

Memorandum of Understanding regarding the retention of World War One and World War Two War Graves and memorials maintained by the Office of Australian War Graves

Between

The Commonwealth of Australia represented by the Office of Australian War Graves (OAWG).

And

Metropolitan Cemeteries Board of Western Australia (MCB)
(ABN 50 602 044 872)

1 Purpose

- 1.1. The purpose of this Memorandum of Understanding (MOU) is to specify the activities between the MCB and the OAWG in relation to World War One (WW1) and World War Two (WW2) War Graves and memorials in cemeteries controlled and managed by the MCB. This includes Victoria Cross, George Cross and Cross of Valour recipients.

2 Parties

- 2.1 The Parties to this MOU are:

The OAWG
and
The MCB.

- 2.2 A reference to a Party in this MOU is a reference to one of the Parties.

3 Period

- 3.1 This MOU will commence on 1 February 2019 and will continue in force until terminated by the Parties in accordance with clause 3.3.
- 3.2 This MOU will be reviewed at 2024 or earlier if required, as agreed by both Parties in writing.
- 3.3 Either Party may terminate this MOU by providing the other Party six months written notice.

4 Interpretation

- 4.1 In this MOU, unless the contrary intention appears:
- (a) a reference to a Law or publication includes a reference to that Law or publication as amended or replaced;
 - (b) a reference to a clause includes any subclause or paragraph within it;
 - (c) words and phrases are to be interpreted by reference to clause 12;
 - (d) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect to the defined term or phrase has a corresponding meaning;
 - (e) a reference to a sum of money is in Australian currency;
 - (f) words in the singular include the plural and vice versa;
 - (g) a reference to a gender denotes any other genders;
 - (h) a reference to the word "include" or "including" is to be construed without limitation;
 - (i) a term defined within a clause, used only within that clause, carries the same meaning when used in the Schedule; and
 - (j) if the day on which any act, matter or thing is to be done under this agreement is not a business day, the act, matter or thing must be done on the next business day.

5 Legal effect

- 5.1 This MOU revokes and replaces any such previous arrangements. This MOU does not create legally binding obligations between the Parties.

6 Exchange of information and mutual assistance

The Parties will:

- 6.1 Communicate to each other any information necessary for the application of this MOU and at the request of one to the other, assist each other in relation to the implementation of the MOU.
- 6.2 Do all things reasonably necessary to monitor and report on the service provision as detailed in Schedule 1.
- 6.3 Nominate a single point of contact for communication regarding the operation of this MOU.
- 6.4 Ensure that wherever possible the assistance referred to in clause 6.1 will be provided free of charge.
- 6.5 Ensure that all information transmitted in accordance with this MOU between the Parties is disclosed in accordance with the relevant Laws applicable to that Party.

7 Resolution of difficulties

- 7.1 The Parties will resolve, to the extent possible, any difficulties which arise in interpreting or applying this MOU according to its spirit and fundamental principles.
- 7.2 The Parties will consult promptly at the request of either concerning matters which have not been resolved.
- 7.3 Any dispute between the Parties which has not been resolved or settled within a reasonable time will be submitted to their respective Chief Executive Officers for decision.

8 Protection of personal information

- 8.1 In this clause, "personal information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in writing or spoken, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 8.2 Each Party mutually consents to comply with its governing privacy Laws and to use its best endeavours to facilitate compliance by the other Party with the privacy Laws applicable to the other Party.
- 8.3 The MCB acknowledges that the OAWG subject to specific privacy compliance provisions under the *Privacy Act 1988* (Cth) in relation to eligible veterans and the OAWG acknowledges the MCB's obligations under the *Cemeteries Act 1986* (WA).
- 8.4 Each Party mutually determines that it will use its best endeavours to ensure that any personal information that the Party discloses to another party in connection with this MOU is disclosed in accordance with the privacy Laws applicable to that Party.
- 8.5 In relation to any personal information that a Party discloses to another party in connection with this MOU, each Party mutually consents to use its best endeavours to:

- 8.5.1 Not use, disclose, store, transfer or handle the information except in accordance with the privacy Laws applicable to that Party. The OAWG acknowledges that the MCB stores information on its Cemetery Records System ("CRS") in accordance with the *Cemeteries Act 1986 (WA)*.
 - 8.5.2 Take all reasonable steps to ensure that the information is protected from misuse, loss, unauthorised access, modification or disclosure.
 - 8.5.3 Only use or disclose the information for the purpose of fulfilling their obligations under this MOU, except where otherwise permitted by Law.
 - 8.5.4 Co-operate with any reasonable request made by the other Party that relates to the protection of the information.
- 8.6 Each Party will:
- 8.6.1 Inform the other Party in writing of any complaint that they receive concerning the use, disclosure, storage, transfer or handling of personal information arising from the operation of this MOU; and
 - 8.6.2 Comply with any reasonable request by the other Party in relation to a complaint received by the Party concerning the use, disclosure, storage, transfer or handling of personal information.

