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| Manual for Victorian Class B  cemetery trusts |
| December 2023 |
| OFFICIAL |

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# 

# Introduction

This manual contains information to help Class A cemetery trusts understand and meet their responsibilities and legislative obligations under the Cemeteries and Crematoria Act 2003, the Cemeteries and Crematoria Regulations 2015 and other relevant Victorian and Australian law*.*

The manual has been developed by the Department of Health’s Cemetery Sector Governance Support Unit in consultation with the Cemeteries and Crematoria Association of Victoria, the Victorian Managed Insurance Authority and the legal services, industrial relations, human resources and financial services branches of the department.

The manual is for general use and is not intended to constitute formal legal advice or be a definitive guide to the law and operations of a cemetery trust. It is not a substitute for professional advice and does not take the individual needs and circumstances of cemetery trusts into consideration.

Every effort has been made to ensure accuracy and completeness at the date of publication.

## Key terms

The following table defines useful terminology related to the Victorian cemetery sector.

| Term | Definition |
| --- | --- |
| Court outlineCemetery trust entity | The cemetery trust entity is the legal entity established under legislation to manage the public cemeteries for which it is responsible. |
| Meeting outlineCemetery trust board | The cemetery trust board is collectively responsible for the operations and governance of the cemetery trust entity. |
| Confused person outlineCemetery trust member | Individual cemetery trust members are responsible for carrying out their duties in the best interests of the cemetery trust entity and the community. |
| Arrow circle outlinePerpetuity | In Victoria, bodily remains are interred in public cemeteries in perpetuity (forever). |
| Alarm clock outlineLimited tenure | In Victoria, cremated remains can be interred in public cemeteries for limited tenure (a term of 25 years) or in perpetuity (forever). |
| Gravestone outline Place of interment | A place of interment is a location where bodily or cremated remains are placed. Examples include a plot or grave, mausoleum crypt or cremation niche. Some places of interment can hold more than one set of remains. |
| Excavator outline Exhumation | Exhumation is the removal of human remains from a place of interment. An exhumation licence is required to move human remains (other than cremated human remains or body parts) from a place of interment. |
| Move outlineLift and re-position | A lift and re-position procedure enables a place of interment to be reused for additional burials. |
| Scroll outlineRight of interment | A right of interment permits the right of interment holder to determine:   * the human remains (bodily or cremated) that can be interred in a place of interment in a public cemetery * the type of memorialisation, if any, to be established at the place of interment subject to any cemetery trust memorialisation policies or specifications.   A right of interment relates to a specific place of interment in a public cemetery. Right of interment holders do not own the land associated with the place of interment as all Victorian public cemeteries are on Crown land. |
| Cycle with people outlineRight of interment holder | The right of interment holder is the person identified in cemetery trust records as the right holder for a specific place of interment within a public cemetery. There can be one sole right holder or multiple joint right holders for a place of interment. A right of interment rests only with the right holders recorded in cemetery trust records. |
| Plant outlinePerpetual maintenance | Cemetery trusts have an obligation to maintain the cemeteries for which they are responsible in perpetuity. Ensuring sufficient funds are reserved to meet this obligation is a key consideration for cemetery trusts. |

## Abbreviations

The following abbreviations are used in the manual.

|  |  |
| --- | --- |
| Term | Referred to as |
| Cemeteries and Crematoria Act 2003 | Cemeteries Act |
| Cemeteries and Crematoria Regulations 2015 | Cemeteries Regulations |
| Minister for Health | Minister |
| Department of Health | department |
| Department of Health Secretary | department Secretary |
| Cemetery Sector Governance Support Unit | unit |
| Cemeteries and Crematoria Association of Victoria | CCAV |
| Victorian Managed Insurance Authority | VMIA |

# 

# Topic 1. Legislation

The Cemeteries Actand the Cemeteries Regulations:

* form the legislative framework under which all public cemeteries in Victoria operate
* provide the framework for administering the sector
* outline the roles and responsibilities of trust members
* detail the powers and functions of cemetery trusts.

## Cemeteries Act

The Cemeteries Act began operation on 1 July 2005 and was amended in 2009, 2015 and 2021. The Cemeteries Act is available on the [Victorian Legislation website](https://www.legislation.vic.gov.au/in-force/acts/cemeteries-and-crematoria-act-2003) <https://www.legislation.vic.gov.au/in-force/acts/cemeteries-and-crematoria-act-2003>.

The objectives of the Cemeteries Act are to ensure:

* human remains are treated with dignity and respect
* all Victorians have access to cemetery and crematoria services
* cemetery trusts operate effectively and efﬁciently.

## Cemeteries Regulations

The Cemeteries Regulations came into effect on 27 June 2015 and were amended in 2015 and 2020. The Cemeteries Regulations are available on the [Victorian Legislation website](https://www.legislation.vic.gov.au/in-force/statutory-rules/cemeteries-and-crematoria-regulations-2015) <https://www.legislation.vic.gov.au/in-force/statutory-rules/cemeteries-and-crematoria-regulations-2015>.

The objectives of the Cemeteries Regulations are to:

* regulate public cemeteries and crematoria
* regulate the activities of cemetery trusts
* prescribe forms, fees and other matters for the purposes of the Cemeteries Act.

## Penalties

The Cemeteries Act and Cemeteries Regulations 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 magistrates 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 line with the Monetary Units Act 2004. For current penalty rates, [email the unit](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au> or call 1800 034 280.

## Other relevant legislation

### Victorian legislation

Victorian legislation relevant to cemetery trusts includes but is not limited to:

* *Aboriginal Heritage Act 2006*
* *Australian Consumer Law and Fair Trading Act 2012*
* *Births, Deaths and Marriages Registration Act 1996*
* *Catchment and Land Protection Act 1994*
* *Charter of Human Rights and Responsibilities Act 2006*
* *Coroners Act 2008*
* *Equal Opportunity Act 2010*
* *Fences Act 1968*
* *Flora and Fauna Guarantee Act 1988*
* *Freedom of Information Act 1982*
* *Funerals Act 2006*
* *Health Records Act 2001*
* *Heritage Act 2001*
* *Land Act 1958*
* *Occupational Health and Safety Act 2004*
* *Privacy and Data Protection Act 2014*
* *Planning and Environment Act 1987*
* *Public Records Act 1973*
* *Racial and Religious Tolerance Act 2001*
* *Victorian Civil and Administrative Tribunal Act 1998*
* *Victorian Managed Insurance Authority Act 1996*
* *Water Act 1989*
* *Wildlife Act 1975*
* *Workplace Injury Rehabilitation and Compensation Act 2013*

## Commonwealth legislation

Commonwealth legislation relevant to cemetery trusts includes but is not limited to:

#### Employment law

Most Australian workplaces are governed by national workplace laws set out in the *Fair Work Act 2009*. Where a cemetery trust has employees, it needs to comply with the Fair Work Act.

#### Consumer law

The *Competition and Consumer Act 2010* applies to a cemetery trust’s commercial activities. The law applies to consumer contracts including the purchase of a right of interment or memorial, and to suppliers of goods and services.

## Access to legislation

All Victorian legislation is available for download on the [Victorian Legislation website](https://www.legislation.vic.gov.au) <https://www.legislation.vic.gov.au>.

Hard copies of Victorian legislation can be purchased from TIMG, the authorised supplier of Victorian legislative publications. Cemetery trusts can order online via the [TIMG website](https://legislationvic.timg.com) <https://legislationvic.timg.com> or telephone (03) 8621 6767 for a quote.

All Commonwealth legislation is available on the [Federal Register of Legislation website](https://www.legislation.gov.au) <https://www.legislation.gov.au>.

## Legal advice

The unit cannot provide legal advice to cemetery trusts. Where legal advice is required, it should be sought from a qualified and experienced source, at the expense of the cemetery trust. A cemetery trust may also be able to draw on the advice of other cemetery trusts that have had similar experiences.

A cemetery trust 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 wish to discuss the matter with the unit before acting.

# Topic 2. Government roles and responsibilities

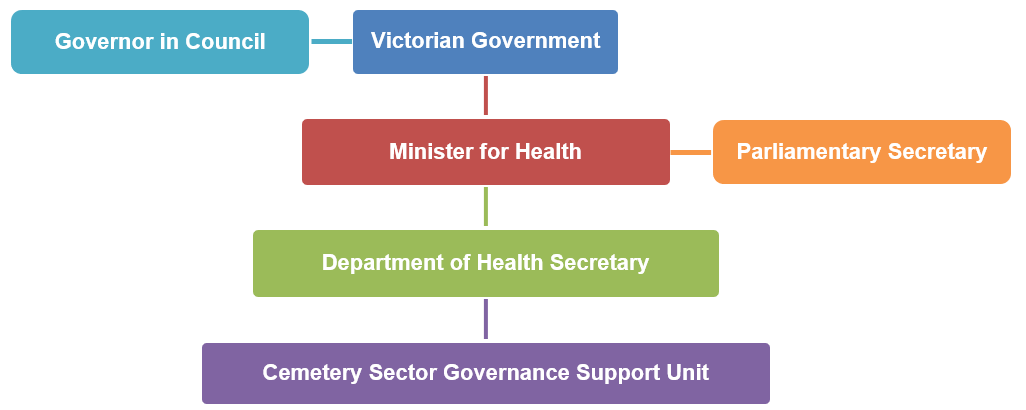
The role of government in the Victorian cemetery sector is to administer the Cemeteries Act and Cemeteries Regulations. This includes establishing and maintaining proper accountabilities and controls for overseeing cemetery trusts to ensure they fulfil their legislative obligations.

While legislation prescribes the functions and operations of cemetery trusts, it is the cemetery trusts’ responsibility to ensure these functions are carried out.

The government expects cemetery trusts to meet their legislative obligations and, where cemetery trusts fail to do so, the government may intervene.

Parliament may amend the Cemeteries Act or issue new Cemeteries Regulations.

Figure 1: Government roles that oversee and support the cemetery sector



## Governor in Council

The Governor of Victoria is appointed by the King, on the advice of the Premier. The Governor is a member of the Executive Council and exercises their power ‘in Council’. The Governor in Council has an administrative formalising role.

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

| Section | Provision |
| --- | --- |
| 4 | Establish a public cemetery, by order published in the VictoriaGovernment Gazette. |
| 5 | Establish a cemetery trust, by order published in the Victoria Government Gazette. |
| 6 | On the recommendation of the Minister, appoint members to a cemetery trust. |
| 10 | On the recommendation of the Minister, appoint an administrator to manage a public cemetery. |
| 27, 28 | Approve and revoke cemetery trust rules. |
| Schedule 1/1A, clause 3(2) | On the recommendation of the Minister, remove members of a cemetery trust. Note: This only occurs in exceptional circumstances when all other options have been exhausted. |

## Minister for Health

The Minister is accountable to Parliament and is responsible for administering the Cemeteries Act and Cemeteries Regulations. The Minister’s powers include the following:

| Section | Provision |
| --- | --- |
| 31 | When requested by a cemetery trust, the Minister may purchase or compulsorily acquire land for cemetery and crematoria purposes. Note: This would generally only happen if the cemetery trust provided the funds. |
| 36, 37 | The Minister may approve purposes for which cemetery trusts can grant leases or licences over cemetery trust land to ensure the land use is not detrimental to the land’s reservation for cemetery purposes. |

## Parliamentary Secretary

The Parliamentary Secretary is a member of Parliament who assists the Minister with their portfolio responsibilities. The Parliamentary Secretary for Health Infrastructure sometimes represents the Minister during stakeholder meetings and events.

## Department of Health Secretary

The department Secretary has broad policy-based review and investigative powers. The following table provides a non-exhaustive list of the department Secretary’s prescribed powers and functions under the Cemeteries Act:

| Section | Provision |
| --- | --- |
| 18 | May give directions to cemetery trusts about carrying out functions or exercising powers of the cemetery trust. |
| 18A | May direct the development of policies and plans about providing cemetery and crematoria services. |
| 21 | Approval to establish a crematorium. |
| 22 | Approval to establish mausolea facilities. |
| 23 | May revoke approvals to establish a crematorium or mausolea facilities. |
| 40 | Approval or disapproval of a cemetery trust fee or scale of fees. |
| 40A | Exempting certain fees and charges from the approval process. |
| 51 | Request an auditor to investigate a cemetery trust. |
| 52 | Receive an annual cemetery trust report that includes particulars relating to the operation of the cemetery, accounts and records kept by the cemetery trust. |
| 57 | Receive an annual report from a municipal council about a public cemetery managed by that council. |
| 84C | Vary or force surrender of a right of interment in certain circumstances. |
| 121 | Approval for an interment other than in a public cemetery. |
| 134 | Approval to cremate bodily remains due to special circumstances. |
| 136 | Approval to cremate bodily remains other than in a crematorium at a public cemetery. |
| 147 | Approval to dispose of bodily remains by a method other than interment or cremation. |
| 157 | Grant or refuse to grant an exhumation licence. |

The department Secretary cannot direct cemetery trusts in relation to:

* cemetery and crematoria services provided to a particular person
* decisions made under the Cemeteries Act by a cemetery trust in relation to a particular person
* cemetery trust decisions to employ or engage a particular person
* cemetery trust decisions to purchase goods and services.

## Cemetery Sector Governance Support Unit

The unit sits within the department and is the Minister’s principal source of advice on the cemetery sector. The unit supports the Minister and the department Secretary by undertaking a range of statutory and administrative functions and providing advice on cemetery sector issues and cemetery trust governance.

## Other relevant government departments and bodies

The following is a non-exhaustive list of other relevant government departments and bodies:

* [Department of Energy, Environment and Climate Action](https://www.deeca.vic.gov.au) <https://www.deeca.vic.gov.au>
* [Department of Premier and Cabinet](https://www.vic.gov.au/department-premier-and-cabinet) <https://www.vic.gov.au/department-premier-and-cabinet>
* [Department of Treasury and Finance](http://www.dtf.vic.gov.au) <http://www.dtf.vic.gov.au>
* [Coroners Court of Victoria](https://www.coronerscourt.vic.gov.au) <https://www.coronerscourt.vic.gov.au>
* [Office of Australian War Graves](https://www.dva.gov.au/wargraves) <https://www.dva.gov.au/wargraves>
* [Office of the Victorian Information Commissioner](https://ovic.vic.gov.au) <https://ovic.vic.gov.au>
* [Public Record Office Victoria](https://prov.vic.gov.au) <https://prov.vic.gov.au>
* [Victorian Civil and Administrative Tribunal](https://www.vcat.vic.gov.au) <https://www.vcat.vic.gov.au>
* [Valuer-General Victoria](https://www.land.vic.gov.au/valuations) <https://www.land.vic.gov.au/valuations>
* [Victorian Managed Insurance Authority](http://www.vmia.vic.gov.au) <http://www.vmia.vic.gov.au>
* [Victorian Ombudsman](http://www.ombudsman.vic.gov.au) <http://www.ombudsman.vic.gov.au>
* [Victorian Public Sector Commission](http://www.vpsc.vic.gov.au) <http://www.vpsc.vic.gov.au>

# Topic 3. The cemetery trust

## The cemetery trust entity

A cemetery trust is an incorporated entity with perpetual succession as established under   
s. 5 of the Cemeteries Act.

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

* is established by either
* 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, trusts are subject to a range of legislative and compliance requirements under the Public Administration Act and other Victorian legislation, which is designed to ensure appropriate governance and accountability.

## The cemetery trust board

All public entities (including 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. 6 of the Cemeteries Act.

A Class B cemetery trust consists of between three and 11 members. Cemetery trust members are appointed for a five-year term and are eligible for reappointment.

Cemetery trusts 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.

A cemetery trust has a number of roles and responsibilities including:

* strategic – setting the overall operational direction of the cemetery trust in line with its obligations under legislation and in line with government policies
* stewardship – ensuring the cemetery trust’s activities reflect public sector values and employment principles
* compliance – ensuring a cemetery trust meets its statutory obligations
* operational – providing cemetery goods and services to the community.

Under the Public Administration Act, a cemetery trust board and its members are subject to the public sector values outlined in s. 7 and must comply with the [*Code of conduct for directors of Victorian public entities*](https://vpsc.vic.gov.au/resources/code-of-conduct-for-directors/) <https://vpsc.vic.gov.au/resources/code-of-conduct-for-directors/> issued by the Victorian Public Sector Commission (VPSC).

### The trust chairperson

Under clause 2 of schedule 1 of the Cemeteries Act, the members of the cemetery trust board must appoint one of the current members to be the trust chairperson.

It is up to the trust to decide the length of a chairperson’s appointment within their five-year term of membership. For example, some trusts prefer to rotate this role each year, while others appoint their chairperson for five years to tie in with their appointment tenure as a trust member. There are no limits on how many times, or for how many years, the same member can be reappointed as chairperson.

At a broad level, the role of the chairperson is to lead the cemetery trust board, ensure its performance and accountability, and to exercise procedural control over trust meetings.

Specific responsibilities of the chairperson will vary depending on the size and complexity of the cemetery trust and may include:

* building an effective trust with the necessary skills and capabilities
* leading trust members and developing them as a cohesive and effective team
* assisting trust members in their understanding of their role, responsibilities and accountability
* setting the trust’s agenda and ensuring key issues are discussed
* ensuring there are no potential conflicts of interest or duty
* ensuring interactive participation by all trust members
* arranging adequate support for trust members
* welcoming new trust members and leading the process for their induction
* representing the trust to external parties as an official spokesperson for the trust
* managing the principal relationships of the board – for example, relationships with cemetery managers and senior staff, committees of the board, the department and the Minister
* ensuring relevant policies are brought to the attention of members of the board
* ensuring the board performs appropriately in relation to
* adhering to its objectives
* risk management
* accountability to the responsible minister
* assessing the performance of members
* adhering to the [*Code of conduct for directors of Victorian public entities*](https://vpsc.vic.gov.au/resources/code-of-conduct-for-directors/) <https://vpsc.vic.gov.au/resources/code-of-conduct-for-directors/>
* a conflicts of interest policy
* a gifts policy
* financial accountability.

## Cemetery trust entity status – opening or changing a bank account

A cemetery trust is a public entity controlled by a statutory board of appointed members (refer to [Topic 4. Cemetery trust members](#_Topic_4._Cemetery) for more details). Trusts experience difficulties when trying to open a new bank account or change their banking arrangements. Generally, these difficulties occur because a bank forms sees cemetery trusts as trading trusts that hold property and have beneficiaries.

While cemetery trusts have ‘trust’ in their name, they are a cemetery ‘board’, with ‘trust members’ appointed. The term ‘trust’ (for the board) and the now defunct reference to ‘trustees’ for trust members were used in the *Cemeteries Act 1958*.

Trust members are appointed in line with s. 6 and schedule 1 of the Cemeteries Act. Evidence of a trust member’s term of appointment is outlined in their letter of appointment. To avoid confusion when trying to set up a new bank account the trust should ensure it provides the following to its bank.

### Advice

* The name of the cemetery trust and advice that the trust is an independent statutory public body created under the Cemeteries Act that is managed by a board of trust members (not trustees) appointed by the Governor in Council on the recommendation of the Minister for Health.

### Documents

* A copy of pages 9–13 (ss. 4–8) of the Cemeteries Act, which set out the provisions that relate to creating a trust and appointing trust members to the boards of cemetery trusts.
* A copy of pages 147–148 (parts 3 & 4 of schedule 2) of the Cemeteries Act, which sets out the provision that confirms all cemetery trusts in existence on 1 July 2005 are deemed to be established as cemetery trusts under part 2 of the 2003 Act.
* Evidence that your trust was in existence before and after July 2005 such as a copy of two bills addressed to the trust – one dated before 1 July 2005 and one dated after 1 July 2005. Alternatively, a statutory declaration to this effect should meet most banks’ requirements.
* A copy of each trust member’s letter of appointment for each trust member nominated to be signatory to the new/updated bank account. The department can provide written confirmation   
  of a trust member’s appointment if required.

If a bank or other financial institution has any queries specifically relating to the establishment of the trust, it can contact the unit on free call 1800 034 280.

## 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 VPSC has developed a range of information and materials to assist boards to better understand and apply good governance practices and principles. For more information visit the [VPSC website](https://vpsc.vic.gov.au/governance/) <https://vpsc.vic.gov.au/governance/>.

## Functions and powers of cemetery trusts

Section 12 of the Cemeteries Act sets out the functions of a Class B cemetery trust. These trusts must:

* properly and efficiently manage and maintain each public cemetery for which it is responsible
* carry out any other function that may be required by legislation.

In exercising its functions, a trust must consider:

* funding its perpetual maintenance obligations
* the cultural and religious values of the community it serves
* the heritage values of the cemetery.

Section 13 of the Cemeteries Act provides for the trust to do anything necessary or convenient to enable it to carry out its functions provided that the trust’s actions do not override other provisions of the Cemeteries Act.

The Cemeteries Act gives several powers to a trust. It is important that the decisions made and the actions taken, including the expenditure of trust funds, can be justified as a bona fide and legitimate exercise of those powers.

## The common seal of the trust

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

## Class A cemetery trusts’ advice and assistance to Class B cemetery trusts

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

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

### Types of assistance

The types of assistance and advice that Class A trusts may be expected to provide include, but are not limited to:

* operational and governance matters relating to cemeteries
* record-keeping systems suited to the requirements of trusts
* standard form documentation suitable for trust purposes
* complaint management
* tendering and contracting processes and requirements.

Where the advice or assistance requested relates to applying or interpreting the Cemeteries 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 trusts have a leadership role, it is important to note that assistance should only be provided where the Class A trust feels comfortable and capable of providing the assistance requested.

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

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

### Listed Class B cemetery trusts

Under s. 18K of the Cemeteries Act, the department may create a list of Class B cemetery trusts which are eligible to receive leadership, assistance and advice from specified Class A cemetery trusts. It is not intended such lists 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 trusts are free to approach any Class A trust to request advice and assistance.

If a list of Class B cemetery trusts is created, it will be published on the [department’s website](https://www.health.vic.gov.au/public-health/cemeteries-and-crematoria) <https://www.health.vic.gov.au/public-health/cemeteries-and-crematoria>.

# Topic 4. Cemetery trust members

Under s. 6 of the Cemeteries Act the Governor in Council appoints cemetery trust members on the recommendation of the Minister for Health. Cemetery trust members comprise the cemetery trust board. Because 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:**

* **Exercise power for proper purpose.** Trust members should exercise their power under the Cemeteries Act for the purpose it was provided.
* **Retain discretion.** Trust members must use their own discretion when voting at trust meetings. They should not allow themselves to be directed to adopt a particular position.
* **Avoid improper use of a position.** Trust members, trust officers and secretaries may not use their positions to gain personal benefits.
* **Exercise care, skill and diligence.** Trust members have a duty to make their decisions in good faith, for proper purpose, not have a material interest in the matter, adequately inform themselves about the matter and reasonably believe their judgement is in the best interest of the trust.
* **Act diligently and prudently in the business of the trust.** The members of a cemetery trust have legal obligations and duties under common law and under the constituting legislation, being the Cemeteries Act and the Cemeteries Regulations, as well as under the Public Administration Actand all other relevant state and federal legislation. Trust members may wish to seek independent legal advice concerning their responsibilities and potential personal liabilities.
* **Disclose conflicts of interest.** Trust members must disclose pecuniary interests or any other interests that could conflict with the proper performance of their duties.
* **Keep and render proper accounts and give 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.

## Diversity on cemetery trusts

The Victorian Government is committed to ensuring that government boards and committees reflect the rich diversity of the Victorian community.

Applications are encouraged from people of all ages, Aboriginal people, people with disability, people from culturally and linguistically diverse backgrounds and from lesbian, gay, bisexual, trans, gender diverse, intersex and queer people.

More information about diversity and practical guidance for Class B cemetery trusts to assist with the recruitment process is available in the [Recruitment toolkit](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising#recruitment-toolkit) on the department’s website <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising#recruitment-toolkit>.

## Appointment of Class B cemetery trust members

### Advertising trust vacancies

All trust vacancies must be advertised, including those that arise due to a current members’ term of office expiring. Trusts should contact the unit to advise which local press they wish their advertisement to be placed in.

The department will place advertisements in local newspapers when a current trust member’s term of office is due to expire. Trusts will receive notification from the department before advertising occurs.

Advertising fulfils a number of purposes including that it:

* promotes the work of the trust in the local community
* provides an opportunity for trusts to implement succession plans
* fulfils government policy by providing the whole community with the opportunity to apply for appointment to a public board.

**Note:** Advertising vacant positions does not prevent a current trust member from reapplying for the position.

### Appointment terms

Before 1 January 1996, the Cemeteries Act 1958 made no provision for trust appointment tenure. Accordingly trust members appointed before 1 January 1996 remain in office until they resign, pass away or, under exceptional circumstances, are removed from office by the Governor in Council.

Post 1 January 1996, trust members are appointed in line with clause 1 of schedule 1 of the Cemeteries Act. Trust members may hold office for a period not exceeding five years and are eligible to apply for reappointment.

Trusts may have a minimum of three and a maximum of 11 members. To run a trust effectively, the department recommends appointing a minimum of six members.

### Appointment rounds

From January 2021 appointments are managed by the unit in four annual appointment rounds.

If a current member intends to seek reappointment for a consecutive term, the completed application will need to be submitted to the unit by a specified date to ensure their application is processed in the appropriate appointment round.

The following table shows the current member term of appointment expiry dates for any year and corresponding deadline for completed applications to be received by the unit:

|  |  |
| --- | --- |
| Term expiry date | Deadline for application to be received by the unit |
| 30 April | 5 February |
| 31 July | 14 May |
| 31 October | 13 August |
| 28 February | 10 December |

If an application for reappointment is received after the corresponding appointment round deadline, it will be processed in the following appointment round. This means that when the applicant’s current term of appointment expires, their trust membership will lapse and they will no longer be an ‘active’ trust member.

**Note:** If a trust member’s term of appointment lapses, they will not be eligible to vote at trust meetings but may continue to attend meetings if the trust agrees.

Members intending to seek reappointment should ensure they submit their completed application to the trust in a timely manner to avoid unnecessary delays.

Current trust member appointment dates and the current membership of each Victorian cemetery trust can be viewed by downloading the [*List of current members appointed to Victorian cemetery trusts*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments> from the department’s website.

### Application process

All applicants seeking appointment to a Class B cemetery trust are required to read the [*Class B cemetery trust applicant guidelines*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments> available on the department’s website. Applicants should declare on the application form that they agree to the application terms contained therein.

This document contains important information about the department’s use of personal information, probity checks and conflicts of interest. Applicants are required to declare on the application form that they have read the guidelines and agree to the application terms.

Applications must be completed on the current version of the [[*Application for appointment to a Class B cemetery trust*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) form](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments>.

The trust chairperson (or secretary or current trust member undertaking this role if the chairperson is not available) is responsible for ensuring:

* the applicant has completed all mandatory fields in Parts A–G of the current version of the form
* the trust has conducted at least one satisfactory referee check for all new applicants it wishes to nominate for appointment. It is not a departmental requirement for trusts to conduct referee checks on current members seeking reappointment. However, for those applicants seeking reappointment 12 months or more from the date their term of office on the trust lapsed, trusts will be required to conduct referee checks
* Part H, where applicable, and Part I have been completed
* the check box in Part I has been ticked to confirm referee check(s) have been conducted
* the application form has been endorsed by signing and dating it before submitting it to the department for processing.

The unit processes all applications for appointment as a Class B cemetery trust member.[[1]](#footnote-1) Once processed, the applications are forwarded to the Minister for Health for recommendation to the Governor in Council for formal appointment.

**Note:** Applications for appointment that are more than 12 months old should not be submitted to the department because the Governor in Council will not be accept these applications.

It is the responsibility of the trust to provide written advice to applicants it does not wish to nominate for appointment. The advice should include the trust’s rationale for non-endorsement and offer to provide feedback on the interview.

### Interview, selection and nomination process

When trusts seek potential nominees for trust membership, the requirements of the position and the selection criteria should be clearly communicated to suitable candidates.

The interview and selection process must be conducted in accordance with the *[Appointment and remuneration guidelines](https://www.vic.gov.au/guidelines-appointment-remuneration)* <https://www.vic.gov.au/guidelines-appointment-remuneration> issued by the Department of Premier and Cabinet and available on its website.

Cemetery trusts are expected to make adjustments to the recruitment process on request to address barriers to inclusion.

Trusts must be able to show that their interview and selection process is both fair and reasonable. Where there is a complaint about the process, the department will usually request copies of the trust’s paperwork relating to the interview and selection process in order to conduct a review.

Trusts should have members with an appropriate mix of expertise, experience and a range of perspectives.

### Referee checks

Referee checks provide the trust with the opportunity to confirm and verify information gathered during interviews.

As part of the selection process, at least one referee check for each suitable new candidate must be conducted to the satisfaction of the trust. This includes candidates seeking reappointment to a trust where 12 months or more has lapsed since the end of their previous term of appointment.

Referee checks can be conducted for those seeking reappointment within a 12-month period of their last term of office lapsing, but this is not a departmental requirement.

### Nomination and appointment of directly related family members

It is acceptable for cemetery trusts to nominate applicants who are directly related[[2]](#footnote-2) to a current trust member or another applicant if the advertising process was unsuccessful in attracting enough other applicants to fill these vacancies.

Those trusts wishing to nominate an applicant who is directly related to a current trust member or another applicant must ensure the applicant has identified the direct relationship in Part A of the application form and Part H is completed by the chairperson (or secretary or current trust member undertaking this role if the chairperson is not available).

Part H of the application requires the trust to give details of its rationale for nominating a directly related family member including:

* confirmation the nominated person will bring applicable skills and experience to the trust
* the number of applications the trust received
* if any applicants were considered unsuitable for recommendation for appointment (and, if so, why)
* if all trust members support the nomination.

**Note:** Noncompliance of this requirement will result in delays in processing these applications.

Where an applicant shares the same surname as an existing trust member but does not meet the definition of a directly related family member, the applicant should select ‘No’ in Part A on the application form.

### Expiry of existing appointments

To ensure continued participation on cemetery trusts, the unit encourages current trust members (who are not lifetime members) to apply for reappointment before their current term expires. It can take up to four months for the appointment process to be finalised. It may take longer if the unit has to follow up with trusts about incomplete application documentation.

Trusts need to ensure applications submitted to the department are on the correct form. Outdated application forms and forms that have been signed and dated 12 months or more before the department receives them cannot be processed and will be returned to the trust. Download the current[[*Application for appointment to a Class B Cemetery trust*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) *form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments> from the department’s website.

## Membership on more than one trust

Cemetery trust members may seek membership on more than one cemetery trust. There is no provision in the Cemeteries Act prohibiting cemetery trust members holding membership of more than one trust.

## Conflict of interest and duty to disclose

Cemetery trust members have a duty to place the public interest above their own interests. This helps to maintain the public’s confidence in the ability of trust members to act in the best interests of the trust and Victorian communities.

The trust chairperson or chairperson’s delegate is responsible for ensuring conflicts of interest are managed appropriately and the duty to prioritise the public interest is maintained.

### What is a conflict of interest?

A conflict of interest is a conflict between your duty as a trust member and your private interests. This conflict exists if your private interests influence, or are seen to influence, your decisions or actions as a trust member.

Private interests include direct interests, such as your own personal, family, professional or business interests. They also include indirect interests, such as the personal, family or business interests of the individuals or groups connected to you.

There does not need to be any direct benefit or advantage received for a conflict of interest to arise. Conflicts may be actual, potential or perceived:

|  |  |
| --- | --- |
| Actual | A real conflict between your public duties and responsibilities and your private interests. |
| Potential | Where you have private interests that could conflict with your public duties, and it is foreseeable that a conflict may arise in the future. |
| Perceived | Where the public or a third party could form the view that your private interests could improperly influence your decisions or actions, now or in the future. |

### Financial conflicts of interest

A financial conflict exists if a trust member or someone they are connected to is financially affected by the trust member’s decisions or actions. Money doesn’t need to change hands for a financial conflict to exist; it could involve a trust member or someone they know receiving concessions, discounts, gifts or hospitality.

### Non-financial conflicts of interest

A non-financial conflict exists if a trust member’s feelings about a person or group could influence, or be seen to influence, the trust member’s decisions or actions. Personal feelings about another person or group, whether positive or negative, can create a conflict of interest by influencing a trust member to use their position to help or hinder a person or group.

### Conflicts of interest due to personal relationships

Personal relationships between trust members and people who could be affected by the trust member’s decisions can create a conflict of interest because the relationship could influence or be seen to influence the trust member’s decisions.

### Conflicts of duty

A conflict of duty is a conflict between a trust member’s duty as a trust member and duty to another public or private organisation or group. This conflict exists if a trust member has two or more roles that have competing priorities.

## Examples of conflicts of interest

| Type | Conflict | Why is it a conflict? |
| --- | --- | --- |
| Financial conflict of interest | A trust member works in a profession directly related to the cemetery sector (funeral director, celebrant, gravedigger, stonemason, plaque manufacturer, florist) that delivers services at the cemetery. | A trust member who works in a profession directly related to the cemetery sector could use their position as a trust member to gain a competitive advantage over other businesses resulting in financial gain. |
| Financial conflict of interest | A trust member’s close personal friend works for a herbicide supplier that is seeking the trust’s business and has offered the trust member a discount on personal purchases. | The trust member may use their position to influence the trust’s procurement decisions in exchange for personal financial gain. |
| Financial conflict of interest | A trust member who is also a gravedigger is paid by a funeral director for gravedigging services, and the cost is then on-charged to the trust by the funeral director. | While not receiving payment directly from the trust, the trust member may still use their position as a trust member to gain a competitive advantage over other businesses resulting in financial gain. |
| Non-financial conflict of interest | A trust member’s daughter is a funeral director, and the trust member has placed advertising materials for their daughter’s business in the cemetery trust office. Advertising for other business is not allowed. | The trust member’s actions result in an unfair competitive advantage for their daughter’s business and disadvantages other businesses. |
| Non-financial conflict of interest | A trust member’s brother owns a groundskeeping business bidding for a cemetery maintenance contract. | The trust member’s personal feelings about their brother may influence the trust member’s decision-making during the procurement process and may result in an unfair outcome. |
| Conflict of interest due to personal relationship | A trust member’s close personal friend has applied for a position as a paid trust secretary and the trust member wants to join the selection panel and participate in the interview process. | The trust member’s personal relationship with the applicant may influence the selection process and may result in an unfair outcome. |
| Conflict of duty | A trust member is a member of a community group that is opposed to the removal of vegetation in public spaces and the trust is planning to develop a new section of the cemetery that will require vegetation removal. | The trust member’s duty to the community group conflicts directly with the trust’s strategy for future development which is required to enable the trust to continue to deliver services and meet community needs. |

## Avoiding financial conflicts of interest

Financial conflicts of interest can pose significant risks to organisations with financial management responsibilities. A key risk is the potential for fraudulent and unlawful activities. It is not acceptable for a Class B cemetery trust member to:

* receive payment from the cemetery trust as an employee
* receive ad hoc payments from the cemetery trust outside of reasonable reimbursements for out-of-pocket cemetery related expenses
* receive payment from the cemetery trust as a contractor (except in exceptional circumstances approved by the department – see below)
* receive payment from a third party for delivering services that are on-charged to the trust by the third party (except in exceptional circumstances approved by the department – see below)
* receive gifts, benefits or hospitality (except in accordance with the trust’s [Gifts, benefits and hospitality policy](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates)).

## Managing conflicts of interest for an applicant seeking appointment

The application form for appointment to a Class B trust asks applicants if they have a potential conflict of interest. If the applicant answers ‘Yes’ or ‘Unsure’ they are required to discuss the matter with the trust.

If the trust agrees the applicant has a potential conflict, the trust must consider possible actions for managing the conflict and inform the applicant that they will be required to enter into a [conflict of interest management plan](#_Conflict_of_interest) if their application is successful. The applicant must include all relevant information in ‘Part C – Conflicts of interest’ of the application form.

When signing ‘Part E – Applicant’s declaration and signature’ of the application form, the applicant is required to declare that they agree to the terms in the application guidelines which specify that applicants with a potential conflict will be required to enter into a conflict of interest management plan if appointed.

When the trust submits an endorsed application to the department for processing, the department will review the information provided. If the department identifies a potential conflict relating to the applicant’s profession that has not been addressed in ‘Part C – Conflicts of interest’ of the application form, the department will return the application to the trust to action.

When the trust and applicant have discussed the potential conflict and the applicant has updated ‘Part C – Conflicts of interest’ of the application form, the trust may then resubmit the application to the department.

When the endorsed application has been submitted to the department, the trust may wish to draft the conflict of interest management plan in advance or wait until the appointment process is completed. The applicant is not expected to sign a conflict of interest management plan before they have received confirmation that their application has been successful, but they must sign the document as soon as practicable following their appointment.

### Exceptional circumstances for applicants intending to receive payment as a contractor

In exceptional circumstances where an applicant is to receive payment from the cemetery trust as a contractor, the department may consider the application if the trust has three or fewer trust members and the following conditions have been met and documented:

* The trust has undertaken an advertising and recruitment process and not identified other suitable candidates.
* The trust has undertaken a procurement process to test the market and an alternative provider has not been identified.
* The trust can demonstrate that there is no other suitable local provider of the required services.
* The applicant has committed to enter into a conflict of interest management plan with the trust if their application for appointment is successful.
* The trust has compared the contractor’s proposed fees with fees paid by a trust in the same region for comparable services and considers the proposed fees to be reasonable (for example, up to 10 per cent variation).
* The trust has committed to undertake a procurement process to test the market and seek an alternative provider every 12 months.

If a suitable alternative supplier is identified in the future, the department recommends changing providers to remove the risks associated with the financial conflict of interest of the trust member appointed under exceptional circumstances.

If a trust member appointed under exceptional circumstances intends to seek reappointment when their term of appointment ends, the circumstances will be tested again against the conditions above.

### Diagram: Process for managing conflicts of interest for an applicant seeking appointment

## Managing conflicts of interest for an existing trust member

Trust members are required to disclose conflicts at a trust meeting as soon as possible after becoming aware of a conflict. The person presiding at the trust meeting must ensure that the disclosure is recorded in the meeting minutes and the trust must take appropriate action.

From time to time the department becomes aware of potential trust member conflicts that have not been declared to the trust. In these circumstances the department will contact the trust to request the trust discusses the potential conflict with the trust member as soon as practicable and takes appropriate action.

Trust members who have disclosed or been identified as having a conflict are expected to enter into a conflict of interest management plan with the trust as soon as practicable following the disclosure/identification of the conflict to ensure it is managed appropriately.

If a trust member with a conflict of interest refuses to enter into a conflict of interest management plan, the trust’s chairperson or chairperson’s delegate is still responsible for monitoring the conflict and ensuring it is managed appropriately. In these circumstances the trust member’s unwillingness to enter into a conflict of interest management plan and relevant details of discussions with the trust member should be noted in the trust’s records.

### Diagram: Process for managing conflicts of interest for an existing trust member

## Conflict of interest management plan

A conflict of interest management plan is a written document that specifies a trust member’s conflict/s and strategies for managing the conflict/s.

Both the trust member and the trust chairperson or chairperson’s delegate are required to sign the document and agree to a schedule for periodic review of the plan. The trust member is responsible for acting in accordance with the plan and implementing agreed management actions. The trust chairperson or chairperson’s delegate is responsible for reviewing the plan as per the agreed schedule.

The department has developed a conflict of interest management plan template for Class B cemetery trusts 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>. Signed conflict of interest management plans should be kept on record and managed appropriately to protect the privacy of the trust member.

## Conflict of interest management strategies

A conflict of interest management plan may require a range of strategies, including the examples below.

### Trust meetings

* The trust member:
  + will disclose any conflicts of interest relating to agenda items at the beginning of trust meetings
  + will leave a trust meeting as soon as an agenda item related to the conflict comes up for discussion
  + will not initiate or engage in any discussions related to the conflict (including before and after meetings)
  + will not seek to influence other trust members’ opinions or decisions related to the conflict (including before and after meetings)
  + will not vote on an agenda item related to the conflict
  + will accept decisions made by the trust and support the implementation of trust decisions.

### Procurement processes

* The trust member will not participate in any stage of procurement processes where:
  + the trust member owns or works for a business bidding for a contract
  + the trust member has shares in a business bidding for a contract
  + the trust member has a private interest in a business bidding for a contract
  + the trust member is a directly related family member or a close personal friend of a person who owns or works for a business bidding for a contract.
* The trust member will not be privy to commercial-in-confidence information relevant to a profession/business the trust member has a private interest in.

### Promotion and advertising

* The trust member will not promote a business they have a private interest in (financial, non-financial or personal) to customers and other stakeholders.
* The trust member will not advertise a business they have a private interest in (financial, non-financial or personal) on cemetery premises or via trust communications (including online).[[3]](#footnote-3)
* The trust member will not be permitted to provide quotes in a private capacity for grant applications.

### Recruitment and employment

* The trust member will not participate in the recruitment process for new trust members (including interviews and referee checks) where an applicant is a directly related family member or a close personal friend of the trust member.
* The trust member will not participate in the recruitment of trust employees (including interviews and referee checks) where an applicant is a directly related family member or a close personal friend of the trust member.
* The trust member will not participate in performance reviews and performance management of a trust employee who is a directly related family member.

## Long-term conflicts that negatively impact the trust

In some cases, a conflict of interest may have a negative impact on the trust despite efforts to manage the conflict. Negative impacts may include ongoing disruptions to trust operations and the inability of the trust to realise plans and strategies in place to ensure it can meet community needs into the future.

