave of standard dimensions, then the dimensions of the proposed coffin or casket must be approved by the cemetery trust before it commences to dig the grave.

It is usual procedure for a new adult grave to be dug to double-depth, unless:

- there is physical impediment (such as rock)
- other instructions are provided.

A grave for the interment of a child would usually be dug to single-depth. Other dimensions are as determined by the cemetery trust, but 600 mm wide by 1,200 mm long could be taken as a guide.

Conducting an interment in a concrete-lined grave (vault)

Regulation 25 of the Regulations sets out the requirements for the interment of bodily remains in a fully concrete-lined grave, otherwise known as a vault. The place of interment must be sealed by a substantial layer of stone, concrete or similar material being placed or poured over the coffin as soon as practicable after the interment.

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

Conducting an interment in a mausoleum crypt

Regulations 33 and 34 of the Regulations prescribe requirements for interring bodily remains in a mausoleum crypt. These include that the bodily remains are enclosed in a coffin or other receptacle that is constructed of substantial material from which neither offensive or noxious emissions or matter will escape, and that the mausoleum crypt is sealed following the interment with a slab of impervious material to further prevent the escape of offensive or noxious emissions or matter, and is faced with a substantial slab of stone, slate or iron.

The coffin or casket

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

Although a coffin or casket is not required for interment, as noted above, the regulations require that a body be transported into and within a cemetery enclosed in a coffin or other substantial receptacle:

- that is clean and hygienic
- that is constructed of wood, metal or other substantial material
- from which neither offensive nor noxious emissions, nor matter from those remains or body parts will escape.

If it is to be a custom-made coffin or receptacle, this should be no larger than necessary.

A standard size adult coffin has external dimensions of approximately 2,000 mm long, 600 mm wide (including handles) and 400 mm high. With the agreement of the cemetery, at the time of booking, the coffin may be larger and/or be rectangular (casket) shape. The external finish on the coffin may be decorative or plain.

It is recommended the cemetery trust have other requirements of the coffin, such as:

- (at least) four strong and securely affixed handles capable of bearing the required weight. These handles are necessary to help carry and manoeuvre the coffin, and to feed the tapes through in the case of hand-lowering the coffin into the grave.
- a metal or plastic nameplate fixed to the lid of the coffin. Engraved into This plate should be the name of the deceased and the date of death. The spelling of the names of the deceased on the nameplate should be identical with that on all the necessary documentation.

Trust delegate responsibilities

For all three types of interment of bodily remains, the cemetery trust's delegate is responsible for:

- being present when the funeral procession arrives at the cemetery entrance to check that the essential documentation is correct and that the name on the coffin nameplate agrees in all respects with the name of the deceased on the documentation (check that names and spelling are identical)
- receiving payment of the trust's fees for the interment and any related services
- if all the required documentation is correct, directing the funeral and coffin to the correct interment location
- facilitating the cultural requirements requested by the applicant for the interment as agreed to by the cemetery trust at the time of confirming the funeral booking.

There is no legal obligation for the delegate or other cemetery trust personnel to assist with moving the coffin in the cemetery. This is at the discretion of the cemetery trust and the staff involved, recognising issues of occupational health and safety in the workplace.

It is also recommended that the trust delegate:

- supervises, together with the funeral director, the safety of members of the public (particularly children, if any) in the vicinity of all places of interment but, in particular, regarding open graves.

- remains at the place of interment at least until they have observed the coffin being placed into the place of interment
- ensures the place of interment is backfilled or sealed as soon as practical after mourners have left the area.

It is desirable that a trust has a number of delegates so that at least one such person is available to attend to daily requirements of the cemetery (refer to **Topic 8 Officers of the cemetery trust**).

Public safety

As part of its risk management procedures (refer to **Topic 31 Occupational health and safety**) the cemetery trust must pay close attention to all aspects of public safety in connection with conducting interments.

Backfilling or sealing of the place of interment should commence as soon as is practicable once all members of the public have left the immediate area of the place of interment. This situation requires a degree of sensitivity and discretion to ensure mourners are not unnecessarily distressed. Staff involved must remain alert to the potential for people to unexpectedly return to the place of interment, in which case work must cease until they have left the area.

Interring bodily remains conducted by a family or other person without the assistance of a funeral director

A trust may be approached by a person or family, who:

- indicate that they are considering conducting a funeral without the assistance of a funeral director and
- seek information as to the legal and procedural requirements for interment or cremation.

In Victoria, the role and duties of a funeral director are not prescribed by legislation. The professional associations for funeral directors have minimum requirements for membership and the town planning requirements of local government regulate the location and operation of their premises.

There is no reason why a family (or other persons) cannot perform some or all of the arrangements necessary prior to the body of the deceased being delivered for interment. The cemetery trust needs to ensure all statutory requirements for interment have been met.

Sometimes a person has planned for their own funeral to be conducted by family, yet when their death occurs, the family members decide they do not want responsibility for all aspects of the funeral. Consideration could then be given to seeking details from one or more commercial funeral directors who could provide the amount of assistance the family requires.

Interring a stillborn child

A stillborn child is defined in the *Births, Deaths and Marriages Registration Act 1996* as 'a child of at least 20 weeks gestation or, if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, with a body mass of at least 400 g at birth, that exhibits no signs of respiration or heartbeat or other signs of life, after birth'.

It is the responsibility of the hospital/doctor to determine if the deceased is a "still born" or "pre-viable foetal tissue" and complete the relevant death certificate (in line with the *Births, Deaths and Marriages Registration Act 1996*) and advise on how the remains will be released.

A stillborn child is regarded as bodily remains and therefore must be interred in a public cemetery or cremated.

An application to inter a stillborn child must be in the prescribed form and accompanied by

- i) a notice of still-birth under the *Births, Deaths and Marriages Registration Act 1996* (ie the “Medical certificate of cause of perinatal death”, which may be completed by hand or electronically and must be signed by the medical practitioner who attended the deceased after the death occurred) or
- ii) if the still birth occurred in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice of still-birth under the *Births, Deaths and Marriages Registration Act 1996* from the jurisdiction where the still-birth occurred (s116 (3) (d) of the Act).

An application to cremate a stillborn child must be in the prescribed form (Application for Cremation Authorisation) and accompanied by both

- i) a notice of still-birth under the *Births, Deaths and Marriages Registration Act 1996* (ie the “Medical certificate of cause of perinatal death”, which may be completed by hand or electronically and must be signed by the medical practitioner who attended the deceased after the death occurred) or
- ii) if the still birth occurred in another State or Territory of the Commonwealth or overseas, a document corresponding to a notice of still-birth under the *Births, Deaths and Marriages Registration Act 1996* from the jurisdiction where the still-birth occurred (s131 (3) (d) of the Act).

If the foetal remains (pre-viable tissue) are not considered a “still birth” by definition in the *Births, Deaths and Marriages Registration Act 1996* (outlined above) then for the purposes of the *Cemeteries and Crematoria Act 2003* it is referred to as a body part.

Disposal of pre-viable tissue or body parts

There is no requirement for pre-viable tissue (being pre-20 weeks’ gestation) or body parts to be disposed of in a public cemetery. If a trust agrees to bury or cremate pre-viable tissue or body parts, the trust will require a statement from the treating doctor or hospital that clearly identifies the person from whom the tissue or body part has come. Please refer to ss. 150 to 153 of the Act.

The trust must ensure privacy concerns are addressed in all record keeping.

Interring deceased poor persons

Under ss. 142–145, the Act provides that a cemetery trust must, upon an order signed by a magistrate or coroner, permit any poor person to be interred within, or cremated at, a public cemetery that has a cremator free of any charge whatsoever.

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

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

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

Cemetery trusts generally inter 'poor persons' in a public grave. This is a grave provided and dug at public expense without the cemetery trust receiving any fees. No right of interment is issued by the trust for such a public grave; rather, the right remains with the trust. The trust may decide to inter the bodies of a number of otherwise unconnected deceased people in the same grave.

Where there are multiple interments in a single grave, the cemetery trust is encouraged to consider the sequence of interments. When mourners attend the interment of a poor person and there are to be multiple interments in the grave at the same time, the interment should occur in a dignified manner with subsequent interments occurring after the mourners depart.

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

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

Sometime after an interment in a public grave, the family or friends of the deceased person may approach the cemetery trust seeking to establish a memorial on the grave. There is no legal requirement that any funds then available to the deceased's family must first be paid to the cemetery trust to offset the costs associated with providing the public grave and the interment. However, the trust may request that the applicant submit an application to establish a memorial and pay the relevant fee in accordance with s. 98 of the Act.

The decision whether to allow a relative or friend of the deceased poor person to establish a memorial on the public grave is a trust decision.

However, in determining whether it is appropriate to grant permission, the trust should consider:

- whether the gravesite will be used for future public interments – if this is the case and permission is granted, the trust should advise the family that the proposed memorial may need to be temporarily removed, when necessary, to accommodate any future public burials
- the size and type of the proposed memorial
- factors listed under s. 99(1)(b) of the Act
- ownership of the memorial and the terms and conditions regarding the process if the memorial is removed, damaged or replaced.
- any relevant trust policies (such as the area of the cemetery).

After the trust has considered all relevant matters it has the authority to approve or refuse the establishment of a memorial. All decisions should be recorded.

Request to inter other family members in a public grave

It may not be possible for a member of the family of a deceased poor person whose body is interred in a public grave to be interred in that same grave. Whether they can or not may depend on the availability of space, whether the trust has a gazetted and approved fee for interment in a public grave or if ordered by a magistrate or coroner (ss 142–145 of the Act).

Interring cremated remains

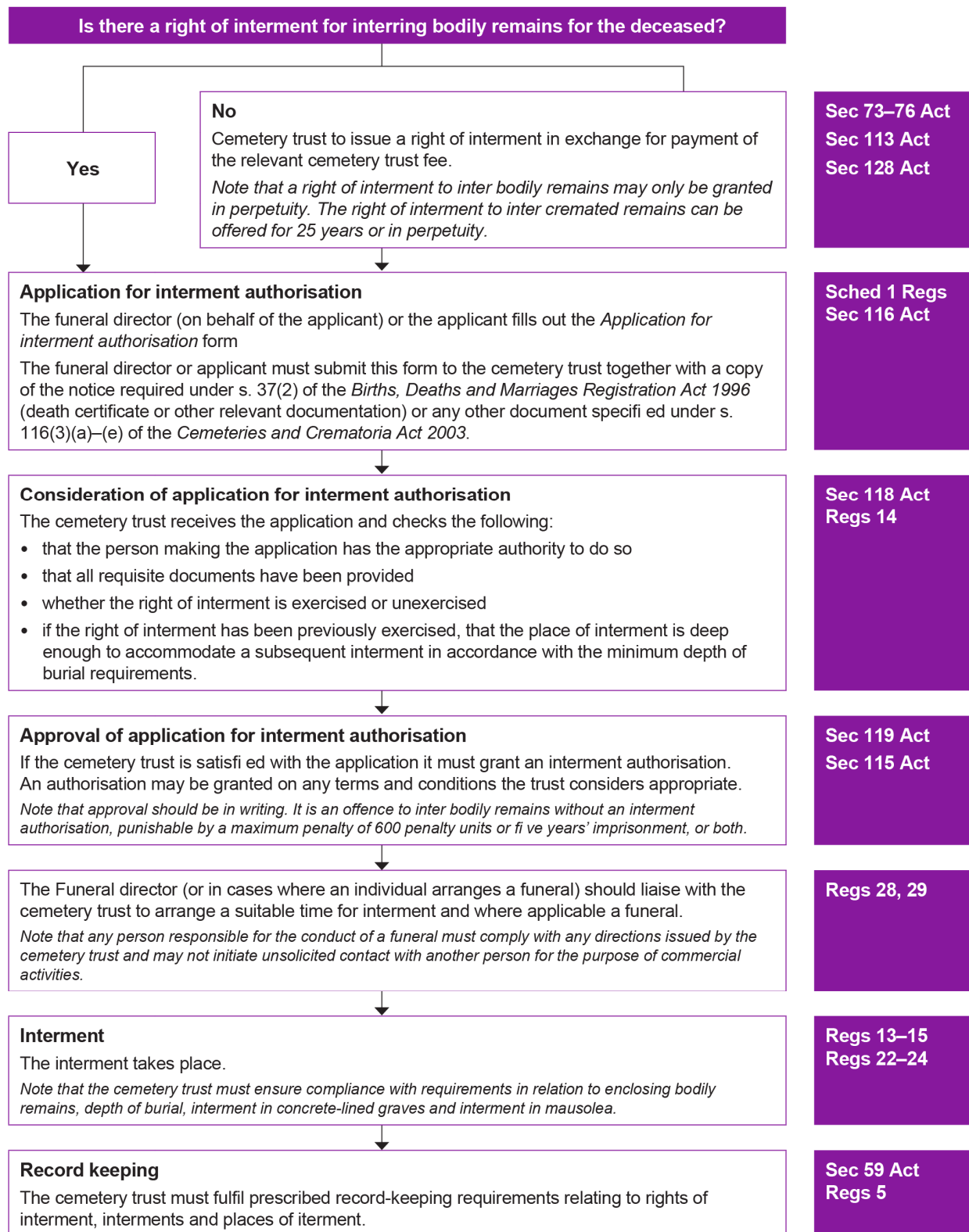
There is no legal requirement that cremated remains must be interred in a public cemetery. The person who authorised the cremation is able to collect the remains from the crematorium and do with them largely as they wish.

Cemetery trusts may view providing attractive memorial areas for cremated remains as a potential source of revenue through the sale of both the memorial position and an accompanying plaque. Further, cremated remains may be interred in a grave, subject to the approval of the holder of the right of interment.

For more information on interment of cremated remains see **Topic 15 Cremation**.

The following flow chart, Process for interring bodily remains, has been created as a quick reference guide to assist trusts by summarising the required processes and identifying the applicable sections of the Act and Regulations.

Process for interring bodily remains (flow chart)



This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 15. Cremation

Legislative requirements for cremation

The requirements for cremating human remains are contained in ss. 128–141 of the Act, which includes the following provisions:

Section	Provision
128	Interment of cremated human remains
129	Unlawful cremation
130	Offence to cremate without cremation authorisation
131	Application for cremation authorisation
132	Offence to make a false statement in an application for cremation authorisation
133	Grant of cremation authorisation

Under r. 26 of the Regulations, a person must not convey bodily remains or body parts to be cremated into a public cemetery unless those remains are enclosed in a coffin, container or receptacle:

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

Where a cardboard coffin is being used, a cemetery trust must consider whether this type of coffin meets these specifications, as a number of these requirements are not only necessary from a public decency and occupational health and safety perspective, but are also necessary to ensure the appropriate operation of a cremator. Where it is clear that a receptacle does not or will not satisfy any of the above criteria, then the cemetery trust has the discretion to refuse to accept the receptacle for cremation.

Cremation authorisation

Under s. 131 of the Act, a person who wishes bodily remains to be cremated in a crematorium at a public cemetery may apply to the responsible cemetery trust for a cremation authorisation. For the cemetery trust to grant cremation approval, the applicant, generally, must provide a completed:

- Application for cremation authorisation²¹
- Certificate of registered medical practitioner authorising cremation
- Medical certificate of cause of death (this may be completed electronically or by hand, and must be signed by the medical practitioner) or, where necessary, a coroner's report.

21 For an Application for cremation authorisation go to <www.health.vic.gov.au/cemeteries>.

There may be additional requirements. Please see Appendix 8 for the documentation requirements for cremations.

Approval of cremation authorisation in exceptional circumstances

In exceptional circumstances, when the prescribed documentation requirements outlined above cannot be met, the applicant for cremation may apply to the department for a 'cremation approval' under s. 134 of the Act.

Under these circumstances, the funeral director is generally responsible for liaising with the department and, where necessary, the relevant international authorities on behalf of the deceased's family or representative.

Please note that certified translations of original documents must be provided for any foreign language documents relating to the application.

An application for cremation approval must include a completed Application for cremation authorisation form,²² together with documentation to enable the department to be satisfied that:

- a medical cause of death has been confirmed by a relevantly qualified person
- where appropriate, the circumstances surrounding the death were appropriately and thoroughly investigated by the authorities in the jurisdiction in which the deceased died
- the family or representatives of the deceased are satisfied that the cause of death does not need to be reported to a coroner for investigation. A statutory declaration from the family to this effect will need to be provided to the department.

The funeral director should provide the department with **ALL** available supporting information and documentation relating to the above matters when seeking a cremation approval.

Where the department cannot satisfy itself regarding the matters outlined above, it is likely that the death will be considered a **reportable death** under the *Coroners Act 2008*, and will need to be reported as such to the Coroners Court.

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

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

Reportable deaths

Under the *Coroners Act*, there is a general obligation for any person who has reasonable grounds to believe that a reportable or reviewable death²³ has not been reported, to report it without delay to a coroner or the officer in charge of a police station. A death may be considered reportable for a number of reasons as outlined in s. 4 of the *Coroners Act*.

The majority of applications for cremation approval received by the department relate to people whose death occurred overseas, but who normally reside in Victoria.

²² For an Application for cremation authorisation go to <www.health.vic.gov.au/cemeteries>.

²³ See s. 5 of the *Coroners Act 2008* for a definition of reviewable death.

In considering such applications, the department needs to be able to determine if the death is reportable under the *Coroners Act*. The criteria for reportable deaths include those that:

- appear to have been unexpected, unnatural or violent
- appear to have resulted directly, or indirectly, from an accident or injury
- occurred at a place outside Victoria where the cause of death has not been certified by a person who, under the law in force in that place, is authorised to certify that death.

In such circumstances, the absence of clear documentation authorised by an appropriate authority in the jurisdiction where the death occurred will raise the questions about the death as it meets the criteria outlined in the *Coroners Act* for reportable deaths.

Any funeral director who does not have appropriately authorised documentation relating to a death that occurred overseas should discuss this matter with the Initial Investigations Office (IIO) of the Coroners Court on telephone 1300 309 519.

The IIO is open 24 hours a day, seven days a week and can assist in determining whether a death is a reportable death.

Where a death is reported, the IIO should be provided with:

- all documentation which the funeral director has received relating to the death (this should include any interpreted documents, if there are any)
- information relating to other investigations or inquiries that have been undertaken by the department or funeral director before the report to the IIO was made
- confirmation that the family has been advised that the death has been reported to the IIO and relevant contact details (this can be done by completing a statutory declaration)
- where an investigation has occurred, confirmation that the family or representatives of the deceased are satisfied with the identified cause of death (this can be done by completing a statutory declaration)
- include any contact details for those involved in the investigations to date.

The department will not provide a cremation approval to the funeral director if the death has been determined to be reportable for the reasons identified above.

It is the funeral director, acting in its capacity as the family's agent, who is responsible for making a report to the IIO in such circumstances.

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

Cremation conducted by family or another person without using a funeral director

A trust may be approached by a person or family, who:

- indicate that they are considering conducting a cremation without the assistance of a funeral director
- seeks information as to the legal and procedural requirements for cremation

In Victoria, the role and duties of a funeral director are not prescribed by legislation. The professional associations for funeral directors have minimum requirements for membership and the town planning requirements of local government regulate the location and operation of their premises.

There is no reason why a family (or other persons) cannot perform some or all of the arrangements necessary prior to the body of the deceased being delivered for cremation. However, the cemetery trust needs to ensure that all statutory requirements for the cremation have been met.

Dual cremation

Due to exceptional circumstances of the deceased person's death, trusts may receive a request from the deceased person's family to cremate more than one body or bodily remains in the same coffin at the same time.

The Act does not prohibit a dual cremation, neither does it specify an actual amount of bodies or bodily remains that may be placed in the same coffin for cremation at the same time.

The funeral director or those arranging the cremation should check with the relevant cemetery trust to determine if the trust is prepared to cremate more than one person in the same cremator at the same time.

At the cemetery trust's discretion, the trust may charge cremation fees for each of the bodies or bodily remains to be cremated.

The trust may also consider waiving or reducing the cremation fees in line with s. 44 of the Act. A completed cremation authorisation application for each individual being cremated will need to be submitted to the trust as required under the Act.

Tenure for interring cremated remains

Under s. 128 of the Act, a cemetery trust must make the option of either a 25-year limited tenure or perpetual tenure for interment of cremated remains available to the public. However, there is no legal requirement that cremated remains must be interred in a public cemetery. The person who authorised the cremation is able to collect the remains from the crematorium, and do with them largely as they wish.

