

Right of interment permit

Factsheet

OFFICIAL

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Rights of interment

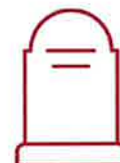
A right of interment permits the right of interment holder (right holder) to determine:

- the human remains (bodily or cremated) that can be interred (buried or placed) in a place of interment in a public cemetery
- the type of memorialisation, if any, to be established at the place of interment subject to any cemetery trust memorialisation policies or specifications.



Places of interment

A right of interment relates to a specific place of interment – for example, a grave, vault, mausoleum crypt or ashes niche. Right holders do not own the land associated with the place of interment as all Victorian public cemeteries are on Crown land.



Right holders

The right holder is the person identified in cemetery trust records as the right holder for a specific place of interment within a public cemetery. There can be one sole right holder or multiple joint right holders for a place of interment. A right of interment rests only with the right holders recorded in cemetery trust records.



Rights and obligations of right holders

Right to make decisions about the place of interment

Subject to the approval of the cemetery trust, payment of the relevant fees and any conditions imposed by the trust, a right of interment gives the right holders the right to:

- authorise the interment of human remains in the place of interment
- establish or alter a memorial at the place of interment
- endorse or object to an application to exhume bodily remains from the place of interment
- authorise the removal of body parts or cremated remains from the place of interment.

Right to transfer or surrender the right of interment

Where a person is a sole right holder, they may transfer the right to another person (refer to [Voluntary transfer of a right of interment to another person](#) below). Sole right holders and joint right holders are also entitled to surrender their right (refer to [Voluntary surrender of a right of interment to a cemetery trust](#) below).

Obligation to maintain memorials at the place of interment

Right holders must maintain any memorial established at the place of interment in a safe and proper condition. Where a memorial is not maintained in a safe and proper condition and right holders cannot be contacted, the cemetery trust may repair, remove or dispose of the memorial and seek to recover the associated costs and expenses from the right holders.

Updating contact details

Right holders are responsible for keeping the cemetery trust advised of their current contact details.

Length of a right of interment

A right of interment for a place of interment that can accommodate both bodily remains and cremated remains (for example, graves, vaults and mausoleum crypts) must be perpetual (forever).

A right of interment for a place of interment that can only accommodate cremated remains (such as a niche wall or rose bush) can be either perpetual (forever) or limited to 25 years (if the cemetery trust offers this).

The length of the right of interment is specified at the time the right is granted.

Limited tenure right of interment

The right holder of a limited tenure right of interment may at any time during the 25-year period request the cemetery trust to extend the right for a further 25 years or convert the right to a perpetual right, subject to paying the relevant fee.

At least 12 months before a limited tenure right of interment is due to expire, the cemetery trust must take reasonable steps to notify (in writing) the right holder that the right is due to expire.

If the right holder does not take action in response to the notification within the time specified by the cemetery trust, the trust may disinter the cremated remains, dispose of the remains within the cemetery grounds and remove any memorial relating to the remains.

Voluntary transfer of a right of interment to another person

A sole right holder may transfer their right of interment to another person. If the recipient pays money to the original right holder for the right, the amount paid must not exceed the current cemetery trust fee for the same type of right of interment in that cemetery, less the cemetery trust fee for recording the transfer. It is an offence to receive payment above this amount and penalties apply.

For a transfer to take effect, a person to whom the right of interment is transferred must notify the cemetery trust of the transfer in writing and pay the relevant fee. The trust should also seek written confirmation from the original right holders that they consent to the transfer.

Example: Sole right holder Jack is transferring his right of interment to Jill. Jill pays Jack \$1,250 for the right (current cemetery trust fee of \$1,275 less the cemetery trust’s administration fee of \$25). Jill advises the cemetery trust of the transfer in writing and pays the \$25 administration fee to the trust. The trust confirms with Jack that he consents to the transfer and then updates its records to show Jill as the new right holder.

Voluntary surrender of a right of interment to a cemetery trust

A right holder may choose to surrender their right of interment to the cemetery trust that issued the right. A sole right holder surrendering the right or a joint right holder surrendering their entitlement to a jointly held right must notify the cemetery trust in writing. Once a right of interment is surrendered, the person surrendering the right of interment has no further rights or obligations in relation to that right of interment.

