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| Manual for Victorian Class A  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

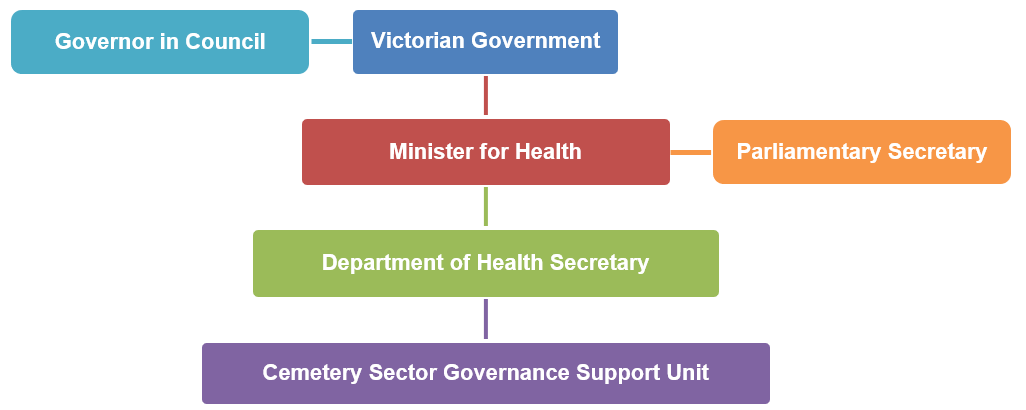
The role of government in the Victorian cemetery sector is to administer the Cemeteries Act and Cemeteries Regulations. This includes establishing and maintaining proper accountabilities and controls for overseeing cemetery trusts to ensure they fulfil their legislative obligations.

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

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

## The cemetery trust board

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

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

Cemetery 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 in line with its obligations under legislation and in line with government policy directions
* 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 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 Public Sector Standards Commissioner (VPSC).

If a bank or other financial institution has any further queries specifically relating to establishing your entity, it can contact the Cemetery Sector Governance Support Unit on freecall 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 materials to assist boards to better understand and apply good governance practices and principles. For further information on principles relating to good governance refer to the [VPSC website](https://vpsc.vic.gov.au/governance/) <https://vpsc.vic.gov.au/governance/>.

## Annual report

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

## Functions and powers of cemetery trusts

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

* properly and efficiently manage and maintain each public cemetery for which the trust is responsible
* develop annual and strategic plans for the operation of the trust and monitor compliance with those plans[[1]](#footnote-1)
* develop annual business plans, strategies and budgets to ensure the efficient and accountable provision of services and the long-term viability of the cemetery trust
* establish and maintain effective systems to ensure the services provided by the cemetery trust meet the needs of the communities it serves and that the views of those communities are taken into account
* oversee the organisational structure of the cemetery trust
* employ a chief executive officer (CEO) to effectively operate and manage the cemetery trust and each public cemetery for which the trust is responsible
* monitor the performance of the CEO
* ensure there are systems in place to enable effective and accountable risk management,   
  financial management and records management of the cemetery trust
* provide leadership, assistance and advice (as requested) to Class B cemetery trusts
* establish committees and ensure those committees operate effectively
* ensure the Secretary of the Department of Health is informed as soon as practicable of any significant issues of public concern in relation to the cemetery trust and its services or any significant risks that may affect the cemetery trust and its services
* develop a code of conduct for members of the cemetery trust and for staff of the trust
* ensure members of the cemetery trust receive adequate training in order to meet their obligations as trust members
* carry out any other function that may be required by legislation.

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

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

Section 13 of the Cemeteries Act provides for the cemetery 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 also gives a cemetery trust a number of powers. It is important that the decisions made and the actions, including the expenditure of trust funds, can be justified as bona fide and legitimate.

## The common seal of the trust

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

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

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

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

### Types of assistance

The types of assistance and advice that Class A cemetery trusts may be expected to provide under their leadership role include:

* operational and governance matters relating to cemeteries
* record-keeping systems suited to the requirements of cemetery trusts
* standard form documentation suitable for cemetery trust purposes
* 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 cemetery trusts have a leadership role, it is important to note that assistance should only be provided where the Class A cemetery trust feels comfortable with, and capable of, providing the assistance requested.

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

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

### Record keeping for Class A cemetery trusts

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

### 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 a particular Class A cemetery trust. It is not intended that such a list will be created, unless it is deemed to be in the interest of the cemeteries sector and the public to do so. Therefore, Class B cemetery trusts are free to approach any Class A cemetery trust they feel is appropriate to request advice and assistance from.

If a list of Class B cemetery trusts is created, it will be published on the department’s website.

# Topic 4. Cemetery trust members

## Cemetery trust member responsibilities

Under s. 6A 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:

* **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.

## Appointment of cemetery trust members

Under s. 6A and schedule 1A of the Cemeteries Act, trust members are appointed by the Governor in Council on the recommendation of the Minister for Health. There must not be fewer than six or more than nine trust members. The appointment of trust members is made according to the [*Appointment and remuneration guidelines*](https://www.vic.gov.au/guidelines-appointment-remuneration) *<*https://www.vic.gov.au/guidelines-appointment-remuneration> issued by the Department of Premier and Cabinet.

### Appointment terms

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

### Appointment process

The appointment process for Class A cemetery trusts is primarily conducted by the Minister in conjunction with the department and (where appropriate) the relevant trust. Candidates are assessed according to a skills-based matrix to ensure the trust collectively has a broad set of skills to assist in performing its functions. The Minister recommends preferred candidates to the Governor in Council for consideration.

## Scheduled appointment rounds

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

Vacancies may occur on a Class A trust for reasons other than the expiry of terms of appointment – for example, the resignation of a trust member. If this occurs and the trust believes it is necessary to fill the vacancy before the next scheduled appointment round, it can write to the department seeking the minister’s approval for an unscheduled appointment round. An unscheduled appointment round will only be conducted under exceptional circumstances such as where the trust has fewer than the minimum six members. Every attempt is made to incorporate these types of appointments into the next scheduled appointment round.

## Remuneration

Under clause 5 of schedule 1A of the Cemeteries Act, Class A trust members are eligible for remuneration. Members of each of the Class A cemetery trusts will receive remuneration in accordance with the [*Appointment and remuneration guidelines*](https://www.vic.gov.au/guidelines-appointment-remuneration)<https://www.vic.gov.au/guidelines-appointment-remuneration>,which set a remuneration scale linked to the size and turnover of the statutory body.

