

|  |
| --- |
| Delegating cemetery trust powers |
| Guidance for Class B cemetery trusts |
| OFFICIAL |

# Background

The *Cemeteries and Crematoria Act 2003* (the Act) imposes a range of statutory powers and functions on cemetery trusts. Many of these powers and functions can be delegated to enable appropriate and efficient operations and decision making. A delegation authorises a person to exercise powers and perform functions specified in an instrument of delegation.

# Delegation of trust powers and functions under the Act

Section 15 of the Act provides for a cemetery trust to delegate many of its powers and functions under the Act to a trust member, the trust secretary or other trust employees.

Section 15 of the Act does not permit delegation of trust powers and functions under the Cemeteries and Crematoria Regulations 2015 (the Regulations). Further information about trust powers and functions under the Regulations is provided below.

Section 15(1) of the Act sets out the powers cemetery trusts **cannot** delegate. This includes the power to:

* make cemetery trust rules
* buy or sell land
* lease or licence land
* establish crematoria
* establish mausolea facilities
* fix fees and charges
* borrow and invest
* delegate.

Section 15(4) of the Act requires a cemetery trust to keep a copy of any delegation of a power or function and a record of all the delegations it has made under s. 15 of the Act.

## Instrument of delegation

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

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

A sample delegation instrument for recording statutory delegations is available for download at [Class B cemetery trust governance](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance>.

# Trust powers and functions under the Regulations

The Regulations do not provide for the delegation of trust powers and functions under the Regulations. A cemetery trust may however wish to engage an agent to act on their behalf in performing these powers and functions. The use of an agent should be limited to practical or administrative powers and functions, consistent with cemetery trust powers and functions under the Regulations.

Examples of powers and functions under the Regulations that may be exercised under agreement by an agent include:

* ensuring requirements for depth of burial and/or concrete lined graves are met; or
* ensuring requirements for interment of bodily remains or body parts in a mausoleum are met (for example, the type of receptacle used and sealing the crypt following interment).

# Accountability

The use of a delegate or an agent does not remove a cemetery trust’s accountability for the exercise of a power or function.

When delegating powers or functions, a cemetery trust should consider the skills required to perform the powers or functions and select the delegate or agent accordingly. Cemetery trusts should ensure they have policies and procedures in place to support delegates and agents, and regularly review their actions.

Under s. 16 of the Act, a trust member is not personally liable for anything done or omitted to be done in:

* good faith in the exercise of a power or function under the Act or the Regulations, or
* the reasonable belief that the act or omission was in the exercise of a power or the carrying out of a function under the Act or the Regulations.

Any liability resulting from an act or omission by a trust member attaches instead to the cemetery trust.

|  |
| --- |
| To receive this document in another format, phone 1800 034 280, using the National Relay Service 13 36 77 if required, or [email the Cemetery Sector Governance Support Unit](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>.  Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.  © State of Victoria, Australia, Department of Health, March 2023.  ISBN 978-1-76131-074-4 (pdf/online/MS word)  Available at [Class B cemetery trust governance](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance> |