Memorials for cremated remains

Cemetery trusts may view the provision of attractive memorial areas for cremated remains as a potential source of revenue, through the sale of both the memorial position and an accompanying plaque. Alternatively, cremated remains may be interred in a grave, subject to the approval of the holder of the right of interment.

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

It is at the trust's discretion to grant requests to inter cremated remains of more than one person in the same grave. It is also at the trust's discretion to determine the maximum number of cremated remains that can be interred in one grave together with the applicable fees.

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

Options for interring cremated remains

Garden memorials tend to be both the most popular and the most expensive for the trust to maintain. These include, for example, interment positions:

- on the borders of rose or shrub gardens or at individual plants in a garden bed
- around the base of individual trees or shrubs in a lawn setting
- located next to items such as bench seats, birdbaths or sculptures.

Interment positions in niches, whether in a wall or ground presentation, have the advantage of very low maintenance costs to the trust.

A cemetery might also have an attractive garden area where, acting under the written instructions of the person who authorised the cremation, the trust could scatter cremated remains for the approved fee.

Subject to the approval of the holder of the right of interment and payment of the relevant trust fee, cremated remains may be interred in an existing family grave in a cemetery. If this is to be done, care should be taken to position the cremated remains so they need not be disturbed if the grave is subsequently reopened to permit another interment.

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

Conversion of limited rights of interment

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

Authority required to remove cremated remains

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

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

- Establish who the holder(s) of the right of interment is/are.
- If a request to remove cremated remains is made, written consent from holder(s) of the right of interment is required, preferably on a statutory declaration, confirming who they are and what they wish to do.

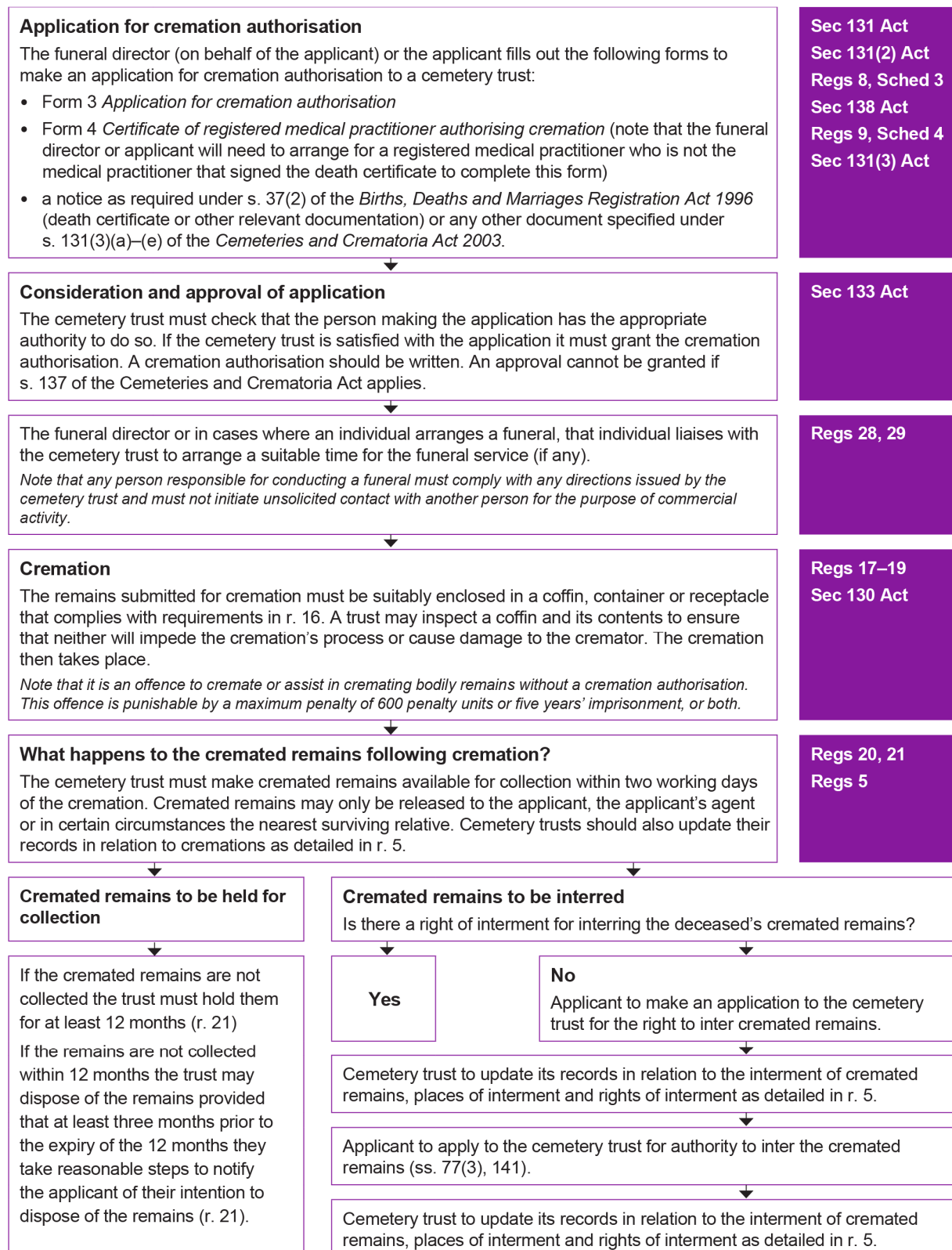
- If the trust has any concerns regarding granting its approval to remove cremated remains, for example, the trust has prior knowledge that other family members do not wish the removal to occur, it is recommended that the trust contact the unit for advice before issuing written approval.
- Ensure all decisions made by the trust are clearly documented in the trust's records.

Note: Where cremated human remains are to be removed from a grave and their removal is likely to disturb any bodily remains that are interred in the same grave, the trust may need to apply for an exhumation licence to remove the cremated remains. See Topic 16 Exhumations for further information.

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

The following flow chart titled Process for cremating bodily remains has been created as a quick reference guide to assist trusts by summarising the required processes and identifying the applicable sections of the Act and Regulations.

Process for cremating bodily remains (flow chart)



This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 16. Exhumations

Generally, an exhumation licence will be required when a trust is requested to remove bodily remains from a grave, for example, to transfer the remains from one site to another or other circumstances when it is likely that bodily remains will be removed.

An '*Exhumation – process*' document (Appendix 20), has been created in conjunction with the Cemeteries and Crematoria Association of Victoria (CCAV). This document has been written to assist trusts understand:

- the process of obtaining an Exhumation Licence
- the cemetery trust's responsibilities, compared to the funeral directors obligations when exhuming
- workplace safety issues that need to be considered
- liaising with family members during this process

This document is a guide and can be used as the basis of creating trust specific procedure manuals, policies and guidelines.

However, there are some situations when an exhumation licence may not be required. See Appendix 10 Examples of situations where an exhumation licence may or may not be required for further information.

Additionally, a flow chart titled Comparison of exhumation and lift and reposition procedures (located at the end of this topic) has been created as a quick reference guide to assist trusts by summarising the required processes, identifying the applicable sections of the Act and Regulations, and differentiating between the processes of an exhumation and a lift and reposition procedure.

Exhumation licences

Under s. 156 of the Act, a person may apply to the department for an exhumation licence to exhume or remove human remains from any place of interment. The applicant must have the written authority of the holder of the right of interment to exhume remains from a place of interment and the permission of the relevant cemetery trust to exhume the remains from its cemetery.

An application for an exhumation licence must be lodged at least seven days before the proposed exhumation or removal. A request for an exhumation licence must include:

- an *Application to Secretary* for an exhumation licence
- *payment for the relevant amount as indicated on the departmental website*
- a letter from the relevant cemetery trust
 - indicating it has no objection to the proposed exhumation taking place
 - identifying the current holder of the right of interment.

And one of the following:

- an original or certified copy of the death certificate
- a copy of a coroner's report releasing the body of the deceased to a specified person
- if the deceased died in another state or territory of the Commonwealth or overseas, a medical certificate of cause of death from the jurisdiction where the deceased died.

If the licence is for a stillborn child, a notice of stillbirth under the Births, Deaths and Marriages Registration Act is required. If the stillbirth occurred in another state or territory of the

Commonwealth or overseas, a document corresponding to a notice of stillbirth under the Births, Deaths and Marriages Registration Act from the jurisdiction where the stillbirth occurred is required.

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

Validity

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

Exhumation procedures

Notification

The department must be notified in advance as to the time and date when the proposed exhumation will take place. A letter providing the details of the exhumation must be sent to the department within 20 days of completing the exhumation.

Charges

The cemetery trust must charge a fee that has been approved and gazetted for exhuming remains and any additional administrative or operational fees relating to the exhumation. No charges arising from the exhumation are to be borne by the department.

The funeral director

The applicant may nominate a funeral director to provide assistance, if required. The funeral director must supply at least three people, in addition to the funeral director, capable of assisting; if a lifting device is used then two people would suffice.

The cemetery trust

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

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

Leaving the cemetery

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

A suitable replacement coffin or container must be made available to use on site by the nominated funeral director, if deemed necessary by the person authorised by the cemetery trust to supervise exhumations.

Re-interment of exhumed remains

The exhumed remains must be re-interred, either in the same cemetery or in another cemetery. The applicant should arrange the re-interment with the relevant cemetery trust before applying to the department for an exhumation licence. Ordinary interment charges should apply to re-inter the exhumed remains.

Exhumed remains to be cremated

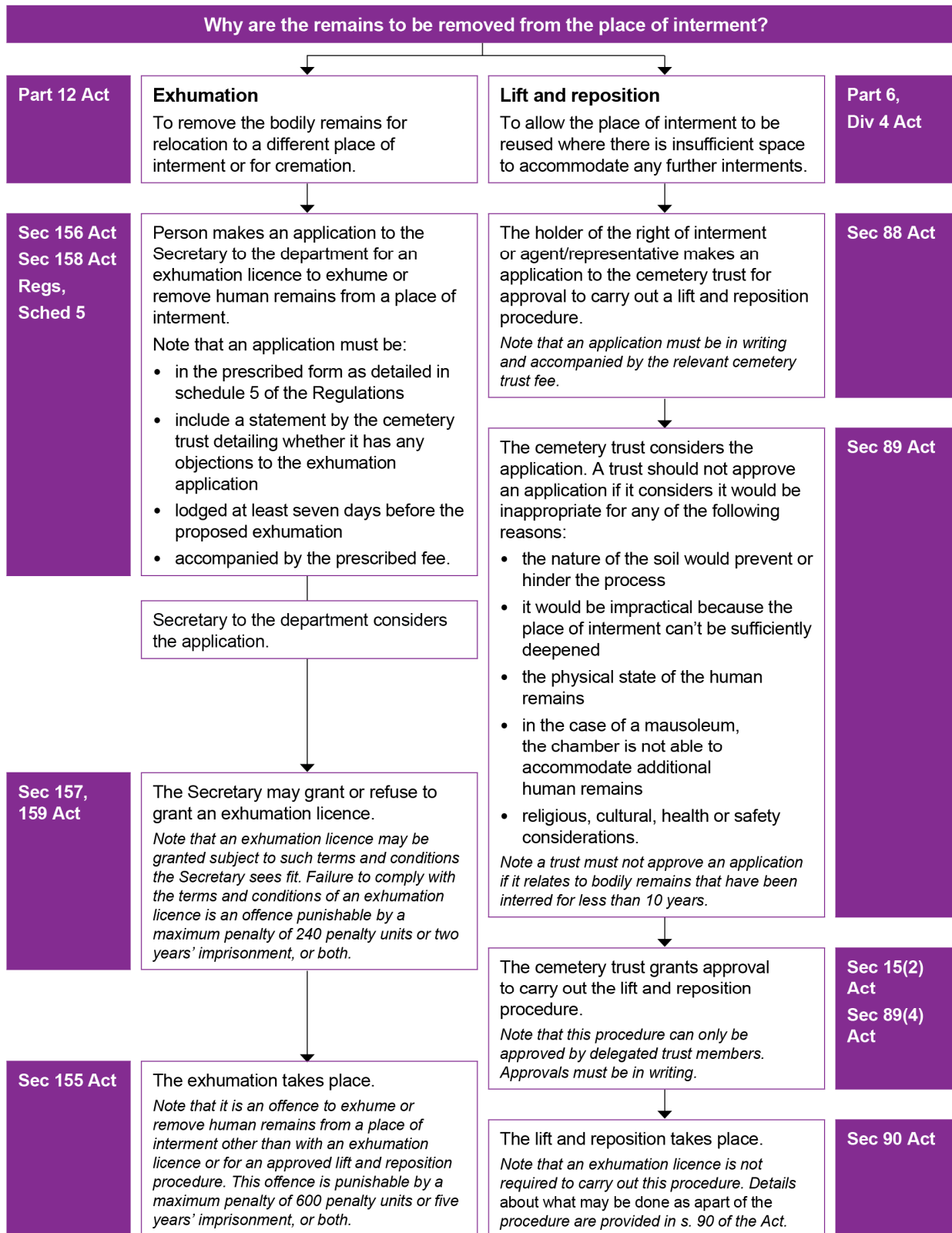
If the exhumed remains are to be cremated, the holder of the right of interment must apply to the department for a separate cremation authorisation. Section 131(3) outlines the documentation required to accompany the application. To assess the application, the following documentation is required:

- an Application for cremation authorisation²⁴
- a letter from the funeral director on company letterhead requesting authorisation from the Secretary to the Department of Health and Human Services for the cremation to take place
- a death certificate.

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

²⁴ An Application for cremation authorisation can be found at <www.health.vic.gov.au/cemeteries>.

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



This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 17. Lift and reposition procedures

The Act sets out the framework under which a trust can undertake the lift and reposition process. The flow chart located in Topic 16 Exhumations compares the lift and reposition process against the exhumation process. It sets out the key steps in the process linking them to the relevant sections of the Act.

The key policy driver behind introducing the lift and reposition procedure is to allow the holder of the right of interment to apply to the trust to reuse a plot for an additional interment.

Example:

Upon application (including the relevant fee), a person can request that the trust determine if a lift and reposition procedure is possible at the proposed plot.

To determine if a lift and reposition procedure is possible the trust would need to consider:

- whether the applicant is the holder of the right of interment
- whether permission from the holder of the right of interment has been provided
- whether the remains have been interred for at least 10 years (refer to s. 89 of the Act)
- factors listed under s. 89(2) of the Act.

Note: It is not considered a 'lift and reposition procedure' where the trust is required to check the nameplate on interred remains. Please see Appendix 10 Examples of situations where an exhumation licence may or may not be required for further information.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 18. Disposal of human remains other than interment or cremation

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

To date, the department has not received any formal applications from cemetery trusts to consider an alternative means of disposal of bodily remains.

If a trust wishes to make a formal application it should submit a written detailed proposal to the Secretary, addressed to:

The Manager
Cemetery Sector Governance Support
PO Box 4057
Melbourne VIC 3001

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

The proposal should also include:

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

If further information is required, contact the department before submitting your proposal.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 19. Cemetery monuments and memorials

Application to establish or alter a monument or memorial

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

The cemetery trust may withhold its permission if the intended work is considered to be inappropriate, unsafe or dangerous under s. 99 of the Act. The trust may wish to seek advice from a consulting engineer concerning structural aspects of the proposed work and whether it will comply with *Australian Standard AS-4204 Headstones and cemetery monuments* (see further below for details on how to obtain a copy of these standards). Generally, the cost of consulting an engineer will be borne by the applicant. However, the cemetery trust must seek the written approval of the applicant prior to seeking further professional advice.

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

Monument construction procedures and standards

Section 98 of the Act provides details of the process for making an application to a cemetery trust for establishing or altering a monument. Under s. 99 of the Act a cemetery trust has 45 days from receiving the application and all relevant information to either approve or refuse the application. Under s. 179 of the Act, an applicant may lodge an appeal against the decision of the trust with the Victorian Civil and Administrative Tribunal (VCAT).

The **Cemeteries and Crematoria Association of Victoria** (CCAV) has developed a form for cemetery trusts to use when applying to establish or alter a memorial.²⁵

It is important that the cemetery trust exercises its responsibility, if necessary, to the point of measuring and pegging the location for a monument on a site. This will prevent the monument being constructed on an incorrect grave.

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

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

Part 4 of the model rules under schedule 2 of the Regulations provides power to the cemetery trust to inspect memorials, places of interment and buildings for ceremonies in the cemetery. It also recommends that materials used in that work are (as far as practicable) prepared off site.

During the course of construction, a monument should be inspected by a representative of the cemetery trust who, if considered necessary, could be a consulting engineer or other appropriately qualified person. A full monument constructed on concrete pier-and-beam foundations should be inspected a number of times to ensure construction is proceeding in accordance with the permit and the Australian Standards, for example:

²⁵ The *Application to establish or alter a memorial or place of interment* is available on the CCAV website at <www.ccaav.org.au>.

- after excavation for foundations and placement of steel reinforcement, but before concrete for foundations is poured
- during construction to ensure all dowels are correctly positioned
- on completion, but while the masons are still at the site, to ensure the finished monument is of a standard acceptable to the trust and that the site is left tidy.

The trust must oversee the construction to ensure the monument conforms with the cemetery trust's conditions; it is not to ensure the monument is constructed in accordance with any other industry standards. A cemetery trust should not assume any liability for the construction of a monument by a third party.

Some cemetery trusts have found it prudent to pre-install concrete pier-and-beam foundations for multiple graves. This should provide a superior end result because the trust has more control over the quality of the foundations (compared with individual foundations being constructed for individual graves) and these foundations for the multiple graves are then tied together as one unit to provide increased stability.

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

Australian Standard	AS-4204 Headstones and cemetery monuments
	AS-4425 Above ground interment structures (mausolea)

These publications are only available, at cost, from:

Standards Australia
PO Box 476
Sydney NSW 2001

Telephone: 1800 035 822
Fax: (02) 9273 6010
Email: mail@standards.org.au
Website: www.standards.org.au

The objective of the Australian Standards is to enable cemetery authorities and monumental masons to specify minimum structural design criteria, performance, installation and renovation requirements for headstones and cemetery monuments, so that these may have a minimum service life of 50 years.

A flow chart titled Process for establishing or altering a memorial (located at the end of this topic) has been created as a quick reference guide to assist trusts by summarising the required processes and identifying the applicable sections of the Act and Regulations.

Trust responsibilities concerning monument safety

The cemetery trust has a duty of care to:

- all members of the public who enter cemetery trust property
- provide healthy and safe working conditions to those who work in the cemetery, including contractors, community volunteers, funeral directors, monumental masons, and trust staff (refer to **Topic 30 Conditions of work** and **Topic 31 Occupational health and safety**).

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

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

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

Where a monument poses a safety risk and it is unable to locate the holder, if it has funding (other than cemetery trust funds), the trust should write to the department and advise that it intends to repair or remove the monument in order to remove the safety risk.

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

Plaques and headstones for lawn area graves

Lawn interment areas have become very popular in Victoria. They are attractive to the public because the trust maintains the grass to a standard it considers appropriate and the cost of an approved memorial (plaque or headstone) will usually be lower than that of a full monument.

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

It is usual for a particular style of memorial to be approved by the cemetery trust for each lawn area, but a cemetery may have two or three lawn areas in operation at the one time, thereby offering a choice, for example:

- metal plaques of approved material (usually bronze), dimensions and styles
- headstones, such as sawn granite (on a granite base) within approved maximum dimensions and style
- restricted monuments such as sawn granite within maximum approved dimensions, but permitting some variety of designs. Note that if a trust has restrictions about the types of memorials permitted in a particular part of the cemetery, these must be clearly documented and made publicly available.

Such memorials can be mounted back to back on reinforced concrete beams where the top of the beams are flush with the surface of the lawn.

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

Plaques

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

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

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

The cemetery trust should make it clear that it is **not** the only supplier of plaques to the cemetery. If a family wishes to source a plaque other than through the cemetery trust, the cemetery trust may:

- specify the material, dimensions and style of plaque
- require a permit procedure with an approved permit fee that reflects the cost of the foundation (if any) provided by the cemetery trust. This fee should also apply to plaques purchased through the cemetery trust.

Granite headstones and monuments

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

Other materials

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

Code of practice and competitive neutrality

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

To assist cemetery trusts to meet these obligations, the department has developed a code of practice for selling and supplying memorial products and services in Victorian public cemeteries. Implementing the code is mandatory for all cemetery trusts that engage in these activities. A copy of the '*Code of practice*' can be located in 'Appendix 16'.