## Resignations

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

The Manager  
Cemetery Sector Governance Support Unit  
Department of Health   
PO Box 4057  
Melbourne VIC 3001

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

## The chairperson

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

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

### Appointment of chairperson

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

## Updating trust member information

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

## Conflict between trust members

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

Where a conflict between trust members cannot be resolved and all reasonable attempts to resolve the conflict have been exhausted, including mediation by a third party such as the Dispute Settlement Centre of Victoria, trust members may raise their concerns with the department’s Cemetery Sector Governance Support Unit. Refer to [Topic 26. Complaints management](#_Topic_26._Complaints) under ‘Referral to the department’.

A cemetery trust does not have the power to remove a trust member.[[2]](#footnote-2) If the trust cannot function because of ongoing conflict, the chairperson should contact the department.

## Conflict of interest and duty to disclose

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

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

In addition, the Public Administration Actrequires that members disclose any pecuniary interests or other interests that could conflict with the proper performance of their duties and details certain procedures to be followed where disclosures occur. However, over time, a person’s circumstances may change, and a person who did not have a conflict of interest three years ago may have one now. For this reason, the department requires each cemetery trust member to submit a [*Declaration of private interest form*](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-appointments) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-appointments> to the trust each year.

## Declaration of private interests

Members of Class A cemetery trusts are required to provide a completed annual [*Declaration of   
private interest form*](https://www.vic.gov.au/guidelines-appointment-remuneration) <https://www.vic.gov.au/guidelines-appointment-remuneration> to the trust. The trust should provide copies of these forms to the department each year for members who have been appointed for more than 12 months.

In accordance with Part 7.22 of the [*Appointment and remuneration guidelines*](https://www.vic.gov.au/guidelines-appointment-remuneration) <https://www.vic.gov.au/guidelines-appointment-remuneration>, if an applicant considered for **appointment** has advised they are employed as an executive officer or equivalent within the public sector, the department is required to seek approval from the Secretary to remunerate candidates **ahead** of seeking Governor in Council approval for the appointment itself.

Part 7.23 of the Appointment and remuneration guidelines states that if an executive officer or equivalent is considered for a board **reappointment**, the department should seek written approval for their remuneration ahead of seeking approval for the reappointment unless:

* written approval from the Secretary was obtained at the time of their initial appointment
* there has not been a material change to their employment since the time that written approval from the Secretary was obtained (such as a change of position or employer).

If a trust is advised by a member during their term of appointment that since their appointment date they have been, and are currently, employed as an executive officer within the public sector, the trust should inform the department immediately.

## Trust members and personal liability

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

## 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 interment for a trust member or former trust member. 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[[3]](#footnote-3)
* 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 department, addressed to the Manager, Cemetery Sector Governance Support Unit, seeking approval from the Minister for Health 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

Under s. 40 of the Cemeteries Act, a cemetery trust must make a formal application to the department Secretary for consent to make or vary its scale of fees.

Under s. 42A of the Cemeteries Act, the Secretary has established the *Guidelines for developing fees and charges for Class A cemetery trusts*. The guidelines outline the public consultation process that trusts are required to undertake when seeking to adjust fees above CPI or introducing new products and services. The guidelines are available on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-fee-setting-and-financial-reporting) at <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-fee-setting-and-financial-reporting>.

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

Once fees have been approved, the department will arrange publication of the approval notice in the gazette and publication of trust’s fee schedule on the department’s website.

# Topic 8. Officers of the cemetery trust

## Chief executive officer

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

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

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

## Other officers of the cemetery trust

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

Any payment to a person employed in an executive role by a trust must comply with the *Public entity executive remuneration policy* as detailed in the [*Victorian public entity executive employment handbook*](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 Victorian Public Sector Commission’s website.

## Delegation of trust power

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

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

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

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

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.

# Topic 9. Trust meetings

## Meetings determined by the chairperson

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

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

## Quorum of trust members

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

Under clause 8(3) of schedule 1A of the Act, a cemetery trust may permit its members to participate in a particular meeting by:

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

A member who participates in a meeting in this way is deemed to be present at the meeting.

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

## Voting and resolution of matters at meetings

When trust members are required to vote at a meeting, the decision is determined by the majority of votes made from members present at the meeting and voting on that decision.

If the voting is equal, the chairperson or the trust member presiding over the meeting, has a casting vote as well as a deliberative vote (clause 8(6) of schedule 1A of the Act).

## Meeting procedure

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

These guidelines should not be confused with the procedure to make rules for managing the cemetery, which are to be submitted to the Governor in Council and published in the *Government Gazette* (ss. 25–27 of the Act).[[4]](#footnote-4)

## Meeting venue

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

## Minutes of meetings

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

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

The minutes of trust meetings are a matter of public record that may need to be produced as evidence of trust decisions. The minutes should be maintained in book format and made available to the department on request. Books no longer required by the trust should be stored in accordance with the directions of the Public Record Office.[[5]](#footnote-5)

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

## Annual meeting

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

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

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

## Notice of annual meeting

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

# Topic 10. Trust committees

## Governance committees

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

Under the *Financial Management Act 1994*, the audit and risk committee must comply with the requirements of audit committees outlined in the [*Standing directions of the Minister for Finance*](https://www.dtf.vic.gov.au/financial-management-government/standing-directions-2018-under-financial-management-act-1994)<https://www.dtf.vic.gov.au/financial-management-government/standing-directions-2018-under-financial-management-act-1994>.

### Functions of governance committees

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

### Membership of governance committees

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

### Procedure of governance committees

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

## Community advisory committees

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

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

### Community advisory committee guidelines

The department Secretary has provided cemetery trusts with guidelines as required under s. 18G. The[*Community advisory committee guidelines for Class A cemetery trusts*](https://www.health.vic.gov.au/publications/community-advisory-committee-guidelines-for-class-a-cemetery-trusts) <https://www.health.vic.gov.au/publications/community-advisory-committee-guidelines-for-class-a-cemetery-trusts> provides a detailed overview of the requirements for cemetery trusts in establishing and operating its community advisory committee. The guidelines cover the composition, roles, functions and procedure of community advisory committees, as well as the appointment of its members. These guidelines are designed to assist cemetery trusts to establish effective community advisory committees that can inform on consumer and community views in relation to providing cemetery trust services.

### Functions of community advisory committees

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

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

### Membership of community advisory committees

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

# Topic 11. Annual and strategic plans

Class A cemetery trusts are required to develop annual and strategic plans and submit them for the department Secretary’s approval.

## Annual and strategic plan guidelines

The department has developed *Annual and strategic plan guidelines in consultation with Class A cemetery trusts.*[[6]](#footnote-6) These guidelines provide an overview of the planning process, planning obligations under the Act and the approval process.

