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| Manual for Victorian cemetery trusts |
| November 2024 |
| OFFICIAL |

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# Introduction

The Department of Health has developed this manual to help cemetery trusts understand and meet their responsibilities and legal obligations under Victorian and Australian law.

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 a cemetery trust into consideration.

Information in the manual applies to both Class A and Class B cemetery trusts unless it is specified in headings or subheadings that information in that section applies to one class only.

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

## Key terms

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

| Term | Definition |
| --- | --- |
| Cemetery trust | The cemetery trust is the legal entity established under legislation to manage the public cemeteries and crematoria under its control. |
| Cemetery trust board | The cemetery trust board is collectively responsible for the operations and governance of the cemetery trust. |
| Cemetery trust member | Individual cemetery trust members are responsible for carrying out their duties in the best interests of the cemetery trust and the community. |
| Perpetuity | In Victoria, bodily remains are interred in public cemeteries forever or ‘in perpetuity’. |
| Limited tenure | In Victoria, cremated remains can be interred in public cemeteries for limited tenure (a term of 25 years) or in perpetuity (forever). |
| 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. |
| Exhumation | Exhumation is the removal of human remains from a place of interment. An exhumation licence is needed to move human remains (other than cremated human remains or body parts) from a place of interment. |
| Lift and reposition | A lift and reposition procedure enables a place of interment to be reused for more burials. |
| Right of interment | A right of interment relates to a specific place of interment in a public cemetery.  A right of interment is purchased and allows the holder to determine who can be interred in the place of interment and the type of memorialisation (if any) to be established at the place of interment (subject to any cemetery trust memorialisation policies or specifications). |
| Right of interment holder | The right of interment holder (right holder) is recorded by the cemetery trust and has the right to determine who can be interred in the place of interment and the type of memorialisation (if any) to be established at the place of interment (subject to any cemetery trust memorialisation policies or specifications). There may be more than one right holder for a place of interment. |
| Perpetual maintenance | Cemetery trusts have an obligation to maintain their cemeteries now and into the future (‘in perpetuity’). Ensuring sufficient funds are reserved to meet this obligation is a key consideration for cemetery trusts when setting fees and developing a long-term financial strategy. |

## Abbreviations

The following abbreviations are used in this document.

|  |  |
| --- | --- |
| Term | Referred to as |
| Australian business number | ABN |
| Australian Taxation Office | ATO |
| Cemeteries and Crematoria Act 2003 | Cemeteries Act |
| Cemeteries and Crematoria Association of Victoria | CCAV |
| Cemeteries and Crematoria Regulations 2015 | Cemeteries Regulations |
| Chief executive officer | CEO |
| Consumer price index | CPI |
| Department of Health | department |
| Department of Health Secretary | department Secretary |
| Freedom of information | FOI |
| Fringe benefits tax | FBT |
| Goods and services tax | GST |
| Independent Broad-based Anti-corruption Commission | IBAC |
| Minister for Health | Minister |
| Occupational health and safety | OHS |
| Office of Australian War Graves | OAWG |
| Office of the Victorian Information Commissioner | OVIC |
| Right of interment holder | right holder |
| Victorian Civil and Administrative Tribunal | VCAT |
| Victorian Managed Insurance Authority | VMIA |
| Victorian Public Sector Commission | VPSC |

## Key documents

|  |
| --- |
| This symbol is used in the manual to highlight related key documents published by the department. These documents are published on the department’s website as standalone resources and should be read alongside the relevant manual topic. |

## Contact details

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

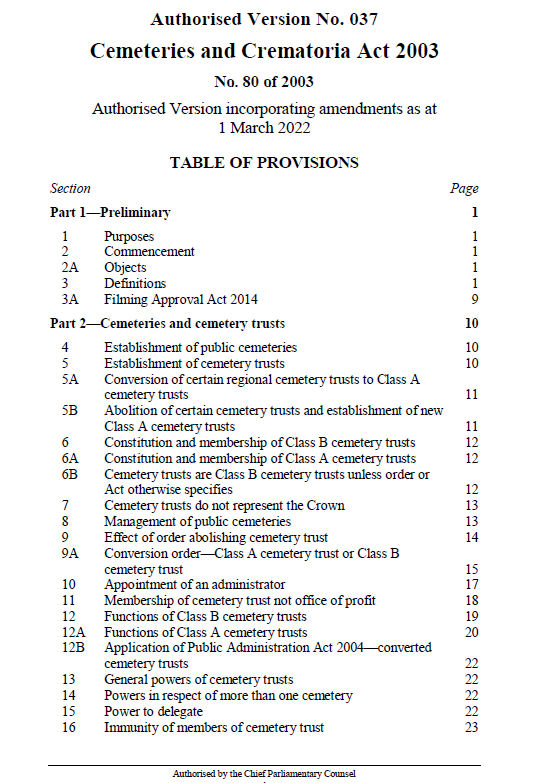
Phone: 1800 034 280

Website: <http://www.health.vic.gov.au/public-health/cemeteries-and-crematoria>

Mail: Cemeteries and Crematoria  
Department of Health   
GPO Box 4057   
MELBOURNE VIC 3001

# Topic 1. Legislation

The Cemeteries Actand the Cemeteries Regulations:

* form the legislative framework under which all public cemeteries in Victoria operate
* 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 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 in June 2015 and 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 and 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. These are expressed in penalty units.

The Magistrates’ Court of Victoria may impose a penalty after determining a case. A cemetery trust may not itself impose a penalty directly without taking the matter for determination before the Magistrates’ Court.

The monetary value of a penalty unit is updated annually in line with the Monetary Units Act 2004. Current penalty rates are available on the [Department of Treasury and Finance website](https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties) <https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties>.

## Other relevant legislation

### Victorian legislation

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

* *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 2017*
* *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 the following.

#### 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.

Refer to [Topic. 30 Employing and managing staff](#_Topic_31._Employing) for more information.

#### 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.

## Accessing 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 legal publications. Cemetery trusts can order online via the [TIMG website](https://legislationvic.timg.com) <https://legislationvic.timg.com> or call (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 department cannot provide legal advice to cemetery trusts. Where legal advice is needed, it should be sought from a qualified and experienced source, at the expense of the cemetery trust. The [Law Institute of Victoria](https://www.liv.asn.au/) <https://www.liv.asn.au/> offers a referral service that identifies law firms that may be able to help with a trust’s legal issues. 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 legal advice, and any subsequent court proceedings, a cemetery trust may wish to discuss the matter with the department before acting (refer to [Contact details](#_Contact_details)).

## Cemetery trusts are legal entities

A cemetery trust is a body corporate with perpetual succession established under s. 5 of the Cemeteries Act. A cemetery trust can do anything a body corporate may legally do.

For the purposes of the *Public Administration Act 2004*, a cemetery trust is also defined as a ‘public entity’. Public entities are organisations the government establishes to take on a range of administrative, service delivery and regulatory functions outside government departments. Because cemetery trusts are public entities, cemetery trust members and employees must act in keeping with obligations in the Public Administration Act and supporting codes of conduct.

Victorian cemetery trusts are divided into 5 Class A cemetery trusts and about 480 Class B cemetery trusts.

Class A cemetery trusts manage large metropolitan and regional public cemeteries. They have significant financial responsibilities with corresponding reporting and accountability requirements. All Class A cemetery trusts operate crematoria.

Class B cemetery trusts are responsible for managing small, medium and large rural, regional or suburban cemeteries. Municipal councils are appointed to manage about 40 Class B cemetery trusts.

## Prescribed functions

Under s. 13 of the Cemeteries Act, a cemetery trust may to do anything necessary or convenient to carry out its functions provided that the cemetery trust’s actions do not override other provisions of the Cemeteries Act.

### Functions of Class A cemetery trusts

Section 12A of the Cemeteries Act sets out the following functions of Class A cemetery trusts:

* properly and efficiently manage and maintain each public cemetery for which the cemetery trust is responsible
* develop annual and strategic plans for the operation of the cemetery trust and monitor compliance with those plans
* 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 the cemetery trust provides meet the needs of the communities it serves and that the views of those communities are considered
* oversee the organisational structure of the cemetery trust
* employ a CEO to effectively operate and manage the cemetery trust and each public cemetery for which the cemetery 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 department Secretary is informed as soon as practicable of any significant issues of public concern relating 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 cemetery trust
* ensure members of the cemetery trust receive adequate training to meet their obligations
* 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.

### Functions of Class B cemetery trusts

Section 12 of the Cemeteries Act sets out the following functions of Class B cemetery trusts:

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

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

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

## Model rules

A set of model rules is contained in the Cemeteries Regulations (Schedule 2). These rules apply to all cemetery trusts. If the model rules do not provide a cemetery trust with enough scope to manage the cemeteries under its control, the cemetery trust can develop its own of set of rules under s. 26 of the Cemeteries Act.

Any rules made under the Cemeteries Act must be consistent with the objectives of the Act, approved by the Minister, submitted to the Governor in Council and published in the *Victoria Government Gazette* before they can be enforced.

Before new rules can be approved, cemetery trusts must consult with the department, local stakeholders and any other relevant parties that the proposed rule change may affect.

Evidence of this consultation and the cemetery trust’s response to any stakeholder concerns will need to be provided to the department along with the request to create specific cemetery trust rules.

## Perpetual maintenance

Bodily remains interred in public cemeteries in Victoria are interred in perpetuity. The Cemeteries Act therefore requires cemetery trusts to consider their obligations for funding the perpetual maintenance of the public cemeteries they are responsible for.

Cemetery trusts should carefully consider how to maintain cemeteries once full capacity has been reached and the standard of maintenance acceptable in a cemetery that is closed to future interments.

The standard of maintenance between an operating cemetery and a closed cemetery may vary, and this difference should be considered when cemetery trusts set their fees. All cemetery trust fees should include an appropriate perpetual maintenance component. Refer to [Topic 15. Cemetery trust fees](#_Topic_15._Department) for more information.

Community expectation will also play a role in determining acceptable maintenance standards for closed cemeteries.

## Class A cemetery trust leadership role

Class A cemetery trusts may provide assistance and advice about governance and operational matters to Class B cemetery trusts on request. Any assistance or advice a Class A cemetery trust provides is on a good-faith basis, based on their own experiences, operations and functions, and in line with all relevant statutory guidelines and regulations.

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

* operational and governance matters
* record-keeping systems suited to the requirements of trusts
* standard forms suitable for trust purposes
* complaints management
* tendering and contracting processes and requirements.

Where the assistance or advice requested relates to applying or interpreting the Cemeteries Act, the Class B cemetery trust should contact the department for help (refer to [Contact details](#_Contact_details)).

Class A cemetery trusts are expected to provide robust, sound and practical advice. Where a Class A cemetery trust does not feel it is appropriate to provide assistance due to specific circumstances, it should inform the department and refer the Class B cemetery trust to the department.

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

The Cemeteries Act empowers the department to create a list of Class B cemetery trusts that are eligible to receive leadership, assistance and advice from specified Class A cemetery trusts. But because this power has not been enacted, Class B cemetery trusts are free to approach any Class A cemetery trust to ask for assistance or advice.

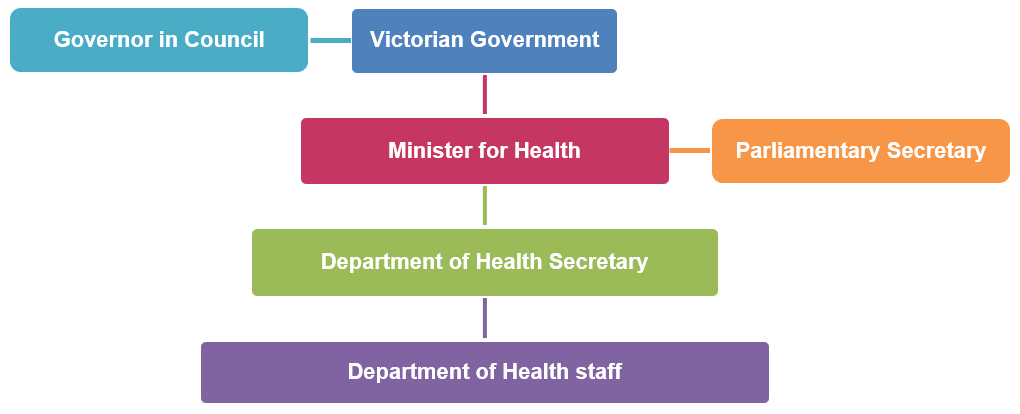
# Topic 2. Government roles and responsibilities

The role of government in the Victorian cemetery sector is to administer the Cemeteries Act and Cemeteries Regulations. Parliament may, from time to time, amend the Cemeteries Act or issue new Cemeteries Regulations.

It is important to note that although legislation prescribes the functions and operations of cemetery trusts, it is the cemetery trust’s responsibility to ensure these functions are carried out. The government expects cemetery trusts to meet their legal obligations and, where cemetery trusts fail to meet these obligations, the government may intervene.

The Cemeteries Act also prescribes a range of other powers (Figure 1 and outlined below).

Figure 1: Government roles



## Governor in Council

His Majesty The King appoints the Governor of Victoria 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 *Victoria Government 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 |
| Sch 1, clause 3(2) | On the recommendation of the Minister, remove a Class B trust member from office |
| Sch 1A, clause 3(2) | On the recommendation of the Minister, remove a Class A trust member from office |

## Minister for Health

The Minister is accountable to the parliament and is responsible for administering the Cemeteries Act and the Cemeteries Regulations. This includes establishing and maintaining proper accountabilities and controls for overseeing cemetery trusts to ensure they fulfil their legal obligations. The Minister’s powers include the following:

| Section | Provision |
| --- | --- |
| 36, 37 | The Minister may approve purposes for which trusts can grant leases or licences over cemetery trust land. The Minister must be satisfied that the purpose of the lease or licence is not detrimental to the land’s cemetery purpose. |

## Parliamentary Secretary

The Parliamentary Secretary is a member of parliament who assists the Minister with their portfolio responsibilities. The Parliamentary Secretary sometimes represents the Minister during stakeholder meetings, events and interviews.

## Department of Health Secretary

The department Secretary has broad policy-based review and investigative powers designed to help manage the cemetery sector effectively. 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 any function or exercising any power of the cemetery trust |
| 18A | May direct policies and plans in relation to providing cemetery and crematoria services to be developed and prepared |
| 21 | Approval to establish a crematorium |
| 22 | Approval to establish mausoleum facilities |
| 23 | May revoke approvals issued under ss. 21 and 22 |
| 40 | Approval or disapproval of a fee or scale of fees submitted for consideration by a cemetery trust |
| 40A | Exempting certain fees and charges from the approval process |
| 51 | Request an auditor to investigate a cemetery trust |
| 52 | Receive the annual cemetery trust report that includes particulars relating to the operation of the cemetery, accounts and records the trust keeps |
| 57 | Receive an annual report from a municipal council in relation to a cemetery that may be managed by that council |
| 84C | Vary or force surrender of a right of interment in certain circumstances |
| 121 | Issue an approval for interment other than in a public cemetery |
| 134 | Issue an approval for the cremation of bodily remains due to special circumstances noted in the Cemeteries Act |
| 136 | Issue an approval to cremate bodily remains other than in a crematorium at a public cemetery |
| 147 | Grant an approval to dispose of bodily remains by a method other than interment or cremation |
| 148 | Grant or refuse to grant an exhumation licence |

The scope of the department Secretary’s power to direct cemetery trusts is limited under s. 18(4) of the Cemeteries Act. The department Secretary cannot direct cemetery trusts on:

* cemetery and/or crematoria services provided to a particular person
* cemetery trust decisions made under the Cemeteries Act about a particular person
* cemetery trust decisions on employing or engaging a particular person
* cemetery trust decisions on purchasing goods and services.

Directions that the department Secretary has issued are available on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/secretarys-directions-to-cemetery-trusts) <https://www.health.vic.gov.au/cemeteries-and-crematoria/secretarys-directions-to-cemetery-trusts>.

## Department of Health staff

Department staff are the Minister’s principal source of advice on the cemetery sector. Staff support the Minister and the department Secretary by taking on a range of statutory functions and providing guidance and advice to cemetery trusts on legal, regulatory, administrative and governance matters.

## Other relevant government departments and bodies

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

* [Coroners Court of Victoria](https://www.coronerscourt.vic.gov.au) <https://www.coronerscourt.vic.gov.au>
* [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>

* [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>

* [Valuer-General Victoria](https://www.land.vic.gov.au/valuations) <https://www.land.vic.gov.au/valuations>
* [Victorian Civil and Administrative Tribunal](https://www.vcat.vic.gov.au) <https://www.vcat.vic.gov.au>

* [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. Trust member responsibilities

Trust members are expected to act in good faith, fairly and impartially, with honesty and integrity, and in the best interests of the cemetery trust and their community.

Trust members have legal obligations, duties and responsibilities under:

* the Cemeteries Act, the Cemeteries Regulations, the Public Administration Act and any other relevant law
* common law
* administrative law principles of natural justice and procedural fairness
* cemetery model rules (Schedule 2 of the Cemeteries Regulations)
* government-issued guidelines or directions.

Because a cemetery trust is incorporated, the responsibilities of a trust member can be likened to those of a company director outlined in the following table.

|  |  |
| --- | --- |
| ****Exercise power for proper purpose**** | Trust members should exercise their power under the Cemeteries Act for the purpose it was authorised. |
| ****Retain discretion**** | Trust members must use their own discretion when voting at cemetery trust meetings. They should not allow themselves to be directed to adopt a particular position. |
| ****Avoid improper use of a position**** | Trust members must not use their position to gain personal benefits. |
| ****Exercise care, skill and diligence**** | Trust members have a duty to make decisions in good faith, for a proper purpose, not have a material interest in the matter, adequately inform themselves about the matter and reasonably believe their judgement is in the best interest of the trust. |
| ****Act diligently and prudently in the business of the cemetery trust**** | Trust members have legal obligations and duties under common law, the constituting legislation and other relevant state and federal law. 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 needed**** | This includes meeting the applicable compliance and reporting requirements of both state and federal law. |

Trust members must always act in the cemetery trust’s best interests. The primary responsibility of a trust member is to carry out their duties with a degree of care and diligence that a reasonable person would exercise if they were a trust member in the same circumstance.

Trust members will have met their duty of care and due diligence if they can show:

* their decisions are made in good faith for a proper purpose
* their decisions do not provide them with material benefit(s)
* they have taken reasonable steps to inform themselves about an issue before making a decision
* they rationally believe the decision they have made (based on their best judgement) is in the interest of the cemetery trust
* they exercise their powers and discharge their duties honestly, in the best interests of the cemetery trust, and for a proper purpose
* they do not use their position improperly to gain an advantage for themselves or someone else or cause detriment to the cemetery trust
* they do not use information that has been obtained by being a trust member improperly to gain an advantage for themselves or someone else or to cause a detriment to the cemetery trust
* they avoid conﬂicts of interest and do not allow personal interests to conﬂict with the interests of the cemetery trust by disclosing all potential, perceived or real conflicts of interest.

The following table includes some dos and don’ts for trust members.

|  |  |
| --- | --- |
| Dos | * Do ask probing questions (for example, about the key assumptions behind a budget). * Do understand and properly value the trust’s liabilities. * Do ensure abstracts and reports are produced on time. * Do develop long-term strategies (to provide trust members with something to measure the trust’s performance against over time). * Do develop and implement risk management policies (risk management policies ensure risks are managed appropriately). * Do foster a positive culture because this will influence behaviour, and behaviour ultimately affects performance. |
| Don’ts | * Don’t ignore responsibility (attend meetings and consider issues). * Don’t hide, filter or play down unpleasant information. |

## Public sector values

As members of a public entity, trust members are public ofﬁcials under s. 4 of the Public Administration Act and are expected to model the 7 core public sector values:

* Responsiveness
* Integrity
* Impartiality
* Accountability
* Respect
* Leadership
* Human rights





## Code of Conduct

Trust members must comply with the VPSC [Code of conduct for directors of Victorian public entities](https://vpsc.vic.gov.au/ethics-behaviours-culture/codes-of-conduct/code-of-conduct-for-directors-of-victorian-public-entities) <https://vpsc.vic.gov.au/ethics-behaviours-culture/codes-of-conduct/code-of-conduct-for-directors-of-victorian-public-entities>.

The Code of Conduct is based on the Victorian public sector values and sets the standard of behaviour expected of public entity board members, directors and statutory office holders.

As members of a Victorian public entity, trust members must:

* be open and transparent in their dealings
* accept responsibility for their decisions
* act in a ﬁnancially responsible manner
* strive to earn and sustain public trust of a high level
* avoid bias, discrimination and acting in self-interest
* show respect for others by acting in a professional and courteous way
* ensure information gained as a trust member is only used for proper purposes and is kept conﬁdential
* model leadership and stewardship
* promote and apply the Victorian public sector values
* honour the Code of Conduct.

## Charter of human rights

Trust members must comply with the Charter of Human Rights and Responsibilities Act. The Charter sets out 20 fundamental human rights that belong to all people in Victoria. Human rights are basic entitlements that belong to everyone regardless of their background, location, differences or beliefs.

More information about the Charter is available on the [Victorian Equal Opportunity and Human Rights Commission website](https://www.humanrights.vic.gov.au) <https://www.humanrights.vic.gov.au>.

## Climate risk

Victoria’s climate has changed in recent decades – generally, becoming warmer and drier with an increase in extreme weather events. These changes are expected to continue into the future.