If a trust member with a conflict of interest that has negatively impacted the trust seeks reappointment, the ongoing impact of the conflict will be taken into consideration.

If, after going through a recruitment process, a trust decides **not** to endorse an application for reappointment due to concerns about the impacts of a long-term conflict of interest, the trust must advise the department in writing outlining its concerns and justifications for its decision.

If a trust **does** endorse an application for reappointment where the department has identified concerns about the impacts of a long-term conflict of interest, the application for reappointment may not be supported by the department.

## Trust members and personal liability

In carrying out a function or power under the Cemeteries Act, a member of a cemetery trust is 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 (s. 16 of the Cemeteries Act).

## Resignations

If a Class B trust member wishes to resign from their position, they should inform the trust chairperson and advise the unit in a resignation letter. The letter may be [emailed to the unit](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au> or mailed to:

Cemetery Sector Governance Support Unit

Department of Health

PO Box 4057

MELBOURNE VIC 3001

Download a [resignation letter template](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments>.

## 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 in writing as soon as possible. The updated information will ensure the unit’s database is maintained accurately and trust members can be contacted as required.

## Fees and allowances

Under clause 5(1) of schedule 1 of the Cemeteries Act, a member of a Class B cemetery trust, other than a member who is an employee of the public service, is entitled to receive travelling and other allowances from time to time, fixed by the Minister in respect of that member. Pursuant to clause 5(2) of schedule 1 of the Cemeteries Act, the travelling and other allowances payable to a member of a cemetery trust are to be paid from the funds of that trust.

Claims for expenses must be reasonable and necessary. An expense is deemed necessary if it is unavoidably incurred in the course of authorised work. Expenses can only be paid upon presentation of receipts and these must be endorsed by the chairperson of the trust. Where a chairperson claims expenses, receipts must be endorsed by a person delegated to perform this function by the trust, for example, the trust secretary.

The travelling and other allowances incurred in accordance with the below fee structure are payable up to a maximum of $4,000 per annum.

| Expense type | Amount |
| --- | --- |
| Travelling expenses per trust member | Up to $2,000 |
| Postage and administrative expenses per trust member | Up to $2,000 |

## Cemetery trust member conduct

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

As members of a public entity, cemetery trust members:

* are subject to the public sector values outlined in s. 7 of the Public Administration Act, which include responsiveness, integrity, impartiality, accountability, respect and leadership
* must comply with the Victorian *Charter of Human Rights and Responsibilities Act 2006*
* must comply with the [*Director’s code of conduct*](https://vpsc.vic.gov.au/) <https://vpsc.vic.gov.au/> issued by the Victorian Standards Commissioner.

A copy of the [Director’s code of conduct and a range of other useful governance materials](https://vpsc.vic.gov.au/) <https://.vpsc.vic.gov.au> are available on the VPSC’s website.

## 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 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.

The cemetery trust does not have the power to remove any trust member.[[4]](#footnote-4) If the trust cannot function because of ongoing conflict, the chairperson should contact the unit.

## Managing poor trust member behaviour

The cemeteries sector is vibrant and engaged, and trust members make invaluable contributions to their communities. Unfortunately, on occasion trust members behave poorly, and this can have a significant impact on other trust members and the ability of the trust to function effectively.

### What is poor behaviour?

Poor behaviour includes behaviour that is disrespectful, inconsiderate, improper, hurtful, threatening, aggressive, fraudulent, or corrupt. It also includes bullying.[[5]](#footnote-5) If poor behaviour is not managed appropriately, it can have a negative effect on trust member communication, relationships, organisational culture, and service delivery.

#### Behaviour in trust meetings

Trust meetings naturally involve discussing differing views, opinions, and perspectives to inform the decision-making process. These discussions may be robust but must always be respectful. If a trust member feels strongly about a matter being discussed, it does not excuse inappropriate behaviour. Inappropriate behaviour in trust meetings includes:

* being disruptive, making interruptions or interjections when someone else is speaking
* being disrespectful, not listening to the person who is speaking or undermining their right to speak
* immediately disregarding opinions that do not align with your own views
* raising your voice, displaying verbal or physical aggression.

#### Communicating via email

When communicating via email, trust members are expected to conduct themselves as they would in a face-to-face meeting. Emails should be polite, have a professional tone, use diplomatic language and be considerate of the recipient. Emails also need to be clear, concise and include all relevant information (use attachments as necessary). Do not use all capital letters to emphasise or highlight your message as this may be interpreted as shouting at the recipient and is poor email etiquette.

Allow sufficient time when composing an email to ensure the response is thoughtful and carefully constructed. It is recommended that trust members read through emails carefully before sending to ensure the language and content is appropriate.

#### Threatening behaviour

If a trust member is subject to threatening, aggressive or violent behaviour from other trust members or employees, Victoria Police should be contacted immediately by telephoning 000.

### Who is responsible for addressing concerns about behaviour?

The trust chairperson is responsible for managing poor trust member behaviour. This responsibility extends to trust activities outside of trust meetings and email communications. For example events, casual gatherings, and interactions with employees and the public.

The trust chairperson is expected to set a positive example for all trust members by upholding the Victorian public sector values and acting in accordance with the Director’s Code of Conduct.

### Managing poor behaviour during trust meetings

The trust chairperson plays a vital role in managing poor behaviour during trust meetings. Trust chairpersons should employ the following strategies during trust meetings as necessary:

* Remind trust members of the expected standards of behaviour as outlined in the Director’s Code of Conduct.
* Call out inappropriate behaviour at the time it occurs and advise trust members that it is unacceptable.
* Establish an agreed approach for trust meeting agenda items, making it clear when individual trust members will make uninterrupted presentations and when items are open for discussion.
* Keep discussions to allocated time limits to avoid conversations going off track.
* If a trust member is being ignored or spoken over, direct other trust members to give them the opportunity to speak without interruption.
* Pay attention to non-verbal cues that may indicate someone is hesitant about expressing their opinion and reassure them that their contribution is valued.
* If one trust member is monopolising the meeting, encourage them to keep their comments short and give others a chance to speak.
* Close down unhelpful or harmful conversations by calling the trust meeting to order and redirecting the discussion.
* If discussions become heated, direct the trust to take a short break.
* If a trust member behaves in an aggressive or threatening manner, ask them to leave the meeting. If the trust member refuses to behave in a reasonable manner the trust chairperson may need to bring the meeting to a close and reconvene later.

### Taking formal action to manage poor behaviour

Poor behaviour should be managed promptly and effectively to prevent matters from escalating and to minimise the impact on the trust. Formal action may be initiated by the trust chairperson based on their own observations (for example, a pattern of poor behaviour exhibited by a trust member) or by a complaint being raised by another trust member.

If a trust member wishes to raise a complaint with the trust chairperson, ideally this should be a face-to-face conversation. However, if a trust member is uncomfortable speaking about the matter, they may wish to inform the trust chairperson of their complaint in writing.

#### Step 1 – Informal meeting

The trust chairperson should contact the trust member who has exhibited poor behaviour and arrange a face-to-face informal meeting to discuss the matter.[[6]](#footnote-6) The trust chairperson should discuss the complaint without identifying who initially raised the matter. The trust member must be provided with the opportunity to discuss their conduct and respond to the concerns raised.

If the trust member responds positively to the informal discussion and their behaviour improves, no further action is required. If the trust member’s behaviour does not improve, the trust chairperson will need to arrange a formal meeting with the trust member.

#### Step 2 – Formal meeting

The trust chairperson should identify and document in writing:

* specific incidents where the trust member demonstrated poor behaviour, including the nature of the behaviour, when it took place and the impact on the trust
* the ways in which the trust member’s behaviour breaches the Director’s Code of Conduct
* steps the trust member will need to take to address their behaviour
* confirmation the trust member understands that if their poor behaviour continues the matter will be referred to the department.

A copy of the written document is to be provided to the trust member following the formal meeting. All information about the meeting should remain confidential, and records should only be accessible by the trust chairperson. Hard copy records should be stored in a secure location and digital records should be password protected.

Note: The trust member may wish to bring another person to the meeting for support during the process. The trust chairperson may also consider arranging an independent facilitator for the meeting if necessary and with the prior agreement of the trust member.

#### Step 3 – Referral to the department

If the trust member continues to display poor behaviour after the formal meeting, the trust chairperson should inform the department and provide copies of all relevant documentation. At this time the trust member should be advised that the matter has been referred to the department.

#### Step 4 – Assessment by the department

The department will assess the information provided by the trust chairperson and consider next steps which may include one of the following:

1. The department instigates a formal investigation into the trust member’s alleged conduct.
2. The department writes to the trust member advising them that based on the information provided their behaviour is inconsistent with the Director’s Code of Conduct, and, if it continues, their conduct may be subject to a formal investigation.
3. The department advises the trust chairperson and trust member that the reported behaviour is not considered to be a breach of the Director’s Code of Conduct and no further action will be taken.

In exceptional circumstances, the Minister for Health may recommend the removal of a trust member by the Governor in Council.

## No free rights of interment for trust members

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

# Topic 5. Abolition and amalgamation of cemetery trusts

Abolition/amalgamation of cemetery trusts generally occurs as a result of a voluntary agreement between two or more trusts that have elected to merge. There are many reasons why a trust may seek an amalgamation with another trust, including difficulty attracting the minimum number of trust members to form a quorum, low turnover or financial and operational security. In certain circumstances, generally related to governance or operational failure, the government may decide to abolish/amalgamate a cemetery trust or class of cemetery trust.

Under s. 8 of the Cemeteries Act, and 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, is the date the order comes into effect. 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 trust(s) will no longer be in existence (be abolished) and one of the following will take place:

* a new cemetery trust will be created to take control of the assets and liabilities of the former trust(s) and become accountable for the management and operation of the cemeteries managed by the former trust(s), or
* the assets and liabilities of the abolished cemetery trust(s) will be amalgamated into an existing cemetery trust (the merged trust), which will become accountable for the management and operation of the cemeteries managed by the former trust(s).

## Trusts seeking abolition

Trusts seeking abolition should consult their local community. This consultation should include:

* outlining the trust’s intention and seek community feedback by placing an advertisement in the local paper(s)
* contacting ‘Friends of the Cemetery’ or other similar groups and posting information on the trust’s website or social media platforms such as Facebook
* arranging a public meeting to discuss the trust’s intention
* contacting the local council to outline the trust’s intention
* completing a due diligence report that includes information about the assets and liabilities, the condition of the cemetery/cemeteries under its control and any other matters that may be relevant to the new trust.

Once the trust has finalised its community consultation and has reached agreement with another trust for the proposed merger, it should write to the department, addressed to the Manager, Cemetery Sector Governance Support Unit, seeking approval from the Minister for Health for the abolition/merger of the trust. The letter should provide the following:

* the reason(s) why the trust should be abolished
* the level of trust members’ support for the abolition/amalgamation including the date of the trust meeting and agreement to seek approval for a merger
* a list of the assets and liabilities being transferred
* details of public consultation undertaken and the outcome of the consultation, including how the trust will manage any issues raised
* the identity of any other trust interested in the abolition/amalgamation process
* a copy of the trust’s due diligence assessment report[[7]](#footnote-7)
* any documents detailing agreements between the two trusts relating to the proposed merger
* any other information/documents that the trust considers relevant.

## The trust seeking a merger

The trust seeking the merger will need to provide a letter and due diligence report to the unit seeking approval from the Minister for the merger.

The letter should outline the following:

* evidence that the trust supports the merger
* evidence of the trust’s own due diligence and identify any financial or community impacts of the proposed merger or potential issues associated with the proposed merger
* the outcome of community consultation relating to the merger
* the perpetual maintenance obligations of the former trust and transfer of its assets to meet these obligations
* advice about how the perpetual maintenance obligation will be managed.

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

## Council trusts

Council trusts seeking amalgamation with a community-operated trust or Class A trust will need to fully fund their existing perpetual maintenance obligations before an application for merger will be considered.

# Topic 6. Cemetery trust fees

Cemetery trusts have the power to set fees for the products and services they provide to their communities. Fees set by cemetery trusts must be approved by the department Secretary. When fees are approved, the department publishes an approval notice in the Victoria Government Gazette. Cemetery trusts cannot charge a fee that has not been approved and published by the department.

## Government policy

The [*Pricing for Value Guide*](https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties) issued by the Department of Treasury and Finance sets pricing principles for government entities including cemetery trusts <https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties>. The pricing principles help entities:

* identify opportunities to review their fees
* increase cost recovery
* achieve sustainable funding
* reduce costs
* improve equity
* increase administrative simplicity.

The department’s fee-setting processes for cemetery trusts are consistent with the principles outlined in the *Pricing for Value Guide*.

## Role of cemetery trusts

Cemetery trusts are expected to set fees that are consistent, transparent, affordable and align with community expectations.

In setting fees, cemetery trusts must consider the costs of operating and managing the public cemeteries they are responsible for and the costs of maintaining public cemeteries in perpetuity. Revenue raised by cemetery trusts through their fees is expected to fund:

* current operational costs
* repairs or replacement of cemetery facilities and equipment
* financial reserves for future operations.

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

Cemetery trusts should consider the following framework when reviewing their fees.

* **Sufficient and sustainable:** Fees should be enough to cover costs and enable appropriate standards of service. Costs can include essential operating needs such as expenditure for supplies, services, labour, products, equipment and capital needs.
* **Efficient:** Fees should cover only necessary costs and avoid waste.
* **Not excessive:** Fees need to be accessible for Victorian families in line with community expectations.
* **Consistent and equitable:** Fees 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 in cemetery fees.
* **Simple and transparent:** Information on the components of fees should be easy to obtain (such as via itemised billing) and easy for families to understand and compare.
* **Competitively neutral:** Fees should be competitively neutral where there are alternative non-government providers, for example the supply of memorialisation goods. Refer to the department’s [*Cemetery Trust Code of Practice*](https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice) for more information about competitive neutrality <https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice>.

## Role of the department

The department’s role is to ensure cemetery trusts undertake an appropriate fee setting process before submitting fee applications for approval. Cemetery trusts must provide sufficient detail in fee applications for the department’s consideration.

Fee applications are usually approved within six weeks of lodgement to the department if the cemetery trust has provided all required information.

When fees are approved, the department will publish an approval notice in the Victoria Government Gazette and publish the cemetery trust’s fee schedule on the department’s website.

## Charging fees for products and services

Cemetery trusts are required to charge approved fees for products and services. Fees can only be waived or reduced on the grounds of extreme hardship or other special circumstances. Cemetery trusts can determine their own definition of extreme hardship and special circumstances.

## Annual Consumer Price Index increase

All approved cemetery trust fees of $50 or more that exist on 1 February are adjusted annually in line with the Consumer Price Index (CPI).

The CPI increase is based on the All Groups Consumer Price Index number (for Melbourne) for the current December quarter, as determined by the Australian Bureau of Statistics. Cemetery trust fees increased by CPI are effective from 1 July each year and are rounded to the nearest five-dollar unit.

Cemetery trusts are advised by the department annually of the upcoming CPI increase for that year.

## Standard fee descriptions

In consultation with the Cemeteries and Crematoria Association Victoria, the department has developed a list of standard fee descriptions (fee names). Each fee description has a unique three-digit identification code. All cemetery products and services should be matched to a standard description. Cemetery trusts can add their own fee name or label to the end of the standard descriptions.

The fee descriptions are grouped into the following six categories. Not all categories or fees within a category will be applicable to all cemetery trusts, as each trust offers different products and services.

1. **Administration**

* Fees related to administrative processes such as record searches and issuing certificates.
* Note: For simplicity, cemetery trusts are encouraged to incorporate administration costs within fees of other categories where practical instead of a standalone fee. For example, administration costs for organising an interment can be included within the ‘interment services’ fee. Similarly, if a right of interment certificate is issued for every plot sold, the right of interment fee could include a component for issuing the certificate, instead of having a separate fee for this service.

| Fee Code | Fee Category 1 | Fee Category 2 | Fee Category 3 |
| --- | --- | --- | --- |
| 101 | Administration Fees Miscellaneous | Cancellation Fees |  |
| 102 | Administration Fees Miscellaneous | Certificate | Issue |
| 103 | Administration Fees Miscellaneous | Certificate | Second or additional issued |
| 104 | Administration Fees Miscellaneous | Grave testing |  |
| 105 | Administration Fees Miscellaneous | Hire of facilities and equipment |  |
| 106 | Administration Fees Miscellaneous | Interment administration |  |
| 107 | Administration Fees Miscellaneous | Interment at short notice |  |
| 108 | Administration Fees Miscellaneous | Interment out of standard hours |  |
| 109 | Administration Fees Miscellaneous | Late arrival |  |
| 110 | Administration Fees Miscellaneous | Own site selection |  |
| 111 | Administration Fees Miscellaneous | Postage |  |
| 112 | Administration Fees Miscellaneous | Search of cemetery records |  |

1. **Cremation services**

* Note: This category of fees is only relevant to cemetery trusts that operate crematoria.
* Fees related to the cremation of bodily remains and body parts.

| Fee Code | Fee Category 1 | Fee Category 2 |
| --- | --- | --- |
| 201 | Cremation services | Adult |
| 202 | Cremation services | Child |
| 203 | Cremation services | Cremation at short notice |
| 204 | Cremation services | Early weekday delivery |
| 205 | Cremation services | Outside standard operating hours |
| 206 | Cremation services | Stillborn or body parts |
| 207 | Cremation services | Temporary storage (cremation next day) |
| 208 | Cremation services | Witnessing of cremation |

1. **Interment services**

* Fees related to sinking, digging graves or placing remains into a place of interment such as a grave or niche wall.
* Subcategories distinguish between the interment of bodily and cremated remains, adult and child remains, and first and subsequent burials.
* Note: Many cemetery trusts choose to use a ‘cost plus percentage’ fee rather than a fixed fee for interment services. For example, if a trust relies on more than one contractor for gravedigging or if gravedigging charges vary depending on the soil type, the trust could charge ‘cost plus 20 per cent’ to ensure it is never ‘out of pocket’ when contractor costs vary.

| Fee Code | Fee Category 1 | Fee Category 2 | Fee Category 3 |
| --- | --- | --- | --- |
| 301 | Interment Services Alternative backfilling |  |  |
| 302 | Interment Services Exhumation |  |  |
| 303 | Interment Services Grave Capping |  |  |
| 304 | Interment Services Interment of bodily remains | Adult | First interment |
| 305 | Interment Services Interment of bodily remains | Adult | Second interment |
| 306 | Interment Services Interment of bodily remains | Adult | Third interment |
| 307 | Interment Services Interment of bodily remains | Child | First interment |
| 308 | Interment Services Interment of bodily remains | Child | Second interment |
| 309 | Interment Services Interment of bodily remains | Child | Third interment |
| 310 | Interment Services Interment of bodily remains | Each additional 0.3m |  |
| 311 | Interment Services Interment of cremated remains | Interment in grave |  |
| 312 | Interment Services Interment of cremated remains | Interment in memorial |  |
| 313 | Interment Services Interment of cremated remains | Officer attendance |  |
| 314 | Interment Services Interment of cremated remains | Scattering of cremated remains |  |
| 315 | Interment Services Interment of stillborn remains |  |  |
| 316 | Interment Services Lift and Reposition |  |  |
| 317 | Interment Services Oversized Grave |  |  |
| 318 | Interment Services Oversized Vault |  |  |
| 319 | Interment Services Re Opening Grave | With cover |  |
| 320 | Interment Services Re Opening Grave | Without cover |  |
| 321 | Interment Services Removal of ledger |  |  |
| 322 | Interment Services Vault |  |  |

1. **Memorial permits / installation**

* Fees for providing permits to establish a memorial
* Fees for providing permits to alter or renovate a memorial
* Fees for the cemetery trust or a contractor engaged by the trust to affix plaques or install other types of memorials
* Fees for providing permission to an external contractor (not engaged by the trust) to affix plaques or install other types of memorials
* Note: In this fee category, ‘headstone’ refers to a memorial placed at the head of the grave (often a single stone or a concrete desk), whereas ‘monument’ is a larger, often more elaborate structure, either upright or covering the surface of the grave. Individual trusts can apply their own definitions about which types of memorial count as a ‘headstone’ or ‘monument’. Some trusts to not distinguish and charge the same fee for both.
* Note: Each trust can determine what works it considers to be a ‘minor’ or ‘major’ renovation and then apply its decision consistently to each application it receives.

| Fee Code | Fee Category 1 | Fee Category 2 | Fee Category 3 |
| --- | --- | --- | --- |
| 401 | Memorial permit fees Certification | Completion |  |
| 402 | Memorial permit fees Certification | Inspection |  |
| 403 | Memorial permit fees Certification | Second and additional inspection for monument completion certificate |  |
| 404 | Memorial permit fees Crypt Shutters |  |  |
| 405 | Memorial permit fees Installation | Affixing bronze and or granite panel or other base by external supplier | On a lawn grave or lawn beam excludes concrete rest and or spacing block |
| 406 | Memorial permit fees Installation | Affixing bronze and or granite panel or other base by external supplier | On an inground cremation memorial excludes concrete rest and or spacing block |
| 407 | Memorial permit fees Installation | Affixing bronze and or granite panel or other base by external supplier | To an above ground cremation memorial excludes concrete rest and or spacing block |
| 408 | Memorial permit fees Installation | Affixing bronze externally supplied plaque and or granite panel or other base by cemetery | Affixing or installation or placement fee |
| 409 | Memorial permit fees Installation | Affixing bronze externally supplied plaque and or granite panel or other base by cemetery | Supply of concrete rest, spacing block or other necessary base |
| 410 | Memorial permit fees Installation | New headstone and base with existing foundation | Each additional grave forming the same monument |
| 411 | Memorial permit fees Installation | New headstone and base with existing foundation | Single Grave |
| 412 | Memorial permit fees Installation | New headstone and base without existing foundation | Each additional grave forming the same monument |
| 413 | Memorial permit fees Installation | New headstone and base without existing foundation | Single Grave |
| 414 | Memorial permit fees Installation | New monument with existing foundation | Each additional grave forming the same monument |
| 415 | Memorial permit fees Installation | New monument with existing foundation | Single Grave |
| 416 | Memorial permit fees Installation | New monument without existing foundation | Each additional grave forming the same monument |
| 417 | Memorial permit fees Installation | New monument without existing foundation | Single Grave |
| 418 | Memorial permit fees Installation | Out of Standard Hours | 0-4hrs (memorial installation with prior approval) |
| 419 | Memorial permit fees Installation | Out of Standard Hours | 4hr+ within same day (memorial installation with prior approval) |
| 420 | Memorial permit fees Renovation | Additional Inscription |  |
| 421 | Memorial permit fees Renovation | Major | Each additional grave forming the same monument |
| 422 | Memorial permit fees Renovation | Major | Single Grave |
| 423 | Memorial permit fees Renovation | Minor | Single Grave |
| 424 | Memorial permit fees Renovation | Out of Standard Hours |  |
| 425 | Memorial permit fees Supply of Approved Products |  |  |

1. **Memorialisation**

* Fees for the supply of various memorials, for example headstones, plaques, urns, and vases
* Note: Many cemetery trusts choose to use a ‘cost plus percentage’ fee rather than a fixed fee for memorialisation products. For example, if the cost of buying a plaque depends on the number of lines or other features, the trust could charge ‘cost plus 20 per cent’ to ensure it is never ‘out of pocket’ when supplier costs vary.

| Fee Code | Fee Category 1 | Fee Category 2 |
| --- | --- | --- |
| 501 | Memorialisation | Base |
| 502 | Memorialisation | Book of remembrance |
| 504 | Memorialisation | Headstone |
| 505 | Memorialisation | Memorial inscription |
| 506 | Memorialisation | Monument |
| 509 | Memorialisation | Photographic items |
| 510 | Memorialisation | Plaque |
| 511 | Memorialisation | Rock/boulder |
| 512 | Memorialisation | Temporary grave marker |
| 513 | Memorialisation | Tree/shrub |
| 514 | Memorialisation | Urn |
| 515 | Memorialisation | Vase |

1. **Right of interment**

* Fees for the sale of a place of interment such as a grave for bodily remains or niche wall space for cremated remains. Some trusts may refer to this as the ‘plot fee’ or ‘land fee’.
* A right is purchased ‘at need’ when there are currently remains to inter in that place of interment. A right is purchased ‘pre-need’ when the place of interment is for future use.
* For rights of interment for cremated remains, the fee descriptions distinguish between ‘perpetual tenure’ and ’25-year tenure’.
* A memorial where an interment cannot occur (or where there is no intention for a burial to take place, only some form of memorialisation) still meets the definition of a right of interment in the Cemeteries Act.

| Fee Code | Fee Category 1 | Fee Category 2 | Fee Category 3 |
| --- | --- | --- | --- |
| 601 | Right of interment bodily remains At Need | Adult |  |
| 604 | Right of interment bodily remains At Need | Child |  |
| 607 | Right of interment bodily remains Pre- Need | Adult |  |
| 610 | Right of interment bodily remains Pre- Need | Child |  |
| 613 | Right of interment cremated remains At Need | Single | 25-year tenure |
| 614 | Right of interment cremated remains At Need | Single | Perpetual tenure |
| 615 | Right of interment cremated remains At Need | Double | 25-year tenure |
| 616 | Right of interment cremated remains At Need | Double | Perpetual tenure |
| 617 | Right of interment cremated remains At Need | Multiple | 25-year tenure |
| 618 | Right of interment cremated remains At Need | Multiple | Perpetual tenure |
| 619 | Right of interment cremated remains Pre-Need | Single | 25-year tenure |
| 620 | Right of interment cremated remains Pre-Need | Single | Perpetual tenure |
| 621 | Right of interment cremated remains Pre-Need | Double | 25-year tenure |
| 622 | Right of interment cremated remains Pre-Need | Double | Perpetual tenure |
| 623 | Right of interment cremated remains Pre-Need | Multiple | 25-year tenure |
| 624 | Right of interment cremated remains Pre-Need | Multiple | Perpetual tenure |
| 625 | Right of interment cremated remains Conversion or Extension | Conversion - 25yr to perpetual tenure |  |
| 626 | Right of interment cremated remains Conversion or Extension | Conversion - Perpetual to 25yr tenure |  |
| 627 | Right of interment cremated remains Conversion or Extension | Extension - Additional 25yrs |  |
| 628 | Right of interment Surrender | Administration (DH sliding scale for maintenance is also applied to the refund) |  |

# Topic 7. Fee applications

Cemetery trusts must make a formal application to the department Secretary for approval to make or vary fees. This guidance and associated tools have been developed to assist Class B cemetery trusts make applications for new fees or increases to existing fees, and to:

* provide cemetery trusts with standard fee descriptions and tools to assist in identifying key cost drivers when developing fees
* ensure fees set by cemetery trusts are clear and transparent
* assist cemetery trusts to meet their operational and maintenance obligations under the Cemeteries Act
* provide consistency across the cemetery sector for descriptions of cemetery products and services, and how cost drivers are identified.

Cemetery trusts must provide justification for any proposed new or increased fees, and a breakdown of the total proposed fee amounts. Completing the department’s interactive [*Fee justification model*](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting) is the preferred method for cemetery trusts to demonstrate the cost drivers of their proposed fees.

## Overview of the application process

The following steps should be undertaken when applying for new fees or fee increases.

1. Complete the fee justification model. Cemetery trusts may send a draft to the unit for review before submitting the signed version.
2. A cover letter or email should explain why the fee increase is being requested and outline the source or components of the figures used in the model.
3. Submit the signed model and cover letter with any supporting documentation to the department:

Email: [cemeteries@health.vic.gov.au](mailto:cemeteries@health.vic.gov.au) (preferred)

Post: Cemetery Sector Governance Support Unit  
Department of Health  
GPO Box 4057  
MELBOURNE VIC 3001

Fee applications are usually approved within six weeks of lodgement to the department if the cemetery trust has provided all required information. The department may ask for additional information about the proposed fees and any figures used in the model.

When fees are approved, the department will publish an approval notice in the Victoria Government Gazette and publish the cemetery trust’s fee schedule on the department’s website.

## Fee justification model

The fee justification model (the model) is a table of cemetery fees broken down into cost drivers that make up the total proposed fee. The model enables trusts to calculate fees based on the costs associated with providing cemetery services. The model and a user guide are available on the [department's website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance) at <https://www.health.vic.gov.au/cemeteries-and-crematoria/ class-b-cemetery-trust-fee-setting>. Microsoft Excel is required to complete the model. Trusts that do not have access to Microsoft Excel should contact the department using the contact details below.

## Deleting fees

Cemetery trusts can request the deletion of fees by emailing the department. The cemetery trust should list the fees to be deleted and briefly explain why they are no longer required.

## Recommended memorial permit fees

In conjunction with the CCAV, the department has developed recommended prices for fees in the memorial permit category. If the trust wishes to charge the recommended amount or a lower fee, it can submit a Recommended Memorial Permit Fee Application Form instead of using the fee justification model. The form is available on the health.vic website at <https://www.health.vic.gov.au/ cemeteries-and-crematoria/ class-b-cemetery-trust-fee-setting>. If the trust wishes to charge a memorial permit fee that is higher than the recommended amount, the fee must be included in the model.

## Fee application sample

Subject: Fee application for Sample Cemetery Trust

Dear Manager

Following a review of our existing fees we have attached a fee justification model for the department’s approval.

The trust is seeking to increase its existing fees as current revenue raised is not covering operational costs.

The contractor hired for grave-digging services has recently increased their fees and our gazetted interment fees do not cover our costs associated with providing grave-digging services.

The trust also sources memorialisation plaques from a supplier which has increased its prices.

We have employed a groundskeeper to provide general maintenance to the cemetery following the resignation of two long-term trust members. Our new groundskeeper is paid in accordance with award wages for cemetery staff.

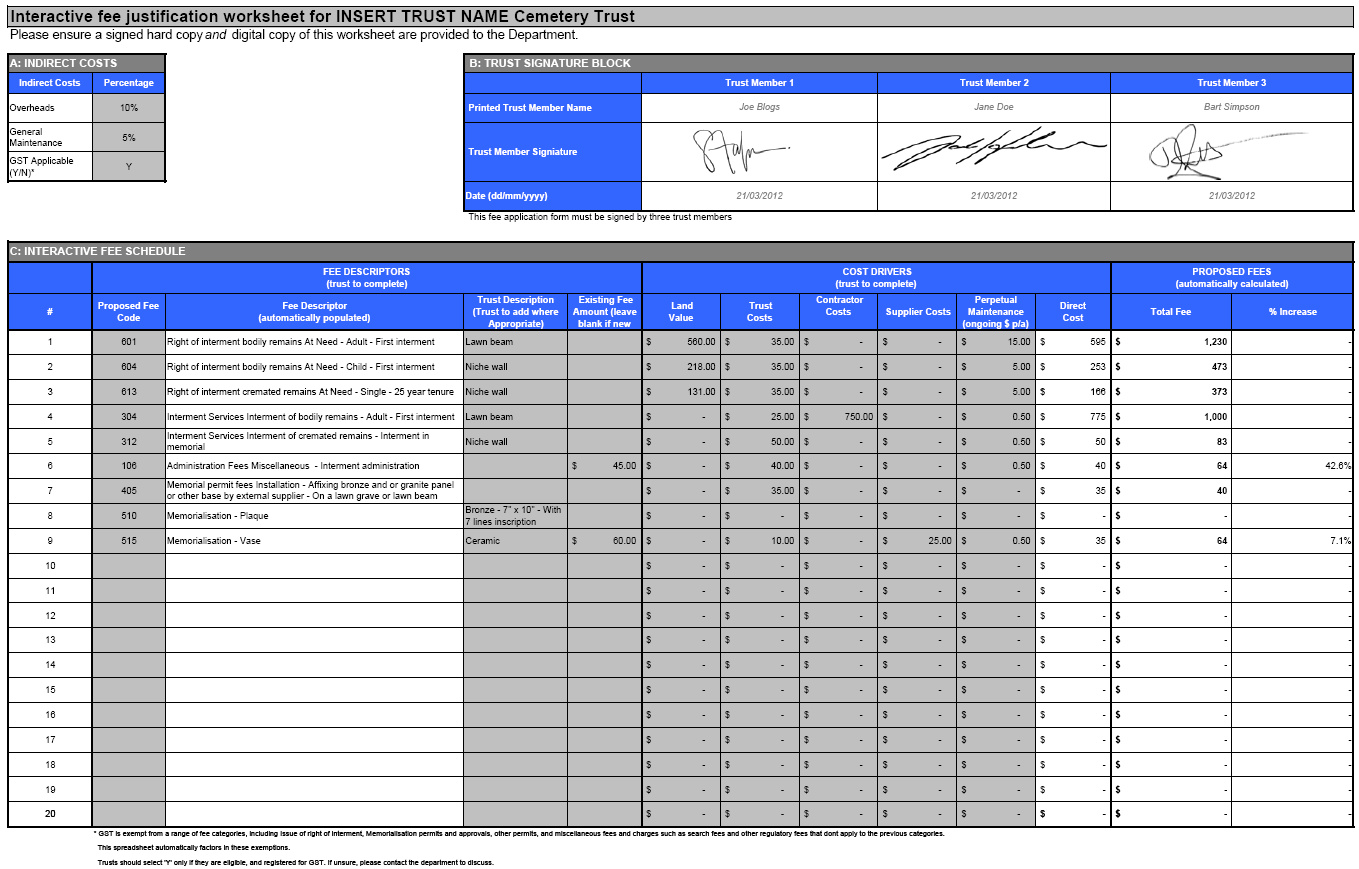
The perpetual maintenance component for right of interment fees ($15) was calculated by estimating the annual funds necessary to maintain the lawn areas of the cemetery including infrastructure repairs ($67,500), divided by the number of plots in the cemetery (4500). Perpetual maintenance for the niche wall rights of interment ($5) was calculated by estimating the annual maintenance costs of that area of the cemetery ($490), divided by the number of spaces (98). Other fees have a notional amount as a perpetual maintenance component.

When calculating the trust costs of each fee, we have used a labour rate based on the Cemetery Industry Award rate for funeral supervisors.

The proposed right of interment fees include a land value based on the price of neighbouring grazing land that was sold earlier this year, plus the cost of installing the lawn beams. We hope the attached documents are appropriate and seek your approval.

Regards

J. Smith  
Trust Chairperson



# Topic 8. Officers of the cemetery trust

## Trust secretary or manager

Although there is no reference in the Cemeteries Act about the position of secretary or trust manager, the cemetery trust may appoint a person to attend to routine business matters and to perform those powers and duties as delegated by the trust.

Depending on the size and operations of the trust, the role of secretary or manager may be paid or voluntary. Where this is a paid position, the trust should ensure a [position description](#_Position_Description_-) (more information about developing a position description is located at the end of this topic), is created and an employment contract completed. Any payment made to the secretary should be commensurate with the duties of the position.

The Local Government Industry Award may be used as a guide when determining wages for administration staff. Trusts can calculate the current award rate using the Fair Work Ombudsman’s online [Pay and conditions tool](https://calculate.fairwork.gov.au/) <https://calculate.fairwork.gov.au/>.

Advice about appropriate pay, working conditions and employment contracts is available on the [Fair Work Ombudsman website](https://www.fairwork.gov.au/) <https://www.fairwork.gov.au/>.

**Note:** Trust members may be appointed to the role of trust secretary. However, they must not receive any payment for this role other than reimbursement of expenses as approved by the trust.

The trust secretary is to exercise care and diligence, act in good faith and use their powers for a proper purpose. The secretary may not use inside information gained through their position for their own benefit or to the detriment of the public entity.

## Other officers of the cemetery trust

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

At the time of their employment, a written specification of duties and conditions of employment should be prepared, taking account of government guidelines and agreed by both parties.

Any payment to a person employed in an executive role by a trust must comply with the policy on [*Victorian public entity executive employment*](https://vpsc.vic.gov.au/resources/victorian-public-entity-executive-employment/) <https://vpsc.vic.gov.au/resources/victorian-public-entity-executive-employment/> available on the VPSC’s website.

Under the Public Administration Act, all cemetery trust employees are deemed to be public sector employees and therefore are subject to the [*Code of conduct for Victorian public sector employees*](https://vpsc.vic.gov.au/resources/code-of-conduct-for-employees/) <https://vpsc.vic.gov.au/resources/code-of-conduct-for-employees/> available on the VPSC’s website. The purpose of the code is to promote adherence to the public sector values prescribed in s. 7 of the Public Administration Act, including responsiveness, integrity, impartiality, accountability, respect, leadership and human rights.

## Employing trust members

Appointed trust members should not be employed or contracted by the trust that they are appointed to, due to the potential for perceived and real conflicts of interest. This does not prevent a trust member from being employed by another unrelated trust.

## Managing employees

### Managing underperformance

The Fair Work Ombudsman has developed the [*Best practice guide – managing underperformance*](https://www.fairwork.gov.au/) <www.fairwork.gov.au> available on its website, which is a comprehensive guide that explains what is meant by underperformance, why this happens and sets out a plan to assist employees address and manage issues about underperformance.

Trusts that are considering taking formal action to address employee underperformance are strongly encouraged to seek independent legal advice.

### Courses for employers and employees

Free, short [online courses](https://www.fairwork.gov.au/) <https://www.fairwork.gov.au/> that teach skills and strategies to employers and employees relating to the workplace are provided by the Fair Work Ombudsman and are available on its website.

### Workplace bullying

#### Definition of bullying

In line with the information provided by the [Fair Work Commission](https://www.fwc.gov.au/) <https://www.fwc.gov.au/> and the *Fair Work Act 2009* s. 789FD(1), workplace bullying occurs when:

* an individual or group of individuals repeatedly behaves unreasonably towards a worker or a group of workers at work
* the behaviour creates a risk to health and safety.

Reasonable management action conducted in a reasonable manner does not constitute workplace bullying.

#### Reasonable management action

The following are examples of what may constitute reasonable management action:

* performance management processes
* ongoing meetings to discuss underperformance
* counselling or disciplining a worker for misconduct
* investigating alleged misconduct
* informing a worker about unsatisfactory work performance or inappropriate work behaviour
* asking a worker to perform reasonable duties in keeping with their job
* maintaining reasonable workplace goals and standards.

These actions must be conducted in a reasonable manner. If they are not, they could be considered bullying.

#### Examples of bullying

Depending on the nature and the context of the conduct, bullying behaviours can include, but are not limited to:

* making vexatious allegations against a worker
* spreading rude or inaccurate rumours about an individual
* conducting an investigation in a grossly unfair way.

The effects of workplace bullying often result in significant negative consequences for a person’s health and wellbeing.

## Delegation of trust power

Section 15 of the Cemeteries Act provides for a 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 trust may delegate powers, duties and authority, it cannot delegate the trust’s responsibility. This means the trust continues to be accountable for exercising its powers and functions, including the actions of its delegates.

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.[[8]](#footnote-8)

## Position description – secretary

Class B cemetery trust secretaries attend to routine business matters on behalf of the trust and perform powers and duties delegated by the trust. This may include the day-to-day administration of the cemetery, communication with cemetery stakeholders, general statutory obligations, financial management, assisting with funeral arrangements, memorial approvals and complaints management.

### Duties and responsibilities

#### Administration of the trust

* Inducting new trust members
* Preparing the trust’s meeting agendas
* Preparing draft meeting minutes for the trust chairperson and recording and circulating minutes, including follow-up on issues and actions raised by the trust
* Ensuring effective information flows within the trust
* Undertaking tasks and decisions set by the chairperson via the trust – for example, helping to implement corporate strategies and giving practical effect to the trust’s decisions
* Preparing and presenting the trust’s budget and financial information for consideration

#### General statutory obligations

* Submitting cemetery financial records for annual audit (where required)
* Preparing the *Abstract of accounts* for trust approval
* Preparing and updating the trust fee schedule
* Circulating advice from the department to trust members
* Maintaining and updating cemetery records

#### Financial management

* Preparing invoices for the sale of cemetery products and services
* Preparing receipts and recording funds received from the sale of cemetery products and services
* Daily deposit of trust income into the bank
* Preparing and presenting trust bank statements, cheques, invoices, sales and payment data for reconciliation by nominated trust members
* Preparing lists of invoices requiring payment approval by trust
* Preparing lists of invoices with amounts owed to the trust
* Maintaining appropriate records for audit purposes
* Ensuring the trust’s purchasing and expenditure policy is followed
* Ensuring a financial control policy is established and followed

#### Funeral and interment arrangements

* Sale of pre-need rights of interment to the public
* ensuring all relevant paperwork is provided and cemetery interment records, financial records, maps and registers are updated
* Sale of at-need rights of interment, interment services and memorials
* ensuring all relevant paperwork is provided and cemetery interment and financial records, cemetery maps and registers are updated
* ensuring someone is on call seven days per week to accept funeral arrangements (hours may vary as arranged by the trust and local funeral directors)
* Reviewing all paperwork relating to interments to ensure it meets the requirements of the current Cemeteries Act and Cemeteries Regulations
* Making all necessary arrangements with contractors/gravediggers for grave-digging services and ensuring interment services are provided to a satisfactory standard
* Where necessary and required by the trust, attending funeral/interment services as the delegate of the trust to provide access to the cemetery, receive and check documentation and to oversee the conduct of the service

#### Memorial approvals

* Reviewing applications to establish/alter a memorial before consideration by the trust
* checking that the holder of the right of interment has provided their permission to establish/alter the memorial
* ensuring the correct information and signatures are included in the application to establish/alter the memorial
* Taking payment and providing receipts for funds received
* Seeking trust approval (where required) to establish/alter the memorial
* Making arrangements for mounting or installing plaques
* Giving direction to contractors/stonemasons to ensure memorials are installed in the correct location in the cemetery

#### Investigations and complaints management

* Providing advice to the trust chairperson about any complaints raised by the local community about the operations or management of the cemetery
* Ensuring complaints are brought to the trust’s attention for consideration and response
* Ensuring written complaints are responded to in writing with details of the trust’s consideration of the complaint and the trust’s response. The trust’s response should clearly set out the trust’s decision in relation to the complainant’s concerns. It should detail what action (if any) the trust will undertake to rectify the complainant’s concerns. If no action is to be taken the trust should identify the reasons why
* Seeking legal and insurance advice at the direction of the trust
* Seeking advice from the department on behalf of the trust

### Desirable skills and experience

* Community member
* Clerical/administrative
* Financial management
* Information technology
* Knowledge of sector
* Community engagement

### Position terms and conditions

#### Conflicts of interest

Trust secretaries are required to disclose any pecuniary interests or other interests that could conflict with the proper performance of their duties.

