



Guidelines – Application to Establish or Alter a Memorial or Place of Interment

Introduction

The Cemeteries and Crematoria Act 2003, Part 7 Section 98 (2) states that an Application must be accompanied by the written consent of the Holder of the Right of Interment.

To assist Cemetery Trusts, the Cemeteries & Crematoria Association of Victoria (CCAV)¹, has prepared the *Application to Establish or Alter a Memorial or Place of Interment* (application form). Under normal circumstances the Holder of the Right of Interment and the person applying to alter a memorial are the same person.

Where an applicant is not the Holder of the Right of Interment they must be able to demonstrate that they are:-

- Acting on behalf of the Holder of the Right of Interment i.e. a stonemason acting upon instructions from the holder; and
- Have written permission from the Holder of the Right of Interment to make alterations to the place of interment on their behalf i.e. a relative acting on behalf of the holder.

Where a person who is not the Holder of the right has no proof that they are acting on behalf of the Holder of the right or the original Holder cannot be contacted (i.e. they are overseas or they are deceased), the Trust may be willing to accept a Statutory Declaration from the applicant, in addition to the completed application form.

A person wishing to use a Statutory Declaration in connection with a law in the State of Victoria must make the declaration in accordance with sections 107-109 of the *Evidence (Miscellaneous Provisions) Act 1958*. A copy of the form is available at:

<https://www.justice.vic.gov.au/statdecs>

Note - No work can be carried out within the cemeteries unless formal written approval has been provided by the relevant Cemetery Trust.

Cemetery Trust Requirements

The Cemeteries and Crematoria Act 2003 Part 7 Section 99 (4) (a)&(b) stipulates a maximum of 45 days for a Trust to make a decision to approve or reject an Application. However it is expected that in most instances where the application is straight forward a Memorial Permit would be issued much earlier than 45 days.

The Trust should ensure that all reasonable steps are taken to ensure that section 98 of the Act is complied with when considering an application to alter a memorial.

To do this the following steps should be followed -

- Check the cemetery records to verify if the named Holder of Right of Interment on the application form, is consistent with what is recorded on the Trust's records for that place of interment which the application relates to.
- If there is more than one Right of Interment holder, recorded on the Trust's records, the Trust should verify that the applicant has written permission from the other holder/s of the right.
- If the Applicant is not the Holder of Right of Interment the Trust should verify that the applicant has written permission from the holder/s of the right.

¹ The Department of Health's Cemeteries and Crematoria Regulation Unit was consulted in relation to the development of this form.

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- If written permission cannot be produced then depending on the circumstances the Trust may elect to accept a Statutory Declaration from the applicant. The Statutory Declaration should at a minimum address the following:
 - Why the Holder of the right cannot provide their permission.
 - Whether the applicant is aware of any objections (eg: from other family members) relating to the establishment/alteration of the memorial.
- Should the Trust have any concern about the Statutory Declaration or the application, it is not obliged to approve the application.

Once the all the necessary information has been received, the Trust will need to come to a decision regarding whether to approve an application or not.

All decisions should be provided to the applicant in writing. If the Trust is not able to make a decision on the correct authority of a Right of Interment, they can contact the Department of Health's Cemeteries and Crematoria Regulation Unit for advice. However, the Trust should not refer the applicant to the Department for advice as the decision regarding the application is a Cemetery Trust's decision.