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| Fraud and corruption control and public interest disclosures framework  Class B cemetery trusts |
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# 1 Introduction

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| Cemetery trust name |  |

The cemetery trust named above is hereafter referred to as ‘the cemetery trust’. The cemetery trust is an independent statutory body established under the *Cemeteries and Crematoria Act 2003* (Cemeteries Act).

## 1.1 Purpose

The purpose of this document is to describe the roles and responsibilities of cemetery trust members regarding the:

* management of fraud and corruption
* process of reporting fraud and corruption
* procedures for handling disclosures of improper conduct, including detrimental action taken by public bodies or public officers performing public functions.

## 1.2 Definition of fraud

The cemetery trust has adopted the definition of fraud in the Australian Standard for Fraud and Corruption Control AS 8001-2021 defined as:

*dishonest activity causing actual or potential gain or loss to any person or organisation including theft of moneys or other property by persons internal and/or external to the organisation and/or where deception is used at the time, immediately before or immediately following the activity.*

## 1.3 Definition of corruption

The cemetery trust has adopted the definition of corruption in the Australian Standard for Fraud and Corruption Control AS 8001-2021 defined as:

*dishonest activity in which a person associated with an organisation (e.g. director, executive, manager, employee or contractor) acts contrary to the interests of the organisation and abuses their position of trust in order to achieve personal advantage or advantage for another person or organisation. This can also involve corrupt conduct by the organisation or a person purporting to act on behalf of and in the interests of the organisation in order to secure some form of improper advantage for the organisation, either directly or indirectly.*

## 1.4 Statement of attitude toward fraud and corruption

The cemetery trust will not tolerate fraud or corruption.

If the cemetery trust engages employees or contractors, the cemetery trust is responsible for conveying and promoting this message to employees and contractors.

## 1.5 Code of Conduct

The document aligns with the Victorian Public Sector Commission’s *Code of conduct for directors of Victorian public entities* (the Code of Conduct) established under the *Public Administration Act 2004*.

## 1.6 Related policies and procedures

The cemetery trust has related policies and guidance which regulate practices and behaviours that should be read in conjunction with this document:

* Gifts, benefits and hospitality policy
* Cash management policy
* Managing conflicts of interest factsheet
* Conflict of interest management plan

## 1.7 Roles and accountability for fraud and corruption control

All cemetery trust members have a duty to:

* comply with legislation, policy and directions
* act in good faith and with skill, care and diligence
* act with honesty and integrity
* declare conflicts of interest
* act fairly and impartially
* act in a financially responsible manner.

In addition, the trust chairperson is responsible for:

* exemplifying the Victorian public sector values and Code of Conduct
* assisting trust members in their understanding of their role, responsibilities and accountability
* ensuring systems are in place to enable effective and accountable risk management, financial management and records management
* ensuring conflicts of interest are disclosed and managed appropriately
* managing poor trust member behaviour.

# 2 Planning and resourcing

## 2.1 Program for fraud control planning and review

The cemetery trust will review this document every two years and trigger reviews may occur, for example in response to changes to legislation.

## 2.2 External assistance

The cemetery trust will contact the department’s Cemetery Sector Governance Support Unit or a Class A cemetery trust for assistance as required.

## 2.3 Internal audit activity in fraud and corruption control

Compliance with this document is a standing agenda item on the cemetery trust’s meeting agenda.

# 3 Fraud and corruption prevention

## 3.1 Chairperson commitment

The trust chairperson is committed to ensuring an ethical and high-integrity cemetery trust that does not tolerate any level of fraud or corruption. The trust chairperson is responsible for conveying and promoting this message to trust members.

## 3.2 Fraud and corruption-related risk assessment

The cemetery trust will conduct a fraud risk assessment every two years and trigger reviews may occur, for example when there is a change in trust membership, employees or contractors. The risk assessment will include the following areas:

* Revenue collection
* Tendering processes, purchasing and contract management
* Information technology and information security
* Services provided to the community
* Allowances and expenses
* Property (including intellectual property) and other physical assets

## 3.3 Position rotation

The cemetery trust will rotate the position of chairperson as determined by the cemetery trust.

## 3.4 Communication and awareness of fraud and corruption

Members of the cemetery trust will be made aware of fraud and corruption risks as part of the induction process led by the chairperson. If the cemetery trust engages employees or contractors, it will promote awareness of fraud and corruption risks to employees or contractors.