As directors of public entities, cemetery trust members have to consider a variety of risks, including climate change-related risks, when carrying out their functions.

For many cemetery trusts, climate change–related risks are likely to present foreseeable risks of harm that may adversely impact assets, service delivery and financials as well as reputational losses or other consequences.

The dynamic, forward-looking nature of climate change-related risks means the standard of care to which public entity directors are held continues to increase. That said, it is important to note that the standard of care reasonably expected of a cemetery trust is proportional to its size.

Guidance to help directors of public entities oversee the management of climate change–related risks is available on the [Join a public board website](https://www.boards.vic.gov.au/directors-duties-respect-climate-risk) <https://www.boards.vic.gov.au/directors-duties-respect-climate-risk>.

## Disclosing of conflicts of interest

Trust members who have a potential, perceived or real conflict of interest must disclose the conflict at a cemetery trust meeting as soon as possible after becoming aware of a conflict. A trust member who has a conﬂict of interest will have to enter into a conflict of interest management plan.

Refer to [Topic 10. Managing conflicts of interest](#_Topic_10._Managing) for more information.

## Personal liability

In carrying out a function or power under the Cemeteries Act, a trust member is not personally liable for anything they do or fail to do in good faith. Any liabilities that come about from the actions of individual trust members attach to the cemetery trust, rather than the individual.

As the insurer for the state of Victoria, the VMIA provides insurance services to cemetery trusts and trust members. This insurance provides cover for trust members and ofﬁcers of the cemetery trust against third-party claims for wrongful acts, including actual or alleged breach of duty, breach of trust, neglect, error misstatement, misleading statement, omission, breach of warranty or authority.

The cover provides ﬁnancial protection for personal assets in the event of a legal action arising from alleged breaches of their obligations while performing their duties as a trust member. Claims may be made by suppliers, customers or employees.

For more information [contact the VMIA](https://www.vmia.vic.gov.au/about-us/contact-us) <https://www.vmia.vic.gov.au/about-us/contact-us>.

### Liability under health and safety legislation

Cemetery trusts and trust members may be liable for a criminal offence under health and safety laws if they fail to meet legal obligations and take reasonable care.

Trust members may also be criminally liable for:

* interfering with an employee’s return to work
* hindering or obstructing an inspector
* knowingly making a false or misleading statement in connection with a dispute referred for conciliation.

That said, trust members 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 and act with due diligence when carrying out obligations under health and safety law.

Refer to [Topic 31. Health and safety](#_Topic_31._Health) for more information.

## Class A trust member fees and allowances

Class A trust members are eligible for remuneration. Refer to [Remuneration](#_Remuneration) for more information.

Class A trust members are also entitled to be reimbursed for reasonable expenses incurred in performing their functions as approved by the cemetery trust. These payments should come from the cemetery trust’s funds.

## Class B trust member fees and allowances

Class B cemetery trust members (excluding trust members who are public service employees) are entitled to receive travelling and other allowances fixed by the Minister. Travelling and other allowances are paid from the cemetery trust’s funds and should be recorded in the cemetery trust’s financial records.

Claims for expenses must be reasonable and necessary. An expense is considered necessary if it is unavoidably incurred in the course of authorised work. Expenses can only be paid on presentation of receipts, and the trust chairperson must endorse these.

Where a chairperson claims expenses, receipts must be endorsed by a person delegated to perform this function by the cemetery trust – for example, the trust secretary.

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

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

## No free rights of interment for trust members

Cemetery trusts do not have the power under the Cemeteries Act to waive the gazetted fee for a right of interment for current or former trust members.

# Topic 4. Trust chairpersons

The trust chairperson leads the cemetery trust board, ensures its performance and accountability, and exercises procedural control over trust meetings. Trust chairpersons are also responsible for ensuring all trust members take part in the governance of the cemetery trust.

## Class A trust chairpersons

The Minister appoints Class A trust chairpersons for terms up to 3 years and may be reappointed. Refer to the Class A chairperson position description for more information.

|  |
| --- |
| [Class A cemetery trust chairperson position description](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> |

## Class B trust chairpersons

A Class B trust chairperson is a current trust member who the cemetery trust board has appointed to the role. It is up to the cemetery trust to decide the length of a Class B trust chairperson’s appointment within their 5-year term of membership.

For example, some cemetery trusts prefer to rotate this role each year, while others appoint a trust chairperson for 5 years to tie in with their term of appointment as a trust member.

There are no limits on how many times, or for how many years, the same trust member can be reappointed as Class B trust chairperson.

Refer to the Class B chairperson position description template for more information.

|  |
| --- |
| [Chairperson position description template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising> |

## Trust chairperson duties and responsibilities

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

|  |  |
| --- | --- |
| Leadership | * Leading the cemetery trust * Helping trust members to understand their role, responsibilities and accountability * Ensuring trust members are provided with appropriate support and induction to enable them to understand and carry out their role * Developing trust members into a cohesive and effective team * Ensuring all trust members take part in running the cemetery trust * Identifying, monitoring and escalating any significant risks or issues of public concern about services the cemetery trust provides |
| Accountability | * Ensuring each public cemetery that the cemetery trust is responsible for is managed properly and efficiently * Making decisions in good faith by being adequately informed about cemetery trust matters and exercising judgement in the best interest of the cemetery trust and the communities being served * Ensuring systems are in place to enable effective and accountable risk management, financial management and records management * Ensuring relevant policies, issues and correspondence are brought to the attention of trust members * Ensuring cemetery trust services meet community needs * Maintaining a skills matrix of all trust members, including the trust chairperson, to help with succession planning |
| Meetings | * Setting the cemetery trust’s agenda * Facilitating discussions at trust meetings by ensuring meetings are managed appropriately and ensuring decisions are properly understood and minuted * Ensuring all trust members have timely access to relevant information, including advice from the department, received by the trust chairperson * Ensuring conflicts of interest are disclosed and managed appropriately |
| Stakeholders | * Managing the principal relationships of the cemetery trust – for example, relationships with staff, committees, community stakeholders, the Minister and the department * Representing the cemetery trust to external parties as an official spokesperson for the cemetery trust * Ensuring media comments are made in line with cemetery trust policies and procedures |
| Conduct | * Managing poor trust member behaviour and conflict between trust members * Maintaining impartiality during any investigation and when resolving complaints * Exemplifying the Victorian public sector values and Code of Conduct |

Other responsibilities for Class A trust chairpersons include:

* developing and monitoring compliance with annual and strategic plans for each public cemetery for which the trust is responsible
* working closely with the department to ensure strategic challenges facing the sector are identified and managed
* monitoring the performance of the CEO
* offering advice and leadership to Class B cemetery trusts.

# Topic 5. Class B trust secretaries

Class B cemetery trusts may appoint a person as secretary (sometimes referred to as cemetery manager or officer) to:

* attend to routine business matters
* provide administrative support
* perform duties and exercise powers delegated by the cemetery trust.

Refer to [Topic 9. Delegating cemetery trust powers](#_Topic_9._Delegating) for more information.

## Member secretary

A member secretary is an appointed trust member who performs the role of the secretary in addition to their trust member responsibilities.

A member secretary does not receive any payment for performing this role but can be reimbursed for reasonable expenses incurred in the course of authorised work (with the cemetery trust’s approval). Refer to [Class B trust member fees and allowances](#_Class_B_trust) for more information.

## Non-member secretary

A cemetery trust may decide to appoint someone who is not a member of the trust to take on some or all of the secretary’s duties. This position, referred to as a non-member secretary, reports to the cemetery trust. The non-member secretary does not vote on cemetery trust decisions. The decision to appoint a non-member secretary is usually based on:

* the weight of the volunteer load
* the number of interments per year at the cemetery
* the cemetery trust’s financial position.

A non-member secretary may be paid or be an unpaid volunteer. A paid non-member secretary may be an employee or a contractor.

Refer to [Topic 30. Employing and managing staff](#_Topic_30._Employing) for more information.

## Secretary’s handbook

|  |
| --- |
| [Secretary’s handbook – Guidance for Class B cemetery trust secretaries](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance> |

The secretary’s handbook provides information and advice about the essential parts of the secretary’s role. It is designed to help induct new secretaries and provide a useful resource for existing secretaries. Topics include:

* rights of interment
* interment services
* forms
* fees
* financial management
* trust meetings
* communication
* complaints management.

## Secretary duties

|  |
| --- |
| [Secretary position description template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising> |

Specific responsibilities of the trust secretary will vary depending on the size and complexity of the cemetery trust. They may include the following duties.

### Administration

* Facilitating induction of new trust members.
* Advising trust members on the obligations of trust members and the cemetery trust.
* Preparing trust meeting agendas.
* Preparing draft meeting minutes for the trust chairperson and circulating the minutes, including following up on issues and actions the cemetery trust raises.
* Ensuring effective information flows within the cemetery trust and advice from the department is circulated to trust members.
* Undertaking tasks and decisions set by the trust chairperson via the cemetery trust – for example, helping to implement corporate strategies and giving practical effect to the trust’s decisions.

### Financial management

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

### Funeral and interment arrangements

* Selling pre-need rights of interment to the public.
  + Ensuring all relevant paperwork is provided and cemetery interment records, financial records, maps and registers are updated.
* Selling at-need rights of interment, interment services and memorials.
  + Ensuring all relevant paperwork is provided and cemetery interment and financial records, cemetery maps and registers are updated.
  + Ensuring someone is on call 7 days per week to accept funeral arrangements. Hours may vary as arranged by the cemetery trust and local funeral directors.
  + Reviewing all paperwork relating to interments to ensure the requirements of the Cemeteries Actand the Cemeteries Regulations are met.
  + Arranging with contractors/gravediggers to provide grave-digging services and ensuring interment services are provided to a satisfactory standard.
  + Where necessary and required by the cemetery trust, attending funeral/interment services as the delegate of the cemetery trust to provide access to the cemetery, receive and check documents and to oversee the conduct of the service.

### Memorial approvals

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

### Investigations and complaints management

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

# Topic 6. Class A trust member appointments

The department manages the appointment process for Class A trust members in line with the Department of Premier and Cabinet’s [Appointment and remuneration guidelines](https://www.vic.gov.au/guidelines-appointment-remuneration) and [Diversity on Victorian government boards guidelines](https://www.vic.gov.au/guidelines-appointment-remuneration) <https://www.vic.gov.au/guidelines-appointment-remuneration>.

Diversity and inclusion are imbedded in the appointment process to ensure cemetery trusts reflect the rich diversity of the Victorian community.

## Appointment rounds

The department coordinates appointment rounds centrally (based on term-of-appointment expiry dates) to ensure continuity of cemetery trust membership. The department will notify cemetery trusts when a scheduled appointment round is due to begin.

Occasionally vacancies occur on Class A cemetery trusts for reasons other than terms of appointment expiring (for example, a resignation). If this occurs and the cemetery trust believes it is necessary to fill the vacancy before the next scheduled appointment round, the cemetery trust may write to the department to request an unscheduled appointment round. The department will then discuss the request with the Minister’s office.

Please note that unscheduled appointment rounds are only conducted in exceptional circumstances. Every attempt is made to incorporate vacancies into the next scheduled appointment round.

## Terms of appointment

Class A trust members are appointed for a term of up to 3 years. The start date and length of terms of appointment may be varied to ensure continuity within the cemetery trust, allow sufficient opportunities for the appointment of new trust members or meet administrative requirements.

Existing trust members are eligible for reappointment and must apply via the formal [application process](#_Application_process). Applicants seeking reappointment should be aware that reappointment is not automatic or guaranteed.

Note: There is a maximum tenure of 10 years applied to individual appointees, except in exceptional circumstances.

## Remuneration

Class A trust members are eligible for remuneration. Current remuneration rates are published in the trust member and trust chairperson position descriptions.

|  |
| --- |
| [Class A cemetery trust member position description](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>  [Class A cemetery trust chairperson position description](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> |

If an applicant is employed as an executive officer or equivalent in the public sector, the department has to seek the department Secretary’s approval for the proposed appointee to receive remuneration, ahead of seeking approval for the appointment itself.

## Application process

### Applicant guidelines

|  |
| --- |
| [Class A cemetery trust applicant guidelines](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> |

Applicants seeking appointment to a Class A cemetery trust must read the applicant guidelines before applying.

### Timeframe

The Minister and Cabinet consider all Class A trust member appointments before submitting to the Governor in Council. Appointments are usually finalised about 6 months after applications close.

### Advertising

Vacant Class A trust member positions are published on the [Join a public board website](Join%20a%20public%20board%20website) <https://www.boards.vic.gov.au> and may also be placed in regional newspapers. Advertisements are also circulated to a range of agencies and networks.

### Applications

Applications are submitted via the [Join a public board website](https://www.boards.vic.gov.au/) <https://www.boards.vic.gov.au>. Applicants complete the online application form, respond to selection criteria (as detailed in the relevant position description) and upload their curriculum vitae.

If an applicant is a public sector employee, whether full-time or part-time, they have to provide a letter from their employer with their application containing employment information as specified in the [Appointment and remuneration guidelines](https://www.vic.gov.au/guidelines-appointment-remuneration) <https://www.vic.gov.au/guidelines-appointment-remuneration>.

### Shortlisting

Suitable applicants are shortlisted for interview. Each cemetery trust’s composition is considered in the shortlisting process. This helps ensure a balance and diversity of necessary skills, expertise, perspectives, lived experience and backgrounds.

### Conflicts of interest

|  |
| --- |
| [Class A cemetery trust declaration of private interests form](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-appointments) (DPI form) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-appointments> |

Shortlisted applicants have to complete the DPI form, which the department will provide.

Generally, people with a financial interest in the cemetery trust will not be appointed – for example, contractors providing goods or services, or people with personal or professional interests that are directly affected by strategic decisions the cemetery trust makes.

Refer to [Topic 10. Managing conflicts of interest](#_Topic_10._Managing) for more information.

### Probity checks

All competitive applicants are subject to the following employment safety screening:

* national police check
* check of the Australian Securities and Investment Commission (ASIC) register of persons prohibited/disqualified by ASIC under the provisions of the *Corporations Act 2001*
* check of the Australian Financial Security Authority National Personal Insolvency Index, which has information about proceedings and administrations under the *Bankruptcy Act 1996*
* referee checks.

If an applicant has lived in one overseas country for more than 12 months in the past 10 years, the applicant must provide a police certificate from that country.

## Resignations

If a Class A trust member wishes to resign from their position, they should inform the trust chairperson and write a letter of resignation addressed to the Minister. The letter must include the date the resignation takes effect and be emailed to the department (refer to [Contact details](#_Contact_details)).

The department will process the resignation and inform the Minister’s office. Do not send resignations directly to the Minister’s office.

# Topic 7. Class B trust member appointments

The Class B trust member recruitment and selection process is managed by each cemetery trust. The department then processes applications for appointment for the Minister’s consideration.

## Terms of appointment

Class B cemetery trust members are appointed for terms up to 5 years. Members can apply for reappointment for subsequent terms of appointment.

Class B cemetery trust members appointed before 1 January 1996 under the previous Cemeteries Act 1958 are lifetime members and remain in office until they resign, pass away or, under exceptional circumstances, are removed from office by the Governor in Council. Lifetime members do not have to apply for reappointment.

### Cemetery trusts managed by municipal councils

Council-managed Class B cemetery trusts do not have appointed trust members because the cemetery trust board is made up of elected councillors for that municipality. Council trust members are automatically appointed for their elected term.

## Diversity and inclusion

Class B cemetery trusts are responsible for running open and fair recruitment processes that meet the Department of Premier and Cabinet’s [Appointment and remuneration guidelines](https://www.vic.gov.au/guidelines-appointment-remuneration) and [Diversity on Victorian government boards guidelines](https://www.vic.gov.au/guidelines-appointment-remuneration) <https://www.vic.gov.au/guidelines-appointment-remuneration>.

Diversity and inclusion must be imbedded in recruitment processes to ensure cemetery trusts reflect the rich diversity of the Victorian community.

## Recruitment toolkit

|  |
| --- |
| [Recruitment toolkit for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising> |

The recruitment toolkit has information about diversity and how to include diversity considerations into recruitment processes. It offers practical advice to guide Class B cemetery trusts through each step of the recruitment process.

Topics in the recruitment toolkit include:

* diversity on boards
* unconscious bias in recruitment
* cultural change in organisations
* position descriptions
* skills matrix
* selection criteria
* advertising vacancies
* community networking
* recruiting volunteers online
* social media
* interviews
* referee checks.

## Recruitment templates

The following recruitment templates can be adapted to suit the needs of individual cemetery trusts.

|  |
| --- |
| [Trust member position description template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising>  [Chairperson position description template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising>  [Secretary position description template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising>  [Skills matrix template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising>  [Advertisement template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising>  [Interview template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising>  [Referee check template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising> |

## Applications endorsed for appointment

|  |
| --- |
| [Application for appointment to a Class B cemetery trust](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments) (application form) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments>  [Application guidelines for appointment to a Class B cemetery trust](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments) (application guidelines) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments> |

When a cemetery trust has agreed to endorse an application for appointment, a completed application form is submitted to the department for processing.

The application form is an interactive Microsoft Word document that can be completed online and printed for signatures. Alternatively, the application form can be printed out and completed by hand. Applicants must complete the current application form. Out-of-date versions of the application form will not be accepted.

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

Note: The application form asks applicants if they have a potential conflict of interest. If the applicant answers ‘Yes’ or ‘Unsure’ they must discuss the matter with the cemetery trust. Refer to [Topic 10. Managing conflicts of interest](#_Topic_10._Managing) for more information.

Completed application forms should be submitted to the department for processing as soon as possible, preferably via email (refer to [Contact details](#_Contact_details)).

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

A trust endorsing an application does not mean the appointment is confirmed. After the application is processed it will be provided to the Minister for consideration and recommendation to the Governor in Council, who formally makes the appointments.

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

## Role of the department

### Processing applications

The department will only process properly completed applications. If the department receives an incomplete application, it will be returned to the cemetery trust.

Once processed, the applications are forwarded to the Minister for recommendation to the Governor in Council for formal appointment.

### Appointment rounds

The department manages Class B trust member appointments in 4 annual appointment rounds.

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

The following table shows the current term-of-appointment expiry dates for any year and the corresponding deadline for the department to receive completed applications.

|  |  |
| --- | --- |
| Term expiry date | Deadline for the department to receive applications |
| 30 April | 5 February |
| 31 July | 14 May |
| 31 October | 13 August |
| 28 February | 10 December |

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

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

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

A list of the membership of each Victorian cemetery trust and appointment expiry dates for current trust members is available on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-member-appointments) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-member-appointments>.

### Probity checks

The department will perform the following probity checks for applicants:

* a check of the Australian Securities and Investment Commission (ASIC) register of persons prohibited/disqualified by ASIC under the provisions of the Corporations Act
* a check of the Australian Financial Security Authority National Personal Insolvency Index, which has information about proceedings and administrations under the Bankruptcy Act.

### Conflicts of interest

Applicants who work in a profession related to the cemetery sector may have a conflict of interest. Examples include funeral directors, celebrants, gravediggers, stonemasons, plaque manufacturers and florists.

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

Refer to [Topic 10. Managing conflicts of interest](#_Topic_10._Managing) for more information.

### Applications from family members

Cemetery trusts may endorse applicants who are directly related to a current trust member or another applicant if the advertising process was unsuccessful in attracting enough other applicants to fill these vacancies. Directly related family members are defined as a husband, wife, domestic partner, parent, child or sibling.

Cemetery trusts wishing to nominate an applicant who is directly related to a current trust member or another applicant must ensure the applicant has identified the direct relationship in Part A of the application form and the chairperson (or chairperson’s delegate) fills in Part H. Part H of the application from requires the cemetery trust to give details of its rationale for nominating a directly related family member.

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

## Resignations

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

If a Class B trust member wishes to resign from their position, they should inform the trust chairperson and advise the department in writing as soon as possible, preferably via email (refer to [Contact details](#_Contact_details)).

# Topic 8. Cemetery trust meetings

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

## Frequency of meetings

The department recommends that cemetery trusts meet at least 4 times a year including:

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

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

Under the Cemeteries Act, the trust chairperson schedules trust meetings. The trust chairperson may at any time convene a meeting and must do so when requested by at least 2 trust members. Trust meetings should be scheduled in advance to ensure trust members have enough notice.

## Scheduling trust meetings

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

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

Trust members can take part in trust meetings by phone, closed-circuit television and any other means of communication. A trust member who takes part in this way is considered present at the meeting.

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

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

## Quorum

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

A majority of the currently appointed trust members constitutes a quorum of a trust. For example, if a trust has 7 members, it needs at least 4 trust members to be present at a meeting to form a quorum.

## Decision making and voting

The cemetery trust should ensure the decisions it makes:

* are legally valid
* comply with government policy
* are ethically sound and fair.

The cemetery trust must consider all aspects of an issue and, if necessary, seek professional advice to help trust members understand the full implications of any decisions they make.

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

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

## Meeting rules

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

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

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

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

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

## Trust chairperson’s role

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

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

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

The trust chairperson should maintain control over the meeting without dominating the debate.

