



Submission in relation to:

**Public Finance Bill**

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The Cemeteries & Crematoria Association of Victoria (CCAV) appreciates the opportunity to present a submission on the discussion paper, "*Public Finance in Victoria: Practices and Legislation*" to address some of the issues causing concern within this industry with the myriad of legislation currently in existence in relation to Public Finances.

This submission will specifically address each of the discussion points within Section 3 of the discussion paper and, where applicable, offer suggestions for improvements or support for the proposals put forward in the discussion paper.

### **Executive Summary**

The CCAV welcomes and supports the government initiative to reform the public finance legislation. The CCAV recommendations regarding specific sections of the discussion paper are predicated on the basis that a differential reporting/compliance regime is implemented. We believe that it is vital that the reform includes a differential reporting/compliance regime which is reflective of different sized entities and the associated levels of resources, capabilities, financial transactions and risk applicable to these entities.

The vast majority of Cemetery Trusts are operated by volunteers and have no employees. Around 80 percent (414 entities) of Cemetery Trusts have an annual average income of \$6,000 with a further 16 percent (82 entities) having an annual average income of \$100,000. If a differential reporting regime was not part of the Government's reform, then implementation and compliance with the proposed reforms would not be feasible for the small to medium sized Cemetery Trusts.

The CCAV is of the opinion that:

- 3.1.1 Strategic and Financial Plans should be prepared by all government entities meeting the differential reporting thresholds.
- 3.1.2 These plans should be based around desired outcomes rather than existing inputs.
- 3.1.3 All government entities should report against strategic plans with both financial and non-financial KPI's.
- 3.2.1 A differential reporting/compliance regime must be part of the overall reforms. If not, then smaller entities are highly unlikely to be able to comply with the legislation.
- 3.2.2 N/A
- 3.2.3 New reporting requirements should be developed, but retention of existing reporting timeframes is recommended.
- 3.2.4 Other public finance legislation should, where practical, be consolidated into the Finance Bill, but there should be no requirement that entities invest with a central repository – entities should still retain their autonomy for investing.
- 3.2.5 The procurement principles are enshrined within the Finance Bill as mandatory but the procurement practices remain optional based on each business case.
- 3.2.6 The new legislation be principles-based.

## Background

The CCAV is a volunteer association and represents members who provide in excess of 80% of the funeral/cremation and memorialisation services of the 522 Cemetery Trusts within Victoria. The majority of Cemetery Trusts are public entities as defined under the Public Administration Act 2004 and public bodies for the purposes of the Financial Management Act 1994. Cemetery Trusts, apart from small maintenance grants, are self-funding entities.

In February 1999 the Minister for Finance declared 14 Cemetery Trusts for which Part 7 of the Financial Management Act applied, and hence were required to comply with reporting and other requirements within the Act. These 14 "large" Cemetery Trusts were "deemed" to comply with the Financial Management Act requirements on the basis that their actual or expected revenue would exceed \$1 million. The remainder of the Cemetery Trusts are required to submit an annual "Abstract of Accounts" to the Department of Human Services under the provisions of the Cemeteries and Crematoria Act 2003.

The vast majority of Cemetery Trusts are operated by volunteers, have no employees and also have minimal financial transactions. Additionally, these Cemetery Trusts have little or no existing resources to implement all the requirements of the legislative reform.

Table 1: Profile of Cemetery Trust Sizes by Annual Income

	Number	Annual Income (\$000)	Average Annual Income (\$000)
Small	414	2,649	6
Medium	82	8,187	100
Large	20	82,602	4,130
<b>Total</b> <sup>1</sup>	<b>516</b>	<b>93,438</b>	<b>181</b>

### 3.1.1 Planning

It is recognised that there is a need for future planning for all entities within the Public Sector as it is the opportunity for targeted outcomes to be developed and documented. As part of this process, there should also be included some form of measurement associated with the outcomes to ensure economies and/or efficiencies are achieved.