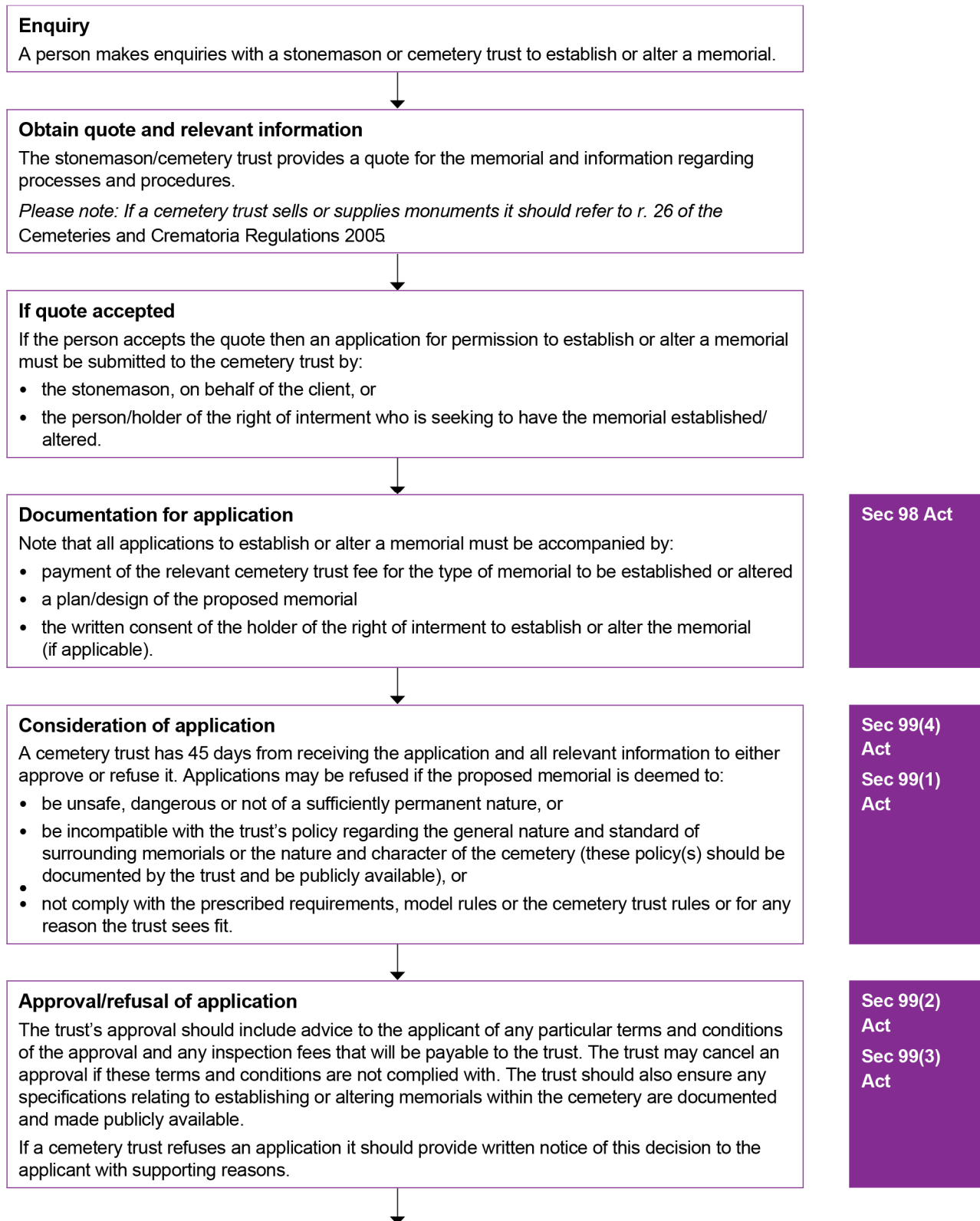
Memorial permit fees

Cemetery trust permit 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. The fee should be based on the actual costs associated with granting the approval, such as:

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

An instruction sheet and fee models to assist cemetery trusts with setting memorial permit fees is available on the cemeteries and crematoria website at <www.health.vic.gov.au/cemeteries>.

Process for establishing or altering a memorial (flow chart)



Construction and inspection of memorial

The cemetery trust or a contractor engaged by the trust may inspect a memorial for compliance with the terms and conditions of the approval. The cemetery trust may require a memorial to be removed where these terms and conditions have not been complied with, or where the memorial has been established or altered without the trust's consent.

Sec 100 Act



Maintenance of memorial

The holder of a right of interment is responsible for maintaining any memorial that has been established on their place of interment in a safe and proper condition. A cemetery trust is empowered to issue directions in relation to the maintenance of memorials. If the trust considers a memorial to be unsafe, and:

- If the holder of the right of interment fails to take the appropriate action requested by the trust then, with the written consent of the Secretary to the department, the trust may repair or take down and remove or dispose of the memorial. Costs and expenses associated with maintenance can be recovered from the holder of the right of interment.
- If the holder of the right of interment is not contactable, the trust may, with the written consent of the Secretary to the department, repair or take down, remove and dispose of the memorial using funds other than trust funds.

Sec
104–106 Act
Sec 108–110
Act

This page has been intentionally left blank for updates

Topic 20. Mausolea

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

Regulations 32 and 33 of the Regulations prescribe requirements for interment in mausolea. The body must be in a closed coffin that is clean and hygienic, and made of metal or wood or other substantial material. The coffin must also be properly sealed to ensure emissions or matter from the bodily remains does not escape.

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

Public mausolea

A public mausoleum is a facility constructed and funded by a cemetery trust where individual rights of interment for crypt spaces are purchased from the cemetery trust by the public.

Under s. 22 of the Act, a cemetery trust is required to obtain the written approval of the Secretary before constructing a mausoleum.

Cemetery trusts must prepare a detailed proposal based on the department's *Mausoleum establishment and construction requirements* for the Secretary's consideration. These guidelines can be located at Appendix 14 and additional information is available on the department's website.²⁶

Private mausolea

A private mausoleum is constructed and paid for by a third party separate to the cemetery trust (usually a family) for interring family members. Under s. 98 of the Act, a family must apply to the responsible cemetery trust for approval to establish this type of place of interment.

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

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

²⁶ www.health.vic.gov.au/cemeteries

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 21. Closure of a public cemetery

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

- there has been no interment of human remains at the cemetery or in that part of the cemetery for at least 25 years
- the cemetery trust responsible for the public cemetery has not granted a right of interment in relation to the cemetery or part of the cemetery for at least 25 years.

Under s. 63, when a cemetery is closed:

- the order applies to the cemetery or the part of the cemetery that is named in the order
- no further interments may take place in that cemetery, or in the part of the cemetery that was closed, whether or not any rights of interment exist.

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

- a refund based on the cemetery trust fee for the same type of right of interment immediately before the closure of the cemetery, less the relevant cemetery trust gazetted fee for administration from the cemetery trust that is responsible for managing the closed cemetery, or
- the Secretary to direct the cemetery trust that is responsible for managing the closed cemetery to grant the holder a right of interment in another cemetery for which that cemetery trust is responsible, either free of charge or at a reduced rate.

Reopening a closed cemetery

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

Historic cemetery parks

Under s. 66 of the Act, a cemetery trust responsible for managing an eligible cemetery may apply to the Minister to convert the cemetery or part of the cemetery to a historical cemetery park. Further information regarding historic cemetery parks is available in ss. 65–72 of the Act.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 22. Perpetual maintenance obligations

Advance planning

Under ss. 74 and 113 of the Act, interring bodily remains in Victoria is for perpetuity. For this reason, s. 12A(2)(a) of the Act requires a cemetery trust, in exercising its functions under the Act, to consider its obligations in relation to funding the perpetual maintenance of the public cemetery for which it is responsible.

Cemetery trusts should give careful consideration to how each cemetery it is responsible for will be maintained once full capacity has been reached. Trusts should take account of this ongoing perpetual maintenance obligation when setting its fees for products and services they provide.

Under s. 74 of the Act:

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

Care should be taken by the cemetery trust to fully document the conditions of tenure for its cremation memorials. This should include obtaining the applicant's signature on a copy of the conditions before the tenure commences.

The acceptable standard of maintenance

The cemetery trust should consider the standard of maintenance acceptable in a cemetery that has reached capacity and is closed to 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. Community expectations will also play a role in the maintenance standards set for closed cemeteries.

Cemetery trust fees

Under the Act, when setting fees cemetery trusts must consider the costs of operating and managing the public cemetery and the need to provide for maintenance (for example, roads, paths, gardens, fences, buildings, water, security, park establishment and replacement) of the public cemetery in perpetuity. All cemetery trust fees should include an appropriate perpetual maintenance component and perpetual maintenance should not be charged as a separate fee.²⁷

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

Use of funds set aside for perpetual maintenance

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

²⁷ The department will continue to work with the sector to identify key cost drivers associated with perpetual maintenance.

These investments are set up to assist trusts to maintain cemeteries when they are closed or partially closed. It is envisaged that trusts will use the 'interest' from these investments to fund the maintenance of closed sections of the cemetery into perpetuity. Perpetual maintenance funds should not be expended on general maintenance or cemetery operations until the cemetery is closed.

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

Funding proposed developments

A trust must be satisfied that the proposed project will earn a sufficient return on the investment before it uses perpetual maintenance funds. A 'sufficient return' is determined by the extent to which the trust can:

- recover the borrowed perpetual maintenance funds with interest.²⁸
- meet any future financial obligations created by undertaking the project.

Acceptable uses of perpetual maintenance funds can include:

- creating new places of interment in the cemetery^{29,30}
- constructing public mausolea³¹
- purchasing new land to expand cemetery services within a community.³²

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

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

28 The interest rate for such projects should be calculated at a risk adjusted rate for the period the funds were used.

29 Such projects must be evaluated in accordance with financial risk management principles.

30 The department has developed a tool that trusts can use to assess the financial viability of any projects.

31 A trust needs to seek approval from the Secretary to the Department of Health and Human Services to construct public mausolea.

32 Trusts need permission from the Minister for Health before new land can be purchased. Before taking any action in relation to a purchase the trust should provide a detailed proposal to the department for discussion.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 23. Other maintenance obligations

Fences – building/establishing

The requirements regarding the establishment/replacement of fences are set out under the *Fences Act 1968* and **not** the *Cemeteries & Crematoria Act 2003*.

Generally speaking, under the *Fences Act 1968* the responsibility regarding the building/establishment of fences is an equal and shared responsibility between neighbours.

However, under certain circumstances, cemetery trusts and other managers of Crown land are exempt from the requirements outlined under the *Fences Act 1968*. This exemption is outlined under s31 of the *Fences Act 1968* and applies in situations where a cemetery trust manages and maintains the 'entirety' of the cemetery land which is the case for most cemetery trusts.

It should be noted however, that where a cemetery trust has leased or provided a licence in respect of any public cemetery land then the exemption under s31 of the *Fences Act 1968* does not extend to the person to whom the lease/licence has been provided to. This means the person will need to comply with the *Fences Act 1968*.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 24. The right of interment

There is a common misconception that a person actually buys the land associated with a cemetery plot or grave when a right of interment for a burial is purchased. This assumption is not correct as all public cemeteries in Victoria are situated on Crown land. What is actually purchased is the right to determine who can be buried in that grave, which is why cemetery plots are referred to as a 'right of interment' under the Act.

Rights of interment also apply to all other types of places of interment such as mausoleum, vault and niche wall.

When selling a right of interment, cemetery trusts should issue a document that provides the owner of the right of interment with sufficient information to be able to identify the location of their right of interment within the cemetery. Trusts should also provide the holder with any relevant conditions that relate to exercising that right of interment when it is purchased.

It is possible for a right of interment to be issued in the name of more than one person. Joint rights can be exercised either individually by one holder, or jointly by all holders, so trusts need to be aware of the possibility of receiving conflicting instructions from multiple holders.

Rights and responsibilities of the holder of the right of interment

Subject to the Act, a right of interment gives the holder (owner):

- the right to authorise the interment of human remains (includes bodily and/ or cremated remains) in the place of interment
- the right to decide if a monument or memorial may be erected on the site
- the obligation to maintain the monument if any is erected on the site
- the right to object to or endorse an application to exhume remains from the site
- the right to transfer or bequeath the right of interment to another party.

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

Exercising the right of interment

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

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

Prior to an interment taking place, an Application for interment authorisation must be completed by the applicant seeking to make arrangements for the interment of human remains and submitted to the cemetery trust in a timely manner.

The trust should always satisfy itself that the person wishing to use the place of interment is the holder of the right of interment, or that they have the permission of the holder to inter human remains in the place of interment.

Transfer of the right of interment

Section 79 of the Act provides for the transfer of a right of interment to another person, providing that the amount paid for the right of interment does not exceed the current trust fee payable for the same type of right of interment in that cemetery, less the trust administration fee for recording the transfer.

Where the holder of the right of interment is deceased, the right of interment will likely be transferred to the beneficiary of a will, or if no such arrangements have been made, the right of interment is transferred in accordance with the rules of intestacy. This could mean transfer to one or to multiple people. In the case of transfer to multiple people or intergenerational inheritance, the right to use a place of interment becomes very complicated and unclear.

If a cemetery trust is concerned that there is likely to be a dispute regarding the exercise of a jointly held right of interment, the trust may elect to not take instructions regarding the exercise of that right until the holders of the right can demonstrate the dispute has been resolved. The trust will need to record this decision and its reasons for the decision in the trust's minutes.

It is the responsibility of the purchaser of a right of interment to provide a cemetery trust with clear instructions regarding the ongoing management of the right prior to their death. However, trusts may consider providing advice when selling a right of interment that the original purchaser of the right consider making a provision in their will regarding the distribution of the right. This would put any issues relating to the ownership of the right of interment beyond doubt.

To affect a transfer of a right of interment, the trust must be notified in writing by the original holder or their legal representative. The holder must provide the trust with clear instructions about who will become the new holder of the right of interment; a fee may be charged by the trust for the transfer of the right. Refer to s. 80(1) of the Act.

Surrender of an unexercised right of interment

Under s. 82 of the Act a sole holder of a right of interment may surrender an unexercised right of interment to the cemetery trust that granted the right. The trust must pay the holder the current fee for the right of interment, less maintenance costs incurred by the trust calculated on a sliding scale (see Appendix 9 Weighted scale – surrender of a right of interment) and the relevant administrative fee (gazetted). Once a right of interment is surrendered, the person surrendering the right of interment has no further entitlements or responsibilities in relation to that right of interment.

Surrender of an exercised right of interment

Under s. 83 of the Act, a right of interment that has previously been exercised can be surrendered to the trust that granted the right. If the place of interment no longer has human remains interred, the holder of the right of interment is entitled to a refund at the current cemetery fee, less

- the relevant administration fee (gazetted),
- maintenance costs incurred by the trust (calculated on a sliding scale – see **Appendix 9 Weighted scale** – surrender of a right of interment) and
- restoration costs (if any).

Circumstances where this may occur include:

- where a right has been purchased for future use, and in order to exercise the right, a memorial is established even though no human remains are interred (the holders of such sites may later decide to remove the memorial and surrender the exercised right to the cemetery trust)
- where human remains are interred and then subsequently exhumed and disposed of correctly according to the Act and the holder of the right has no further need of the right.

Note that if the place of interment contains human remains at the time it is surrendered to the trust, then there is no refund payable.

Once a right of interment is surrendered, the person surrendering the right of interment has no further entitlements or responsibilities in relation to that right of interment.

Surrender of an exercised right of interment – more than one holder

Under s. 84 of the Act, the holder of a right of interment who is a joint holder of a right may surrender their entitlement in the right by notifying the cemetery trust in writing. On the surrender of their entitlement, no refund is payable by the cemetery trust to the person surrendering the entitlement, and the person has no further entitlements or responsibilities in relation to that right of interment. The surrender of entitlement by one joint holder does not affect the entitlement of any other joint holders of the same right.

Establishing the holder of the right of interment if trust records are disputed

Occasionally a member of the public will approach a cemetery trust claiming that they are the 'actual' holder of the right of interment rather than the person named in the trust's records. This can occur because:

- An error has occurred when applying for the right
- The right should be a joint right
- There is dispute regarding who paid for the right
- The executor of the estate has not nominated a holder

When this situation occurs and the matter cannot be resolved between the current named holder (in the trust's records) and the person claiming to be the holder of the right of Interment, the following process is suggested:

- The trust advise the family to seek support to resolve the dispute through the free Dispute Settlement Centre of Victoria (DSCV) offered through the Department of Justice. The DSCV have staff located at 15 offices throughout metropolitan and regional Victoria. Contact details for services in your region can be located on the following website:
www.disputes.vic.gov.au
- The person seeking to make a claim to the right of interment is required to provide to the trust in writing, reasons and supporting documentation, why they believe they are the holder of the right of interment. The trust cannot change its records unless it is presented with sufficient evidence to support the change.

- It is not advisable for the trust to provide parties with suggestions of evidence that would satisfy the trust to amending its records as evidence should be considered on a case by case basis depending on the circumstances. However, the type of documentation the trust may take into consideration when assessing a request to change its records include;
 - evidence identifying who actually paid for the right of interment (generally the person who pays for a product or service is the owner)
 - where the right has been paid for by the estate, written advice from the executor of the estate, identifying the holder of the right of interment
- After this information has been provided, the trust should write to the named holder of the right of interment (as it appears in the trust's records) to advise them of the situation and allow them a 'right of reply' providing an opportunity for them to appeal the decision and present their own information to the trust.
- When a response has been received from the currently named holder of the right of interment, the trust will then have to consider all the information provided and make a decision as to who the trust believes to be the actual holder of the right of interment. If the trust is in doubt, it should seek its own legal advice.
- Whatever the trust decides, the trust should ensure both parties are provided with written notification of this decision and keep a record of all correspondence.
- The trust should always advise VMIA where this type of dispute occurs.

Note: Until the matter has been resolved, the trust should not take instructions from either person regarding the place of interment.

Cancelling and discontinuing a right of interment

Section 91 of the Act provides a mechanism for the trust to cancel certain rights of interment under particular circumstances if it has been in existence for more than 25 years, has never been exercised and the person who holds the unexercised right of interment cannot, after diligent enquiry by the cemetery trust, be found. At least 14 days before cancelling the right of interment, the trust must publish notice of its intention to do so in a daily or weekly newspaper circulating generally in the area in which the public cemetery to which the right of interment applies.

Upon cancelling a right of interment, a cemetery trust may then re-sell that particular right at the current market value applicable to that right or an equivalent right,

The intent of such provisions is to provide trusts with a process that facilitates the resale of old unexercised rights, and the subsequent use of the places of interment to which such rights relate, thereby preventing cemetery land from remaining unused.

Note: Not all types of rights of interment can be cancelled. If a trust wishes to cancel an unexercised right of interment, the trust should refer to Appendix 7 for specifics and /or contact the department for advice on those provisions that are specific to its particular circumstances.

Reuse of an unused place of interment in a double grave (side by side only)

Where a trust has only issued one right of interment for a double grave that has two separate places of interment side-by-side, the trust will be unable to use the provisions in s.91 of the Act to cancel a right of interment if one of the places of interment has been used. In this case the original right of interment was exercised when the first interment took place in the double grave (side-by-side), and it is not possible to use s.91 to cancel a right of interment that has already been exercised. Appendix 12 provides further advice on reclaiming an unused place of interment in a double grave (side-by-side only).

How to determine whether a right can be cancelled

To assist trusts to identify potential sites for cancellation and subsequent resale, the department has prepared advice in a table format (see Appendix 7) that provides information about:

- what types of rights can be cancelled under s. 91 of the Act
- refunds payable to the holder of a right where the right has been cancelled by a cemetery trust (s92).

Trusts should follow the four steps outlined below to determine the current status of, and potential for, cancellation of a particular right:

1. Determine what type of right is proposed for cancellation. This information should be noted on the documentation held by the holder of the right, or should be available in the trust's records.
2. Determine the date that the right was granted.
3. Determine whether the right was granted on any particular terms and conditions, and whether these terms and conditions are consistent with the Act.
4. Using the type of right and date granted, refer to the table in Appendix 7 for information regarding the cancellation and refund applicable to that type of right.