## Annual plan

Under s. 18N of the Cemeteries Act, a Class A cemetery trust must prepare an annual plan for each financial year and submit it to the department on or before 30 September. The Secretary may approve the annual plan or refer it back to the cemetery trust for amendment (s. 18N(4) of the Act). If the Secretary refers an annual plan back to a cemetery trust, the cemetery trust must make the amendments required and deliver the completed annual plan to the Secretary within three months from the cemetery trust’s original submission date (s. 18N(5) of the Act).

## Strategic plan

Under s. 18O of the Act, a Class A cemetery trust must prepare a strategic plan for managing and operating the cemetery trust. The Secretary will direct when a strategic plan is to be submitted for approval. The Secretary may request amendments before approving the strategic plan or may refuse to approve the plan. A cemetery trust must advise the Secretary if it wishes to exercise its functions in a manner inconsistent with its approved strategic plan (s. 18O(4) of the Act).

## Availability to the public

Class A cemetery trusts must ensure that approved annual plans and approved strategic plans are available to members of the public on request (s. 18N(7) and s. 18O(5) of the Act respectively) and may publish approved plans on the cemetery trust’s website.

# Topic 12. Planning controls and conservation

All land within Victoria is covered by local planning schemes. The local planning schemes regulates 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 Environment, Land, Water and Planning (DELWP). The planning scheme will indicate if a planning permit is required 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 regarding public construction procurement. Further information can be located on the [Department of Treasury and Finance’s website](https://www.dtf.vic.gov.au/public-construction-policy-and-resources/practitioners-toolkit) <https://www.dtf.vic.gov.au/public-construction-policy-and-resources/practitioners-toolkit>.

## Zones and overlays

A zone is a planning control that determines the appropriate use of the 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 affect 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. Advice regarding such matters is available from your local council and your [local DELWP office](https://www.delwp.vic.gov.au/communities-and-regions/regions-and-locations) <https://www.delwp.vic.gov.au/communities-and-regions/regions-and-locations>.

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

## Conservation and planning legislation

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

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

The relevant legislation does not allow ignorance of applicable overlays as an excuse for not obtaining the appropriate permits 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 applicable to their cemeteries.

## Native vegetation

Where trusts believe there is a need to clear native vegetation or remove trees, they need to contact their local council and local DELWP office. A permit and offset requirements may be necessary. Under special circumstances, such as dangerous trees, the trust may be able to remove trees without a permit, but this should be confirmed in writing by the local council. A trust could also consider submitting an application for a departmental cemetery grant to pay for any offset requirements. Further [information about the grant program and the applicable applications forms](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants> can be found on the department’s website.

# Topic 13. 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 14. 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 24. 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.

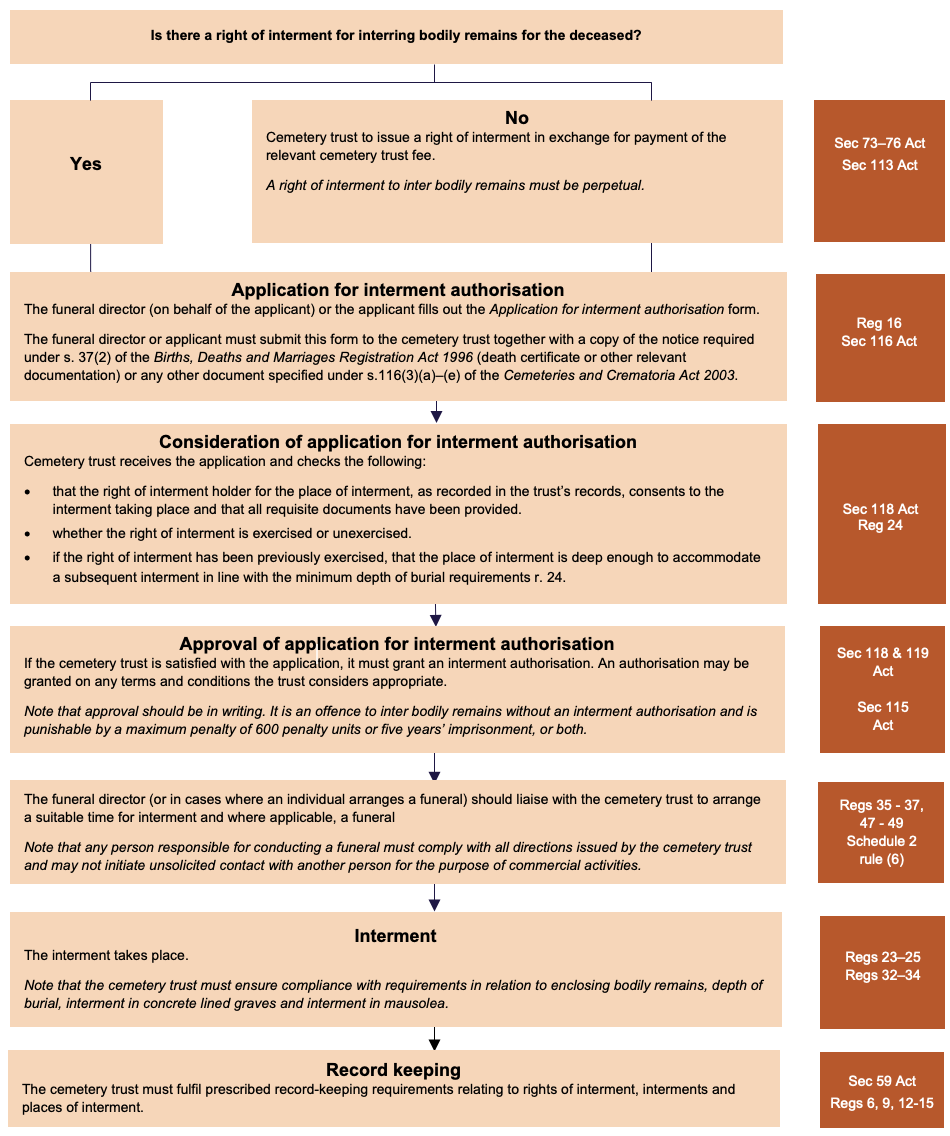
## Interment of body parts or foetal remains

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 15. 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[[7]](#footnote-7) | 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 25. 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.[[8]](#footnote-8)

### 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[[9]](#footnote-9) | 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[[10]](#footnote-10) | 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.

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

## 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 30. 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 for interring human remains in a public grave and may or may not permit memorials to be established as they see fit.