#### Legal obligations

Trust secretaries have legal obligations and duties under common law and under the constituting legislation, being the Cemeteries Act, Cemeteries Regulations, Public Administration Actand other relevant state and federal legislation.

# Topic 9. Trust meetings

Cemetery trust meetings allow the trust to make decisions about its operations and the business of the cemeteries it is responsible for.

## Frequency of meetings

The department recommends that trusts meet at least four times a year including:

* an open meeting with members of the public invited to attend
* a budget and planning meeting, usually held in April or May.

If a cemetery receives very few or no interments in a year, the trust may decide to meet less frequently.

Under the Act, meetings of a trust are determined by the trust chairperson. The trust chairperson may at any time convene a meeting and must do so when requested by at least two trust members. Trust meetings should be scheduled in advance to ensure trust members have sufficient notice.

## Meetings – when and where?

Trust members are expected to attend at least 75 per cent of trust meetings held per year. Trust members who cannot attend a trust meeting should notify the trust chairperson or trust secretary in writing, providing enough time, where possible, for the trust chairperson to reschedule the meeting if appropriate.

If the trust chairperson is unable to attend a meeting that cannot be rescheduled, the trust must select a trust member to act as trust chairperson and preside over that meeting.

Under the Act, a trust may permit its trust members to participate in a particular meeting by:

* telephone
* closed-circuit television
* any other means of communication.

A trust member who takes part in this way is deemed to be present at the meeting.

Trust meetings may be held at any venue determined by the trust chairperson. The venue must be accessible to all trust members.

The trust chairperson should ensure that as many trust members as possible can attend trust meetings. This is particularly important for trust meetings where the trust will make significant decisions such as major expenditure and policies.

## Quorum

A quorum refers to the minimum number of members that must be present at a meeting to make the proceedings of the meeting valid. Votes cannot be carried without a quorum.

A majority of the currently appointed trust members constitutes a quorum of a trust. For example, if a trust has seven members, it needs at least four trust members to be present at a meeting to form a quorum.

## Decision-making and voting

The trust should ensure the decisions it makes are legally valid, comply with government policy and are ethically sound and fair. The trust must consider all aspects of an issue and, if necessary, seek professional advice to assist trust members in understanding the full implications of any decisions they make.

Trust decisions are determined by a majority of votes of the trust members participating in the trust meeting (provided there is a quorum). If a trust member chooses not to vote on an issue for any reason their decision should be recorded in the meeting minutes as an abstention.

If a vote results in a tie, the trust chairperson of that meeting has the casting vote. In the event of a tie, the trust chairperson may decide to postpone the decision to allow for further discussion and information gathering rather than using their casting vote.

## Meeting rules

Trusts have some discretion over how they run their trust meetings outside of the requirements outlined above. It is important that trusts agree on the procedures and rules they will use for their own meetings.

Establishing trust meeting rules ensures that trusts can fully concentrate on the decisions they need to make, rather than how to make decisions. Meeting rules are sometimes called standing orders.

When developing meeting rules trusts may consider and determine the following:

* Should a motion be tabled before voting at a trust meeting?
* Does a motion need to be seconded before it is voted upon?
* How many amendments can be made to a motion?
* If a trust member decides not to vote, should their abstention be counted as a “no” vote or not be counted?
* Should the trust chairperson allocate a specified amount of time for trust members to speak at meetings?

A meeting rules template and sample standing orders are available on the [Institute of Community Directors Australia website](https://communitydirectors.com.au/policies/conduct-of-meetings-policy) <https://communitydirectors.com.au/policies/conduct-of-meetings-policy>.

## Trust chairperson’s role

The role of the trust chairperson at trust meetings is to ensure business is conducted efficiently and that meeting rules are adhered to. The trust chairperson needs to facilitate discussions and keep members on track and on time. When a topic has been fully discussed, the trust chairperson should summarise the decision and seek agreement or a vote.

The trust chairperson plays a vital role in managing trust member behaviour during trust meetings. Trust chairpersons should employ the following strategies during trust meetings as necessary:

* Remind trust members of the expected standards of behaviour as outlined in the *Code of conduct for directors of Victorian public entities*.
* Call out inappropriate behaviour at the time it occurs and advise trust members that it is unacceptable.
* Establish an agreed approach for trust meeting agenda items, making it clear when individual trust members will make uninterrupted presentations and when items are open for discussion.
* Keep discussions to allocated time limits to avoid conversations going off track.
* If a trust member is being ignored or spoken over, direct other trust members to give them the opportunity to speak without interruption.
* Pay attention to non-verbal cues that may indicate a trust member is hesitant about expressing their opinion and reassure them that their contribution is valued.
* If one trust member is monopolising the meeting, encourage them to keep their comments short and give others a chance to speak.
* Close down unhelpful or harmful conversations by calling the trust meeting to order and redirecting the discussion.
* If discussions become heated, direct the trust to take a short break.
* If a trust member behaves in an aggressive or threatening manner, ask them to leave the meeting. If the trust member refuses to behave in a reasonable manner the chairperson may need to bring the meeting to a close and reconvene later.

The trust chairperson is expected to maintain control over the meeting without dominating the debate.

## Meeting agenda

Preparing a meeting agenda helps the trust meeting flow smoothly and the trust make informed decisions. A trust meeting agenda can include:

* Scheduled start and finish times
* Minutes of previous meeting (presented for endorsement)
* Outstanding major action items
* Declarations of conflicts of interest
* Standing agenda items such as OHS
* Matters for decision, which may include recommendations and reports from committees
* Strategic, operational and performance issues
* Financial reports including year-to-date budget and expenditure, and financial forecasts
* Correspondence/complaints received (including recommended actions, if relevant)
* Other items for discussion

## Meeting minutes

The trust chairperson, or where they are absent, the trust member presiding over the trust meeting, must ensure accurate minutes are kept of each trust meeting, including:

* Trust name
* Place, date, start and finish time
* Those present including the name of the trust chairperson
* Apologies (the names of trust members who have said they cannot attend)
* Trust members’ declarations of conflicts of interests
* Notes about discussions and decisions
* Action plans and the names of people who are responsible for implementation

The meeting minutes should be adopted by resolution at the following trust meeting. When the meeting minutes have been adopted, the trust chairperson should then initial each page of the adopted meeting minutes as confirmation of their accuracy.

The meeting minutes of trust meetings are a matter of public record that may need to be produced as evidence of trust decisions.

## Other meeting papers

Other meeting papers may include:

* Finance report
* New information and advice issued by the department
* Reports and briefing papers providing background information
* Quotes to be considered
* Policy documents to be reviewed
* Copies of significant correspondence

## Making decisions without holding a trust meeting

In exceptional circumstances, a trust may need to make a decision on an urgent matter but is unable to hold a trust meeting. If consideration of a particular matter is urgent and cannot be postponed, trust members can address the matter by communicating via email. This is called a circular resolution.

In such cases, trust members can make a decision by casting votes in writing provided that the number of trust members participating in the circular resolution constitutes a quorum.

More information about circular resolutions is available on the [Institute of Community Directors Australia website](https://communitydirectors.com.au/policies/circular-resolution-policy) <https://communitydirectors.com.au/policies/circular-resolution-policy>.

## Trust-member-only discussions

For trusts that employ staff, trust-member-only sessions are an opportunity for open and frank discussions without staff present. They are often held just before a regular trust meeting. Topics discussed may include:

* staff pay and salary packages
* staff performance management
* relationships between trust members
* conﬁdential issues
* conﬂicts of interest
* sensitive matters affecting management or providers of professional services such as legal or financial advice.

During these sessions, the trust chairperson should keep notes to ensure any actions decided upon are followed up. These notes are conﬁdential trust records and do not form part of the meeting minutes.

# Topic 10. Planning controls and conservation

All land within Victoria is covered by local planning schemes that regulate what can and cannot be done on particular land. A planning scheme sets out the requirements for the use, development and protection of land. Planning schemes are administered by the local council but governed by the Department of Energy, Environment and Climate Action (DEECA). The planning scheme will indicate if a planning permit must be obtained to construct a building, carry out works or make other changes to the land.

Building permits are an additional requirement for building construction and should be sought by a cemetery trust for any new proposed building. Trusts should be aware of mandatory compliance requirements about public construction procurement. More information is available on the [department’s website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement>.

## Zones and overlays

A zone is a planning control that determines the appropriate use of land. There are different uses such as residential, business, industrial, farming, conservation and public use. Cemeteries are generally zoned as Public Use – Cemeteries and Crematoria (PUZ5).

An overlay is a planning control indicating that the land has some special feature such as heritage values, environmental significance, native title or native vegetation that affects how land can be developed.

Cemetery trusts have an obligation to check for and be aware of any planning overlays that may apply to their cemeteries before undertaking any works or maintenance projects. Advice about such matters is available from your local council and your local DEECA office.

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 affect the amenity of residents living adjacent to the cemetery.

## Conservation and planning legislation

The legislation relevant to cemeteries for 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 (Cwlth)
* Heritage Act 2017
* 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 before 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 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 that apply to their cemeteries.

## Native vegetation

Where trusts believe there is a need to clear native vegetation including trees, they will need to contact their local council to get a permit. They may also need to discuss the proposed removal with their local DEECA office. Native vegetation offsets will generally be necessary before a council issues a permit to remove native vegetation.

Trusts may be permitted to remove native vegetation without a permit under special circumstances, such as when a tree is a danger to the public. Before taking any action to remove the tree, trusts should seek written authority from the local council.

A Class B trust can seek advice from a Class A trust if it is experiencing difficulty with the permit application process. A trust could also consider putting in an application for a cemetery grant to pay for any offset requirements. Refer to [Topic 11. Grants](#_Topic_11._Grants) in this manual for more information about the departmental grant program or to get an application form, or visit the [department’s website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants>.

# Topic 11. Grants

Trusts may apply to the department for a grant. Grants are for when trusts do not have funds available for the required expenditure.

The department assesses grant applications twice each financial year, in November and March. All applications will be assessed on the likely benefit it would bring to the cemetery, the number of applications received and the total grant money available for the current grant round.

Grants are prioritised based on need. Items relating to maintaining significant structures, such as fences, or issues that pose a threat to personal safety, such as dangerous trees, are generally prioritised. Standard items include equipment required for operating a cemetery. Items that may enhance the quality or amenity of the cemetery, but are not necessary to its function, are considered a low priority.

**Note:** The department does not provide financial assistance for: salary and wages of trust employees; ongoing ground maintenance; or repairs to, or restoration of, memorials – that is, monuments or plaques.

## Applying for a grant

To apply for a grant, a cemetery trust must submit a [*Cemetery grants program application form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants>, which is available from the department’s website. The department will not reimburse trusts that have expended funds in anticipation of receipt of a grant. Applications should include two quotes (GST inclusive) for the proposed expenditure and photos of the relevant area (where appropriate) before work begins. If a trust cannot obtain two quotes, a written explanation outlining why this is not possible must be submitted with the application.

The trust will be contacted if more 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.

### Tree removal, destruction or lopping

When applying for a grant for tree removal, destruction or lopping, trusts need to provide information to show how they have addressed the necessary requirements (where appropriate). The [*Cemetery grants tree removal grant application form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants>, available on the department’s website, should be completed and submitted with the [*Cemetery grants program application form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/grants> and two quotes.

**Note:** Trusts need to have submitted all due *Abstracts of accounts*, have a suitable scale of fees (where appropriate) and have a current ABN before the department will consider a grant application.

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

If a trust wishes to resubmit a grant application that has been declined, the application must be submitted with updated information and quotes. Applications with expired quotes will not be accepted.

## 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 on their own funds to complete the proposed works. Top-up grants **will not** be provided for the same project in subsequent years.

## Electronic funds transfer form

If a grant application is approved, the funds will be deposited into a nominated cemetery trust bank account. The details for the electronic funds transfer form included in the grant application form must be completed and submitted.

## 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 Abstract of accounts form. 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 – an invoice and a report/letter with photos, where appropriate
* removing hazards such as trees – an invoice and 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.

# Topic 12. Interments

Under the Cemeteries Act, the term ‘interment’ means the interring, burial or placing of human remains in a place of interment such as a grave, mausoleum crypt or niche wall. Human remains are defined in the Cemeteries Act as bodily remains (a corpse of a human being or still-born child), cremated human remains and body parts.

## 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.

Five working days is usually enough 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 Cemeteries Act requires a 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 find out 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 closely as possible and advise the funeral director or client making the booking of any anticipated problems.

## Example of a booking procedure

The following is an example of the procedure for confirming a booking for an interment.

* Record the details of the funeral director or applicant, the name of the deceased, the type of interment and the proposed date and time for the interment.
* Advise the person making the booking of the documentation requirements (refer to section below).
* Confirm with the funeral director or applicant that the right of interment holder for the place of interment, as recorded in the trust’s records, consents to the interment taking place.
* If the recorded right of interment holder is deceased, the trust will require documentation to establish who the current right of interment holder is so it can update its records and ensure the current holder consents to the interment taking place (refer to [Topic 22. The right of interment](#_Topic_22._The)).
* On receiving the required documentation from the funeral director or applicant, the trust should undertake a physical inspection of the place of interment to check:
* the proposed place of interment matches the trust’s records
* the receptacle (for example, coffin, casket, urn) will fit inside the interment location
* if there is an existing memorial at the place of interment or an existing interment in the place of interment
* the place of interment can be accessed safely with equipment required to conduct the interment.
* After the site inspection and before the interment booking is accepted and confirmed, any issues relating to erecting monuments, placing ledgers or confirming the dimensions of the receptacle should be communicated to the funeral director in writing.
* The trust should advise the funeral director of all costs associated with the booking, including the cost of the right of interment (if it is being purchased at-need), the interment service and any other related costs charged by the trust. The trust should also advise of their preferred method for receiving payment.

Before issuing confirmation for an interment booking, the trust should determine:

* if any part of the proposed funeral ceremony and/or interment (for example, motorcycle escort, music, public address system) may cause disturbance to other funerals or cemetery visitors
* if the receptacle will need to be opened at the place of interment
* whether the funeral director or the trust will be providing a lowering device for an interment of bodily remains (if the trust is providing the lowering device, this should be in place before the funeral begins)
* whether the trust will be expected to provide equipment to enable a receptacle to be hand-lowered into a grave for an interment of bodily remains.

Once all the above information has been verified, the interment booking should be confirmed in writing, listing all relevant details and be provided to the funeral director or applicant.

## Interment of bodily remains

The interment of bodily remains includes interments in graves, vaults (concrete-lined graves) and mausoleum crypts. The key requirements for interring bodily remains are contained in ss. 113–120 of the Cemeteries Act. Additional requirements under the Cemeteries Regulations apply depending upon whether the interment is to take place in a grave, a vault or a mausoleum crypt (refer to rr. 24–25, 33–34 of the Cemeteries Regulations).

## Interment of a still-born child

A still-born 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 grams at birth, that exhibits no signs of respiration or heartbeat or other sign of life, after birth.

It is the responsibility of the hospital/doctor to determine if the deceased is a still-born child or foetal tissue and complete the relevant death certificate. A still-born child is regarded as bodily remains and therefore must be interred in a public cemetery or cremated.

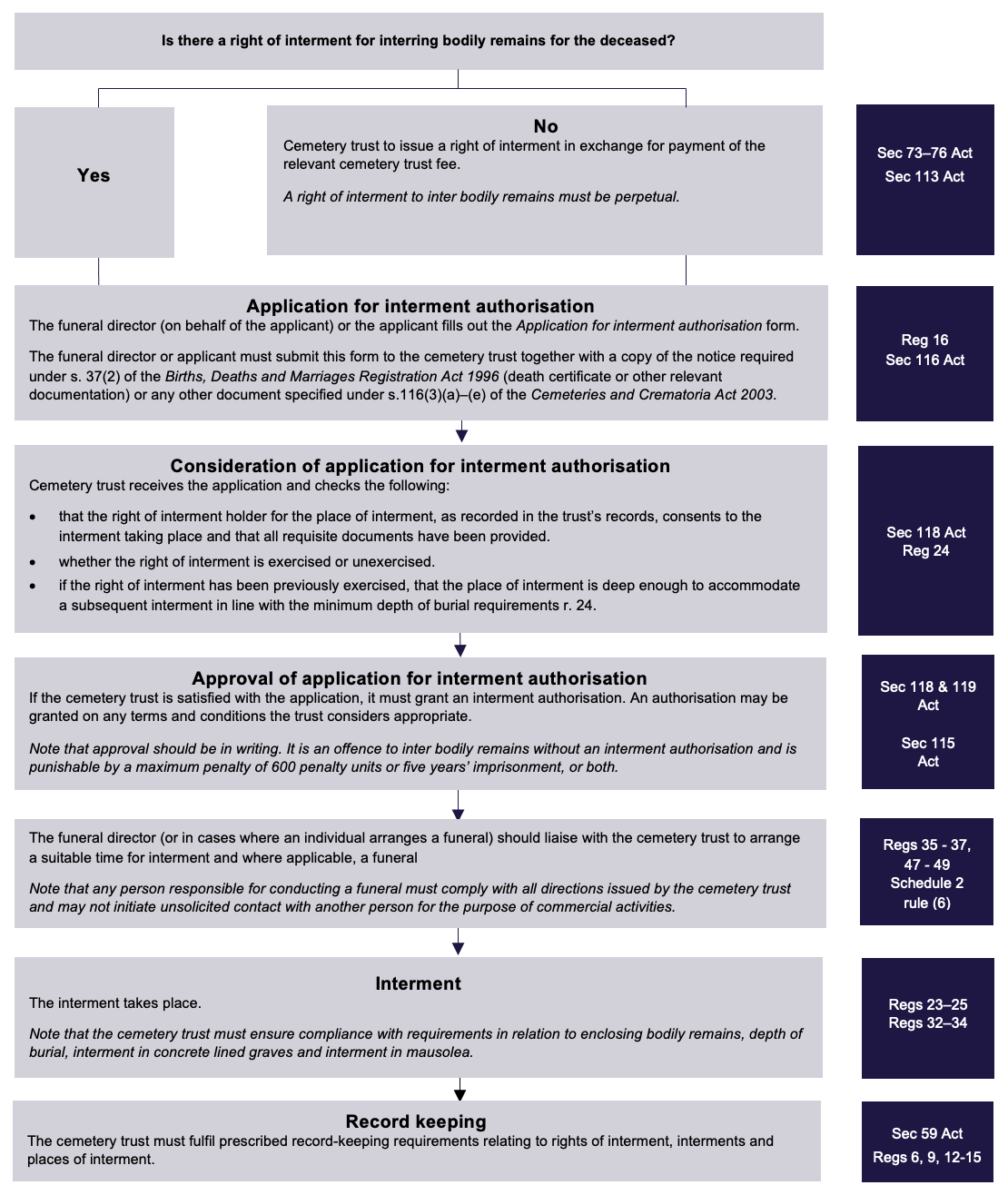
## Interment of body parts or foetal remains

There is no requirement for body parts to be interred in a public cemetery. Body parts means human tissue or a part of a person where that tissue or part is not part of a corpse. The definition of body parts in the Cemeteries Act includes foetal remains which are not a still-born child.

Foetal remains which are not a still-born child means 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.

Process for interring bodily remains (flow chart)

(An accessible version of this flow chart is available in the ‘[Appendix: Transcripts of flow charts in this manual](#_Appendix:_Transcripts_of)’) section.



## Interment of cremated remains

There is no legal requirement that cremated remains must be interred in a public cemetery. However, many cemetery trusts provide places of interment for cremated remains such as niche walls and rose bushes. Cremated remains may also be interred in a grave subject to the approval of the holder of the right of interment and the cemetery trust. (Refer to [Topic 13. Cremation](#_Topic_13._Cremation) for more information about the interment of cremated remains.)

## Interment documentation requirements

The documentation requirements necessary for a trust to approve an interment differ depending on whether the remains are:

* a deceased person aged 28 days or older
* a live-born child who dies within 28 days after birth
* a still-born child
* foetal remains that are not a still-born child
* body parts that are not foetal remains
* cremated remains.

Note that required documentation must be provided to the cemetery trust either before or, at the latest, on delivery of the remains to the cemetery for interment.

### Documentation requirements for the interment of bodily remains

Applications for authorisation to inter bodily remains of a deceased person or still-born child in a public cemetery must be made using the [[*Application for interment authorisation*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/interment-of-bodily-remains) *form* (Form 1)](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/interment-of-bodily-remains) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/interment-of-bodily-remains> prescribed under Schedule 1 of the Cemeteries Regulations. The prescribed form must be accompanied by the required documentation detailed in the following table:

| Deceased | Prescribed form | Documentation accompanying the prescribed form |
| --- | --- | --- |
| A person aged 28 days or older | Application for interment authorisation | One of the following:   * Medical certificate of cause of death of a person aged 28 days or older * Order for release of body issued by coroner * If the deceased died outside Victoria, a document corresponding to a Medical certificate of cause of death of a person aged 28 days or older from the jurisdiction where the deceased died |
| A live-born child who dies within 28 days after birth | Application for interment authorisation | One of the following:   * Medical certificate of cause of perinatal death * Order for release of body issued by coroner * If the deceased died outside Victoria, a document corresponding to a Medical certificate of cause of perinatal death from the jurisdiction where the deceased died |
| A still-born child[[9]](#footnote-9) | Application for interment authorisation | One of the following:   * Medical certificate of cause of perinatal death * Order for release of body issued by coroner * If the still-birth occurred outside Victoria, a document corresponding to a Medical certificate of cause of perinatal death from the jurisdiction where the still-birth occurred |

If the required accompanying documentation listed in the table above cannot be provided, the funeral director or applicant must provide a statutory declaration stating that owing to special circumstances (as detailed in the declaration), it is not possible to submit the required documentation. In such cases, the cemetery trust must notify the Secretary of the Department of Health in writing that it has authorised an interment where the application was accompanied by a statutory declaration.

A *Medical certificate of cause of death of a person aged 28 days or older* or *Medical certificate of cause of perinatal death* 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 provided to the delegate of the cemetery trust for examination when applying for interment authorisation. A trust may keep a copy of the medical certificate of cause of death on record. However, it must ensure privacy considerations are addressed (refer to [Topic 23. Cemetery records](#_Topic_23._Cemetery) for more information).

If the death was reported to the Coroners Court of Victoria, an original of the *Order for release of body* signed by a coroner should be provided to the delegate of the cemetery trust for examination. A trust may keep a copy of the order; however, it must ensure privacy considerations are addressed.

Information provided in the ‘Application for interment authorisation’ form is to be recorded in the cemetery trust’s records in accordance with s. 59 of the Cemeteries Act and rr. 6–15 of the Cemeteries Regulations. Refer to [Interment register](#_Interment_register_1) for more information.

### Documentation requirements for the interment of foetal remains or body parts

There is no form prescribed for applications for authorisation to inter foetal remains that are not a still-born child or to inter body parts that are not foetal remains. However, certain information must be provided to the cemetery trust and the application must be made by a prescribed person as detailed in the table below:

| Deceased | Documentation requirements | Prescribed persons |
| --- | --- | --- |
| Foetal remains that are not a still-born child[[10]](#footnote-10) | The following information must be provided to the cemetery trust in writing:   * 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 | * A registered medical practitioner who treated the person to whom the foetal tissue belonged * A registered medical practitioner of the hospital where the person to whom the foetal tissue belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Secretary of the Department of Health |
| Body parts that are not foetal remains[[11]](#footnote-11) | The following information must be provided to the cemetery trust in writing:   * 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 * the name of the person and the name of the organisation (if any) making the application * the category of prescribed person to which the person making the application belongs | * A registered medical practitioner who treated the person to whom the body parts belonged * A registered medical practitioner of the hospital where the person to whom the body parts belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Secretary of the Department of Health |

### Documentation for the interment of cremated remains

Applications for authorisation to inter cremated remains in a public cemetery may be made using the [Application for approval to inter cremated human remains form (Form B)](https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-of-cremated-remains) <https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-of-cremated-remains> developed by the department. This form assists trusts to meet the record keeping requirements under the Cemeteries Regulations in relation to interment of cremated remains.

## Trust delegate responsibilities

For all interments the cemetery trust’s delegate should:

* check that all documentation requirements have been met and that the information on the nameplate on the receptacle agrees in all respects with the information provided in the documentation (including accurate spelling)
* receive payment of the trust’s fees for the interment and any related services
* direct the funeral director to the correct interment location
* facilitate any cultural requirements requested for the interment as agreed with the trust at the time the interment was booked.

There is no legal obligation for the trust’s delegate or other cemetery trust personnel to help move the receptacle in the cemetery. This is at the discretion of the cemetery trust and the staff involved and will require consideration of all relevant OHS matters.

It is also recommended that the trust’s 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 and especially open graves
* remains at the place of interment at least until they have observed the receptacle being placed in the place of interment
* ensures the place of interment is backfilled or sealed as soon as practical after mourners have left the area.

Trusts should have a number of delegates so at least one is available to attend to daily requirements of the cemetery (refer to [Topic 8. Officers of the cemetery trust](#_Topic_8._Officers)).

## Transporting bodily remains and body parts within a cemetery

All bodily remains and body parts being transported into and within a public cemetery for interment must comply with r. 23 of the Cemeteries Regulations. The bodily remains or body parts must be enclosed in a coffin, container or other receptacle that:

* is clean and hygienic
* is constructed of wood, metal or other substantial material
* from which no offensive or noxious emissions or matter will escape.

Note that while being required for transportation into and within the cemetery, the coffin, container or receptacle is not required for the interment itself under the Cemeteries Regulations. This allows for shrouded burials to occur.

## Applications made without the assistance of a funeral director

A trust may be approached by a person considering conducting a funeral without the assistance of a funeral director and seeking information about the legal and procedural requirements for interments.

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 someone cannot perform some or all of the arrangements necessary before the body of the deceased is delivered for interment. The cemetery trust needs to ensure all statutory requirements for interment have been met.

## Coffins and caskets

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

A standard adult coffin or casket has external dimensions of approximately 2,000 mm long, 600 mm wide (including handles) and 400 mm high. 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 the grave is dug.

It is recommended that the cemetery trust require coffins and caskets to have:

* At least four strong and securely affixed handles capable of bearing the required weight. These handles are necessary to help carry and manoeuvre the receptacle, and to feed tapes through if the receptacle is to be hand-lowered into the grave.
* A metal or plastic nameplate affixed 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 deceased’s name on the nameplate should be identical to the name listed on all relevant documentation.

## Standard grave dimensions

As at January 2021, the accepted industry standard dimensions for an adult interment in a grave in Victoria are:

| Place of interment | 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. A coffin-shaped grave may be dug if requested. If there is a requirement for a grave to exceed the standard dimensions, the trust may charge an oversized grave fee if the fee has been approved and gazetted. |

## Depth of burial

Regulation 24 of the Cemeteries Regulations sets out the minimum depth of earth cover up to ground level required for interments in unsealed graves, graves with a sealed cap and graves with a sealed cap and sides.

### Depth of burial for an unsealed grave

If a grave is unsealed following an interment, a minimum of 750 mm of earth is required between the receptacle and the normal level of the ground as shown below:

Diagram of unsealed burial showing a minimum of 750 mm earth cover

### Depth of burial for a grave with a sealed cap

If a grave is to be sealed following an interment it must be sealed with a substantial layer of stone, concrete or similar material, and a minimum of 500 mm of earth is required between the sealed cap and the normal level of the ground as shown below:

Diagram of sealed cap burial. Minimum of 500 mm earth cover

### Depth of burial for a grave with a sealed cap and sides

Following an interment in a grave where an interment has previously taken place at least once before 28 July 1998, the grave must be sealed with a substantial layer of stone, concrete or similar material and the sides of the grave above the level of the sealed cap must be lined with brick, stone, concrete or other similar material. A minimum of 300 mm of earth is required between the sealed cap and the normal level of the ground as shown below:

Diagram of sealed cap and sides burial. Minimum of 300 mm earth cover

### Interment in a vault

Regulation 25 of the Cemeteries Regulations sets out the requirements for interments in vaults (fully concrete-lined graves). A vault must be sealed by placing or pouring a substantial layer of stone, concrete or similar material over the receptacle as soon as is practicable after the interment.

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

### Interment in a mausoleum crypt

Under r. 33 of the Cemeteries Regulations, bodily remains and body parts to be interred in a mausoleum crypt must be interred in a coffin, container or other receptacle that:

* is clean and hygienic
* is constructed of wood, metal or other substantial material
* from which no offensive or noxious emissions or matter will escape.

Under r. 34 of the Cemeteries Regulations, following an interment of bodily remains in a mausoleum crypt, the crypt must be sealed with a slab of impervious material to prevent the escape of offensive or noxious emissions or matter, and then faced with a substantial slab of stone, slate or iron.

### Recommended minimum depth of single, double and triple graves

| Grave type | Recommended minimum depth at first interment |
| --- | --- |
| Single-depth grave | 1,700 mm |
| Double-depth grave | 2,200 mm |
| Triple-depth grave | 2,700 mm (subject to mechanical digging) |

It is usual procedure for a new adult grave to be dug to double-depth, unless there is a physical impediment (such as rock) or the cemetery trust receives other instructions.

A grave for the interment of a child would usually be dug to single-depth, with the width and length of the grave to be determined by the cemetery trust.

## Public safety

As part of its risk management procedures (refer to [Topic 28. Occupational health and safety](#_Topic_28._Occupational)), the cemetery trust must pay close attention to all aspects of public safety in connection with conducting interments.

### Public safety relating to graves

An open grave dug before an interment must be made safe so there is no risk of any person (including trust staff) falling into the grave. Safety measures that may be taken include:

* internal shoring inside the grave and timber on the ground around the edge of the grave to prevent the sides of the grave collapsing under the weight of mourners
* a temporary barricade around the grave, at least one metre back from the edge of the grave
* a temporary cover over the grave (clearly marked to indicate the potential danger), sufficient to hold the weight of an adult, and temporary signage erected near the grave, indicating the potential danger (the temporary barricade and grave cover would generally be removed just before the participants of the funeral arrive at the graveside).

The trust’s delegate, together with the funeral director, should supervise the activities of mourners (particularly children) in the vicinity of the grave to ensure that, where practicable, they remain safe for the duration of the funeral.

Backfilling or sealing of the place of interment should start 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 graveside, in which case work should cease until they have left the area.

### Carrying the coffin

It is usual practice for the funeral director’s hearse to park as close as practicable to the graveside. The coffin is usually then carried to the grave by pallbearers, being people selected for this purpose by the family or the funeral director. The funeral director may give them instructions as to what they are expected to do.

Whether the selected pallbearers are fit and able to perform their duties, particularly if a heavy coffin is to be hand-lowered into the grave using tapes, is generally an issue in which the cemetery trust has no involvement. The cemetery trust is not required to provide personnel to assist with lifting and carrying the coffin in the cemetery or lowering it into the grave.

### Lowering the coffin

After preparing the grave for the interment, the trust will usually place over the open grave either:

* a lowering device (provided by the trust or the funeral director), or
* steel bars with webbing tapes to enable the pallbearers to hand-lower the coffin.

If webbing tapes are used, either as part of the lowering device or for hand-lowering, it is important that the tapes are regularly inspected to ensure they are in sound condition with no signs of fraying or deterioration. The tapes should be replaced regularly to ensure they do not break during the lowering of a heavy coffin.

If a lowering device is in position over the open grave, the pallbearers will usually walk three each side of the grave and then lower the coffin onto its tapes, with the head of the coffin closest to the headstone-end of the grave. At the appropriate time during the interment service, the funeral director will release the brake mechanism of the lowering device and the coffin will begin to lower into the grave.

If steel bars and tapes for hand lowering are in position over the grave, the pallbearers will similarly place the coffin after walking three each side of the grave. Usually six pallbearers and three tapes will be required. Once the coffin has been lowered onto the steel bars, each tape will be passed through a coffin handle, under the coffin, and through the handle on the other side of the coffin.

At the appropriate time during the interment service, the pallbearers will, using the tapes, lift the coffin above the bars and another person will remove the bars from over the grave to enable the pallbearers to lower the coffin into the grave.

## Interring deceased poor persons

Sections 142–145 of the Cemeteries Act provide that a cemetery trust must, upon an order signed by a magistrate or coroner, permit any poor person to be interred within a public cemetery or cremated free of charge. The order is often referred to as a Part 10 Order.

The Cemeteries 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 are unable to pay the charge.

An order that a magistrate or coroner may make under s. 143 of the Cemeteries 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 the trust must do.

Cemetery trusts generally inter poor persons in a public grave. This is a grave provided and dug by the cemetery trust at the trust’s expense. The right of interment for a public grave is held by the cemetery trust. The trust may decide to inter bodily remains of a number of other unconnected deceased poor persons in the same grave. All interments in a grave must be recorded in the trust’s records.

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 this right of interment 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

After an interment in a public grave, the family 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 the interment of the poor person. However, the trust may request that the applicant submits an application to establish a memorial and pays the relevant fee in accordance with s. 98 of the Cemeteries Act.

It is up to the trust to decide whether to allow a relative or friend of the deceased poor person to establish a memorial on a public grave. When making this decision the trust should consider:

* whether the grave 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 in future to enable additional public burials)
* the size and type of the proposed memorial
* requirements for approving or refusing an application for the establishment of a memorial under s. 99 of the Cemeteries Act
* ownership of the memorial and terms and conditions about future management of the memorial if it needs to be repaired or removed
* any relevant trust memorialisation policies.

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 documented in the trust’s records.

### Requests to inter family members of a poor person in a public grave

It may not be possible for an additional member of the family of a deceased poor person who is interred in a public grave to be interred in the same grave. Whether they can or not may depend on:

* availability
* whether the trust has an approved and gazetted fee for interment in a public grave
* if an order is made by a magistrate or coroner (ss. 142–145 of the Cemeteries Act).

# Topic 13. Cremation

Under s. 131 of the Cemeteries Act, a person who wishes bodily remains or body parts to be cremated in a Victorian crematorium may apply to the responsible cemetery trust for authorisation.

## Cremation authorisation documentation requirements

The documentation requirements necessary for a trust to approve a cremation differ depending on whether the remains are:

* a deceased person aged 28 days or older
* a live-born child who dies within 28 days after birth
* a still-born child
* bodily remains of unknown name
* foetal remains that are not a still-born child
* body parts that are not foetal remains
* body parts of unknown name with an identifier.

Note that required documentation must be provided to the cemetery trust either prior to or, at the latest, upon delivery of bodily remains to the cemetery for cremation.

## Documentation requirements for the cremation of bodily remains

Applications for authorisation to cremate bodily remains of a deceased person or still-born child must be made using the *Application for cremation authorisation for deceased persons of known identity* (Form 3).[[12]](#footnote-12) The prescribed form must be accompanied by the required documentation detailed in the following table.

| Deceased | Prescribed form | Documentation required to accompany the prescribed form |
| --- | --- | --- |
| A person aged 28 days or older | Application for cremation authorisation for deceased persons of known identity | Both of the following documents:   * certificate of registered medical practitioner authorising cremation[[13]](#footnote-13) * medical certificate of cause of death of a person aged 28 days or older   Or, if the death was investigated by a coroner, either of the following documents:   * order for release of body issued by a coroner under s.47 of the *Coroners Act 2008* * if the deceased died outside Victoria, an authority to cremate under the hand of the coroner or other person permitted by the law of the jurisdiction where the deceased died to authorise cremation |
| A live-born child who dies within 28 days after birth | Application for cremation authorisation for deceased persons of known identity | Both of the following documents:   * certificate of registered medical practitioner authorising cremation * medical certificate of cause of perinatal death   Or, if the death was investigated by a coroner, either of the following documents:   * order for release of body issued by a coroner under s. 47 of the Coroners Act * if the deceased died outside Victoria, an authority to cremate under the hand of the coroner or other person permitted by the law of the jurisdiction where the deceased died to authorise cremation |
| A still-born child[[14]](#footnote-14) | Application for cremation authorisation for deceased persons of known identity | Either of the following documents:   * medical certificate of cause of perinatal death * if the still-birth occurred outside Victoria, a document corresponding to a notice of still-birth from the jurisdiction where the still-birth occurred |

In exceptional circumstances, when the prescribed documentation requirements outlined above cannot be met, a person may apply to the department for cremation authorisation under s. 134 of the Cemeteries Act. Refer to ‘[Cremation approval granted by the department’s Secretary when prescribed documentation requirements cannot be met](#_Cremation_approval_granted)’ below for more information.

A *Medical certificate of cause of death of a person aged 28 days or older* or *Medical certificate of cause of perinatal death* 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 provided to the delegate of the cemetery trust for examination when applying for cremation authorisation. A trust may keep a copy of the medical certificate of cause of death on record; however, it must ensure privacy considerations are addressed.

The *Certificate of registered medical practitioner authorising cremation* (Form 4) can be completed by any medical practitioner registered under the *Medical Practice Act 1994* provided they are not the registered medical practitioner who signed the *Medical certificate of cause of death of a person aged 28 days or older* or *Medical certificate of cause of perinatal death* for the deceased and:

* are not in partnership[[15]](#footnote-15) with any registered medical practitioner who professionally attended the deceased
* will not derive any professional remuneration from any registered medical practitioner who professionally attended the deceased
* has not acquired, and does not anticipate acquiring, directly or indirectly, any property or pecuniary or other benefit of any description by reason of the death of the deceased (apart from any fee payable for providing the *Certificate of registered medical practitioner authorising cremation*).

If the death was reported to the Coroners Court of Victoria, the order to release the body signed by a coroner should be provided to the delegate of the cemetery trust for examination. A trust may keep a copy of the order; however, it must ensure privacy considerations are addressed.

### Documentation requirements for the cremation of bodily remains of unknown identity

If bodily remains to be cremated are of unknown name or have an identifier,[[16]](#footnote-16) an application for cremation authorisation must be made using the *Application for cremation authorisation of bodily remains of unknown name or with an identifier* (Form 3A).[[17]](#footnote-17)

The prescribed form must be accompanied by a written cremation approval granted by the department’s Secretary under s. 134 of the Cemeteries Act.

|  |  |  |
| --- | --- | --- |
| Deceased | Prescribed form | Documentation required to accompany the prescribed form |
| Bodily remains of unknown name or with an identifier | Application for cremation authorisation of bodily remains of unknown name or with an identifier | Written cremation approval granted by the department’s Secretary under s. 134 of the Cemeteries Act |

When granted, the department Secretary’s cremation approval is attached to the completed prescribed form (Form 3A) and both documents are submitted to the cemetery trust by the applicant.

### Documentation requirements for the cremation of foetal remains

There is no prescribed form for applications for authorisation to cremate foetal remains that are not a still-born child. The application must contain prescribed information and can only be made by a prescribed person as detailed in the table below.

| Deceased | Prescribed information | Prescribed persons |
| --- | --- | --- |
| Foetal remains that are not a still-born child[[18]](#footnote-18) | The following information must be provided to the cemetery trust in writing:   * 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 | * A registered medical practitioner who treated the person to whom the foetal tissue belonged * A registered medical practitioner of the hospital where the person to whom the foetal tissue belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Department Secretary |

### Documentation requirements for the cremation of body parts

Applications for authorisation to cremate body parts that are not foetal remains must be made by a prescribed person and include certain information as detailed in the table below.

|  |  |  |
| --- | --- | --- |
| Deceased | Prescribed information | Prescribed persons |
| Body parts that are not foetal remains[[19]](#footnote-19) | The following information must be provided to the cemetery trust in writing:   * 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 cremated * the name of the person and the name of the organisation (if any) making the application * the category of prescribed person to which the person making the application belongs | * A registered medical practitioner who treated the person to whom the body parts belonged * A registered medical practitioner of the hospital where the person to whom the body parts belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Department Secretary |

In some cases, body parts of unknown name will have an identifier. For example, cadaveric material imported for the purposes of surgical teaching may be identified by a reference number and no personal details will be provided.

Applications for authorisation to cremate body parts of unknown name with an identifier must be made using the *Application for cremation authorisation of body parts of unknown name with an identifier* (Form 3B).[[20]](#footnote-20) The application must be made by a prescribed person as detailed in the table below.

|  |  |  |
| --- | --- | --- |
| Deceased | Prescribed form | Prescribed persons |
| Body parts of unknown name with an identifier | Application for cremation authorisation of body parts of unknown name with an identifier | * A registered medical practitioner who treated the person to whom the body parts belonged * A registered medical practitioner of the hospital where the person to whom the body parts belonged was treated * A coroner * An inspector of a school of anatomy * A designated officer of a school of anatomy * Department Secretary |

## Cremation approval granted by the department’s Secretary when prescribed documentation requirements cannot be met

In exceptional circumstances, an applicant for cremation may apply to the department for a cremation approval under s. 134 of the Cemeteries Act. Exceptional circumstances include when the prescribed documentation requirements outlined above cannot be met – for example, if the deceased died overseas and their bodily remains have been transported into Victoria for cremation.