The development of a Strategic Plan, preferably covering a minimum of 5 years, would greatly assist the planning and development of the entity and this could then link to a 5 year Financial Plan incorporating a number of Key Performance Indicators (KPI's) to measure the success of the entity and to monitor the ongoing financial sustainability of the entity. The format of the Strategic Plan should be similar across all public sector entities and it is recommended that a "model" format for this Plan be developed for the Public Sector and this then could be adapted to suit each of the sub-sectors within the Public Sector i.e. Cemeteries and Crematoria. It is also recommended that a similar approach be taken for the Financial Plan to ensure consistency in both the preparation and presentation of these plans.

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<sup>1</sup> State Services Authority Review of Major Cemetery Trusts Final Report June 2007 Appendix G. Analysis based on annual returns to the Department of Human Services for small and medium sized Trusts (varies between 1994 and 2005-06) and 2005-06 annual reports or returns for large Trusts. Six Cemetery Trusts failed to provide financial information for this review.

The concern would be that embedding this in new legislation may place an administrative burden on a significant number of very small Public Sector entities, particularly those with little or no administrative support (generally run by volunteers). Cemetery Trusts run by volunteers would find this an extremely daunting task and, as an Association representing its members, CCAV requests that any reference to either one or both of a longer term Strategic Plan and Financial Plan be limited to those Trusts required to prepare comprehensive Financial Statements and subject to audit by the Victorian Auditor-General's Office. This limitation on reporting will be addressed later in this submission.

With regard to the development of KPI's it is suggested that these be delegated to the sub-sector level i.e. in this case the Cemeteries and Crematoria sector, as this Association feels it would be more relevant to work with members to canvas suggestions that directly reflect the industry and its operations and how these can be best measured and reported on.

**Recommendation:**

That five year Strategic and Financial Plans, incorporating KPI's, should be prepared at all levels of government (i.e. departments and entities) and that this is embedded in legislation, subject to implementation of a differential reporting/compliance regime outlined in section 3.2.1. It is further recommended that a "model" format be developed and adapted to suit the various levels of government (i.e. department and entity) and specific sectors.

**3.1.2 Providing and allocating resources**

CCAV wishes to provide comment on this section but only in relation to providing and allocating resources, particularly in regard to development of Strategic and Financial Plans. The issue of government appropriations is not relevant to this sector as there is little, if any, government funding provided to cemetery trusts.

This issue was touched on in the previous discussions and, again, the CCAV supports this process as it should create efficiencies in resource allocation if a Strategic and Financial Plan have been developed by the entity. By developing a plan based on required outcomes rather than existing inputs an entity would be identifying the needs of its community and citizens and then matching existing resources against such a plan to determine whether additional short term resources are required or an ongoing increase in permanent resources will be necessary to continue to provide the service levels required.

If developed correctly it should also support the need for growth in the resource base if it is an expanding sub-sector, such as the Cemeteries and Crematoria sector. The number of burials and cremations is increasing each year and coupling this with the need to maintain existing and closed cemeteries in perpetuity will require an increase in resources required at some stage in the future and this could be tied to a five year Strategic and Financial Plan.

The approval of the annual budget is part of this ongoing process and consideration to an extended budget period or development of a rolling budget process could also be considered.

As detailed previously, KPI's could also be developed as part of the Annual Budget to link in with the longer term Strategic Plan and by monitoring and recording these KPI's the entity could track their "success" against their longer term plans. The key issue here is that the development of the KPI's needs to be given due consideration to ensure they are both useful and meaningful as too often KPI's are developed hastily to appease certain sections of the community or the entity and do not really provide relevant and useful information. The reporting of these KPI's would be best portrayed via the Annual Report and Financial Statements.