## Meeting agendas, minutes and papers

The purpose and contents of meeting agendas, minutes and papers are detailed in the following table.

| Document | Purpose | Contents |
| --- | --- | --- |
| Agenda | Meeting agendas provide trust members with a clear set of topics, objectives and timeframes to ensure effective trust meetings. | * Scheduled start and finish times * Minutes of the previous meeting (presented for endorsement) * Outstanding major action items * Declarations of conflicts of interest * Standing agenda items such as OHS * Matters for decision, which may include recommendations and reports from committees * Strategic, operational and performance issues * Financial reports including the year-to-date budget and expenditure, and financial forecasts * Correspondence/complaints received (including recommended actions, if relevant) * Other items for discussion |
| Minutes | Meeting minutes are the public record of cemetery trust decisions and ensure action items are progressed. | * Cemetery trust name * Place, date, start and finish time * Those present including the name of the trust chairperson * Apologies (the names of trust members who have said they cannot attend) * Trust members’ declarations of conflicts of interests * Notes about discussions and decisions * Action plans and the names of people who are responsible for implementing those plans |
| Papers | Meeting papers ensure robust discussions and informed decision making. | * Finance report * New department-issued information and advice * Reports and briefing papers providing background information * Quotes to be considered * Policy documents to be reviewed * Copies of significant correspondence |

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

Because trust meeting minutes are a matter of public record, they may need to be produced as evidence of cemetery trust decisions.

## Making decisions without holding a trust meeting

In exceptional circumstances a cemetery trust may need to make a decision on an urgent matter without holding a trust meeting. If a particular matter is urgent and cannot be postponed, trust members can address the issue by communicating via email. This is called a circular resolution.

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

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

## Trust-member-only discussions

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

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

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

# Topic 9. Delegating cemetery trust powers

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

## Delegation of trust powers and functions under the Cemeteries Act

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

Section 15 of the Cemeteries Act does not permit delegation of trust powers and functions under the Cemeteries Regulations. Refer to information about trust powers and functions under the Regulations below.

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

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

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

Note: The delegation of trust powers and functions differs for cemetery trusts managed by municipal councils in relation to provisions in the *Local Government Act 2020*. Refer to Division 5 of the [Cemeteries Act](#_Cemeteries_Act) for more information.

### Instrument of delegation

|  |
| --- |
| [Instrument of delegation template](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-appointments)  <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance> |

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

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

## Trust powers and functions under the Cemeteries Regulations

The Cemeteries Regulations do not allow for the delegation of trust powers and functions under the Regulations. However, a cemetery trust may wish to engage an agent to act on their behalf in performing these powers and functions.

The use of an agent should be limited to practical or administrative powers and functions, consistent with cemetery trust powers and functions under the Cemeteries Regulations.

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

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

## Accountability

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

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

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

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

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

# Topic 10. Managing conflicts of interest

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

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

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

Private interests include direct interests, such as a person’s own personal, family, professional or business interests. They also include indirect interests, such as the personal, family or business interests of the individuals or groups connected to a person.

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

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

## Financial conflicts of interest

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

## Non-financial conflicts of interest

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

## Conflicts of interest due to personal relationships

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

## Conflicts of duty

A conflict of duty is a conflict between a trust member’s duty as a trust member and duty to another public or private organisation or group. This conflict exists if a trust member has 2 or more roles that have competing priorities.

## Examples of conflicts of interest

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

## Avoiding financial conflicts of interest

Financial conflicts of interest can pose significant risks to organisations with financial management responsibilities. A key risk is the potential for fraudulent and unlawful activities.

It is not acceptable for a cemetery trust member to:

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

## Conflict of interest management strategies

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| --- | --- |
| Trust meetings | The trust member will:   * disclose any conflicts of interest relating to agenda items at the beginning of trust meetings or when the agenda and papers are circulated * leave a trust meeting as soon as an agenda item related to the conflict comes up for discussion * not initiate or engage in any discussions related to the conflict (including before and after meetings) * not try to influence other trust members’ opinions or decisions related to the conflict (including before and after meetings) * not vote on an agenda item related to the conflict * accept decisions the trust makes and support their implementation. |
| Procurement processes | The trust member will not take part in any stage of procurement processes where the trust member:   * owns or works for a business bidding for a contract * has shares in a business bidding for a contract * has a private interest in a business bidding for a contract * is a directly related family member or a close personal friend of a person who owns or works for a business bidding for a contract.   The trust member will not be privy to commercial-in-confidence information relevant to a profession/business the trust member has a private interest in. |
| Promotion and advertising | The trust member will not:   * promote a business they have a private interest in (financial, non-financial or personal) to customers and other stakeholders * advertise a business they have a private interest in (financial, non-financial or personal) on cemetery premises or via trust communications (including online) * be permitted to provide quotes in a private capacity for grant applications.   Note: If a cemetery trust sells and supplies memorialisation goods and services, private businesses that are in direct competition are permitted to promote their goods and services in line with the [Cemetery trust code of practice – sale and supply of memorialisation goods and services by cemetery trusts and other suppliers in Victorian public cemeteries](https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice-relating-to-the-sale-and-supply-of-memorialisation-goods) <https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice-relating-to-the-sale-and-supply-of-memorialisation-goods>. |
| Recruitment and employment | The trust member will not take part in:   * the recruitment process for new trust members (including interviews and referee checks) where an applicant is a directly related family member or a close personal friend of the trust member * the recruitment of trust employees (including interviews and referee checks) where an applicant is a directly related family member or a close personal friend of the trust member * performance reviews and performance management of a trust employee who is a directly related family member. |

## Managing conflicts of interest for Class A cemetery trust members

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| --- |
| [Class A cemetery trust declaration of private interests form (DPI 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> |

### Applicants seeking appointment to a Class A cemetery trust

Shortlisted applicants will be required to complete the DPI form, which the department will provide.

### Existing Class A cemetery trust members

Class A cemetery trust members must complete the DPI form and submit it to the cemetery trust annually and whenever there is a material change in their interests. If a conflict is identified, the trust member and trust chairperson must complete the conflict of interest management plan at the end of the DPI form and manage the risk accordingly.

## **Managing conflicts of interest for Class B cemetery trust members**

### Applicants seeking appointment to a Class B cemetery trust

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| --- |
| [Application for appointment to a Class B cemetery trust (application form)](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments>  [Application guidelines for appointment to a Class B cemetery trust (application guidelines)](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-appointments> |

The application form asks applicants if they have a potential conflict of interest. If the applicant answers ‘Yes’ or ‘Unsure’, they must discuss the matter with the cemetery trust.

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

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

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

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

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

Figure 2 outlines the process for managing conflicts of interest for an applicant seeking appointment.

Figure 2: Process for managing conflicts of interest for an applicant seeking appointment

#### Exceptional circumstances for applicants seeking appointment to a Class B cemetery trust who intend to receive payment from the cemetery trust

In exceptional circumstances where an applicant is to receive payment from the cemetery trust as a contractor, the department may consider the application if the cemetery trust has 3 or fewer trust members and the following conditions have been met and documented:

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

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

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

### Existing Class B cemetery trust members

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

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

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

If a trust member with a conflict of interest refuses to enter into a conflict of interest management plan, the trust’s chairperson or chairperson’s delegate is still responsible for monitoring the conflict and ensuring it is managed appropriately.

In these circumstances the trust member’s unwillingness to enter into a conflict of interest management plan and relevant details of discussions with the trust member should be noted in the trust’s records.

Figure 3 outlines the process for managing conflicts of interest for an existing trust member.

Figure 3: Process for managing conflicts of interest for an existing trust member

### Conflict of interest management plan

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| --- |
| [Conflict of interest management plan template for Class B cemetery trusts (conflict of interest management plan)](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance> |

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

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

The trust chairperson or chairperson’s delegate is responsible for reviewing the plan as per the agreed schedule.

Signed conflict of interest management plans should be kept on record and managed appropriately to protect the privacy of the trust member.

### Long-term conflicts that have a negative impact on the cemetery trust

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

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

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

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

# Topic 11. Managing poor trust member behaviour

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

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

## Behaviour in trust meetings

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

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

## Communicating via email

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

Allow enough time when composing an email to ensure the response is thoughtful and carefully constructed. It helps to read through emails carefully before clicking ‘send’ to ensure the language and content is appropriate.

## Concerns or issues outside of trust meetings

If a trust member has a concern or issue, they should email the chairperson or secretary to place the item on the agenda for the next trust meeting. The chairperson or secretary should acknowledge that they have received the item for the next agenda.

It is not appropriate to repeatedly email the chairperson or secretary and demand a concern or issue be addressed outside of a trust meeting unless it is urgent.

Any urgent issues or concerns that could affect the functioning of the cemetery trust or the operation of the cemetery should be raised with the chairperson. Any matters that need to be voted on in between trust meetings can be facilitated via circular resolution (refer to [Making decisions without holding a trust meeting](#_Making_decisions_without) for more information).

## Threatening behaviour

If a trust member is subject to threatening, aggressive or violent behaviour from other trust members, employees or members of the community the matter should be reported to Victoria Police by calling 000 (if urgent) or 131 444 (if not urgent).

## Who is responsible for addressing concerns about behaviour?

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

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

The chairperson plays a vital role in managing poor behaviour during trust meetings. Refer to [Trust chairperson’s role](#_Trust_chairperson’s_role) for strategies for managing poor behaviour during trust meetings.

## Taking formal action to manage poor behaviour

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

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

### Step 1 – Informal meeting

The chairperson should contact the trust member who has exhibited poor behaviour and arrange a face-to-face meeting to discuss the matter. If unable to meet in person, the meeting may be conducted remotely via phone or an online platform.

The chairperson should discuss the complaint without identifying who initially raised the matter. The trust member must be provided with the opportunity to discuss their conduct and respond to the concerns raised.

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

### Step 2 – Formal meeting

At this meeting, the chairperson should identify and document in writing:

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

A copy of the written document is to be provided to the trust member after the formal meeting. All information related to the meeting must remain confidential, and only the chairperson should access records. Hard copy records should be stored in a secure location and digital records should be password-protected.

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

### Step 3 – Contacting the department

If the trust member continues to display poor behaviour after the formal meeting, the chairperson can contact the department to discuss options to address the matter. The department will assess the information the chairperson provides and consider the next steps, which may include one of the following:

* undertaking a formal investigation
* making a recommendation to the Minister that the member’s removal from office be sought through the Governor in Council under clause 3(2) of Schedule 1 of the CemeteriesAct
* not supporting an application for reappointment as a trust member regardless of trust support where the department decides that the behaviour is detrimental to the trust functioning effectively.

## Concerns about the trust chairperson’s behaviour

Where trust members have raised concerns about the chairperson’s behaviour with the chairperson and they remain dissatisfied with the conduct of the chairperson, a cemetery trust may call for an agenda item to ‘spill’ the position and vote in a new chairperson.

Concerns about the behaviour of the chairperson can be raised with the department (refer to [Contact details](#_Contact_details)).

The department does not intervene where there are interpersonal matters or differences of opinion. Trust members are expected to resolve those matters and agree on a way forward so the trust can continue to provide services to the community.

## Managing the conduct of trust employees

Cemetery trusts are responsible for managing employee conduct. Cemetery trusts must ensure employees understand what is expected of them and should provide feedback on their performance. This can help prevent underperformance.

It is not appropriate for employees to have multiple reporting lines. Cemetery trusts should ensure employees report to and take direction from one person, which is usually the chairperson or the secretary. Refer to [Topic 30. Employing and managing staff](#_Topic_31._Employing) for more information.

# Topic 12. Risk management and insurance

## Risk management

Risk management helps protect cemetery trusts from the chance of something happening that will have a negative impact on their ability to achieve objectives. Risk management is closely linked to a trust member’s duty of care. If a trust member does not ensure risks are managed, they are not fulﬁlling their duties.

Cemetery trusts should implement a risk management framework that suits the size and needs of the cemetery trust and its risk proﬁle.

### Types of risks

|  |  |
| --- | --- |
| Strategic | Risks to the cemetery trust’s direction or achievement of its plans and objectives |
| Governance and compliance | Risks relating to governance frameworks and risks to meeting regulatory obligations |
| Financial and systems | Risks with ﬁnancial controls and systems. Examples include:   * market risk (gains/losses from changes in ﬁnancial and physical market prices) * liquidity risk (risk that the cemetery trust cannot fund its operations or convert assets into cash) * credit risk (gains/losses from the failure of a counterparty to fulﬁl their contractual obligations) |
| Operational and technical | Risks to core business activities. Examples include:   * physical damage to assets * threats to personal safety * risks of not managing assets appropriately * loss of public money through misappropriation or expenditure (inadequate internal controls) |
| Customer | Risks of not communicating clearly with or listening to customer feedback |
| People | Risks of not having adequate human resources |

### Risk management culture

Trust members play a pivotal role in establishing a risk management culture through leadership, behaviour and the decision-making process. The beneﬁts of risk management include:

* protecting the organisation from legal liability
* improving the perception of the organisation
* better information for decision making
* better asset management and maintenance
* protecting stakeholder relationships.

### Risk management strategies

Cemetery trusts should encourage and oversee initiatives to:

* spell out a clear risk management policy that deﬁnes the cemetery trust’s expectations and internal accountabilities for managing risk
* where staff are employed by the cemetery trust, position risk management as the responsibility of each manager and employee as they go about their duties
* establish a robust approach to risk management, providing a framework for
  + identifying existing risks and changes to existing risks
  + identifying emerging risks
  + measuring the potential impact of risks
  + determining how likely it is that risks will eventuate
  + determining the likely consequences of risks and if risk levels are acceptable
  + identifying controls and actions to be taken if risks were to eventuate
  + ensuring reporting and monitoring systems are in place.

### Risk management templates

|  |
| --- |
| [Risk register template](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance)  <https://www.health.vic.gov.au/cemeteries-and-crematoria/fraud-corruption-control-and-public-disclosures> |

The department has developed a risk register template to help Class B cemetery trusts.

The VMIA has developed useful tools and templates to support public entities in risk management. These resources are available on the [VMIA website](https://www.vmia.vic.gov.au/tools-and-insights/risk-management-tools) <https://www.vmia.vic.gov.au/tools-and-insights/risk-management-tools>.

## Insurance

The department has arranged several insurance policies with the VMIA for all public cemetery trusts in Victoria. The policies include cover for:

* property
* combined liability
* directors and officers liability
* personal accident
* cyber liability.

Individual cemetery trusts can purchase other insurance policies (the department does not fund the premiums for these optional products) for:

* construction (contract value over $500,000)
* business travel
* personal accident (journey)
* motor vehicle.

VMIA contact details and information about cemetery trust policies and coverage are 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>.

**Note:** Cemetery trusts must first lodge a claim with VMIA to determine if specific damage to cemetery trust property is covered and a claim can be made. If the damage is not covered under the insurance policy, the cemetery trust may be eligible for a grant from the department. Refer to [Topic 21. Cemetery grants program](#_Topic_22._Cemetery) **for more information.**

# Topic 13. Integrity

## 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 have an 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 [IBAC](https://www.ibac.vic.gov.au/) directly <https://www.ibac.vic.gov.au/>.

IBAC assesses these reports to determine if they will conduct an investigation or refer to another investigative body.

## Class A cemetery trust responsibilities

Class A cemetery trusts have to attest that they have controls and processes in place to ensure integrity, fraud and corruption risks have been reviewed and addressed in their annual reports. Class A cemetery trust annual reports also include information required under the *Public Interest Disclosures Act 2012*. Class A cemetery trust annual reports are tabled in Parliament.

## Class B cemetery trust responsibilities

The department recommends Class B cemetery trusts have a documented fraud and corruption control and public interest disclosures framework. The department has developed a template to support Class B cemetery trusts that can be adapted to suit the needs of individual cemetery trusts.

|  |
| --- |
| [Fraud and corruption control and public interest disclosures framework template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/fraud-corruption-control-and-public-disclosures)  <https://www.health.vic.gov.au/cemeteries-and-crematoria/fraud-corruption-control-and-public-disclosures> |

# Topic 14. Additional requirements for Class A cemetery trusts

## Annual and strategic plans

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

The department has developed planning guidelines to provide an overview of the planning process, planning obligations under the Cemeteries Act and the approval process.

|  |
| --- |
| [Class A cemetery trust annual and strategic plan guidelines](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-governance) (planning guidelines) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-governance> |

### Annual plan

Class A cemetery trusts must prepare an annual plan for each financial year and submit it to the department on or before 30 September. The department Secretary may approve the annual plan or refer it back to the cemetery trust for amendment.

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 department Secretary within 3 months from the cemetery trust’s original submission date.

### Strategic plan

Class A cemetery trusts must prepare a strategic plan for managing and operating the cemetery trust. The department Secretary will direct when a strategic plan is to be submitted for approval.

The department Secretary may request amendments before approving the strategic plan or may not approve the plan. Cemetery trusts must advise the department Secretary if they wish to exercise their functions in a way that is inconsistent with an approved strategic plan.

### Availability to the public

Class A cemetery trusts must ensure approved annual plans and strategic plans are available to members of the public on request and can publish approved plans on their website.

## Governance committees

Class A cemetery trusts must establish a finance committee and an audit and risk committee to help manage the cemetery trust. The cemetery trust may also establish any other governance committee.

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>.

## Community advisory committees

Class A cemetery trusts must appoint a community advisory committee to liaise with local communities. Class A trusts may also appoint any other community advisory committees it wishes.

Community advisory committees aim to help cemetery trusts to facilitate community engagement and ensure they are attuned to the needs and preferences of the communities they serve. They also help ensure the cemetery trust’s services and policies are informed by community input, such as local knowledge, as well as religious, cultural and heritage perspectives.

### Functions of community advisory committees

The functions of a community advisory committee are 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

The cemetery trust appoints members of community advisory committees, having regard to the community advisory committee guidelines and the requirements set out under the Cemeteries Act.

### Community advisory committee guidelines

|  |
| --- |
| [Class A cemetery trust community advisory committee guidelines](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-governance) (CAC guidelines) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-governance> |

The CAC guidelines are designed to help cemetery trusts to establish effective community advisory committees that can inform on consumer and community views on cemetery trust services.

## Chief Executive Officer employment

Class A cemetery trusts are responsible for employing a CEO for the effective operation and management of the cemetery trust and each public cemetery for which it is responsible.

CEOs are employed in line with government policies and guidelines for public entity executives. More information is available on the [VPSC website](https://vpsc.vic.gov.au/executive-employment/victorian-public-entity-executive-employment) <https://vpsc.vic.gov.au/executive-employment/victorian-public-entity-executive-employment> including a *Victorian public entity executive employment handbook* and the *Standard contract for public entity executives*.

### Approval to appoint a CEO

The Cemeteries Act requires the CEO’s terms and conditions of appointment, including remuneration, to be approved by the department Secretary before a person is employed as a CEO.

This approval process ensures the CEO is remunerated within the appropriate executive remuneration band in line with the following:

* Public entity executive remuneration policy
* Public entity executive classification framework
* Victorian Independent Remuneration Tribunal determinations.

The appropriate executive remuneration band is determined by a work value assessment.

### CEO functions

The functions of a Class A cemetery trust CEO include:

* preparing material for the cemetery trust to consider and approve, including draft annual plans, strategic plans, business plans, strategies and budgets
* managing the cemetery trust in line with the cemetery trust’s approved plans
* providing the cemetery trust with relevant and timely information to enable the cemetery trust to fulfil its functions and objectives efficiently and effectively
* ensuring the cemetery trust’s decisions are implemented efficiently and effectively
* ensuring the resources of the cemetery trust are used effectively and efficiently
* informing 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.

### CEO performance management

Class A cemetery trusts are responsible for managing the CEO’s performance. A framework that aligns CEO performance and reviews with organisational goals and objectives is recommended.

The CEO performance appraisal is an important cemetery trust responsibility that provides:

* important feedback to the CEO about their performance including measuring the CEO’s performance in line with the cemetery trust’s business plan
* an increased understanding of the CEO’s concerns and views on achieving objectives
* a forum to build a healthy relationship between the cemetery trust and the CEO based on honesty
* an opportunity for the CEO to highlight professional development opportunities
* a forum to reinforce accountability, transparency and the responsibilities of the CEO
* an opportunity to identify and address any early warning signs of possible difﬁculties
* an opportunity to discuss any future plans the CEO may have (such as retirement).

A useful tool to use is a 360-degree feedback survey, which incorporates the views of several groups (such as trust members, employees, customers, suppliers and other key stakeholders), who will all have a view on the CEO’s performance. This must be handled sensitively and all comments treated conﬁdentially to uphold the integrity of the process. Both quantitative and qualitative indicators could be included to assess the CEO’s leadership behaviour and performance goals.

The cemetery trust should provide the CEO with candid and constructive feedback. Depending on the size and scope of the organisation it may be appropriate for the feedback to be provided by 2 trust members, including the trust chairperson. The content of the feedback and the decision about who should provide the feedback should be discussed and agreed at a trust meeting ﬁrst. Once the CEO has had an opportunity to absorb the feedback, they should be given an opportunity to respond.

A succinct appraisal summary could include:

* top 5 strengths the CEO displays
* opportunities to enhance performance (learning and development)
* personal attributes the trust members see as important in the CEO.

Formal performance appraisals should be conducted in line with the organisation’s policies on performance management at least annually, with a formal discussion on progress at least every 6 months. The review should also be in keeping with the CEO’s contract of employment.