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

An application for cremation approval must be made using the *Application for cremation authorisation for deceased persons of known identity* (Form 3).

The form must be accompanied by additional documentation to enable the department to be satisfied that:

* a medical cause of death has been confirmed by a relevantly qualified person
* the circumstances surrounding the death were appropriately and thoroughly investigated by the authorities in the jurisdiction in which the deceased died
* the department is satisfied that the cause of death does not need to be reported to a coroner for investigation.

The funeral director should provide the department with all available supporting information and documentation relating to the above matters when seeking a cremation approval. It is mandatory for certified translations of original documents to be provided for any foreign language documents.

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 and will need to be reported as such to the Coroners Court of Victoria.

Where a notification of a reportable death is made to the Coroners Court, the department will not provide a cremation approval until a coroner has made a 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 before receiving 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 death[[21]](#footnote-21) 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.

Most applications for cremation approval received by the department relate to people whose death occurred overseas, and normally live in Victoria.

In considering such applications, the department needs to determine if the death is reportable under the Coroners Act. The absence of clear documentation authorised by an appropriate authority in the jurisdiction where the death occurred will raise questions about the death.

Any funeral director who does not have appropriately authorised documentation about a death that occurred interstate or overseas should discuss this matter with Coronial Admissions and Enquiries (CA&E) of the Coroners Court of Victoria on 1300 309 519.

CA&E is open 24 hours a day, seven days a week and can assist in determining whether a death   
is reportable. More information about how to report a death is available on the [Coroners Court of Victoria website](https://www.coronerscourt.vic.gov.au/report-death-or-fire/how-report-death) <https://www.coronerscourt.vic.gov.au/report-death-or-fire/how-report-death>.

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

## Transporting bodily remains and body parts for cremation

All bodily remains and body parts being transported into and within a public cemetery for cremation must comply with r. 26 of the Regulations. The bodily remains or body parts must be enclosed in a coffin, container or other 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 or 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.

These requirements are important for treating remains with dignity and respect, workplace health and safety, and the proper operation of crematoria.

Where a cardboard coffin is being used, a cemetery trust must consider whether this type of coffin meets the requirements of the Regulations. If a cemetery trust determines that a receptacle does not or will not satisfy any of the above criteria, the trust has the discretion to refuse to accept the receptacle for cremation.

## Applications made without the assistance of a funeral director

A trust may be approached by a person who is considering conducting a funeral without the assistance of a funeral director and seeking information about the legal and procedural requirements for cremations.

There is no reason why someone cannot perform some or all the arrangements necessary before the body of the deceased is delivered for cremation. The cemetery trust needs to ensure all statutory requirements for cremation have been met.

## Dual cremation

A trust may receive a request to cremate the bodily remains of more than one deceased person in the same receptacle at the same time.

The Cemeteries Act does not prohibit dual cremations and does not specify how many bodies or bodily remains may be placed in the same receptacle for cremation at the same time.

The funeral director or applicant arranging the cremation will need to check with the relevant cemetery trust to determine if the trust is prepared to cremate more than one body or bodily remains in a crematorium at the same time. If the trust agrees, cremation authorisation documentation requirements must be met for each deceased person.

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 Cemeteries Act.

## Cremating deceased poor persons

Sections 142 to 145 of the Cemeteries Act provide that a cemetery trust must, upon an order signed by a magistrate or coroner, cremate the bodily remains of a deceased poor person and inter those cremated human remains free of charge. The order is often referred to as a Part 10 order.

The Cemeteries 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 cremation expenses, and that their relatives are unable to pay the charge.

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

Before any arrangements are made by the trust to cremate 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 the trust is required to do.

**Note:** The trust has control over the right of interment for the place of interment of the cremated remains and may or may not permit memorials to be established as they see fit.

## Release of cremated remains

Cemetery trusts should have processes in place to ensure they comply with their obligations under the Cemeteries Act and Regulations in relation to cremated remains. This includes having processes in place in relation to ‘proof of identity’ that specifies what documents, or combination of documents, a person may provide to prove their identity to the trust when collecting cremated remains. More information about identity proofing is available in the *National identity proofing guidelines* issued by the Department of Home Affairs.[[22]](#footnote-22)

Trusts should also ensure their process for releasing cremated remains includes appropriate record keeping as to the basis upon which remains have been released to a particular person.

### Meaning of cremated remains

In accordance with r. 30 of the Regulations, references made to cremated human remains in this section do not include cremated human remains that have been disinterred under the Cemeteries Act after a limited tenure interment has expired. Rather, it refers to remains that have been cremated but not yet collected from the crematorium.

### Release of cremated remains

Under r. 30(2) of the Regulations, subject to any order by a court, a cemetery trust may release cremated remains only to the applicant or the applicant’s agent. Where the applicant and the applicant’s agent are both deceased, the trust may only release the cremated human remains to the nearest surviving relative of the person who was cremated.

### Releasing cremated remains to an applicant

Under r. 30(3) of the Regulations, an applicant is the person who applied for the cremation authorisation or cremation approval or, in the case of body parts, the person who applied for authorisation to cremate body parts under s. 150 of the Cemeteries Act.

Before releasing remains to an applicant, the trust should:

* refer to the relevant application documentation to confirm the identity of the applicant
* sight proof of identity documents to confirm that the person collecting the remains is the applicant.

### Releasing cremated remains to an applicant’s agent

Under r. 30(3) of the Regulations, an applicant’s agent is the person authorised in writing by the applicant to be the applicant’s agent for the purposes of the release of cremated human remains. In many cases, the applicant’s agent will have been nominated on the prescribed application form.

If an agent was not previously nominated on the prescribed application form, an agent can be nominated by providing the trust with written authorisation that is signed by the applicant and refers specifically to the collection of clearly identified cremated human remains. For example: ‘I, John Brown, appoint Fred Smith of Smith Funerals as my agent for the purpose of collecting the cremated remains of Jane Brown (deceased 22 March 2022) from West Cemetery Trust’.

Trusts should sight proof of identity documents to ensure that the person collecting the remains is the appointed agent.

### Releasing remains pursuant to a court order

The requirements for releasing cremated remains under the Regulations apply subject to any order of a court. When releasing remains pursuant to the order of a court, trusts should ensure:

* they sight a copy of the court order
* the court order provides for the release of the cremated remains to a particular person[[23]](#footnote-23)
* they sight proof of identity documents confirming that the person collecting the remains is the same person referred to in the court order.

### Releasing remains where the applicant and the applicant’s agent are both deceased

Where the applicant and the applicant’s agent are both deceased, the trust can release the cremated remains only to the nearest surviving relative of the person who was cremated. The nearest surviving relative is determined according to the hierarchy set out in the definition in r. 5 of the Regulations.

When releasing remains in these circumstances, trusts should ensure they:

* sight appropriate evidence that the applicant is deceased, such as a death certificate
* refer to the original application form and other records held by the trust to confirm whether the applicant appointed an agent
* if the applicant appointed an agent, sight appropriate evidence that the agent is deceased, such as a death certificate
* sight appropriate evidence that the person seeking to collect the remains is the nearest surviving relative of the person who was cremated (for example, by sighting appropriate evidence of the death of other people who would, if living, be above or at the same level in the hierarchy as the person seeking to collect the remains)
* if there are other living people at the same level in the hierarchy as the person seeking to collect the remains, request appropriate evidence that all of these nearest surviving relatives are in agreement regarding the release of the remains to a specific relative (if there is a dispute between multiple nearest surviving relatives about the release of the cremated remains, the trust should encourage the parties to seek dispute resolution assistance).

Note that this exception only applies where the applicant and agent are deceased. It does not apply where they are unavailable or incapacitated, or for any other reason.

## Interring cremated remains in a public cemetery

Cremated human remains may be interred in a public cemetery; however, there is no legal requirement to do so. The applicant or the applicant’s agent who collects the cremated remains from the crematorium can do with them largely what they wish.

### Options for interring cremated remains

Garden memorials tend to be both the most popular and the most expensive places for interring cremated remains for trusts to maintain. Examples of places of interment include:

* along the borders of rose or shrub gardens
* at the base of individual plants in a garden bed
* around the base of individual trees or shrubs in a lawn setting
* beside features 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 are not disturbed if the grave is subsequently reopened to permit another interment.

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

### Tenure for interring cremated remains

Under s. 128 of the Cemeteries Act, a cemetery trust that offers rights of interment for the interment of cremated remains only must offer perpetual tenure and may, at their discretion, also offer a 25-year limited tenure option.

### Conversion of limited tenure rights of interment

At least 12 months prior to a 25-year right of interment expiring, the trust must take reasonable steps to notify the right of interment holder (s. 85 of the Cemeteries Act). The trust should notify in writing and may specify the timeframe that the right of interment holder has to reply. The notification must advise the right of interment holder, by written request to the trust, 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 right of interment holder within the specified timeframe, then under s. 86 of the Cemeteries Act, the trust may remove the cremated human remains and its memorial.

### Managing the limited tenure cremated remains of veterans

The Cemeteries Act was amended in 2015 to ensure identified veterans’ cremated remains are not scattered upon expiry of a limited tenure interment, but rather are preserved in perpetuity.

When a trust is identifying 25-year rights of interment that are due to expire, cremated remains interred within those places of interment may be identified as the remains of a deceased veteran. Trusts might identify cremated remains of deceased veterans by reference to:

* the memorial – for example, a Rising Sun emblem or other service badge inscribed on the memorial
* the trust’s records – for example, war-related causes of death on the death certificate
* notification by family members or interested community members.

The approach trusts take to managing a veteran’s limited tenure cremated remains will depend on the right of interment holder’s response to the notification that the right of interment is due to expire.

If the right of interment holder agrees to take action in response to the expiry notification, the trust should manage the veteran’s cremated remains as requested by the right of interment holder on receipt or waiver of the appropriate fee. The right of interment holder may choose to:

* convert the right of interment to a perpetual right of interment
* extend the right of interment for a further period not exceeding 25 years
* allow the right of interment to lapse and request the ashes be scattered, released to a specified person, or reinterred elsewhere.

If the right of interment holder does not respond to the expiry notification or responds but refuses to take action, trusts should leave the cremated remains of an identified veteran in place where possible. The right of interment would then be converted to a perpetual right and the trust would become the right of interment holder.

If it is not possible or viable to leave the remains interred in perpetuity at their original location, trusts may relocate the cremated remains of identified veterans to another place of interment. The right of interment for the new place of interment would be a perpetual right and the trust would be the right of interment holder.

If a trust relocates an identified veteran’s cremated remains, the trust is also permitted to relocate any other cremated remains interred in the identified veteran’s place of interment or any cremated remains of family members interred in the vicinity to ensure they aren’t separated.[[24]](#footnote-24) These other cremated remains may only be moved after appropriate notice to the right of interment holder(s) for those remains.

If a trust relocates the cremated remains of an identified veteran, it should also relocate any associated memorial where practicable. Where this is not practicable the trust should establish a new equivalent memorial. It is expected that trusts would bear the costs of memorialisation associated with relocating the cremated remains of identified veterans, such as repairing a plaque that is damaged during the relocation, or establishing a new equivalent memorial for a plaque that is damaged beyond repair or does not fit the new location.

More information about [managing the limited tenure cremated remains of veterans](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/veterans-cremated-remains) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/veterans-cremated-remains> is available on the department’s website.

### 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. The trust should ensure all interments (cremated or otherwise) are recorded in the trust’s records and permission to inter has been granted by the right of interment holder.

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

### 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 in a 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:

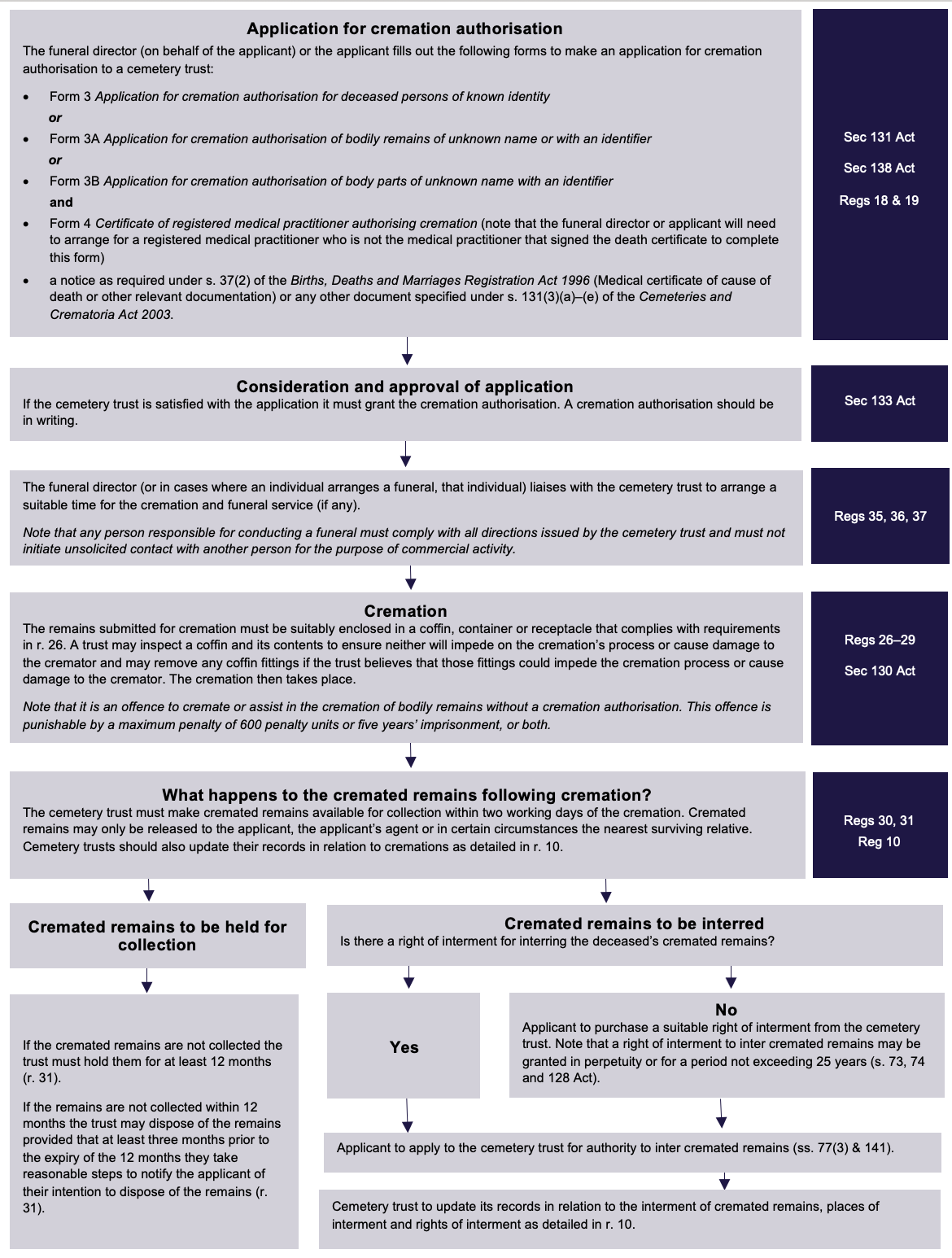
* Establish who holds the right of interment.
* If a request to remove cremated remains is made, written consent from all right of interment holders is required, preferably on a statutory declaration, confirming who they are and what they wish to do.
* If the trust has any concerns about granting its 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 contacts the department for advice before issuing written approval.
* Clearly document all trust decisions 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. Refer to [Topic 14. Exhumations](#_Topic_14._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 before 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.

Process for cremating bodily remains (flow chart)

(An accessible version of this flow chart is available in the ‘[Appendix: Transcripts of flow charts in this manual’](#_Appendix:_Transcripts_of)) section.



# Topic 14. Exhumations

## Exhumation licence

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

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

It is an offence under s. 155 of the Cemeteries Act to exhume or remove human remains from any place of interment (except in accordance with the Cemeteries Act). It carries a penalty of 600 penalty units or five years’ imprisonment or both.

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

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

Under s. 156 of the Cemeteries Act, a request for an exhumation licence must include:

* an application to the Secretary of the Department of Health for an exhumation licence
* the consent of the holder of the right of interment to the current place of interment
* 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. The current holder of the right of interment cannot be the deceased. If the trust records show the deceased as the right of interment holder, the trust will need to update its records. For more information, refer to [Topic 22. The right of interment](#_Topic_22._The).

And one of the following:

* an original or certified copy of the deceased’s 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 still-born child, a notice of still-birth under the Births, Deaths and Marriages Registration Actis required. 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 from the jurisdiction where the still-birth 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.

### Expiry of an exhumation licence

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

## Assessing applications for an exhumation licence

Relevant considerations for the Secretary may include (but are not limited to):

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

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

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

### Dignity and respect for the deceased

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

Nevertheless, it is recognised that in some cases dignity and respect may be best served by an exhumation – for example, for the purpose of interring in a more culturally and spiritually appropriate location, or to relocate the deceased closer to family who wish to pay their respects by visiting the place of interment. Members of the deceased’s family will generally be best placed to determine what dignity and respect means in their particular culture, faith and circumstances.

When the views of family members concerning the proposed exhumation are in conflict, it may be difficult for the applicant to show that the outcome to be achieved by the exhumation outweighs the dignity and respect associated with undisturbed interment.

### The views of the parties with a connection to the proposed exhumation

The department seeks information about the views of various parties, through the prescribed form, to help understand the context of the proposed exhumation, particularly:

* *The right of interment holder for the current place of interment*. The right of interment holder cannot be a deceased person. If the original holder of the right is the deceased, the applicant will need to work with the cemetery trust to have the trust’s records updated to reflect the current holder of the right of interment who can provide written consent.
* *Family members*. Underpinning the application process is the premise that all direct family members should, at a minimum, be informed of the exhumation and the subsequent relocation or cremation of remains. To this end, applicants must sign a declaration that they have informed the deceased’s surviving parents, children (who are older than 18 years including stepchildren) and siblings (over the age of 18 years) of the proposed exhumation.
* *Objectors*. Objections to the proposed exhumation, depending on the circumstances, may be relevant (although not necessarily determinative) in the decision to grant or refuse to grant an exhumation licence. Therefore, the prescribed form requires the applicant to declare whether any of the informed direct relatives have an objection to the proposed exhumation and to also declare if the applicant is aware of any other relatives with an objection.

### Any wishes documented by the deceased in relation to managing their remains

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

The extent to which the proposed management of the remains following a proposed exhumation aligns with the deceased’s documented wishes will be a relevant (although not necessarily determinative) consideration, particularly where the applicant and family members have conflicting views.

## Exhumation procedures

### Notification

The department must be notified in advance about the time and date when the proposed exhumation will take place. The cemetery trust must send to the department a report providing the details of the exhumation within 20 days of completing the exhumation.

### Charges

The cemetery must charge a fee that has been approved and gazetted for exhuming remains and any additional administrative or operational fees for the exhumation. The department will not pay any charges arising from the exhumation.

### The funeral director

The applicant may nominate a funeral director to help. The funeral director must supply at least three people (plus the funeral director) who can assist. If a lifting device is used, two people would be sufficient.

### 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 before 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 provided by the nominated funeral director for use on side if deemed necessary by the person authorised by the cemetery trust to supervise exhumations.

### Re-interment of exhumed remains

The exhumed remains may be re-interred, either in the same cemetery or in another cemetery, in either a grave, vault or mausoleum.

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 applicant must apply to the department for a separate cremation authorisation. Under s. 134 of the Cemeteries Act, the Secretary may grant an approval for the cremation of bodily remains if the requirements of s. 131(3) of the Cemeteries Act cannot be met. To assess the cremation application, the following documentation is required:

* an [*Application for cremation authorisation for deceased persons of known identity*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation>, available on the department’s website
* a letter from the funeral director on company letterhead requesting authorisation from the Secretary of the Department of Health under s. 134 for a cremation approval
* the death certificate of the deceased.

In most cases where exhumed remains are to be cremated, it is not possible to meet the documentation requirements set out under s. 131 of the Cemeteries Act. However, under s. 134 of the Cemeteries 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.

### 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.

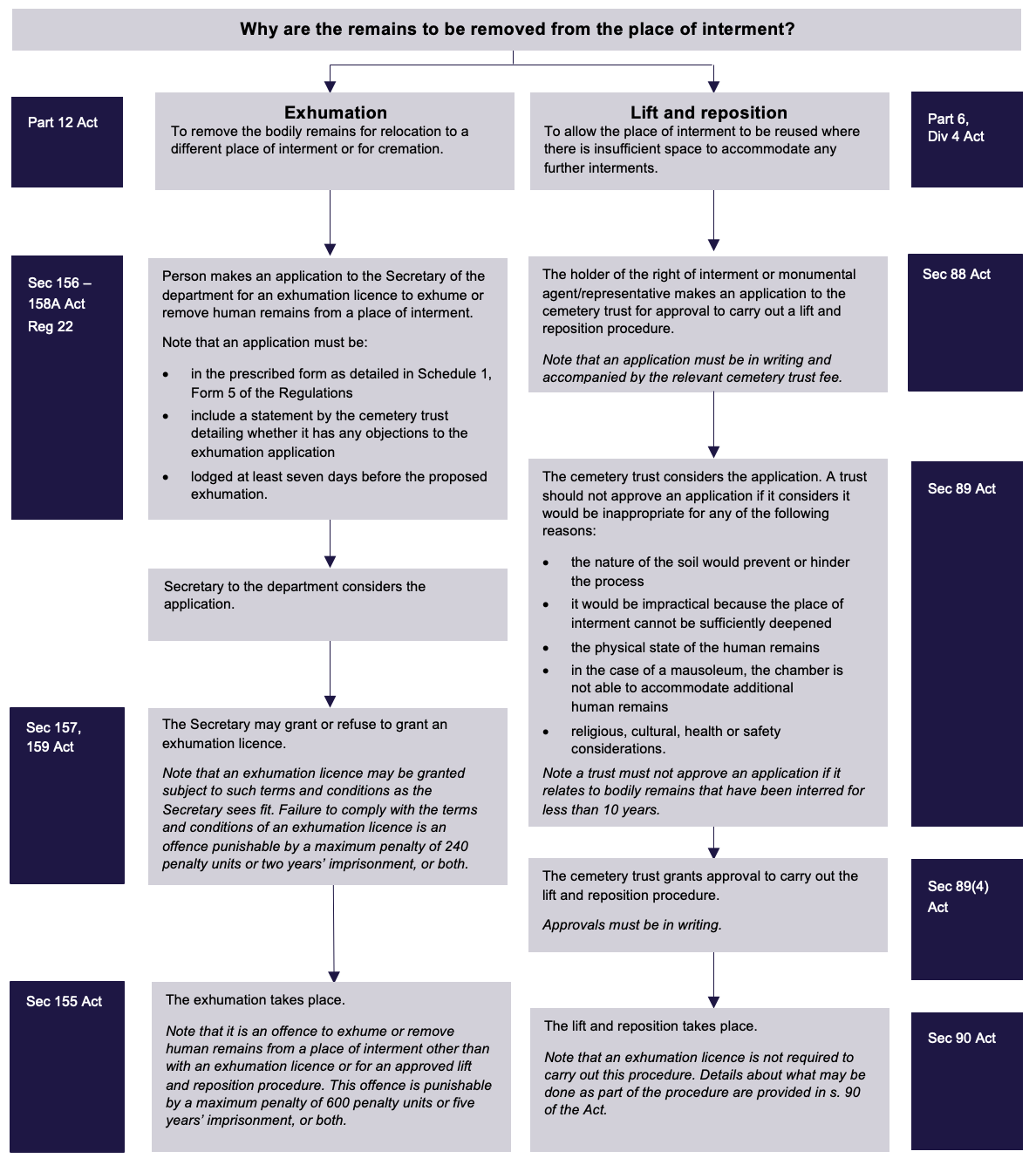
The following examples are not intended to be an exhaustive list and trusts should contact the department for advice if they are unclear about any aspects of exhumation requirements under the Cemeteries Act.

|  |  |  |
| --- | --- | --- |
| Request | Exhumation licence required? | Lift and reposition procedure |
| Where a trust is asked 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 | **Yes** | No |
| Where a trust has to check a nameplate on the outside of a coffin and can ensure the bodily remains **will not** be removed from the grave | No | No |
| Where a trust has provided written approval for cremated remains to be removed from a place of interment[[25]](#footnote-25) | No | No |
| Where a trust has to reposition a coffin within a burial plot and can ensure the bodily remains **will not** be removed from the grave area | No | No |
| Where a trust receives a request to lift a coffin and deepen a place of interment to accommodate another interment[[26]](#footnote-26) | No | **Yes** |
| Where a trust is moving a coffin from an incorrect place of interment to the correct place of interment before the incorrect place of interment has been backfilled (for a grave) or sealed (for a mausoleum crypt) | No | No |
| Where the trust is opening the place of interment for the purpose of opening the coffin – for example, to retrieve objects from the coffin | **Yes** | No |

The flow chart below titled ‘Comparison of exhumation and lift and reposition procedures’ has been created as a quick reference guide to assist trusts by summarising the required processes, identifying the applicable sections of the Cemeteries Act and Cemeteries Regulations, and differentiating between the processes of an exhumation and a lift and reposition procedure.

(An accessible version of this flow chart is available in the [‘Appendix: Transcripts of flow charts in this manual’](#_Reason_1:_Exhumation)) section.

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



# Topic 15. Lift and reposition procedure

The Cemeteries Act sets out a framework that allows the holder of the right of interment to re-use a place of interment for additional burials (if additional burials are permissible). This procedure is known as a ‘lift and reposition’.

Sections 88–90 of the Cemeteries Act sets out the process for the lift and re-position procedure. These sections of the Cemeteries Act outline the application process, the trust approval process and the lift and re-position procedure. An exhumation licence is not required to conduct a lift and re-position procedure.

**Note:** The flow chart at the end of [Topic 14. Exhumations](#_Topic_14._Exhumations) compares the lift and re-position process with the exhumation process. It sets out the key steps in the process, linking them to the relevant sections of the Cemeteries Act.

## Application process

### How to apply

Section 88 of the Cemeteries Act provides that the holder of the right of interment (or representative of the holder)[[27]](#footnote-27) can make an application to the relevant cemetery trust. The application must be in writing and accompanied by the relevant cemetery trust fee.

### Assessment of applications

Upon application, a person can request that the trust determines if a lift and re-position procedure is possible at the proposed plot.

To determine if a lift and re-position procedure is possible, the trust would need to consider whether:

* the applicant is the holder of the right of interment
* the holder of the right of interment has given permission
* the remains have been interred for at least 10 years (s. 89(3) of the Cemeteries Act).

Under s. 89(2) of the Cemeteries Act, an approval must not be granted if the cemetery trust considers that the lift and re-position procedure is inappropriate for any of the following reasons:

* the nature of the soil prevents or hinders the process
* it would be impracticable to undertake the procedure because the place of interment cannot be made deep enough
* the physical state of the human remains in the place of interment are such that a lift and re-position is unlikely to be successful
* in the case of a mausoleum, the chamber cannot accommodate additional human remains
* religious, cultural, health or safety considerations.

## Lift and re-position procedure

A cemetery trust that has approved a lift and re-position procedure may authorise a person to:

* open a place of interment
* lift any existing human remains that are interred in the place of interment
* deepen or enlarge the place of interment if necessary
* re-position the existing human remains in the place of interment, whether contained in a receptacle or not, to provide space for a further interment in that place of interment
* remove human remains from any receptacle and place them in another receptacle.

Practical constraints mean that in most circumstances a place of interment can only be re-used for up to a maximum of three interments. When planning a lift and re-position procedure, trusts should refer to Part 4 s. 24 of the Cemeteries Regulations, which set out the depth of burial requirements for the uppermost interment in a grave in a public cemetery.

There are some circumstances where neither an exhumation licence or a lift and re-position procedure is required. An example is where a trust has to re-position a coffin within a burial plot and can ensure the bodily remains will not be removed from the grave area.

If the application satisfies the trust’s requirements and the procedure is suitable, the trust must give written approval to the applicant to carry out a lift and re-position procedure.

It is expected that a lift and re-position procedure, including the re-interment of bodily remains, would occur on the same day.

**Note:** It is not considered a ‘lift and re-position procedure’ where the trust is required to check the nameplate on interred remains. Please refer to ‘Examples of situations where an exhumation licence may or may not be required’ in [Topic 14. Exhumations](#_Topic_14._Exhumations) for examples of situations where an exhumation licence may or may not be required.

# Topic 16. Disposal of human remains other than interment or cremation

Section 146 of the Cemeteries 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.

Where a trust wishes to make a formal application to dispose of human remains other than interment or cremation, it should submit a written detailed proposal to the departmental Secretary, addressed to:

The Manager  
Cemetery Sector Governance Support Unit

Department of Health  
PO Box 4057  
Melbourne VIC 3001

The proposal should address how the proposed service aligns with the cemetery trust’s functions prescribed under the Cemeteries Act, namely the proper and efficient management of the cemeteries under its control, its obligations for 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 installing and operating the required equipment
* the estimated return on investment, including proposed fees the trust will charge
* relevant building or planning controls that may apply
* 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.

It may take up to six months for the department to review and assess this type of application, and trusts should factor the assessment into their planning timelines.

For more information, contact the department on 1800 034 280 or [email](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au> before submitting your proposal.

# Topic 17. Cemetery memorials

## Application to establish or alter a memorial

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

Under s. 99 of the Cemeteries Act, the cemetery trust may withhold its permission if the intended work is inappropriate, unsafe or dangerous. 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. Refer to the ‘[Monument construction procedures and standards](#_Monument_construction_procedures)’ section below for more information about Australian Standards.

Generally, the cost of consulting an engineer will be borne by the applicant. However, the cemetery trust must seek the applicant’s written approval before seeking professional advice.

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

The exception to these requirements is the establishment or alteration of official Office of Australian War Graves memorials. Refer to [War graves and memorials](#_War_graves_and) for more information.

## Monument construction procedures and standards

Section 98 of the Cemeteries 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 Cemeteries 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 Cemeteries Act, an applicant may lodge an appeal against the decision of the trust with the Victorian Civil and Administrative Tribunal.

The CCAV has developed an [[*Application to establish or alter a memorial or place of interment*](https://ccav.org.au/news-and-resources/) form](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/memorials) <https://ccav.org.au/news-and-resources/> to use when applying to establish or alter a memorial.

It is important that the cemetery trust provides clear advice about the location of the grave to ensure a memorial is constructed on the correct grave.

It is recommended that the cemetery trust adopts 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 Cemeteries 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.

The cemetery trust has the power to inspect the construction of a memorial and, where appropriate, seek advice from a consulting engineer or other appropriately qualified person.

The trust can inspect the memorials to ensure they conform with its specifications. Generally, a trust will not have responsibility to ensure a memorial is constructed in accordance with any other industry standards. Unless otherwise indicated, a cemetery trust is not liable for the construction of a monument by a third party.

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

* AS-4204 Headstones and cemetery monuments
* AS-4425 Above ground burial structures.

These publications are only available, at cost, from:

Standards Australia  
Telephone: 1800 035 822  
[Email](mailto:Email): <success@standards.org.au>  
[Website](https://www.standards.org.au/search-for-a-standard): <https://www.standards.org.au/search-for-a-standard>

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.

The process for establishing or altering a memorial is outlined on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/memorials) <https://www.health.vic.gov.au/cemeteries-and-crematoria/memorials>.

## Managing unsafe memorials

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 27. Conditions of work](#_Topic_27._Conditions) and [Topic 28. Occupational health and safety](#_Topic_28._Occupational) for more information.

It is the responsibility of the right of interment holder (right holder) to maintain any memorial at that place of interment in a public cemetery in a safe and proper condition. A memorial is not in a safe and proper condition if it is likely to cause physical danger to any person or has noxious fumes escaping from it.

Cemetery trusts have a duty of care for the safety of visitors and workers in public cemeteries. When a cemetery trust identifies an unsafe memorial there are steps it can take under the Cemeteries Act to address the safety risk.

It is important to note that the process for managing unsafe memorials differs depending on whether the right holder can be found. There are also different requirements for [managing an unsafe cremation memorial of an identified veteran](#_Managing_an_unsafe) and [managing an unsafe memorial subject to a forced surrender of right of interment](#_Managing_an_unsafe_1) as detailed below.

### Damage to memorials covered by insurance

A cemetery trust may make an insurance claim for the repair or replacement of a memorial due to loss caused by theft, vandalism, storm, tempest, impact by vehicle and/or impact by foreign object where the right holder has been identified and made a written request for the repair or replacement of stolen or damaged memorial.

To make a claim, the right holder must submit a completed VMIA claim form to the cemetery trust. The cemetery trust then makes a claim to VMIA. Information on how to make a claim is available on the [VMIA website](https://www.vmia.vic.gov.au/insurance/policies-and-cover) <https://www.vmia.vic.gov.au/insurance/policies-and-cover>.

If the right holder does not submit a completed claim form to the cemetery trust and the memorial **does not** pose a safety risk, it is to be left in situ.

If the right holder does not submit a completed claim form to the cemetery trust and the memorial **does** pose a safety risk, the cemetery trust should complete the [process for managing unsafe memorials](#_Process_for_managing) detailed below.

### Damage to memorials not covered by insurance

If the right holder cannot be found, the cemetery trust **cannot** make an insurance claim for the repair or replacement of a stolen or damaged memorial.

If the memorial **does not** pose a safety risk, it is to be left in situ.

If the memorial **does** pose a safety risk, the cemetery trust should complete the [process for managing unsafe memorials](#_Process_for_managing) detailed below.

Note: If the right holder is identified as part of this process, the right holder should be advised of the option to make an insurance claim before progressing to step 3a or 3b (detailed below).

### Process for managing unsafe memorials

#### Step 1 – Cemetery trust assesses safety risk

If the memorial is not in a safe and proper condition, the cemetery trust must take all reasonable measures to adequately warn of the risk (for example, erect signage at the location warning of the risk) and restrict access to the risk (for example, cordon off the memorial) until there is no longer a safety risk (the memorial has been repaired or removed).

#### Step 2 – Cemetery trust attempts to contact right holder

If the cemetery trust believes that a memorial is not in a safe and proper condition, it may send a written notice (by post and/or email) to the right holder requiring they make the condition of the memorial safe and proper or carry out repairs specified in the notice within 14 days of its receipt. The cemetery trust may wish to send the written notice by registered post or contact the right holder by telephone to ensure it has been received. The cemetery trust should retain evidence of receipt (for example, registered post delivery confirmation).

If the right holder’s contact details are incomplete or out of date, the cemetery trust should follow the steps for updating right of interment records detailed in Topic 22 of the [Manual for Victorian Class B cemetery trusts](https://www.health.vic.gov.au/publications/manual-for-victorian-class-b-cemetery-trusts) <https://www.health.vic.gov.au/publications/manual-for-victorian-class-b-cemetery-trusts>.

It is important that the cemetery trust establishes whether the written notice has been received by the right holder to determine the next step in the process (step 3a or 3b as detailed below).

#### Step 3a – Right holder received written notice but has not complied

If the right holder fails to comply with the written notice within 14 days of receiving that notice, the cemetery trust has two options to consider:

|  |  |  |
| --- | --- | --- |
| Option | Action | Funds used |
| 1. Repair the unsafe memorial | The cemetery trust repairs the memorial to a safe and proper condition. | The cemetery trust uses trust funds or other funds to pay for costs and expenses of repair.  Note: The cemetery trust may seek to recover the costs and expenses of repair from the right holder as a debt recoverable in a court of competent jurisdiction. |
| 2. Remove the unsafe memorial | The cemetery trust seeks consent of the department Secretary to take down, remove and dispose of the memorial.  Note: If practicable, the cemetery trust may consider storing the memorial for a specified period and advise the right holder that they can collect the memorial. The costs associated with storing the memorial should not be recovered from the right holder. | The cemetery trust uses trust funds or other funds to pay for costs and expenses of removal.  Note: The cemetery trust may seek to recover the costs and expenses of removal from the right holder as a debt recoverable in a court of competent jurisdiction. |

#### Step 3b – Right holder cannot be found

The right holder cannot be found if the cemetery trust:

* has not received a response from the right holder in respect to the written notice; and
* has not been able to confirm the written notice was received by the right holder; and
* has completed the steps for updating right of interment records and updated its interment register to record that the right holder cannot be found (refer to [step 2](#_Step_2_–)).

If the right holder cannot be found, the cemetery trust has two options to consider:

|  |  |  |
| --- | --- | --- |
| Option | Action | Funds used |
| 1. Repair the unsafe memorial | The cemetery trust repairs the memorial to a safe and proper condition. | The cemetery trust uses trust funds or other funds to pay for the costs and expenses of the repairs. |
| 2. Remove the unsafe memorial | The cemetery trust seeks consent of the department Secretary to take down, remove and dispose of the memorial. | The cemetery trust uses trust funds or other funds to pay for costs and expenses of for the removal. |

### Process for managing an unsafe cremation memorial of an identified veteran

A veteran is a person who has performed service or duty within the meaning of the *Veterans Act 2005*.

If the right holder of a **perpetual interment** of an identified veteran’s cremated remains with an unsafe memorial cannot be found or has received a written notice from the cemetery trust but not complied, the cemetery trust should follow the relevant process set out at [step 3a](#_Step_3a_–) or [step 3b](#_Step_3b_–) above with respect to the memorial.

If the right holder of a **limited tenure interment** of an identified veteran’s cremated remains with an unsafe memorial cannot be found or has received a written notice from the cemetery trust but not complied, the cemetery trust should follow the relevant process set out at [step 3a](#_Step_3a_–) or [step 3b](#_Step_3b_–) above with respect to the memorial, subject to the operation of the Cemeteries Act that provides for limited tenure interments to be converted to perpetual rights with respect to interments with identified veteran’s cremated remains.

If the **cemetery trust is the right holder** of an identified veteran’s cremated remains, the cemetery trust is obligated to maintain any such memorial. It is also obligated to re-establish an existing memorial or establish a new equivalent memorial if interred cremated remains of deceased identified veterans are moved. The cemetery trust may use cemetery trust funds or other funds to maintain, repair or restore a memorial, or for the establishment of a memorial in relation to a deceased identified veteran equivalent to a memorial it replaces.

Refer to [Managing the limited tenure cremated remains of veterans](#_Managing_the_limited) for information.

### Process for managing an unsafe memorial subject to a forced surrender of right of interment

Under s. 84C of the Cemeteries Act, the department Secretary may force the surrender of a right of interment in certain circumstances.

Where the department Secretary decides to force the surrender of a right of interment the previous right holder has no further entitlements or responsibilities under that right of interment. The cemetery trust will become either a sole or joint right holder to ensure ongoing management of the right in accordance with the department Secretary’s decision.

In circumstances where the cemetery trust becomes a joint right holder for an unsafe memorial, the cemetery trust should follow the steps above for the [process for managing unsafe memorials](#_Process_for_managing). The obligation to maintain the memorial lies with the other joint right holders. While the cemetery trust is not obligated to maintain the memorial in its capacity as the right holder, in its capacity as the cemetery trust it continues to have public safety obligations.

If the cemetery trust is the sole right holder in respect of an unsafe memorial, the cemetery trust must act to make safe any such memorial. If the cost of repairs is not covered by insurance, the cemetery trust may use trust funds or other funds to pay for costs and expenses of repair or removal of the memorial.

### How to seek the department Secretary’s consent to repair or remove an unsafe memorial

To seek the department Secretary’s consent to repair or remove an unsafe memorial, the cemetery trust should submit the following information in a written request to the unit:

* Name of cemetery trust and cemetery
* Location of the memorial within the cemetery
* Description of the condition of the memorial and how it is unsafe
* Photograph of the memorial (optional)
* Summary of notification process including evidence of steps taken to attempt to contact the right holder (for example, a copy of a public notice)
* Evidence of the alternate funding source if required
* Description of the proposed repair works or intention to remove the memorial

The request should be submitted by [email](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au> or posted to:

Cemetery Sector Governance Support Unit  
Department of Health  
GPO Box 4057  
MELBOURNE VIC 3001

## Plaques and headstones for lawn area graves

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

It is usual for a cemetery trust to approve a particular style of memorial for each lawn area. But a cemetery may have two or three lawn areas operating at one time, thereby offering a choice of memorialisation, 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 show 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 before constructing such memorials.

### Other materials

The trust should consider the durability of materials used for memorials; for example, monuments that use timber may not be appropriate for this purpose because timber is not as durable as concrete. Trusts may decide to allow 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 Cemeteries 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 help cemetery trusts meet their obligations in the sale and supply of memorial products and services in Victorian public cemeteries, the department has developed the [*Code of practice – sale and supply of memorialisation goods and services by cemetery trusts and other suppliers in Victorian public cemeteries*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/code-of-practice) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/interments-and-memorials/code-of-practice>, available on the department’s website.

Implementing the code is mandatory for all cemetery trusts that engage in these activities.

## Memorial permit fees

Cemetery trust permit fees for 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 for 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 before, during and after construction
* a component of the cemetery trust’s perpetual maintenance costs.