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

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 15. 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 the 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).[[11]](#footnote-11) 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[[12]](#footnote-12) * 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[[13]](#footnote-13) | 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[[14]](#footnote-14) 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,[[15]](#footnote-15) 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).[[16]](#footnote-16)

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 |

To seek cremation approval from the department’s Secretary, the applicant must submit a completed *Application for cremation authorisation of bodily remains of unknown name or with an identifier* (Form 3A) to the department.

When granted, the 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 form prescribed 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[[17]](#footnote-17) | 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 |

### 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[[18]](#footnote-18) | 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 * Secretary of the Department of Health |

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).[[19]](#footnote-19) 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 * Secretary of the Department of Health |

## 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.

When seeking a cremation approval under s. 134 of the Cemeteries Act because prescribed documentation requirements cannot be met, 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[[20]](#footnote-20) 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 considering conducting a funeral without the assistance of a funeral director and seeking information about the legal and procedural requirements for cremations.

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 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

Due to exceptional circumstances, 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.[[21]](#footnote-21)

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 human 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 human 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 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 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[[22]](#footnote-22)
* 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 that cremated remains must be interred in a public cemetery. 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 rights of interment

When a 25-year right of interment is due to expire, the responsible cemetery trust must take reasonable steps to notify the holder of that right of interment at least 12 months before the expiry (s. 85 of the Cemeteries Act). The cemetery trust should make this notification in writing and may specify the timeframe that the right of interment holder has to reply. The notification must advise that the holder, by a request to the cemetery trust in writing, may extend the tenure for another 25 years or convert it to a perpetual right of interment. If no action has been taken by the right of interment holder within the timeframe specified, then under s. 86 of the Cemeteries Act, the cemetery 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.[[23]](#footnote-23) 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:

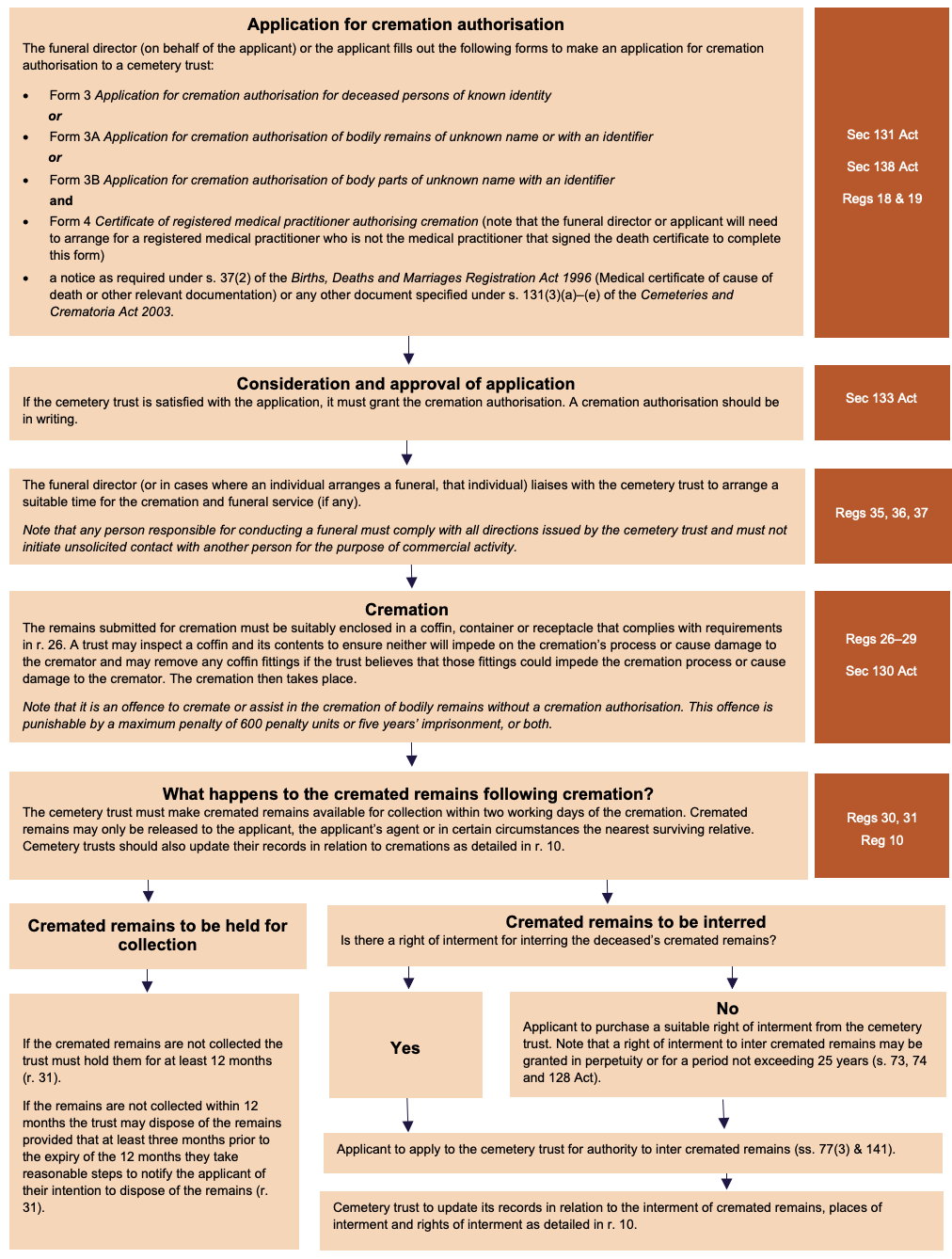
* Establish who holds the right of interment.
* If a request to remove cremated remains is made, written consent from all right of interment holders is required, preferably on a statutory declaration, confirming who they are and what they wish to do.
* If the trust has any concerns about granting its 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 16. 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.

