

## Online submission to the Victorian Law Reform Commission

### Funeral and Burial Instructions

<b>Number</b>	34
<b>Name</b>	Ballarat General Cemetery Trust
<b>Date</b>	13 January 2016

<b>Question 1</b>	<b>If you have been involved in a funeral and burial dispute, can you tell us about your experience?</b>
<b>Response</b>	No response
<b>Question 2</b>	<b>Is the law on funeral and burial instructions satisfactory as it is?</b>
<b>Response</b>	No, for the reasons noted in the Consultation Paper. Today's society is markedly different (culturally and religiously) to 19th century England.
<b>Question 3</b>	<b>Should the common law position on funeral and burial instructions be enshrined in legislation?</b>
<b>Response</b>	No, the current common law position is unsatisfactory
<b>Question 4</b>	<b>Should the law oblige a person with the right to control the disposal of a body to make appropriate funeral and burial arrangements after taking into account:</b>  <ul style="list-style-type: none"> <li>(a) the wishes of the deceased</li> <li>(b) the views of the family</li> <li>(c) the deceased's cultural or religious background</li> <li>(d) the need to dispose of the deceased without undue delay</li> <li>(e) the capacity of the estate to cover the reasonable costs of disposal and/or</li> <li>(f) any other factors?</li> </ul>
<b>Response</b>	Yes, in line with contemporary thinking.
<b>Question 5</b>	<b>If the law obliges a person with the right to control the disposal of a body to make an appropriate decision after taking into account certain factors, should that person have a duty to seek out the views of people close to the deceased before making a decision?</b>
<b>Response</b>	Yes, in line with contemporary thinking
<b>Question 6</b>	<b>Should people be able to leave legally binding funeral and burial instructions?</b>
<b>Response</b>	No response

<b>Question 7</b>	<p><b>If people are able to leave legally binding funeral and burial instructions:</b></p> <p><b>(a) in what circumstances should a person controlling the final disposal of a body be exempt from carrying out the instructions?</b></p> <p><b>(b) should there be a requirement that the instructions be:</b></p> <p style="padding-left: 40px;"><b>(i) contained in a will</b></p> <p style="padding-left: 40px;"><b>(ii) in written form or</b></p> <p style="padding-left: 40px;"><b>(iii) in any form as long as the expression of intention is reliable?</b></p> <p><b>(c) should children (ie. people aged under 18) be allowed to leave instructions for their own funeral and burial and, if so, at what age and/or in what circumstances?</b></p>
<b>Response</b>	<p>(a) The exemptions existing in other jurisdictions noted in the consultation paper are appropriate.</p> <p>(b)(i) Yes</p> <p>(b)(ii) At very minimum</p> <p>(b)(iii) No</p> <p>(c) The status quo should be maintained</p>
<b>Question 8</b>	<p><b>Should people be able to appoint a funeral and burial agent to control the final disposal of their body?</b></p>
<b>Response</b>	<p>No – this is a concept foreign to Victorian law. It would add an additional layer of complexity and possible uncertainty</p>
<b>Question 9</b>	<p><b>If people are able to appoint a funeral and burial agent:</b></p> <p><b>(a) should they be required to obtain the agent's consent for the appointment to be valid?</b></p> <p><b>(b) in what circumstances should the agent forfeit the right to control the disposal of the body?</b></p> <p><b>(c) who should be liable for the costs of disposal and what, if any, measures are needed to make the arrangement practical?</b></p>
<b>Response</b>	<p>(a) Yes</p> <p>(b) The circumstances applicable in the US are as good as any</p> <p>(c) The Estate should be liable in all cases (thereby possibly creating added complexity)</p>
<b>Question 10</b>	<p><b>Do you have an alternative option for reform (other than those identified in Questions 3, 4, 6 and 8) that you would like to see adopted in Victoria?</b></p>
<b>Response</b>	<p>Yes – Option 5: Wishes of deceased are binding but subject to challenge in the Supreme Court by beneficiaries/family</p>

<b>Question 11</b>	<b>Which court/s and/or tribunal should have jurisdiction over funeral and burial disputes and why?</b>
<b>Response</b>	No need to change current jurisdiction of the courts.
<b>Question 12</b>	<b>How accessible and effective are low-cost mediation services for people involved in funeral and burial disputes, and how could they be made more accessible and effective?</b>
<b>Response</b>	Details not known.