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

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

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

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

This provision is conditional on when they received the right of interment. Please refer to the table in Appendix 7 to determine if this avenue is applicable to the previous holder of the right of interment.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 25. Cemetery records

Register of interments

Section 59 of the Act requires that details of all interments, including bodily and cremated remains, within a cemetery shall be maintained in a register. Part 2 of the Regulations provides details of specific information that must be maintained in this register.

To assist cemetery trusts in this regard, the department has an interment register that accommodates all the required information available for trusts to use. The register is available in bound book (hard copy) or in electronic form.³³

Trusts may also wish to maintain additional information to assist with their management and administration functions beyond what is required under the legislation, including:

- the details of pre-payments to the trust for the right of interment or the interment service
- the last known address of the deceased person
- brief biographical information
- the name of the funeral director
- details of any monument or plaque.

It is recommended that copies of the completed Application for interment authorisation forms be stored indefinitely by the cemetery trust and, if necessary, be microfilmed or scanned and saved electronically. It may also be helpful to have on file the signatures of all holders of rights of interment (refer to **Topic 24 The right of interment**).

Register of cremation memorials

The department's interment register also includes provision for records related to cremated remains (if any) that are interred in the cemetery. Such remains may either be:

- placed in a memorial garden or wall niche position possibly with limited tenure, depending on the policy of the trust
- interred in a grave
- scattered in the cemetery with the approval of the trust.

Where a cremation memorial is for a 25-year period, details of the expiry date of the tenure period should also be maintained in the register.

Cemetery plans

It is imperative that the cemetery trust maintains plans of its cemeteries that are accurate to scale, current and complete as far as possible.

The location of all graves and cremation memorials should be detailed on the plans and these locations should be cross-referenced to the trust's interment and right of interment registers (both hard copy and electronic).

A recommended plan includes the location of all principle fixtures in the cemetery (buildings, roads, garden beds, niche walls, taps, power poles), together with plotting the course of any underground services such as water pipes.

³³ An electronic copy is available at <www.health.vic.gov.au/cemeteries>.

Computerisation of registers and plans

Although the majority of interment registers and plans are in hard copy, it is becoming increasingly common practice for registers and plans to be maintained electronically on a computer. If a trust is considering computerising its registers and plans, there is little point in starting from scratch to develop software. Consideration should be given to inspecting what is already available and used by other trusts. Appendix 11 Copyright of trust records provides advice regarding the steps a trust should take to ensure it will hold copyright over any electronic version of trust records created by a third party.

Security and back-up of registers and plans

The trust should ensure it has one or more back-up sets of its interment registers and plans and any other principle records stored at locations different to the working set in case of fire. In addition, electronic records should be backed up in case of computer malfunction or burglary.

Privacy considerations

Under the provisions of the *Information Privacy Act 2000 (Vic)*, cemetery trusts are required to protect the privacy of people from whom they collect personal information including:

- the holder of the right of interment
- the person who signs the Application for interment form to authorise the interment.

Personal details should be kept confidential by the trust, and particular care should be taken not to release information concerning the name and address of next of kin or the holder of the right of interment, particularly to commercial businesses that may seek to profit by contacting these people.

Note: The person who authorises the interment may have private reasons for not advertising the funeral arrangements in the press and may not want them made public.

Deceased persons

The Information Privacy Act only protects the privacy of living persons and therefore does not apply to deceased persons.

It is important to be aware that information about a deceased person may include personal information about the living, for example, coronial records may include information about the deceased's family, employer, colleagues and relevant medical and police officers involved in the coronial inquiry. In such instances, the privacy of living relatives and other individuals will continue to be protected by the Information Privacy Act.

Availability of records to the public

Under s. 60 of the Act, a cemetery trust must make the information contained in the records (as required by the Act) 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 this fee has been approved and gazetted by the department.

Archiving records

Cemetery trusts are public offices within the definitions of the *Public Records Act 1973* and as such create public records.

As a public office, cemetery trusts must archive their permanent records with the Public Record Office Victoria (PROV) once these records have finished their active use. Trusts should contact PROV if they wish to make other arrangements to store cemetery records such as storing copies with local historical societies.

Contact details for PROV are as follows:

Public Record Office Victoria

99 Shiel Street

North Melbourne VIC 3051

PO Box 2100

North Melbourne VIC 3051

Telephone: 1800 657 452 or 9348 5600

Fax: (03) 9348 5656

Email: prov.agency.queries@prov.vic.gov.au

Website: www.prov.vic.gov.au

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 26. Complaints management

Cemetery trusts are given wide-ranging power over the administration of cemeteries under their control. The policies and decision making of a trust cannot be arbitrary and must be based upon good governance and administration principles.

Cemetery trusts need to ensure they have adequate complaints management procedures to function as a responsible public body. Complaints may arise from different stakeholders and it is important that each point of view is acknowledged and discussed in resolving the complaint or dispute. 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 (see Topic 2 Cemetery trust members) or from external stakeholders. Where complaints relate to trust policies or decisions, these must be reviewed. When reviewing policies or decisions, cemetery trusts must give consideration to procedural fairness. If the trust requires advice on these matters, it should contact the department. No trust may disregard a complaint and consider it to be trivial or unnecessary to review.³⁴

Members of the public and other stakeholders

When trusts receive complaints about their policies and decisions from stakeholders, it is the trust's responsibility to review these policies or decisions. Any concerns with the decisions of a cemetery trust should be discussed initially between the complainant and representatives of the trust, and an attempt should be made to resolve the matter. Regardless of the outcome of these discussions, the trust should provide the complainant with a written response to their concerns.

Banning people from the cemetery

From time to time, a cemetery trust may have legal disputes with people who use the cemetery. Often these disputes relate to the activities of funeral directors, monumental masons and contract gravediggers. Occasionally, disputes arise from members of the public. When such disputes occur, the trust cannot simply ban a person from working in the cemetery.

If a cemetery trust believes it has sufficient grounds to ban a person from the cemetery it should seek independent legal advice before taking any action. Any restriction of a person's access to the cemetery must be in writing. It must cite the reason for the ban, the duration of the ban and the power the trust is relying on to apply the ban. The trust should advise the department before introducing any ban.

Referral to the department

There are limited circumstances in which the department can review the conduct of cemetery trusts.

Fraud or serious mismanagement

The department can investigate significant matters relating to cemetery trust governance and financial affairs. These may include:

- fraud, such as misappropriation of trust funds
- poor governance and/or management practices

³⁴ For more general information regarding dispute management and dispute management framework go to <www.justice.vic.gov.au/disputes>.

- poor record-keeping practices
- conflicts of interest.

In the case of suspected fraud a person should report their concerns immediately to the chairperson of the relevant cemetery trust. The chairperson must act on the concern and decide whether to investigate it further internally or report the suspected fraud to the police and the department.

Other complaints

If a cemetery trust has made a decision that a person considers is not consistent with the trust's powers under the Act, the department can, if it agrees with that view, ask the cemetery trust to review the decision

If a trust is not prepared to change its decision after the department has asked for a review, a person can consider further options to address the disputed decision. Options include:

- dispute settlement (discussed further below)
- complaining to Consumer Affairs Victoria, or
- formal appeal procedures to a tribunal or court (see below).

Formal appeal procedures

Currently, the avenues of formal appeal against a decision made by a cemetery trust are through a review of the decision by the ombudsman for administrative review or by an appeal to the Supreme Court for judicial review.

Victorian Civil and Administrative Tribunal

In addition, under s. 179 of the Act, there is a specific appeals process for a holder of a right of interment to appeal to the VCAT to review a decision of a cemetery trust to:

- refuse to grant an approval to establish a memorial or a place of interment in the cemetery, or
- grant an approval to establish or alter a memorial or a place of interment in the cemetery subject to terms and conditions.

Dispute Settlement Centre of Victoria

It is recommended that before a dispute becomes a legal matter or follows a formal appeals process that the trust attempts to seek resolution with the complainant through mediation or another form of conflict resolution. The Dispute Settlement Centre of Victoria provides a fresh and fair approach to dispute management. In some cases, the centre can arrange for meetings to take place in rural areas. Contact details of the centre are:

Dispute Settlement Centre of Victoria
Level 4, 456 Lonsdale Street
Melbourne VIC 3000

Telephone: (03) 9603 8370

Free call: 1800 658 528

Email: dscv@justice.vic.gov.au

Website: www.disputes.vic.gov.au

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 27. Risk management

Regular review to determine potential risks

Cemetery trusts have an obligation to regularly review all aspects of their cemeteries and operations to:

- identify potential risks
- take action to remove or diminish potential threats, harm and loss.

Matters for such a review include:

- asset management
- financial management and fraud
- human resource management
- the needs of different community groups
- record management
- relationship management of funeral directors and stonemasons.

Public and worker safety

Trusts have a duty of care to all members of the public who enter onto cemetery property. Potential hazards include open graves, paths/roads in disrepair, unstable monuments, overgrown vegetation and machinery operations.

The trust's responsibility for the health and safety of workers in the cemetery extends beyond its own staff to all people who work there, including:

- contractors appointed by the trust
- community volunteers working in the cemetery with the approval of the trust
- funeral directors, their staff, contractors and subcontractors
- monumental masons, their staff, contractors and subcontractors.

In particular, trusts should ensure that:

- all plant and equipment brought into the cemetery is in a safe and sound condition
- those who operate plant and equipment in the cemetery have had sufficient training and hold the necessary qualification for its safe operation
- all work in the cemetery, no matter by whom, is performed in a manner that is healthy and safe for the workers involved and members of the public who may be affected by it (refer to **Topic 31 Occupational health and safety**).

The *Wrongs Act 1958* and *Occupational Health and Safety Act 2004* provide some guidance on how to make balanced and weighted decisions affecting all stakeholders, for example, clients, family members, staff and volunteers.

Asset security

Trusts have an obligation to safeguard their assets from any damage or loss. Assets of the trust include:

- buildings, fixtures and fittings
- plant and equipment
- cash and investments.

Safeguard measures for protecting assets include installing fences, lockable shed/storage area, security systems (ie locks and/or alarms), neighbourhood watch, staff training, maintaining updated asset registers, conducting regular stock takes, and arranging audit checks and insurance programs.

Interment registers and plans

Trusts should ensure they have one or more back-up sets of their interment registers and plans and other principle records stored at locations different to the working set in case of fire. In addition, electronic records should be backed up in case of computer malfunction or burglary.

Action to remove or diminish those threats

When a trust (including its members and officers) becomes aware of a potential threat within its cemetery and operations, it is obliged to take prompt action to remove or diminish that threat.

Insurances

Although a cemetery trust may hold a number of insurance policies to cover various risks, these should be viewed as only one element of an effective risk management plan.

WorkCover insurance is compulsory for a cemetery trust that is an employer, as defined by the relevant legislation (refer to **Topic 31 Occupational health and safety**).

It is possible that a trust may be found legally liable for a personal injury claim that occurs in circumstances where a trust was aware of the existence of a potential threat but neglected to take all reasonable steps to prevent or diminish that threat.

The Victorian Managed Insurance Authority (VMIA)

The Department of Health and Human Services has arranged a suite of insurance policies with the VMIA for all public cemetery trusts in Victoria.

Victorian Managed Insurance Authority (VMIA)

Level 10, 161 Collins Street

Melbourne VIC 3000

PO Box 18409

Collins Street East VIC 8003

Telephone: (03) 9270 6900

Fax: (03) 9270 6949

Website: www.vmia.vic.gov.au

The suite of policies includes cover for:

- industrial special risks
- public and product liability
- directors' and officers' liability
- professional indemnity
- personal accident (which covers trust members and volunteer workers).

VMIA offers optional cover to all cemetery trusts for motor vehicle insurance, business travel insurance and construction all-risk insurance. The premiums for these optional products are not funded by the Department of Health and Human Services.³⁵

The VMIA Healthcare and Community Services teams provide day-to-day advice on general insurance enquiries, risk management and claims services. All enquiries can be directed to the VMIA's cemetery trust client relationship manager, account manager, insurance advisor or risk management advisor on (03) 9270 6900.

Each cemetery trust has a client page on the VMIA's website that can be accessed through the client login area found on the home page. Each trust can:

- order a Certificate of currency
- access the manual and other insurance policies
- download claim forms
- view relevant risk management resources.

In addition, a summary of the VMIA Cemetery Trust Insurance Program can be accessed from the departmental website at <www.health.vic.gov.au/cemeteries/cemeterytrusts/insurance>.

Note: It is essential that trusts first lodge a claim with VMIA to determine if specific damage to cemetery trust property is covered under the insurance policy and can be claimed. However, if it is determined that the damage to cemetery trust property is not covered under the insurance policy, then cemetery trusts may be eligible for a departmental grant. Refer to Topic 13 Grants for information.

Cemetery trust members and personal liability

Cemetery trust members in Victoria are, in effect, the directors of the incorporated entity being the cemetery trust. Because it is incorporated, the trust may sue and be sued in its own right.

In carrying out a function or power under the Act, a member of a cemetery trust is not personally liable for anything they do or omit to do in good faith. However, this limited liability protection may not extend to any other legislation under which legal action may be brought against a cemetery trust and/or its members and officers as individuals.

This possible exposure to some personal liability means trust members and officers of cemetery trusts should always discharge their powers and duties in a prudent and conscientious manner, and in compliance with all relevant legislation.

³⁵ The terms and conditions of the policies and insurance manual are available on the VMIA website at <www.vmia.vic.gov.au> by navigating to Insurance> Policies & Manuals>.Community Service Organisations Program> Cemetery Trust Insurance Guide 2012–13.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 28. Financial management

Accounting and financial reporting under the *Financial Management Act 1994*

A cemetery trust is responsible for the stewardship and proper accounting of its income and expenditure, assets and liabilities.

Class A cemetery trusts are required, as determined by Department of Treasury and Finance, to:

- prepare annual financial statements in accordance with the *Standing directions of the Minister for Finance* and the provisions of the *Financial Management Act 1994*
- have those statements audited by the Victorian Auditor-General's Office
- submit an annual report incorporating those statements to the Parliament of Victoria by 30 September each year.

The Department of Treasury and Finance, through the department's Cemetery Sector Governance Support, provides annual reporting guidelines to cemetery trusts.

Audit and risk committee

A cemetery trust is required to have an audit and risk committee. The functions of this committee are to be determined by the cemetery trust but must comply with the *Standing directions of the Minister for Finance* under the *Financial Management Act 1994*.³⁶

Finance committee

A cemetery trust is required to have a finance committee. The functions of this committee are to be determined by the cemetery trust.³⁷

Annual levy

For the purposes of assisting in defraying the costs of administering the Act, making improvements in cemetery trust governance and administration, and providing services to the community, each cemetery trust must pay an annual levy on its gross earnings as reported in the annual financial statements of the trust for the previous financial year (s. 18Q of the Act).

Preparing an annual budget

Under s. 12A(1)(c) of the Act, a cemetery trust must develop an annual budget that consists of an operating and capital budget. The budget should be approved by the audit and risk committee and the trust.

The budget should be designed to resource all activities and reflect the strategic and annual plans. Costs involved in managing a cemetery include administrative, operational and developmental expenses. Therefore, the budget should include:

- proposed expenditure on both maintenance and development works
- anticipated revenue from the trust's fees and charges based on the anticipated number of burials/cremations

³⁶ A draft Audit and risk committee charter is available from <www.health.vic.gov.au/cemeteries>.

³⁷ A draft Finance committee charter is available from <www.health.vic.gov.au/cemeteries>.

- goods and services tax
- funds and investments.

This process is important in enabling the trust to determine whether its cemeteries' current fees and charges are appropriate, in light of the trust's requirements for income and meeting perpetual maintenance obligations.

Financial reporting process

Financial statements outlining the cemetery's expenses versus income for each month should be submitted to the trust for review on a monthly basis. This keeps the trust updated on the cemetery's financial performance and enables comparison of the financial statement against the budget.

Paying commissions is considered inappropriate

It is inappropriate for any third party to be paid a commission (tips, rewards, discounts) by the trust for selling rights of interment, plaques, cremation memorials or any other items on its behalf. Under the Act, only a trust or its delegate is authorised to grant a right of interment.

Funds received

It is reasonable that a cemetery trust should be able to expend a portion of the funds it receives from the sale of its products and services on the general operations of the cemetery. However, it should also ensure that a portion of its earnings are set aside for the perpetual maintenance of the cemetery. Pre-paid revenue should be invested and should only be used when the trust provides the actual product or service to the purchaser.

When setting new fees for areas within the cemetery that have been recently developed, such as a new lawn area, 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.

Financing development works

In some instances, Trusts may want to finance cemetery redevelopment projects from borrowed funds. To do this the trust would require Treasury approval. Note that the trust will need to be able to put forward a strong business case to support its application for a loan.

Section 46 of the Act empowers a cemetery trust, subject to the approval of the Treasurer, to borrow funds. Please note for the purposes of the Act- a lease does not constitute a loan (e.g novated car lease, leasing of equipment – photocopier etc.)

Perpetual maintenance fund

When preparing its annual budget and reviewing its scale of fees, the cemetery trust must determine how much it needs to set aside from its future earnings for its perpetual maintenance fund; 15 per cent of total profit is considered to be a reasonable benchmark by a number of trusts.

The accumulated perpetual maintenance funds, including interest, will be used to finance the continuing maintenance of the cemetery after all available places of interment have become full and the site has little or no further potential to generate income.

Purchasing or acquiring land

Consideration also needs to be given as to how a trust will finance the purchase and development costs of its next cemetery site. Trusts should consider including an additional component in their fees that will cover the future purchase of land.

Section 30(1) of the Act allows cemetery trusts to purchase or acquire land, with the approval of the Minister, for the purposes of a public cemetery for which it is responsible. A cemetery trust cannot purchase or acquire land for any other purpose.

Generally, any purchase or acquisition of land to be reserved for cemetery purposes will take approximately 6–12 months for the processes and procedures to be completed.

A formal letter of application is required from the chairperson of the cemetery trust addressed to:

The Manager
Cemetery Sector Governance Support

PO Box 4057
Melbourne VIC 3001

The letter must detail:

- the rationale for its intention to acquire additional land
- a financial report indicating the trust has relevant funds to purchase the land
- the location and size of the land it is seeking to purchase
- if the current owner of the land is willing to sell
- the estimated purchase price.

After all the necessary documents are received and the Minister approves the application, the trust will be advised.

Purchasing and tender procedures

The department recommends that trusts follow the purchasing guidelines as set out in the Victorian Government Purchasing Board (VGPB) procurement policies. These can be found at the following link:

<http://www.procurement.vic.gov.au/CA2575BA0001417C/pages/home>

Click on the 'Procurement practitioners' heading then scroll down and click on the document 'Procurement Policies Master Manual'.

For the purchase of goods and services less than \$25,000.00 a minimum of one written quote is to be obtained.

For the purchase of goods and services valued between \$25,000.00 and \$150,000.00 a minimum of three written quotes are to be sought.

For more details around purchases up to \$150,000.00 please refer to page 56 – 58 of the VGPB Policies Master Manual.

For purchases above \$150,000.00 tender processes will apply – please refer to page 64 – 81 of the VGPB Policies Master Manual.

The *Project Development and Construction Act 1994* covers the procurement of 'works' involving building and construction and the guidelines issued for this type of procurement state that:

- for works where the amount to be expended (incl. GST) is estimated to be \$25,000 or less, one written quote is to be obtained
- for works estimated to be more than \$25,000 but not exceeding \$200,000 a minimum of three written quotes are to be sought
- for works estimated to exceed \$200,000 tender processes apply.

Further information and guidelines on the procurement of 'works' are available from the Department of Treasury website at <www.dtf.vic.gov.au/publications>

Note: When planning a request for tender, trusts should prepare a written scope/specification of the work required in the cemetery. The documentation should then be provided to those companies/persons expressing interest in submitting a response to the tender so as to ensure quotations will be comparable.

Further information and guidelines on appropriate purchasing procedures are available from the VGPB (Victorian Government Purchasing Board) at <www.vgpb.vic.gov.au>.

Victorian Government Purchasing Board
Level 8, 120 Collins Street
Melbourne VIC 3000

Telephone: (03) 8683 2944

Fax: (03) 8683 2997

Email: vgpb@dtf.vic.gov.au

Website: www.vgpb.vic.gov.au

Partial rebate of water charges

A cemetery trust, being a not-for-profit organisation, that receives water assessments in its own name, may make application to its local water authority for the \$260 per annum rebate offered by the state government regarding each assessment.