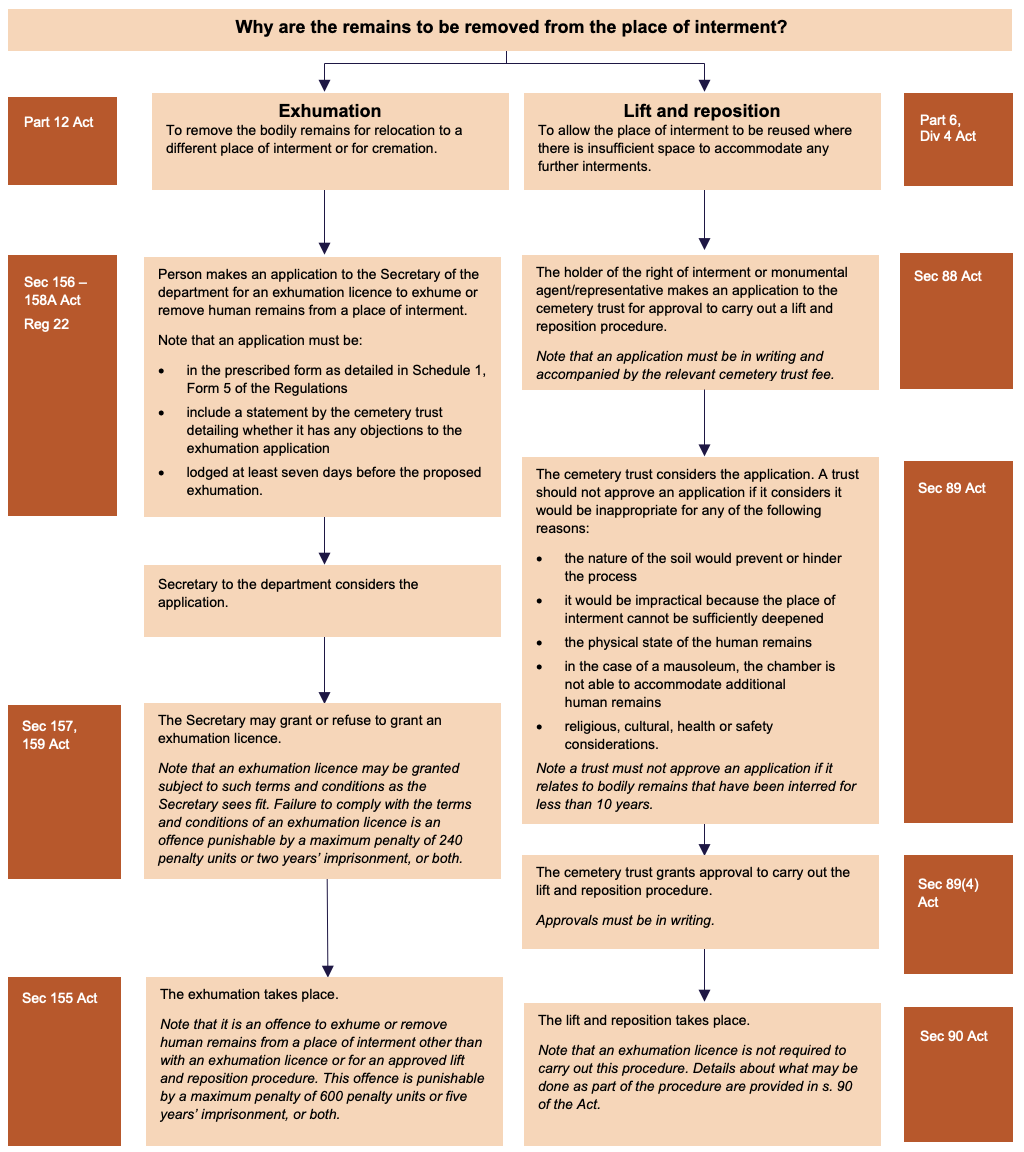
The following examples are not intended to be an exhaustive list and trusts should contact the department for advice if they are unclear about any aspects of exhumation requirements under the *Cemeteries Act*.

| 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[[24]](#footnote-24) | 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[[25]](#footnote-25) | 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 17. 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)[[26]](#footnote-26) 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 18. Alternate methods of disposal

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 19. Cemetery monuments and memorials

## Application to establish or alter a monument or 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. 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 29. Conditions of work](#_Topic_27._Conditions) and [Topic 30. 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 take down, remove and dispose of an unsafe memorial

To seek the department Secretary’s consent to take down, remove and dispose of 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)

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

## 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 Office of Australian War Graves (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.

### Official OAWG memorials

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 20. 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 [DTF website](https://www.dtf.vic.gov.au/infrastructure-investment/public-construction-policy-and-resources) <https://www.dtf.vic.gov.au/infrastructure-investment/public-construction-policy-and-resources>.

## 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 21. 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 22. 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.[[27]](#footnote-27)

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[[28]](#footnote-28)
* meet any future financial obligations created by undertaking the project.

Acceptable uses of perpetual maintenance funds can include:

* creating new places of interment in the cemetery[[29]](#footnote-29),[[30]](#footnote-30)
* constructing public mausolea[[31]](#footnote-31)
* purchasing new land to expand cemetery services within a community.[[32]](#footnote-32)

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 23. 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, cemetery trusts are required to establish processes in line with procurement principles.

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 13. Grants](#_Topic_11._Grants).

To assist 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 24. 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)).
* 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)).

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)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) 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)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) 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), 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.[[33]](#footnote-33)

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)).

## 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.

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 25. Cemetery records

Cemetery trusts manage a range of important records including:

* right of interment and interment registers
* cemetery plans
* applications for rights of interment
* applications for interment authorisations
* applications for approval to inter cremated human remains
* applications to establish or alter memorials or places of interment
* trust records such as meeting minutes, correspondence, financial statements, policies and procedures.

## Prescribed information

Under s. 59 of the Cemeteries Act, cemetery trusts are required to keep records of interments, places of interment, cremations and rights of interment for the cemeteries for which they are responsible. Part 2 of the Cemeteries Regulations details the specific prescribed information that must be recorded.

Cemetery records must be secured to maintain the confidentiality, integrity and availability of the records for future generations. Access to cemetery records must only be granted to those deemed eligible and suitable by the trust.

## Interment register

The department has developed an interment register that captures the prescribed information about interments and rights of interment to assist trusts in meeting their record-keeping obligations. The register is available in a bound book (hard copy) or in electronic form.[[34]](#footnote-34)

Trusts should store interment registers and copies securely and, if necessary, scan and save them electronically. Interment registers are permanent public records. If permanent records are no longer actively required by the trust to help deliver its functions, they must be transferred to the Public Record Office Victoria. Permanent records must not be destroyed.

## Cemetery plans

It is imperative that trusts maintain cemeteries plans that are accurate, to scale, current and complete as far as possible. The location of all graves and cremation memorials should be detailed on the plans, and these locations should be cross-referenced to the trust’s interment register.

It is recommended that the plans include the location of all principal fixtures within the cemetery (buildings, roads, garden beds, niche walls, taps and power poles) and plot the course of any underground services such as water pipes.

## Other records

Trusts need to establish and maintain other records to assist with their management and administration functions beyond what is required under the Cemeteries Act. Examples include:

* pre-payments to the trust for rights of interment and interments
* receipts
* names of funeral directors
* details of memorials established and altered
* justifications for not approving applications.