#### Performance considerations

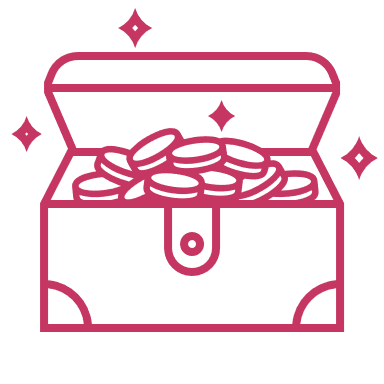
* Does the cemetery trust have complete conﬁdence in the CEO and senior management team?
* Does the cemetery trust (especially the trust chairperson) actively support and mentor the CEO?
* Does the CEO encourage the development of talented people around them?
* Are the respective roles of the cemetery trust and CEO clearly delineated in writing?
* Does the CEO, through their attitude and behaviours, reinforce the appropriate ‘tone at the top’?
* Has the cemetery trust developed a CEO succession plan that is periodically reviewed?
* Is there a robust CEO appraisal process?
* Are performance concerns discussed with the CEO and appropriately documented?

# Topic 15. Cemetery trust fees

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

## Government policy

The Department of Treasury and Finance’s [Pricing for value guide](https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties) <https://www.dtf.vic.gov.au/financial-management-government/indexation-fees-and-penalties> sets pricing principles for government entities including cemetery trusts. 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 schedule regular reviews of fees to help keep prices aligned with actual costs. 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, supplying memorialisation goods.  Refer to the department’s [Cemetery trust code of practice](https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice) <https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice> for more information about competitive neutrality. |

## Role of the department

The department’s role is to ensure cemetery trusts go through an appropriate fee-setting process before submitting fee applications for approval. Fee applications are usually approved within 6 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 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 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 5-dollar unit.

Each year, the department advises cemetery trusts of the upcoming CPI increase for that year.

## Standard fee descriptions

In consultation with the CCAV, the department has developed a list of standard fee descriptions (fee names). Each fee description has a unique 3-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 6 categories. Not all categories or fees within a category will be applicable to all cemetery trusts because 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’ fees. 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**

* Fees related to cremating bodily remains and body parts

Note: This category of fees is only relevant to cemetery trusts that operate crematoria.

| 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 interring 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 grave-digging or if grave-digging 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 the trust engages to affix plaques or install other types of memorials
* Fees for giving an external contractor (not engaged by the trust) permission 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 do not distinguish and use one fee for both types of memorial.

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 to supply 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 refer to this as the ‘plot fee’ or ‘land fee’

Notes:

* A right is purchased ‘at need’ when there are 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, only 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 (sliding scale for maintenance is also applied to the refund) |  |

# Topic 16. Class A cemetery trust fee applications

## Guidelines

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| --- |
| [Guidelines for developing fees for Class A cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-fee-setting-and-financial-reporting) (fee guidelines) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-a-cemetery-trust-fee-setting-and-financial-reporting> |

The fee guidelines outline the public consultation process that trusts have to go through when looking to adjust fees above CPI or when introducing new products and services.

## Fee applications

Cemetery trusts must make a formal application to the department Secretary for approval to make or vary fees.

Fee applications are usually processed within 6 weeks of lodgement if the cemetery trust has provided all required information. The department may ask for more information about the proposed fees and any figures used in the costing tool.

Once fees have been approved, the department will publish the approval notice in the *Victoria Government Gazette* and post the cemetery trust’s fee schedule on the department’s website.

# Topic 17. Class B cemetery trust fee applications

Cemetery trusts must make a formal application to the department Secretary to make or vary fees.

This topic and associated tools aim to assist Class B cemetery trusts make applications for new fees or increases to existing fees, and:

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

Cemetery trusts must justify any proposed new or increased fees, providing a breakdown of the proposed fees.

Completing the department’s fee justification model (refer below) is the preferred method for cemetery trusts to show the cost drivers of their proposed fees.

## Overview of the application process

Follow these steps when applying for new fees or fee increases:

1. Complete the fee justification model. Cemetery trusts may send a draft to the department for review before submitting the signed version.
2. Explain by letter or email why the fee increase is being requested and outline the source or components of the figures used in the model.
3. Submit the signed model and cover letter or email with any supporting documents to the department (refer to [Contact details](#_Contact_details)).

Fee applications are usually approved within 6 weeks of lodgement to the department if the cemetery trust has provided all required information. The department may ask for more information about the proposed fees and any figures used in the model.

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

## Fee justification model

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| --- |
| [Fee justification model](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting)  <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting>  [Fee justification model user guide](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting> |

The fee justification model is a table of cemetery fees broken down into cost drivers that make up the proposed fee. The fee justification model enables trusts to calculate fees based on the costs associated with providing cemetery services.

Before completing the fee justification model, refer to [Topic 15. Cemetery trust fees](#_Topic_15._Department) to become familiar with fee-setting concepts and terminology and the [sample fee application](#_Sample_fee_application) below.

Microsoft Excel is needed to complete the fee justification model. Cemetery trusts that do not have access to Microsoft Excel should contact the department for advice (refer to [Contact details](#_Contact_details)).

## Land value calculator

Cemetery trusts can use the land value calculator to capture the costs of developing cemetery land for the sale of rights of interment for bodily remains and cremated remains.

The cost proposed by the land value calculator can be used as the ‘land value’ figure in a fee justification model submitted to the department as part of a fee application. The land value calculator helps cemetery trusts incorporate development costs into fees as well as the cost of shared infrastructure such as toilet blocks, roads, pathways and communal gardens.

|  |
| --- |
| [Land value calculator](https://www.health.vic.gov.au/cemeteries-and-crematoria/%20class-b-cemetery-trust-fee-setting)  <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting>  [Land value calculator user guide](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting> |

## Recommended memorial permit fees

|  |
| --- |
| [Recommended memorial permit fee application form](https://www.health.vic.gov.au/%20cemeteries-and-crematoria/%20class-b-cemetery-trust-fee-setting) <https://www.health.vic.gov.au/ cemeteries-and-crematoria/ class-b-cemetery-trust-fee-setting> |

The department has developed predetermined recommended memorial permit fees in consultation with the CCAV. If a cemetery trust wishes to charge the recommended amount or a lower fee, it can submit a *Recommended memorial permit fee application form* instead of using the fee justification model.

If a cemetery trust wishes to charge a memorial permit fee that is higher than the recommended amount, the fee must be included in the fee justification model.

## Deleting fees

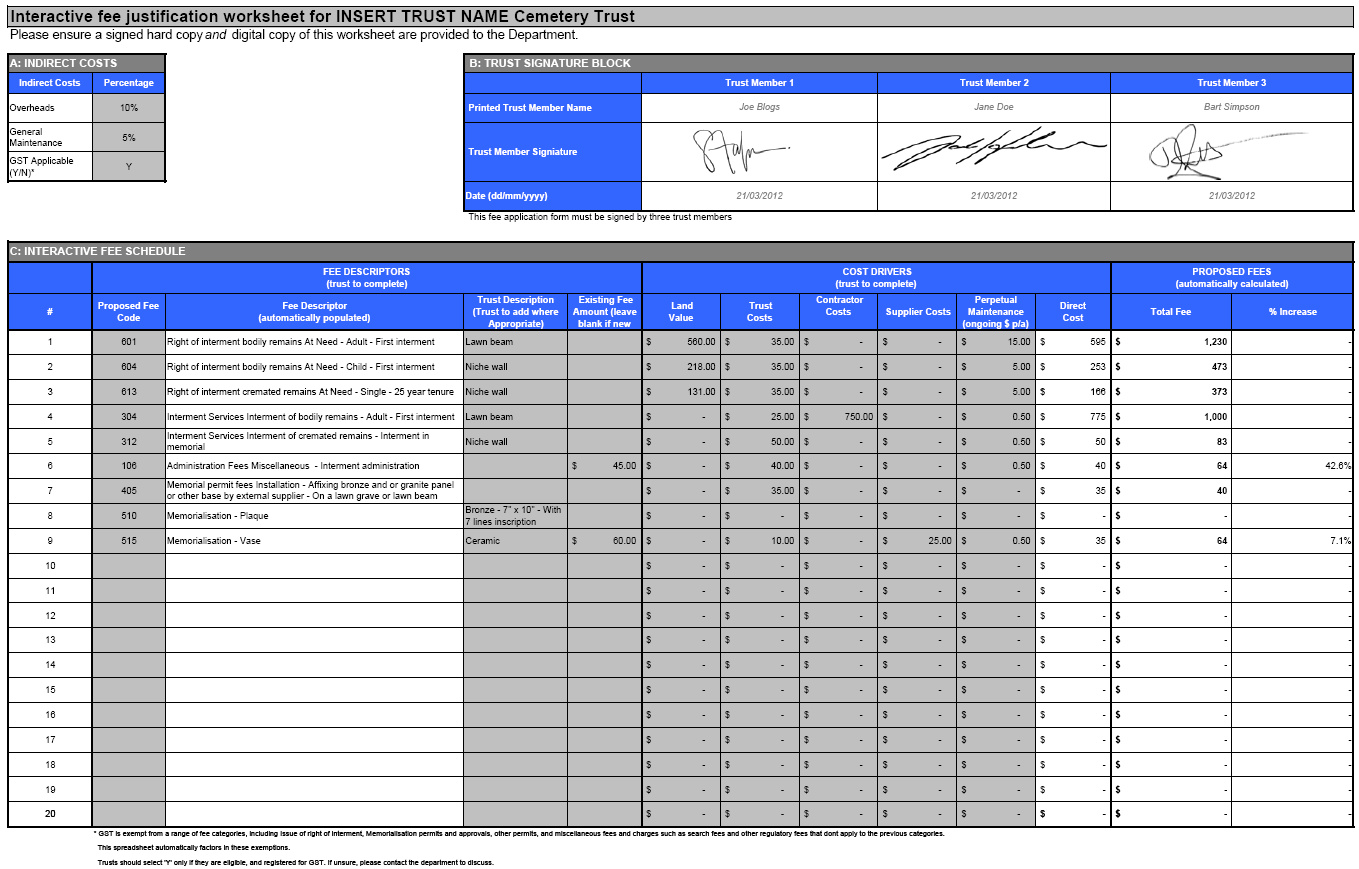
Cemetery trusts can request that fees be deleted by writing to the department. The cemetery trust should list the fees to be deleted and briefly explain why they are no longer required.

## Renaming fees

Cemetery trusts can request that fees are renamed (swapping the standard fee description for a more accurate code or changing the trust description) by writing to the department.

## Sample fee application

|  |
| --- |
| Subject: Fee application for [insert name] Cemetery Trust  Dear Manager  Following a review of our existing fees we have attached a fee justification model for the department’s approval.  The trust is seeking to increase its existing fees because the current revenue raised is not covering operational costs.  The contractor hired for grave-digging services has recently increased their fees and our gazetted interment fees do not cover our costs associated with providing grave-digging services.  The trust also sources memorialisation plaques from a supplier that has increased its prices.  We have employed a groundskeeper to provide general maintenance to the cemetery after 2 long-term trust members resigned. Our new groundskeeper is paid award wages.  The perpetual maintenance component for right of interment fees ($15) was calculated by estimating the annual funds necessary to maintain the lawn areas of the cemetery including infrastructure repairs ($67,500), divided by the number of plots in the cemetery (4,500).  Perpetual maintenance for the niche wall rights of interment ($5) was calculated by estimating the annual maintenance costs of that area of the cemetery ($490), divided by the number of spaces (98).  Other fees have a notional amount as a perpetual maintenance component.  When calculating the trust costs of each fee, we have used a labour rate based on award wages.  The proposed right of interment fees include a land value based on the price of neighbouring grazing land that was sold earlier this year, plus the cost of installing the lawn beams.  We hope the attached documents are appropriate and seek your approval.  Regards  [insert name] Trust Chairperson |



# Topic 18. Financial management

## Cemetery trust bank accounts

Banking institutions often confuse cemetery trusts with trading trusts that hold property and have beneficiaries. This can create confusion when cemetery trusts wish to open a new bank account or change their banking arrangements.

To avoid confusion, it is recommended cemetery trusts provide the following information to their banking institution:

* While cemetery trusts have ‘trust’ in their name, they are actually a government board with ‘trust members’ appointed. The term ‘trust’ (for the board) and the now defunct reference to ‘trustees’ for trust members were used in previous legislation (Cemeteries Act 1958).
* The cemetery trust [insert name] is an independent statutory public body created under the *Cemeteries and Crematoria Act 2003*.
* The cemetery trust is managed by a board of trust members (not trustees) appointed by the Governor in Council on the recommendation of the Minister for Health.
* Class B trust members are appointed in line with s. 6 and schedule 1 of the *Cemeteries and Crematoria Act 2003*. Evidence of a trust member’s term of appointment is outlined in their letter of appointment.

If the above information does not satisfy the banking institution, the cemetery trust should contact the department for more information (refer to [Contact details](#_Contact_details)).

## Perpetual maintenance funds

Perpetual maintenance for public cemeteries is funded through cemetery trust income received from selling cemetery products and services.

Cemetery trusts may consider allocating a portion of income into an investment fund to cover the cost of future perpetual maintenance obligations. These investments can provide cemetery trusts with interest that can fund the future maintenance of closed or partially closed cemeteries in perpetuity.

Under the Cemeteries Act, cemetery trusts may invest their money in any manner they see fit, subject to the directions of the Minister. The Minister has not issued directions on this matter.

As a first step in establishing an investment strategy, cemetery trusts should identify the amount of funding required to maintain all cemeteries they are responsible for in perpetuity.

Cemetery trusts should seek professional advice before investing funds. Any investments should be made in a stable and secure financial environment, having regard for future cash flow needs. Cemetery trusts should establish a schedule for reviewing investments (for example, once or twice a year).

Ideally, perpetual maintenance funds should not be used for general maintenance or cemetery trust operations until a cemetery is closed. However, under limited circumstances, cemetery trusts can use perpetual maintenance funds before closing a cemetery, noting that this should only occur when no other funding is available.

## Using perpetual maintenance funds for development works

Cemetery trusts must be satisfied that any proposed development project will earn a sufficient return on investment before they consider using perpetual maintenance reserves to fund a project. A sufficient return is determined by the extent to which the cemetery trust can:

* recover the borrowed perpetual maintenance funds with interest (the interest rate should be calculated at a risk-adjusted rate for the period the funds were used)
* meet any future financial obligations created by taking on the project.

Acceptable uses of perpetual maintenance funds can include:

* creating new places of interment in the cemetery
* constructing public mausolea (requires the department Secretary’s approval)
* purchasing new land for cemetery purposes (requires the Minister’s approval).

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

## Borrowing funds for development works

Cemetery trusts may consider seeking approval from the Victorian Treasurer to borrow funds to finance proposed development projects. Before seeking approval from the Treasurer, the cemetery trust should put together a strong business case and contact the department to discuss the application.

Note: For the purposes of the Cemeteries Act a lease does not constitute a loan (for example, a novated car lease or leasing equipment).

## Fundraising

Cemetery trusts can organise 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 a cemetery trust has raised or expects to raise more than $20,000 in a financial year, the cemetery trust must register with Consumer Affairs Victoria as a fundraiser operating in Victoria. Registration requires completing an online form and a criminal record and personal insolvency declaration.

More 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/registration>.

## Purchasing

Cemetery trusts are subject to the Victorian Government Purchasing Board’s procurement policies.

The following principles underpin these policies:

* Value for money – considering the benefits and costs over their life, environmental, social and economic factors and any risks related to the procurement.
* Accountability – based on appropriate levels of authority and responsibility.
* Probity – through integrity, ethical behaviour, fairness and transparency.
* Scalability – governance policies and processes are appropriate and efficient, taking into account the capability of the resources available.

Policies, guidance, tools and templates are available on the [Buying for Victoria website](https://www.buyingfor.vic.gov.au) <https://www.buyingfor.vic.gov.au>. The department recommends the following minimum requirements when planning the purchase of goods and services:

| Estimated purchase value | Minimum requirement |
| --- | --- |
| Up to $5,000 | One verbal or written quote |
| $5,000 up to $25,000 | One written quote |
| $25,000 up to $50,000 | Two written quotes |
| $50,000 up to $500,000 | Invite 3 suppliers to take part in a limited tender |
| More than $500,000 | Open tender |

Note: When planning a request for tender, cemetery trusts should provide a written scope/specification of the goods/services required to potential suppliers. This will ensure quotes/tenders can be compared and assessed fairly.

### Public construction procurement

Note: Public construction procurement requirements are **mandatory** for Class A cemetery trusts. Class B cemetery trusts are **exempt** from these requirements.

In 2018 the Minister for Finance issued *Ministerial* *Directions for public construction in Victoria*. 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.

More information about public construction procurement is available on the [Department of Treasury and Finance 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>.

## Commissions and in-kind benefits

Third parties cannot be paid a commission or receive an in-kind benefit (tips, rewards or discounts) from a cemetery trust for selling products and services on its behalf.

## Partial rebate of water charges

Cemetery trusts that receive water assessments in their own name may apply to their local water authority for a rebate of up to $260 per annum offered by the Victorian Government.

## Tax advice

The matters summarised below are complex. The department recommends cemetery trusts seek advice as needed from:

* [Australian Taxation Office](https://www.ato.gov.au/about-ato/contact-us) <https://www.ato.gov.au/about-ato/contact-us>
* [State Revenue Office](https://www.sro.vic.gov.au/contact-us) <https://www.sro.vic.gov.au/contact-us>
* financial services professionals.

## Australian business number

Cemetery trusts must have an ABN to be eligible for the department’s [cemetery grants program](#_Topic_22._Cemetery). The ATO is responsible for providing ABNs.

Cemetery trusts can register to receive an ABN via the [Business Registration Service](https://register.business.gov.au/) <https://register.business.gov.au/>. Call 13 28 46 for help.

A cemetery trust is a ‘not-for-profit’ incorporated entity type of trust, similar to a committee of management and not a financial/investment corporate trust.

When completing the registration process online, cemetery trusts should select the following:

* For ‘organisation type’, select ‘other incorporated entity’. When prompted, select ‘an incorporated association’.
* For ‘nature of your activity’, select ‘in the form of a business’.
* For the ‘income tax exempt’ category, select ‘yes’.
* For ‘not-for-profit organisation’, select, ‘yes’.
* If trusts need more information about the nature of the business activity, enter ‘cemetery operations’.

## Goods and services tax

Cemetery trusts with an annual turnover from the sale of goods and services above $150,000 must be registered for GST.

Cemetery trusts with an annual turnover from the sale of goods and services below $150,000 do not have to register for GST, but trusts may choose to register for GST if they wish. The department recommends cemetery trusts seek advice from a financial services professional when considering registration.

If a cemetery trust has an ABN it can register for GST via the [Business Registration Service](https://register.business.gov.au/) <https://register.business.gov.au/>. If a cemetery trust does not have an ABN it can register for an ABN and GST at the same time via the Business Registration Service.

Direct enquiries about GST or business activity statements recoup matters to the ATO or a financial services professional.

## GST exemptions on cemetery fees

If a cemetery trust is not registered for GST, GST is not applied to any of the trust’s fees. If a cemetery trust is registered for GST, GST is **only** applied to the following fees:

* interment service fees (including grave-digging, backfilling, grave-capping, exhumations)
* memorialisation fees (the sale of products such as plaques, granite, urns and other memorials)
* administration fees for grave testing and the hire of facilities or equipment.

Gazetted fees are GST inclusive and do not require an extra amount to be added for GST.

## Income tax exemption

As public entities, cemetery trusts are exempt from income tax under the *Income Tax Assessment Act 1997*.

## Fringe benefits tax

FBT is a tax paid by employers on certain benefits provided to their employees, or to their employees’ family or other associates. FBT is separate to income tax. It's calculated on the taxable value of the fringe benefit.

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 the cemetery trust provides to business associates or to voluntary (unpaid) trust members.

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

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

The ATO does not categorise cemetery trusts in Victoria as ‘rebateable employers’ (charities) for the purposes of the FBT legislation. Contact the ATO for more information about FBT.

## Payroll tax exemption

Cemetery trusts receive a payroll tax exemption from the State Revenue Office. For more information [contact the State Revenue Office](https://www.sro.vic.gov.au/contact-us) <https://www.sro.vic.gov.au/contact-us>.

## Charitable tax status

Under the *Charities Act 2013*, state government appointed not-for-profit entities, such as cemetery trusts, are **not** eligible for charitable tax status. For more information [contact the Australian Charities and Not-for-Profits Commission](https://www.acnc.gov.au/contact-us) <https://www.acnc.gov.au/contact-us>.

# Topic 19. Class A cemetery trust financial reporting

## Annual budget

Class A cemetery trusts must develop an annual budget that consists of an operating and capital budget. The audit and risk committee and the cemetery trust should approve the budget.

Refer to [Governance committees](#_Governance_committees) for more information about Class A cemetery trust committees.

The budget should be designed to resource all activities and reflect the cemetery trust’s strategic and annual plans.

Costs involved in managing a cemetery include administrative, operational and development expenses. Therefore, the budget should include:

* proposed expenditure on maintenance and development works
* anticipated revenue from the cemetery trust’s fees based on the projected number of interments and cremations
* GST
* funds and investments.

This process is important to enable the cemetery trust to determine whether its current fees are appropriate for proposed expenditure and meeting perpetual maintenance obligations. Refer to [Topic 15. Cemetery trust fees](#_Topic_15._Department) for more information.