Fundraising

Cemetery trusts are able to undertake fundraising activities other than lotteries, raffles and bingos without registering with Consumer Affairs Victoria, if they do not expect to raise more than \$10,000 in any financial year (subject to the conditions stated in the *Fundraising Act 1998*). If they have raised or expect to raise more than \$10,000 in a financial year, they will need to register with Consumer Affairs Victoria as a fundraiser operating in Victoria.³⁸

Cemetery trusts do not qualify for an exemption for registering as a fundraiser in Victoria as they are not established under the *Health Act 1958*.

A fact sheet relating to fundraising activities is available from Consumer Affairs Victoria.³⁹

38 This requires a police check and completion of a registration form available at <www.consumer.vic.gov.au/clubs-and-not-for-profits/fundraisers>.

39 www.consumer.vic.gov.au/clubs-and-not-for-profits/fundraisers/what-is-a-fundraiser

If you have any further questions please contact:

Consumer Affairs Victoria (CAV)

113 Exhibition Street

Melbourne VIC 3000

PO Box 123

Melbourne VIC 3001

Telephone: 1300 55 81 81

Email: consumer@justice.vic.gov.au

Website: www.consumer.vic.gov.au/businesses

The Regional Office's contact details are also available by checking the CAV website under 'contact us'.

This page has been intentionally left blank for updates

Topic 29. Tax

The matters summarised in this topic are complex, and it is recommended that advice be obtained from a person professionally qualified in this subject or from the Australian Taxation Office (ATO) or State Revenues Office (SRO).

Australian Tax Office

PO Box 9990

Melbourne VIC 3000

Telephone: 13 28 66

Website: www.ato.gov.au

State Revenues Office

GPO Box 1641

Melbourne VIC 3001

Telephone: 13 21 61

Email: sro@sro.vic.gov.au

Website: www.sro.vic.gov.au

GST exemption on fees and charges

As of 1 January 2010, the following cemetery products and services have been exempt from GST under Division 81 of the *Goods and Services Tax Act 1999*:

Cemeteries and crematoria			
10.9	Issue a right of interment	<i>Cemeteries and Crematoria Act 2003</i>	Rights of places of interment for graves, memorials and mausolea
10.10	Memorialisation permits and approvals	<i>Cemeteries and Crematoria Act 2003</i>	Fees relating to memorialisation permits and approvals
10.11	Permits	<i>Cemeteries and Crematoria Act 2003</i>	Fees relating to memorial permits and other permits
10.12	Miscellaneous fees and charges	<i>Cemeteries and Crematoria Act 2003</i>	Search fee and other regulatory fees that don't apply to the above categories

As a consequence of these exemptions cemetery trusts are not permitted to charge customers GST for any of these products or services.

Income tax exemption

As a public entity cemetery trusts are exempt from income tax pursuant to s. 50–25 of the *Income Tax Assessment Act 1997*.

Fringe benefits tax

Fringe benefits tax (FBT) is payable on benefits other than wages provided by a cemetery trust to its employees but not on the employer's share of its contributions to employees' superannuation. It is not payable on benefits provided by the trust to business associates or to voluntary (unpaid) trust members.

If the trust provides non-compulsory uniforms to its employees, attention should be paid to the ATO requirement that the uniform and logo must be approved and registered. Otherwise FBT may be payable at the highest marginal rate on the cost of that uniform.

If an employee receives fringe benefits as defined (not including meals and entertainment) of more than \$2,000 in any tax year, it is required that the grossed-up value (including tax added back) of these benefits be recorded on the employee's PAYG payment summary.

Due to its income tax exempt status, a cemetery trust does not receive an exemption from providing minor benefits of less than \$300 in value.

Cemetery trusts in Victoria are not regarded by the ATO as rebateable employers (charities) for the purposes of the FBT legislation.

Further information regarding fringe benefits tax can be obtained by contacting the ATO.

Debits tax exemption

The *Debits Tax Act 1990* is Victorian Government legislation and applies to all debit transactions on bank accounts that have a cheque-drawing facility attached. Cemetery trusts may seek exemption from this state tax. For further information contact the SRO.

Accounts without a cheque-drawing facility are not taxable accounts so the debits tax does not apply. This includes savings accounts, investment accounts and term deposits.

Payroll tax exemption

Cemetery trusts receive a payroll tax exemption from the SRO. Normally employers in Victoria with an annual gross payroll, including gross fringe benefits and employer contributions to superannuation exceeding \$550,000, from 1 July 2010 onwards are liable to pay state payroll tax. For further information, contact the SRO.

Charitable Tax Status

In November 2012 the Commonwealth Government established the Australian Charities and Not-for-Profits Commission (ACNC) to provide a national approach to the regulation of charitable tax status, previously regulated by the ATO.

Charities that previously registered with the ATO will automatically be registered with the ACNC, however, the ATO will remain responsible for administering tax concessions.

To check if a trust is currently endorsed as a charity by the ATO to receive charity tax concessions, it should conduct a search on the ATO's website by searching the 'ABN Lookup' section.

New applications for charitable status should be submitted to, and will be considered by, the ACNC.

Application information

When applying for Charity Tax Status trusts should ensure they register as a 'Charity Institution' being an institution that is established and run to advance or promote a charitable purpose.

The cemetery trust entity type should be recorded as a 'State Government Other Incorporated Entity' as trusts are incorporated associations under a State Act.

All enquiries in relation to charitable tax status should be made directly to the ACNC or the ATO.
The contact details for the ACNC are as follows:

Australian Charities and Not-for-Profits Commission
GPO Box 5108
Melbourne VIC 3001

Telephone: 13 22 62 (8am-8pm Mon–Fri)

Fax: 1300 232 569

Email: advice@acnc.gov.au

Website: www.acnc.gov.au

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 30. Conditions of work

Cemetery trusts must ensure that the terms and conditions under which any person performs work for it are lawful.

The legal and industrial frameworks that may govern a worker's employment with a cemetery trust include:

- the *Fair Work Act 2009*
- an applicable modern award
- an enterprise agreement
- a common law contract of employment.

All cemetery trusts must act in accordance with the principles set out in the *Public sector industrial relations policy manual*.⁴⁰

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

Cemetery trusts should familiarise themselves with the information on <www.fairwork.gov.au>. Any questions relating to these matters should be directed to the office of the Fair Work Ombudsman.

Contact details are:

Fair Work Ombudsman
GPO Box 9887
Melbourne VIC 3000

Telephone: 13 13 94

Fax: 1800 618 366

Website: www.fairwork.gov.au

Equal employment opportunity

Under Victoria's *Equal Opportunity Act 2010*, it is unlawful to discriminate against people on the basis of various personal attributes and unlawful to harass individuals including job applicants, employees, co-workers and contract workers. Sexual harassment is unlawful.

Victorian Charter of Human Rights

The *Victorian Charter of Human Rights and Responsibilities Act 2006* is an agreed set of human rights, freedoms and responsibilities protected by law. Government departments and public bodies, including cemetery trusts, must observe these rights when they create laws, set policies and provide services. Cemetery trusts are required to act in a way that is consistent with the human rights protected under the Charter, comply with the Charter, and take human rights into account in their day-to-day operations.⁴¹

40 Electronic copy available from
<[http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/PSIRPolicyManual2010/\\$File/PSIRPolicyManual2010.pdf](http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/PSIRPolicyManual2010/$File/PSIRPolicyManual2010.pdf)>.

41 For more information go to <www.humanrightscommission.vic.gov.au>.

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

This page has been intentionally left blank for updates

Topic 31. Occupational health and safety

The *Occupational Health and Safety Act* (OHS Act) makes it clear that every individual involved in the workplace has a responsibility to prevent injury or ill health. The best way to meet this responsibility is by working together to progressively reduce the incidence, severity and cost to the community of work-related injury and disease.

The OHS Act provides a broad framework for improving standards of workplace health and safety to reduce work-related injury and illness. It 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.

Some of the key health and safety principles that underpin the Act are that:

- all people – employees and the general public – should have the highest level of protection against risks to health and safety
- those who manage or control activities that may create health and safety risks in the workplace are responsible for eliminating those risks (where they cannot be eliminated, they are responsible for reducing those risks so far as reasonably practicable)
- employers should be proactive in promoting health and safety in the workplace
- information and ideas about risks and how to control them should be shared between employees and employers.

Reasonably practicable

What is reasonably practicable in a given situation is to be determined objectively. In determining what is reasonably practicable, trusts must take into account:

- the probability of a person being exposed to harm
- the potential seriousness of injury or harm
- what is known, or ought to be known, about the risk and how to eliminate it (people responsible for health and safety are required to inform themselves of current and relevant information)
- the availability, suitability and cost of eliminating or reducing the risk.

An individual's responsibilities to ensure health and safety

The OHS Act imposes general *occupational health and safety* duties on employers, the self-employed, employees, designers, manufacturers, suppliers and others.

A person may have more than one duty, for example, they may have duties as an employer and as designer or supplier, or as an employer and as a subcontractor or supplier of plant.

These general *occupational health and safety* duties, in most instances, require a person to ensure health and safety as far as is reasonably practicable. If it is not reasonably practicable to eliminate risks to health and safety, a person must reduce those risks as far as reasonably practicable.

No one may put another person at a workplace in danger

It is an offence, without lawful excuse, for any person to recklessly engage in conduct that exposes, or may expose, a person at a workplace to the risk of serious injury.

A safe workplace for all people, not only trust staff

Cemetery trusts are responsible for ensuring that all work in their cemeteries is performed in a healthy and safe manner, and without risk to anybody. This responsibility includes work in the cemetery undertaken by:

- employees of the trust
- contractors, including their staff and subcontractors, appointed by the trust
- community volunteers
- monumental masons, including their staff and subcontractors
- funeral directors, including their staff and subcontractors.

Procedures should be in place to ensure that work is not commenced in the cemetery by any of these people without the prior knowledge and approval of the trust. This approval should not be given until the trust, or its experienced delegate, is satisfied with all safety aspects of the proposed work. This may include, for example:

- structured and documented induction and training sessions for new employees of the trust
- the trust's delegate performing a visual inspection of the equipment and/or item intended to be used by a contractor or stonemason or by trust staff in the cemetery to see if it has any obvious defects
- a requirement to produce to the trust's delegate, documents providing details of approved safety inspection/testing reports for that equipment and/or item (for example, details of maximum load limits in the case of a monumental mason's crane with lifting slings or hooks)
- a requirement for the proposed operator of the equipment and/or item to show the trust delegate documentation verifying their training and competency to operate that equipment and/or item
- directions issued by the trust delegate as to how members of the public are to be alerted to, but kept isolated from, safety hazards associated with the proposed work.

Particular workplace hazards in a cemetery

Hazards to the health and safety of workers and the public in a cemetery include open graves, monuments that are unstable or under construction, plant and machinery operations, vegetation that might drop limbs.

Open graves are a particular cemetery hazard. The safety of mourners attending at the open grave for an interment is addressed in Trust delegate's responsibilities of **Topic 14 Interments**.

It is a legal requirement that no person enters a grave of depth greater than 1.5 metres that has not first been adequately shored with sufficient ground support. This applies even if entering the grave is intended to be only for a moment, such as to retrieve car keys that have fallen into the open grave.

If cemetery staff must enter a grave with a depth greater than 1.5 metres, they can only be permitted to do so if:

- the grave has been appropriately shored to the required standard
- appropriate staff and equipment (including a ladder to get in and out of the grave) are on hand at the graveside.

Training in the shoring and safety of graves is available as part of the Certificate III course in grave-digging operations.

Documentation of safe work requirements

The documents that a cemetery trust should use in its staff training sessions include the following.

- **OHS Act and WorkSafe guidebooks**
- **Guidance notes**
 - first aid, which specifies requirements for trained first-aiders and first aid kits
 - manual handling
 - hazardous substances
 - working in heat
 - crane, hoists and forklift trucks
 - tractors and other powered mobile plant
 - sun protection of outdoor workers.
- **Codes of practice**

These are being phased out and replaced by guidance notes.
- **Material safety data sheets (MSDS)**

An MSDS is available from the manufacturer or importer of each hazardous substance used in the workplace. The code of practice on hazardous substances requires that all such substances are identified and listed in a register and accompanied by the relevant MSDS to be kept at the workplace.
- **Plant/Equipment hazard assessments**

Employers are required to identify and document the hazards, and assess and control the risks associated with the operation of each item of plant/equipment in their workplace. This process must be continually reviewed.
- **Guidelines and safety policy manuals for the workplace prepared by the employer**
- **WorkCover documents**
 - *If you are injured* poster
 - *Notification of injuries* book
 - *Worker's claim* forms
- **Operator's manuals for plant/equipment items, provided by manufacturers**
- **Radiation pharmaceuticals safety information**

An information sheet on dealing with deceased people containing radiopharmaceuticals is available on the environmental health website at www.health.vic.gov.au/environment/radiation or by contacting the Radiation Safety Hotline on 1300 767 469.

Accidents and incidents to be reported to WorkSafe

Under the Occupational Health and Safety (Incident Notification) Regulations, the employer with management or control of the workplace is responsible for notifying WorkSafe Victoria of serious incidents, regardless of whether or not the person who has been killed, injured or exposed to serious immediate risk is an employee.

PHONE WORKSAFE

Ph 13 23 60

To report serious accident and incidents

Notification is required where an incident at a workplace or equipment site results in death or a specified serious injury, that is, if an injured person requires:

- medical treatment within 48 hours of being exposed to a substance
- immediate hospital treatment as an inpatient
- immediate medical treatment for
 - amputation
 - serious head injury
 - serious eye injury
 - separation of skin from underlying tissue, for example, de-gloving or scalping
 - electric shock
 - spinal injury
 - loss of bodily function
 - serious laceration.

Notification is also required of dangerous occurrences that seriously endanger the lives or the health and safety of people in the immediate vicinity. Such dangerous occurrences include:

- collapse, overturning, failure or malfunction of, or damage to, certain items of major plant/equipment items
- collapse or failure of an excavation or the shoring support of an excavation
- collapse of part of a building or structure
- implosion, explosion or fire
- escape, spillage or leakage of substances
- the fall from a height of dangerous or heavy objects.

The deadlines for notification to WorkSafe are:

- **first deadline – immediate:** employers in charge of prescribed equipment at an equipment site must notify WorkSafe as soon as they become aware of a notifiable incident at their workplace or equipment site.
- **second deadline – within 48 hours:** written details of the incident must subsequently be sent to WorkSafe within 48 hours.

While there may be occasions when an employer is not aware of an incident until some time later, procedures should be in place to ensure swift notification as soon as the employer becomes aware.

For more information on occupational health and safety and WorkSafe Victoria contact:

WorkSafe Victoria

Telephone: (03) 9641 1444

Freecall: 1800 136 089

Email: info@worksafe.vic.gov.au

Website: www.worksafe.vic.gov.au

Appendix 1:

Industry associations and contacts

This information is correct as of April 2013.

	Organisation	Telephone	Fax	Website	Notes
CCAV	Cemeteries and Crematoria Association of Victoria Inc. Suite North 1/215 Bell St Preston VIC 3072	(03) 9863 6911	(03) 9863 6901	http://www.ccav.org.au/	The representative association of the operators of public cemeteries and crematoria in Victoria.
ACCA	Australasian Cemeteries and Crematoria Association Suite North 1/215 Bell St Preston VIC 3072	(03) 9863 6914	(03) 9863 6901	http://www.accaweb.com.au/	The representative association of the operators of both public and private cemeteries and crematoria in Australasia.
AFDA	Australian Funeral Directors Association Lvl 1/700 High Street (PO Box 291) Kew East VIC 3102	(03) 9859 9966 Toll Free 1300 888 188	(03) 9819 7390	http://www.afda.org.au/	A professional association of funeral directors upholding a code of ethics.
AWU	Australian Workers Union Victorian Branch 685 Spencer Street West Melbourne VIC 3003	(03) 8327 0888 Call Centre 1300 362 298	(03) 8327 0899	http://www.vic.awu.net.au/	The union covering workers employed in cemeteries and crematoria in Victoria.
NFDA	National Funeral Directors' Association of Australia Ltd John Stewart (Victorian representative) c/- Phelan's Cnr Clarendon and Tuaggra Streets (PO Box 358) Maryborough VIC 3465	(03) 5461 1979	(03) 9830 1754	http://www.nfda.com.au/	A professional association of funeral directors upholding a code of ethics.
MSAV	Master Stonemasons Association of Victoria PO Box 661 Greensborough VIC 3088	(03) 9830 1326 or 0409 429 023	(03) 9830 1754	http://www.stonemasons.org.au/	A professional association of stonemasons upholding a code of ethics.
ACGB	Australian Centre for Grief and Bereavement Inc. 253 Wellington Road Mulgrave VIC 3170	(03) 9265 2100 Freecall 1800 642 066	(03) 9265 2150	http://www.grief.org.au/	Provides and promotes grief education, consultancy, counselling and research.

	Organisation	Telephone	Fax	Website	Notes
DSCV	Dispute Settlement Centre Victoria Level 4, 456 Lonsdale St Melbourne VIC 3000	(03) 9603 8370 Freecall 1800 658 528	(03) 9603 8355	http://www.disputes.vic.gov.au/	Provides a free dispute settlement service and can help with practical advice on resolving disputes or conflicts without legal action.

Appendix 2:

Some of the frequently used provisions of the *Cemeteries and Crematoria Act 2003* for Class A cemetery trusts

Section	Provision
4(1)	The Governor in Council, by order published in the Government Gazette, may establish a public cemetery.
5(1)	The Governor in Council, by order published in the Government Gazette, may establish a cemetery trust.
5(2)	A cemetery trust is a body corporate with perpetual succession, which may sue and be sued in its corporate name, acquire, hold and dispose of real and personal property, and may do and suffer all acts and things that a body corporate may by law do and suffer.
6A	A cemetery trust consists of not less than six and not more than nine members appointed by the Governor in Council.
8	The Governor in Council may appoint a trust to manage one or more public cemeteries.
10	The Governor in Council, on recommendation of the Minister, may appoint an administrator to manage a public cemetery.
12A	Functions of a cemetery trust.
13	General powers of a cemetery trust.
14	A cemetery trust responsible for managing more than one cemetery may manage all the cemeteries as if they were one cemetery.
15	Trusts may delegate certain powers to trust members and/or employees.
16	In carrying out a function or power under the Act, a member of a cemetery trust is not personally liable for anything done or omitted to be done in good faith.
25	Model rules – see schedule 2 of Cemeteries and Crematoria Regulations (2015).
26	Trusts may make rules to assist in managing the cemetery.
27	Any rules must be approved by the Governor in Council and published in the Government Gazette.
36, 37	Trusts may grant leases/licences over cemetery land, but must have the prior approval of the Minister.
39	Trusts may set fees and charges and must submit them to the Secretary for approval.
40	The Secretary may approve or not approve trust fees.
41, 42	The Secretary must publish fees in the Government Gazette and on the internet.
43	Fees and charges to increase by CPI on 1 March of each year.
49	Cemetery trusts must keep proper accounts and records of its finances.
59 & 60	Cemetery trusts records must be made available to members of the public for historical or research purposes.

Section	Provision
62–64	Order the closing of public cemeteries.
64A	Order the reopening of a closed cemetery.
74	A right of interment is perpetual where remains are interred, or can be for 25 years or perpetual if ashes are interred.
78	A right of interment is exercised if human remains are interred or a memorial is created at the place of interment.
79	A right of interment can be transferred to another person for a fee not less than the current fee payable for the same right of interment.
82	An unexercised right of interment can be surrendered to the cemetery trust.
85	At the expiry of a limited tenure for ashes, the cemetery trust must offer a further period of limited tenure or permanent tenure for the ashes.
88	A right of interment holder, or a person acting on behalf of that holder, may apply in writing and submit to the trust, with the relevant cemetery trust fee, a request for the lift and reposition of bodily remains to enable re-use of the place of interment.
89	The cemetery trust may either approve or not approve the carrying out of a lift and reposition procedure.
98	A person may apply to the cemetery trust for approval to establish or alter a memorial or a placement of interment.
104	The right of interment holder is responsible for maintaining any memorial at the place of interment in a safe and proper condition.
108	A trust may recover the cost of repairing a monument or place of interment from the right of interment holder or person responsible for establishing or altering the memorial.
113	Bodily remains interred in a public cemetery are interred for perpetuity.
114	Bodily remains must not be interred in a place other than a public cemetery, unless the Secretary has granted an interment approval for that interment.
128	Cremated remains may be interred for a limited tenure not exceeding 25 years or for perpetuity.
129	Cremation must take place in a public cemetery or in accordance with an approval given by the Secretary.
143	A magistrate or a coroner may make an order requiring a cemetery trust to either cremate or inter the remains of a poor person at no cost.
155	Except in accordance with the Act, a person must not exhume or remove any human remains from any place of interment.
156	A person may apply to the Secretary for an exhumation licence to exhume or remove human remains from a place of interment.
179	A right of interment holder may apply to the Victorian Civil and Administrative Tribunal for a review of the cemetery trust's decision to either grant or refuse an approval to establish or alter a memorial or place of interment.