Trusts should store copies of completed *Application for interment authorisation* forms indefinitely and, if necessary, scan and save them electronically. It may also be helpful to have on file the signatures of all holders of rights of interment.

## Digitising records

Although most interment registers and plans are in hard copy, it is becoming increasingly common for these records to be maintained electronically on a computer (digitised). If a trust is considering digitising its registers and plans, there is little point in starting from scratch to develop software. Consider inspecting what is already available and used by other trusts.

Before shifting to a digital or computerised record-keeping system, trusts should perform an information security risk assessment, including consideration of any third parties (including software providers or administrators).

## Copyright of trust records

Many trusts, either themselves or via a third party, have been converting hard copy records into an electronic version either by scanning the hard copy documents or by transcribing them.

Trusts hold copyright of all original trust records because they are the owner of the records. Problems may arise in relation to copyright when a new version of the original trust records is created and the person who created the new version is claiming ownership over the work.

Before a trust engages a person or organisation to create a new version of or to edit existing records (whether that person holds a position on the trust or not), it is suggested that the trust:

* discusses the nature of the arrangement with the person who is going to undertake the work, including the purpose, scope and costs
* performs an information security risk assessment considering the Victorian Protective Data Security Standards
* formalises the arrangement in a legally binding document that includes
  + that the trust will retain all intellectual property rights (including copyright) of all trust records and materials
  + that the trust will own the copyright over all new records created or existing records amended by the person
  + that the person gives consent in writing in relation to all rights that are necessary for the trust to have copyright over all versions of the trust’s records
  + whether the person will be paid for the work and, if so, the amount that the person will be paid.

The trust may wish to seek legal advice when creating an agreement or if it is unclear who has copyright over documents.

## Security and back-up of registers and plans

Trusts should ensure they have one or more back-up copies of interment registers, plans and other principal records stored in a different location from the working set, in case of fire, flood or other damage or destruction of records. In addition, electronic records should be backed up electronically (for example, on an external hard drive or cloud servers) in case of computer malfunction or theft.

## Privacy considerations

Under the provisions of the Privacy and Data Protection Act 2014, trusts are required to protect the privacy of people from whom they collect personal information including:

* the holder of the right of interment
* the person who signs the *Application for interment* *authorisation* form.

Personal information is 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 managed by trusts includes:

* names and contact details of the holder of the right of interment
* names and contact details of applicants seeking trust approval for a range of actions
* funeral arrangements
* payment details.

When managing personal information, trusts must act in accordance with the Information Privacy Principles (IPPs) established under the Privacy and Data Protection Act. The IPPs set out the minimum standard for how Victorian public sector organisations should manage personal information.

There are 10 IPPs: collection; use and disclosure; data quality; data security; openness; access and correction; unique identifiers; anonymity; transborder data flows; sensitive information. The full text of the IPPs is available on the [Office of the Victorian Information Commissioner (OVIC) website](https://ovic.vic.gov.au/privacy/information-privacy-principles-full-text/) <https://ovic.vic.gov.au/privacy/information-privacy-principles-full-text/>. The first two IPPs, collection and use and disclosure, are particularly relevant to trusts.

Care should be taken when considering the release of personal information to ensure the information is only used and disclosed where it is for the same purpose as the purpose for which the information was collected, or for a secondary purpose in accordance with the IPPs.

### Deceased persons

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

It is important to be aware that information about a deceased person may include personal information about the living. For example, a completed *Application for interment* *authorisation* form contains information about the deceased and personal information about the applicant, the right of interment holder and the funeral director (or other person arranging the interment).

## Making records available to the public

Under s. 60 of the Cemeteries Act, trusts must make the information about interments, places of interment, cremations and rights of interment contained in the records available to the public for historical or research purposes. A 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.

Trusts must ensure the release of any information has been carefully considered and complies with the IPPs.

## Archiving records

Trusts are public offices within the definition of the Public Records Act 1973 and as such create public records. Trust records are of value to the sector, the community and the Victorian Government.

As a public office, trusts must securely archive their permanent records with the Public Record Office Victoria (PROV) once these records have finished their active use.

PROV has established the *Retention and disposal authority for cemetery and crematoria records* (RDA) available on the [PROV website](https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-cemetery-and-crematoria) <https://prov.vic.gov.au/recordkeeping-government/document-library/pros-1501-cemetery-and-crematoria>.

The RDA:

* identifies records that are worth preserving permanently as part of Victoria’s archival heritage
* prevents the premature destruction of records that need to be retained for a specified period to satisfy legal, financial and other requirements of public administration
* authorises the destruction of those records not required permanently.

If permanent records (as identified in the RDA) are no longer actively required by the trust to help deliver trust functions, they must be transferred to PROV. Permanent records must not be destroyed.

Examples of permanent trust records include:

* meeting minutes, agendas and papers
* policies and procedures
* interment registers
* cemetery plans
* memorialisation records.

Trusts are required to keep other records, such as records of long-term administrative value or significance, for between seven and 50 years. Requirements for these records are detailed in the RDA.

Some trust records (for example, bank statements) are not covered in the RDA. Trusts should refer to the *Retention and disposal authority for records of common administrative functions* on the [PROV website](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> for guidance about disposal actions for administrative records not explicitly covered in the RDA.

All enquiries about archiving public records should be directed to PROV via the online contact form on the [PROV website](https://prov.vic.gov.au/contact-us) <https://prov.vic.gov.au/contact-us>.

## Loss of plans or records

The loss of current plans or records may be considered an information security incident, as the records would no longer be available. Depending on the circumstances, there may also be confidentiality concerns relating to the lost information. The nature and extent of the incident will inform whether notification is required to relevant authorities (the department, OVIC and Victoria Police).

## Information security

OVIC has developed the *Victorian protective data security standards* as required under the Privacy and Data Protection Act. Part 4 of the Privacy and Data Protection Act sets out the standards and associated requirements that trusts must adhere to and sets out mandatory measures designed to protect trust information.

### What is information security?

Information security is a risk management process that protects public sector information from unauthorised access, disclosure and use. This ensures the right people have access to the right information at the right time.

The right people means that the information is only accessed or viewed or spoken about by and with authorised people. The right information means that the information is accurate, complete and up to date. The right time means that people have timely and reliable access to information.

### Information security across the record life cycle

Information security focuses on maintaining the confidentiality (right people), integrity (right information) and availability (right time) of the information throughout its life cycle.

This includes capturing, collecting, recording or registering information in a secure way, securely using and storing it, and securely disposing of the information when it is no longer needed.