To help cemetery trusts with setting memorial permit fees, the department has developed the [*Recommended memorial permit fee application form*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance>, available on the department’s website.

## War graves and memorials

The OAWG provides and maintains official OAWG memorials in public cemeteries throughout Australia for those Australians who died in conflict or who die post war as a result of causes related to their war service.

OAWG memorials are supplied, installed, and maintained by the OAWG. These fall into two categories:

1. Memorials provided to war veterans who died in a war or conflict.
2. Memorials provided to war veterans who died post war from an injury or illness directly attributed to their service.

The OAWG provides category 1 veterans with a perpetual right of interment for bodily or cremated remains and an official memorial at either the place of interment or in an OAWG Garden of Remembrance. The OAWG maintains these memorials in perpetuity.

The OAWG provides category 2 veterans with an official memorial either in an OAWG Garden of Remembrance or at a place of interment where the right of interment is supplied by the deceased’s family/surviving relatives. Rights of interment for veterans in this category may be perpetual and relate to either bodily or cremated remains or limited tenure in the case of cremated remains, depending on the preference of the deceased’s relatives supplying the right of interment.

The OAWG will maintain official memorials for these veterans consistent with the tenure of the right of interment (including any extension of limited tenure). The OAWG will advocate, on behalf of the veteran and their family, to retain an official commemoration if tenure becomes due and is not renewed by family. If advocacy for retention is unsuccessful, OAWG will, at the cemetery’s request, transfer the official commemoration to an OAWG Garden of Remembrance and collect the official plaque from the cemetery or crematorium. The official plaque cannot be released to the family under any circumstances, as it remains the property of OAWG.

### Other war veteran memorials

Public cemeteries may also contain other war veterans privately arranged, placed, and maintained memorials. In some cases, these may be identified by the relevant Australian Defence Force service badge on a private memorial. For example, where:

* a returned war veteran is ineligible for an official OAWG commemoration, and the family choose to acknowledge the veteran’s war service by including the relevant service badge on their private memorial.
* the style of memorial provided by the OAWG does not satisfy the family’s requirements, so the veteran is officially commemorated in an OAWG Garden of Remembrance, and the family are granted permission to use the appropriate service emblem on their private memorial at the place of interment.
* the veteran’s family seeks greater creative input into the design of the memorial than OAWG enables, so they manage a district memorial that recognises military service differently or
* the cemetery or crematorium does not allow OAWG commemorations.

Permission must be sought from the OAWG to use a service emblem on a private memorial. However, the responsibility for establishing and maintaining such memorials lies with the right of interment holder right holder.

### Establishment of official OAWG memorials

Under the Defence Force Regulations 1952, the OAWG has extensive powers that exempt them from complying with relevant state or territory laws when establishing, maintaining or replacing official OAWG memorials. This means that the OAWG does not need approval from a cemetery trust before starting work on an official OAWG memorial. However, the OAWG has agreed a process for establishing official memorials (including replacing existing memorials) in Victorian cemeteries that ensures such memorials are properly authorised in accordance with Victorian requirements as follows:

#### Step 1

When the OAWG receive an application for official commemoration, it will confirm with the relevant cemetery trust that the person applying for the memorial is the right holder or has their authority. If a Statutory Declaration is required, the trust will confirm this and OAWG will arrange it.

This ensures the consent of the right holder (or the authorised person) is obtained before establishing an official OAWG memorial.

#### Step 2

OAWG’s appointed contractor will complete the CCAV application form, ensuring the name of the right holder and their signature is provided and that the contractor has their consent to establish the memorial, (or attach the Statutory Declaration), and forward this with a copy of the work order to the cemetery for their approval.

If the paperwork is correct, the trust can provide approval for the contractor to proceed with the work.

The exception to this process is the establishment of official OAWG memorials for veterans who died more than 50 years ago and whose family can no longer be contacted. Under these circumstances the Director, OAWG will complete and sign the application form in lieu of the holder of the right of interment.

### Maintenance of official OAWG memorials

The OAWG maintains official OAWG memorials in perpetuity (or for the duration of a limited tenure right of interment). Maintenance works undertaken by the OAWG include:

* annual/biannual inspection
* cleaning, tidying and, where necessary, polishing
* refurbishing or repainting plaques every seven to 12 years (repainting requires the plaque to be sanded, which affects the prominence of the lettering, meaning the plaque has to be replaced after three paints)
* sanding of marble headstones every two to four years.
* replacing deteriorated memorials with new memorials.

The frequency of maintenance within these ranges varies depending on the location and environmental conditions of the area the memorial is in. The OAWG engages contractors to undertake routine civil and general maintenance work on their behalf. A copy of the OAWG Work Order and CCAV form will be supplied by the contractor. As noted above, the OAWG has extensive powers under the Defence Force Regulations 1952 for undertaking work on memorials. However, OAWG masons undertaking work in Victorian cemeteries must comply with trust’s requirements and processes – for example, to ensure areas of key risk such as OHS, public and site access are addressed.

### Victorian Office of the OAWG

The OAWG provides monumental masons with grave monument standards and guidelines that direct the conduct of their work. The guidelines are consistent with the agreed process outlined above. Cemetery trusts should phone the Victorian Office of the OAWG on (03) 9547 1991 if they have any concerns about work being undertaken by OAWG monumental masons.

# Topic 18. Mausolea

Under the Cemeteries 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 Cemeteries 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 do not escape.

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

Trusts considering building mausolea should be aware of mandatory compliance requirements regarding public construction procurement. Information about requirements can be obtained from the [Class B cemetery trust financial reporting and financial procedures](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures> on the department’s website.

## 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 by the public. Under s. 22 of the Cemeteries Act, a cemetery trust is required to obtain the departmental Secretary’s written approval 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. More information and the [*Mausoleum establishment and construction guidelines*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/establishing-a-mausoleum) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/establishing-a-mausoleum> are available on the department’s website.

## Private mausolea

A private mausoleum is constructed and paid for by a third party separate to the cemetery trust, usually a family. Applications are made to the responsible cemetery trust for approval to establish this as a place of interment under s. 98 of the Cemeteries Act.

In line with s. 3(1) of the Cemeteries 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 in ongoing management, maintenance and administration of these structures. Under the Cemeteries Act, cemetery trusts are not required to allow the construction of private mausolea in cemeteries under their control.

# Topic 19. Closure of a public cemetery

Under s. 62 of the Cemeteries Act, at the request of the entity responsible for managing a cemetery, and with the approval of the minister, the Governor in Council can 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 of the Cemeteries Act, when a cemetery trust 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, regardless of whether there are any existing rights of interment.

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

* a refund based on the trust fee for the same type of right of interment immediately before the closure of the cemetery, less the relevant cemetery trust fee for administration from the cemetery trust that is responsible for managing the closed cemetery, or
* that the Secretary directs 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 Cemeteries 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 Victorian *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 Cemeteries Act, a cemetery trust that is 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. More information about historical cemetery parks is available in ss. 65–72 of the Cemeteries Act.

# Topic 20. Perpetual maintenance obligations

## Perpetuity

Bodily remains in Victoria are interred in perpetuity in line with ss. 74 and 113 of the Cemeteries Act. For this reason, s. 12(2)(a) of the Cemeteries Act requires a cemetery trust, in exercising its functions under the Act, to consider its obligations for funding the perpetual maintenance of the public cemetery for which it is responsible.

Cemetery trusts should carefully consider how each of its cemeteries 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 Cemeteries Act:

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

The cemetery trust should take care 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 begins.

## 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 more interments. The standard of maintenance between an operating cemetery and a closed cemetery may vary, and this difference should be considered when trusts set their fees and charges. Community expectation will also play a role in the maintenance standards set for closed cemeteries.

## Cemetery trust fees

Under the Cemeteries Act, when setting fees, cemetery trusts must consider the costs of operating and managing a public cemetery, and the need to provide for immediate and ongoing maintenance (for example, roads, paths, gardens, fences, buildings, water, security, park establishment and replacement) of the public cemetery. All cemetery trust fees should include an appropriate perpetual maintenance component, and perpetual maintenance should not be charged as a separate fee.[[28]](#footnote-28)

As a general guideline, the department recommends that 15 to 20 per cent of the 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 Cemeteries Act, when fixing fees and charges, cemetery trusts must consider the costs of operating and maintaining the cemetery into perpetuity. Trusts may consider allocating a portion of its income into an investment fund to cover the cost of future perpetual maintenance obligations.

These investments can be set up to assist trusts to maintain cemeteries when they are closed or partially closed. Ideally, trusts will be in a position to use the ‘interest’ from these investments to fund the maintenance 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 before 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 any proposed development project will earn a sufficient return on investment before it uses its perpetual maintenance reserves to fund the project. A ‘sufficient return’ is determined by the extent to which the trust can:

* recover the borrowed perpetual maintenance funds with interest[[29]](#footnote-29)
* 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[[30]](#footnote-30),[[31]](#footnote-31)
* constructing public mausolea[[32]](#footnote-32)
* purchasing new land to expand cemetery services within a community.[[33]](#footnote-33)

Where the trust decides to expend its perpetual maintenance funds, it must document its decision and ensure 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 1800 034 280. The department will assist the trust determine if the project is viable.

# Topic 21. Other maintenance and construction requirements

## Fences – building/establishing

The requirements for establishing/replacing fences are set out under the Fences Act 1968 and not the Cemeteries Act.

Generally speaking, under the Fences Act, the responsibility for building/establishing 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. This exemption is outlined under s. 31 of the Fences Act 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 s. 31 of the Fences Act does not extend to the person to whom the lease/licence has been provided.

## Public construction procurement

In 2018 the Minister for Finance issued Directions for Public Construction Procurement in Victoria (the directions). The directions relate to any construction in excess of $50,000 (current April 2022).

Under the directions Class B cemetery trusts are required to establish processes in line with procurement principles. To assist trusts the department has developed the [*Class B cemetery trust guidelines for public construction procurement*](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures>, which are available from the department’s website.

Public construction may relate to the construction of chapels, mausolea, crematoria, roadways, fences, drainage, retaining/niche walls, administration/storage buildings, excavation, grading, engineering design, surveying construction and project management. If a trust is considering seeking funding to assist with the costs of such a project, more information about the department’s grant program is located in [Topic 11. Grants](#_Topic_11._Grants).

To assist Class B cemetery trusts meet the requirements of the directions, the department has also developed [contractor, purchasing/tendering and complaints policy template](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/policy-templates)s <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/policy-templates> available for download on the on the department’s website.

# Topic 22. Rights of interment

## Right of interment

A right of interment permits the right of interment holder (right holder) to determine:

* the human remains (bodily or cremated) that can be interred (buried or placed) in a place of interment in a public cemetery
* the type of memorialisation, if any, to be established at the place of interment subject to any cemetery trust memorialisation policies or specifications.

A right of interment relates to a specific place of interment – for example, a grave, vault, mausoleum crypt or ashes niche. Right holders do not own the land associated with the place of interment as all Victorian public cemeteries are on Crown land.

**Note:** The terms ‘right holder’ and ‘right holders’ are used interchangeably.

## Right holders

The right holder is the person identified in cemetery trust records as the right holder for a specific place of interment within a public cemetery. There can be one sole right holder or multiple joint right holders for a place of interment.

The right holder is not necessarily the same person as the applicant who completed and signed an application form or the person who paid the relevant fee to purchase the right of interment. A right of interment rests only with the right holders recorded in cemetery trust records.

A right of interment rests only with the right holders. Physical possession of a right of interment permit does not of itself give a person the right to make decisions in relation to the right of interment.

## Selling a right of interment

When selling a right of interment, the cemetery trust issues a right of interment permit to the right holders containing information about the right of interment, the place of interment and the conditions of the permit. A [right of interment permit template](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit) is available on the department’s website <https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit>.

When a right of interment is purchased, the cemetery trust should advise the right holders of the following:

* The rights and obligations of right holders (refer to [Rights and obligations of right holders](#_Rights_and_obligations_1)).
* If there are any memorialisation policies that apply to the place of interment that specify or restrict the types of memorials that may be established.
* That if a memorial is not maintained in a safe and proper condition by the right holders and the cemetery trust is unable to contact the right holders, the cemetery trust may seek approval from the department to repair or remove and dispose of the memorial.
* That if the right of interment is unexercised after 25 years, the cemetery trust may take steps to cancel the right of interment in certain circumstances (refer to [Cancelling a right of interment](#_Cancelling_a_right_1)).

It is recommended that cemetery trusts provide right holders with a copy of the [Right of interment permit factsheet](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment) <https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment>, available on the department’s website.

## Rights and obligations of right holders

### Right to make decisions about the place of interment

Subject to the approval of the cemetery trust, payment of the relevant fees and any conditions imposed by the trust, a right of interment gives the right holders the right to:

* authorise the interment of human remains in the place of interment
* establish or alter a memorial at the place of interment
* endorse or object to an application to exhume bodily remains from the place of interment
* authorise the removal of body parts or cremated remains from the place of interment.

### Right to transfer or surrender the right of interment

Where a person is a sole right holder, they may transfer the right to another person (refer to [Voluntary transfer of a right of interment to another person](#_Voluntary_transfer_of)). Sole right holders and joint right holders are also entitled to surrender their right (refer to [Voluntary surrender of a right of interment to a cemetery trust](#_Voluntary_surrender_of_1)).

### Obligation to maintain memorials at the place of interment

Right holders must maintain any memorial established at the place of interment in a safe and proper condition. Where a memorial is not maintained in a safe and proper condition and right holders cannot be contacted, the cemetery trust may repair, remove or dispose of the memorial and seek to recover the associated costs and expenses from the right holders.

### Updating contact details

Right holders are responsible for keeping the cemetery trust advised of their current contact details.

## Length of a right of interment

A right of interment for a place of interment that can accommodate both bodily remains and cremated remains (for example, graves, vaults and mausoleum crypts) must be perpetual (forever).

A right of interment for a place of interment that can only accommodate cremated remains (such as a niche wall or rose bush) can be either perpetual (forever) or limited to 25 years (if the cemetery trust offers this).

The length of the right of interment is specified at the time the right is granted.

Cemetery trusts that offer rights of interment for interring cremated remains only **must** offer perpetual tenure and may also, at the trust’s discretion, offer limited tenure for a period of 25 years.

### Limited tenure rights of interment

The right holder of a limited tenure right of interment may at any time during the 25-year period request the cemetery trust to extend the right for a further 25 years or convert the right to a perpetual right, subject to paying the relevant fee.

At least 12 months before a limited tenure right of interment is due to expire, the cemetery trust must take reasonable steps to notify the right holder in writing that:

* the right of interment is due to expire
* right holders may request that the cemetery trust extends the right for a further 25 years (subject to paying the relevant fee)
* right holders may request that the cemetery trust converts the right to a perpetual right (subject to paying the relevant fee).

If the right holder does not act in response to the notification within the time specified by the cemetery trust, the trust may disinter the cremated remains, dispose of the remains within the cemetery grounds and remove any memorial relating to the remains.

**Note:** The Cemeteries Act was amended in 2015 to ensure identified veterans’ cremated remains are not scattered upon expiry of a limited tenure interment, but rather are preserved in perpetuity. Refer to [Managing limited tenure cremated remains of veterans](#_Managing_the_limited) for more information.

## Exercising a right of interment

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

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

**Note:** If human remains have been interred and subsequently disinterred from the place of interment the right of interment is still considered exercised.

## Transfer of a right of interment when a right holder dies

The transfer of a right of interment following the death of a right holder differs depending on whether the deceased was a sole right holder or a joint right holder as explained below.

### Joint right holder

When a joint right holder dies, the deceased’s interest will pass to the remaining right holders in accordance with the right of survivorship.

#### Example

A right of interment was issued in 1930 to three brothers. Two of the brothers died in the 1940s and the surviving brother became the sole right holder.

### Sole right holder

When a sole right holder dies, 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. In lieu of a specific bequest leaving the right of interment to an identified person or persons, the right typically forms part of the deceased’s estate and is inherited by the beneficiary or beneficiaries of the estate. This could mean transfer of the right to one or multiple people.

#### Example

Following on from the example above, the third brother who became the sole holder of the right of interment had two daughters who inherited his estate when he died. He did not leave a specific bequest identifying who should inherit the right of interment. His two daughters became joint holders of the right.

**Note:** The cemetery trust is not responsible for investigating who will become the new right holders when a right holder dies. It is up to interested parties to provide the cemetery trust with sufficient evidence, for example a will.

## Managing a right of interment following the death of a right holder

When a right holder dies a cemetery trust will generally receive a request from a funeral director, executor or family representative to inter the deceased in the plot they purchased. At the time of the funeral, it is unlikely that the funeral director or family representative will be able to provide the cemetery trust with enough information to allow the trust to update its right of interment records with the name of the new right holder.

### Who can instruct the cemetery trust following the death of a right holder

#### Sole right holder

Where the deceased was the sole right holder, the following people can give the cemetery trust instructions on using the place of interment, depending on the circumstances:

* a person nominated to administer the deceased’s estate (such as an executor) because the right of interment forms part of the estate
* a representative nominated by the deceased’s family to manage the funeral arrangements, including a funeral director, family friend or member of the family.

**Note:** There might not be clear documentation available about the person’s nomination (for example, if the will has not yet been located or if the deceased did not leave a will). If the matter is in dispute, the cemetery trust may need to obtain evidence to its satisfaction (for example, through a statutory declaration) to confirm the identity of the administrator of the deceased’s estate.

#### Joint right holder

If a right is held by multiple joint right holders, the remaining joint right holders may give the cemetery trust instructions regarding the interment and exercise of the right. The cemetery trust may request a signed authority from all joint holders confirming their nominated representative

#### Disputes

Under normal circumstances a funeral should proceed as directed by the family or their representative. However, if there is a dispute about the exercise of a right relating to a proposed interment, placement of a memorial, transfer of the right or any other matter relating to the exercise of the right, the cemetery trust should recommend the family seek mediation to settle the dispute before taking directions regarding the right.

#### Executor

The cemetery trust should note the executor or administrator of an estate will not necessarily become the new right holder. Cemetery trusts should not update their records to reflect new right holders without clear supporting evidence.

### Identifying the new right holders

Identifying the new right holders is a crucial part of the cemetery trust’s record validation process. Refer to [Transfer of a right of interment when a right holder dies](#_Transfer_of_a) for more information.

If done properly, this step will clearly establish who is authorised to give the cemetery trust directions about the right and the place of interment regarding future interments, memorials and exhumations.

The process of distributing a deceased estate can take several months and be finalised long after an interment has taken place.

Once the estate has been settled the new right holders are likely to be one or a number of beneficiaries. They should be able to provide the cemetery trust with documentary evidence showing they are the new right holders (for example, a certified copy of the will or statutory declarations from the nearest surviving relatives of the deceased). If there are multiple beneficiaries, they become joint right holders.

The cemetery trust should contact the executor or family representative at a reasonable time after the interment to confirm the identity of the new right holders and update the cemetery trust records accordingly.

#### Evidence for updating the cemetery trust’s records

| Scenario | Evidence |
| --- | --- |
| The deceased holder was the sole identified right holder (in the cemetery trust’s records) and leaves a will | The cemetery trust will need a certified copy of the will that identifies the beneficiaries of the deceased’s estate or, alternatively, the beneficiaries nominated to manage the right of interment. Where multiple beneficiaries are identified in the will, the cemetery trust will need to record each beneficiary as a right holder. |
| The deceased holder was the sole identified right holder (in the cemetery trust’s records) and did not have a will | In circumstances where the deceased right holder did not leave a will, prospective beneficiaries will generally apply to court for Letters of Administration. The cemetery trust will require a certified copy of the Letter of Administration granted by the court as evidence confirming the new right holders.  Where a new right holder is not identified through a court-issued Letter of Administration the cemetery trust will need a statutory declaration from anyone claiming to be a new right holder. The statutory declaration must:   * address why they believe they have a claim * confirm that to the best of their knowledge there are no other beneficiaries who can make claim to the right of interment * note that if any legitimate claimants come forward the cemetery trust reserves the right to update its right of interment records to recognise them.   A cemetery trust is not obliged to update its records if it is not satisfied that the information provided by an applicant is sufficient to have the right of interment record updated.  When rejecting an application, the cemetery trust should provide the reasons for its decision in writing and, where possible, be clear about what additional information is required to enable it to update its records. |

## Voluntary transfer of a right of interment to another person

A sole right holder may transfer their right of interment to another person. If the recipient pays money to the original right holder for the right, the amount paid must not exceed the current cemetery trust fee for the same type of right of interment in that cemetery, less the cemetery trust fee for recording the transfer. It is an offence to receive payment above this amount and penalties apply.

For a transfer to take effect, a person to whom the right of interment is transferred must notify the cemetery trust of the transfer in writing and pay the relevant fee. The trust should also seek written confirmation from the original right holders that they consent to the transfer.

### Example

Sole right holder Jack is transferring his right of interment to Jill. Jill pays Jack $1,250 for the right (current cemetery trust fee of $1,275 less the cemetery trust’s administration fee of $25). Jill advises the cemetery trust of the transfer in writing and pays the $25 administration fee to the trust. The trust confirms with Jack that he consents to the transfer and then updates its records to show Jill as the new right holder.

## Voluntary surrender of a right of interment to a cemetery trust

A right holder may choose to surrender their right of interment to the cemetery trust that issued the right. A sole right holder surrendering the right or a joint right holder surrendering their entitlement to a jointly held right must notify the cemetery trust in writing. Once a right of interment is surrendered, the person surrendering the right of interment has no further rights or obligations in relation to that right of interment.

How cemetery trusts manage the voluntary surrender of a right of interment will differ depending on the status of the right of interment (unexercised, exercised with no human remains interred or exercised with human remains interred) and whether there is a sole right holder or multiple joint right holders.

### What is the status of the right of interment?

The status of a right of interment at the time it is surrendered will determine if a refund is payable by the cemetery trust. This is because the cemetery trust is only able to restore and re-use a right of interment that does not have human remains interred at the time it is surrendered. The table below defines each status.

| Status | Definition |
| --- | --- |
| Unexercised | No human remains have been interred at any time **and** no memorial has been established at the place of interment at any time. |
| Exercised with no human remains interred | No human remains have been interred but a memorial has been established at the place of interment (whether or not the memorial has since been removed).  **or**  Human remains have been interred and subsequently disinterred (exhumed or removed) from the place of interment (with or without a memorial). |
| Exercised with human remains interred | Human remains are interred at the place of interment (with or without a memorial). |

### Is a refund payable?

A refund is only payable by the cemetery trust in certain circumstances and will depend on whether the right is being surrendered by a sole right holder, all joint right holders or one joint right holder and the status of the right (as indicated in the table above).

If human remains are interred at the place of interment at the time that the right of interment is surrendered to the cemetery trust, the right holders will not be entitled to a refund.

The tables below show when a refund is due and what happens to the right of interment once it has been voluntarily surrendered.

#### Surrender by a sole right holder of a right of interment

| Status | Does the cemetery trust pay a refund? | What happens to the right of interment once it has been surrendered? |
| --- | --- | --- |
| Unexercised | Yes | The cemetery trust may resell the right of interment. |
| Exercised with no human remains interred | Yes | The cemetery trust may remove the memorial (if any) and resell the right of interment. |
| Exercised with human remains interred | No | The cemetery trust becomes the right holder for that place of interment. |

#### Surrender by all joint right holders of a right of interment acting in agreement

| Status | Does the cemetery trust pay a refund? | What happens to the right of interment once it has been surrendered? |
| --- | --- | --- |
| Unexercised | Yes | The cemetery trust may resell the right of interment. |
| Exercised with no human remains interred | Yes | The cemetery trust may remove the memorial (if any) and resell the right of interment. |
| Exercised with human remains interred | No | The cemetery trust becomes the right holder for that place of interment. |

**Note:** It is recommended that cemetery trusts require joint right holders to nominate a bank account or representative to receive the refund.

#### Surrender by one joint right holder of a right of interment

| Status | Does the cemetery trust pay a refund? | What happens to the right of interment once it has been surrendered? |
| --- | --- | --- |
| Unexercised | No | The entitlements and responsibilities of other joint right holders remain the same. The joint holder who has surrendered their interest has no further entitlements or responsibilities under that right of interment. |
| Exercised with no human remains interred | No | The entitlements and responsibilities of other joint right holders remain the same. The joint holder who has surrendered their interest has no further entitlements or responsibilities under that right of interment. |
| Exercised with human remains interred | No | The entitlements and responsibilities of other joint right holders remain the same. The joint holder who has surrendered their interest has no further entitlements or responsibilities under that right of interment. |

### How is the refund calculated?

If a refund is due, the cemetery trust will calculate the refund by determining the current fee for that type of right of interment, less an administrative charge and any maintenance costs incurred by the cemetery trust.

If the cemetery trust incurs any restoration costs (such as for removing a memorial), these costs are also subtracted from the refund.

Maintenance costs are calculated using sliding scales developed by the unit for rights of interment for the interment of bodily and cremated remains and rights of interment for cremated remains.

Refer to the following applicable scale and example.

#### Sliding scale for the surrender of a right of interment for bodily and cremated remains (perpetual tenure)

| Year | Maintenance charge |
| --- | --- |
| 1 | 3.00% |
| 2 | 4.75% |
| 3 | 6.50% |
| 4 | 8.25% |
| 5 | 10.00% |
| 6 | 11.75% |
| 7 | 13.50% |
| 8 | 15.25% |
| 9 | 17.00% |
| 10 | 18.75% |
| 11 | 20.50% |
| 12 | 22.25% |
| 13 | 24.00% |
| 14 | 25.75% |
| 15 | 27.50% |
| 16 | 29.25% |
| 17 | 31.00% |
| 18 | 32.75% |
| 19 | 34.50% |
| 20 | 36.25% |
| 21 | 38.00% |
| 22 | 39.75% |
| 23 | 41.50% |
| 24 | 43.25% |
| 25 | 45.00% |

Example – Surrender of a right of interment for bodily remains (perpetual)

| Item | Amount |
| --- | --- |
| Current value of right of interment | $10,000 |
| Purchased 10 years previously – maintenance rate | 18.75% |
| Maintenance fee | ($10,000 × 0.1875) = $1,875 |
| Current gazetted administration charge | $75 |
| Refund payable | ($10,000 – $1,875 – $75) = $8,050 |

**Note:** The maximum a cemetery trust can charge for maintenance is 45 per cent (25 years).

#### Sliding scale for the surrender of a right of interment for cremated remains (limited tenure)

| Year | Maintenance charge |
| --- | --- |
| 1 | 4.00% |
| 2 | 8.00% |
| 3 | 12.00% |
| 4 | 16.00% |
| 5 | 20.00% |
| 6 | 24.00% |
| 7 | 28.00% |
| 8 | 32.00% |
| 9 | 36.00% |
| 10 | 40.00% |
| 11 | 44.00% |
| 12 | 48.00% |
| 13 | 52.00% |
| 14 | 56.00% |
| 15 | 60.00% |
| 16 | 64.00% |
| 17 | 68.00% |
| 18 | 72.00% |
| 19 | 76.00% |
| 20 | 80.00% |
| 21 | 84.00% |
| 22 | 88.00% |
| 23 | 92.00% |
| 24 | 96.00% |
| 25 | 100.00% |

Example – Surrender of a right of interment for cremated remains (limited tenure)

| Item | Amount |
| --- | --- |
| Current value of right of interment | $10,000 |
| Purchased 10 years previously – maintenance rate | 40% |
| Maintenance fee | ($10,000 × 0.4) = $4,000 |
| Current gazetted administration charge | $75 |
| Refund payable | ($10,000 – $4,000 – $75) = $5,925 |

**Note:** The maximum a cemetery trust can charge for maintenance is 100 per cent (25 years). If the surrender is in the final year the following percentages could be used:

* 97 per cent for the first three months
* 98 per cent for the first six months
* 99 per cent for the first nine months
* 100 per cent anything over the first nine months.

## Variation or forced surrender of a right of interment

In March 2021 the Victorian Parliament passed the *Cemeteries and Crematoria Amendment Act 2021*, which amended the Cemeteries Act to provide the department Secretary with a discretionary power to make a decision to vary or force the surrender of a right of interment under certain circumstances.

An affected person or someone acting on their behalf may apply to the department Secretary seeking the variation or forced surrender of a right of interment held by another person. Information about the application process is available on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/seeking-variation-or-forced-surrender-of-a-right-of-interment-held-by) <https://www.health.vic.gov.au/cemeteries-and-crematoria/seeking-variation-or-forced-surrender-of-a-right-of-interment-held-by>.

Where the department Secretary makes a decision to vary or force the surrender of a right of interment, the department will notify the relevant cemetery trust in writing. The cemetery trust has a role in ensuring the right of interment is exercised in accordance with the decision and notifying the department if a right holder does not comply with a decision.

When a cemetery trust is notified of a Secretary’s decision, it will need to update the cemetery trust’s records to reflect the details of the decision and manage the exercise of the right of interment in accordance with the decision.

In addition, under certain circumstances of forced surrender, a cemetery trust may be required to become a joint right holder or provide a refund. Further details about specific trust responsibilities and managing a right of interment following a Secretary’s decision is provided below.

### Variation

A decision to vary a right of interment may include placing conditions on the exercise of certain entitlements or alter the way a right of interment has previously been exercised. For example, a decision to vary a right of interment may restrict or alter the wording used on a memorial or prevent a particular person from being interred in a place of interment.

The Cemeteries Act enables the department Secretary to vary a right of interment by imposing conditions with respect to:

* who may be interred in the place of interment
* establishing or altering a memorial at the place of interment
* removing cremated human remains or body parts from the place of interment
* transferring the right of interment to another person.

Where the department Secretary decides to vary a right of interment, the cemetery trust will be responsible for:

* updating cemetery trust records to reflect the details of the decision
* ensuring where possible that the right of interment is exercised in accordance with the department Secretary’s decision
* notifying the department if a right holder does not comply with a decision issued by the department Secretary.

Where a decision varies the exercise of a right of interment and exercising that right of interment has already occurred, the cemetery trust will not be responsible for giving effect to the decision, rather this is the right holder’s responsibility. The cemetery trust will, however, be responsible for reporting any noncompliance with a decision to the department.

If the right holder does not comply with a decision to vary a right of interment, the affected person can make a supplementary application to the department Secretary for the right of interment to be forcibly surrendered.

### Forced surrender

Where the department Secretary makes a decision to force the surrender of a right of interment, the previous holder of that right (the person whose right of interment is forcibly surrendered) has no further entitlements or responsibilities under that right of interment.

The responsible cemetery trust will become either a sole or joint right holder to ensure ongoing management of the right of interment in accordance with the department Secretary’s decision; however, the cemetery trust will **not** be subject to the requirements in ss.104 and 106 of the Cemeteries Act to maintain the memorial or place of interment.

There are four scenarios that could apply when a decision for forced surrender is made, depending on whether human remains are interred at the place of interment and whether the right of interment is held by sole or joint right holders.

The following tables provide detailed information for each scenario.

#### Human remains are NOT interred – joint right holder

| Legislative provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84I | Where one joint holder is forced to surrender their entitlement, the trust will become a joint right holder with the remaining right holders.  If all joint holders are known and forced to surrender their entitlement, the trust will become the sole right holder. | Where one joint holder is forced to surrender their entitlement in the right of interment no refund is payable.  If all joint holders are known and are forced to surrender their entitlement, the trust will become a sole right holder and a refund will be payable based on the current trust fee for the same or similar right of interment, less any gazetted administration, maintenance, or restoration costs. | Where the trust becomes a joint holder:   * Update the trust’s records. * Consult with other joint holders before exercising the right as appropriate – the trust may exercise the right of interment with or without the consent of the other holders. * Ensure the right is exercised in accordance with the Cemeteries Act and consistent with the Secretary’s decision. * The trust may transfer the right of interment to the remaining joint holders; however, the Secretary’s decision will specify a minimum period before this can occur. The reasons for this transfer must be clear and noted in the trust’s records. * The trust is not subject to the requirements in ss.104 and 106 of the Cemeteries Act to maintain the memorial or place of interment.   Where all joint holders are forced to surrender the right and the trust becomes a sole right holder:   * Update the trust’s records. * Pay a refund to the previous holders. * If a memorial has been established at the place of interment the trust may remove and dispose of it. * The trust may grant (re-sell) a new right of interment in accordance with s. 73 of the Cemeteries Act. |

#### Human remains are NOT interred – sole right holder

| Legislative provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84I | Trust becomes the sole holder of the right of interment. | Yes – the previous right holder is refunded the current trust fee for the same or similar right of interment, less any gazetted administration, maintenance or restoration fees. | * Update the trust’s records. * Pay a refund to the previous holder. * If a memorial has been established at the place of interment the trust may remove and dispose of it. * The trust may grant (re-sell) a new right of interment in accordance with s. 73 of the Cemeteries Act. |

#### Human remains ARE interred – joint right holder

| Legislative provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84H | Trust becomes a joint right holder with the other remaining joint holders. | No refund is payable because the right cannot be re-sold by the trust. | * Update the trust’s records. * Consult with other joint holders before exercising the right as appropriate – the trust may exercise the right of interment with or without the consent of any other holders. * Ensure the right of interment is exercised in accordance with the Cemeteries Act and consistent with the Secretary’s decision. * The trust may transfer the right of interment to the remaining joint holders; however, the Secretary’s decision will specify a minimum period before this can occur. The reasons for this transfer must be clear and noted in the trust’s records. * The trust is not subject to the requirements in ss.104 and 106 of the Cemeteries Act to maintain the memorial or place of interment. |

#### Human remains ARE interred – sole right holder

| Legislative provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84H | Trust becomes the sole holder of the right of interment. | No refund is payable because the right cannot be re-sold by the trust. | * Update the trust’s records. * Upon request from a relative or associate of the deceased person interred in the place of interment, exercise the right of interment in accordance with the Cemeteries Act and consistent with the Secretary’s decision. * The trust may transfer the right of interment to a relative or associate of the deceased; however, the Secretary’s decision will specify a minimum period before this can occur. The reasons for this transfer must be clear and noted in the trust’s records. * The trust is not subject to the requirements in ss.104 and 106 of the Cemeteries Act to maintain the memorial or place of interment. |

## 

## Cancelling a right of interment

Section 91 of the Cemeteries Act provides a mechanism for a cemetery trust to cancel certain rights of interment under certain circumstances if it has been in existence for more than 25 years, has never been exercised, and the right holder cannot be found after diligent enquiry by the cemetery trust. At least 14 days before cancelling a right of interment, the trust must have published 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 right at the current market value applicable to that right or an equivalent right.

The intent of such provisions is to provide cemetery 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. Refer to [Information on cancelling unexercised rights of interment](#_Information_on_cancelling_1)for specifics and/or contact the unit for advice on those provisions that are specific to the circumstances.

### How to determine whether a right can be cancelled

To assist cemetery trusts to identify potential sites for cancellation and subsequent re-sale, the unit has prepared advice in the section [Information on cancelling unexercised rights of interment](#_Information_on_cancelling_1) below that provides information about:

* what types of rights can be cancelled under s. 91 of the Cemeteries Act
* refunds payable to the holder of a right where the right has been cancelled by a cemetery trust (s. 92 of the Cemeteries Act).

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

1. Determine what type of right is proposed for cancellation. This information should be noted on the documentation held by the right holder or should be available in the cemetery trust’s records.
2. Determine the date that the right was granted.
3. Determine whether the right was granted on any terms and conditions, and whether these terms and conditions are consistent with the Cemeteries Act.
4. Using the type of right and date granted, refer to [Information on cancelling unexercised rights of interment](#_Information_on_cancelling_1)for information about the cancellation and refund applicable to that type of right.

### Information on cancelling unexercised rights of interment

Under s. 91 of the Cemeteries 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 it has 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.

#### Exclusive right of burial or interment

| Date granted | Is the right current under the Cemeteries Act? | If the right is expired, is a refund payable? | Can the right be cancelled under the Cemeteries Act? | If the right is cancelled, is a refund payable? | Additional information |
| --- | --- | --- | --- | --- | --- |
| Prior to 17 December 1974 | Yes(refer to note 1).  Provided that the right was not previously cancelled by the trust under s. 25(2) of the Cemeteries Act 1958. | Not applicable(refer to note 2). | Yes(refer to note 3). | Yes(refer to note 4). | Refer to note 5 and the end of these tables. |
| 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 more 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 next row relating to rights purchased or renewed on or after  1 July 1980 and before 1 July 2005. | 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. | Exclusive rights of burial or interment acquired between 17 December 1974 and 30 June 2005 were, in line with s. 25(5) of the 1958 Cemeteries 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 Cemeteries Act? | If the right is expired, is a refund payable? | Can the right be cancelled under the Cemeteries Act? | If the right is cancelled, is a refund payable? | Additional information |
| --- | --- | --- | --- | --- | --- |
| On or after 1 July 1980 and before 1 July 2005  Note this includes rights repurchased during this period under s. 25(5) of the 1958 Act. | Yes (refer to note 1). | Not applicable (refer to note 2). | Yes(refer to note 3). | Yes(refer to note 4). | The 1958 Act specified that this type of right must be exercised within 25 years or they expired (subject to renewal).  However, the transitional provisions of the 2003 Act deem this type of right to be a right under s. 75(a).  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.  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.  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. |

#### Agreement for the interment of human remains not for a limited period

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Date granted | Is the right current under the Cemeteries Act? | If the right is expired is a refund payable? | Can the right be cancelled under the Cemeteries Act? | If the right is cancelled is a refund payable? | Additional information |
| Prior to 1 July 2005 | Yes(refer to note 1). | Not applicable (refer to note 2). | Yes(refer to note 3). | Yes(refer to note 4). | Refer to note 5. |

#### Agreement for the interment of human remains for a limited period

| Date granted | Is the right current under the Cemeteries Act? | If the right is expired is a refund payable? | Can the right be cancelled under the Cemeteries Act? | If the right is cancelled is a refund payable? | Additional information |
| --- | --- | --- | --- | --- | --- |
| Prior to 1 July 2005 | This depends on the original period for which the right was granted.  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 before 1 July 2005 no refund is payable because 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. |

#### Notes

1. The transitional provisions of the Cemeteries Act provide that such rights are deemed to be current rights of interment under s. 75(a) of the Cemeteries 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 Cemeteries Act is perpetual and therefore will not expire.
3. If a right of interment under s. 75(a) of the Cemeteries Act has not been exercised within 25 years of its grant, then the trust may cancel the right in line with s. 91 of the Cemeteries Act. Section 91 of the Cemeteries 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 before cancelling a right. Cemetery trusts should note that if the right holder can 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 Cemeteries Act. Note that a refund under s. 92 of the Cemeteries Act 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 regarding that right under the new Cemeteries Act, provided they are not inconsistent with the provisions of the new Cemeteries Act. Cemetery trusts need to be aware of any terms and conditions in relation to rights previously granted, to understand whether such terms and conditions still apply.

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

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

Refer to [Information on cancelling unexercised rights of interment](#_Information_on_cancelling_1) to determine if this avenue is applicable to the previous holder of the right of interment.

## Reselling an unused place of interment in a side-by-side double grave

Cemetery trusts may issue a single right of interment for a double grave that has two separate places of interment side-by-side. A right of interment is exercised when human remains are interred and/or a memorial is established at the place of interment. This means that if one side of a side-by-side double grave has no remains interred and no memorial established, the right of interment for the unused side of the grave is still considered to be exercised.

As explained above in [Cancelling a right of interment](#_Cancelling_a_right_1), the Cemeteries Act provides a mechanism for cemetery trusts to cancel certain rights of interment in certain circumstances and then re-sell that right at the current market value applicable to that right or an equivalent right.

In the case of a side-by-side double grave with one side unused, the single right of interment for the double grave cannot be cancelled under s. 91 of the Cemeteries Act because it has been exercised. However, the trust may take steps to alter the existing right of interment so it no longer relates to the double grave, only the used grave on one side. The cemetery trust can then issue a new right of interment for the unused grave.

This information applies to double graves that are side-by-side only. Cemetery trusts cannot seek to reuse an unused place of interment in a grave that is intended for multiple interments at different depths (for example, a grave that is dug to double depth to accommodate a second interment above the first interment).

If a cemetery 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.

Before a cemetery trust can update its records, it will need to place a public notice in a local news publication requesting members of the public notify the trust if they believe they have a claim to the unused place of interment within the cemetery. The cemetery trust should ensure the public notice provides as much information about the original right of interment as practicable and specifies:

* the cemetery trust is seeking to update its records in relation to unused places of interment in double graves
* the family name of the right holder for the double grave
* the date the right of interment was purchased and the date it was exercised
* the time period for responding to the public notice (it is recommended that cemetery trusts allow at least six weeks from the publication date to give members of the community enough time to respond)
* the cemetery trust’s contact details.

The cemetery trust may need to place multiple public notices during this time to ensure it can obtain as much information as possible to update its records.

### If a claim is received in relation to an unused place of interment

The cemetery trust should evaluate any claims made. Where a person can demonstrate to the cemetery trust’s satisfaction that they have a valid claim to an unused place of interment, the cemetery trust should issue a new right of interment to the claimant.[[34]](#footnote-34)

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 cemetery 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 holder over that place of interment.

### If no claim is made in relation to the unused right of interment

In this case, the cemetery 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 Cemeteries Act.

Once the cemetery 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 (refer to [Cancelling a right of interment](#_Cancelling_a_right_1)).

## Updating historical right of interment records

It is not uncommon for historical right of interment records to be lost, accidentally destroyed, incomplete or out-of-date. This can create challenges for members of the public and cemetery trusts seeking to determine current right holders for rights of interment that were issued many years ago.