**Recommendation:**

That five year Strategic and Financial Plans are based on desired outcomes rather than relying on existing inputs. The plans are to be developed, inclusive of relevant KPI's, to further assist in the allocation of available resources to satisfy the demands of the community and the entity itself. These well-constructed plans would also assist in determining the need for growth in an entity's available resource base if it were part of an expanding industry – as the Cemeteries and Crematoria sector is. The reporting of KPI's within the Annual Report is also strongly recommended.

**3.1.3 Accountability**

One of the key criteria for the Public Sector is accountability and CCAV strongly supports the reporting of performance against pre-set targets from the Strategic Plan. The ongoing review and reporting process based on proposed outcomes would keep the community informed of the progress on each specific target. This reporting process should be incorporated into the entity's Annual Report with ongoing historical information provided for comparison over time.

It is felt that this should be reported at the entity level given that a number of outcomes and outputs will be entity specific but there should also be a requirement for each specific industry sector to develop a number of key performance outcomes that can be reported on at an industry level to the relevant government department (in this case, the Department of Human Services).

The development of a Strategic Plan incorporating proposed outcomes for the entity over the life of the Plan is seen as mandatory and the review and monitoring of these outcomes can then be carried out by the community, the entity itself or even the greater Public Sector. The advantages of reporting on these outcomes are that both the community and the entity are regularly informed of the progress of these longer term plans and an ongoing record of actual performance against pre-set targets is provided in the entity's Annual Report.

The important factor for consideration is the development of the outcomes – they need to be both financial and non-financial. Caution needs to be taken when determining these outcomes as financial targets are generally very predictable and hence are usually set conservatively, making them often easily achievable but in a lot of cases may not provide any guidance to the long term financial sustainability of the entity. In the case of this sector, pre-paid sales of Rights of Interment are possible in many cases providing additional revenue for a Trust but not necessarily coinciding with any expenditure outlays.

Over time this may result in relatively significant cash inflows for a Trust with no corresponding outlays which may distort financial targets. However, to link this increased revenue with a reduction of available grave sites and hence a need for future development works involving significant outlays may portray a more accurate picture of the Trust and its operations over the longer term.

**Recommendation:**

That legislation is introduced requiring entities to provide both financial and non-financial targets within its Strategic Plan and also within its Annual Report to Parliament and that these are developed over time by the industry sector to allow comparison between entities where possible. Further, that outcomes of a non-financial nature be clearly identified within an entity's Strategic Plan and these be reported and monitored over the life of the plan to determine progress towards fulfilling the pre-set targets. It is proposed that the financial indicators be reported to the relevant government department by all reporting entities in an effort to ensure the specific entity is financially viable and sustainable in the long term.

With regard to reporting it is suggested that the legislation only require the reporting of financial and non-financial information but that the extent of what is reported is initially developed by the industry sector to ensure relativity and the practicality of sourcing the relevant information. This can then be conveyed to the relevant government department for consolidation and reporting to Parliament.

### **3.2.1 Entities**

There are currently in excess of 500 Cemetery Trusts throughout Victoria with the vast majority of them being managed by a dedicated group of volunteers with only the larger ones being in a position of having paid employees to carry out both the administrative and operational duties of the Trust. The reporting requirements of Trusts currently varies significantly with the smaller Trusts required to complete an Abstract of Accounts on an annual basis, which is prepared on a cash basis, through to the larger Trusts which are required to comply with all aspects of the Financial Management Act, including provision of financial statements, annual reports and other reporting and compliance requirements.

The CCAV is of the view that it is vital that a differential reporting regime is implemented in the finance bill to reflect the level of financial and human resources, risk and expertise within a Cemetery Trust. The differential reporting regime should include “scaled-down versions” of financial reporting and compliance, compared to “full” reporting/compliance by larger entities. The issue of differential reporting/compliance regime is relevant to other sectors, not only the cemetery sector.

Currently, differential reporting/compliance regimes exist in a number of legislative frameworks and CCAV is strongly of the opinion that a differential reporting regime can readily and practically be implemented. Examples of differential reporting/compliance regimes include:

#### **Company Reporting**

Large proprietary companies are required to prepare and lodge an audited financial report with the Australian Securities and Investments Commission (ASIC).