Appendix 3:

Some of the frequently used provisions of the *Cemeteries and Crematoria Regulations 2015*

Section	Regulation
6-15	Provides details of the prescribed information that must be kept by a cemetery trust.
23	A person must not bring bodily remains or body parts to be interred into a cemetery except in accordance with this section.
24	Provides details of the depth of interment requirements.
26	Provides information on the requirements for enclosing bodily remains or body parts where cremation is to take place.
32	Advises that mausolea must be constructed to the standard noted in the Regulations.
35-49	Regulates behaviour and activities in public cemeteries.

Appendix 4:

List of Victorian legislation that impact on the operations of a cemetery trust

There may be other legislation that impacts on cemetery trusts such as taxation legislation. This list is a guide only.

Accident Compensation (WorkCover Insurance) Act 1993

To provide for compulsory WorkCover insurance for employers under WorkCover insurance policies provided by WorkSafe agents and the payment of premiums for WorkCover insurance policies. Class A cemetery trusts must have a WorkSafe agent.

Audit Act 1994

To provide for the conduct of efficient and effective financial and performance audits in the Victorian public sector. Cemetery trusts may be audited.

Births, Deaths and Marriages Registration Act 1996

To provide for the registration of births, deaths and marriages and changes of name in Victoria. Death certificates are required before remains may be buried or cremated.

Building Act 1993

To provide for the regulation of building and building standards. All buildings and structures erected in a cemetery must comply with the relevant building regulations. New structures or additions must be constructed in accordance with a valid building permit.

Catchment and Land Protection Act 1994

To set up a framework for the integrated management and protection of catchments, to set up a system of controls on noxious weeds and pest animals, and to encourage community participation in managing land and water resources.

Cemeteries and Crematoria Act 2003

To provide for the management and operation of cemeteries and crematoria.

Charter of Human Rights and Responsibilities Act 2006

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 laws, 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.

Coroners Act 2008

To require the reporting of certain deaths and set out the procedures for investigations and inquests by coroners. A coroner's report may be required before remains are buried or cremated.

Crown Land (Reserves) Act 1978

Provides for the reservation of Crown lands for certain purposes and for management of such reserved lands. A public cemetery may only be established on Crown land reserved or deemed to be reserved for the purposes of cemeteries and crematoria.

Dangerous Goods Act 1985

To promote the safety of people and property when using dangerous goods or importing explosives into Victoria, and to ensure adequate precautions are taken regarding dangerous goods.

Electricity Safety Act 1998

The purpose of this Act is to make further provision relating to the safety of electricity supply and use, and the efficiency of electrical equipment.

Equal Opportunity Act 2010

To promote recognition and acceptance of everyone's right to equality of opportunity, to eliminate discrimination against people, to eliminate sexual harassment and to provide redress for people who have been discriminated against or sexually harassed. Cemetery trusts must uphold the principles of this Act in every capacity.

Fair Trading Act 1999

To protect consumers, and promote and encourage fair trading practices and a competitive and fair market. Cemetery trusts must comply with this Act.

Fences Act 1968

The requirements regarding the establishment/replacement of fences are set out under the *Fences Act 1968*.

Financial Management Act 1994

To improve financial administration and make better provision for the accountability of the Victorian public sector. Class A cemetery trusts are required to report under provisions outlined in the *Financial Management Act 1994*.

Flora and Fauna Guarantee Act 1988

The purpose of this Act is to establish a legal and administrative structure to enable and promote the conservation of Victoria's native flora and fauna, and to provide for a choice of procedures that can be used for the conservation, management or control of flora and fauna and managing potentially threatening processes. Cemetery trusts must consider the conservation of native flora and fauna on each of their cemetery sites.

Freedom of Information Act 1982

To extend as far as possible the right of the community to access information in the possession of the government of Victoria and other bodies constituted under the law of Victoria. This includes cemetery trusts.

Funerals Act 2006

To enhance consumer protection by regulating the funeral industry and strengthening enforcement and inspection powers, and to improve how the funeral industry is monitored and how it delivers services and information to the public. Knowledge of this Act will help cemetery trusts work with funeral directors.

Goods Act 1958

Consolidates the laws relating to the sale of goods and contracts of sale.

Health Records Act 2001

To promote fair and responsible handling of health information.

Information Privacy Act 2000

To establish a regime for the responsible collection and handling of personal information in the Victorian public sector. This includes cemetery trusts.

Land Acquisition and Compensation Act 1986

To establish procedures for the acquiring land for public purposes and provide determination of the compensation payable in respect to land so acquired. A cemetery trust, with the approval of the Minister, may purchase or acquire land for the purposes of a public cemetery.

Land Act 1958

An Act to consolidate the law relating to the sale and occupation of Crown land.

Local Government Act 1989

This Act supports systems of local government. Knowledge of this Act will help cemetery trusts work with local government.

Occupational Health and Safety Act 2004

To secure the health and safety of employees and other people at work. A cemetery trust has a duty to provide a safe and healthy worksite for workers, including voluntary workers and contract workers (for example, gravediggers and monumental masons) whether or not employed by the trust. Any incident that results, or may have resulted, in personal injury must be promptly reported to WorkSafe.

Ombudsman Act 1973

To provide powers to investigate administrative actions taken by, or on behalf of, government departments and other authorities. One of the avenues of formal appeal against a decision made by a cemetery trust is through a review of the decision by the Ombudsman.

Public Administration Act 2004

To provide a framework for good governance in the Victorian public sector and in public administration generally in Victoria. Part 5 of this Act deals with the operations and governance of public entities, such as cemetery trusts. Under s. 4 of this Act, cemetery trust members, as directors on the board of a public entity, are public officials and, as such, are subject to the Director's code of conduct issued by the Public Sector Standards Commissioner. The purpose of the code is to promote adherence to the public sector values.

Planning and Environment Act 1987

Establishes a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians. The planning scheme of the local municipality should contain a reference to, and indicate that, land designated for cemetery purposes is zoned in a public-use zone (PUZ). Trusts are advised to liaise with the relevant planning authority concerning their development proposals and before commencing any major works.

Public Health and Wellbeing Act 2008

To consolidate the law relating to public health.

Public Records Act 1973

To provide for better preservation management and utilisation of the public records of the state of Victoria. Cemetery trusts must ensure records are kept in relation to interments, places of interments, cremations and rights of interment. These records must be provided to any person when requested for historical or research purposes. For further details, see Part 4 of the *Cemeteries and Crematoria Act*.

Racial and Religious Tolerance Act 2001

To promote racial and religious tolerance by prohibiting certain conduct involving the vilification of people on the grounds of race or religious belief or activity. Cemetery trusts must behave in a way that is tolerant of all races and religions.

Road Management Act 2004

Establishes the general principles that apply to road management.

Road Safety Act 1986

Cemetery trust vehicles (including tractors and trailers) driven on public roads are required to be registered. If a cemetery is on Crown land, its defined roads are considered to be public roads.

Victorian Civil and Administrative Tribunal Act 1998

To establish the Victorian Civil and Administrative Tribunal (VCAT). A holder of a right of interment may apply to VCAT to review a cemetery trust's decision relating to approving, or refusing to approve, the establishment or altering of a memorial or place of interment.

Victorian Managed Insurance Authority Act 1996

To establish the VMIA to assist departments and participating bodies to develop programs to identify, quantify and manage risks, and to act as an insurer for, or provide insurance services to, departments and participating bodies. This is the general insurance cover for all cemetery trusts, as arranged by the Department of Health and Human Services.

Water Act 1989

To promote the orderly, equitable and efficient use of water resources and to make sure water resources are conserved and properly managed for sustainable use for the benefit of present and future Victorians.

Whistleblowers Protection Act 2001

To encourage and facilitate disclosures of improper conduct by public officers and public bodies, and to provide protection for people who make disclosures. This Act applies to cemetery trusts because they are public entities.

In addition, Commonwealth legislation that may also have an impact on a cemetery trust includes the *Trade Practices Act 1974*, taxation (PAYE, GST, FBT) and employment law.

In addition, Commonwealth legislation that may also have an impact on a cemetery trust includes the *Trade Practices Act 1974*, taxation (PAYE, GST, FBT) and employment law.

Appendix 5:

List of Victorian Government departments and other relevant governmental organisations

Victorian government departments

Department of Education and Early Childhood Development

The Department of Education and Early Childhood Development (DEECD) brings together a range

of services for young people from before birth to the beginning of adulthood.

www.education.vic.gov.au

Department of Health and Human Services

The objective of the Department of Health and Human Services is to enhance and protect the health and wellbeing of all Victorians with emphasis on vulnerable groups and those most in need. Cemetery Sector Governance Support, which administers the *Cemeteries and Crematoria Act 2003*, is within the Health Review and Regulation Branch of the Department of Health and Human Services. Under the Act, the Secretary to the Department of Health and Human Services has powers to gather information, request audits of individual cemetery trusts and approve fees set by cemetery trusts, as well as a limited power to direct cemetery trusts.

www.dhhs.vic.gov.au

The Department of State Development, Business and Innovation

The Department of State Development, Business and Innovation (DSDBI) is the Victorian Government's lead agency for economic and regional development and innovation.

<http://www.dsdbi.vic.gov.au/>

Department of Justice

The Department of Justice (DOJ) encompasses a broad range of roles committed to the administration of justice. The department's activities also cover the drafting of legislation and the administration of various programs and tribunals, including the Victorian Civil and Administrative Tribunal (VCAT), to protect citizens' rights.

www.justice.vic.gov.au

Department of Premier and Cabinet

The Department of Premier and Cabinet (DPC) assists the government to create sustainable growth and a vibrant, innovative society by leading policy advice and implementing key projects and activities. Class A trust members must be approved by DPC before being appointed.

<http://www.dpc.vic.gov.au/>

Department of Environment and Primary Industries

The Department of Environment and Primary Industries (DEPI) is responsible for sustainable management of water resources, climate change, bushfires, public land, forests and ecosystems

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

<http://www.depi.vic.gov.au/>

Department of Treasury and Finance

The Department of Treasury and Finance (DTF) provides the government with economic, financial and resource management policy advice to assist the government in delivering its policy outcomes. Class A cemetery trusts are required to make annual reports to the Minister for Finance under the Financial Management Act.

www.dtf.vic.gov.au

The Department of Transport, Planning and Local Infrastructure

The Department of Transport, Planning and Local Infrastructure (DTPLI) along with VicRoads and other transport agencies, is responsible for public transport, roads and ports across Victoria; DTPLI is also responsible for planning and local infrastructure.

<http://www.transport.vic.gov.au/>

Department of Veterans' Affairs

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

www.dva.gov.au

Other relevant government organisations

Consumer Affairs Victoria (CAV)

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

www.consumer.vic.gov.au

Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade (DFAT) provides foreign and trade policy advice to government.

www.dfat.gov.au

Essential Services Commission (ESC)

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

www.esc.vic.gov.au/public

Valuer-General Victoria

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

www.depi.vic.gov.au

Victorian Auditor-General's Office (VAGO)

VAGO provides assurance to parliament on the accountability and performance of the Victorian public sector. VAGO may be requested to audit any cemetery trust.

www.audit.vic.gov.au

Victorian Managed Insurance Authority (VMIA)

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

www.vmia.vic.gov.au

Victorian Ombudsman

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

www.ombudsman.vic.gov.au

Victorian Public Sector Commission (VPSC)

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

www.vpsc.vic.gov.au

Victorian Registry of Births, Deaths and Marriages

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

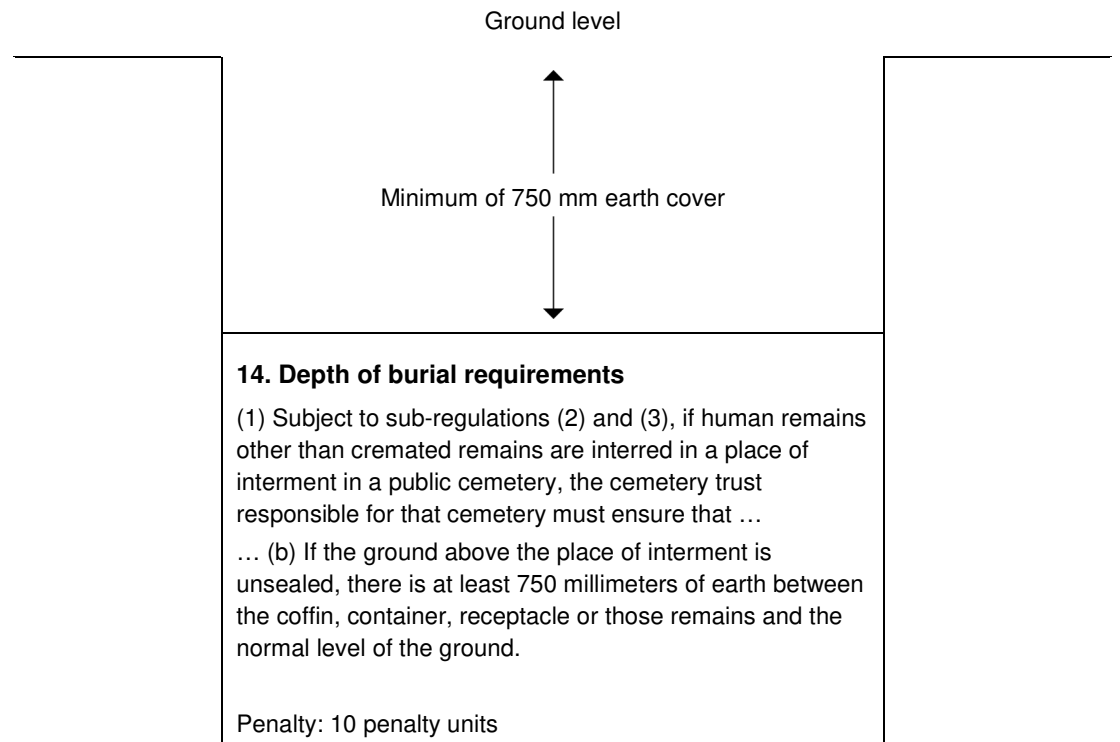
www.bdm.vic.gov.au

This page has been intentionally left blank for updates

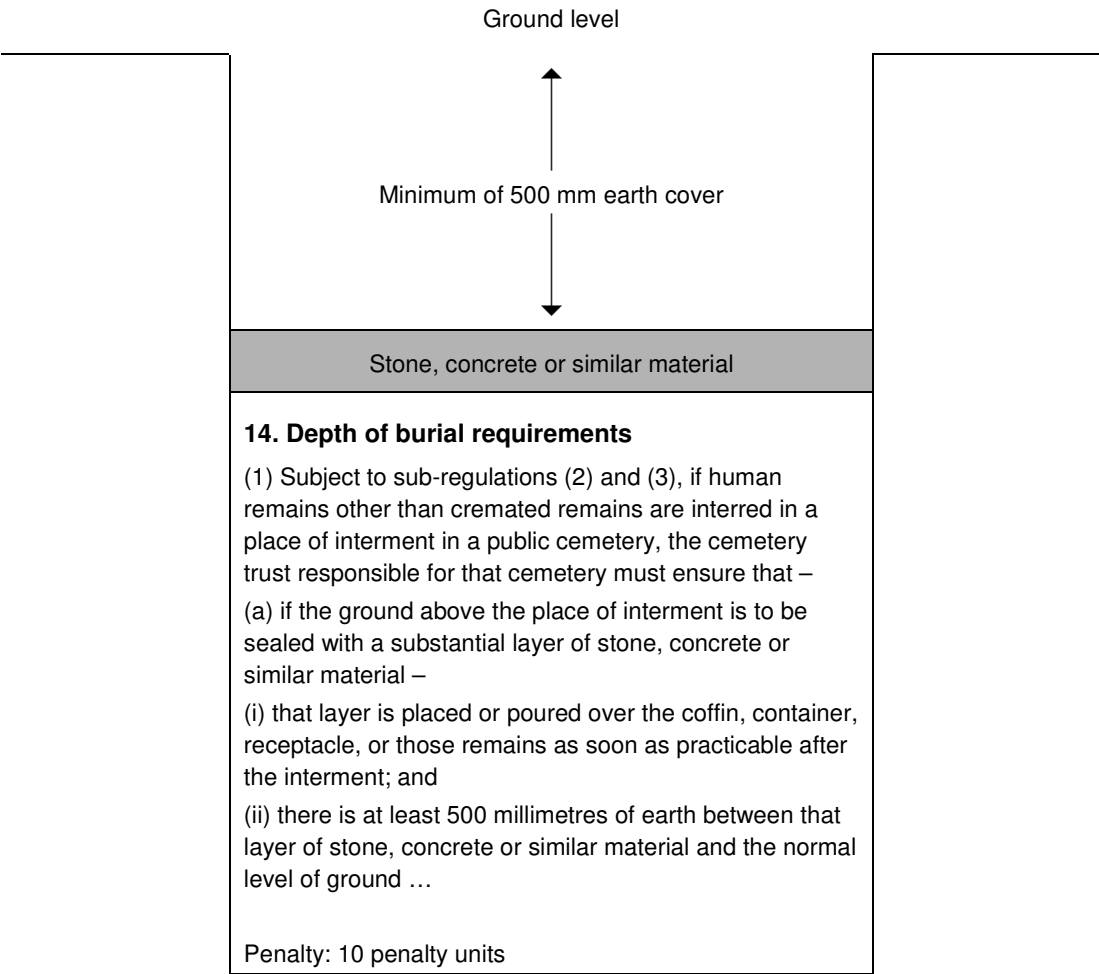
Appendix 6:

Depth of burial – Regulation 14

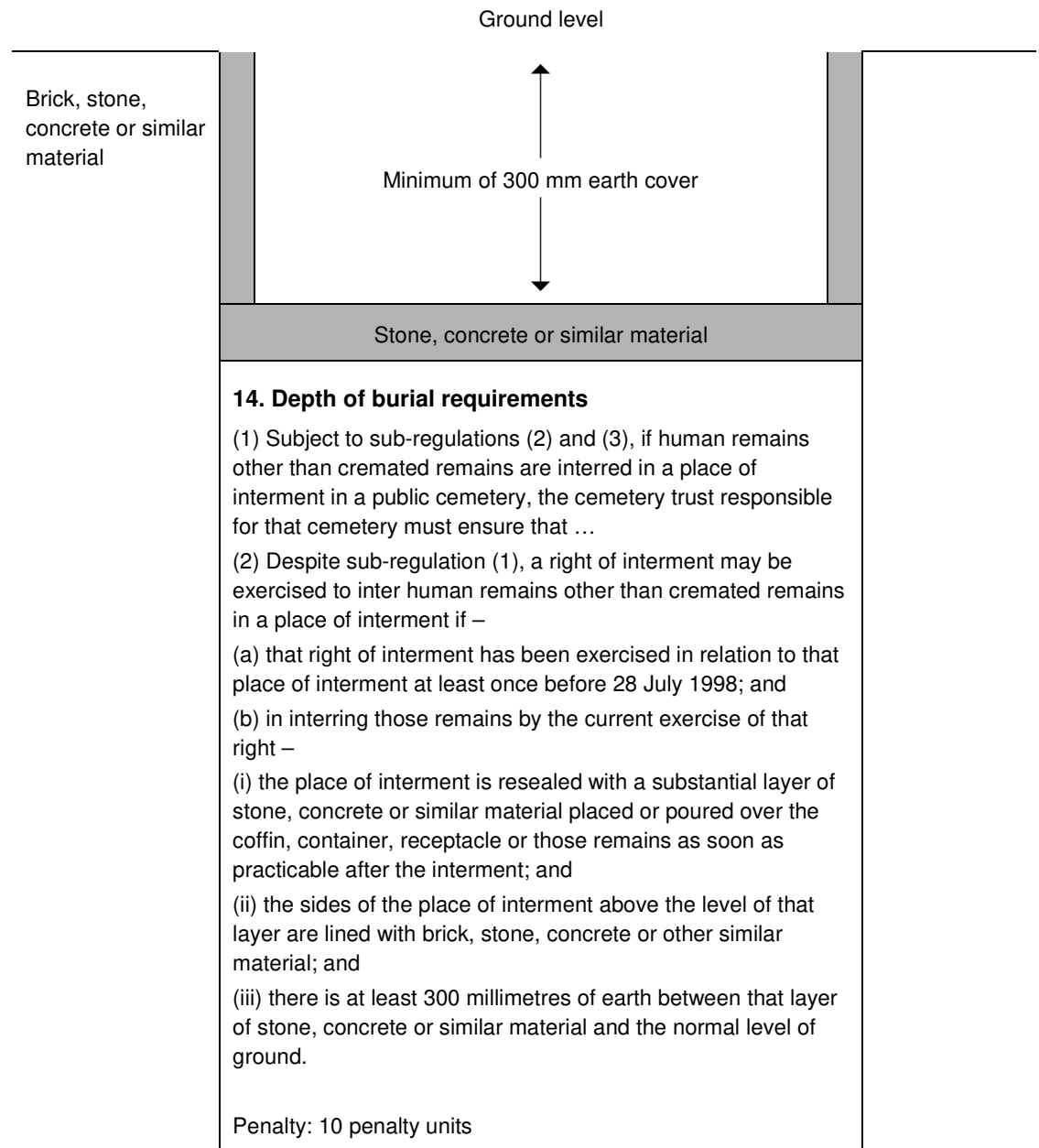
Unsealed:



Sealed cap:



Sealed cap and sides:



Appendix 7:

Information on cancelling unexercised rights of interment

Under s. 91 of the Act, subject to a range of conditions, a cemetery trust may cancel certain rights of interment and/or burial (referred to here as a 'right') where they have not been used within 25 years of their original grant.