The unit considers historical right of interment records to be those where the recorded right holder is either known to be deceased (for example, there is a record of the original holder’s interment in the cemetery trust’s records) or is very likely to be deceased (for example, the right of interment was purchased more than 75 years ago and the recorded right holder is uncontactable).

Members of the public may contact cemetery trusts seeking to determine who currently holds a historical right of interment. Refer to [Public access to cemetery trust records](#_Public_access_to_1) for information about responding to information requests.

When the cemetery trust receives a request to update historical right of interment records from an interested party, the cemetery trust should instruct the interested party to put their claim in writing for the cemetery trust’s consideration.

The claim should include supporting documentary evidence. Certified copies of documents should be provided where possible. Evidence may include (but is not limited to):

* wills identifying beneficiaries of estates
* death certificates as evidence that family members have passed away and identification of their dependents
* family trees and other genealogical research
* correspondence
* statutory declarations.

The cemetery trust may request interested parties provide statutory declarations to support statements made as part of their case indicating why they believe they have a claim to the right of interment.

**Note:** It is recommended that the cemetery trust requests a statutory declaration stating that the interested parties are aware that the cemetery trust reserves the right to review and reconsider its decision at any time which may result in further updates to right of interment records.

If the evidence indicates multiple interested parties have equal claim to the right of interment, the cemetery trust may request evidence to demonstrate that either:

* all interested parties with equal claim wish to be recorded as joint right holders, or
* all interested parties with equal claim agree that they wish a specified person or persons be recorded as the right holders.

If the cemetery trust is satisfied with the case put forward, it may then agree to update its right of interment records.

When a cemetery trust agrees to update its records, it should provide the right holders with a copy of the [Right of interment permit fact sheet](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment) <https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment>, available on the department’s website.

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

Occasionally a member of the public will approach a cemetery trust claiming that they are the ‘actual’ right holder rather than the person named in the cemetery trust’s records.

When this occurs and the matter cannot be resolved between the current named right holder (in the cemetery trust’s records) and the person claiming to be the right holder, the following steps are suggested:

1. The cemetery trust advises the parties to seek support to resolve the dispute through the free service provided by the Dispute Settlement Centre of Victoria via its [online contact form](https://www.disputes.vic.gov.au/about-us/contact-us) <https://www.disputes.vic.gov.au/about-us/contact-us>.
2. The person seeking to make a claim to the right of interment provides to the cemetery trust (in writing) reasons and supporting documentation as to why they believe they are the right holder. Evidence provided should be considered by the cemetery trust on a case-by-case basis depending on the circumstances.
3. The cemetery trust writes to the current named right holder (in the cemetery trust’s records) to advise them of the situation, allow them a ‘right of reply’, and provide an opportunity for them to appeal the decision and present their own information to the cemetery trust. Refer to [Contacting a right holder if right of interment records are out of date or incomplete](#_Out_of_date) if the cemetery trust is having difficulty contacting the current named right holder.
4. When a response is received from the currently named right holder, the cemetery trust carefully considers all the information provided to decide who it determines is the actual right holder. If the cemetery trust is in doubt, it should seek its own legal advice.
5. Whatever the cemetery trust decides, it must provide both parties of written notification of its decision and update its records accordingly.

**Note:** It is recommended that the cemetery trust requests a statutory declaration stating that the interested parties are aware that the cemetery trust reserves the right to review and reconsider its decision at any time which may result in further updates to right of interment records.

The cemetery trust should advise the Victorian Managed Insurance Authority where this type of dispute occurs. **The cemetery trust should not take instructions from any person about the place of interment until the matter has been resolved.**

## Contacting a right holder if right of interment records are out of date or incomplete

It is the responsibility of the right holder to advise the cemetery trust when their contact details have changed; however, it is not uncommon for cemetery trust records to contain out-of-date or incomplete information about right holders. The following steps may help cemetery trusts contact a right holder where records are out of date or incomplete.

1. Attempt to contact the right holder in writing by sending a letter to the address documented in the cemetery trust’s records. Allow 21 (minimum) days for the right holder to respond.
2. If a response is not received, attempt to contact the right holder via any other contact methods documented in the cemetery trust’s records (for example, telephone or email). If a second contact method is attempted, allow an additional seven days for the right holder to respond.
3. If a response is not received, search the [White Pages](http://www.whitepages.com.au) <www.whitepages.com.au> for the right holder’s current contact details. If this search successfully identifies contact details, return to the first step and attempt to contact the right holder in writing.
4. If all efforts to contact the right holder fail, place a public notice in a local newspaper and/or other prominent local publication seeking expressions of interest from anyone who believes they may be the current right holder. The public notice should contain the following information:
   * + Name of the cemetery
     + Location of the place of interment within the cemetery
     + Names and dates of death of the deceased interred within the place of interment
     + The cemetery trust’s contact details
     + End date (for example, submissions close three weeks from the date of publication)
5. If submissions are received, the cemetery trust should advise interested parties that they are responsible for making a case to the cemetery trust demonstrating why they believe they are the current holder. This may involve providing documentary evidence including wills, instructions left by the deceased and/or statutory declarations.

If the cemetery trust is satisfied that an interested party has provided enough evidence to show they are the right holder, the cemetery trust can update its records accordingly (this may involve a fee). This process may result in identifying multiple right holders. If no submissions are received, the cemetery trust can document in its records that the right holder cannot be found.

# Topic 23. Records management

## Types of cemetery trust records

Cemetery trusts keep records of their operations and functions including records about:

* governance
* structures and inventory management
* disposal of remains
* land management
* memorialisation.

These categories are based on the [Retention and disposal authority for cemetery and crematoria records](https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-cemetery-and-crematoria) issued by PROV <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-cemetery-and-crematoria>. Refer to [Retention and disposal authority](#_Retention_and_disposal) below for more information.

### Governance

Governance records kept by cemetery trusts include:

* trust meeting agendas, minutes and papers, membership and activities of committees
* policies, procedures, rules
* strategic planning
* engagement with the department, Minister for Health and other stakeholders
* advice from Class A cemetery trusts
* legal advice
* risk assessments, protective data security plans, information asset registers
* management and resolution of complaints, correspondence
* grant applications and acquittals
* financial assets, statements, budgets, abstracts of accounts, invoices, receipts, approvals.

### Structures and inventory management

Structures and inventory management records kept by cemetery trusts include:

* plans and specifications for crematoria, mausolea, niche walls, structures for ceremonies, crypts, grave foundations, lawn cemeteries
* contracts, agreements, designs, proposals, approvals
* decommissioning or removing structures, maintenance and repairs, safety audits
* research, business cases, project plans, fee reviews
* community consultation.

### Disposal of remains

Disposal of remains records kept by cemetery trusts include:

* applications, authorisations, bookings, schedules, disputes, statutory declarations
* right of interment permits and cancellation, transfer and surrender of rights of interment
* interments and cremations
* fee applications and approvals, receipt books, pre-payments
* exhumations, delivery and transport of remains
* collection of cremated remains.

### Land management

Land management records kept by cemetery trusts include:

* cemetery maps and plans including fixtures, grave locations, horticultural species, native vegetation
* acquisitions, re-zoning, cemetery closures and re-openings
* planning overlays, management plans, approvals, licences and leases, permits, reports
* maintenance standards, landscaping, roads, drainage, dams
* consultation and agreements to allocate cemetery areas to cultural/religious groups.

### Memorialisation

Memorialisation records kept by cemetery trusts include:

* approvals, plans, inscriptions, installation, alterations, inspections
* actions to manage memorials that are not in a safe and proper condition, approvals, removals, repairs, safety audits, correspondence with right of interment holders (right holders)
* preservation of memorials of public interest
* species registers of horticultural memorials (such as trees, roses, shrubs) and their locations
* management of expired limited tenure memorials for cremated remains
* investigations, reports, advertisements, correspondence
* insurance, engagement with memorial suppliers.

## Prescribed information

Part 2 of the Cemeteries Regulations prescribes information that must be recorded by cemetery trusts about interments, places of interment, cremations and rights of interment. Prescribed information is information that cemetery trusts must record.

It is important to understand what information collected and used by cemetery trusts is prescribed information and what information is not prescribed. This is because the Cemeteries Act provides for prescribed information to be made available to members of the public for historical or research purposes. Refer to [Public access to cemetery trust records](#_Public_access_to_1) below for more information.

Information that is collected and used by cemetery trusts that is not prescribed information is not open to the public. If a member of the public wants to access non-prescribed cemetery trust information, they must make a freedom of information request. Refer to [Freedom of information](#_Freedom_of_information) below for more information.

The Cemeteries Regulations prescribe forms that are mandatory for use in certain circumstances, for example the [Application for interment authorisation (Form 1)](https://www.health.vic.gov.au/publications/application-for-interment-authorisation-form-1)<https://www.health.vic.gov.au/publications/application-for-interment-authorisation-form-1>.

While prescribed forms are used to collect prescribed information, they also collect non-prescribed information necessary for cemetery trusts to carry out their legislative functions, for example information about applicants and funeral directors.

Accompanying documents that are submitted with prescribed forms as required under the Cemeteries Act does not constitute prescribed information.

Examples of information collected by cemetery trusts and whether the information is prescribed or not are provided in the following table.

|  |  |  |
| --- | --- | --- |
| Information collected | Example | Prescribed information? |
| Information explicitly prescribed under Part 2 of the Cemeteries Regulations | The date a right of interment was cancelled | Yes |
| Information contained in a prescribed form that is also explicitly prescribed under Part 2 of the Cemeteries Regulations | The number of interments that a place of interment has been excavated to accommodate, provided in an application for interment authorisation (Form 1) | Yes |
| Information contained in a prescribed form that is not explicitly prescribed under Part 2 of the Cemeteries Regulations | Information about the funeral director provided in an application for interment authorisation (Form 1) | No |
| Information contained in accompanying documents that are submitted with prescribed forms as required under the Cemeteries Act | Information provided in a medical certificate of cause of death that is submitted with an application for interment authorisation (Form 1) | No |

### Information prescribed under the Cemeteries Regulations

The following detailed list of prescribed information summarises Part 2 of the Cemeteries Regulations.

#### Rights of interment

* Full name, address and contact number for all right holders
* Date the right was granted and details of conditions of the right (if any)
* Whether the right is allocated or unallocated
* Description of the type of place of interment, such as grave, vault or crypt
* If allocated, a description of the location of the place of interment
* If unallocated, the specific part of the cemetery to which the right of interment relates (if any)
* Fee or charge paid for the right of interment
* If the right is for the interment of cremated remains, the period of the right and, if renewed, the date and period of renewal
* If the right has been transferred
  + Date of transfer
  + Full name of person transferring the right
  + Full name of person to whom the right has been transferred
  + Method of transfer (gift, sale, other)
  + Amount paid (if any)
* If the right has been surrendered, date of surrender and full name of person surrendering right
* If the right has been cancelled, date of cancellation

#### Interment of bodily remains

* Full name of the deceased person
* Last permanent address of the deceased person (if known)
* Date of birth and the date of death of the deceased person (if known)
* Date of the interment
* Description of the type of place of interment, such as grave, vault or crypt
* Description of the location of the place of interment, such as section, row and grave number or other unique identifier
* If applicable, the number of interments that the place of interment has been excavated to accommodate
* If bodily remains are exhumed from the place of interment, the date of the exhumation and details of the manner in which those remains were disposed of

#### Interment of cremated remains

* Full name of the deceased person
* Last permanent address of the deceased person (if known)
* Date of birth and the date of death of the deceased person (if known)
* Whether the deceased person is an identified veteran
* Date of the interment
* Description of the type of place of interment, such as niche wall, garden niche, memorial rose or grave
* Description of the location of the place of interment, such as section, row and grave number or other unique identifier
* If cremated remains are removed from the place of interment, the date of the removal and details of the manner in which those remains were disposed of

#### Interment of foetal remains

* Date of interment
* A description of the type of place of interment, such as grave, crypt, or ashes niche
* A description of the location of the place of interment, such as section, row, grave number
* The name of the person and of the organisation (if any) making the application

#### Cremation of bodily remains

* Full name of the deceased person
* Last permanent address of the deceased person (if known)
* Date of birth and the date of death of the deceased person (if known)
* Date of cremation
* If the cremated remains are scattered within the cemetery, the date on which that occurred (if known)
* If the cremated remains are collected from the cemetery, the full name, address and contact number of the person who collected them and the date of collection

#### Cremation of foetal remains

* Date of cremation
* Name of the person and organisation (if any) making the application

#### Interment or disposal of cremated remains of unknown name or with an identifier

* The identifier (if any)
* Last permanent address of the source of the cremated remains (if known)
* Date of cremation
* Name and address of the person and organisation (if any) making the application
* Description of the type of place of interment, such as niche wall, garden niche, memorial rose or grave
* Description of the location of the place of interment (such as section, row and grave number or other unique identifier) or the place of disposal (such as garden bed or lawn where the remains were scattered)
* Date of interment or disposal
* If cremated remains are removed from the place of interment, the date of the removal and details of the manner in which those remains were disposed of

### Difference between the applicant and the right holder

It is important to differentiate between the applicant and the right holder in cemetery trust records because they will not necessarily be the same person, and this has implications for identifying prescribed information.

The **applicant** is the person who applies to the cemetery trust and provides their name and contact details to the trust as required for prescribed information and in prescribed forms.

In most cases, information about the applicant is not prescribed information. The only information about applicants that is prescribed is:

* the name of an applicant applying for the interment or cremation of foetal remains
* the name of an applicant applying for the interment or disposal of cremated remains of unknown name or with an identifier.

The **right holder** is the person recorded in the cemetery trust’s records as ‘the right of interment holder’ as determined at the time the right of interment was issued or when the records were most recently updated.

Information about the right holder is prescribed for all rights of interment that have been issued for places of interment for bodily and/or cremated remains by the cemetery trust. This is the case for all rights of interment regardless of whether it has been exercised or not. Examples are provided in the following table.

| Example | Prescribed information? | Explanation |
| --- | --- | --- |
| Information about the right holder contained in an application for right of interment (Form A) | Yes | This information is explicitly prescribed under Part 2 of the Cemeteries Regulations |
| Information about an applicant who has applied for interment or cremation of foetal remains | Yes | This information is explicitly prescribed under Part 2 of the Cemeteries Regulations |
| Information about the applicant contained in an application for right of interment (Form A) | No | This information is not explicitly prescribed under Part 2 of the Cemeteries Regulations |
| Information about the applicant contained in an application for interment authorisation (Form 1) | No | This information is not explicitly prescribed under Part 2 of the Cemeteries Regulations |
| Information about the consent of the right holder contained in an application for interment authorisation (Form 1) | No | This information is not explicitly prescribed under Part 2 of the Cemeteries Regulations  The information is collected on the prescribed form to enable the cemetery trust to consider the application and cross reference the information provided with the interment register |

## Interment register

Cemetery trusts keep prescribed information about interments and rights of interment in interment registers. This information is crucial for the management of public cemeteries.

Interment registers can be kept in hard copy or digital format. It is up to each cemetery trust to decide whether to keep its records in hard copy, digitally or a combination of the two.

It is recommended that cemetery trusts keep a master interment register and at least one backup copy in a different location.

### Hard copy interment register

The department has developed a hard copy interment register to assist cemetery trusts in meeting their record keeping obligations under the Cemeteries Regulations.

The register has three sections that capture information about:

* rights of interment
* interments
* interments of foetal remains.

Cemetery trusts can request a hard copy interment register from the department by [emailing the Cemetery Sector Governance Support Unit](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>.

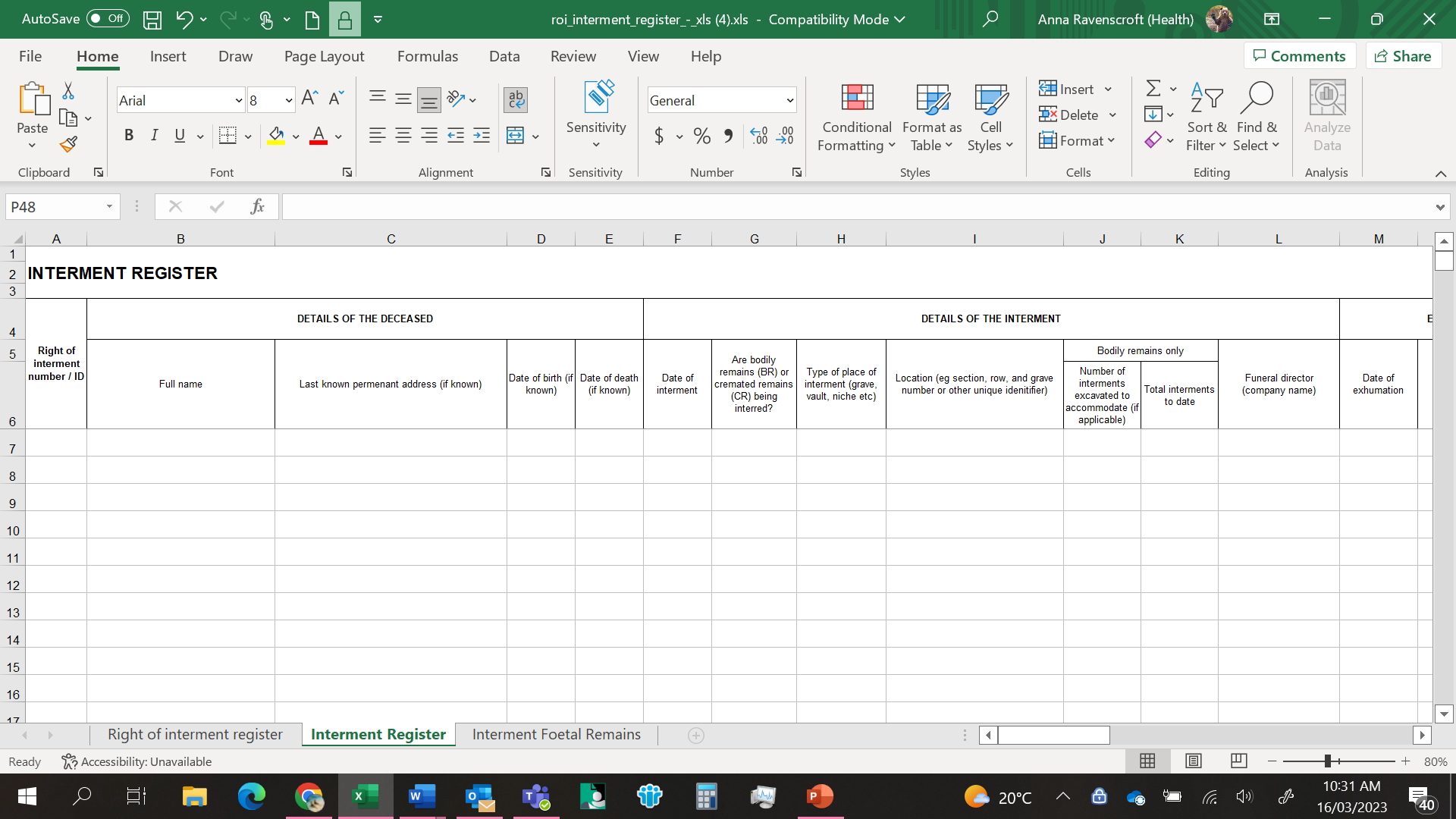
### Digital interment register

A digital interment register in Microsoft Excel format is available on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-register) <https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-register>.

There are three tabs at the bottom of the document that can be used to navigate between the different sections.

Cemetery trusts may wish to adapt the digital interment register by adding columns to capture additional information to assist them to perform their functions.

Figure 2: Screenshot of digital interment register template

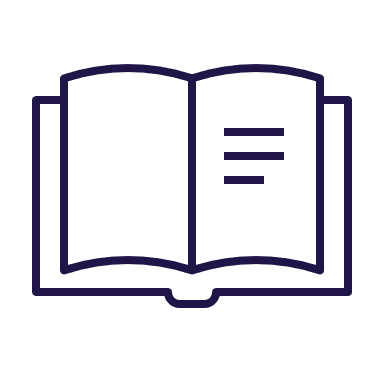


Refer to [Transitioning from hard copy to digital record keeping](#_Digital_record_keeping) below for more information.

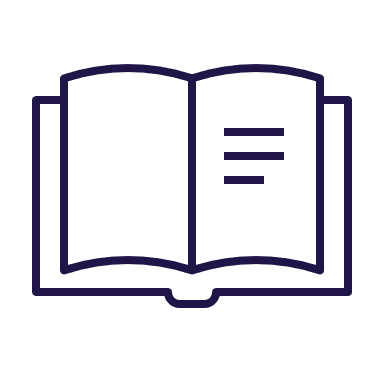
### Interment register case study

The following scenarios demonstrate how three cemetery trusts might keep interment records in different formats. In each scenario the cemetery trust does not have access to secure on-site storage at the cemetery it manages.

#### Scenario 1 – Hard copy only

The cemetery trust has purchased a lockable fireproof cabinet to securely store its master interment register. The trust secretary has agreed to keep the cabinet in their garage and committed to returning the cabinet and records to the cemetery trust when their employment ends. The trust secretary holds the keys to the garage and cabinet. The trust chairperson and one other trust member have copies of the keys.

+

A backup register is stored at the trust chairperson’s house. The trust chairperson brings the backup register to every monthly trust meeting so that the trust secretary can update the backup register to match new entries in the master register. The cemetery trust is planning to purchase a second lockable fireproof cabinet to be kept at the trust chairperson’s house to ensure the backup register is secure.

#### Scenario 2 – Hard copy and digital

In early 2020, the cemetery trust decided to start keeping digital interment records. The cemetery trust maintained the hard copy register up to 30 June 2020 and started recording interments digitally from 1 July 2020.

The trust secretary downloaded the department’s digital interment register and saved the file on the cemetery trust’s laptop. The laptop and the register are password protected and only the trust secretary, trust chairperson and one other trust member know the passwords. The laptop has up-to-date antivirus and security software.

The trust secretary has a backup copy of the register on an external hard drive. The backup copy is also secured by a password. Every time the trust secretary makes changes to the master register, they save a new backup copy on the external hard drive. The trust secretary keeps the laptop and external hard drive in a lockable cabinet in their home office.

The trust chairperson also has an external hard drive with a backup copy of the register that is password protected. At every monthly trust meeting the trust chairperson and trust secretary swap their external hard drives. The trust secretary then saves new backup copies on the second external hard drive every time changes are made to the master register. This ensures there are two backup copies stored in different locations.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Open book outline | + | Laptop outline | + | Usb Stick outline | + | Usb Stick outline |

#### Cloud Computing outlineScenario 3 – Digital only

Between 2018 and 2020, the cemetery trust undertook a project to digitise its interment records.

The cemetery trust developed a plan for the project in 2017 and sought quotes from three companies that perform bulk scanning of documents into Portable Document Format (.pdf). The cemetery trust asked questions of the three companies based on [OVIC guidance](#_Important_information_security) to determine what information security protections the companies have in place.

The cemetery trust successfully applied for a grant from the department to fund the project based on the quote from the company with the most comprehensive information security protocols.

Each volume of the master interment register was digitised individually. The first volume was transported to the service provider by courier, digitised and returned to the cemetery trust, followed by the second volume and so on. Interment records for each year were saved as individual files and provided to the cemetery trust via a [cloud storage](#_Cloud_storage) service.

Hard copy interment records up to 30 June 2019 were digitised and from 1 July 2019 onwards the cemetery trust began recording interments digitally using the department’s digital interment register.

All of the cemetery trust’s interment records are stored in the cemetery trust’s secure cloud storage. The cemetery trust followed [OVIC guidance](#_Important_information_security) when choosing its cloud storage service provider to make sure it has sufficient information security protections in place.

The trust secretary, trust chairperson and one other trust member have access to the cloud storage. The cloud storage service provider has its own backup protocols where backup information is stored at another location and backed up weekly. The cemetery trust also receives a backup every three months that it downloads and stores on a password protected external hard drive.

The cemetery trust has contacted PROV to discuss transferring the hard copy interment registers to PROV.

## Retention timeframes

The length of time that cemetery trust records are kept depends on the type of record.

### Retention and disposal authority

The [Retention and disposal authority for cemetery and crematoria records](https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-cemetery-and-crematoria) (Cemeteries RDA) issued by PROV specifies which records are temporary and which are permanent records that must be retained as State Archives <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-cemetery-and-crematoria>.

Some administrative records held by cemetery trusts (for example, bank statements) are not covered in the Cemeteries RDA. For guidance about disposal actions for administrative records not explicitly covered in the Cemeteries RDA, trusts should refer to the [Retention and disposal authority for records of common administrative functions](https://prov.vic.gov.au/recordkeeping-government/document-library/pros-0701-common-administrative-functions) <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-0701-common-administrative-functions>.

### Temporary records

Cemetery trusts are required to keep temporary records, such as records of long-term administrative value or significance, for between seven and 50 years.

The Cemeteries RDA specifies how long different types of temporary cemetery trust records must be kept for. The following table includes examples of temporary records and their retention period.

|  |  |
| --- | --- |
| Temporary record | Retention period |
| Records relating to a complaint that prompted the cemetery trust to change its memorialisation policy | 50 years after last action |
| A contract with a builder for repairing a concrete niche wall | 50 years after last action |
| Ground penetrating radar reports prepared to identify unexercised rights of interment | 50 years after last action |
| Records of calculations, justifications, research and requests to increase cemetery trust fees | 15 years after last action |
| Insurance paperwork | 15 years after last action |
| Licence with farmer for use of cemetery land for agistment of livestock | 15 years after last action |
| Booking schedule for interments and funeral services | 7 years after last action |
| Information requests made by members of the public | 7 years after last action |
| Records of landscaping projects | 7 years after last action |

Cemetery trusts should refer to the applicable RDA in the first instance to determine the retention period for different types of temporary cemetery trust records.

At the end of the retention period, temporary records can be destroyed. There are principles for the destruction of time expired records, including ensuring destruction is carried out securely. More information is available on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/a-z-topics/destruction) <https://prov.vic.gov.au/recordkeeping-government/a-z-topics/destruction>.

#### Ephemeral records

Some temporary records are classified as ephemeral records. This refers to records of short-term value that can be disposed of once there is no further need for or value in keeping the information.

Ephemeral records include:

* contact lists
* brochures from external service providers
* duplicate copies of original documents on record
* reference materials, for example articles, research papers
* manuals and guidance materials that have been superseded and are no longer current
* transitory messages of minor importance, for example written phone messages and reminders.

### Permanent records

Permanent cemetery trust records include:

* interment registers
* trust meeting minutes, agendas and papers
* policies and procedures
* cemetery plans
* design plans for cemetery structures
* land overlay registers and approvals
* memorialisation records.

More detailed information about permanent cemetery trust records is available in the Cemeteries RDA and on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/a-z-topics/cemeteries-class-b-trusts) <https://prov.vic.gov.au/recordkeeping-government/a-z-topics/cemeteries-class-b-trusts>.

Permanent cemetery trust records must **not** be destroyed.

Note: If a cemetery trust is keeping records in both hard copy and digital formats, it must determine which version will be the permanent record. Refer to [Transitioning from hard copy to digital record keeping](#_Digital_record_keeping) for more information.

## Storage

Cemetery trusts are responsible for managing and storing their records and backup copies securely. It is up to each cemetery trust to decide where to store its records.

Storage locations are often determined by what is convenient for those who need regular access to key records such as the interment register. Some cemetery trusts have onsite storage at the cemeteries they manage, however this may not necessarily be the most convenient or secure storage location.

### Tips for securely storing cemetery trust records

* Store records and backup copies in separate locations.
* Store records and backup copies in lockable fire-proof cabinets.
* Ensure all trust members and employees understand that all cemetery trust records are owned by the cemetery trust, regardless of where they are stored.
* Ensure all trust members and employees understand that all cemetery trust records must be returned to the cemetery trust when a trust member’s term of office ends, or an employee’s contract ends.
* If records are stored at a private residence, protocols should be in place to enable another trust member or employee to access the records and prevent unauthorised people from accessing the information.
* For digital records:
  + records and backup copies should be password protected
  + backup copies should be updated regularly and saved as ‘read only’ files
  + editing rights should be restricted to individuals responsible for updating the records

computers used to access records should have up-to-date anti-virus protection..

### Storage support

Cemetery trusts are encouraged to apply to the department for funding through the [Cemetery grants program](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program> for equipment for storing records. Examples of eligible grant requests include:

* Lockable cabinets and cupboards
* Fireproof cabinets and cupboards
* On-site storage such as a shed or shipping container
* Laptops
* External hard drives

### Storing digital records

Digital record keeping options – for example, external hard drives with password protection and secure cloud storage arrangements – reduce the need for physical storage space. Refer to [Transitioning from hard copy to digital record keeping](#_Transitioning_from_hard) for more information.

## Information security

Information security is a risk management process that protects public sector information, including cemetery trust records, from unauthorised access, disclosure and use.

Under the Privacy and Data Protection Act, cemetery trusts are responsible for protecting the information they generate, hold and manage and ensuring the right people have access to the right information at the right time. This includes securing systems that hold this information.

### Legislative information security obligations

Under Part 4 of the Privacy and Data Protection Act, cemetery trusts are required to:

* adhere to the Victorian Protective Data Security Standards
* undertake a Security Risk Profile Assessment
* develop, implement and maintain a Protective Data Security Plan
* provide OVIC free and full access to public sector information or information systems, when requested, including participating in any monitoring and assurance activities conducted by OVIC
* ensure that any third-party with access to cemetery trust information or systems, does not contravene the Victorian Protective Data Security Standards when collecting, holding, using, managing, disclosing or transferring cemetery trust information.

Further, the Victorian Protective Data Security Standards require cemetery trusts to:

* provide an annual attestation if requested by OVIC
* notify OVIC of information security incidents.

#### Reporting timeframes and deliverables

|  |  |  |
| --- | --- | --- |
| Deliverable | Timeframe | Submit to OVIC? |
| Security Risk Profile Assessment | Annual (at least) | No\* |
| Protective Data Security Plan including attestation signed by the trust chairperson | Biennial (every 2 years) | Yes |
| Attestation signed by the trust chairperson | OVIC will inform cemetery trusts directly if this is required | Yes |
| If there is a significant change to the cemetery trust, updated Protective Data Security Plan including attestation signed by the trust chairperson | Timeframe agreed in consultation with OVIC | Yes |
| Notify OVIC of information security incidents that compromise the confidentiality, integrity or availability of cemetery trust information | As required  Contact OVIC for further guidance | Yes |

**\*** Cemetery trusts must complete this deliverable, but OVIC does not require a copy.

All enquiries about information security reporting requirements should be directed to the OVIC Information Security Team by [email](mailto:security@ovic.vic.gov.au) <security@ovic.vic.gov.au> or telephone 1300 006 842.

### Protective Data Security Plan

Cemetery trusts are required to develop and maintain a Protective Data Security Plan (PDSP). A PDSP outlines the minimum data security measures a cemetery trust will implement to ensure its information and systems are managed in a risk-informed way.

OVIC has developed a PDSP template and ‘How-to’ guide specifically for Class B cemetery trusts. Both documents are available on the [OVIC website](https://ovic.vic.gov.au/information-security/agency-reporting-obligations-hub/class-b-cemetery-trust-stakeholders) <https://ovic.vic.gov.au/information-security/agency-reporting-obligations-hub/class-b-cemetery-trust-stakeholders/>.

The PDSP covers core requirements across physical, personnel, IT, communications, governance and information security areas. Cemetery trusts indicate progress against each requirement as either not commenced, planned, partial, implemented or not applicable. If a cemetery trust considers a requirement is not applicable it must provide a rationale in the PDSP.

### Information Asset Register

Cemetery trusts should develop and maintain an Information Asset Register (IAR) as part of their PDSP. An IAR is a comprehensive list of the types of information cemetery trusts generate, hold and manage (information assets). An IAR also documents:

* where information is located/stored
* who is responsible for different types of information
* the level of sensitivity and/or importance of information
* the suitability of information for public release.

OVIC has developed an IAR template for Class B cemetery trusts that includes detailed instructions. The department strongly recommends cemetery trusts use OVIC’s template to develop their IAR. The template is available on the [OVIC website](https://ovic.vic.gov.au/information-security/information-security-tips-for-class-b-cemetery-trusts/class-b-information-asset-register/) <https://ovic.vic.gov.au/information-security/information-security-tips-for-class-b-cemetery-trusts/class-b-information-asset-register/>.

Cemetery trusts are not required to provide a copy of their IAR to OVIC unless requested.

### Security Risk Profile Assessment

Cemetery trusts are required to undertake a Security Risk Profile Assessment (SRPA) to assess and document their information security risks and appropriate strategies to mitigate the risks to protect information and systems. This risk-based approach to information security helps cemetery trusts consider the likelihood and consequence of a compromise of the confidentiality, integrity or availability of information.

To undertake a SRPA, cemetery trusts should consider the following questions:

* What can go wrong?
* How likely is it to go wrong?
* What will be the consequences if it goes wrong?
* What will be done to prevent it happening?

The department has developed a [risk register template](https://www.health.vic.gov.au/publications/sample-risk-register) that cemetery trusts can use to develop their SRPA <https://www.health.vic.gov.au/publications/sample-risk-register>.

Cemetery trusts are not required to provide a copy of their SRPA to OVIC unless requested.

### Notification of information security incidents

If a cemetery trust becomes aware of an information security incident involving sensitive information (for example, information is lost or there is an unauthorised disclosure of cemetery trust information), the incident should be reported by email to the department’s Privacy and Legal Compliance Team and the OVIC Information Security Team at the earliest opportunity.

[Privacy and Legal Compliance Team](mailto:privacy@health.vic.gov.au) <privacy@health.vic.gov.au>

[OVIC Information Security Team](mailto:security@ovic.vic.gov.au) <security@ovic.vic.gov.au>

## Privacy

Cemetery trusts are required to manage personal information that they collect, use and disclose in accordance with the [Information Privacy Principles](https://ovic.vic.gov.au/privacy/information-privacy-principles-full-text) (IPPs) established under the Privacy and Data Protection Act <https://ovic.vic.gov.au/privacy/information-privacy-principles-full-text>. The IPPs set the minimum standard for how Victorian public sector organisations manage personal information.

### Personal information

‘Personal information’ means information or an opinion that is recorded in any form about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. Personal information may include:

* name
* gender
* contact information (for example, email, residential address, postal address, phone number)
* signature
* financial details
* biometrics (for example, electronic copies of a person’s fingerprint, facial image, voice).

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Employee badge outline | Email outline | Mailbox outline | Telephone outline | Signature outline | Bank check outline | Fingerprint outline |

Cemetery trust records that contain personal information include:

* Interment registers
* Trust member records
* Employee records
* Trust meeting minutes
* Financial statements and receipts
* Forms and accompanying documents

The Privacy and Data Protection Act protects the privacy of living people and does not apply to personal information about deceased people. However, cemetery trusts need to be aware that it is reasonable to assume some personal information about a deceased person may also relate to a living person. For example, the deceased’s last known address provided in an application for interment authorisation (Form 1) for a recent burial may also be the address of a surviving relative. This information should be treated as personal information about a living person.

In some instances, personal information in cemetery trust records is also prescribed information. Prescribed personal information about living persons must be managed very carefully. Refer to [Managing requests for personal prescribed information](#_Managing_requests_for).

#### Collection of personal information

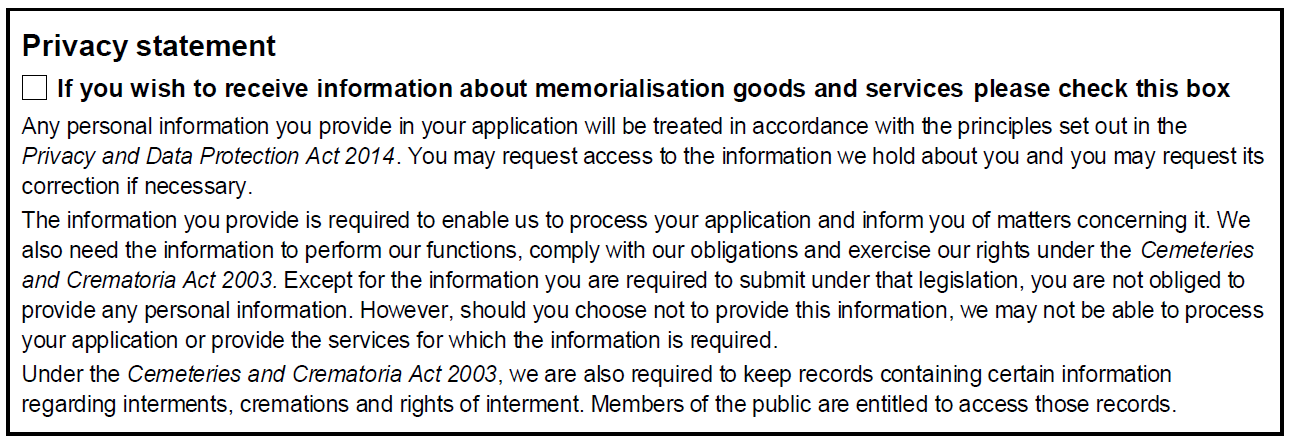
Cemetery trusts must not collect personal information unless that information is necessary for one or more of the trust’s functions or activities. This is known as the ‘primary purpose’ of collection. In most cases, the primary purpose for which cemetery trusts collect personal information is to fulfil their legislative functions and responsibilities.

When collecting personal information from an individual, cemetery trusts must inform the individual:

* they are able to gain access to the information
* the purposes for which the information is collected
* any law that requires the particular information to be collected
* the main consequences (if any) for the individual if all or part of the information is not provided.

This information is usually provided to the individual in the form of a privacy or collection statement. Prescribed forms include privacy statements at the end of each form.

Figure 3: Example privacy statement



#### Use and disclosure of personal information

Cemetery trusts must not use or disclose personal information about an individual for a purpose other than the primary purpose for collection unless there is an appropriate exemption.

Exemptions may be relied upon where an individual gives consent for the information to be used for a secondary purpose or if the disclosure for a secondary purpose is authorised or required under law.

Examples of purposes that do not constitute a primary purpose for which cemetery trusts collect personal information:

* Contacting a right holder to tell them about memorialisation options they can purchase from the cemetery trust.
* Advising a member of the public about a planned funeral (however if this information is publicly available, the cemetery trust may direct the enquirer to the available information).
* Informing a researcher if a deceased person had a spouse or domestic partner at the time of the deceased’s death.
* Advising a member of the public how many pre-need rights of interment an individual has purchased.

#### Tips for managing personal information

* Develop and maintain an [Information Asset Register](#_Information_asset_register) to identify which information assets contain personal information.
* Develop and maintain a [Security Risk Profile Assessment](#_Security_Risk_Profile) to identify privacy risks and mitigation strategies.
* Consider who should have access to different types of personal information during a trust meeting and record the decision in the meeting minutes. Examples:
  + Only the secretary, chairperson and one other trust member have access to the interment register.
  + Only the chairperson and one other trust member have access to personal information about employees.
  + Only the chairperson has access to information about trust member conduct.
* Ensure conflicts of interest are taken into consideration when determining who should have access to different types of personal information. Refer to the department’s [Managing conflicts of interest factsheet](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance#conflicts-of-interest) for more information <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance#conflicts-of-interest>.
* Ensure records containing personal information are stored securely.
* Develop policies to support the cemetery trust’s management of personal information. The following policy templates are available from the [Institute of Community Directors Australia Policy Bank](https://communitydirectors.com.au/tools-resources/policy-bank) <https://communitydirectors.com.au/tools-resources/policy-bank>.
  + Privacy policy
  + Confidentiality policy
  + Board confidentiality policy

Further information about how to apply the IPPs is available in OVIC’s [Guidelines to the Information Privacy Principles](https://ovic.vic.gov.au/privacy/resources-for-organisations/guidelines-to-the-information-privacy-principles/) <https://ovic.vic.gov.au/privacy/resources-for-organisations/guidelines-to-the-information-privacy-principles/>.

### Health information

Cemetery trusts are required to manage health information in accordance with the Health Privacy Principles (HPPs) established under the Health Records Act. The HPPs, which broadly mirror the IPPs, govern the collection, use, and handling of identifying personal information defined as ‘health information’.

Cemetery trusts must not use or disclose health information about an individual for a purpose other than the primary purpose for collection unless an appropriate exemption under the HPPs applies.

Health information includes information or opinions about the physical or mental health, or disability, of a living or deceased individual. Unlike the Privacy and Data ProtectionAct, the Health Records Act applies to deceased individuals for 30 years following the individual’s death, after which time the legislation no longer applies.

Applications for interment and cremation authorisation often include information about the deceased’s cause of death which is a type of health information. Cause of death is not prescribed information under the Cemeteries Regulations and is not recorded in interment registers. However, cemetery trusts are privy to this information due to the supporting documentation that must be submitted with prescribed forms.

It is recommended that cemetery trusts keep prescribed forms on record but not the supporting documents due to the privacy risk and to reduce overcollection of information not necessary to perform their functions. It is sufficient for cemetery trusts to sight the required supporting documentation and note in its records the date the documents were sighted.

Note: Cemetery trusts may collect other health information about individuals, for example health information about trust members, that must also be managed in accordance with the HPPs.

More information about the Health Records Act and the HPPs is available on the [department’s website](https://www.health.vic.gov.au/legislation/health-records-act) <https://www.health.vic.gov.au/legislation/health-records-act>.