### Information security areas

Trusts need to be aware of the following five information security areas.

**Information security** considers the protection of trust information across its life cycle, from the point it is created, until it is no longer needed. Consistent identification and security risk assessment of trust information is essential in maintaining its confidentiality, integrity and availability.

**Personnel security** aims to mitigate an organisation’s personnel security risks and provides a consistent approach for managing access to trust information and systems. This includes assessing each individual’s continued eligibility and suitability.

**Information and communications technology (ICT security)** seeks to maintain a secure environment by protecting trust information and systems using ICT security controls. This is sometimes referred to as cybersecurity.

**Physical security** includes establishing and maintaining a secure physical environment to protect trust information and systems, including secure facilities, equipment and services.

**Governance** includes sponsorship and endorsement of the trust’s information security program, and well-defined processes and procedures to manage information security risks.

### Information security risk assessment

Under Part 4 of the Privacy and Data Protection Act, trusts are required to undertake a comprehensive information security risk assessment to identify information security risks and help select security measures to protect the information and systems they manage. Trusts need to keep a register of the risks identified and mitigation strategies and update it regularly.

This risk-based approach to information security helps trusts consider the likelihood and consequence of a compromise of the confidentiality, integrity or availability of the information or systems in their care, as demonstrated in the following example:

|  |  |
| --- | --- |
| Risk | No copies or back-ups of documents that are destroyed by fire |
| Likelihood | Possible |
| Consequence | Lack of confidence by the local community in the trust |
| Mitigation | The trust will create copies or back-ups of the documents in order to address a lack of availability of those documents if the risk ever eventuated |

### Protective data security plan

In addition to conducting an information security risk assessment, Part 4 of the Privacy and Data Protection Act requires trusts to develop a protective data security plan (PDSP). A PDSP outlines the minimum data security measures the trust will implement to ensure its information is managed in a risk-informed way.

Class A cemetery trusts report by completing the PDSP for Single-Organisation Reporting form available on the [OVIC website](https://ovic.vic.gov.au/agency-reporting-obligations-hub/vps-stakeholders/) <https://ovic.vic.gov.au/agency-reporting-obligations-hub/vps-stakeholders/>.

Reporting requirements and timeframes

Trusts operate under a reporting cycle that requires the trust to complete the necessary deliverables in accordance with the Privacy and Data Protection Act and the standards. The following table sets out the reporting cycle with associated timeframes and deliverables.

| Reporting requirement | Description/deliverables | Timeframe |
| --- | --- | --- |
| Security risk profile assessment | Undertake (and/or) update an information security risk assessment for the trust. | Annual  (at least) |
| Attestation | Provide OVIC with an attestation by the chairperson. | Annual |
| Protective data security plan | Submit a PDSP (including an attestation) by the chairperson every two years.  A copy of the PDSP must be sent to OVIC by 31 August of the reporting year. | Biennial  (every two years) |
| Significant change | If a trust undergoes significant change, an out-of-cycle PDSP submission may be required. A significant change could include:   * significant alterations to the operating environment of the trust (for example, trust administration is transferred to another trust through a merger) * new or updated information security risks that are considered significant enough for the trust.   If this is the case, an updated PDSP must be submitted to OVIC within an agreed timeframe. | In consultation with OVIC |
| Incident notification | In the case of an information security incident involving sensitive information (for example, information loss or unauthorised disclosure), the incident should be reported to the department and OVIC at the earliest opportunity by:   * [emailing the department’s Privacy team](mailto:privacy@health.vic.gov.au) <privacy@health.vic.gov.au> * [emailing the OVIC Information Security Team](mailto:security@ovic.vic.gov.au) <security@ovic.vic.gov.au>. | As required |

### Supporting resources

More information about trust reporting obligations and a how-to guide is available on the [OVIC website](https://ovic.vic.gov.au/agency-reporting-obligations-hub/vps-stakeholders/) <https://ovic.vic.gov.au/agency-reporting-obligations-hub/vps-stakeholders/>.

# Topic 26. 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.

## 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 27. Risk management

## Regular review to determine potential risks

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

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

Matters for such a review include:

* asset management
* financial management and fraud
* human resource management
* the needs of different community groups
* record 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 people who work there, including:

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

In particular, trusts should ensure:

* all plant and equipment brought into the cemetery is in a safe and sound condition
* those who operate plant and equipment in the cemetery have had sufficient training and hold the necessary qualification for its safe operation
* all work in the cemetery, no matter by whom, is performed in a manner that is healthy and safe for the workers involved and members of the public who may be affected by it (refer to [Topic 30. Occupational health and safety](#_Topic_30._Occupational)).

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

## Asset security

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

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

Safeguard measures for protecting assets include installing fences, lockable shed/storage areas, security systems (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 from 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 25. Cemetery records](#_Topic_25._Cemetery_1)).

## 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 30. 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.

## Victorian Managed Insurance Authority

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 suite of policies includes cover for:

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

The VMIA offers optional cover to all cemetery trusts for motor vehicle insurance, business travel insurance and construction all-risk insurance. The premiums for these optional products are not funded by the Department of Health.[[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 trust 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 the VMIA to determine if specific damage to cemetery trust property is covered under the insurance policy and can be claimed. However, if it is determined that the damage to cemetery trust property is not covered under the insurance policy, then cemetery trusts may be eligible for a departmental grant. Refer to [Topic 13. Grants](#_Topic_13._Grants) for information.

## Immunity from personal liability

All trust members are provided with personal liability protection in accordance 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 Act or Regulations. Liability for such acts or omissions 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 Rehabilitation and Compensation 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 Rehabilitation and CompensationAct.

# Topic 28. Financial management

## Financial reporting

Cemetery trusts are responsible for the stewardship and proper accounting of their income and expenditure, assets and liabilities.

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

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

The Department of Treasury and Finance, through the unit, provides annual reporting guidelines to cemetery trusts.

## Audit and risk committee

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

## Finance committee

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

## Annual levy

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

## Preparing an annual budget

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

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

* proposed expenditure on both maintenance and development works
* anticipated revenue from the trust’s fees and charges based on the anticipated number of burials/cremations
* goods and services tax
* funds and investments.

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

## Financial reporting process

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

## 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 have recently been developed, (such as 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 its current and future maintenance obligations. To do this, the trust will need to identify:

* the capital and operational cost of the development
* an appropriate rate of return over the life of the development that is equal to or better than the equivalent rate of return through investing the funds used in the development of the cemetery in Commonwealth bonds.