9 Notices

- 9.1 Any notice, request or other communication served in relation to this MOU shall be in writing and delivered promptly to the OAWG or the MCB at the addresses specified below:

OAWG	Peta Alderman
Position	State Manager, Office of Australian War Graves
Postal Address	PO Box 3, Nedlands, WA, 6009
Telephone (business hours)	(08) 9386 3807
Fax	(08) 9386 2257
Mobile	0429 004 620
E-mail	Peta.Alderman@dva.gov.au

MCB	Tim Halls
Position	Director Planning and Operations
Postal Address	PO Box 53 Claremont, WA, 6910
Telephone (business hours)	(08) 9383 5229
Fax	(08) 9383 3683
Mobile	0413745680
E-mail	tim.halls@mcb.wa.gov.au

10 Meetings

- 10.1 Meetings regarding this MOU will be conducted as required and agreed by both Parties.

11 Variation to MOU

- 11.1 The terms of this MOU can only be varied with the prior written consent of both Parties.

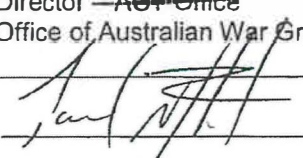
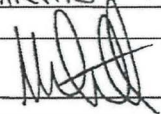
12 Definitions

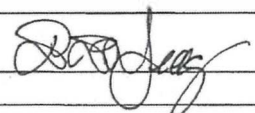
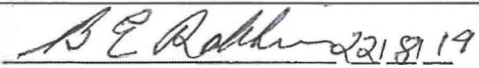
Definitions in this MOU, unless the contrary intention appears are:

Attachment	Means a document attached or referred to expressly by a clause as describing a relevant aspect of this MOU, including any Schedules.
CRS	Means the MCB's Cemetery Records System.
Commonwealth	Means the Commonwealth of Australia.
OAWG	Means the Office of Australian War Graves including its Personnel.
Include	Where "include" (in any form) is used in this MOU, examples following it do not limit the scope of the relevant issue to a specific example or class of examples.
Law	Includes any relevant: (a) Legislation, whether primary, delegated or subordinate, of the Commonwealth, Western Australian legislation or a state, territory or local government; (b) Judicial ruling (including under common law or the rules of equity).
MAAC	Means the MCB's Monument Assessment Advisory Committee and its Members.
Material	Includes any goods, documentation or information.
MCB	Means the Metropolitan Cemeteries Board of Western Australia, its cemeteries and its Personnel.
MOU	Means this Memorandum of Understanding (i.e. this document, embracing the clauses and information in the Signatures Page) plus any express Attachment. It is a non-binding agreement that does not commit to perform work or provide resources.
MOU Date	Means the date upon which the Parties executed this MOU (i.e. the date of the last relevant signature on the Signatures Page).
Official War Graves and memorial	Means a grave memorial or bronze plaque in a general or lawn cemetery maintained by the Office of Australian War Graves relating to Commonwealth WW1 and WW2 War Dead.
OAWG	Means the Office of Australian War Graves and its Personnel.

Parties	Means, as applicable, the OAWG, the MCB and their respective Personnel.
Personnel	Includes any Party's authorised officer, partner, employee, agent, volunteer, bailee, contractor, subcontractor, executor, administrator, substitute, successor, licensee or assignee but – when applied to one Party – does not include the other Party or that other Party's Personnel.
Procedures	Means all things that the MCB and Office of Australian War Graves agree to do under this MCU, including the undertakings described in the Schedule.
Signatures Page	Means the pages executed by signatures by each Party to indicate intention to be bound by this MOU.
Victoria Cross, George Cross and Cross of Valour recipients	Refers to recipients that are interred in MCB cemeteries and are acknowledged as official war graves by the Office of Australian War Graves or are private graves.
War Dead	Means those Service Personnel who died during World War One ("WW1") and World War Two ("WW2"), with the respective war periods associated with the same defined as: <ul style="list-style-type: none"> • WW1: 4 August 1914 – 31 August 1921; and • WW2: 3 September 1939 – 31 December 1947.