Financial statements outlining expenses versus income for each month should be submitted to the cemetery trust for review monthly. This keeps the cemetery trust updated on financial performance and enables financial statements to be compared against the budget.

## Annual report

Class A cemetery trusts are responsible for the proper accounting of income, expenditure, assets and liabilities.

As determined by the Department of Treasury and Finance, Class A cemetery trusts must:

* prepare annual financial statements in line with 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>
* have annual financial statements audited by the Victorian Auditor-General’s Office
* submit an annual report, incorporating annual financial statements, to the Parliament of Victoria by 30 September each year.

The department provides annual reporting guidelines to Class A cemetery trusts each year, checks draft reports for compliance and coordinates the submission of finalised annual reports to the Minister for approval.

## Annual levy

Class A cemetery trusts pay an annual levy to government. The levy is currently set at 3per cent of each Class A cemetery trust’s gross earnings for the previous financial year.

The Cemeteries Act prescribes the purposes of the levy. These are to help:

* meet the costs of administering the Cemeteries Act
* make improvements in cemetery trust governance and administration
* provide services to the community.

The levy supports sector objectives by:

* enhancing the delivery of cemetery services across Victoria
* supporting and strengthening cemetery trust governance
* developing and maintaining community infrastructure
* supporting and sustaining the volunteer cemetery trust workforce
* investing in local communities.

### Gross earnings

Gross earnings refers to total earnings in a specified period before deductions. The following table provides an overview of the items to be included and excluded as gross earnings.

|  |  |
| --- | --- |
| Gross earnings inclusions | * Ordinary activities (for example, sale of goods and services) * Financial instruments (for example, interest and dividend income from shares, term deposits, cash) * Property (for example, rental income) |
| Gross earnings exclusions | * Donations * Sale or proceeds from the sale of assets other than trading stocks (for example, realised or unrealised gain (loss) from disposal or valuation of financial instruments and properties, plant and equipment) * Taxes collected * Unearned income * Grants from government departments (for example, maintenance or heritage grants) * Discounts received or refunds and recoveries on expenses (for example, WorkCover and insurance claims) * Income from structural changes as a result of Governor in Council orders (including mergers, gifted assets or resources received free of charge) |

### Levy payment

The levy is calculated based on the gross earnings as reported be each Class A cemetery trust in their annual financial reports. The department invoices each Class A trust for payment.

While payment is invoiced to the department, all levy monies are paid into the Consolidated Fund. The Consolidated Fund is the government’s primary financial account and receives all consolidated revenue from which payments appropriated by Parliament are made.

### Levy expenditure

The department allocates funds to the following 3 key areas of expenditure.

#### Cemetery grants program

The department’s cemetery grants program provides funding as a contribution to the cost of cemetery infrastructure, amenities, maintenance, equipment and training. Refer to [Topic 21. Cemetery grants program](#_Topic_22._Cemetery) for more information.

#### Administration of cemeteries-related legislation

The department administers the Cemeteries Act and Cemeteries Regulations, develops supporting policies and guidelines and issues statutory documents. Key functions of the department include:

* reviewing and implementing legislation, setting policy and strategic planning
* providing governance support, advice, tools and resources for the sector
* managing the appointment of trust members
* coordinating with other agencies and peak bodies on cemetery issues
* managing key projects that affect the sector
* providing advice to cemetery trusts and the public
* evaluating and approving cemetery trust fee applications
* investigating complaints relating to significant cemetery trust governance failures
* processing and issuing statutory approvals.

#### Projects

The levy helps fund projects to address emerging issues and deliver long-term benefits for the cemetery sector – for example, governance training for cemetery trusts including cemetery essentials online training for Class B cemetery trusts.

### Levy reporting

Each year the department’s annual report details:

* the total levy amount paid
* a summary of how the appropriated money was spent.

# Topic 20. Class B cemetery trust financial guidelines and reporting

## Financial guidelines

|  |
| --- |
| [Financial guidelines for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures> |

Cemetery trusts are responsible for the proper financial management of their trust. The department’s financial guidelines help Class B cemetery trusts establish and maintain a set of minimum financial controls. The financial guidelines:

* support consistent, repeatable and properly controlled financial processes
* aim to help trust members understand the financial information presented to them, as well as the potential risks associated with that information.

Trust members are responsible for ensuring the controls implemented are appropriate to the cemetery trust’s level of operations and financial risk. The financial guidelines should be scaled to the level of activity of each cemetery trust.

## Annual budget

|  |
| --- |
| [Budget template](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures> |

Cemetery trusts should prepare an annual budget for the coming financial year that details:

* proposed expenditure on maintenance and development works (consider funds required to be set aside for future construction or development of a master plan, and whether expenditure is fixed or variable)
* anticipated revenue from the cemetery trust’s fees based on the projected number of interments and other products and services provided by the cemetery trust
* the proportion of revenue to be set aside for perpetual maintenance
* GST collected on anticipated sales, less credit for GST on the anticipated purchases if the cemetery trust is registered for GST and has an ABN
* funds and investments on hand, in both the general account and perpetual maintenance account
* projected income from investments
* funds for identified risks such as tree maintenance.

Cemetery trusts should hold a budget meeting in April or May to discuss the budget for the coming financial year. Once a budget has been agreed, the cemetery trust will be able to determine whether its fees are appropriate to meet forward expenditure. Refer to [Topic 15. Cemetery trust fees](#_Topic_15._Department) for more information.

## Abstracts of accounts

|  |
| --- |
| [Abstract of accounts](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures>  [Checklist for abstract of accounts](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures> |

Class B cemetery trusts must submit a financial report to the department by 1 September each year.

The report, known as the abstract of accounts, is to give a true and fair view of the financial position and performance of a cemetery trust for the past financial year. The abstract of accounts must be accompanied by copies of bank and investment statements relating to the reporting period.

Each year (usually in June), cemetery trusts are sent:

* a blank copy of the abstract of accounts
* a checklist to help cemetery trusts prepare and submit the abstract of accounts.

The abstract of accounts form and checklist are updated each year and published on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures>.

All cemetery trusts must verify the information contained in the abstract by signing the statutory declarations at the end of the document. The Cemeteries Act requires 3 statutory declarations.

Note: Cemetery trusts managing inactive or closed cemeteries still have to submit abstracts of accounts. If the cemetery trust holds no funds or there have been no financial transactions, this must be reported to the department via the abstract of accounts.

### Review or audit of abstracts of accounts

There are other requirements for cemetery trusts with annual income or expenditure above $250,000.

|  |  |
| --- | --- |
| Annual income or expenditure (inclusive) | Requirement |
| $250,000 to $1 million | Financials must be **reviewed** by a qualified accountant in keeping with the Australian Auditing Standard on Review Engagement. |
| Above $1 million | Financials must be **audited** by a registered auditor or a qualified accountant. |

If a review or audit is needed, a copy of the report must be submitted with the abstract of accounts. It should be printed on letterhead or, if letterhead is unavailable, the report must be accompanied by documents that indicate the accountant/auditor’s qualifications.

Note: If a council-managed cemetery trust reaches the threshold for a review or audit as detailed above, it may provide a copy of the council’s annual report audited by the Victorian Auditor-General’s Office with the abstract of accounts to meet this requirement.

### Failure to submit abstracts of accounts

Failure to submit abstracts may result in an investigation or audit of a cemetery trust’s financial affairs or governance. Class B cemetery trusts that have not submitted an abstract are not eligible to receive funding through the department’s [cemetery grants program](#_Topic_22._Cemetery).

Cemetery trusts that have unsubmitted abstracts of accounts should refer to the following guidance document:

|  |
| --- |
| [Guidance for Class B cemetery trusts on unsubmitted abstracts of accounts](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-financial-reporting-and-procedures> |

# Topic 21. Cemetery grants program

|  |
| --- |
| [Cemetery grants program guidelines](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program) (grant guidelines) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program> |

Cemetery trusts may apply to the department for cemetery grants. Grants are for when cemetery trusts do not have enough funds for their required expenditure.

The department assesses grant applications twice each financial year, in October 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 funding available.

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 usually a low priority.

Note: The department does not provide financial help for salary and wages for employees, ongoing maintenance or repairs or restoration of memorials.

## Applying for a grant

|  |
| --- |
| [Cemetery grants program application form](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program> |

To apply for a grant, a cemetery trust must submit a grant application form to the department. The department will not reimburse cemetery trusts that have expended funds in anticipation of receiving a grant.

Grant application forms should include 2 quotes (GST inclusive) for the proposed expenditure and photos of the relevant area (where appropriate) before work begins. If a cemetery trust cannot get 2 quotes, a written explanation outlining why this is not possible must be submitted with the application.

The department will contact cemetery trusts if more information is needed, although this is likely to delay the application. To avoid delays please read the grant guidelines carefully and ensure all relevant sections of the grant application form are completed.

### Tree removal, destruction or lopping

|  |
| --- |
| [Removing, destroying or lopping vegetation – grant application attachment](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-grants-program> |

When applying for a grant for tree removal, destruction or lopping, cemetery trusts need to provide more information to show how they have addressed the necessary requirements (where appropriate). The supplementary attachment for removing, destroying or lopping vegetation should be completed and submitted with the grant application form and quotes.

Note: Cemetery trusts need to have submitted all due [Abstracts of accounts](#_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 department acknowledges all grant applications received and advises on the outcome of all applications in writing once the process is complete.

If a cemetery 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 are not accepted.

## Partial grants

Depending on the total funds available and the nature of the applications received, the department cannot always fund the full amount requested in the application.

Cemetery trusts that are provided with partial grants are expected to draw on their own funds to complete the proposed works. Top-up grantswill notbe provided for the same project in subsequent years.

## Financial reporting and grants

Grant money transferred to a trust must be spent within 4 months of allocation and appear in the following year’s [Abstract of accounts](#_Abstracts_of_accounts). Cemetery 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 4 months of their allocation, the cemetery trust must advise the department in writing of the reasons for the delay 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 22. Rights of interment

## Right of interment

A right of interment permits the 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 because 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 about the right of interment.

## Selling a right of interment

|  |
| --- |
| [Right of interment permit](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit) <https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit> |

When selling a right of interment, the cemetery trust issues a right of interment permit to the right holders. The permit includes information about the right of interment, the place of interment and other conditions.

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_2))
* 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 cannot contact the right holders, the cemetery trust may seek approval from the department to repair or remove and dispose of the memorial
* that if the right of interment is unexercised after 25 years, the cemetery trust may take steps to cancel the right of interment in certain circumstances (refer to [Cancelling a right of interment](#_Cancelling_a_right_1)).

It is recommended that cemetery trusts provide right holders with a copy of the right of interment permit factsheet:

|  |
| --- |
| [Right of interment permit factsheet](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit) <https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit> |

## 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 the trust imposes, 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 aim 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 only cremated remains **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 another 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 another 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 the cemetery trust specifies, 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 when a limited tenure interment expires but are instead preserved in perpetuity. Refer to [Managing limited tenure cremated remains of veterans](#_Managing_limited_tenure) 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 line with the right of survivorship.

#### Example

A right of interment was issued in 1930 to 3 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 line with the rules of intestacy. In lieu of a specific bequest leaving the right of interment to an identified person or people, the right typically forms part of the deceased’s estate and is inherited by the beneficiary or beneficiaries of the estate. This could mean the right is transferred 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 2 daughters, who inherited his estate when he died. He did not leave a specific bequest identifying who should inherit the right of interment. His 2 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 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 documents 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 get supporting evidence (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 for 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 about 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 other information is needed 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 more 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 the cemetery trust has to pay a refund. This is because the cemetery trust can only restore and reuse 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 stay the same. The joint holder who has surrendered their interest has no more entitlements or responsibilities under that right of interment. |
| Exercised with no human remains interred | No | The entitlements and responsibilities of other joint right holders stay the same. The joint holder who has surrendered their interest has no more entitlements or responsibilities under that right of interment. |
| Exercised with human remains interred | No | The entitlements and responsibilities of other joint right holders stay the same. The joint holder who has surrendered their interest has no more 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 the cemetery trust incurs.

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 department for rights of interment for interring 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 3 months
* 98 per cent for the first 6 months
* 99 per cent for the first 9 months
* 100 per cent anything over the first 9 months.

## Variation or forced surrender of a right of interment

In 2021 the Cemeteries Act was amended to provide the department Secretary with a discretionary power to direct the variation or forced 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 direction 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 is exercised in line with the direction and notifying the department if a right holder does not comply with a direction.

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

In addition, under certain circumstances of forced surrender, a cemetery trust may be required to become a joint right holder or provide a refund. More details about specific trust responsibilities and managing a right following a direction by the department Secretary are provided below.

### Variation

A direction 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 direction 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 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
* providing or withholding consent for exhuming human remains from the place of interment.

Where the department Secretary directs the variation of a right of interment, the cemetery trust will be responsible for:

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

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

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

### Forced surrender

Where the department Secretary makes a direction 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 more 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 in line with the department Secretary’s direction. 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 4 scenarios that could apply when a direction for forced surrender is made, depending on whether human remains are interred at the place of interment and whether the right is held by sole or joint right holders.

The following tables provide detailed information for each scenario.

#### Human remains are *not* interred – joint holder

| Legal 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 line with the Cemeteries Act and consistent with the Secretary’s direction. * The trust may transfer the right of interment to the remaining joint holders, but the Secretary’s direction 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 (resell) a new right of interment in line with s. 73 of the Cemeteries Act. |

#### Human remains are *not* interred – sole holder

| Legal provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84I | The trust becomes the sole holder of the right of interment. | Yes – the previous 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 (resell) a new right of interment in line with s. 73 of the Cemeteries Act. |

#### Human remains *are* interred – joint holder

| Legal provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84H | The trust becomes a joint right holder with the other remaining joint holders. | No refund is payable because the trust cannot resell the right. | * 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 is exercised in line with the Cemeteries Act and consistent with the Secretary’s direction. * The trust may transfer the right of interment to the remaining joint holders; however, the Secretary’s direction 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 holder

| Legal provision | Who is the right holder after surrender? | Is a refund payable? | Trust responsibilities and ongoing management of the right of interment |
| --- | --- | --- | --- |
| Section 84H | The trust becomes the sole holder of the right of interment. | No refund is payable because the trust cannot resell the right. | * Update the trust’s records. * On request from a relative or associate of the deceased person interred in the place of interment, exercise the right in line with the Cemeteries Act and consistent with the Secretary’s direction. * The trust may transfer the right of interment to a relative or associate of the deceased; however, the Secretary’s direction 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 rights of interment under certain circumstances if:

* it has been in existence for more than 25 years
* it has never been exercised
* 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.

On cancelling a right of interment, a cemetery trust may then resell 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 or contact the department for advice on those provisions that are specific to the circumstances.

### How to determine whether a right can be cancelled

To help cemetery trusts identify potential sites for cancellation and subsequent resale, the department 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 4 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 documents 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 cancelling and refunding 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 help identify 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? | Other 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 ‘Other 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 another 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 interring 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 interring 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? | Other 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 considered 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 under s. 85 of this Act.  The holder of the right is entitled to either convert or extend that right under s. 87 of the 2003 Act. |

#### Notes

1. The transitional provisions of the Cemeteries Act provide that such rights are considered current rights of interment under s. 75(a) of the Cemeteries Act. Note that the holder of such a right does not have to pay any other 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 make 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 under 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 for 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 applies 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 2 separate places of interment side by side. A right of interment is exercised when human remains are interred and/or a memorial is established at the place of interment. This means that if one side of a side-by-side double grave has no remains interred and no memorial established, the right of interment for the unused side of the grave is still considered to be exercised.

As explained above in [Cancelling a right of interment](#_Cancelling_a_right_1), the Cemeteries Act provides a mechanism for cemetery trusts to cancel certain rights of interment in certain circumstances and then resell 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 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 not be able 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 period for responding to the public notice (it is recommended that cemetery trusts allow at least 6 weeks from the publication date to give community members 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 gather 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. If a person can show 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.

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 line with s. 91 of the Cemeteries Act.

Once the cemetery trust’s records have been updated and if the trust determines that it will cancel the reissued right of interment, it can follow the normal process for cancelling a right (refer to [Cancelling a right of interment](#_Cancelling_a_right_1)).

## Updating historical right of interment records

It is not uncommon for historical right of interment records to be lost, accidentally destroyed, incomplete or outdated. 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 department considers historical right of interment records to be those where the recorded right holder is either known to be deceased (for example, there is a record of the original holder’s interment in the cemetery trust’s records) or is very likely to be deceased (for example, the right of interment was purchased more than 75 years ago and the recorded right holder is uncontactable).

Members of the public may contact cemetery trusts seeking to determine who currently holds a historical right of interment. Refer to the records management handbook for information about responding to information requests:

|  |
| --- |
| [Records management handbook](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management> |

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 that may result in more 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 show 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:

|  |
| --- |
| [Right of interment permit factsheet](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit) <https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment-permit> |

## 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 documents as to why they believe they are the right holder. The cemetery trust should consider the evidence on a case-by-case basis.
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:Cemetery trusts should request 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 that may result in more updates to right of interment records.

The cemetery trust should advise the VMIA 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, phone or email). If a second contact method is attempted, allow 7 more 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 3 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 showing why they believe they are the current holder. This may involve providing documentary evidence including wills, instructions left by the deceased and/or statutory declarations.

If the cemetery trust is satisfied that an interested party has provided enough evidence to show they are the right holder, the cemetery trust can update its records accordingly (this may involve a fee). This process may result in identifying multiple right holders. If no submissions are received, the cemetery trust can document in its records that the right holder cannot be found.

# Topic 23. 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.

## Booking procedure

Cemetery booking systems should be designed to eliminate errors related to identifying, allocating and preparing interment locations. They should allow for timely and efficient interment service 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.

The Cemeteries Act requires a cemetery trust to consider the cultural and religious values of the community when exercising its functions. Therefore, when collecting information about a forthcoming interment and associated funeral, the cemetery trust should find out if there are any specific cultural arrangements that need to be put in place for the service. Cemetery trusts should endeavour to meet these requirements as closely as possible and advise the person who is arranging the interment – for example, a funeral director – of any anticipated problems.

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

1. 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.
2. Advise the person making the booking of the document requirements (refer to [Interment document requirements](#_Interment_documentation_requirement)).
3. Confirm with the funeral director or applicant that the right holder for the place of interment, as recorded in the cemetery trust’s records, consents to the interment taking place. If the recorded right holder is deceased, refer to [Managing a right of interment following the death of a right holder](#_Managing_a_right_1) for information about who can direct the cemetery trust in relation to the interment.
4. On receiving the required documents from the funeral director or applicant, the cemetery trust should do a physical inspection of the place of interment to check:

* the proposed place of interment matches the cemetery trust’s records
* the receptacle (for example, coffin, casket, urn) will fit inside the place of interment
* 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 needed to conduct the interment.

1. 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 or applicant in writing.
2. The cemetery trust should advise the funeral director or applicant 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 the cemetery trust charges. The cemetery trust should also advise the preferred method for receiving payment.

Before confirming an interment booking, the cemetery trust should determine:

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

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. Cemetery trusts may wish to use the template for notification of interment authorisation.

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| --- |
| [Notification of interment authorisation template](https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-of-bodily-remains) <https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-of-bodily-remains> |

## 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. Other requirements under the Cemeteries Regulations apply depending on 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 Actas 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 that are not a still-born child.

Foetal remains that 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.

## Interment document requirements

The required documents for a cemetery 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.

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

### Document requirements for interring bodily remains

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| --- |
| [Application for interment authorisation (Form 1)](https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-of-bodily-remains) <https://www.health.vic.gov.au/cemeteries-and-crematoria/interment-of-bodily-remains> |

Applications for authorisation to inter the bodily remains of a deceased person or still-born child in a public cemetery must be made using Form 1 prescribed under Schedule 1 of the Cemeteries Regulations. The prescribed form must include the documents detailed in the following table.

| Deceased | Prescribed form | Documents 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 | 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 documents 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 documents. In such cases, the cemetery trust must notify the department Secretary 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. The medical practitioner who attended the deceased after the death occurred must sign it, and an original should be provided to the delegate of the cemetery trust when applying for interment authorisation.

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.

The cemetery trust may keep copies of medical certificates of cause of death and coroner’s orders on record. However, it is sufficient for cemetery trusts to sight the supporting documents and note in its records the date the documents were sighted. This will reduce privacy risks associated with holding personal and health information.

Information provided in Form 1 is to be recorded in the cemetery trust’s records in line with s. 59 of the Cemeteries Act and the Cemeteries Regulations. Refer to the records management handbook for more information.

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| --- |
| [Records management handbook](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management> |

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

Note: Body parts that 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.

## Cemetery trust delegate responsibilities

For all interments the cemetery trust’s delegate should:

* check that all document requirements have been met and that the information on the nameplate on the receptacle agrees in all respects with the information provided in the documents (including accurate spelling)
* receive payment of the cemetery 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 cemetery trust at the time the interment was booked.

There is no legal obligation for the cemetery 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 health and safety matters.

It is also recommended that the cemetery 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.

Cemetery trusts should have a number of delegates so at least one is available to attend to daily requirements of the cemetery (refer to [Topic 9. Delegating cemetery trust powers](#_Topic_9._Delegating) for more information).

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

## 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 cemetery trust must approve the dimensions of the proposed coffin or casket before the grave is dug.

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

* At least 4 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 documents.