## Public access to cemetery trust records

Section 60 of the Cemeteries Act requires cemetery trusts to make prescribed information about interments, places of interment, cremations and rights of interment contained in the cemetery trust’s records available to the public for historical or research purposes. Refer to [Prescribed information](#_Prescribed_information) above for more details.

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 the department has approved and gazetted this fee.

### Protecting privacy when considering information requests

To protect privacy and manage privacy risks, cemetery trusts should consider the following questions when they receive an information request.

#### 1. Is the request within scope?

Refer to [Prescribed information](#_Prescribed_information) above to inform consideration of this question.

When a cemetery trust receives an information request it must first confirm that the request is within scope, meaning the request is for prescribed information. If a cemetery trust is unsure about whether information is prescribed or not it should contact the department for assistance.

|  |  |
| --- | --- |
| If the answer is yes | If the request is in scope, the cemetery trust should inform the requestor of the cost of the information request (where applicable). Progress to question two. |
| If the answer is no | If the request is out of scope, the cemetery trust should advise the requestor they are unable to fulfil the request. |

#### 2. Does the request include personal information about a living person?

Refer to [Privacy](#_Privacy) above to inform consideration of this question.

Once the cemetery trust has located the relevant information and documents in its records, it must carefully review the contents to determine if they contain personal information about a living person (including a person it is reasonable to assume is living).

Personal information is information or an opinion that makes a person’s identity clear or allows someone to reasonably work out who the information relates to. Personal information can include a range of identifiers, such as a person’s name, gender, email, residential address, postal address, phone number, signature and financial details.

Personal information about a deceased person that it is reasonable to assume also relates to a living person – for example, the deceased’s last known address provided in an application for interment authorisation (Form 1) for a recent interment – is to be treated as personal information about a living person if their identity is apparent or could be reasonably ascertained.

|  |  |
| --- | --- |
| If the answer is yes | If the requested information and/or documentation includes personal information about a living person, progress to question three. |
| If the answer is no | If the requested information and/or documentation does not include personal information about a living person, the cemetery trust may action the information request. |

#### 3. Is the personal information also prescribed information?

In some cases, prescribed information is also personal information about a living person. Examples include:

* the name, address and phone number of a right holder
* the name of a person making an application for the interment of foetal remains
* if a right of interment has been transferred, the name of the person transferring the right, the name of the person to whom the right has been transferred and the amount paid (if any)
* if a right of interment has been surrendered, the name of the person surrendering the right.

|  |  |
| --- | --- |
| If the answer is yes | If the personal information is prescribed information, the cemetery trust must consider the privacy risks before actioning the information request. Refer to [Managing requests for personal prescribed information](#_Managing_requests_for) below. |
| If the answer is no | If the personal information is not prescribed information, the cemetery trust must exclude and/or redact all personal information contained in the information and/or documents requested before actioning the information request. Refer to [Format of information provided to the requestor](#_Format_of_information) below. |

### Managing requests for personal prescribed information

The IPPs state that an organisation must not use or disclose personal information about an individual for a purpose other than the primary purpose of collection unless the use or disclosure is required or authorised by or under law (IPP2.1(f)).

This means that cemetery trusts can make personal information prescribed under the Cemeteries Regulations available to the public for historical or research purposes because it is provided for under s. 60 of the Cemeteries Act. That said, cemetery trusts must still carefully consider the risks associated with releasing personal prescribed information and steps that can be taken to mitigate those risks described below.

#### Purpose of request

Cemetery trusts are required to make records available for inspection for historical or research purposes but not for other purposes.

If a cemetery trust is concerned that a request for prescribed personal information is being made for a different purpose and the cemetery trust has documented the reasons for its concerns, the cemetery trust may consider refusing the information request. The cemetery trust may also wish to contact the department for advice.

#### Timeframe

Cemetery trusts are required to make records available for inspection at any reasonable time. If a cemetery trust has concerns about a request for prescribed personal information, it may consider that it is not a reasonable time to make the records available. In these circumstances, the cemetery trust should document the reasons for its decision, consider when would be a reasonable time to disclose the information and inform the requestor.

Example: The cemetery trust is aware that a family is involved in a lawsuit and has decided that while the legal process is underway it is not a reasonable time to release prescribed personal information about the parties involved.

#### Minimum information required to satisfy the request

Cemetery trusts should consider the minimum information it can provide to comply with Section 60 of the Cemeteries Act to satisfy an information request that includes personal prescribed information. Examples:

* If a member of the public wants to identify the right holder for a place of interment, the cemetery trust may decide to release the name of the right holder but not disclose their personal contact details.
* If a member of the public has requested the address of a right holder, the cemetery trust may decide to only release the suburb rather than the full address.

#### Disputes and risks to personal safety

If a cemetery trust is aware of a dispute that relates to the personal prescribed information that has been requested, the cemetery trust should seek legal advice on how to manage the request.

If a cemetery trust has concerns that releasing personal prescribed information may pose a risk to personal safety, it should raise its concerns with Victoria Police as soon as practicable. The cemetery trust may also wish to contact the department for advice.

### Format of information provided to the requestor

The department strongly recommends that information is transcribed from cemetery trust records and provided to the requestor in a letter or email.

If the cemetery trust decides to provide the requestor with a copy of an original document, the cemetery trust must redact all information contained in the document that is not prescribed information. For example, if a copy of an application for interment authorisation (Form 1) has been requested and the cemetery trust has agreed to action the request, the following sections of the form should be redacted:

* Did the deceased have a spouse or domestic partner at the time of the deceased’s death
* Coffin, receptacle or container dimensions and material
* Applicant for interment authorisation
* Consent of the right holder
* Other matters (funeral director information)
* Matters relating to interment (memorialisation service information)
* Signature of applicant

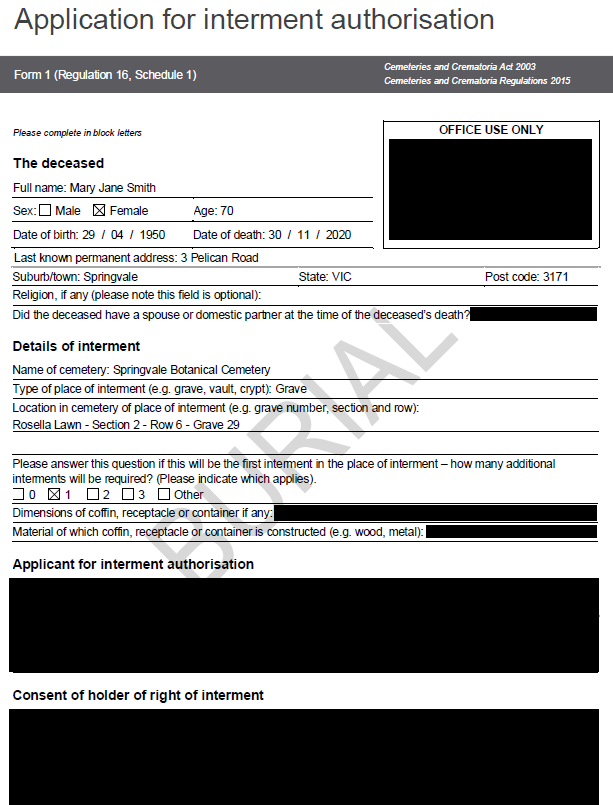
See Figure 4 below for an example of the first page of an application for interment authorisation (Form 1) with non-prescribed information redacted.

#### Redacting information

Redacting information is a process of applying black boxes over the parts of a document to obscure information contained in the document that is not to be released.

Cemetery trusts can use software such as Adobe Acrobat Pro or Redax to redact information within a document. Information can also be redacted by applying black boxes to Microsoft Word documents and then printing the document or saving it in .pdf format so that the obscured information cannot be revealed. Similarly, a single-sided print out of a document can be redacted manually using felt-tip markers, correction fluid/tape or paper. It may be necessary to then photocopy the redacted copy to ensure the obscured information is not visible from either side of the page.

Figure 4: Example of a redacted document



## Freedom of information

Freedom of information, or FOI, is a process where the Victorian community can request documents from an agency. The purpose of FOI is 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, including cemetery trusts.

The FOI Act obligates cemetery trusts to respond to valid FOI requests. The FOI Act also sets out rules and processes cemetery trusts should follow.

### Professional standards

The FOI Professional Standards (the Standards) were developed under the FOI Act in 2019 and apply to Victorian government agencies subject to the FOI Act. The Standards aim to improve communication between agencies and applicants, ensure FOI requests are processed in a timely manner, provide clarity to certain provisions in the FOI Act and ensure the FOI Act is given a modern interpretation, both in practice and process.

The Standards are available on the [OVIC website](https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/professional-standards/) <https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/professional-standards/>. Refer to [OVIC’s guidance on compliance with the Standards](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-6w/) for more information <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-6w/>.

### Step 1 – Acknowledge the request

Acknowledging the request is not required under the FOI Act but it is strongly recommended as best practice. Cemetery trusts should acknowledge the request in writing, for example by email.

### Step 2 – Determine if the request is valid

There are three requirements that must be met for a request to be valid:

* The request must be in writing
* The applicant must have provided the application fee, or requested that the fee is waived
* The request must provide sufficient information to enable documents to be identified

The Standards require agencies to assist a person to make a valid request if they wish to make a request or have made a request that does not comply with the requirements.

#### Written request

FOI requests cannot be accepted over the phone or face-to-face. It is a strict requirement of the FOI Act that requests must be made in writing.

In circumstances where an applicant cannot provide their FOI request in writing, for example because of a disability, the agency must assist the person to make their request in writing (for example by transcribing their request).

Applicants may use the [FOI request form template](https://ovic.vic.gov.au/freedom-of-information/make-a-freedom-of-information-request/) available on the OVIC website but using this form is not mandatory <https://ovic.vic.gov.au/freedom-of-information/make-a-freedom-of-information-request/>.

A request that is in writing, but not on the application form, for example in a letter or email, will still satisfy this requirement. The Standards require agencies to provide an applicant with an option to make a request by email.

#### Application fee or waiver

The application fee is set at two fee units. The price of a fee unit is set by the *Monetary Units Act 2004* and the price of a fee unit goes up every 1 July. The fee unit for 2023-24 is $15.90, which makes the 2023-24 FOI application fee $31.80.

An applicant can request that the application fee is waived. Cemetery trusts may decide to waive the application fee, or reduce it, if it considers payment would cause hardship to the applicant.

If the applicant has not paid the application fee and the cemetery trust has not waived the fee, the request is not valid. If this happens, the cemetery trust should contact the applicant in writing within 21 days of receiving the FOI request and ask them to pay the fee. It is good practice to set out a clear timeframe for payment, for example 21 days.

If the cemetery trust does not receive a response after a reasonable amount of time and the applicant has not paid the fee within the requested time, the cemetery trust should write to the applicant and advise that the request is invalid because the fee has not been paid and the request has been closed.

#### Discrete documents

FOI requests need to include enough information about the documents being requested to enable the cemetery trust to identify the documents. FOI requests cannot ask for something too broad or vague. For example, if an applicant made a request for ‘the report held by the trust’ the cemetery trust can advise the applicant that the scope of their request is unclear.

In this example, the cemetery trust would write to the applicant and ask them to provide more details about what they are requesting. The applicant should be given a minimum of 21 days to respond in accordance with the Standards.

Determining the scope of the request may take time as the request is refined by the applicant and reconsidered by the cemetery trust. Ideally the cemetery trust and applicant will reach an agreement resulting in a revised scope of requested documents.

If the cemetery trust does not receive a response after a reasonable amount of time, the cemetery trust should contact the applicant to assist them to make a valid request and advise that the request may be refused if the request does not comply. If the request remains invalid, the cemetery trust can advise the applicant that the request has been closed as it is invalid.

### Step 3 – Consider the timeframe for the request

When a cemetery trust receives a valid request, a 30 calendar day timeframe begins. This means the cemetery trust must undertake the following steps within 30 calendar days:

* Search for the relevant documents
* Assess those documents to determine whether they contain any exempt material
* Consider if it is practicable to consult any third parties whose personal information or business information is contained in the documents
* Estimate and calculate any applicable access charges
* Exempt (redact) the information from the documents that should not be released
* Finalise a decision letter that gives reasons for exempting certain information
* Seek approval of the trust chairperson, or if the chairperson is unavailable, the chairperson’s delegate
* Release a decision letter to the applicant and the final documents, unless any documents are subject to a third-party 60-day appeal period

Cemetery trusts will need to manage the process carefully to meet this timeframe. If the cemetery trust is unsure of how to progress the request, it should [email the department’s FOI Unit](mailto:foi@health.vic.gov.au) as soon as possible <foi@health.vic.gov.au>.

If the cemetery trust does not think the request can be completed within 30 days, it may seek an extension from the applicant.

Key points about extensions:

* Extensions must be requested in writing and state:
  + under which subsection of s. 21(4) of the FOI Act the time has been extended
  + the reasons for the extension
  + the number of additional days the request has been extended by.
* The cemetery trust may apply an extension of 15 days if third-party consultation is required.
* An extension request that is agreed by the applicant may be for up to 30 days.
* Cemetery trusts may request more than one extension, but the applicant must agree each time.
* Future extension requests must be made during the current request period (extension request cannot be made after the deadline has passed).
* If the applicant does not agree to an extension, the request will become overdue when the deadline passes.

If a request becomes overdue, the applicant should be advised of their legal right to:

* make a complaint to OVIC
* make an application to the Victorian Civil and Administrative Tribunal (VCAT) to seek review of the cemetery trust’s decision.

Refer to [Reviews and complaints about FOI decisions](#_Reviews_and_complaints) for more information.

### Search Inventory outlineStep 4 – Action the request

#### Types of documents

The definition of ‘document’ in the FOI Act includes:

* a document in writing
* any book, map, plan, graph, or drawing
* a photograph
* a label
* any disc, tape, soundtrack or other device that contains sounds and not visual images
* any film negative, tape or other device that contains visual images
* anything whatsoever with any words, figures, letters or symbols which carry a definite meaning to persons conversant with them
* any copy, reproduction or duplicate of anything referred to above.

#### Searching for documents

Places cemetery trusts should search include:

* records storage, filing cabinets and other locations of hard copy records
* email accounts
* electronic systems, for example external hard drives
* messaging services the cemetery trust might use, for example Microsoft Teams
* anywhere else that may contain documents that are in scope.

#### Consider informal release outside the FOI Act

Informal release involves an agency receiving an FOI request and releasing the requested information or document, either in full or in part, outside the FOI Act. This is also known as ‘administrative release’.

The cemetery trust must consider whether a document in its possession that is requested under the FOI Act can properly be provided to an applicant outside the FOI Act in accordance with the Standards.

Where a document in the possession of a cemetery trust can properly be provided to an applicant outside the FOI Act, the Standards require the trust to either facilitate access to the document or advise the applicant how the document can be accessed.

#### Exempt documents

While cemetery trusts have an obligation to release as much information as possible, trusts should also be aware that this obligation is limited by information that is exempt under the FOI Act.

Exemptions allow cemetery trusts to refuse to release certain information to an applicant to protect privacy, confidentiality, and some internal communications. There are 15 exemptions under the FOI Act and the most common exemptions that relate to cemetery trusts are outlined below.

##### Internal working documents

Under s. 30 of the FOI Act, cemetery trusts can exempt information if it would disclose internal working documents:

* that contain opinion, advice, or a recommendation prepared by an officer of the cemetery trust, or consultation or deliberation that has taken place between officers of the trust
* that are deliberative in nature (pre-decisional)
* where the disclosure would be contrary to the public interest.

Establishing which documents fall under the first two dot points above is a relatively straightforward task. For the third dot point, it can be more difficult to establish which internal working documents, if disclosed, would be contrary to the public interest.

There is no clear definition of public interest as it relates to FOI because to define something is to limit it. When considering whether releasing certain information would be contrary to the public interest, cemetery trusts need to consider:

* the object of the FOI Act
* the sensitivity of the issues involved
* the stage of a decision or policy development at the time of the communications
* whether disclosure would inhibit future communications
* whether disclosure would only provide a part explanation of a particular decision or outcome
* the public interest in the community being better informed about the cemetery trust’s processes
* the public interest in transparency and accountability
* the impact of disclosing draft documents
* whether there is controversy or impropriety around the decision or decision-making processes
* why the applicant might want the information (to understand its value to the applicant or the broader community)
* anything else that might be reasonable.

If the cemetery trust is unsure if releasing certain information would be contrary to the public interest it can [email the department’s FOI Unit](mailto:foi@health.vic.gov.au) to seek advice <foi@health.vic.gov.au>.

##### Personal privacy

Under s. 33 of the FOI Act, cemetery trusts can exempt information if it would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person). The definition of ‘personal affairs’ in the FOI Act includes:

* information that identifies any person or discloses their address or location
* information from which any person’s identity, address or location can be reasonably determined.

##### Information obtained in confidence

Under s. 35 of the FOI Act, cemetery trusts can exempt information obtained in confidence if the following applies:

* The information has been communicated *to* the cemetery trust (not information generated by the cemetery trust, for example internal working documents).
* If the information were to be released, it would impair the cemetery trust’s ability to obtain similar information in the future.

Note: Whether a person communicates in confidence is a matter of fact. The sender does not have to stamp it as confidential for it to be so. Cemetery trusts need to consider the information at hand, not the visual markings or stamps.

### Step 5 – Finalise the request

Once the cemetery trust has found all the relevant documents and applied the relevant exemptions (if any), the cemetery trust is required to write a decision letter.

The decision letter should include the following:

* A statement that the letter is a ‘Notice of Decision’ in response to the applicant’s request under the FOI Act
* A statement that the decision maker is an authorised officer in accordance with s. 26 of the FOI Act
* A copy of the terms of the request (scope)
* A statement confirming the applicant paid the fee or the fee was waived, or details of any access charges required to be paid before documents are released
* An outline of where the cemetery trust searched, and the type of documents identified
* If any exemptions were applied, which exemptions under the FOI Act were used and reasons why they were applied
* The relevant review rights and timeframe for the applicant to appeal the cemetery trust’s decision should they wish to
* The name, date and signature of the decision maker

Cemetery trusts may [email the department’s FOI Unit](mailto:foi@health.vic.gov.au) for a template to assist with drafting the decision letter if required <foi@health.vic.gov.au>.

To finalise the request the cemetery trust sends the decision letter and documents to the applicant.

### Reviews and complaints about FOI decisions

FOI is regulated by OVIC and VCAT. An applicant can make a complaint to OVIC regarding a cemetery trust’s handling of a request or seek a review of a cemetery trust’s decision on an FOI request. If OVIC receives a complaint or a request to review a cemetery trust’s FOI decision, OVIC will contact the trust directly about what it needs to do.

At the end of the review process OVIC will either support the cemetery trust’s decision or make a different decision in part or in full. The applicant will have 60 days to decide if they want to appeal the matter at VCAT. If OVIC makes a different decision to the cemetery trust’s decision, the trust may either:

* accept OVIC’s decision and comply with the decision
* appeal to VCAT within 14 days.

If the cemetery trust decides to appeal to VCAT, it should [email the department’s FOI Unit](mailto:foi@health.vic.gov.au) as soon as possible for guidance <foi@health.vic.gov.au>.

Note: OVIC publishes de-identified decisions on its [website](https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/decisions-and-case-notes/) <https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/decisions-and-case-notes/>.

### OVIC resources

OVIC’s website provides [detailed guidance and practice notes](https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/) to assist organisations with each step of the FOI process <https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/>.

If the cemetery trusts has not been able to find information it is looking for on the OVIC website, the trust should [email OVIC’s Agency FOI Information Service](mailto:AskFOI@ovic.vic.gov.au) <AskFOI@ovic.vic.gov.au>. OVIC will generally respond within **24 hours, however s**ome responses may take up to five business days, depending on the complexity of the enquiry.

### FOI annual report

Each year Victorian Government agencies, including cemetery trusts, are required to provide data for the FOI annual report. The annual report covers FOI activity in all Victorian Government agencies for the previous financial year and is tabled in Parliament.

Cemetery trusts will receive a letter or email from OVIC in July each year seeking input for the report. The letter will advise cemetery trusts what information is required.

Note: Requests for public access to cemetery trust records under s. 60 of the Cemeteries Act are not FOI requests and do not need to be reported. Refer to [Public access to cemetery trust records](#_Public_access_to_1) for more information.

## Transitioning from hard copy to digital record keeping

If a cemetery trust is interested in transitioning from hard copy to digital record keeping there are several considerations that will assist with the process.

### Will the digital record be the permanent record?

Cemetery trusts that are planning to create digital records must determine if the digital record will be the permanent record under the Cemeteries RDA. Refer to [Retention timeframes](#_Retention_timeframes) for more information about permanent records.

If the digital records to be created will be the cemetery trust’s permanent records, the trust is required by PROV to develop a digitisation plan. A digitisation plan template is available on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/document-library/pro-58-digitisation-plan-template) <https://prov.vic.gov.au/recordkeeping-government/document-library/pro-58-digitisation-plan-template>. Refer to [Planning a digitisation project](#_Planning_a_digitisation) for more information.

Alternatively, the cemetery trust may be planning to create digital records as backup or reference copies and continue to keep hard copy records as the trust’s permanent records. In this case the trust would not be required to develop a digitisation plan but must continue to manage and maintain it’s hard copy records properly.

### Storage method

Digital records are stored on local hard drives or in cloud storage. Deciding which storage method best suits a cemetery trust is usually based on the volume of records the cemetery trust collects and generates. Managing a moderate to high volume of cemetery trust records on local hard drives can be onerous. In such circumstances it is recommended that cemetery trusts use secure cloud storage.

#### Cloud outlineCloud storage

Cloud storage is a type of information storage where digital data is stored in servers in off-site locations and is accessed remotely via the internet. The servers are owned and managed by a hosting company. Examples of cloud storage services include Microsoft OneDrive, Google Drive, iCloud and Dropbox.

Refer to [Online cloud-based cemetery software](#_Online_cloud-based_cemetery_2) for more details about cloud storage considerations.

### Equipment

Cemetery trusts will require specific equipment to transition to digital record keeping. At a minimum a cemetery trust will need the following:

* A laptop or desktop computer
* A quality scanner
* External hard drives

Refer to [Planning a digitisation project](#_Planning_a_digitisation) below for more information about technical specifications for digitisation projects.

Cemetery trusts that do not have sufficient funds to purchase required equipment are strongly encouraged to apply for funding through the department’s [cemetery grants program](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program>.

A key advantage of digital record keeping is the ease of saving email correspondence as a digital record of cemetery trust advice, decisions and actions.

It is recommended that cemetery trusts ensure they have access to a reliable internet service before transitioning to digital record keeping. An internet connection is required for cloud storage.

### Protecting digital records

A cemetery trust considering transitioning to digital record keeping will need to determine what cyber security measures it will put in place to meet [information security](#_Information_security) requirements.

Basic cyber security measures include using anti-virus and anti-malware software on devices, using passwords to protect devices and records, and establishing backup protocols.

The [Australian Cyber Security Centre website](https://www.cyber.gov.au/learn-basics) is an excellent resource that provides easy-to-understand practical advice and interactive tools <https://www.cyber.gov.au/learn-basics>.

There are also training providers that deliver courses about cyber security. Cemetery trusts may wish to apply for funding for relevant training through the department’s [cemetery grants program](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program>.

### Ongoing costs

Cemetery trusts must consider their ability to fund ongoing costs relating to digital record keeping because ongoing costs are not eligible for funding applications under the department’s cemetery grants program. Ongoing costs include:

* internet service provider costs
* anti-virus and anti-malware software subscriptions
* cloud storage costs.

Note: Smaller cemetery trusts may be eligible to receive a grant through the department’s [small cemetery operations grants program](https://www.health.vic.gov.au/cemeteries-and-crematoria/small-cemetery-operations-grants-program) <https://www.health.vic.gov.au/cemeteries-and-crematoria/small-cemetery-operations-grants-program>.

Small cemetery operations grants can be used for software licencing or subscription fees, however these grants may not be available every year and should notbe relied on to fund ongoing contracts.

## Digitising existing records

There are two options for digitising existing records for cemetery trusts to consider:

1. Transcribing records into a digital format
2. Making digital images of hard copy records

### Transcribing interment records into a digital format

Transcribing records involves making a new version of the information contained in hard copy records by typing the text into a spreadsheet or other digital format.

A key advantage of transcribed records is the ability to search for and locate information easily, for example by searching a name, date, or interment location.

It is recommended that cemetery trusts use the department’s digital template when transcribing interment registers. Refer to [Digital interment register](#_Digital_interment_register) for more information.

Cemetery trusts that require equipment or software to support digitisation projects are encouraged to apply for funding through the department’s [cemetery grants program](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program>.

### Digital images of hard copy records

Digital images of hard copy records are made by taking digital photographs or scanning hard copy documents. This requires specialised equipment and is usually undertaken by an experienced professional.

Unlike transcribed records, searching for information in digital images will require scrolling through the images, much like reading through a hard copy interment register.

Note: When a cemetery trust transfers hard copy records to PROV to be archived, in some circumstances PROV may be able to create digital images of the records and provide a copy to the trust. Refer to [Archiving cemetery trust records](#_Archiving_cemetery_trust) for more information.

### Copyright

Cemetery trusts hold copyright of all cemetery trust records as the owner of the records. Issues may arise in relation to copyright when a new version of original records is created if the individual or other party who created the new version tries to claim ownership over the work undertaken.

Before a cemetery trust engages an individual or other party to create a new version or edit existing records, the cemetery trust should:

* discuss and define the nature of the arrangement with the individual or other party who is going to undertake the work, including the purpose, scope and costs
* formalise the arrangement in a legally binding document that states that:
  + the cemetery trust will retain all intellectual property rights (including copyright) for all cemetery trust records and materials
  + the cemetery trust will own the copyright over all new records created or existing records
  + the individual or other party gives consent, in writing, in relation to all rights that are necessary for the cemetery trust to have copyright over all versions of the trust’s records.

### Clipboard Checked outlineDigitisation projects

A step-by-step guide to digitisation projects is available on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/a-z-topics/digitisation) <https://prov.vic.gov.au/recordkeeping-government/a-z-topics/digitisation>.

#### Planning a digitisation project

Cemetery trusts that are planning a digitisation project where the digital record will be the permanent record, are required to develop a digitisation plan. A digitisation plan template is available on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/document-library/pro-58-digitisation-plan-template) <https://prov.vic.gov.au/recordkeeping-government/document-library/pro-58-digitisation-plan-template>.

A digitisation plan will help cemetery trusts:

* establish an authorised framework for digitisation and business ownership over the project
* identify the types and condition of records to be digitised
* undertake a risk analysis for the digitisation
* establish the digitisation process and image technical requirements
* determine how the digitised records will be managed
* determine disposal actions for the original or source records.

The following considerations are a good starting point for planning a digitisation project.

##### Who will digitise the records?

The trust may consider engaging a third-party to undertake the project or assign the task to trust members or employees.

##### How long will it take?

Digitising records can be a very time consuming task. It is recommended that the cemetery trust break up the task into manageable portions. For example, the cemetery trust may wish to start with digitising records relating to a specific five-year period.

##### How much will it cost?

Digitising records can be a costly activity. If the cemetery trust is considering engaging a third-party, it should research what services are available and seek multiple quotes.

The cemetery trust should carefully consider if it has sufficient funds for the project and if the proposed expenditure is a reasonable use of existing cemetery trust funds.

##### What digital record format will be created?

There are [minimum technical requirements](https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1905-s1-digitisation-specification) issued by PROV that cemetery trusts must meet if digitised records will become the trust’s permanent records <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1905-s1-digitisation-specification>.

Cemetery trusts must ensure that permanent digital records created by transcription or making digital images have the degree of authenticity, reliability, integrity and useability necessary to meet the purposes of the source record.

Cemetery trusts should [contact PROV](https://prov.vic.gov.au/contact-us) to discuss technical requirements as part of the planning process <https://prov.vic.gov.au/contact-us>.

## Online cloud-based cemetery software

Several companies provide online cloud-based cemetery software programs to cemetery trusts. This type of software is stored in the cloud and cemetery trusts access the software via the internet.

The programs can provide cemetery trusts with record keeping services including:

* digital mapping of cemetery land
* digitising existing interment registers and importing data into the program
* creating new records
* deceased search function.

Many programs also have additional functionalities for managing cemeteries such as bookings, issuing certificates, reporting and financial management.

### Warning outlineImportant information security considerations when engaging third-party providers

Cemetery trusts considering online cloud-based cemetery software programs are accountable for ensuring that the service provider securely manages cemetery trust records appropriately in line with legislative requirements.

Cemetery trusts are encouraged to ask questions and seek information from service providers to make informed decisions.

Information about security considerations when engaging third-party providers is available in OVIC’s [information sheet](https://ovic.vic.gov.au/information-security/information-security-tips-for-class-b-cemetery-trusts/information-sheet-for-class-b-cemetery-trusts-considering-third-party-providers) <https://ovic.vic.gov.au/information-security/information-security-tips-for-class-b-cemetery-trusts/information-sheet-for-class-b-cemetery-trusts-considering-third-party-providers>.

Cemetery trusts must carefully read any service agreements (contracts) proposed by the service provider and should not feel pressured into accepting any conditions they are unhappy with.

In addition to the considerations in OVIC’s information sheet about third-party providers, cemetery trusts should also consider the following matters to inform decision making.

#### Accreditations and compliance

* Does the service provider hold any cyber security accreditations or meet any established standards (national or international) for cyber security?
* Does the service provider understand and comply with all legislated requirements for managing cemetery trust records under the Privacy and Data Protection Act?

#### Backup protocols and retrieval of data

* What is the service provider’s backup schedule?
* Is backup data stored at a separate location?
* How often can the cemetery trust receive an export of its data and what will the format be?
* Can the service provider export data in a format that meets PROV requirements for digital archiving of permanent records?

#### Storage location

* Will cemetery trust data, including backup copies, be stored within Australia?

It is important that cemetery trust records are stored within Australia to protect the sovereignty of the data. Data sovereignty refers to digital data being subject to the laws and regulations of the country in which it is stored. Ensuring cemetery trust records are stored within Australia means relevant state and federal laws can be enforced for that data.

#### Copyright

* Will the cemetery trust retain copyright over its records and backup copies?

Cemetery trusts hold copyright of all original trust records as the owner of the records and must retain copyright of new versions of their records. Refer to [Copyright](#_Copyright) for more information.

#### Costs

* Which costs are fixed, and which costs may increase over time?

Costs for using these programs typically include an initial one-off payment for digitising and importing existing cemetery trust records and an ongoing subscription cost. Ongoing subscription costs may vary based on the number of new interment records generated by the trust per year.

#### Other contract terms

* How much notice does the cemetery trust have to provide to exit the contract?
* Are there limits to the technical support provided under the contract, for example the number or type of support requests?
* Does the service provider intend to share information with other parties?
* How does the service provider manage the return of records at the end of the contract?

## Archiving cemetery trust records

If permanent records are not actively required by a cemetery trust for the delivery of its functions, they must be transferred to PROV. Common examples include historical trust meeting records and original cemetery maps or plans that are no longer in use. These records are appropriate for transfer as they are no longer being added to or updated and are not accessed frequently. Refer to [Permanent records](#_Permanent_records_1) for more information.

If a cemetery trust is considering transferring permanent records that contain information that may need to be accessed by the cemetery trust from time-to-time, for example early volumes of interment registers, it is recommended that the cemetery trust makes copies of the records and then transfers the original documents to PROV. This ensures historical records are protected without limiting the cemetery trust’s delivery of its functions.

Records transferred to PROV are stored securely in a climate-controlled repository and digital archive to ensure records are preserved and accessible forever. PROV does not charge any direct fees to cemetery trusts for transfer projects and there are no ongoing storage costs.

Note: Cemetery trusts may be required to cover costs for packaging and delivery.

When transfer projects are completed, PROV will take custody, but not ownership, of the records.

If a cemetery trust has not undertaken a transfer project before, it should refer to guidance about the process on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/transferring-records) in the first instance <https://prov.vic.gov.au/recordkeeping-government/transferring-records>.

### Archiving hard copy cemetery trust records

A step-by-step guide to transferring hard copy records is available on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/transferring-records/physical-records-transfer-step-by-step) <https://prov.vic.gov.au/recordkeeping-government/transferring-records/physical-records-transfer-step-by-step>.

In some cases, PROV may be able to digitise hard copy records that have been transferred and then provide a digital copy of the records back to the cemetery trust. This can be a lengthy process and cemetery trusts should not transfer hard copy records to PROV with the expectation that the records will be digitised by PROV.

### Archiving digital cemetery trust records

A step-by-step guide to transferring digital records is available on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/transferring-records/digital-records-transfer-step-by-step) <https://prov.vic.gov.au/recordkeeping-government/transferring-records/digital-records-transfer-step-by-step>.

This process requires digital records to be converted into a specific long-term format using PROV software. PROV will provide detailed advice and assistance to cemetery trusts at the time of transfer.

## Useful records management contacts

##### Department of Health

* [Cemetery Sector Governance Support Unit](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>
* [Privacy and Legal Compliance Team](mailto:privacy@health.vic.gov.au) <privacy@health.vic.gov.au>
* [FOI Unit](mailto:foi@health.vic.gov.au) <foi@health.vic.gov.au>

##### OVIC

* [Information Security Team](mailto:OVIC%20Information%20Security%20Team) <security@ovic.vic.gov.au>
* [Privacy Team](mailto:privacy@ovic.vic.gov.au) <privacy@ovic.vic.gov.au>
* [Agency FOI Information Service](mailto:AskFOI@ovic.vic.gov.au) <AskFOI@ovic.vic.gov.au>

##### PROV

* [Government Services Team](https://prov.vic.gov.au/contact-us) <https://prov.vic.gov.au/contact-us>

##### Sector peak body

* [Cemeteries and Crematoria Association of Victoria](mailto:executiveofficer@ccav.org.au) <executiveofficer@ccav.org.au>

##### Class A cemetery trusts

* [Ballarat General Cemeteries Trust](mailto:enquiries@ballaratcemeteries.com.au) <enquiries@ballaratcemeteries.com.au>
* [Geelong Cemeteries Trust](mailto:enquiries@gct.net.au) <enquiries@gct.net.au>
* [Greater Metropolitan Cemeteries Trust](mailto:enquiries@gmct.com.au) <enquiries@gmct.com.au>
* [Remembrance Parks Central Victoria](mailto:enquiries@rpcv.org.au) <enquiries@rpcv.org.au>
* [Southern Metropolitan Cemeteries Trust](mailto:enquiries@smct.org.au) <enquiries@smct.org.au>

# Topic 24. Complaints management

Cemetery trusts are independent statutory bodies responsible for the day-to-day management and operation of public cemeteries.

If a cemetery trust receives a complaint, it is the trust’s responsibility to investigate the complaint and, where appropriate, resolve it. Trusts should manage complaints promptly, efficiently, fairly, and respectfully.

A trust may not disregard a complaint or consider it unnecessary to respond to.

The department does not have a formal complaint resolution role and does not have the power to direct trusts on operational matters.

## Complaints management policy

Cemetery trusts should have a complaints management policy in place. A complaints policy template is available on the [department's website](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates) <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>. Cemetery trusts should log all complaints received and record the outcome.

## Strategies for managing complaints

### Written complaints

Cemetery trusts should ask people with complex complaints to provide them in writing.

### Verbal complaints

When discussing a complaint, it is important to listen to the complainant and allow them time to talk about their concern, preferably without interruption. Once the complainant has expressed their concern you can reflect to ensure you have understood the matter. Useful phrases include:

* ‘What I am hearing is you are concerned about…’
* ‘I appreciate that this is distressing for you.’

Phrases like these acknowledge a person’s feelings and point of view without agreeing or disagreeing. People who feel heard feel respected.

### Family and right of interment holder disputes

Complaints relating to a family dispute or a dispute between right of interment holders are a matter for the parties to resolve. It is not the responsibility of the cemetery trust to mediate or intervene. A cemetery trust will usually not act until disputes are resolved.

### Outline next steps

Manage expectations by providing clear information about next steps and expected timeframe to avoid misunderstandings about what the cemetery trust is going to do. It is good governance practice to confirm this information in writing.

### Provide a response

Once the cemetery trust has reviewed the complaint (written or verbal) it should provide a written reply to the complainant. This ensures the trust has a record of the response and reduces the chance miscommunication. Avoid legalistic, defensive responses that inflame the matter.

The following is a recommendation structure to a reply:

* Acknowledge the receipt of the complaint including the date and summarise the concerns raise. For example, ‘I refer to your letter dated 15 December 2022 about damage to your grandfather’s headstone’.
* Acknowledge the emotional aspects of the complaint. For example, ‘I appreciate that this matter has caused distress for you and your family.’
* If the trust has made an error, it is appropriate to acknowledge this and apologise.
* Explain the facts established by the trust.
* Explain the outcome.
* Note if the trust has implemented any changes or improvements because of the matter.
* Thank the person for bringing the matter to the attention of the trust.

### Internal complaints

Trust members with internal complaints should raise them at a trust meeting for discussion. The chairperson should encourage and support this practice. If a trust member does not feel comfortable raising a concern at a meeting, they may do so directly with the chairperson.

Complaints about interpersonal issues are the responsibility of chairperson to manage and ensure they do not impact the functioning of the trust. All trust members must to treat each other with courtesy and respect. Refer to the [Trust member conduct and managing poor behaviour factsheet](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance) on the department’s website for more information <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance>.

### Dispute Settlement Centre of Victoria

The Dispute Settlement Centre of Victoria provides a free mediation service funded by the Victorian Government. They may be able to assist to mediate disputes. They assess requests on a case-by-case basis and can be contacted via their [online contact form](https://www.disputes.vic.gov.au/about-us/contact-us) <https://www.disputes.vic.gov.au/about-us/contact-us>.

## Trust member and staff safety

Trust members and staff should not tolerate abuse or threats and should immediately remove themselves from threatening situations. The other party should be informed that their behaviour is inappropriate and that the trust will not engage with them until they behave appropriately. Threats to personal safety should be reported to Victoria Police.

## Banning people from the cemetery

Cemetery trusts may have disputes regarding the activities of funeral directors, monumental masons, contract gravediggers or members of the public. If a dispute occurs, a trust must not simply ban a person cemetery grounds.

If a trust believes it has grounds to ban a person, it should seek independent legal advice before acting. A ban should be a last resort, and only used where there is a risk to health and safety.

Restriction of a person’s access must be in writing. It must cite the reason, the duration, and the power the trust is relying on to apply the ban. Any ban must allow a right of reply from the affected party for the trust to review its decision. The trust should review any restriction of access at least once every 12 months. The trust should advise the department before introducing any ban.

## Escalation of complaints

### Referring a complainant to the department

Trusts can contact the department for advice on managing a complaint. They should not refer a complaint to the department about trust services, products, or decisions.

If a complainant is unhappy with the trust’s response the trust may direct the complainant to the department or to the Victorian Ombudsman. Ensure the department’s role is clear to avoid unrealistic expectations by the complainant.

### Department consideration of complaints

If the department receives a complaint directly or via the Minister’s Office, it will contact the trust for information.

Trusts must cooperate and provide all relevant information to the department so it can the review issue and steps taken by the trust.

Once the department has reviewed the matter it or the Minister for Health will provide a response to the complainant. The department will inform the trust of the response.

### Significant governance failures and mismanagement

The department can investigate significant matters relating to trust governance and financial affairs such as:

* fraud (for example, misappropriation of trust funds)
* significant governance failure
* poor record-keeping practices
* conflicts of interest.

For suspected fraud, a person should immediately report their concerns to the chairperson. The chairperson must act and decide whether to internally investigate or report the matter to the police and the department.

### Victorian Ombudsman

The Victorian Ombudsman can investigate complaints about Victorian public organisations including trusts. If a person is dissatisfied with the trust’s response they can make a complaint to the Victorian Ombudsman via the [online complaint form](https://www.ombudsman.vic.gov.au/complaints/make-complaint/) <https://www.ombudsman.vic.gov.au/complaints/make-complaint>.

## Formal appeal

### Victorian Civil and Administrative Tribunal

A right of interment holder can make an application to the Victorian Civil and Administrative Tribunal to review a trust decision regarding:

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

## Fraud and corruption control and public interest disclosures

### Fraud and corruption

Fraud and corruption in cemetery trusts is not tolerated. This message should be conveyed and promoted to all cemetery trust members and, if applicable, trust employees and contractors.

Fraud and corruption-related risks can impact on a cemetery trust’s:

* 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.

### Public interest disclosures

Public interest disclosures are reports about the improper conduct of public bodies, including cemetery trusts, or public officers, including cemetery trust members, employees and contractors.

Cemetery trusts are not authorised to receive public interest disclosures. If a person (including a trust member, employee or contractor) 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 Anti-corruption Commission (IBAC) directly.

IBAC assesses these reports to determine if they will conduct an investigation or refer to another investigative body.

### Cemetery trust responsibilities

The department recommends Class B cemetery trusts have a documented fraud and corruption control and public interest disclosures framework. The department has developed a framework template to support Class B cemetery trusts in meeting this requirement.

The [*Fraud and corruption control and public interest disclosures framework template for Class B cemetery trusts*](https://www.health.vic.gov.au/cemeteries-and-crematoria/fraud-corruption-control-and-public-disclosures) is available on the department’s website <https://www.health.vic.gov.au/cemeteries-and-crematoria/fraud-corruption-control-and-public-disclosures>.

The template can be adapted to suit the needs of individual cemetery trusts.