THE SIGNATURES PAGE

<i>Signed for and on behalf of the Commonwealth of Australia as represented by The Commonwealth of Australia represented by the Office of Australian War Graves (OAWG).</i>	
Name: PAUL NOTHARD Director — ACT Office Office of Australian War Graves	
Signature and date:	 12/7/19
Witnessed by:	
MARTIN FARRELL	
Signature and date:	 12/7/19

<i>Signed for and on behalf of the Metropolitan Cemeteries Board:</i>	
Peter Deague Chief Executive Officer Metropolitan Cemeteries Board	
Signature and date:	 22/8/2019
Witnessed by:	
Signature and date:	 22/8/19



SCHEDULE 1

1. MCB Undertakings

The MCB acknowledges the sacrifices of Australian service personnel who served their nation in war to protect the freedoms we enjoy today. In recognising the respect the community of Western Australia has for those service personnel who died during WW1 and WW2 or the relevant war periods associated with the same, the MCB will honour their memory by applying the following:

- 1.1 The MCB agrees to record all Official War graves on the MCB's CRS. These records will ensure that all official war graves maintained by the OAWG will be retained where practicable.
- 1.2 The MCB will continue to include the OAWG in its MAAC meetings as an observer. In its capacity as an observer, the OAWG is permitted to make comments at MAAC meetings.
- 1.3 If the MCB wishes to modify an Official War Graves, a written request will be provided to the OAWG describing the desired modification prior to any modification being carried out. If the MCB does not receive a response within a reasonable time, the MCB will table the request for modification at the next scheduled MAAC meeting for resolution with the OAWG representative.
- 1.4 The MCB will undertake all things necessary to ensure the safety of all persons engaged in the maintenance of Official War Graves, and will comply with the requirements of any relevant Law.
- 1.5 The MCB will not charge the OAWG a monumental application fee when erecting a new monument or altering an existing monument of official war graves.
- 1.6 The MCB will recognise these graves which are maintained by OAWG as government graves under the terms of the Cemeteries Act 1986 (WA). The Board will retain these graves without a current grant, including all rights and powers in respect of that grave.
 - 1.6.1 A current grant is required for further interments of a spouse or family member. Where a new grant is issued, conditions will apply whereby the official headstone is to remain without alterations unless authorised. An additional plaque may be placed in the centre or at the foot of the grave.
 - 1.6.2 The OAWG will take responsibility for the restoration of the grave.
- 1.7 In consideration of the wishes of the family or other appropriate representatives, the MCB will retain graves for Victoria Cross, George Cross and Cross of Valour recipients without a current grant, including all rights and powers in respect of that grave. These graves will be retained for historical purposes and for the purpose of serving the community.
 - 1.7.1 The grant of right of burial fee will be waived for the four existing graves of Victoria Cross and George Cross recipients located in MCB cemeteries should the family wish to restore, add to or alter the monument of these privately commemorated graves. The MCB retains the right to these graves should the families choose not to re-purchase the grant. The only fee received by the MCB in this regard will be the Monument Application Fee.

- 1.7.2 If a family wishes for any further interment in a particular grave, including the burial of ashes, the grant for the same must be re-purchased by the appropriate person.

2. The OAWG Undertakings

Recognising the OAWG's responsibility to assist the MCB, it will:

- 2.1. Agrees to provide details of all Official War Graves and Memorials to the MCB.
- 2.2. Update the list of these Official War Graves and Memorials annually and provide the updated list to the MCB within a reasonable time or in the alternative, within a reasonable time upon request from the MCB.
- 2.3. Maintain all Official War Graves to a high standard and ensure they do not present any risk to public safety.
- 2.4. Respond, in a timely manner, to all requests from the MCB to modify an Official War Graves or Memorials.
- 2.5. Actively participate in the MAAC and assist in assessing relevant monumental works of Official War Graves and Memorials at the MCB's cemeteries.
- 2.6. Understand that the decisions of the MCB will be final in its application of the cemetery renewal program.