Small proprietary companies are only required to prepare audited financial statements if ordered to do so by ASIC, by members holding 5% of voting shares or if controlled by a foreign company.

The classification of proprietary companies is detailed in section 45A of the Corporations Act 2001:

Large proprietary companies must satisfy at least two of – revenue of \$25 Million or more, assets of \$12.5 Million or more or employees of 50 or more as at the end of the financial year.

Small proprietary companies must satisfy at least two of – revenue of less than \$25 Million, assets less than \$12.5 Million or employees less than 50 as at the end of the financial year.

#### **Income Tax**

Highly wealthy individuals (\$30 Million or more in net wealth) are subject to considerably more scrutiny from the ATO including audits, preliminary and comprehensive tax risk reviews.

Businesses are also segregated into different categories depending on their annual turnover and are subject to different levels of scrutiny and disclosure requirements.

Large businesses have an annual turnover of \$250 Million or more,  
Small to medium enterprises have a turnover between \$2 Million and \$250 Million, and  
Small businesses have a turnover less than \$2 Million.

In addition to these levels of scrutiny and reporting, businesses also have varying time lines associated with GST and PAYG remitting and reporting depending on their size.

Businesses with turnover greater than \$20 Million must report and pay GST monthly,  
Businesses with turnover between \$75,000 and \$20 Million report and pay GST quarterly,  
Entities voluntarily registered for GST are eligible to report and pay annually.

## **Overseas Experience**

In relation to not-for-profit entities, New Zealand International Financial Reporting Standards (NZ-IFRS) have introduced differential reporting requirements for Public Benefit Entities – the equivalent of the not-for-profit sector in Australia.

These are defined in each standard as “reporting entities whose primary objective is to provide goods or services for community or social benefit and where any equity has been provided with a view to supporting that primary objective rather than for a financial return to equity holders”.

In these circumstances, NZ-IFRS are being updated to include public benefit entities insertions to lessen the burden of financial reporting for these entities.

The CCAV proposes that at least 2, if not 3 reporting/compliance levels are implemented to address the needs of public accountability, whilst not placing an undue administrative burden on entities without the appropriate resources.

The Act could contain a number of tests that would be used to determine which level of reporting/compliance is relevant to the specific entity. If the entity meets at least 2 of the 3 tests detailed below (based on actual or anticipated figures), then it falls within that level of reporting/compliance. For example:

- Large Entities: assets exceeding \$10 million, income greater than \$1 million, or more than 50 full-time equivalent (FTE) employees,
- Medium Entities: assets between \$1 million and \$10 million, income greater than \$50,000 but less than \$1 million or between 5 and 50 FTE employees,
- Small Entities: assets less than \$1 million, income less than \$50,000 or less than 5 FTE employees.

The level of reporting/compliance based on the thresholds detailed above would be:

- Large Entities: Full compliance with all aspects of the legislation – e.g. detailed Financial Statements, accompanying notes and an Annual Report all subject to audit by the Victorian Auditor-General’s Office, Financial Management Compliance Framework, Risk Management Attestation etc.,
- Medium Entities: Abridged compliance inclusive of summary reports and compliance with “key” aspects of the legislation with “optional” full compliance – e.g. concise Financial Statements subject to audit by an approved and qualified auditor etc.,
- Small Entities: “Limited” compliance with financial reporting and other reporting/compliance requirements within the legislation – e.g. completion of an “Abstract of Accounts” detailing income and expenses on a cash basis and a summarised balance sheet.

**Recommendation:**

That legislation be introduced that allows for a differential reporting regime that contains staged thresholds for financial reporting and compliance requirements reflecting the size of the entities, in order to address the needs of public accountability, whilst not placing an undue administrative burden on smaller entities.

**3.2.2 Accrual-based appropriations and flexibility**

The cemetery and crematoria sector currently operates on a full accrual based system and therefore does not wish to offer any suggestions within this area of legislation amendment.