Please refer to the table below to assist with identifying potential sites for cancellation and subsequent resale.

Date granted		Is the right current under the Act?	If the right is expired is a refund payable?	Can the right be cancelled under the Act?	If the right is cancelled is a refund payable?	Additional information
Exclusive right of burial or interment	Prior to 17 December 1974	Yes ¹ Provided that the right was not previously cancelled by the trust under s. 25(2) of the <i>Cemeteries Act 1958</i> .	Not applicable ²	Yes ³	Yes ⁴	Refer endnote 5
	Granted after 17 December 1974 and before 1 July 1980	Maybe Exclusive rights of burial or interment acquired in This period were granted for a limited period of 25 years. Refer to the 'Additional information' column for further details. If the holder of a right did not repurchase the right at the expiry of 25 years, the right expired. Where the holder did repurchase the right at the expiry of 25 years, this right is still current. For repurchased rights, refer to the information in the next row relating to rights purchased or renewed on or after 1 July 1980 and before 1 July 2005.	No The 1958 Act was clear that this type of right was to be exercised within 25 years, otherwise they expired (subject to renewal).	For repurchased rights, refer to the information in the following row relating to rights purchased or renewed on or after 1 July 1980 and before 1 July 2005.		Exclusive rights of burial or interment acquired between 17 December 1974 and 30 June 2005 were, in accordance with s. 25(5) of the 1958 Act, subject to the condition that the right must be exercised within 25 years of the date of purchase. If the right was not exercised within this time, the holder had the option to repurchase a further right to the same location, otherwise the original right ended.

Date granted		Is the right current under the Act?	If the right is expired is a refund payable?	Can the right be cancelled under the Act?	If the right is cancelled is a refund payable?	Additional information
Exclusive right of burial or interment continued	On or after 1 July 1980 and before 1 July 2005 <i>Note this includes rights repurchased during This period under s. 25(5) of the 1958 Act.</i>	Yes ¹	Not applicable ²	Yes ³	Yes ⁴	<p>The 1958 Act specified that this type of right must be exercised within 25 years or they expired (subject to renewal).</p> <p>However, the transitional provisions of the 2003 Act deem this type of right to be a right under s. 75(a).</p> <p>The terms and conditions on which a right was originally granted, such as requiring the right to be exercised within 25 years or it expired, are only preserved under the 2003 Act, where they are consistent with the provisions of this Act.</p> <p>Therefore, if the original right was for the interment of bodily remains, the condition that the right must be exercised within 25 years or it expired (subject to renewal) is inconsistent with the 2003 Act (which provides for burials in perpetuity) and therefore does not apply.</p> <p>If the right was for the interment of cremated remains, the 25-year condition is consistent with the 2003 Act, which provides for limited tenure in relation to cremated remains, and therefore this condition would continue to apply.</p>
	Prior to 1 July 2005	Yes ¹	Not applicable ²	Yes ³	Yes ⁴	Refer endnote 5

Date granted		Is the right current under the Act?	If the right is expired is a refund payable?	Can the right be cancelled under the Act?	If the right is cancelled is a refund payable?	Additional information
Agreement for the interment of human remains for a limited period	Prior to 1 July 2005	This depends on the original period that the right was granted for. If the right was current on 30 June 2005 then the transitional provisions of the 2003 Act deem the right to be a current right of interment for a period not exceeding the original period it was granted for.	No If the right expired prior to 1 July 2005 no refund is payable as the right was for a limited period.	No This type of right was granted for a limited period, and is now deemed to be a right of interment for the remainder of the original period that it was originally granted for.	Not applicable	Under the Transitional Provisions of the 2003 Act, the holder continues to hold their right for the remainder of the original period. However, as this right is now deemed to be a right of interment under the 2003 Act, at least 12 months before the right is due to expire the cemetery trust must offer to convert or extend such a right expire pursuant to s. 85 of this Act. The holder of the right is entitled to either convert or extend that right pursuant to s. 87 of the 2003 Act.

Endnotes

1. The transitional provisions of the Act provide that such rights are deemed to be current rights of interment under s. 75(a) of the Act. Note that the holder of such a right is not required to pay any further fee to secure the ongoing tenure of the right.
2. A current right of interment under s. 75(a) of the Act is perpetual and therefore will not expire.
3. If a right of interment under s. 75(a) of the Act has not been exercised within 25 years of its grant, then the trust may cancel the right in accordance with s. 91 of the Act. Section 91 of the Act requires a cemetery trust to undertake diligent enquiries to locate the holder of a right and requires the trust to follow a particular notification process prior to cancelling a right. Trusts should note that if the holder of a right is able to be contacted and indicates a desire to retain, convert or surrender their right, the right cannot be cancelled.
4. The holder of a cancelled right may subsequently seek a refund or alternative right of interment from the trust that cancelled the right pursuant to s. 92 of the Act. Note that a refund under s. 92 is to be based on the current fee payable for the same type of right, less the trust's gazetted administration fee.
5. Any terms and conditions on which a right was originally granted still apply, in respect of that right, under the new Act, provided they are not inconsistent with the provisions of the new Act. Trusts need to be aware of any terms and conditions in relation to rights previously granted, to understand whether or not such terms and conditions are still applicable.

Appendix 8:

Documentation requirements for interments and cremations

Deceased	Documentation for cremation	Documentation for interment
A person aged 28 days or older	<p>The following documentation must be submitted to the crematorium:⁴³</p> <ul style="list-style-type: none"> • Medical certificate of cause of death of a person aged 28 days or older • Application for cremation authorisation • Certificate of registered medical practitioner authorising cremation. 	<p>The following documentation must be submitted to the cemetery:⁴⁴</p> <ul style="list-style-type: none"> • Medical certificate of cause of death of a person aged 28 days or older • Application for interment authorisation.
A live-born child that dies within 28 days after the birth	<p>The following documentation must be submitted to the crematorium:</p> <ul style="list-style-type: none"> • Medical certificate of cause of perinatal death <i>Note the medical practitioner should handwrite on the certificate that it is a true copy of the original with their signature and the date (not just the tear-off slip).</i> • Application for cremation authorisation • Certificate of registered medical practitioner authorising cremation. 	<p>The following documentation must be submitted to the cemetery:</p> <ul style="list-style-type: none"> • Medical certificate of cause of perinatal death • Application for interment authorisation.
<p>A stillborn child <i>A stillborn child means a child of at least 20 weeks' gestation or, if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, with a body mass of at least 400 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, after birth.</i>⁴⁵</p>	<p>The following documentation must be submitted to the crematorium:</p> <ul style="list-style-type: none"> • Medical certificate of cause of perinatal death <i>Note this can be the tear-off slip, or a certified photocopy of the Medical certificate of cause of perinatal death. The tear-off slip referred to above may be provided in this case because there is no requirement for a second independent medical practitioner to authorise cremation.</i> • Application for cremation authorisation. 	<p>The following documentation must be submitted to the cemetery:</p> <ul style="list-style-type: none"> • Medical certificate of cause of perinatal death • Application for interment authorisation.

Deceased	Documentation for interment and cremation
<p>Foetal remains that are not a stillborn child</p> <p><i>Foetal remains that are not a stillborn child include a child of less than 20 weeks' gestation or, if it cannot be reliably established whether the period of gestation is more or less than 20 weeks, with a body mass of less than 400 grams at birth, that exhibits no sign of respiration or heartbeat, or other sign of life, after birth.⁴⁶</i></p>	<p>The application for interment or cremation must be made to the cemetery or crematorium in writing and must include:⁴⁷</p> <ul style="list-style-type: none"> • the name of the person and the organisation (if any) making the application • the category of prescribed person to which the person making the application belongs. <p>A prescribed person means:</p> <ul style="list-style-type: none"> • a registered medical practitioner who treated the person to whom the foetal tissue belonged, or • a registered medical practitioner of the hospital where the person to whom the foetal tissue belonged was treated, or a coroner. <p>The form of the application is not prescribed. An appropriate form of application, for example, would consist of a letter addressing the information requirements outlined above, and any additional logistical information that the cemetery or crematorium may require to arrange the interment or cremation.</p>
<p>Body parts</p> <p><i>Body parts include human tissue or a part of a person where that tissue or part is not part of a corpse.</i></p>	<p>The application must be in writing and include:</p> <ul style="list-style-type: none"> • if known, the full name of the person or persons to whom the body parts belong • if known, the type of body part to be interred or cremated • the name of the person and the name of the organisation (if any) making the application for cremation or interment • the category of prescribed person to which the person making the application belongs. <p>A prescribed person means:</p> <ul style="list-style-type: none"> • a registered medical practitioner who treated the person to whom the body part(s) belonged, or • a registered medical practitioner of the hospital where the person to whom the body part/s belonged was treated, or a coroner. <p>The form of the application is not prescribed. An appropriate form of application, for example, would consist of a letter addressing the information requirements outlined above, and any additional logistical information that the cemetery or crematorium may require to arrange the interment or cremation.</p>

Deceased	Documentation for cremation
<p>Human remains from interstate or overseas without valid documentation</p> <p><i>In exceptional circumstances, when the prescribed documentation cannot be met, the applicant for cremation authorisation may apply to the department for a cremation approval.</i></p>	<p>In this situation there is no specific documentation that will satisfy the requirements. Instead, when considering an application for a cremation approval, the department will need to be satisfied as to the following matters:</p> <ul style="list-style-type: none"> • that the death is not considered a 'reportable death' under the Coroners Act • that there is a stated medical cause of death of the deceased as confirmed by a relevantly qualified person • that the circumstances surrounding the death were appropriately and thoroughly investigated by the authorities in the jurisdiction in which the deceased died and that no further investigations by either the jurisdiction in which the deceased died or the Victorian authorities are likely to be necessary • that the family or representatives of the deceased are satisfied with the identified cause of death and do not feel that further investigations by the State Coroner are necessary. <p>The applicant should provide the department with as much supporting information and documentation relating to the above matters as they have available.</p> <p>It is mandatory that certified translations of original documents be provided for any foreign language documents.</p>

42 Section 131 of the Cemeteries and Crematoria Act

43 Section 116 of the Cemeteries and Crematoria Act

44 Section 4 of the Births Deaths and Marriages Registration Act 1996

45 Based on the definition of a stillborn child in the Births Deaths and Marriages Registration Act

46 Regulation 21(2) of the Cemeteries and Crematoria Regulations and s. 151 of the Cemeteries and Crematoria Act

Appendix 9:

Weighted Scale – Surrender of a right of interment

In accordance with sections 82 & 83 of the Act, the department has designed a weighted scale to allow trusts to recover expended maintenance costs relating to surrendered rights of interments (unused and used). The scale starts with a base of 3% and increases by 1.75% pa and cuts off at 45% after twenty five years. After twenty five years the trust can (under certain circumstances) undertake action to recover unused rights of interment i.e. trust can approach the owner of the right of interment as opposed to waiting for the owner to approach the trust. When processing a refund for a surrendered right of interment, trusts should use the document 'Weighted Scale – Surrender of a Right of Interment' to determine how much foregone maintenance costs the trust should retain from the refund. Trusts can also recover relevant administrative costs from the refund where appropriate (must be a gazetted fee).

Weighted scale

Surrender of a right of interment

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

Example:

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

Note: the maximum a trust can charge for maintenance is 45% (25 years).

Appendix 10:

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

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

The following examples are not intended to be an exhaustive list and trusts should contact the department for advice if they are unclear about any aspects of exhumation requirements under the *Cemeteries and Crematoria Act 2003*.

Request	Exhumation licence required	Exhumation licence not required	Lift and reposition procedure
Where a trust is requested to remove bodily remains from a grave, for example, to transfer the remains from one site to another or other circumstances where it is likely that bodily remains will be removed.	√		
Where a trust is required to check a nameplate on the outside of a coffin and can ensure that the bodily remains will not be removed from the grave.		√	
Where a trust has provided written approval for cremated remains to be removed from a place of interment. ⁴⁸		√	
Where a trust is required to reposition a coffin within a burial plot and can ensure the bodily remains will not be removed from the grave area.		√	
Where a trust receives a request to lift and deepen a place of interment for the purposes of another interment. ⁴⁹			√

⁴⁷ Written approval must be provided by the trust prior to the removal.

⁴⁸ The trust must comply with ss. 88–90 of the Act.

Appendix 11:

Copyright of trust records

Introduction

Under s. 59 of the *Cemeteries and Crematoria Act 2003*, a cemetery trust is required to maintain records in relation to interments, places of interments, cremations and rights of interments. Many of these records are only in a hard copy format. Cemetery trusts, either themselves or via a third party, have been converting these records into an electronic version either by scanning the hard copy documents or by transcribing them.

These guidelines will provide advice regarding steps a trust should take to ensure it will hold copyright over any electronic version of trust records created.

Maintaining copyright

Cemetery trusts hold copyright of all original trust records as the trust is the owner of the records. Problems may arise in relation to copyright when a new version of the original trust's records is created and the person who created the new version is claiming ownership over the work undertaken.

Before a trust engages a person to create a new version or edit existing records (whether or not that person holds a position on the trust), it is suggested that the trust:

- discuss the nature of the arrangement with the person who is going to undertake the work, including the purpose, scope and costs
- formalise the arrangement in a legally binding document that includes
 - that the trust will retain all intellectual property rights (including copyright) in all trust records and materials
 - that the trust will own the copyright over all new records created or existing records amended by the person
 - that the person gives consent in writing, in relation to all rights that are necessary for the trust to have copyright over all versions of the trust's records
 - whether the person will be paid for the work, if so the amount that the person will be paid
 - the scope that the new or amended records may be used for, including if the records may be sold.

Legal advice

The trust may wish to seek legal advice when creating an agreement or if it is unclear who has copyright over particular documents.

Appendix 12:

Reuse of an unused place of interment in a double grave (side-by-side only)

Where a trust has only issued one right of interment for a double grave that has two separate places of interment **side-by-side**, the trust will be unable to use the provisions in s. 91 of the *Cemeteries and Crematoria Act 2003* (the Act) to cancel a right of interment if one of the places of interment has been used. In this case the original right of interment was exercised when the first interment took place in the double grave, and it is not possible to use s. 91 to cancel a right of interment that has already been exercised.

Updating a trust's records

Before a trust can reclaim an unused place of interment in a double grave (side-by-side only), it will need to update its records and issue a new right of interment for the unused place of interment.⁴⁹

To update its records, the trust should place an advertisement in local papers requesting members of the public to notify the trust if they believe they have a claim to the unused place of interment within the cemetery. The trust should ensure the ad provides as much information about the original right of interment as practicable. For example, the notice should include:

- the trust's purpose for placing the ad, for example, 'The XYZ trust is seeking to update its records in relation to unused places of interment in double graves in the XYZ cemetery ...'
- the family name of the holder of the right of interment for the double grave, the date the grave was purchased and the date the original right was exercised
- the time period for responding to the ad (it is recommended that 45 days be set aside to allow members of the community to respond)
- the trust's contact details.

The trust may need to place multiple advertisements during this time to ensure it can obtain as much information as possible to update its records.

Where a claim is received in relation to an unused place of interment

The trust should evaluate any claims made and, where a person can demonstrate to the trust's satisfaction that they have a valid claim to an unused place of interment, the trust should issue a new right of interment for that unused place of interment to the claimant.⁵⁰

Where practicable, a new right of interment should be reissued on the same terms and conditions and issue date of the original.

Once a new right of interment has been issued the trust should ensure its records are updated. The holder of this 'new' right of interment has the same rights and obligations as any other right of interment holder over that place of interment.

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

50 If a person can demonstrate they have a legitimate claim on the unused place of interment, the trust should also ensure it updates its records to reflect this person's rights in relation to the exercised place of interment.

Where no claim is made in relation to the unused right of interment

The trust can:

- amend its records and issue a separate right of interment for the unused place of interment to the original owner of the right
- determine if it is going to cancel the right in accordance with s. 91 of the Act.

Cancelling a right of interment under section 91

Once the trust's records have been updated and if the trust determines that it will cancel the reissued right of interment, it can follow the normal process for cancelling a right set out under s. 91 of the Act.

Section 91 of the Act requires the trust to advertise its intention to cancel the right of interment prior to the actual right being cancelled.⁵¹ Once a right of interment has been cancelled in accordance with the Act, the trust is able to make the unused place of interment available for purchase.⁵²

51 The process for cancelling a right of interment is set out in Topic 24 of the Manual for Victorian Class A cemetery trusts and Topic 22 of the Manual for Victorian Class B cemetery trusts.

52 Please note, however, that if at any time the former holder of the right of interment approaches the trust to use the grave and exercise the right of interment after it has been cancelled, the trust must either provide them with a full refund of the current market value of the right of interment or offer them an alternative comparable right of interment at no cost.

Appendix 13:

Leasing and Licensing of cemetery land

Under s. 37(1) of the *Cemeteries and Crematoria Act 2003* (the Act) a cemetery trust may grant a lease of any land in a public cemetery for which it is responsible with the Minister for Health's approval of the purpose of the lease and its terms and conditions. Under s. 36(1) of the Act a cemetery trust may grant a licence to enter and use any part of the land in a public cemetery for which it is responsible with the Minister for Health's approval of the purpose of the licence and its terms and conditions.

The Minister for Health must approve the purpose of a lease or licence to ensure cemetery land is not used in a manner that may be detrimental to the purposes for which the land is reserved (cemetery purposes).

The Act also specifies that a licence must be granted for a period not exceeding three years, and a lease must be for a specified term not exceeding 21 years.

Requests for ministerial approval should be submitted directly to the department for processing. When submitting a request, please provide:

- a summary of the transaction, including rental rate, term and any special conditions
- a copy of the draft lease or licence agreed between the parties (prior to entering into an agreement)
- valuation advice
- any other relevant information.

Victorian Government policy requires that a grant of a lease must be at the current market value assessed by the Valuer-General Victoria. The Minister for Health may approve the grant of a non-commercial lease. When considering whether to approve a rental rate below market value (non-commercial) the Minister will consider the estimated loss of revenue and the public or community benefits arising from the non-commercial lease.

Trusts should seek independent legal advice when considering whether to enter into an agreement. Trusts should also check with their local council if a planning permit is required (for example, for a mobile base station).

Trusts should ensure they allow sufficient time for the approval process, which may take in excess of three months.

Further Information

For further information please contact the department on 1800 034 280 or email cemeteries@dhhs.vic.gov.au

Appendix 14:

Mausoleum establishment and construction guidelines

Introduction

Under s. 22 of the *Cemeteries and Crematoria Act 2003* a cemetery trust must apply to the Secretary of the Department of Health and Human Services for approval to establish a mausoleum in a public cemetery for which it is responsible. The trust must submit a detailed project proposal to the manager of Cemetery Sector Governance Support.