## Standard grave dimensions

As at January 2024, 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 needed 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 needed 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 needed 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

### 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 interring a child would usually be dug to single-depth, with the cemetery trust to decide the width and length of the grave.

## Lift and reposition

The Cemeteries Act sets out a framework that allows the right holder to reuse a place of interment for more burials (if more burials are possible). This is referred to as a lift and reposition.

Practical constraints mean that in most circumstances a place of interment can only be reused for up to a maximum of 3 interments. When planning a lift and reposition, cemetery trusts must consider the [depth of burial](#_Depth_of_burial) requirements prescribed in the Cemeteries Regulations.

Refer to [Topic 26. Exhumations and lift and repositions](#_Topic_26._Exhumations) for more information.

## 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.

## 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.

## Conducting interments safety

As part of its risk management procedures, the cemetery trust must pay close attention to all aspects of public safety in connection with conducting interments.

Refer to [Topic 31. Health and safety](#_Topic_32._Health) for information about public safety around graves and carrying and lowering coffins.

## Interments conducted without engaging a funeral director

The cemetery trust may be approached by a person considering conducting an interment without engaging a funeral director. In Victoria, the role and duties of a funeral director are not prescribed by legislation, so there is no reason why someone cannot perform some or all of the arrangements for an interment. Examples:

* Transportation may be organised via a private patient transport provider.
* Many hospitals have mortuaries on site and may be able to store bodily remains.
* There are several companies that sell coffins direct to the public.
* Funeral services can be held at a range of venues.

Anyone arranging the interment of bodily remains without the help of a funeral director takes on the responsibility for meeting all legal requirements associated with conducting an interment, including health and safety.

## Interring deceased poor persons

The Cemeteries Act provides 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 also specifies that every magistrate or coroner, before signing any such order, must satisfy themselves that the person died without the means to pay interment or cremation expenses and that their relatives cannot afford the charge.

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

Before the cemetery trust makes any arrangements to inter a deceased poor person, the cemetery trust should ensure it has a copy of the magistrate’s or coroner’s order so it is clear what the cemetery 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 cemetery trust’s expense. The cemetery trust holds right of interment for public graves. The cemetery trust may decide to inter bodily remains of other unconnected deceased poor persons in the same grave. All interments in a grave must be recorded in the cemetery 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 cemetery trust is the right holder for public graves 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 of interring the poor person. However, the cemetery trust may request that the applicant submits an application to establish a memorial and pays the relevant fee.

It is up to the cemetery 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 cemetery trust should advise the family that the proposed memorial may need to be temporarily removed in future to enable more public burials)
* the size and type of the proposed memorial
* requirements for approving or refusing an application for establishing 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 cemetery trust’s records.

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

It may not be possible for another 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 cemetery trust has an approved and gazetted fee for interment in a public grave
* if a magistrate or coroner makes an order.

## 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 right holder and the cemetery trust.

|  |
| --- |
| [Application for approval to inter cremated human remains (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> |

Cemetery trusts have several record-keeping requirements under the Cemeteries Regulations for interring cremated remains. Cemetery trusts may wish to use Form B to ensure they collect the required information. Form B is not a prescribed form, so it is not mandatory for cemetery trusts to use it.

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

### Options for interring cremated remains

#### Gardens

Garden memorials tend to be a popular option for interring cremated remains. Cremated remains may be interred in a receptacle or scattered at the place of interment. Examples of places of interment in gardens 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.

Cemetery trusts should be aware that garden memorials can be expensive for cemetery trusts to maintain over time.

#### Niches

Niches are shallow recesses in a wall or ground presentation where cremated remains are interred. Niches have the advantage of lower maintenance costs over time.

#### Graves

Cemetery trusts may permit cremated remains to be interred in a place of interment that also holds bodily remains – for example, a grave, crypt or vault. Care should be taken to position the cremated remains so they are not disturbed if the place of interment is subsequently reopened to permit another interment.

#### Scattering

Cemetery trusts may permit cremated remains to be scattered at a place of interment or in a general area within the cemetery that is set aside for scattering ashes without individual places of interment or memorials.

If cremated remains are to be scattered, it is important that the applicant understands that it is an irreversible action, meaning that once the remains have been scattered, they cannot be retrieved or moved.

### Tenure for interring cremated remains

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

### Conversion of limited tenure rights of interment

When a 25-year right of interment is due to expire, the responsible cemetery trust must take reasonable steps to notify the right holder at least 12 months before the expiry.

The cemetery trust should make this notification in writing and may specify the timeframe that the right 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 the right holder doesn’t take any action within the timeframe specified, the cemetery trust may remove the cremated human remains and its memorial.

### Managing limited tenure cremated remains of veterans

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

#### Identifying veterans’ cremated remains

A veteran is defined in s. 4 of the Cemeteries Act as a person who has performed service or duty within the meaning of the *Veterans Act 2005*. The Veterans Act defines service or duty as:

* any naval, military or air service in any proclaimed war
* any special defence undertaking within the meaning of s. 6 of the *Defence (Special Undertakings) Act 1952* of the Commonwealth
* any peacetime activities, including peace keeping activities, or
* any training activities, including activities conducted in conditions simulating war or war-like activities.

When a cemetery 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. Cemetery trusts could identify that a deceased person was a veteran by reference to:

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

Note: Cemetery trusts are not expected to make independent enquiries into whether a deceased person might be a veteran where there is no indication of veteran status.

#### Options for managing veterans’ limited tenure cremated remains

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

If the right holder agrees to take action in response to the expiry notification, the cemetery trust should manage the veteran’s cremated remains as requested by the right holder on receiving or waiving the fee.

The right holder may choose to:

* convert the right of interment to a perpetual right of interment
* extend the right of interment for another 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 holder does not respond to the expiry notification or responds but refuses to take action, cemetery 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 cemetery trust would become the right holder.

If it is not possible or viable to leave the remains interred in perpetuity at their original location, cemetery 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 cemetery trust would be the right holder.

If a cemetery trust relocates an identified veteran’s cremated remains, the cemetery trust can also relocate any other cremated remains interred in the veteran’s place of interment or any cremated remains of family members interred in the vicinity to ensure they aren’t separated.

‘Family member’ in relation to a deceased identified veteran is defined in the Cemeteries Act as:

* a spouse or domestic partner of the deceased identified veteran
* a child of the deceased identified veteran, including a stepchild or an adopted child, or
* a parent of the deceased identified veteran.

Any cremated remains of family members interred in the vicinity of the identified veteran’s place of interment may only be moved after appropriate notice to the right holders for those remains.

If a cemetery trust relocates the cremated remains of an identified veteran, it should also relocate any associated memorial where practicable. Where this is not practicable the cemetery trust should establish a new equivalent memorial.

It is expected that cemetery trusts will 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.

### Interring cremated remains of more than one person in a place of interment

It is at the cemetery trust’s discretion to grant requests to inter cremated remains of more than one person in the same place of interment. It is also at the cemetery trust’s discretion to decide the maximum number of cremated remains that can be interred in one place of interment and the applicable fees.

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

### Authority required to remove cremated remains

An exhumation licence is not required to remove or reinter cremated remains. However, no person should remove cremated remains in a cemetery without the written approval of the cemetery trust.

Consider the following before providing written approval to remove cremated remains from within a cemetery for which the trust is responsible:

* Identify the right holders.
* If a request to remove cremated remains is made, written consent from all right holders is needed, preferably on a statutory declaration, confirming who they are and what they wish to do.
* If the cemetery trust has any concerns about granting its approval to remove cremated remains (for example, the cemetery trust knows that other family members do not wish the removal to occur), it is recommended that the cemetery trust contacts the department for advice.
* Clearly document all cemetery trust decisions in the cemetery trust’s records.

Note: Where cremated human remains are to be removed from a grave, and their removal is likely to disturb bodily remains that are interred in the same grave, the cemetery trust may need to apply for an exhumation licence to remove the cremated remains. Refer to [Topic 26. Exhumations and lift and repositions](#_Topic_27._Exhumations) for more information.

Cemetery trusts should avoid becoming involved in family disputes. Where possible, encourage families to resolve their differences before making a written request to the cemetery trust to remove cremated remains. If this is not possible, family members should be advised to seek independent legal advice.

# Topic 24. Cremations

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 document requirements

The document 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.

Required documents must be provided to the cemetery trust either before or, at the latest, when delivering the remains to the cemetery for cremation.

### Document requirements for the cremation of bodily remains of known identity

|  |
| --- |
| [Application for cremation authorisation for deceased persons of known identity (Form 3)](https://www.health.vic.gov.au/cemeteries-and-crematoria/cremations) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cremations> |

Applications for authorisation to cremate bodily remains of a deceased person or still-born child must be made using Form 3 prescribed under Schedule 1 of the Cemeteries Regulations. Form 3 must include the documents detailed in the following table.

| Deceased | Prescribed form | Documents 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 (Form 4) * 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 * 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 | 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 |

Note: 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.

In special circumstances, when the prescribed document requirements outlined above cannot be met – for example, if the deceased died overseas and their remains have been transported into Victoria for cremation – a person may apply to the department for cremation authorisation under s. 134 of the Cemeteries Act.

For more information, cemetery trusts should refer applicants to the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/cremation-authorisations) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cremation-authorisations>.

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. The medical practitioner who attended the deceased after the death occurred must sign it, and an original should be provided to the delegate of the cemetery trust when applying for cremation authorisation.

|  |
| --- |
| [Certificate of registered medical practitioner authorising cremation (Form 4)](https://www.health.vic.gov.au/cemeteries-and-crematoria/cremations) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cremations> |

Form 4 is prescribed under Schedule 1 of the Cemeteries Regulations. 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 for the deceased and:

* are not in partnership 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 Form 4).

Note: ‘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, 2 doctors who work in a hospital and share the same employer.

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.

The cemetery trust may keep copies of medical certificates of cause of death and coroner’s orders on record, but it is enough for cemetery trusts to sight the required supporting documents and note in its records the date the documents were sighted. This will reduce privacy risks associated with holding personal and health information.

Information provided in Form 3 is to be recorded in the cemetery trust’s records in line with s. 59 of the Cemeteries Act and rr. 6–15 of the Cemeteries Regulations. Refer to the records management handbook for more information:

|  |
| --- |
| [Records management handbook](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management> |

### Document requirements for cremating bodily remains of unknown identity

Examples of sources of bodily remains include schools of anatomy, body donor programs, universities, museums and body parts exhibitions.

Bodily remains of unknown identity 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.

|  |
| --- |
| [Application for cremation authorisation of bodily remains of unknown name or with an identifier (Form 3A)](https://www.health.vic.gov.au/cemeteries-and-crematoria/cremations) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cremations> |

If bodily remains to be cremated are of unknown name or have an identifier, an application for cremation authorisation must be made using Form 3A prescribed under Schedule 1 of the Cemeteries Regulations.

Form 3A must be accompanied by a written cremation approval granted by the department Secretary under s. 134 of the Cemeteries Act.

|  |  |  |
| --- | --- | --- |
| Deceased | Prescribed form | Documents 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 Secretary under s. 134 of the Cemeteries Act |

To seek cremation approval from the department Secretary, the applicant must complete Form 3A and submit it to the department. When granted, the department Secretary’s cremation approval is attached to Form 3A and the applicant submits both documents to the cemetery trust.

### Document requirements for cremating 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 following table.

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

Note: 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.

### Document requirements for cremating 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 following table.

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

Note: Body parts that 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.

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.

|  |
| --- |
| [Application for cremation authorisation of body parts of unknown name with an identifier (Form 3B)](https://www.health.vic.gov.au/cemeteries-and-crematoria/cremations) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cremations> |

Applications for authorisation to cremate body parts of unknown name with an identifier must be made using Form 3B prescribed under Schedule 1 of the Cemeteries Regulations. The application must be made by a prescribed person as detailed in the following table.

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

## 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, [health and safety](#_Topic_32._Health), 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 cemetery trust has the discretion to refuse to accept the receptacle for cremation.

## Cremations arranged without engaging a funeral director

The cemetery trust may be approached by a person considering arranging a cremation without engaging a funeral director. In Victoria, the role and duties of a funeral director are not prescribed by legislation, so there is no reason why someone cannot perform some or all of the arrangements for a cremation. For example:

* Transportation may be organised via a private patient transport provider.
* Many hospitals have mortuaries on site and may be able to store bodily remains.
* There are several companies that sell coffins direct to the public.
* Funeral services can be held at a range of venues.

Anyone arranging the cremation of bodily remains without the help of a funeral director takes on the responsibility for meeting all legal requirements associated with transporting and enclosing the remains.

## Dual cremation

Due to exceptional circumstances, a cemetery 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 cemetery trust agrees, cremation authorisation document requirements must be met for each deceased person.

At the cemetery trust’s discretion, the cemetery trust may charge cremation fees for each of the bodies or bodily remains to be cremated. The cemetery trust may also consider waiving or reducing the cremation fees in line with s. 44 of the Cemeteries Act.

## Cremating deceased poor persons

Sections 142–145 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 also states that every magistrate or coroner, before signing any such order, must satisfy themselves that the person died without the means to pay cremation expenses, and that their relatives cannot afford 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 the trust makes any arrangements 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 has to do.

Note: The cemetery trust is the right holder for the place of interment 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 Cemeteries Regulations in relation to cremated remains.

Under r. 30(2) of the Cemeteries 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 cemetery trust may only release the cremated human remains to the nearest surviving relative of the person who was cremated.

Note: In keeping with r. 30 of the Cemeteries 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.

### Proof of identity

Cemetery trusts should have processes in place in relation to ‘proof of identity’ that specify what documents, or combination of documents, a person may provide to prove their identity to the cemetery trust when collecting cremated remains. More information about identity proofing is available in the Department of Home Affairs’ [National identity proofing guidelines](https://www.ag.gov.au/national-security/publications/national-identity-proofing-guidelines) <https://www.ag.gov.au/national-security/publications/national-identity-proofing-guidelines>.

### Releasing remains to an applicant

Under r. 30(3) of the Cemeteries 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 cemetery trust should:

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

Cremated human remains may be interred in a public cemetery, but 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. Refer to [Interment of cremated remains](#_Interment_of_cremated) for more information.

### Releasing remains to an applicant’s agent

Under r. 30(3) of the Cemeteries Regulations, an applicant’s agent is the person authorised in writing by the applicant to be the applicant’s agent for the purposes of releasing 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 cemetery trust with written authorisation that is signed by the applicant and refers specifically to collecting 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.*

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

### Releasing remains under a court order

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

* see a copy of the court order
* ensure the court order provides for the release of the cremated remains to a particular person (if in doubt as to the meaning of a court order cemetery trusts should seek legal advice)
* 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 cemetery 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 Cemeteries Regulations.

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

* see appropriate evidence that the applicant is deceased, such as a death certificate
* refer to the original application form and other records the cemetery trust holds to confirm whether the applicant appointed an agent
* if the applicant appointed an agent, see appropriate evidence that the agent is deceased, such as a death certificate
* see appropriate evidence that the person seeking to collect the remains is the nearest surviving relative of the person who was cremated (for example, by seeing 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 about releasing the remains to a specific relative (if there is a dispute between multiple nearest surviving relatives about the release of the cremated remains, the cemetery trust should encourage the parties to seek dispute resolution).

Note: 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.

### Record keeping

Cemetery trusts should ensure their process for releasing cremated remains includes appropriate record keeping about why remains have been released to a particular person.

# Topic 25. Memorials

For the purposes of the Cemeteries Act, a memorial is defined as a monument, tombstone, headstone, ledger, cenotaph, plaque or other method of memorialising a deceased person in a public cemetery.

A person may apply to a cemetery trust for approval to establish or alter a memorial at a place of interment.

Note: There is a separate process for establishing or altering official OAWG memorials. Refer to [War graves and memorials](#_War_graves_and) for more information.

## Applications to establish or alter a memorial

The application to establish or alter a memorial must include:

* the relevant cemetery trust fee
* a plan or design of the memorial to be established or altered
* the written consent of the holder of the right of interment.

The CCAV has developed a form that cemetery trusts may wish to use for applications available on the [CCAV website](https://ccav.org.au/news-and-resources) <https://ccav.org.au/news-and-resources>.

A cemetery trust has 45 days from receiving the application and all relevant information to consider the application and decide whether to approve or refuse the application.

A cemetery trust may approve the application as is or approve the application subject to any terms and conditions the cemetery trust thinks fit.

### Refusing an application to establish or alter a memorial

A cemetery trust may refuse an application to alter or establish a memorial for any reason the cemetery trust thinks fit – for example, because the memorial:

* would be unsafe, dangerous or not sufficiently permanent
* would be incompatible with the nature and standard of surrounding memorials
* would not be in keeping with the nature and character of the cemetery
* would not comply with the model rules or cemetery trust rules.

If a cemetery trust decides to refuse an application to alter or establish a memorial, the right holder and/or applicant (if applicable) should be informed in writing. The notification should be clearly dated because the date will be relevant if the right holder seeks a statement of reasons and/or VCAT review.

#### Statement of reasons

A right holder may ask a cemetery trust to provide a written statement of reasons for refusing an application to alter or establish a memorial. The right holder must submit a written request for a statement of reasons to the cemetery trust within 28 days of the decision date. The cemetery trust will then have 28 days to respond to the right holder’s request. Refer to ss. 45–47 of the VCAT Act for more information.

#### VCAT review

Within 28 days of the decision date or the date a cemetery trust provided a statement of reasons, the right holder may seek a review of the VCAT decision.

## Memorial construction

Before starting construction, cemetery trusts should ask monumental masons to submit a work schedule outlining the planned schedule for all works, including any inspection times. Cemetery trusts should provide clear and accurate information about the interment location to ensure memorials are constructed at the correct place of interment.

Note: The Cemeteries Regulations require those responsible for carrying out work on a memorial to ensure all materials to be used in that work are, so far as practicable, prepared off site.

### Materials

Cemetery trusts should consider the durability of materials used for memorials. For example, memorials that use timber may not be appropriate because timber is not as durable as concrete. Cemetery trusts may allow temporary markers made of less durable materials to mark a place of interment until a more permanent memorial is established.

### Australian Standards

The suggested Australian Standards for monument construction in Victorian public cemeteries are:

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

These publications are available at cost from [Standards Australia](https://store.standards.org.au/) <https://store.standards.org.au/>.

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

Generally, cemetery trusts will not be responsible for ensuring a memorial is constructed in line with any other industry standards.

#### Advice about Australian Standards

Cemetery trusts may wish to seek advice from a consulting engineer or other appropriately qualified person concerning structural aspects of a plan to establish or alter a memorial to ensure it will comply with Australian Standards. Generally, the applicant will pay for consulting an engineer, but the cemetery trust must get the applicant’s written approval before seeking professional advice.

The cemetery trust has the power to inspect the construction of a memorial. When the memorial has been finalised, the cemetery trust may inspect it to ensure it conforms with specifications and standards.

Unless otherwise indicated, a cemetery trust is not liable for a third party construction of a monument.

## Managing unsafe memorials

Cemetery trusts have a duty of care for the safety of visitors and workers in public cemeteries. Refer to [Topic 31. Health and safety](#_Topic_32._Health) for more information.

It is the responsibility of the 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.

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 to repair or replace 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 to repair or replace a 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 to repair or replace 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](#_Step_3a_–) or [step 3b](#_Step_3b_–).

### Process for managing unsafe memorials

#### Step 1 – Cemetery trust assesses the 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 the 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 phone to ensure it has been received. The cemetery trust should keep evidence of this receipt (for example, a 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. Refer to [Contacting a right holder if right of interment records are out of date or incomplete](#_Out_of_date) for more information.

It is important that the cemetery trust establishes whether the right holder has received the written notice to decide the next step in the process ([step 3a](#_Step_3a_–) or [step 3b](#_Step_3b_–)).

#### Step 3a – Right holder has received a 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 2 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 repair.  Note: The cemetery trust may try to recover the costs 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 the 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 the removal.  Note: The cemetery trust may try 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
* has not been able to confirm the right holder received the written notice
* 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 2 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 repairs. |
| 2. Remove the unsafe memorial | The cemetery trust seeks the 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 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.

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_–) 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_–) with respect to the memorial. This is 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 to establish a memorial for a deceased veteran equivalent to a memorial it replaces.

Refer to [Managing limited tenure cremated remains of veterans](#_Managing_limited_tenure) for more 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. Refer to [Forced surrender](#_Forced_surrender) for more information.

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 line 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 to repair or remove 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 the 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 the notification process including evidence of the steps taken to attempt to contact the right holder (for example, a copy of a public notice).

The request should be submitted to the department by email (refer to [Contact details](#_Contact_details)).

## Memorials in lawn sections

Cemetery trusts typically have memorialisation policies for lawn sections that restrict the type of memorial that can be established. Memorialisation policies may specify the approved materials, size and style for plaques or headstones that are permitted in a lawn section.

This creates a level of uniformity in the general nature and standard of memorials that contributes to the amenity of lawn sections. It also reduces safety risks to visitors (for example, tripping hazards) and workers (for example, lawn maintenance obstructions).

Memorialisation policies must be documented and made available to right holders and the public. Cemetery trusts may wish to use the department’s memorialisation policy template. The template can be adapted to suit the needs of individual cemetery trusts.

|  |
| --- |
| [Memorialisation policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates) <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates> |

Memorials in lawn sections can be mounted back to back on reinforced concrete beams where the top of the beams are flush with the surface of the lawn.