**3.2.3 Reporting**

The requirements are currently very onerous with a myriad of retrospective reports being provided that basically portray a position that is now past rather than looking forward to where the sector or specific entity either wants to be or expects to be. The concept of reporting on a forward basis would appear to be of more value than looking back at historical information – although it would still be necessary to provide the annual Financial Statements as this is the historical record of the year's operations and the financial position at a specific point in time.

The key reports that should be maintained are:

- the Mid-Year Financial Report but this would be better structured to provide probable year end figures rather than the financial position at mid-year. To attempt to provide a relatively accurate picture of the first six months of operations so soon after the cut-off date is extremely difficult but would quite possibly be 90 - 95% accurate. To project out to the perceived year end position would appear to be of more value, particularly on a whole-of-government basis.
- The Annual Financial Statements at year end – as detailed in an earlier section, this would be on some sort of differential reporting basis dependant on the categorisation of the entity.
- A relatively high level forward looking Financial Plan inclusive of revenue and expenditure assumptions together with some dialogue detailing any significant variations in the entity's operations over the coming years so as to provide a more accurate picture of exactly where the entity is proposing to be at a given point in time. This could also include the key points from the Strategic Plan so readers would be able to see the connection between the two Plans.

In relation to timeliness, it is proposed to retain the existing timelines i.e. that annual reports are to be presented to Parliament within four months of the end of the financial year. The reasoning behind this proposal is the difficulty currently experienced in preparing and receiving audit certification in a timely manner to allow sufficient time to present the annual reports to the relevant government department, for consolidation and ultimately presentation to Parliament.

The current practice is to have the Financial Statements prepared, audited and signed off by the relevant officers and the Trust prior to 30 September and then forwarding them on to the Department of Human Services by the first week of October to collate into one consolidated report.

Experience over recent years has shown that audit clearance is often not received promptly after the audit field work has been done even though this has been completed late in July. Delays in clearance thereby impacts on the Trust's ability to approve and sign off the Financial Statements in a timely manner and forward to the relevant government department for consolidating into one report. It may be argued that this is a resourcing problem for VAGO to sort out but experience has shown that the existing timelines are difficult to adhere to.

**Recommendation:**

That a new reporting regime be legislated whereby entities produce a mid year financial report detailing year end projections and the existing Annual Reports (incorporating Financial Statements) continue to be produced, maintaining the existing reporting timelines of four months after year end. Further that a relatively high level forward looking Financial Plan inclusive of revenue and expenditure assumptions and explanatory dialogue be prepared, inclusive of targets/outcomes from the Strategic Plan, to allow readers the opportunity to understand the direction of the entity.

### **3.2.4 Other public finance legislation**

As detailed in the discussion paper, this would be an opportune time to consolidate a number of related Acts into this new legislation.

*The Borrowing and Investment Powers Act 1987* should be repealed and all existing requirements of entities detailed in that legislation should be incorporated into the new Public Finance Bill. The CCAV believes that it is appropriate for legislation to provide some over-arching principles and/or controls in respect of borrowing and investments. However, this legislation should not ingrain the concept of a central investment repository as the needs of entities vary within and between sectors. In the case of Cemetery Trusts there is a distinct need to provide choice in a variety of investment opportunities over varying terms as Trusts receive funds for pre-paid funerals and cremations and are also required to provide for maintenance of their cemeteries in perpetuity. This will require Trusts to be aggressive, yet conservative, in their investment options to ensure their ongoing financial viability.

Whilst the CCAV acknowledges some benefits associated with a centralised investments entity, such as pooling assets to access economies of scale, we see a number of potential disadvantages, including:

- a potential lack of flexibility to fully recognise and tailor an investment strategy that meets the risk, return and time horizon requirements of CCAV members and other entities;
- the potential to be 'locked' into a central investment repository that is not industry best practice that could then impact the effective business management of the CCAV members and other entities;
- a potential lack of flexibility and or capability to advise and service the CCAV members on investment matters.