## Additional resources

* [Victorian Ombudsman good practice guides](https://www.ombudsman.vic.gov.au/learn-from-us/practice-guides/) <https://www.ombudsman.vic.gov.au/learn-from-us/practice-guides/>
  + Handling complaints
  + Managing complex complainant behaviour
  + Complaints handling in a crisis
  + Managing complaints involving human rights
  + Apologies
* [Institute of Community Directors Australia policy bank](https://communitydirectors.com.au/tools-resources/policy-bank) <https://communitydirectors.com.au/tools-resources/policy-bank>
  + Complaints handling policy
  + Fraud risk management policy
  + Whistle-blower policy
* [Dispute Settlement Centre of Victoria](https://www.disputes.vic.gov.au/information-and-advice/reaching-an-agreement) <https://www.disputes.vic.gov.au/information-and-advice/reaching-an-agreement>

# Topic 25. 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 communities
* record and information management
* relationship management of funeral directors and stonemasons
* customers of, and visitors to, the cemetery
* cemetery trust employees.

## 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 or 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 those 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, the trust should ensure:

* all plant and equipment brought into the cemetery is in a safe and sound condition
* those who operate plant and equipment in the cemetery are trained 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 28. Occupational health and safety](#_Topic_28._Occupational)).

The Wrongs Act 1958 and the OHS Act provide some guidance on how to make balanced and weighted decisions affecting all stakeholders including 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 areas, security systems (for example, 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 principal 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 (refer also to ‘Cemetery plans’ in [Topic 23. Cemetery records](#_Topic_23._Cemetery)).

## 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 28. Occupational health and safety](#_Topic_28._Occupational)).

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 has arranged a suite of insurance policies with the VMIA for all public cemetery trusts in Victoria.

Victorian Managed Insurance Authority (VMIA)  
Level 10 South, 161 Collins Street  
Melbourne VIC 3000

PO Box 18409  
Collins Street East VIC 8003

Telephone: (03) 9270 6900  
Fax: (03) 9270 6949

[Email](mailto:contact@vmia.vic.gov.au) <contact@vmia.vic.gov.au>  
[Website](http://www.vmia.vic.gov.au) <http://www.vmia.vic.gov.au>

The policies include cover for:

* industrial special risks
* public and products liability
* directors’ and officers’ liability
* professional indemnity
* cyber indemnity
* personal accident (which covers trust members and volunteer workers).

The VMIA offers optional cover to all cemetery trusts for motor vehicle insurance, business travel insurance and construction all risk insurance. The Department of Health does not fund the premiums for these optional products.[[35]](#footnote-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 trusts’ client relationship manager, account manager, insurance advisor or risk management advisor on (03) 9270 6900.

For more information go to the [cemetery trusts policies page](https://www.vmia.vic.gov.au/insurance/policies-and-cover/cemetery-trusts) <https://www.vmia.vic.gov.au/insurance/policies-and-cover/cemetery-trusts> on the VMIA website.

**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. 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 11. Grants](#_Topic_11._Grants) **for information.)**

## Immunity from personal liability

All trust members are provided with personal liability protection in line with s. 16 of the Cemeteries Act. This section of the Act provides that a member of a cemetery trust is not personally liable for an act or omission done in good faith while the trust member is, or reasonably believes they are, exercising a power or function under the Cemeteries Act or the Cemeteries Regulations. Liability for such acts of omission rests with the cemetery trust.

For example, a cemetery trust member would be acting in good faith if they made reasonable efforts to inform themselves of the legal requirements that apply to a cemetery trust and to trust members and complied with those requirements.

However, the OHS Act places obligations on a cemetery trust in its capacity as an employer. For instance, a cemetery trust has an obligation to provide and maintain a safe working environment for employees. It must also take reasonable steps to ensure people (other than employees) who are visiting or working in the cemetery are not exposed to health and safety risks, and it must notify the Victorian WorkCover Authority about any incidents. A cemetery trust may be liable for a criminal offence if it fails to carry out these obligations. Trust members could also be liable in circumstances where they failed to take reasonable care.

Under the *Workplace Injury and Rehabilitation Act 2013*, a trust member may be criminally liable in respect of an employee’s return to work, hindering or obstructing an inspector and knowingly making a false or misleading statement in connection with a dispute referred for conciliation.

That said, a cemetery trust member will be protected to the maximum extent possible if, when carrying out their functions and exercising their powers, they act in good faith, exercise reasonable care in carrying out obligations under the OHS Act and act with due diligence in carrying out obligations under the Workplace Injury and RehabilitationAct.

# Topic 26. Financial management

## Accounting and financial reporting

Cemetery trusts are responsible for the stewardship and proper accounting of their income and expenditure, assets and liabilities.

The department has developed the [*Financial guidelines for Class B cemetery trusts*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance> to help trust members understand their financial responsibilities and to implement appropriate financial controls relevant to their trust. These guidelines can be implemented in a way that is relevant to the size and scale of the operations of the trust.

The financial year for trusts ends on 30 June. The Cemeteries Act requires that a cemetery trust must keep proper accounts and records of its financial affairs (s. 49 of the Cemeteries Act) and that a financial report (known as the abstract of accounts) on cemetery operations and accounts must be lodged with the department by 1 September each year. The abstract must be accompanied by copies of bank and/or investment statements for that financial year.

All trusts must verify the information contained in the abstract by signing the statutory declaration on the last page of the abstract form.

## Review or audit of the abstract of accounts

Trusts with income or expenditure[[36]](#footnote-36) of between $250,000 and $1 million must also ensure their abstract:

* is prepared in line with the Australian Accounting Standards
* has a ‘review statement’ prepared in line with the Australian Auditing Standards on Review Engagement by a professionally recognised accountant (who is a member of the Institute of Chartered Accountants of Australia, or of CPA Australia, or of the National Institute of Accountants).

Trusts with earnings or expenditure above $1 million must ensure their abstract:

* is prepared in line with the Australian Accounting Standards
* has an ‘audit report’ prepared in line with the Australian Auditing Standards by a registered auditor or professionally recognised accountant (a member of the Institute of Chartered Accountants of Australia, or of CPA Australia, or of the National Institute of Accountants).

### Council-managed trusts

Section 57 of the Cemeteries Act requires that a municipal council responsible for managing a public cemetery must submit a report in respect of the exercise of its powers and functions under the Cemeteries Act to the departmental Secretary each financial year.

The report (being the abstract of accounts) must be in a form and contain the particulars required by the Secretary including:

* any accounts and records kept under the *Local Government Act 1989*, to the extent they relate to the exercise of any powers and functions under the Cemeteries Act
* any audit of these accounts
* reports to the operation of the public cemetery and crematoria for which the municipal council is responsible.

## Australian Business Number (ABN)

Cemetery trusts are required to have an ABN in order to receive a grant from the department.

The Australian Tax Office (ATO) is responsible for providing ABNs. The ATO maintains a website where business entities, which includes cemetery trusts, can register to receive an ABN. The site is known as [ABN Lookup](https://abr.business.gov.au) <https://abr.business.gov.au>. Trusts can also check if they have an existing ABN on this website. Trusts can also contact the ATO by telephoning 13 92 96 for help with registration.

Trusts should advise the ATO that they are a ‘not-for-profit’ incorporated entity type of trust, similar to a committee of management and not a financial/investment corporate trust entity. This is to ensure the trust receives the appropriate information from the ATO about the registration process.

Registration requires that a trust member, as the nominated representative of the entity applying for an ABN, provides basic contact details. When completing the registration process online, cemetery trusts should select the following:

* For ‘organisation type’, select ‘other incorporated entity’. When prompted, select ‘an incorporated association’.
* For ‘nature of your activity’, select ‘in the form of a business’.
* For the ‘income tax exempt’ category, select ‘yes’.
* For ‘not-for-profit organisation’, select, ‘yes’.
* If more information about the nature of the business activity is required, this can be stated as ‘cemetery operations’.

## Preparing an annual budget

It is recommended that cemetery trusts prepare their own budget statement for the coming financial year and discuss this at a trust budget meeting held in April or May. This budget should detail:

* proposed expenditure on maintenance and development works
* anticipated revenue from the trust’s fees and charges, based on the anticipated number of burials/cremations
* GST collected on anticipated sales, less credit for GST on the anticipated purchases, assuming the trust is registered for GST and has an ABN
* funds and investments on hand, in both the general account and perpetual maintenance account.

Once a budget has been agreed, a trust would be in a position to determine whether its current fees and charges are appropriate to meet its forward expenditure. It is recommended that fees and charges be set to reflect the actual cost of operating a cemetery, including funds to meet the trust’s perpetual maintenance obligations under the Cemeteries Act.

## Commissions and in-kind benefits

It is not permitted for any third party to be paid a commission or receive an in-kind benefit (tips, rewards or discounts) from the trust for selling rights of interment, plaques, cremation memorials or any other items on its behalf. Under the Cemeteries Act, only a trust or its delegate is authorised to grant a right of interment.

## Funds received

At times a cemetery trust will need to expend a portion of the funds received from the sale of products and services on the general operations of the cemetery. However, a trust also needs to ensure a portion of its earnings is set aside for the perpetual maintenance of the cemetery.

When setting new fees and charges for areas within a cemetery that has been recently developed (for example, a new lawn area), a trust is to ensure it sets the fees at a level that enables it to recoup its original investment, in addition to sufficient returns, to meet 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.

The department has developed the [*Fee justification model user guide*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/class-b-cemetery-trusts-finance> and the [*Cemetery land development costing model user guide*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/land-development-costings) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/land-development-costings> to assist in this process.

Pre-paid revenue should be invested and only used when the trust provides the actual product or service to the purchaser.

## Perpetual maintenance fund

When preparing its annual budget and reviewing its scale of fees, the trust must determine how much is needed to be set aside from its future earnings for its perpetual maintenance fund. Between 15 and 20 per cent of total revenue is a reasonable benchmark.

The accumulated perpetual maintenance funds, including interest, is to 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 and tender procedures

All cemetery trusts are subject to a purchasing process as set out in the Victorian Government Purchasing Board (VGPB) procurement policies. Information and guidelines can be located on the Victorian government’s [‘Buying for Victoria’ website](http://www.procurement.vic.gov.au/Buyers/Policies-Guides-and-Tools) <http://www.procurement.vic.gov.au/Buyers/Policies-Guides-and-Tools>.

The following information provides guidance for the usual process a trust is required to follow when purchasing goods and service:

* When purchasing goods and services less than $25,000, get a minimum of one written quote.
* When purchasing goods and services valued between $25,000 and $50,000, get two written quotes.
* When purchasing goods and services valued between $50,000 and $500,000, invite three potential tenderers to submit to a limited tender.
* For purchases over $500,000 an open tender is required.

To assist trusts, the department has developed templates for purchasing and tendering and contractor engagement. [Policy templates](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/policy-templates) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/policy-templates> are available on the department’s website.

**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 expressing interest in submitting a response to the tender to ensure quotations will be comparable.

More information and guidelines on appropriate [Governance – goods and services policies](https://www.buyingfor.vic.gov.au/governance-goods-and-services-policy) <https://www.buyingfor.vic.gov.au/governance-goods-and-services-policy> are available on the VGPB website or by contacting VGPB directly:

Level 4, 1 Macarthur Street

Melbourne VIC 3000

Telephone: (03) 7005 9138

[Email](mailto:vgpb@dtf.vic.gov.au) <vgpb@dtf.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 an application to its local water authority for the $260 per annum rebate offered by the state government for each assessment.

## Fundraising

Cemetery trusts can undertake fundraising activities, other than lotteries, raffles and bingos, without registering with Consumer Affairs Victoria if they:

* receive less than $20,000 gross in a financial year from fundraising
* are not paid for conducting the fundraising
* use only unpaid volunteers.

If they have raised or expect to raise more than $20,000 in a financial year, they will need to register with Consumer Affairs Victoria as a fundraiser operating in Victoria. Registration requires completing an online form and a criminal record and personal insolvency declaration.

Further information about fundraising activities and the registration process is available on the [Consumer Affairs Victoria website](https://www.consumer.vic.gov.au/clubs-and-fundraising/fundraisers/registration) <https://www.consumer.vic.gov.au/clubs-and-fundraising/fundraisers>.

For more information, contact Consumer Affairs Victoria directly:

Consumer Affairs Victoria  
GPO Box 123  
Melbourne VIC 3001

Telephone: 1300 558 181

## Borrowing funds

Section 46 of the Cemeteries Act enables a cemetery trust to borrow money to carry out its functions, for example, to finance a cemetery development project. A trust cannot borrow money without first receiving approval from the Treasurer to do so and must comply with any conditions imposed by the Treasurer.

A trust will need to be able to put forward a robust and detailed business case to support its application for a loan.

**Note:** For the purposes of the Cemeteries Act, a lease does not constitute a loan – for example, a novated car lease or leasing of equipment such as a photocopier.

## Tax

The matters summarised below are complex and so we recommend getting advice from a person professionally qualified in this subject or from the ATO or State Revenue Office (SRO):

Australian Taxation Office

PO Box 9990

Melbourne VIC 3000

Telephone: 13 28 66

[Website](https://www.ato.gov.au/) <https://www.ato.gov.au/>

State Revenue Office

GPO Box 1641

Melbourne

Telephone: 13 21 61

[Website](hhtps://www.sro.vic.gov.au) <https://www.sro.vic.gov.au>

## Goods and services tax (GST) and business activity statements (BAS)

Cemetery trusts with annual turnover of more than $150,000 must register for GST with the ATO.

Trusts earning below $150,00 can register for GST. Get further advice from a financial services professional when considering registration.

Direct enquiries about GST or BAS recoup matters to the ATO or a financial services professional.

## 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 *A New Tax System (Goods and Services Tax) Act 1999*.

The following is an extract from A New Tax System (Goods and Services Tax), (Exempt Taxes, Fees and Charges) Determination 2011 (No. 1), Volume 4, Part 3, Items 10.10–10,13 for cemeteries and crematoria.

| Item | Australian tax, fee  or charge | Australian law | Notes |
| --- | --- | --- | --- |
| 10.10 | Issue a right of interment | Cemeteries and Crematoria Act 2003 | Rights of places of interment for graves, memorials and mausolea |
| 10.11 | Memorialisation permits and approvals | Cemeteries and Crematoria Act 2003 | Fees relating to memorialisation permits and approvals |
| 10.12 | Permits | Cemeteries and Crematoria Act 2003 | Fees relating to memorial permits and other permits |
| 10.13 | Miscellaneous fees and charges | Cemeteries and Crematoria Act 2003 | Search fee and other regulatory fees that don’t apply to the above categories |

As a consequence of these exemptions, cemetery trusts cannot 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 ss. 50–25 of the Income Tax Assessment Act 1997.

## Fringe benefits tax

Fringe benefits tax 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 a non-compulsory uniform to its employees, pay attention to the ATO requirement that the uniform and logo must be approved and registered. Otherwise, fringe benefits tax 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 to be ‘rebateable employers’ (charities) for the purposes of the fringe benefits tax legislation.

Contact the ATO for more information about fringe benefits tax.

## 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 more information, contact the SRO.

## Charitable tax status

On 1 January 2014 the Commonwealth Government updated the *Charities Act 2013*. The changes excluded state government–appointed not-for-profit entities (such as cemetery trusts) from receiving charitable tax status.

Trusts requiring more advice on the changes can contact the Australian Charities and Not-for-Profits Commission:

GPO Box 5108  
Melbourne VIC 3001

Telephone: 13 22 62 (8:00 am to 8:00 pm, Monday to Friday)  
Fax: 1300 232 569  
[Emai](mailto:communications@acnc.gov.au)l <communications@acnc.gov.au>  
[Website](https://www.acnc.gov.au/) <https://www.acnc.gov.au/>

# Topic 27. Conditions of work

A cemetery trust must ensure 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
* an applicable modern award
* an enterprise agreement
* a common law contract of employment.

All cemetery trusts must act in line with the principles set out in the [*Public sector industrial relations policies 2015*](https://www.vic.gov.au/public-sector-industrial-relations-policies-2015/industrial-action) <https://www.vic.gov.au/public-sector-industrial-relations-policies-2015/industrial-action>.

This is in addition to laws prescribed in Victorian legislation about OHS, superannuation, WorkCover, bullying, discrimination and long service leave.

Cemetery trusts should familiarise themselves with the [[information on the Fair Work Ombudsman’s](https://www.fairwork.gov.au/) website](https://www.fairwork.gov.au/) <https://www.fairwork.gov.au>. Any questions about these matters should be directed to the office of the Fair Work Ombudsman:

GPO Box 9887  
Melbourne VIC 3001

Telephone: 13 13 94  
Fax: 1800 618 366  
[Website](https://www.fairwork.gov.au/) <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 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 that are protected under the Charter, comply with the Charter and take human rights into account in their day-to-day operations.[[37]](#footnote-37)

# Topic 28. Occupational health and safety

The *Occupational Health and Safety Act 2004* (the OHS Act) is the main workplace health and safety law in Victoria. It sets out key principles, duties and rights about OHS. The OHS Act seeks to protect the health, safety and welfare of employees and other people at work. It also aims to ensure the health and safety of the public is not put at risk by work activities.

The Occupational Health and Safety Regulations 2017 (the OHS Regulations) build on the OHS Act. They set out how to fulfil duties and obligations, and particular processes that support the OHS Act.

There are other Victorian laws and regulations that cover particular areas of health and safety. A full list of relevant Acts, Regulations and Statutory Rules is available on the [WorkSafe Victoria website](https://www.worksafe.vic.gov.au) <https://www.worksafe.vic.gov.au>.

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.

## Principles

Key health and safety principles that underpin the OHS 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 is 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.

## Responsibilities

Employers, so far as is reasonably practicable, must provide and maintain a working environment that is safe and does not pose health risks to themselves and others.

In determining what is reasonably practicable, cemetery 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 should be known, about the risk and how to eliminate it (people responsible for health and safety must inform themselves of current and relevant information)
* the availability, suitability and cost of eliminating or reducing the risk.

Cemetery trusts are responsible for ensuring all work in their cemeteries is performed in a healthy and safe way. This responsibility includes work in the cemetery undertaken by:

* employees of the trust
* contractors, including their staff and subcontractors, engaged 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 no one undertakes work in the cemetery 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:

* induction and training sessions for new employees of the trust
* requiring documentation of safety inspections/testing reports for equipment/items to be reviewed by the trust’s delegate
* requiring the proposed operator of equipment/items to show the trust’s delegate documentation verifying their training and competency to operate the equipment/item
* issuing the trust’s delegate with directions as to how members of the public are to be alerted to, but kept isolated from, safety hazards associated with the proposed work.

## Duties

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

OHS 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.

Cemetery trust duties include, so far as is reasonably practicable:

* providing and maintaining safe plant and safe systems of work
* ensuring safe use, handling, storage and transport of plant and substances
* maintaining the workplace in a safe condition (for example, ensuring graves are covered or secured when not in use)
* providing necessary information, instruction, training and/or supervision so employees and contractors can work safely.

Specific duties in the OHS Regulations relevant to cemetery trusts include:

* prevention of falls (Part 3.3)
* plant (Part 3.5)
* confined spaces (Part 3.4)
* hazardous manual handling (Part 3.1).

## Workplace hazards in cemeteries

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 and vegetation that might drop limbs.

Open graves are a key cemetery hazard. Risks associated with graves include:

* grave collapse
* falls from height
* employees, contractors and others falling into excavated graves, risking injury or death
* loads falling while being lifted or suspended.

More information about safety in and around graves is available on the [WorkSafe Victoria website](https://www.worksafe.vic.gov.au/safety-in-and-around-graves) <https://www.worksafe.vic.gov.au/safety-in-and-around-graves>.

The safety of mourners attending an open grave for an interment is addressed under ‘Trust delegate’s responsibilities’ in [Topic 12. Interments](#_Topic_12._Interments).

### WorkSafe Victoria resources

The following resources are available on the [WorkSafe Victoria website](https://www.worksafe.vic.gov.au/safety-in-and-around-graves) <www.worksafe.vic.gov.au>:

* OHS Act and OHS Regulations
* safety topics
* asbestos
* bushfires
* confined spaces
* cranes and lifting equipment
* fall prevention
* hazardous manual handling
* hazardous substances
* plant
* slips, trips and falls
* sun protection
* compliance codes
* confined spaces
* excavation
* first aid in the workplace
* hazardous manual handling
* hazardous substances
* plant
* removing asbestos in workplaces
* workplace amenities and work environment
* safety in and around graves
* plant hazard checklist.

## Additional resources

* Safety data sheets (SDSs)
* SDSs are issued by the manufacturer or importer of hazardous substances or dangerous goods and provide health and safety information about products, substances or chemicals. Employers using or storing hazardous substances or dangerous goods on their premises should ensure they obtain an up-to-date SDS for each of these products and that employees, contractors and emergency services personnel have access to the SDSs.
* Adhere to manufacturer/operator manuals for plant
* Radiation pharmaceuticals safety information
* Bodily remains containing therapeutic amounts of radiopharmaceuticals are rarely encountered because treatment with radiopharmaceuticals is usually only given to patients who are not expected to die shortly after treatment. However, cemetery and crematorium workers, funeral directors, embalmers and coroners may occasionally be required to handle the remains of deceased persons who have recently been treated with a therapeutic radiopharmaceutical. Information about [radiation risks, recommended work practice and current radiation legislation in Victoria](https://www2.health.vic.gov.au/public-health/radiation) <https://www2.health.vic.gov.au/public-health/radiation> is available on the department’s website.

## Accidents and incidents to be reported to WorkSafe

Under the OHS Act, 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.

**To report serious accidents and incidents phone WorkSafe on 13 23 60**

If the situation is still dangerous or high-risk, call emergency services immediately on Triple Zero (000).

You must report incidents resulting in:

* death
* a person needing medical treatment within 48 hours of being exposed to a substance
* a person needing immediate treatment as an inpatient at a hospital
* a person needing immediate medical treatment for one of the following injuries: amputation, serious head injury or serious eye injury, removal of skin, electric shock, spinal injury, loss of a bodily function, serious lacerations.

You must report incidents involving:

* registered or licensed plant collapsing, overturning, falling or malfunctioning
* collapse or failure of an excavation, or shoring supporting an excavation
* collapse of a building structure (or partial collapse)
* implosion, explosion or fire
* escape, spillage or leakage of any substance
* plant or objects falling from high places.

Notify WorkSafe Victoria immediately by calling 13 23 60. WorkSafe will email a link to an online incident notification form and the incident must be reported in writing 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 OHS visit the [WorkSafe Victoria website](http://www.worksafe.vic.gov.au) <http://www.worksafe.vic.gov.au>, [email WorkSafe](mailto:info@worksafe.vic.gov.au) <info@worksafe.vic.gov.au> or phone 1800 136 089.

# Topic 29. Acquiring land and development

## Purchasing or acquiring land

Section 30(1) of the Cemeteries 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.

As a Victorian government agency, cemetery trusts must act in line with the[*Victorian Government Landholding Policy and Guidelines*](https://www.land.vic.gov.au/government-land/resources-and-tools/government-land-management-policies) and the[*Victorian Government Land Transactions Policy and Guidelines*](https://www.land.vic.gov.au/government-land/resources-and-tools/government-land-management-policies) <https://www.land.vic.gov.au/government-land/resources-and-tools/government-land-management-policies> when acquiring land.

Land planning for cemeteries is also influenced by other legislative and policy frameworks including native title and traditional owner law, state and local government land use and planning policies, native vegetation regulation and heritage law.

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

A formal letter of application is required from the chairperson of the cemetery trust, seeking the minister’s approval, to be addressed to the Manager of the Cemetery Sector Governance Support Unit (the unit). The letter must include a detailed business case supporting the acquisition and a valid valuation from the Valuer-General. Requests for valuations can be submitted directly to the unit via [email](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>. The trust will be invoiced for the valuation.

Once land has been acquired, it will need to be included in an existing cemetery or established as a new cemetery under the Cemeteries Act before it can be used as a cemetery. It is also necessary for the trust to obtain appropriate zoning for use as a cemetery from the relevant council, normally Public Use – Cemeteries and Crematoria (PUZ5).

The [*Property acquisition checklist*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/land-acquisition) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/land-acquisition> is a detailed guide to cemetery land acquisition processes in compliance with Victorian government policies, including guidance for writing a business case and obtaining a valuation and is available on the department’s website.

## Cemetery land development – guidelines

From time to time trusts need to develop new areas of their cemeteries in response to market demand.

Before starting a new development, the trust should confirm there is enough demand for the new area to recover the cost of the project within a reasonable time. For large projects or projects that will use a significant proportion of the trust’s funds, it is strongly recommended that trusts engage an independent actuary to assess the project’s financial viability.

To identify project costs, the trust can use the Cemetery land development costing model user guideand the Microsoft Excel spreadsheet ‘Cemetery land development costing model’available on the [department’s website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/land-development-costings) *<*https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/finance/land-development-costings>. The costing model can also assist trusts in pricing rights of interment for any new development, or to evaluate the current pricing of existing areas to ensure their products are priced appropriately.

Trusts should be aware of mandatory compliance requirements for public construction procurement. [Visit the department’s website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-b-public-construction-procurement> for more information.

Some development works will require planning and/or building permits. Trusts should obtain advice from their local council to ascertain any specific requirements.

Information about the development of mausolea is located in [Topic 18 ‘Mausolea](#_Topic_18._Mausolea)’.

More information

Contact the unit for more information:

Telephone: 1800 034 280

[Email](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>

Cemetery Sector Governance Support Unit

Department of Health

PO Box 4057

Melbourne VIC 3001

# Topic 30. Leasing and licensing of cemetery land

## Approval process

Under s. 37(1) of the Cemeteries Act, a cemetery trust may grant **a lease** of any land in a public cemetery for which it is responsible. The Minister for Health must approve the purpose of the lease and its terms and conditions.

Under s. 36(1) of the Cemeteries Act a cemetery trust may grant **a licence to enter and use** any part of the land and buildings in a public cemetery for which it is responsible. This must also have the minister’s approval.

The minister must approve the purpose of a lease or licence to ensure cemetery land is not used in a way that may be detrimental to the purposes for which the land is reserved (cemetery purposes).

The Cemeteries 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 unit 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 (before entering into an agreement)
* a valid valuation from the Valuer-General Victoria (for a lease)
* details of a market rate assessment for rental rate if conducted for a licence (for example, a tender has been undertaken for a catering licence)
* any other relevant information.

Trusts should allow enough time for the approval process, which may take three months or longer.

## Precedent lease and licence

Cemetery trusts must use the [precedent lease or precedent licence document](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/leasing-and-licencing-cemetery-land) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/leasing-and-licencing-cemetery-land> if they are considering granting a lease or licence for general purposes such as grazing, agistment, operation of a temporary flower stall, or permitting transport access.

The [*Precedent lease specific to installing a telecommunications tower*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/leasing-and-licencing-cemetery-land) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/land-and-development/leasing-and-licencing-cemetery-land> is for trusts considering granting a lease to install, alter or continue using a telecommunications tower.

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).

## Rental rates

Victorian Government policy requires that a grant of a lease must be at the current market value assessed by the Valuer-General Victoria.

In exceptional circumstances, the Minister for Health may approve a rental rate below market value (a non-commercial lease). When considering whether to approve a non-commercial lease, the minister will consider the estimated loss of revenue and the public or community benefits arising from the lease.

Valuations can be arranged via the department. Please email the unit to arrange a valuation.

## Lease or licence?

A lease is appropriate when the tenant requires exclusive use of land and/or premises for the permitted use.

Under a licence, the licensee does not have the right to exclusive use of land and/or premises and may have to share occupation with the licensor and third parties or may only be able to use the licensed area at certain times.

More information

For more information please contact the unit:

Telephone: 1800 034 280

[Email](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>

# Appendix: Transcripts of flow charts in this manual

Process for interring bodily remains (in Topic 12)

1. If there is no right of interment for interring bodily remains for the deceased

Cemetery trust to issue a right of interment in exchange for payment of the relevant cemetery trust fee. [Sections 73–76 Act, section 113 Act]

*Note that a right of interment to inter bodily remains may only be granted in perpetuity. The right of interment to inter cremated remains only must be offered in perpetuity and at the trust’s discretion can also be offered for 25 years.*

2. Application for interment authorisation

The funeral director (on behalf of the applicant) or the applicant fills out the *Application for interment authorisation* form. [r. 16, s. 116 of the Act]

The funeral director or applicant must submit this form to the cemetery trust together with a copy of the notice required under s. 37(2) of the *Births, Deaths and Marriages Registration Act 1996* (death certificate or other relevant documentation) or any other document specified under s.116(3)(a)–(e) of the *Cemeteries and Crematoria Act 2003*.

3. Consideration of application for interment authorisation

Cemetery trust receives the application and checks the following [s. 118 of the Act, r. 24]:

* that the person making the application has the appropriate authority to do so
* that all requisite documents have been provided
* whether the right of interment is exercised or unexercised
* if the right of interment has been previously exercised, that the place of interment is deep enough to accommodate a subsequent interment in accordance with the minimum depth of burial requirements.

4. Approval of application for interment authorisation

If the cemetery trust is satisfied with the application, it must grant an interment authorisation. An authorisation may be granted on any terms and conditions the trust considers appropriate. [s. 115, 118 and 119 of the Act]

*Note that approval should be in writing. It is an offence to inter bodily remains without an interment authorisation and is punishable by a maximum penalty of 600 penalty units or five years’ imprisonment, or both.*

5. Arrange a time for the interment

The funeral director (or in cases where an individual arranges a funeral) should liaise with the cemetery trust to arrange a suitable time for interment and, where applicable, a funeral. [rr. 35–37 and 47–49]

*Note that any person responsible for conducting a funeral must comply with any directions issued by the cemetery trust and may not initiate unsolicited contact with another person for the purpose of commercial activities.*

6. Interment

The interment takes place. [rr. 23–25 and 47–49]

*Note that the cemetery trust must ensure compliance with requirements in relation to enclosing bodily remains, depth of burial, interment in concrete-lined graves and interment in mausolea.*

7. Record keeping

The cemetery trust must fulfil prescribed record-keeping requirements relating to rights of interment, interments and places of interment. [s. 59 of the Act, rr. 6, 9, 12–15]

Process for cremating bodily remains (in Topic 13)

1. Application for cremation authorisation

The funeral director (on behalf of the applicant) or the applicant fills out the following forms to make an application for cremation authorisation to a cemetery trust [ss. 131 and 138 of the Act, rr. 18 and 19]:

* Form 3 – Application for cremation authorisation
* Form 4 – Certificate of registered medical practitioner authorising cremation (note that the funeral director or applicant will need to arrange for a registered medical practitioner who is not the medical practitioner that signed the death certificate to complete this form)
* a notice as required under s. 37(2) of the *Births, Deaths and Marriages Registration Act 1996* (death certificate or other relevant documentation) or any other document specified under s. 131(3)(a)–(e) of the *Cemeteries and Crematoria Act 2003*.

2. Consideration and approval of application

The cemetery trust must check that the person making the application has the appropriate authority to do so. If the cemetery trust is satisfied with the application, it must grant the cremation authorisation. A cremation authorisation should be in writing. An approval cannot be granted if s. 137 of the Cemeteries and Crematoria Act applies. [s. 133 of the Act]

3. Arrange a time for the interment

The funeral director (or in cases where an individual arranges a funeral, that individual) liaises with the cemetery trust to arrange a suitable time for the funeral service (if any). [rr. 35, 36 and 37]

*Note that any person responsible for conducting a funeral must comply with any directions issued by the cemetery trust and must not initiate unsolicited contact with another person for the purpose of commercial activity.*

4. Cremation

The remains submitted for cremation must be suitably enclosed in a coffin, container or receptacle that complies with requirements in r. 16. A trust may inspect a coffin and its contents to ensure neither will impede on the cremation’s process or cause damage to the cremator. The cremation then takes place. [rr. 26–29, s. 130 of the Act]

*Note that it is an offence to cremate or assist in the cremation of bodily remains without a cremation authorisation. This offence is punishable by a maximum penalty of 600 penalty units or five years’ imprisonment, or both.*

5. What happens to the cremated remains following cremation?

The cemetery trust must make cremated remains available for collection within two working days of the cremation. Cremated remains may only be released to the applicant, the applicant’s agent or in certain circumstances the nearest surviving relative. Cemetery trusts should also update their records in relation to cremations as detailed in r. 5. [rr. 10, 30 and 31]

Option 1: Cremated remains to be held for collection

If the cremated remains are not collected, the trust must hold them for at least 12 months (r. 21).

If the remains are not collected within 12 months the trust may dispose of the remains provided that at least three months prior to the expiry of the 12 months they take reasonable steps to notify the applicant of their intention to dispose of the remains (r. 21).

Option 2: Cremated remains to be interred

If there is no right of interment for interring the deceased’s cremated remains:

* Applicant to make application to cemetery trust for the right to inter cremated remains.
* Cemetery trust to issue a right of interment. Note that a right of interment to inter cremated remains may be granted in perpetuity or for a period not exceeding 25 years (s. 73, 74 and 128 Act).
* Applicant to apply to the cemetery trust for authority to inter cremated remains. (ss. 77(3) and 141).
* Cemetery trust to update its records in relation to the interment of cremated remains, places of interment and rights of interment as detailed in r. 5.

Comparison of exhumation and lift and reposition procedures (in Topic 14)

Why are the remains to be removed from the place of interment?

#### Reason 1: Exhumation

1. To remove the bodily remains for relocation to a different place of interment or for cremation. [Part 12 of the Act]

2. Person makes an application to the Secretary of the department for an exhumation licence to exhume or remove human remains from a place of interment. [ss. 156 to 158A of the Act, r. 22]

Note that an application must be:

* in the prescribed form as detailed in Schedule 5 of the Regulations
* include a statement by the cemetery trust detailing whether it has any objections to the exhumation application
* lodged at least seven days before the proposed exhumation.

3. Secretary of the department considers the application.

4. The Secretary may grant or refuse to grant an exhumation licence. [ss. 157 and 159 of the Act]

*Note that an exhumation licence may be granted subject to such terms and conditions as the Secretary sees fit. Failure to comply with the terms and conditions of an exhumation licence is an offence punishable by a maximum penalty of 240 penalty units or two years’ imprisonment, or both.*

5. The exhumation takes place. [s. 155 of the Act]

*Note that it is an offence to exhume or remove human remains from a place of interment other than with an exhumation licence or for an approved lift and reposition procedure. This offence is punishable by a maximum penalty of 600 penalty units or five years’ imprisonment, or both.*

#### Reason 2: Lift and reposition

1. To allow the place of interment to be reused where there is insufficient space to accommodate any further interments. [Part 6, Div 4 of the Act]

2. The holder of the right of interment or monumental agent/representative makes an application to the cemetery trust for approval to carry out a lift and reposition procedure. [s. 88 of the Act]

*Note that an application must be in writing and accompanied by the relevant cemetery trust fee.*

3. The cemetery trust considers the application. A trust should not approve an application if it considers it would be inappropriate for any of the following reasons:

* the nature of the soil would prevent or hinder the process
* it would be impractical because the place of interment can’t be sufficiently deepened
* the physical state of the human remains
* in the case of a mausoleum, the chamber is not able to accommodate additional human remains
* religious, cultural, health or safety considerations. [s. 89 of the Act]

*Note a trust must not approve an application if it relates to bodily remains that have been interred for less than 10 years.*

4. The cemetery trust grants approval to carry out the lift and reposition procedure. [s. 89(4) of the Act]

*Note that this procedure can only be approved by delegated trust members. Approvals must be   
in writing.*

5. The lift and reposition takes place. [s. 90 of the Act]

*Note that an exhumation licence is not required to carry out this procedure. Details about what may be done as part of the procedure are provided in s. 90 of the Cemeteries Act.*

1. [Information on the guidelines and application forms](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/appointments/class-b-appointments> can be obtained on the department’s website. If you need hard copies, please contact the unit on free call 1800 034 280. [↑](#footnote-ref-1)
2. A direct relationship is defined to be parents, husband, wife or domestic partners (defacto), siblings and children. [↑](#footnote-ref-2)
3. If a cemetery trust sells and supplies memorialisation goods and services, private businesses that are in direct competition are permitted to promote their goods and services in accordance with the [*Cemetery trust code of practice - sale and supply of memorialisation goods and services by cemetery trusts and other suppliers in Victorian public cemeteries*](https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice-relating-to-the-sale-and-supply-of-memorialisation-goods) <https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice-relating-to-the-sale-and-supply-of-memorialisation-goods>. [↑](#footnote-ref-3)
4. Under clause 3(2) schedule 1 of the Cemeteries Act, only the Governor in Council, on recommendation by the Minister for Health, may remove a trust member from office. This will only occur under exceptional circumstances. [↑](#footnote-ref-4)
5. More information about bullying is available in the bullying policy template on the [Institute of Community Directors Australia website](https://communitydirectors.com.au/policies/bullying-policy) <https://communitydirectors.com.au/policies/bullying-policy>. [↑](#footnote-ref-5)
6. If unable to meet in person, the meeting may be conducted remotely via an online platform. [↑](#footnote-ref-6)
7. A trust interested in amalgamating with another trust must complete a due diligence assessment report. 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. To request a copy of a template due diligence report, phone us on 1800 034 280 or [email the unit](mailto:cemeteries@dhhs.vic.gov.au) <cemeteries@health.vic.gov.au>. [↑](#footnote-ref-7)
8. An [indtrument of delegation template](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance#delegating-cemetery-trust-powers) < https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance#delegating-cemetery-trust-powers> is available the department’s website. [↑](#footnote-ref-8)
9. A still-born 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. [↑](#footnote-ref-9)
10. Foetal remains that are not a still-born child are defined as 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. [↑](#footnote-ref-10)
11. Body parts which are not foetal remains are defined as human tissue or a part of a person where that tissue or part is not part of a corpse or foetal remains. [↑](#footnote-ref-11)
12. The [‘Application for cremation authorisation for deceased persons of known identity’](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation-authorisation) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation-authorisation> is available on the department’s website. [↑](#footnote-ref-12)
13. The [‘Certificate of registered medical practitioner authorising cremation’](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation-authorisation) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/cremation-authorisation> is available on the department’s website. [↑](#footnote-ref-13)
14. A still-born 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. [↑](#footnote-ref-14)
15. ‘Partnership’ refers to a legal relationship of persons carrying on a business with a view to profit. Partners are jointly and severally liable for the debts incurred in connection with the partnership. It does not include, for example, two doctors who work in a hospital and share the same employer. [↑](#footnote-ref-15)
16. Bodily remains of unknown name may have an identifier in some circumstances, for example a cadaver imported as part of an overseas voluntary body donor program for the purposes of surgical teaching that is identified by a reference number with no personal details. [↑](#footnote-ref-16)
17. The [*Application for cremation authorisation of bodily remains of unknown name or with an identifier*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/remains-of-unknown-identity) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/remains-of-unknown-identity> is available on the department’s website. [↑](#footnote-ref-17)
18. Foetal remains that are not a still-born child are defined as 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. [↑](#footnote-ref-18)
19. Body parts which are not foetal remains are defined as human tissue or a part of a person where that tissue or part is not part of a corpse or foetal remains. [↑](#footnote-ref-19)
20. The [*Application for cremation authorisation of body parts of unknown name with an identifier*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/remains-of-unknown-identity) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/cremations/remains-of-unknown-identity> is available on the department’s website. [↑](#footnote-ref-20)
21. Refer to s. 5 of the Coroners Act for a definition of reviewable death. [↑](#footnote-ref-21)
22. Available on the [Department of Home Affairs website](https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/cybercrime-identity-security/identity-security) <https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/cybercrime-identity-security/identity-security>. [↑](#footnote-ref-22)
23. If in doubt as to the meaning of a court order, trusts should seek legal advice. [↑](#footnote-ref-23)
24. ‘Family member’ in relation to a deceased identified veteran is defined in s. 4 of the Cemeteries Act. [↑](#footnote-ref-24)
25. The trust must provide written approval before the removal. [↑](#footnote-ref-25)
26. The trust must comply with ss. 88–90 of the Cemeteries Act. [↑](#footnote-ref-26)
27. Where a representative (such as a funeral director) acts on behalf of the holder of the right of interment, written authorisation from the holder of the right of interment must accompany the application. [↑](#footnote-ref-27)
28. The department will continue to work with the sector to identify key cost drivers associated with perpetual maintenance. [↑](#footnote-ref-28)
29. The interest rate for such projects should be calculated at a risk-adjusted rate for the period the funds were used. [↑](#footnote-ref-29)
30. Such projects must be evaluated in line with financial risk management principles. [↑](#footnote-ref-30)
31. The department has developed a tool that trusts can use to assess the financial viability of any projects. [↑](#footnote-ref-31)
32. A trust needs to seek approval from the Secretary of the Department of Health to construct public mausolea. [↑](#footnote-ref-32)
33. 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. [↑](#footnote-ref-33)
34. If a person can demonstrate they have a legitimate claim on the unused place of interment, the cemetery trust should also ensure it updates its records to reflect this person’s rights in relation to the exercised place of interment. [↑](#footnote-ref-34)
35. The [terms and conditions of the policies and insurance manual](http://www.vmia.vic.gov.au) <https://www.[vmia.vic.gov.au>](http://www.vmia.vic.gov.au) are available on the VMIA website. [↑](#footnote-ref-35)
36. Excludes funds in the bank, funds in investment accounts and grants. [↑](#footnote-ref-36)
37. For more information visit the [Victorian Equal Opportunity and Human Rights Commission website](https://www.humanrights.vic.gov.au/) <https://www.humanrights.vic.gov.au/>. [↑](#footnote-ref-37)