### Plaques

Cemetery trusts may provide services for arranging the supply and delivery of plaques from a foundry and affixing plaques at the place of interment. When providing these services, cemetery trusts must inform customers that the cemetery trust is not the only supplier of plaques for the cemetery.

If a customer wishes to directly source a plaque from a third-party supplier, they must still apply to the cemetery trust for approval to establish a memorial, pay the relevant memorial permit fees to the cemetery trust and adhere to relevant memorialisation policies.

## Code of practice and competitive neutrality

Any cemetery trust that sells and supplies memorials must ensure they are informed about and comply with the principles of competitive neutrality to encourage a fair and equitable environment for the sale and supply of memorialisation goods and services.

To help cemetery trusts to meet these obligations, the department has developed a code of practice for selling and supplying memorialisation products and services in Victorian public cemeteries.

|  |
| --- |
| [Code of practice – Sale and supply of memorialisation goods and services by cemetery trusts and other suppliers in Victorian public cemeteries](https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice) <https://www.health.vic.gov.au/cemeteries-and-crematoria/code-of-practice> |

Victoria’s competitive neutrality policy applies to the sale and supply of all memorialisation goods and services by cemetery trusts where trusts are in direct competition with alternative suppliers from the private market, including those goods and services not covered by the code of practice.

It is strongly recommended that cemetery trusts that have formally adopted the code of practice incorporate monitoring of compliance with the code into their governance framework. This will ensure consideration is given to the requirements of the code and the cemetery trust’s performance in meeting those requirements on a regular basis.

## War graves and memorials

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

The OAWG supplies, installs and maintains OAWG memorials. These fall into 2 categories:

|  |  |
| --- | --- |
| Category 1 | Memorials for war veterans who died in a war or conflict |
| Category 2 | Memorials for war veterans who died after a 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 deceased’s family or surviving relatives supply the right of interment. 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 the 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 because it remains the property of the 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 chooses to acknowledge the veteran’s war service by including the relevant service badge on their private memorial
* the style of memorial the OAWG provides 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 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 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 line 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 needed, the trust will confirm this and the 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

The 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 approve the contractor to proceed with the work.

The exception to this process is in establishing 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 of the OAWG will complete and sign the application form in lieu of the holder of the right of interment.

### Maintaining official OAWG memorials

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

* annual/biannual inspection
* cleaning, tidying and, where necessary, polishing
* refurbishing or repainting plaques every 7 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 3 paints)
* sanding of marble headstones every 2 to 4 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 take on routine civil and general maintenance work on their behalf. The contractor will supply a copy of the OAWG work order and CCAV form.

As noted above, the OAWG has extensive powers under the Defence Force Regulations for working on memorials. However, OAWG masons working 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 call the Victorian office of the OAWG on (03) 9547 1991 if they have any concerns about the work of OAWG monumental masons.

# Topic 26. Exhumations and lift and repositions

## Exhumation

An exhumation is the process of removing bodily remains from a place of interment to relocate to a different place of interment or for cremation. The definition of a place of interment includes a grave, vault, mausoleum, niche wall or any other structure or plot used for interring human remains. The definition applies to any plot of ground where human remains are interred.

Under the Cemeteries Act it is an offence to exhume or remove human remains from a place of interment without an exhumation licence. The penalty for exhuming or removing human remains from a place of interment without an exhumation licence is 600 penalty units or 5 years’ imprisonment, or both.

## Exhumation licence

A person may apply to the department Secretary for an exhumation licence to exhume or remove human remains from a place of interment. There is no restriction on who may apply.

The department has developed an exhumation licence policy explain when an exhumation licence is needed and the basis for assessing exhumation licence applications.

|  |
| --- |
| [Exhumation licence policy](https://www.health.vic.gov.au/cemeteries-and-crematoria/exhumation-licence-policy) <https://www.health.vic.gov.au/cemeteries-and-crematoria/exhumation-licence-policy> |

After considering an application for an exhumation licence, the department Secretary may either grant or refuse to grant an exhumation licence and a licence may be granted subject to conditions. An exhumation licence is valid for one year from the date of issue.

### Application process

Information about how to apply for an exhumation licence is available on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/applying-for-an-exhumation-licence) <https://www.health.vic.gov.au/cemeteries-and-crematoria/applying-for-an-exhumation-licence>.

|  |
| --- |
| [Application to Secretary for exhumation licence (Form 5)](https://www.health.vic.gov.au/cemeteries-and-crematoria/applying-for-an-exhumation-licence) <https://www.health.vic.gov.au/cemeteries-and-crematoria/applying-for-an-exhumation-licence> |

#### Statement from cemetery trust

There are several supporting document requirements for exhumation licence applications including a statement from the relevant cemetery trust.

The cemetery trust will be asked to provide a statement confirming:

* whether the proposed exhumation can be accommodated
* if the exhumation cannot be accommodated (at all or at a particular time) the reasons for this (for example, ground conditions during a particular season)
* the right holder’s name for the place of interment from which the proposed exhumation is to occur (note this cannot be a deceased person; cemetery trusts may need to update their records before providing the statement).

The statement should be addressed to and provided to the applicant or their funeral director to be included in the application. It should not be sent directly to the department and should not be dated more than 6 months before the date the applicant signed the form.

## Lift and reposition

The Cemeteries Act sets out a framework that allows a right holder to reuse a place of interment for more burials (if more burials are possible). This procedure is known as a lift and reposition.

Cemetery trusts that have approved a lift and reposition 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
* reposition the existing human remains in the place of interment, whether contained in a receptacle or not, to provide space for another 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 reused for up to a maximum of 3 interments. When considering a lift and reposition procedure, cemetery trusts should refer to the [depth of burial](#_Depth_of_burial) requirements in the Cemeteries Regulations that set out the requirements for the uppermost interment in a plot.

### Application process

An application for a lift and reposition procedure must be made to a cemetery trust in writing and include the relevant cemetery trust fee.

When assessing an application for a lift and reposition procedure, the cemetery trust must confirm that:

* the applicant is the right holder or the right holder has provided written authorisation for a representative to apply on their behalf
* the remains have been interred for at least 10 years.

The cemetery trust must not grant approval for a lift and reposition procedure if it considers it to be inappropriate for any of the following reasons:

* the nature of the soil prevents or hinders the process
* it would be impracticable to perform 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 reposition is unlikely to be successful
* in the case of a mausoleum, the chamber cannot accommodate more human remains
* religious, cultural, health or safety considerations.

If the application satisfies the cemetery trust’s requirements and the procedure is suitable, the cemetery trust must give written approval to the applicant to carry out the procedure.

It is expected that a lift and reposition procedure, including the reinterment of bodily remains, would occur on the same day.

## Exhumation licence or lift and reposition?

The following table has been developed to help cemetery trusts identify when an exhumation licence or life and reposition procedure may or may not be required. The following examples are not intended to be an exhaustive list, and cemetery trusts should contact the department for advice if they are unclear about any information in this topic (refer to [Contact details](#_Contact_details)).

|  |  |  |
| --- | --- | --- |
| 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 | 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 | 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 |

# Topic 27. Discovery of unidentified human remains

There are cases where unidentified human remains have been discovered when digging or excavating areas of public cemetery land not normally used for interment purposes.

The discovery of human remains must be managed in an appropriate manner consistent with the requirements of relevant legislation including the Cemeteries Act, Coroners Act, Aboriginal Heritage Act and Heritage Act.

Under the Cemeteries Act it is an offence to exhume or remove human remains from a place of interment without an exhumation licence. The department Secretary grants exhumation licences under the Cemeteries Act. Refer to [Topic 26. Exhumations and lift and repositions](#_Topic_27._Exhumations) for more information.

The Victorian Coroner also has the power to authorise exhumations under the Coroners Act and does not require an exhumation licence under the Cemeteries Act to do so.

## Key actions following discovery of unidentified remains

### Step 1 – Stop working and secure the remains

All works that could disturb the remains should stop immediately. The location of the remains must be covered and made secure. If remains have been unintentionally removed from the place of interment, any excavated soil believed to contain human remains should also be set aside in a secure location.

### Step 2 – Notify Victoria Police

The discovery of unidentified human remains must be reported to Victoria Police as soon as possible using the relevant local police contact number or 131 444 (do not use triple zero ‘000’). Victoria Police will notify the Victorian Coroner who will assign a forensic anthropologist to assess the remains.

The remains may be relevant to:

* Victoria Police or the Victorian Coroner for a reportable death
* the Victorian Aboriginal Heritage Council if the remains are believed to be Aboriginal
* Heritage Victoria if the remains are considered to be more than 75 years old.

The Victorian Coroner’s office will notify the Victorian Aboriginal Heritage Council if the remains are believed to be Aboriginal. If the remains are not considered to be Aboriginal or related to a reportable death, then subject to advice from the Victorian Coroner about the likely age of the remains, Heritage Victoria should also be notified about the discovery to determine if there are considerations to be addressed under the Heritage Act.

Victoria Police or the Victorian Coroner may decide to remove the remains from the place of interment as part of their assessment process. In these cases, the Victorian Coroner authorises the exhumation and an exhumation licence is not needed.

### Step 3 – Future management of the remains

If the Victorian Coroner, Victoria Police, the Aboriginal Heritage Council or Heritage Victoria do not require the remains, options for future management of the remains will need to be considered.

Available options will depend on whether the remains have been left undisturbed in situ or have been fully or partially removed from the place of interment.

## Options for managing undisturbed remains left in situ

The preferred approach is that human remains are left undisturbed in situ at the original place of interment. This is consistent with the objectives of the Cemeteries Act.

If the remains were uncovered but have not been disturbed, the place of interment should be backfilled and the location of the remains noted to avoid future disturbance where possible.

Relevant details about the remains should be recorded in the cemetery trust’s records including the date they were found, a description of the remains and the coordinates or other details to identify the location of the remains.

If the location of the remains is affecting construction or development works, alternative design options that will avoid the need to remove and relocate the remains should be considered. If there are no viable alternatives and the remains need to be relocated, an application for an exhumation licence can be made to the department.

Applications to exhume unidentified remains are rare and more complex than standard exhumation licence applications. Departmental decisions can take time. All applications to exhume human remains are considered within the broader context of the Cemeteries Act.

If an exhumation is considered necessary, please contact the department (refer to [Contact details](#_Contact_details)).

## Options for managing remains fully or partially removed from the place of interment

In some circumstances the human remains will have been fully or partially removed from the place of interment either:

* unintentionally during construction or development works or by other means
* under the authority of the Coroners Act, or
* in keeping with an exhumation licence granted under the Cemeteries Act.

There are 2 options for managing unidentified remains discovered on public cemetery land that have been removed from the place of interment:

1. With the approval of the relevant cemetery trust, the remains can be reinterred in the same location or an alternative location within the public cemetery. Note: In these circumstances the cemetery trust must advise the department Secretary in writing of the interment.
2. With the approval of the department Secretary, the remains can be cremated and scattered within the cemetery grounds. Refer to [Topic 24. Cremations](#_Topic_24._Cremations) for information about cremating bodily remains of unknown identity. Note: The cemetery trust pays the cremation costs.

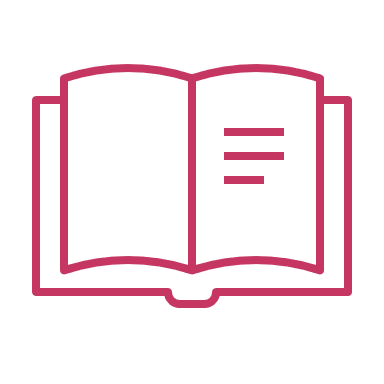
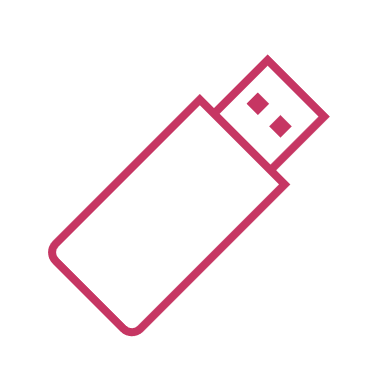
# Topic 28. Records management

Cemetery trusts must keep records for the cemeteries they manage. Cemetery trusts are public bodies, so the records they create are public records.

Cemetery trust records hold significant value for the cemetery sector, the community and the Victorian Government and have a range of record-keeping obligations under Victorian law.

## Records management handbook

The department has developed a handbook to provide practical advice about records management for Class B cemetery trusts. The handbook also contains information relevant to Class A cemetery trusts. The handbook covers the following topics:

* types of cemetery trust records
* prescribed information
* interment register
* retention timeframes
* storage
* information security
* privacy
* public access to cemetery trust records
* freedom of information
* digital record keeping
* copyright
* archiving cemetery trust records.

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| [Records management handbook](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management> |

## Data security measures and reporting obligations

OVIC requires cemetery trusts to meet data security measures and reporting obligations in line with the Privacy and Data Protection Act.

Data security reporting requirements are different for Class A and Class B cemetery trusts.

### Class A cemetery trust reporting requirements

Class A cemetery trusts report to OVIC by completing the *Single organisation protective data security plan* template and required attestations. Information and templates are available on the [OVIC website](https://ovic.vic.gov.au/information-security/agency-reporting-obligations-hub/vps-stakeholders/) <https://ovic.vic.gov.au/information-security/agency-reporting-obligations-hub/vps-stakeholders/>.

### Class B cemetery trusts reporting requirements

Class B cemetery trusts report to OVIC by completing the *Class B cemetery trust protective data security plan* template and required attestations. Information and templates are available on the [OVIC website](https://ovic.vic.gov.au/information-security/agency-reporting-obligations-hub/class-b-cemetery-trust-stakeholders/) <https://ovic.vic.gov.au/information-security/agency-reporting-obligations-hub/class-b-cemetery-trust-stakeholders/>.

## Freedom of information

FOI is a process where the Victorian community can request documents from an agency. The purpose of FOI is to extend, as far as possible, the right of the community to access information held by the Government of Victoria and other bodies constituted under the law of Victoria, including cemetery trusts.

The FOI Act obligates cemetery trusts to respond to valid FOI requests. The FOI Act also sets out rules and processes cemetery trusts should follow.

The FOI process is explained in detail in the *Records management handbook*.

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| [Records management handbook](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemetery-trust-records-management> |

### FOI annual report

Each year Victorian Government agencies, including cemetery trusts, have to provide data for the FOI annual report. The annual report covers FOI activity in all Victorian Government agencies for the previous financial year and is tabled in Parliament.

Cemetery trusts will receive a letter or email from OVIC in July each year seeking input for the report. The letter will advise cemetery trusts what information is needed.

Note: Requests for public access to cemetery trust records under s. 60 of the Cemeteries Act are not FOI requests and do not need to be reported.

# Topic 29. 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. The department has developed a complaints policy template that can be adapted to suit the needs of individual cemetery trusts. Cemetery trusts should log all complaints received and record the outcome.

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| [Complaints policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates) <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates> |

## 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 holder disputes

Complaints relating to a family dispute or a dispute between right 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 of 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 trust’s attention.

### 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 affect the functioning of the trust. All trust members must to treat each other with courtesy and respect. Refer to [Topic 11. Managing poor trust member behaviour](#_Topic_11._Managing) for more information.

### 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 help mediate disputes.

The Dispute Settlement Centre of Victoria assess requests on a case-by-case basis and can be contacted 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>.

## 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 over 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 from 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.

Restricting 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

### Contacting 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 from 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 review the issue and the steps the trust took.

Once the department has reviewed the matter it or the Minister 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

### VCAT

A right holder can make an application to VCAT to review a trust decision about:

* 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 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.

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 IBAC directly.

Refer to [Topic 13. Integrity](#_Topic_13._Integrity) for more information.

## Other 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 30. Employing and managing staff

## Class A cemetery trust CEO

Refer to [Topic 14. Other requirements for Class A cemetery trusts](#_Topic_14._Additional) for information about employing and managing Class A cemetery trust CEOs.

## Class B cemetery trust secretary or manager

Although there is no reference in the Cemeteries Act about the position of secretary or manager, the cemetery trust may appoint a person to attend to routine business matters and to perform powers and duties delegated by the cemetery trust. Refer to [Topic 5. Class B trust secretaries](#_Topic_5._Class) for more information.

Depending on the size and operations of the cemetery trust, the role of secretary or manager may be paid or voluntary. Where this is a paid position, the cemetery trust should ensure it develops a position description and completes an employment contract.

The department has developed a secretary position description template for Class B cemetery trust that be adapted to suit the needs of individual cemetery trusts.

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| [Secretary position description template for Class B cemetery trusts](https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising) <https://www.health.vic.gov.au/cemeteries-and-crematoria/recruitment-and-advertising> |

Any payment made to a secretary should match the duties of the position. The Local Government Industry Award may be used as a guide when determining wages for administration staff. Cemetery trusts can calculate the current award rate using the Fair Work Ombudsman’s online [Pay and conditions tool](https://calculate.fairwork.gov.au/) <https://calculate.fairwork.gov.au/>.

Advice about appropriate pay, working conditions and employment contracts is available on the [Fair Work Ombudsman website](https://www.fairwork.gov.au/) <https://www.fairwork.gov.au/>. Cemetery trusts must ensure the terms and conditions under which any person performs work are lawful. Cemetery trusts should familiarise themselves with the information, resources and tools 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.

Note: Trust members may be appointed to the role of trust secretary. However, they must not receive any payment for this role other than reimbursement of expenses as approved by the cemetery trust. Refer to [Class B trust member fees and allowances](#_Class_B_trust) for more information.

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

## Employing trust members

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

## Managing performance

The cemetery trust is the employer and is therefore responsible for managing employee conduct. Cemetery trusts must ensure employees understand what is expected of them and provide feedback on performance. This can help prevent underperformance.

A best practice guide for managing underperformance is available on the [Fair Work Ombudsman website](https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/managing-underperformance) <https://www.fairwork.gov.au/tools-and-resources/best-practice-guides/managing-underperformance>.

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

## Workplace bullying, sexual harassment and discrimination

Everyone has the right to a workplace free from bullying, sexual harassment and discrimination.

Information, tools and resources are available on the [Fair Work Ombudsman website](https://www.fairwork.gov.au/employment-conditions/bullying-sexual-harassment-and-discrimination-at-work) <https://www.fairwork.gov.au/employment-conditions/bullying-sexual-harassment-and-discrimination-at-work>.

## Online training courses

Free short online courses that teach skills and strategies to employers and employees are available on the [Fair Work Ombudsman website](https://www.fairwork.gov.au/tools-and-resources/online-learning-centre) <https://www.fairwork.gov.au/tools-and-resources/online-learning-centre>.

# Topic 31. Health and safety

Cemetery trusts have important health and safety responsibilities that include protecting the health, safety and welfare of trust members and people who work in and visit cemeteries.

## Occupational health and safety legislation

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 consider:

* 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 works in the cemetery without the approval of the cemetery trust. This approval should not be given until the cemetery 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
* requiring documentation of safety inspections/testing reports for equipment/items to be reviewed
* requiring the proposed operator of equipment/items to provide documents verifying their training and competency to operate the equipment/item
* issuing 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:

* falls prevention (Part 3.3)
* plant (Part 3.5)
* confined spaces (Part 3.4)
* hazardous manual handling (Part 3.1).

### 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>.

## Conducting interments safely

### Safety around open graves

An open grave dug before an interment must be made safe so there is no risk of any person (including cemetery 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 cemetery trust’s delegate, together with the funeral director, should supervise the activities of mourners (particularly children) in the vicinity of the grave to ensure, 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 a coffin safely

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 the family or the funeral director chose for this purpose. The funeral director may give them instructions about 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 does not have to provide personnel to help lift and carry the coffin in the cemetery or lowering it into the grave.

### Lowering a coffin safely

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

* a lowering device (provided by the cemetery 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.

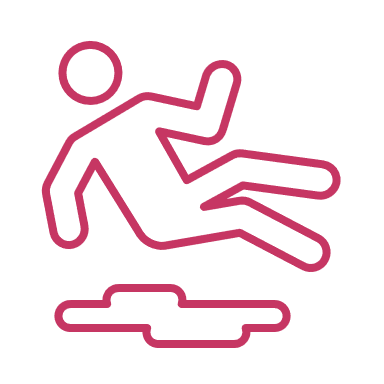
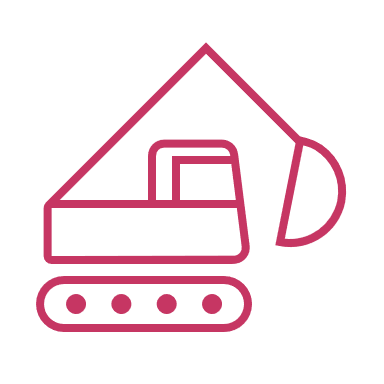
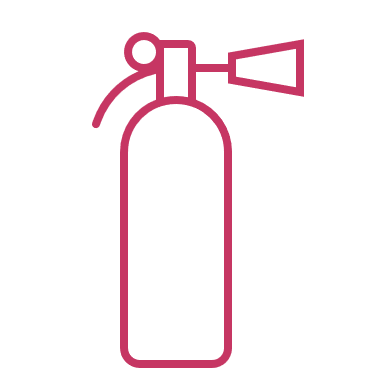
If a lowering device is in position over the open grave, the pallbearers will usually walk 3 each side of the grave and then lower the coffin onto its tapes, with the head of the coffin closest to the headstone end of the grave. At the appropriate time during the interment service, the funeral director 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 3 each side of the grave. Usually 6 pallbearers and 3 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.