## Financing development works

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

Section 46 of the Cemeteries Act empowers a cemetery trust, subject to the approval of the Treasurer, to borrow funds. Please note that for the purposes of the Cemeteries Act a lease does not constitute a loan (for example, a novated car lease, leasing of equipment such as a photocopier).

## 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 considered to be a reasonable benchmark by a number of trusts.

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 purchasing guidelines as set out in the Victorian Government Purchasing Board’s procurement policies. The [*Ministerial directions for public construction procurement* (MDPCP)](http://www.procurement.vic.gov.au/Buyers/Policies-Guides-and-Tools) <http://www.procurement.vic.gov.au/Buyers/Policies-Guides-and-Tools> also apply for the purposes of public construction.

To assist trusts the department has developed templates for purchasing and tendering and contractor engagement, which are available for download from 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>. The purchasing and tendering policy template includes the following thresholds:

| Estimated purchase value | Minimum requirement | Authorised by | MDPCP applies |
| --- | --- | --- | --- |
| Up to $5,000 | One verbal or written quote | Trust or chairperson | No |
| $5,000 up to $25,000 | One written quote | Trust | No |
| $25,000 up to $50,000 | Two written quotes | Trust | No |
| $50,000 up to $500,000 | Invite three potential tender participants to participate in a limited tender | Trust | Yes |
| More than $500,000 | Open tender | Trust | Yes |

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/people expressing interest in submitting a response to the tender to ensure quotations will be comparable.

Further information and guidelines on the procurement of ‘works’ are available on the [Department of Treasury and Finance’s website](https://www.dtf.vic.gov.au/publications) <https://www.dtf.vic.gov.au/publications>.

Further information and guidelines on appropriate purchasing procedures is available from the [Victorian Government Purchasing Board’s website](http://www.procurement.vic.gov.au/) <http://www.procurement.vic.gov.au>.

Victorian Government Purchasing Board Secretariat  
Level 4, 1 Macarthur Street  
Melbourne VIC 3000

Telephone: (03) 9651 1699  
[Email](mailto:vgpb@dtf.vic.gov.au) <vgpb@dtf.vic.gov.au>  
[Website](http://www.procurement.vic.gov.au) <www.procurement.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 regarding 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 the completion of 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

## Tax

The matters summarised below are complex and so we recommend getting advice from a person professionally qualified in this subject or from the Australian Taxation Office (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 VIC 3000

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 revenue or expenditure of more than $150,000 must register for GST with the ATO.

Trusts earning below $150,000 can register for GST and it is recommended further advice from a financial services professional be sought when a trust is considering registration.

Enquiries regarding GST or BAS recoup matters are to be directed 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 *A New Tax System (Goods and Services) 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:

| 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 are not permitted to charge customers GST for any of these products or services. Cemetery trusts can charge customers GST in fees related to interment services and the supply of memorials.

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

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

If an employee receives fringe benefits as defined (not including meals and entertainment) of more than $2,000 in any tax year, it is required that the grossed-up value (including tax added back) of these benefits is to 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 FBT legislation.

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

## Payroll tax exemption

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

## Charitable tax status

As of 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 further advice on the changes can contact the Australian Charities and Not-for-Profits Commission (ACNC)

Tel: 13 22 62 (8.00 am to 8.00 pm, Monday to Friday)  
Fax: 1300 232 569  
[Email](mailto:advice@acnc.gov.au) <advice@acnc.gov.au>  
[Website](https://www.acnc.gov.au/) <https://www.acnc.gov.au>

# Topic 29. 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.[[36]](#footnote-36)

# Topic 30. 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 14. 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 31. 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 20 ‘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 32. 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 14)

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. Under s. 18N and 18O of the Cemeteries Act, annual and strategic plans must be approved by the Secretary of the Department of Health. [↑](#footnote-ref-1)
2. Under clause 3 of schedule 1A of the Cemeteries Act, the Governor in Council, on the recommendation of the minister, may at any time remove a member of a Class A cemetery trust from office. This would only occur in exceptional circumstances. [↑](#footnote-ref-2)
3. 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-3)
4. A standard textbook on meeting procedures that the trust may consider using is: Magner ES 2012, *Joske’s law and procedure at meetings in Australia*, 11th edn, Thomson Reuters, Australia. [↑](#footnote-ref-4)
5. Refer to [Topic 25. Cemetery records](#_Topic_25._Cemetery) for information relating to the storage of cemetery trust records at the Public Record Office. [↑](#footnote-ref-5)
6. The [*Annual and strategic plan guidelines*](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-a-governance) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/governance-and-finance/governance/class-a-governance> are available on the department’s website. [↑](#footnote-ref-6)
7. 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-7)
8. A [‘Right of interment and interment register’](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/interment-register) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/interment-register> that complies with the record-keeping requirements under the Cemeteries Act and Cemeteries Regulations is available on the department’s website. [↑](#footnote-ref-8)
9. 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-9)
10. 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-10)
11. 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-11)
12. 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-12)
13. 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-13)
14. ‘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-14)
15. 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-15)
16. 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-16)
17. 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-17)
18. 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-18)
19. 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-19)
20. Refer to s. 5 of the Coroners Act for a definition of reviewable death. [↑](#footnote-ref-20)
21. 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-21)
22. If in doubt as to the meaning of a court order, trusts should seek legal advice. [↑](#footnote-ref-22)
23. ‘Family member’ in relation to a deceased identified veteran is defined in s. 4 of the Cemeteries Act. [↑](#footnote-ref-23)
24. The trust must provide written approval before the removal. [↑](#footnote-ref-24)
25. The trust must comply with ss. 88–90 of the Cemeteries Act. [↑](#footnote-ref-25)
26. 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-26)
27. The department will continue to work with the sector to identify key cost drivers associated with perpetual maintenance. [↑](#footnote-ref-27)
28. The interest rate for such projects should be calculated at a risk-adjusted rate for the period the funds were used. [↑](#footnote-ref-28)
29. Such projects must be evaluated in line with financial risk management principles. [↑](#footnote-ref-29)
30. The department has developed a tool that trusts can use to assess the financial viability of any projects. [↑](#footnote-ref-30)
31. A trust needs to seek approval from the Secretary of the Department of Health to construct public mausolea. [↑](#footnote-ref-31)
32. Trusts need permission from the Minister for Health before new land can be purchased. Before taking any action in relation to a purchase, the trust should provide a detailed proposal to the department for discussion. [↑](#footnote-ref-32)
33. 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-33)
34. An electronic copy of the [interment register](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/interment-register) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/interment-register> is available on the department’s website or hard copies can be requested by [emailing the unit](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>. [↑](#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. 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-36)