## 3.5 Trust member screening

The cemetery trust conducts referee checks for applicants seeking appointment as required in the department’s *Application guidelines for appointment to a Class B cemetery trust*.

Cemetery trust members are screened by the department as part of the appointment process in accordance with the *Appointment and remuneration guidelines* issued by the Department of Premier and Cabinet.

## 3.6 Employment and contractor screening

If the cemetery trust engages employees or contractors, it will conduct referee checks and require verifiable evidence of qualifications.

# 4 Fraud and corruption detection and reporting

## 4.1 Fraud and corruption detection program

Fraud and corruption is a standing agenda item on the cemetery trust’s meeting agenda.

Under the Cemeteries Act, the cemetery trust is required to submit an annual financial report to the department to give a true and fair view of its financial position and performance.

The cemetery trust may be selected for review under the department’s performance support program for Class B cemetery trusts.

## 4.2 Managing a report of fraud or corruption

Members of the cemetery trust may report fraud or corruption to the cemetery trust during a trust meeting, directly to the trust chairperson or to the department.

The cemetery trust will report fraud or corruption to the department quickly and decisively whilst maintaining confidentiality. The cemetery trust will report fraud or corruption to Victoria Police and IBAC as required.

# 5 Responding to fraud and corruption incidents

## **5.1 Procedures for investigations of detected or suspected fraud or** corruption

Detected or suspected fraud or corruption will initially be investigated by the department. The department may initiate a formal review of the cemetery trust under the department’s performance support program for Class B cemetery trusts.

## 5.2 Disciplinary procedures

In exceptional circumstances the Minister for Health may recommend the removal of a member or members of the cemetery trust to the Governor in Council.

## 5.3 Internal control review following the discovery of fraud

Following the discovery and reporting of fraud or corruption, the cemetery trust will review its fraud risk assessment and strengthen or introduce new controls, policies and procedures as required.

## 5.4 Maintaining and monitoring Fidelity Guarantee insurance

The cemetery trust is insured by the Victorian Managed Insurance Authority. Policies include:

* Directors and Officers Liability
  + Provides cover for cemetery trust members and officers for third party claims arising from their actions and decisions while acting in an official capacity.
  + Includes employment-related violations.
* Combined Liability
  + Provides cover for the cemetery trust’s legal liability from personal injury and/or property damage claims by third parties arising out the cemetery trust’s business activities.
  + Provides cover for the cemetery trust in relation to third party claims for financial loss arising from a breach of professional duty.

# 6 Handling public interest disclosures

## 6.1 What is a disclosure?

A disclosure is a report about the improper conduct of public bodies or public officers that a person makes to any of the organisations specified in Part 2 of the *Public Interest Disclosures Act 2012* (PID Act).

**For the purposes of the PID Act, the cemetery trust is a public body and cemetery trust members, employees and contractors are public officers.**

The disclosure can relate to conduct or action that:

* may have already taken place
* may be occurring now, or
* may happen in the future.

A disclosure can also be made about detrimental action that a public officer or public body takes against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

A complaint or allegation already in the public domain will not usually be a public interest disclosure – for example, if the matter has already been subject to media or other general commentary.

## 6.2 Can a disclosure be made to the cemetery trust?

**No, cemetery trusts are not authorised to receive public interest disclosures.**

If a person wishes to make a public interest disclosure about a cemetery trust or a cemetery trust member, employee or contractor, they must contact the Independent Broad-based Anticorruption Commission (IBAC) directly.

# 7 Making a public interest disclosure

## 7.1 Independent Broad-based Anti-corruption Commission

Any public interest disclosure about a cemetery trust or a cemetery trust member, employee or contractor, must be made to IBAC directly.

Any person, including cemetery trust members, employees and contractors, may make a report of corruption or misconduct directly to IBAC. IBAC assesses these reports to determine if they will conduct an investigation or refer to another investigative body.

By law, IBAC must be notified of suspected corrupt conduct and potential public interest disclosures. If a person reasonably suspects that corrupt conduct is occurring or has occurred in the cemetery trust, they must report it to IBAC as soon as practicable.

Reports of fraud, corruption or suspected fraud and corruption can be made to IBAC as follows:

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| Website | <https://www.ibac.vic.gov.au/reporting-corruption/complaints-form> |
| Telephone | 1300 735 135 |
| Street address | Level 1, North Tower, 459 Collins Street, MELBOURNE VIC 3000 |
| Postal address | GPO Box 24234, MELBOURNE VIC 3001 |

## 7.2 Who can make a disclosure?

Any person, including a trust member, employee or contractor, can make a public interest disclosure about improper conduct occurring in the cemetery trust or detrimental action taken by the trust or one of its members, employees or contractors.