## WorkSafe Victoria resources

The following resources are 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
* falls 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
* 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 have 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 people who have recently been treated with a therapeutic radiopharmaceutical. Information about radiation risks, recommended work practice and current radiation legislation in Victoria is available on the [department’s website](https://www.health.vic.gov.au/public-health/radiation) <https://www.health.vic.gov.au/public-health/radiation>.

## Psychological safety

Grieving people are often experiencing heightened stress that can affect their ability to communicate, process information and make decisions. When experiencing loss, customers may not behave as they would in normal circumstances.

Cemetery trust members and employees regularly interact with customers who may be highly distressed or aggressive. If these experiences are affecting a trust member’s psychological safety when performing their role, or their health and wellbeing more broadly, direct them to speak to someone they trust and ask for help.

For a comprehensive list of services and resources for people experiencing grief and advice for those who provide support to the bereaved, refer to the department’s [Better Health Channel website](https://www.betterhealth.vic.gov.au/health/servicesandsupport/grief-support-services) <https://www.betterhealth.vic.gov.au/health/servicesandsupport/grief-support-services>.

The *Secretary’s handbook* also includes advice on communication strategies, culturally appropriate communication and how to deal with distressed or aggressive customers.

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| [Secretary’s handbook – Guidance for Class B cemetery trust secretaries](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-governance> |

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| 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 the person who has been killed, injured or exposed to serious immediate risk is an employee.  **To report serious accidents and incidents call 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 call 1800 136 089. |

# Topic 32. Cemetery land management

## 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 follow the government’s [landholding and land transactions policies 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 6 to 12 months for the processes and procedures to be completed.

The trust chairperson must prepare a formal letter of application addressed to the department seeking the Minister’s approval (refer to [Contact details](#_Contact_details)). 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 department via [email](mailto:cemeteries@health.vic.gov.au). The cemetery 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 get appropriate zoning for use as a cemetery from the relevant council, normally Public Use – Cemeteries and Crematoria (PUZ5). The correct zoning or a planning permit to use the land for cemetery purposes is needed before any burials occur. The rezoning process is not included in the timeline above.

The property acquisition checklist is a detailed guide to cemetery land acquisition processes, including guidance for writing a business case and obtaining a valuation and is available on the department’s website. Cemetery trusts should contact the department before developing a business case.

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| [Property acquisition checklist](https://www.health.vic.gov.au/cemeteries-and-crematoria/land-acquisition) <https://www.health.vic.gov.au/cemeteries-and-crematoria/land-acquisition> |

## Cemetery land development costings

From time to time cemetery trusts need to develop new areas of their cemeteries in response to market demand.

Before starting a new development, the cemetery 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 a cemetery trust’s funds, it is strongly recommended that the cemetery trust engages an independent actuary to assess the project’s financial viability.

Cemetery trusts can use the land value calculator to identify project costs, price rights of interment in a new development, or to evaluate the current pricing of existing areas to ensure their products are priced appropriately.

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| [Land value calculator](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting> |

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| [Land value calculator user guide](https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting) <https://www.health.vic.gov.au/cemeteries-and-crematoria/class-b-cemetery-trust-fee-setting> |

Some development works will need planning and/or building permits. Cemetery trusts should ask their local council about any specific requirements. Refer to [Topic 33. Structures and facilities on cemetery land](#_Topic_33._Structures) for information about developing mausolea.

Note: Class A cemetery trusts should be aware of mandatory compliance requirements for [public construction procurement](#_Public_construction_procurement_1).

## Leasing and licensing 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 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 3 years, and a lease must be for a specified term not exceeding 21 years.

Requests for ministerial approval should be submitted directly to the department for processing (refer to [Contact details](#_Contact_details)). When submitting a request, cemetery trusts need to provide:

* a summary of the transaction, including the 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 the rental rate if conducted for a licence (for example, a tender has been advertised for a catering licence)
* any other relevant information.

Cemetery trusts should allow enough time for the approval process, which may take 3 months or longer.

### Precedent lease and licence

Cemetery trusts must use the precedent lease or precedent licence document if considering granting a lease or licence for general purposes such as grazing, agistment, operating a temporary flower stall or permitting transport access.

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| [General purpose precedent lease of public cemetery land under section 37 of the Cemeteries and Crematoria Act 2003](https://www.health.vic.gov.au/cemeteries-and-crematoria/leasing-and-licencing-cemetery-land) <https://www.health.vic.gov.au/cemeteries-and-crematoria/leasing-and-licencing-cemetery-land> |

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| [General purpose precedent licence of public cemetery land under section 36 of the Cemeteries and Crematoria Act 2003](https://www.health.vic.gov.au/cemeteries-and-crematoria/leasing-and-licencing-cemetery-land) <https://www.health.vic.gov.au/cemeteries-and-crematoria/leasing-and-licencing-cemetery-land> |

The precedent lease specific to installing a telecommunications tower is for cemetery trusts considering granting a lease to install, alter or continue using a telecommunications tower.

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| [Precedent lease specific to installing a telecommunications tower: Provision for lease on public cemetery land under section 37 of the Cemeteries and Crematoria Act 2003](https://www.health.vic.gov.au/cemeteries-and-crematoria/leasing-and-licencing-cemetery-land) <https://www.health.vic.gov.au/cemeteries-and-crematoria/leasing-and-licencing-cemetery-land> |

Cemetery trusts should seek independent legal advice when considering whether to enter into an agreement. Cemetery trusts should also check with their local council if a planning permit is needed (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 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 department to arrange a valuation (refer to [Contact details](#_Contact_details)).

### Lease or licence?

A lease is appropriate when the tenant needs exclusive use of the land and/or a premises.

Under a licence, the licensee does not have the right to exclusive use of the land and/or a 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.

## Planning controls and conservation

All land in Victoria is covered by local planning schemes. Local planning schemes regulate what can and cannot be done on particular land. A planning scheme sets out the requirements for the use, development and protection of land.

Planning schemes are administered by the local council but governed by the Department of Energy, Environment and Climate Action (DEECA). The planning scheme will indicate if cemetery trusts need a planning permit to construct a building, carry out works or make other changes to the land.

Building permits are an extra requirement for building construction and should be sought by a cemetery trust for any new proposed building.

Note: Class A cemetery trusts should be aware of mandatory compliance requirements for [public construction procurement](#_Public_construction_procurement_1).

### Zones and overlays

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

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

Cemetery trusts have an obligation to check for and be aware of any planning overlays that may apply to their cemeteries before taking on any works or maintenance projects. Advice about such matters is available from local council and the local [DEECA office](https://www.deeca.vic.gov.au/communities-and-regions/regions-and-locations) <https://www.deeca.vic.gov.au/communities-and-regions/regions-and-locations>.

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

### Conservation and planning legislation

The legislation relevant to cemeteries for conservation and planning includes (but is not limited to) the following:

* Catchment and Land Protection Act
* Flora and Fauna Guarantee Act
* Environment Protection and Biodiversity Conservation Act (Cwlth)
* Heritage Act
* Planning and Environment Act
* Wildlife Act.

The relevant legislation does not allow ignorance of overlays as an excuse for not getting the right permits before starting work. The onus is on each cemetery trust to be aware of the conservation and planning legislation relevant to the cemeteries they are responsible for.

### Heritage

Cemetery trusts should be sensitive to the increased public awareness of heritage values and the need for conserving historic components of older cemeteries.

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

### Native vegetation

Native vegetation means all plants (including trees, shrubs, groundcover plants and grasses) that were growing naturally in Victoria before European arrival. It does not include plants that originate from other parts of Australia or from other countries.

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

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

Class B cemetery trusts should seek advice from a Class A cemetery trust if they are finding the permit application process difficult. Cemetery trusts may also consider applying for a cemetery grant to pay for specialist expertise. Refer to [Topic 21. Cemetery grants program](#_Topic_22._Cemetery) for more information.

## Tours, events and recreational activities in cemeteries

Cemetery trusts may be approached by a person seeking to conduct an activity within a cemetery. Examples include cemetery tours, events and recreational activities. An activity may not be conducted within a public cemetery without the approval of the relevant cemetery trust.

### Seeking approval to conduct an activity

A written application seeking approval to conduct an activity in a public cemetery may be submitted to the relevant cemetery trust. The application must include the following information:

* applicant’s name, address and contact details
* type of activity
* location within the cemetery
* number of activities, frequency and duration
* maximum group size for each activity
* vehicles or equipment to be used within the cemetery
* current indemnity insurance and workers compensation policy that covers any person the applicant engages
* a risk management plan.

### Cemetery trust considerations

When deciding whether to approve an application, the cemetery trust should consider a range of matters including:

* cultural and community values
* heritage values of the cemetery
* occupational health and safety within the cemetery
* current public liability insurance the applicant holds
* whether to restrict the location, number, frequency or duration of activities
* adequacy of the applicant’s risk management plan.

The cemetery trust may wish to develop its own risk management plan, with actions to be implemented by the applicant and/or the cemetery trust. Refer to [Topic 12. Risk management and insurance](#_Topic_12._Risk) for more information.

The cemetery trust may also consider undertaking community consultation if it anticipates potential sensitivities about the proposed use of cemetery land.

### Cemetery trust approval

Approval may be granted by the responsible officer of a Class A cemetery trust or by vote during a meeting of a Class B cemetery trust. Approval to the applicant must be in writing and specify any relevant terms and conditions of the activity.

## Closing a public cemetery

Under s. 62 of the Cemeteries Act, at the request of the cemetery trust 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 other interments may take place in that cemetery, or in the part of the cemetery that was closed, regardless of whether there are any existing unexercised 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 cemetery 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 department Secretary directs the cemetery trust that is responsible for managing the closed cemetery to grant the right 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 cemetery trust responsible for managing a cemetery, and with the approval of the Minister, the Governor in Council, by order published in the *Victoria 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 historic cemetery park. More information about historic cemetery parks is available in ss. 65–72 of the Cemeteries Act.

# Topic 33. Structures and facilities on cemetery land

## 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.

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.

Note: Class A cemetery trusts considering building mausolea should be aware of mandatory compliance requirements for [public construction procurement](#_Public_construction_procurement_1).

### Establishing a public mausoleum

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

Cemetery trusts must have the department Secretary’s written approval before constructing a mausoleum. To seek the department Secretary’s approval, a cemetery trust must submit a detailed proposal to the department. The department has developed guidelines that detail the information that must be included in the proposal.

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| [Mausoleum establishment and construction guidelines](https://www.health.vic.gov.au/cemeteries-and-crematoria/leasing-and-licencing-cemetery-land) <https://www.health.vic.gov.au/cemeteries-and-crematoria/establishing-a-mausoleum> |

The department has developed a mausoleum construction finance model and user guide to help cemetery trusts determine the profitability of the proposed mausoleum construction.

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| [Mausoleum construction finance model](https://www.health.vic.gov.au/cemeteries-and-crematoria/leasing-and-licencing-cemetery-land) <https://www.health.vic.gov.au/cemeteries-and-crematoria/establishing-a-mausoleum> |

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| [Mausoleum construction finance model user guide](https://www.health.vic.gov.au/cemeteries-and-crematoria/leasing-and-licencing-cemetery-land) <https://www.health.vic.gov.au/cemeteries-and-crematoria/establishing-a-mausoleum> |

Class B cemetery trusts are expected to use the department’s mausoleum construction finance model. If a Class B cemetery trust wishes to use a different finance model, the department’s corporate finance area will need to endorse it before the proposal is submitted to the department.

Class A cemetery trusts may use the department’s finance model or may decide to use a different model provided it does not contain less information than the department’s finance model.

Cemetery trusts that do not use the department’s finance model must explain any deviations from assumptions in the department’s finance model in their proposal.

### Establishing a private mausoleum

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 a private mausoleum as a place of interment. The Cemeteries Act defines a ‘place of interment’ as a grave, vault, mausoleum, niche wall or any other structure or plot used for interring human remains.

**Note:** Very few cemetery trusts permit private mausolea due to a range of issues that can impact on ongoing management, maintenance and administration of these structures. Cemetery trusts do not have to allow the construction of private mausolea in the cemeteries under their control.

## Crematoria

There are 9 public cemeteries in Victoria that provide cremation services. A list of Victorian crematoria and the cemetery trusts responsible for their management is available on the department’s website.

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| [List of public cemeteries and crematoria in Victoria](https://www.health.vic.gov.au/public-health/cemeteries-and-crematoria) <https://www.health.vic.gov.au/public-health/cemeteries-and-crematoria> |

There are no privately operated crematoria in Victoria, and the Cemeteries Act does not allow crematoria to be established outside of public cemeteries.

The Cemeteries Regulations prescribe requirements for cremations conducted in public cemeteries for:

* enclosing bodily remains and body parts
* inspecting coffins and containers
* removing fittings that may impede the cremation process
* disposing of substances
* releasing cremated human remains
* collecting and disposing of cremated human remains.

### Establishing a crematorium

A report by Marsden Jacob and Associates, in conjunction with Spatial Vision and Cumpston Serjeant Truslove, reviewing the viability of the Victorian cremation industry was published in November 2004.

A key objective was to provide a clear basis for the department Secretary to evaluate proposals from cemetery trusts to establish new crematorium facilities.

The *Victorian cremation industry viability report*, also known as the 'Marsden report' is available on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/cemeteries-and-crematoria-reports) <https://www.health.vic.gov.au/cemeteries-and-crematoria/cemeteries-and-crematoria-reports>.

The Marsden report noted that almost all crematoria were operating at around one-quarter to one-half capacity.

It concluded that ‘research undertaken for the project has not revealed any evidence in support of the need for additional crematoria in Victoria. The current mix of crematoria in Victoria adequately serves the needs of the market. The industry has sufficient capacity to continue to serve those needs for at least the next 40–50 years’.

Specific findings of the Marsden report were as follows:

* Irrespective of the future demands for cremations, the current industry has the capacity to service demand until close to 2051.
* Given that existing capacity in the metropolitan area is enough to meet forecast demand until at least between 2040 to 2050, new cremation facilities will not be warranted in the Melbourne metropolitan area within the forecast period.
* Establishing new facilities in some non-metropolitan regions would have significant potential to increase cremation rates in those regions. However, any proposed new crematorium facilities must first meet the evaluation criteria of being viable in their own right.

In light of these findings, the Marsden report recommended that cemetery trusts focus on maintaining and improving existing crematoria rather than considering establishing new facilities.

Cemetery trusts require the written approval of the department Secretary to establish a new crematorium. The evaluation of proposals to establish a crematorium will consider:

* the findings of the Marsden report and other relevant policies and evidence
* the need to ensure the cost-effective use of public funds in relation to cemeteries, which will generally include ensuring the efficient use of existing crematoria and associated infrastructure
* meeting the needs of the community in relation to cremation services, including by providing an appropriate level of access to these facilities.

As noted in the Marsden report, unless market conditions change substantially it appears that there are enough cremation facilities available in the Melbourne metropolitan area to meet the level of demand for such services in the foreseeable future.

Cemetery trusts seeking to establish more crematoria in Melbourne will need to take the findings in the Marsden report into account and clearly show why those findings are not valid or relevant.

Applications for approval to establish a crematorium should provide a convincing business case to support the proposal that clearly shows:

* the cemetery trust has considered the Marsden report in detail and has addressed all relevant findings and evidence
* the proposed crematorium will be viable in its own right
* there is a community need for the proposed crematorium (such as limited access to cremation services) that cannot be met by existing cremation facilities
* supporting evidence
* consideration of any other relevant matters.

## Fences

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

Generally, owners of adjoining land must contribute in equal shares to a dividing fence unless one party wants to pay the difference for a fence of a higher standard. However, cemetery trusts (as managers of unalienated Crown land) are exempt from this requirement under s. 31 of the Fences Act.

This means a cemetery trust is not liable to make any contribution towards fencing works for any dividing fence the adjoining landowner requests. Similarly, the cemetery trust cannot require the neighbouring landowner to contribute to fencing works the cemetery trust initiates. Whichever party initiates the works will be liable for the fencing costs.

Despite the absence of a legal obligation to do so, cemetery trusts may choose to contribute towards costs for construction or other works to dividing fences. Choosing to contribute funds may help the cemetery trust if it has preferred design characteristics for the fence (for example – height, width or material).

It should be noted that where a cemetery trust has leased or provided a licence over any public cemetery land, then the exemption under s. 31 of the Fences Act does not extend to the person to whom the lease or licence has been provided to. This means the person will need to comply with the Fences Act and contribute to the cost of fencing works.

## Establishing an alternate means of disposal for bodily remains

With the department Secretary’s approval in writing, a cemetery trust may dispose of bodily remains by a method other than interment or cremation in a public cemetery it is responsible for.

Where a cemetery trust wishes to make a formal application to dispose of human remains other than by interment or cremation, it should submit a written detailed proposal to the department (refer to [Contact details](#_Contact_details)).

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
* 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
* all project costs associated with installing and operating the required equipment
* the estimated return on investment, including proposed fees the cemetery trust will charge
* relevant building or planning controls that may apply
* environmental considerations
* strategies to deal with the waste product the process produces
* an actuarial analysis undertaken by a registered actuary to support the financial assumptions outlined in the submission
* any other relevant information.

It may take at least 6 months for the department to review and assess this type of application. Cemetery trusts should factor the assessment into their planning timelines.

# Topic 34. Cemetery trust transfer of management

Transferring management of a cemetery trust involves a cemetery trust being abolished and the transfer of its responsibilities, assets and liabilities to another entity (usually an existing cemetery trust). In some cases, a new cemetery trust may be established and appointed to manage cemeteries previously managed by an abolished cemetery trust.

Abolishing a cemetery trust usually occurs when 2 cemetery trusts voluntarily reach an agreement to transfer management from one cemetery trust to the other. In certain circumstances, generally related to governance or operational failure, the government may decide to abolish a cemetery trust or class of cemetery trust and transfer management.

There are many reasons why a cemetery trust may seek to transfer management to another cemetery trust including:

* difficulty attracting the minimum number of trust members to form a quorum
* lack of financial and operational security.

On the recommendation of the Minister, the Governor in Council may abolish a cemetery trust and transfer its assets and liabilities to another entity (including the State of Victoria) by order published in the *Victoria* Government Gazette. The transfer of management will take effect on the date the order is published, and trust members appointed to the abolished cemetery trust will cease to hold office as of this date.

## Cemetery trusts seeking to transfer management

Cemetery trusts seeking to transfer management must consult to inform their local communities. The consultation process could include:

* placing advertisements in local newspapers
* posting information on the cemetery trust’s website or other online media platforms (if applicable)
* contacting friends groups and other known interested parties
* arranging a public meeting to discuss the cemetery trust’s intention
* contacting the local council to outline the cemetery trust’s intention
* responding to community feedback.

The cemetery trust will also need to complete a due diligence report that includes information about its assets and liabilities, the condition of the cemeteries under its control and any other relevant information. To request a template due diligence report please email the department (refer to [Contact details](#_Contact_details)).

When the cemetery trust has finalised the consultation process and reached an agreement with another cemetery trust to take over management, it should submit a written proposal to the department seeking the Minister’s approval.

The proposal should include:

* why the cemetery trust is seeking to be abolished
* the level of trust member support for the proposal including the date the cemetery trust endorsed the proposal at a trust meeting
* a list of the assets and liabilities to be transferred
* details of the consultation process including responses provided to community feedback
* the cemetery trust that has agreed to take over management
* the identity of any other cemetery trusts interested in taking over management (if applicable)
* the due diligence report
* any documents detailing agreements with other cemetery trusts for the transfer of management
* any other relevant information or documents.

### Cemetery trusts managed by municipal councils

Municipal councils that are seeking to transfer management of their cemetery trusts to a community-operated Class B cemetery trust or Class A cemetery trust will need to fully fund their existing perpetual maintenance obligations before a proposal will be considered.

## Cemetery trusts seeking to take over management

Cemetery trusts seeking to take over management will need to prepare their own due diligence report and submit a written proposal to the department seeking the Minister’s approval (refer to [Contact details](#_Contact_details)).

The proposal should include:

* evidence the cemetery trust has agreed to take over management
* a due diligence report that
  + addresses potential financial or community impacts
  + advises how the perpetual maintenance obligation will be managed
  + identifies any shortfall in perpetual maintenance funding and advises how the shortfall will be managed.

Once a proposal is submitted, the department will assess the documents and contact the trusts. This process may take up to 12 months to complete.

# Topic 35. Policy templates

Cemetery trusts develop and implement policies to support the effective management of the cemeteries they are responsible for. Cemetery trust policies must be consistent with the requirements of relevant legislation and department guidelines and policies.

The department has developed policy templates for Class B cemetery trusts in consultation with stakeholders including cemetery trusts and the CCAV.

The following policy templates can be adapted to suit the needs of individual cemetery trusts. Trust policies should be reviewed at least every 2 years.

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| [Cash management policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates) <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>  [Complaints policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates) <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>  [Contractor policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates) <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>  [Gifts, benefits and hospitality policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates)  <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>  [Memorialisation policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates)  <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>  [Monumental mason policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates)  <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates>  [Purchasing and tendering policy template](https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates)  <https://www.health.vic.gov.au/cemeteries-and-crematoria/policy-templates> |