*The Monetary Units Act 2004* could similarly be repealed and existing legislation and requirements incorporated into this Public Finance Bill. As detailed in the discussion paper, the inclusion of the penalty unit structure would appear practical and there shouldn't be any impediments to this happening and at the same time providing a more consolidated document.

Similarly, the *Public Authorities (Dividends) Act 1983* should be repealed given its very limited applicability and incorporate the necessary clauses into the new Public Finance Bill to retain the concept of a dividend policy.

With regard to the Land and property functions and the various pieces of legislation currently in place it would appear somewhat difficult to propose removal of the relevant clauses from the Public Finance Bill until such time as it can be encapsulated into a revised Transfer of Land or Property Law Act. As these reviews will not be running concurrently it would seem difficult to remove certain requirements prior to being able to incorporate them into other specific legislation.

**Recommendation:**

That the aforementioned legislation is reviewed and, where appropriate and practical, the legislative requirements be incorporated into the new Public Finance Bill. However, the CCAV is of the opinion that it should be optional as to whether entities invest monies in some form of central repository or are allowed autonomy to invest in differing opportunities as they become available, subject to key over-arching principles and controls. The review of the land and property functions will require further consideration to develop some methodology whereby these aspects are incorporated into yet-to-be-reviewed legislation but still retained in the Public Finance Bill until such time as these further reviews are commissioned.

### **3.2.5 Procurement**

Although this is potentially a key area in larger entities operations, to enshrine mandatory procurement policies and procedures in the new Public Finance Bill would possibly place an unnecessary administrative burden on smaller entities. The concept of the VGPB has always been seen as a major step forward in procurement as it incorporates the tendering process for all like services required by government departments. However, consideration needs to be given to rural and remote entities and the economies and efficiencies they may possibly be able to achieve in their local community/region rather than procuring through the VGPB.

The CCAV is of the opinion that there are benefits with incorporating, and making mandatory, the procurement principles into the Public Finance Bill however the requirement to comply with the Victorian Government Purchasing Board (VGPB) policies and procedures in relation to procurement should still remain optional. Departments and other public entities should be encouraged to incorporate the VGPB purchasing and procurement framework into their policies and procedures as this is seen as “best practice” but that they also are allowed the freedom to work outside the framework on a case by case basis if it is in the financial interests of the entity.

The CCAV is not in a position to comment whether the procurement role should be part of government or an independent entity.

**Recommendation:**

That the procurement principles (e.g. Tendering Guidelines) should be included within the new Public Finance Bill and legislated as mandatory for all public entities but that the policies and procedures in relation to procurement via the VGPB are included as an optional choice for entities to comply with. This is seen as “best practice” but entities should still be allowed the freedom to work outside the VGPB framework on a case by case basis if it is in the financial interests of the entity.

### **3.2.6 Principles-based legislation**

The concept of a principles-based Act does hold some merit as it would specify the fundamental principles to be followed in relation to finances but care would need to be taken when drafting any subordinate legislation to ensure we don't end up with a myriad of regulations to familiarise with. An example of where this has been done particularly well is the *Cemeteries and Crematoria Act 2003*, which is a relatively condensed Act setting the higher level operational requirements for the industry, and this is then complimented with the *Cemeteries and Crematoria Regulations 2005* which provides significantly more detail, where required.

#### **Recommendation:**

That the new legislation be principles-based but careful consideration needs to be taken when drafting subordinate legislation to ensure all detailed rules are encapsulated within the one document to eliminate unnecessary confusion. Entities must be able to initially refer to an over-arching document for guidance and direction and then, if additional detail is required, be able to access a second document to determine the processes to follow. The development of the subordinate legislation needs to be addressed as a single set of regulations to ensure streamlined processes are easily followed.

If you wish to discuss this submission further, please do not hesitate to contact me on 03 5221 1077.

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