These guidelines provide detailed advice about the information that the trust must provide in its application. A copy of these guidelines can be downloaded from the department's website at <http://www.health.vic.gov.au/cemeteries/guidelines/>.

Market analysis (demand)

The trust must provide clear evidence that there is demand for the new mausoleum. When demonstrating this demand the trust should at a minimum:

- outline any consultation process it has undertaken with the community to determine demand
- provide the results of relevant surveys
- support its analysis with data from the Australian Bureau of Statistics.

The trust will also need to demonstrate that it has considered what impact constructing a new mausoleum will have on other trusts with similar services in the immediate catchment area. A copy of the market analysis must be included in the application.

Actuarial analysis

The actuarial report must be undertaken by a registered actuary. The actuary will be expected to provide a report which confirms the trusts marketing and financial assumptions and the expected return on investment on the proposed mausoleum project. A copy of the actuarial report must be provided to the department as part of the trusts application.

Purchasing processes

All purchases made by a cemetery trust must comply with Victorian Government's procurement policy. The application must include details of the procurement process that the trust will undertake.

Identification of project costs

All project costs need to be accounted for and assessed against projected revenue streams. The trust must demonstrate that the project's return on investment will exceed a risk-free market-based return. This will ensure that the allocated funds are put to the best use and that the project is financially viable.

The trust must use the department's Mausoleum construction finance model, designed in Microsoft Excel format, to report the project costs.⁵³ The trust must provide both a printed and an electronic version of the completed Excel workbook with its application.⁵⁴

Building and construction information

The Victorian Government's *Code of practice for the building and construction industry* is available on the Building Commission website at

<http://www.buildingcommission.com.au/resources/documents/Code_of_Practice_Building.pdf>

In its application to the Secretary the trust will need to give an undertaking that it intends to:

- obtain working drawings and written certification – signed by an architect registered in an Australian state or territory, or by a civil engineer registered as a building practitioner in the State of Victoria – to the effect that the design, construction and completion of the mausoleum will be undertaken according to the current Cemeteries and Crematoria Regulations 2015 and *Australian Standard: Above-ground burial structures* (AS 4425-1996), and all subsequent amendments thereof
- obtain advice from the local council's planning department about any specific requirements in relation to planning approvals (note that it may not be necessary to obtain a building permit)
- prepare a maintenance budget for the upkeep of the mausoleum
- develop an asset maintenance manual, including an annual maintenance logbook.

Further information

Additional information can be obtained from Cemetery Sector Governance Support on freecall 1800 034 280 or by writing to the unit at:

Cemetery Sector Governance Support
Department of Health and Human Services
GPO Box 4057
Melbourne VIC 3001

Note: In addition to these guidelines, the Mausoleum construction finance model – user guide and costing model (excel spreadsheet, to be completed on line) can be found on the departmental website at the following link:

http://www.health.vic.gov.au/cemeteries/guidelines/mausoleum_est.htm

⁵³ Microsoft Excel is required in order to open and complete the model. The Mausoleum construction finance model user guide can be downloaded from the department's website at <<http://www.health.vic.gov.au/cemeteries/guidelines>>.

⁵⁴ The trust will need to have access to all project costs and projected sales figures in order to complete the workbook developed for the model.

Appendix 15:

Cemetery Land Development – Guidelines

Introduction

From time to time cemetery trusts need to develop new areas of their cemeteries in response to market demand. Cemetery Sector Governance Support has prepared these guidelines to assist trusts with the preparation of plans to undertake new development projects. This document has been developed in conjunction with the 'Cemetery Land Development Costing Model' which is a Microsoft Excel spreadsheet designed to assist cemetery trusts in pricing Rights of Interment for any new development.

Trusts must submit their applications to the Manager Cemetery Sector Governance Support. The trust is to provide a detailed project proposal which must contain the following information:

- The completed Costing Model (both electronically and in hard copy).
- All relevant written quotations where available.

The completed model can be used to support future fee applications associated with the proposed development area. The model can also be used to assist trust evaluate their current pricing of existing developments to ensure that their products are priced appropriately.

Market analysis (demand)

The trust should provide evidence that there is demand for the new development area – when demonstrating this demand the trust should:

- Outline any consultation process it has undertaken with the community to determine demand.
- Provide the results of any relevant surveys and/or evidence of demand.
- Provide analysis of data from the Australian Bureau of Statistics to support its project proposal (where appropriate).

The trust should also demonstrate that it has considered what impact developing a new area will have on other trusts with similar services in the immediate catchment area. A copy of the marketing analysis must be provided to the department as part of the trusts application.

Purchasing processes

Details of the procurement process that the trust will undertake must be provided to the department as part of the trusts application. All trust purchases must be in accordance with the Government Purchasing Policy Directives.

Identification of project costs

The trust must use the Microsoft Excel spreadsheet 'Cemetery Land Development Costing Model' to report its project costs.⁵⁵ All project costs need to be accounted for in the model, and any supporting documents provided to the department for assessment where available.

⁵⁵ Microsoft Excel or equivalent software is required in order to open and complete the model, which is intended to be used in conjunction with its user guide: Cemetery Land Development Costings Model – User Guide.

The user guide for the Cemetery Land Development Costing Model can be found on the Department's website.

Building and construction information

The trust is advised to follow the Code of Practice for any building and construction works undertaken and should undertake the following:

- Obtain advice from the local council planning department to ascertain any specific requirements in relation to planning approvals (note that there may not be a requirement to obtain a building permit).
- Prepare a maintenance budget for the upkeep of the development.
- Develop an asset maintenance manual, including an annual maintenance logbook.

The Code of Practice for the building and construction industry is available at <www.buildingcommission.com.au>.

Further information

Additional information can be obtained from Cemetery Sector Governance Support's free hotline 1800 034 280 or by writing to the Unit at:

Cemetery Sector Governance Support
Department of Health and Human Services

GPO Box 4057
Melbourne VIC 3001

Note: In addition to these guidelines, the cemetery land development – user guide and costing model (excel spreadsheet to be completed on line) can be found on the departmental website at the following link:

<http://www.health.vic.gov.au/cemeteries/guidelines/>

Appendix 16:

Code of practice

Relating to the sale and supply of memorialisation goods and services by cemetery trusts and other alternative suppliers in Victorian public cemeteries. (see attachment).

Note: An electronic version can be located on the departmental website at the following link:

<http://www.health.vic.gov.au/cemeteries/guidelines/code.htm>

Appendix 17:

Insurance – Victorian Managed Insurance Authority (VMIA)

The Victorian Managed Insurance Authority (VMIA) is the captive insurer and risk adviser to the Victorian Government.

VMIA provides a comprehensive range of insurance and risk management services to the State, including cover to more than 500 Victorian public cemetery trusts established under the *Cemeteries and Crematoria Act 2003*. (see attachment).

Note: An electronic version can be located on the departmental website at the following link:

http://www.health.vic.gov.au/cemeteries/cemetery_trusts/insurance.htm

This page has been intentionally left blank for updates

Appendix 18:

Further guidelines and policies

The following guidelines and policies can be located on Cemetery Sector Governance Support's website under the associated links provided below:

Appointment and remuneration guidelines for Victorian Government boards, statutory bodies and advisory committees

These Guidelines provide Cabinet, Ministers and Departments with advice on making appointments and determining appropriate fee levels for directors and members of various boards, committees and tribunals.

<http://docs.health.vic.gov.au/docs/doc/Appointment-and-Remuneration-Guidelines-for-Victorian-Government-Boards--Statutory-Bodies-and-Advisory-Committees>

Cemetery Model Annual Reporting for (current year) Finance

http://www.health.vic.gov.au/cemeteries/guidelines/annualrep_glines30jun11.htm

Community Advisory Committee Guidelines for Class A Cemetery Trusts

The community advisory committee (CAC) guidelines are designed to assist Class A cemetery trusts to establish effective CACs that can inform on consumer and community views in relation to the provision of cemetery trust services.

http://www.health.vic.gov.au/cemeteries/guidelines/cac_glines.htm

Crematorium requirements – Guidelines for establishing crematoria

Guidelines on applications for approval to establish and operate a crematorium in Victoria

<http://docs.health.vic.gov.au/docs/doc/Guideline-on-applications-for-approval-to-establish-and-operate-a-crematorium>

Good practice guide on governance for Victorian public entities

This guide covers the key concepts of public entity governance and how best to apply them.

<http://www.vpsc.vic.gov.au/products/view-products/welcome-to-the-board.html>

Managing Native Vegetation in Cemeteries

This document outlines the management of native vegetation for all Victorian cemeteries.

http://www.health.vic.gov.au/cemeteries/guidelines/native_vegetation.htm

Secretary's directions

Directions to trusts issued by the Secretary to the Department of Human Services under s18(1) of the *Cemeteries and Crematoria Act 2003*

<http://docs.health.vic.gov.au/docs/doc/Secretarys-directions>

Strategic and Annual Plan Guidelines

The purpose of these guidelines is to provide Class A cemetery trusts with an overview of:

- the corporate planning process
- their obligations under the *Cemeteries and Crematoria Act 2003* with respect to planning
- the approval and evaluation process of trust plans.

http://www.health.vic.gov.au/cemeteries/guidelines/sap_glines.htm

Appendix 19:

Forms available on the departmental website

The following forms can be located on the departmental website under the following link:

<http://www.health.vic.gov.au/cemeteries/forms/>

A

Abstract of Accounts

Application to Establish or Alter a Memorial or Place of Interment

Appointment Application – Class A
– Class B

C

Class A cemetery trust advice & assistance for Class B cemetery trusts

Cremation Authorisation

- Application for Cremation Authorisation
- Certificate of Registered Medical Practitioner Authorising Cremation
- Guidance notes for medical practitioners authorising cremation

Cremated remains – Interment Application

D

Declaration of Private Interest

Delegation instrument for Class B trusts with no paid staff

E

Exhumation Licence Applications

F

Fee Applications – Guidelines for development of fees Class B trusts

G

Grant applications

I

Interment Authorisation Application

Interment and right of interment registers

P

Private Burial Application

R

Resignation letter – template (trust member)

Right of Interment Application

S

Statutory declaration

Appendix 20:

Exhumation – process

As referred to in Topic 14 'Exhumations', the following information has been developed in conjunction with the Cemeteries and Crematoria Association of Victoria (CCAV) and has been provided to assist trusts to understand:

- the process of obtaining an Exhumation Licence
- the cemetery trust's responsibilities, compared to the funeral directors' obligations when exhuming
- workplace safety
- liaising with family members during this process.

Trusts may find this useful when developing their own specific procedure manuals, policies and guidelines.

1. Introduction

A request for an exhumation is normally received from a representative of the holder of the right of interment (HROI). This may be a funeral director, a family members or the HROI themselves.

Under section 158 of the *Cemeteries and Crematoria Act 2003* (the Act), an exhumation licence is required where human remains⁵⁶ are to be removed from a place of interment and reinterred at another location, including graves, vaults and mausoleum crypts. In some circumstances where the remains are to be reinterred in the same place of interment, the procedure can be completed as a 'lift and reposition' subject to sections 88–90 of the Act.

The CCAV advised that a cemetery trust should have a procedure manual specific to their own cemetery site/s detailing the practical operational process and methodology for performing an exhumation. This will include the training of staff and ability to write up a specific Risk Assessment, Job Safety Analysis or Safe Work Method Statement prior to commencing the exhumation.

2. Obtaining an exhumation licence

An exhumation licence from the Department of Health and Human Services (the department) must be issued before an exhumation can take place. An application for an exhumation licence must be lodged with the Department at least seven days prior to the proposed exhumation.

As part of the application for exhumation licence process, the representative of the HROI will ask the cemetery trust for a letter confirming the following:

- 2.1 The name of the current HROI.
- 2.2 Whether the trust has any objections to the exhumation.

At this stage, the trust should also identify:

- 2.3 If there is a monument on the grave as this will need removing prior to the exhumation.
- 2.4 Any reason why removing the remains may pose a health and safety risk, if there is such a reason, a detailed risk assessment should be performed by the trust including engineering reports if applicable.

⁵⁶ An exhumation licence is not required for the removal or interment of cremated remains or body parts.

3. Cemetery trust responsibilities

If the exhumation licence is granted and has been received from the Department, confirm the following with the representative:

- 3.1 The exhumation must be completed as per the Department of Health and Human Services' Exhumation Licence.
- 3.2 The trust will need to identify the correct grave or crypt site (use industry best practice of verifying data records to plans as well as a site location inspection by two trained people; an authorised trust representative and the gravedigger/contractor) and provide the funeral director with access to the coffin, casket or deceased's remains. Funeral directors are responsible for the removal of the deceased's remains from the grave (if the coffin cannot be removed intact).
- 3.3 Trusts and funeral directors must ensure that the process is carried out with all occupational health and safety (OH&S) risks identified and appropriate measures implemented to minimise these risks.
- 3.4 The preferred day and time agreed between all parties to perform the exhumation. Notify the Department of this at least 24 hours prior to exhuming.
- 3.5 If necessary, the representative is to arrange for the removal of the memorial (including footings and piers) well in advance of the exhumation.
- 3.6 Ensure the gazetted trust fee for conducting an exhumation has been paid.
- 3.7 Ensure all exhumation equipment, tools and safety gear including personal protective equipment (PPE) and hygiene products are available.

4. General responsibilities

4.1 Cemetery Manager/Supervisor

- Notify the Department of day and time of exhumation.
- Ensure the risks are assessed (complete a Risk Assessment or Job Safety Analysis).
- Ensure risk control is agreed to by all parties.
- Ensure safe work procedures are followed and supervised at all times.
- If a member of the public (such as a family member or friend of the deceased) indicates that they wish to attend the exhumation, advise the individual of the potentially distressing nature of the process.⁵⁷
- Assist the nominated funeral director to liaise and consult with the family representative if they are present.
- Notify the Department of completion of the exhumation and file report.

⁵⁷ If family or friends cannot be discouraged from attending an exhumation, the trust should consider requesting that they sign a disclaimer indemnifying the trust against any potential psychological impact of witnessing an exhumation.

4.2 Grave Diggers

- Work with the Manager/Supervisor to assess the risks and develop an appropriate procedure.
- Assemble all required equipment, tools and materials and check they are both suitable and in good order.
- Excavate the grave (or remove crypt shutter seal), make it safe and expose the coffin.
- If possible, bring the coffin to the surface (or remove from crypt) and hand over to the funeral director.
- Check and wear appropriate protective clothing and equipment.
- Always work safely and be aware of hygiene risks.
- Once exhumed, backfill the grave and make good, or with crypt, reseal vent and drain holes and reseal shutter seal.

4.3 Funeral Directors

- Attend the cemetery on the day of exhumation.
- Take control of the coffin once it reaches ground level or is removed from crypt, or if the coffin has disintegrated, to handle the human remains to get them to ground level or removed from crypt and enclose them in a suitable container.
- Supply and wear all required protective clothing and equipment.
- Assist with liaising with family representative.

5. Preparing the site prior to exhumation

The remains are not to be removed from the place of interment until the scheduled day and time of the exhumation as confirmed with the Department. If the day and time need to be varied, inform the Department and other stakeholders.

The grave can be pre-dug (or, with concrete vaults, concrete lid removed) prior to the exhumation to investigate the condition of the coffin and remains and to assist in preparing for the exhumation. It is not recommended to remove the crypt seal until the day of exhumation.

If pre-digging, it is important to do the following:

- 5.1 Inform the representative that the grave will be pre-dug to determine the condition of the coffin.
- 5.2 Install shoring as required.
- 5.3 Confirm the name on the plate is correct if legible.
- 5.4 If the coffin is deteriorated to the point where it cannot be lifted out of the grave:
 - Clear the soil from the lid and 100mm around the sides of the coffin.
 - Leave the coffin in this position and place a locked lid or other substantial cover over the grave in readiness for the exhumation.
 - Notify the funeral director that they will need to supply a new coffin and sufficient staff to remove the human remains.

5.5 If the condition of the coffin is deemed structurally sound and can be lifted out of the grave:

- Clear the soil over the lid and remove the soil from the sides of the coffin.
- Once the coffin is loosened from the bottom of the grave, leave the coffin in this position and place a locked lid or other substantial cover over the grave in readiness for the exhumation.
- If water is trapped in the coffin, it can be lifted off the base of the grave to assist with drainage. A pump can also be used if needed to allow draining prior to exhumation.

Under no circumstances should the remains or coffin be removed from the grave during the pre-digging process.

6. Day of exhumation

On the scheduled day and time of the exhumation, ensure that the person authorised by the trust to supervise exhumations is present.

Cemetery trust staff are able to prepare the site in readiness for the exhumation, this will include ladders, lifting equipment, shovels, installing a safety barrier around the work zone and PPE/hygiene gear. No coffin or remains are to be removed from the grave or crypt unless the authorised trust delegate is present and gives consent to commence the exhumation.

It is advisable that any family representative is met at the specific location away from the grave or crypt. This will give the trust an opportunity to advise them of the condition of the coffin and explain the process that will occur.

The exhumation will only take place when all safety equipment is in place and ready; the funeral director is present with sufficient staff; a replacement coffin is available; the trust delegate authorised to supervise exhumations is present and all non-core people are outside the safety barrier.

It is imperative that all the human remains to be exhumed are removed from the place of interment, and only the funeral director's staff or cemetery staff who have obtained their Mortuary Hygiene Certificate handle the human remains. Once the coffin or remains have been removed from the place of interment, transfer these to a new coffin or onto a transportation tray. The remains can then be transferred to another site within the cemetery, or if the remains are in a sound receptacle, removed from the cemetery in accordance with the conditions of the exhumation licence.

If safe to do so, allow the family representative to view the name plate of the original coffin (if legible), then take them back to a location away from the grave and debrief them to ensure that they are comfortable with what occurred and have any queries answered.

If any coffin materials remain in the grave or crypt, remove these and dispose of as per trust procedures, which under normal circumstances, would be immediately after the exhumation.

The grave can then be backfilled, or the crypt resealed, as per normal procedures and make good the site. This should occur as soon as possible after the exhumation and any subsequent re-interment at the site.

7. Possible risks

While the actual extent of the following risks may vary from one exhumation to another, all trusts should be aware of the risks associated with:

- 7.1 Identifying the incorrect interment location. Double check cemetery plans and records to confirm location and cemetery supervisor should inspect location with gravedigger. Also check name plate once located (if legible).
- 7.2 Digging of the grave and the need for work to be carried out at the base of the grave up to a depth of 2.7m (9') – (or even deeper), or with a crypt, working at heights of up to 4.2m (12').
- 7.3 Possible unknown hazards, such as floral tribute wire, metal components from the coffin, broken glass/crockery, presence of embalming fluid, noxious (poisonous) gases, micro-organisms and coffin wood, as well as contaminated soil and substances (including water).
- 7.4 Lifting the remains with or without a coffin.
- 7.5 Working under pressure and working to a time limit.
- 7.6 Working in difficult conditions, including wearing a lot of PPE.
- 7.7 Weather conditions.
- 7.8 Potential psychological impact to those present.

Further advice and information can be obtained from:

Class A cemetery trusts

Ballarat

Telephone: (03) 5332 1469

Email: balgcm@ballaratcemeteries.com.au

Bendigo

Telephone: (03) 5446 1566

Email: enquiries@rpcv.com.au

Geelong

Telephone: (03) 5249 3939

Email: info@gct.net.au

Greater Metropolitan Cemeteries Trust

Telephone: (03) 9355 3100

Email: enquiries@gmct.com.au

Southern Metropolitan Cemeteries Trust

Telephone: (03) 8558 8278

Email: enquiries@smct.org.au

Cemeteries and Crematoria Association of Victoria (CCAV)

Telephone: (03) 9863 6911

Email: admin@ccav.org.au

Cemetery Sector Governance Support

Freecall: 1800 034 280

Email: cemeteries&crematoria@health.vic.gov.au

Acronyms and abbreviations

ATO	Australian Taxation Office
CAV	Consumer Affairs Victoria
CEO	chief executive officer
ESC	Essential Services Commission
FBT	fringe benefits tax
GSERP	Government Sector Executive Remuneration Policy
GST	goods and services tax
OH&S	occupational health and safety
OHSMS	Occupational Health and Safety Management System
PAA	<i>Public Administration Act 2004</i>
PAYG	pay as you go tax
SRO	State Revenues Office
VAGO	Victorian Auditor-General's Office
VMIA	Victorian Managed Insurance Authority
VPSC	Victorian Public Sector Commission (formerly State Services Authority)