

17 December 2015

The Hon. P. D. Cummins AM
Chair
Victorian Lawn Reform Commission
Funeral and Burial Instructions Consultation Paper

Dear Mr. Cummins,

The Geelong Cemeteries Trust is appreciative of the opportunity to provide this submission in relation to the Funeral and Burial Instructions Consultation Paper November 2015.

The Trust is a Class A Cemetery Trust, as per the Cemeteries and Crematoria Act 2003 (amended 2010) and provides burial and cremation services for approximately 2,300 families per year and also follow up memorialisation options for families of deceased who have been cremated.

The Trust currently administers 19 cemeteries within the Barwon South-Western Region comprising of in excess of 450 acres of Crown Land. These sites provide for both burials and memorialisation of cremated remains. As such, the Trust is keen to provide a response to reforms within the Industry and provides the following comments to address the specific questions raised within the Consultation Paper.

As a Class A Cemetery Trust, this Trust provides support and advice for many Class B Cemetery Trusts (usually managed by volunteers) through regular meetings, phone calls and emails. The Trust seeks to support these Class B Trusts by promoting best practice in our industry, public awareness and industry education, resource sharing and networking. The Trust also provides representation on matters of common interest to the Department of Health and Human Services and the cemetery sector.

The matters under consideration by the Victoria Law Reform Commission have the potential to have a significant impact upon both the community and the cemetery sector.

Many cemetery trusts in Victoria experience disputes in regards to the Holder (ownership) of a Right of Interment (burial or cremation plot) and who is able to authorise interments or memorials at these Rights of Interment on a regular basis.

Cemeteries of the Trust

- Geelong Eastern
- Geelong Western
- Barrabool Hills, Highton

- Grovedale
- Mount Duneed
- Mount Moriac
- Winchelsea

- Leopold
- Drysdale
- Portarlington
- Queenscliff, Point Lonsdale

- Lorne
- Colac
- Beeac
- Whoorel, Birregurra

- Warncoort
- Flinders Memorial Park, Lara
- Geelong Memorial Park and Crematorium, Armstrong Creek

Under the current Cemeteries and Crematoria Act 2003, if the Holder of the Right of Interment passes away, and if the specific grave is not noted in the deceased's will, then the beneficiaries would inherit this grave through the general estate. If there are multiple beneficiaries, then multiple joint Holders would be authorised to exercise their right to the grave. If there was no Will, then the grave would be passed through the Rules of Intestacy would normally apply.

It is sufficient to say, if no clear Holder of the Right can be determined, then a dispute can quickly escalate, where no obvious resolution is achievable.

The Trust would recommend that all Wills are read prior to a funeral service occurring. Currently this is not always the case, and as such, the deceased's wishes may not be clear to the Executor of the Estate, family and beneficiaries.

It is also common practice that the Executor arranges a memorial (headstone, plaque or full monument) sometimes costing thousands of dollars and this is arranged prior to probate. This may seem to be good practice to ensure that the deceased has a memorial, however it has been the experience in the industry that at times, the immediate family and beneficiaries have no say in the design and cost of the memorial, even though they may become Holders of the Right of Interment after probate is made.

The Trust suggests that people pre-purchase and arrange their grave and burial or cremation and memorialisation service directly with their preferred cemetery trust. This will ensure that their preferred method of disposition is known by the cemetery, and when their appointed funeral director contacts the cemetery, their records can be checked and their pre-paid service known to those arranging the funeral service.

In regards to dispute resolution, the existing Dispute Resolution Service provided by the Department of Justice is referred to individuals who find themselves in a burial dispute with other people. This service seems to be an effective option for people who do not wish to gain independent professional legal advice.

With regard to the specific questions detailed within the Consultation Paper, the Trust provides the following comments for consideration.

Question 2 – No, it isn't.

Question 3 – In absence of a will there should be legislation enacted to protect the deceased and ensure their wishes are carried out.

Question 4 – The law should oblige a person with the right to control the disposal of the body to make appropriate funeral and burial arrangements, as set out in the Will. Remembering that the mode of disposition is personal and memorialisation is about those that are left behind.

Question 5 – The wishes of the deceased, via their Will, need to be adhered to in all cases, subject to complying with all legal requirements.

Question 6 – Yes they must be able to. This should be enshrined within their Will and, as explained earlier, the Will should be read prior to the Funeral and Burial arrangements being made.

Question 7 – As far as the disposal of the body is concerned there should be no exemption as there is provision under the Cemeteries and Crematoria Act 2003 to ensure that the mode of disposition may be carried out at the expense of the Cemetery Trust. The requirements should be contained in a Will and children should not be allowed to leave instructions for their disposal.

Question 8 – No, this would be a dangerous practice as it may well be against either the deceased wishes or the family wishes. It would be far too difficult to control this practice and may well create an increase in disputes.

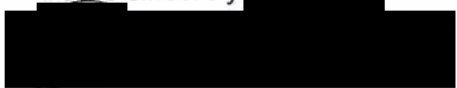
Question 9 – Refer to Question 8 response.

Question 10 – Yes, it should be legislated that the Will **must** be read prior to any arrangements being made. This will ultimately delay the process but will provide time to ensure all wishes are met and families have adequate time to consider their options fully rather than making rushed and potentially the wrong decisions which have the ability to cause high levels of angst and grief.

Question 11 and 12 – Refer to body of document above.

Thank you for providing the Trust the opportunity to provide this submission to your Consultation Paper, and the Trust would be pleased to provide further information if needed, or meet with your team to discuss our submission in person.

Yours sincerely


Darryl Thomas
Chief Executive Officer