A person (Person A) may ask someone else (Person B) to disclose on their behalf. However, in these circumstances only Person B receives the full protection of the PID Act in relation to that disclosure. Person A’s protection will be limited to confidentiality and protection against detrimental action taken against them in reprisal for the disclosure that has been made. For Person A to receive the same level of protection as Person B, it is recommended that the disclosure is made jointly.

A person does not have to specifically refer to the PID Act or the protections in the PID Act for the disclosure to be a public interest disclosure. A person may also advise that they want to avoid the disclosure being treated as a public interest disclosure.

## 7.3 What is a disclosure made about?

A person may make a public interest disclosure about information that shows or tends to show, or that they believe on reasonable grounds shows or tends to show, that a person, public officer or public body is engaging in, or proposing to engage in 'improper conduct' and/or 'detrimental action'.

### Public officer and public body

The conduct disclosed must occur in the performance of a person or body's function as a public officer or public body. In other words, there must be a link between the alleged improper conduct and/or detrimental action and the person or body's functions as a public officer or public body.

### Improper conduct and detrimental action definitions

**Corrupt conduct**

Corrupt conduct is conduct that:

* adversely affects the honest performance of functions by a public officer or public body,
* involves the dishonest performance of functions by a public officer or public body,
* involves a breach of public trust,
* involves a misuse of information acquired in the performance of functions as a public officer or public body, or
* involves a conspiracy or an attempt to engage in any of the above conduct

**and** would constitute:

* an indictable offence,
* an attempt to pervert the course of justice,
* bribery of a public official; or
* perverting the course of justice.

Improper conduct is defined as 'corrupt conduct' or 'specified conduct'

**Specified conduct**

Specified conduct is corrupt conduct that would not constitute an indictable offence, but would constitute either a criminal offence or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct

**or** conduct that:

* involves a substantial mismanagement of public resources,
* involves a substantial risk to public health and safety, or
* involves a substantial risk to the environment

**and** would constitute a criminal offence, or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct, an attempt to pervert the course of justice, bribery of a public official or perverting the course of justice.

Detrimental conduct is action taken against a person who has made a public interest disclosure which:

* causes injury, loss or damage,
* intimidation or harassment, or
* discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including disciplinary action).

Detrimental action is not legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.

Detrimental conduct

## 7.4 Public Interest Disclosures Act offences

There are several offences set out in the PID Act relating to breaches of the requirements of the PID Act. The cemetery trust notes the following key offences:

1. It is an offence to take detrimental action against another person in reprisal for a public interest disclosure.
2. It is an offence to disclose the content, or information about the content, of a disclosure that has been notified to IBAC by the department or information that is likely to lead to the identification of the person who made that disclosure unless permitted by the PID Act.
3. It is an offence for any person to:
   1. provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure
   2. provide further information relating to a public interest disclosure made by the person that the person knows is false or misleading in a material particular.
   3. claim that a matter is the subject of a public interest disclosure, knowing the claim to be false
   4. falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure complaint.
4. It is an offence for any person to:
   1. disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the PID Act
   2. disclose that a disclosure has been determined to be a public interest disclosure complaint unless permitted to do so by the PID Act.

# 8 Resources

* [Managing conflicts of interest factsheet](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>
* [Conflict of interest management plan template](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>
* [Gifts, benefits and hospitality policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates) <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>
* [Cash management policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates) <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>
* [Risk register template](https://www.health.vic.gov.au/publications/sample-risk-register) <https://www.health.vic.gov.au/publications/sample-risk-register>

This document draws from and is consistent with the following standards, legislation, and guidelines:

* AS ISO 31000:2018 Risk management – Guidelines
* Asset Management Accountability Framework
* Australian Standard: Fraud and Corruption Control AS 8001-2021
* *Financial Management Act 1994*
* *Independent Broad-based Anti-corruption Commission Act 2011*
* *Public Administration Act 2004* and the Code of Conduct
* *Public Interest Disclosures Act 2012*
* *Public Records Act 1973*
* Victorian Government Purchasing Board policies
* Victorian Government Risk Management Framework
* Victorian Government Supplier Code of Conduct
* Victorian Protective Data Security Standards