How cemetery trusts manage the voluntary surrender of a right of interment will differ depending on the status of the right of interment (unexercised, exercised with no human remains interred or exercised with human remains interred) and whether there is a sole right holder or multiple joint right holders.

What is the status of the right of interment?

The status of a right of interment at the time it is surrendered will determine if a refund is payable by the cemetery trust. This is because the cemetery trust is only able to restore and re-use a right of interment that does not have human remains interred at the time it is surrendered. The table below defines each status.

Status	Definition
Unexercised	No human remains have been interred at any time and no memorial has been established at the place of interment at any time.
Exercised with no human remains interred	No human remains have been interred but a memorial has been established at the place of interment (whether or not the memorial has since been removed). or Human remains have been interred and subsequently disinterred (exhumed or removed) from the place of interment (with or without a memorial).
Exercised with human remains interred	Human remains are interred at the place of interment (with or without a memorial).

Is a refund payable?

A refund is only payable by the cemetery trust in certain circumstances and will depend on whether the right is being surrendered by a sole right holder, all joint right holders or one joint right holder and the status of the right (as indicated in the table above).

If human remains are interred at the place of interment at the time that the right of interment is surrendered to the cemetery trust, the right holders will not be entitled to a refund.

The tables below show when a refund is due and what happens to the right of interment once it has been voluntarily surrendered.

Surrender by a **sole right holder** of a right of interment

Status	Does the cemetery trust pay a refund?	What happens to the right of interment once it has been surrendered?
Unexercised	Yes	The cemetery trust may resell the right of interment.
Exercised with no human remains interred	Yes	The cemetery trust may remove the memorial (if any) and resell the right of interment.
Exercised with human remains interred	No	The cemetery trust becomes the right holder for that place of interment.

Surrender by **all joint right holders** of a right of interment **acting in agreement**

Status	Does the cemetery trust pay a refund?	What happens to the right of interment once it has been surrendered?
Unexercised	Yes	The cemetery trust may resell the right of interment.
Exercised with no human remains interred	Yes	The cemetery trust may remove the memorial (if any) and resell the right of interment.
Exercised with human remains interred	No	The cemetery trust becomes the right holder for that place of interment.

Surrender by **one joint right holder** of a right of interment

Status	Does the cemetery trust pay a refund?	What happens to the right of interment once it has been surrendered?
Unexercised	No	The entitlements and responsibilities of other joint right holders remain the same. The joint holder who has surrendered their interest has no further entitlements or responsibilities under that right of interment.
Exercised with no human remains interred	No	The entitlements and responsibilities of other joint right holders remain the same. The joint holder who has surrendered their interest has no further entitlements or responsibilities under that right of interment.
Exercised with human remains interred	No	The entitlements and responsibilities of other joint right holders remain the same. The joint holder who has surrendered their interest has no further entitlements or responsibilities under that right of interment.

How is the refund calculated?

If a refund is due, the cemetery trust will calculate the refund by determining the current fee for that type of right of interment, less an administrative charge and any maintenance costs incurred by the cemetery trust. If the cemetery trust incurs any restoration costs (such as for removing a memorial), these costs are also subtracted from the refund. Maintenance costs are calculated using sliding scales developed by the department for rights of interment for the perpetual interment of bodily and cremated remains and rights of interment for limited tenure cremated remains. Refer to the department's website for more information <<https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment>>.

Transfer of a right of interment when a right holder dies

The transfer of a right of interment following the death of a right holder differs depending on whether the deceased was a sole right holder or a joint right holder as explained below.

Joint right holder

When a joint right holder dies, the deceased's interest will pass to the remaining right holders in accordance with the right of survivorship.

Example: A right of interment was issued in 1930 to three brothers. Two of the brothers died in the 1940s and the surviving brother became the sole right holder.

Sole right holder

When a sole right holder dies, the right of interment will likely be transferred to the beneficiary of a will, or if no such arrangements have been made, the right of interment is transferred in accordance with the rules of intestacy. In lieu of a specific bequest leaving the right of interment to an identified person or persons, the right typically forms part of the deceased's estate and is inherited by the beneficiary or beneficiaries of the estate. This could mean transfer of the right to one or multiple people.

Example: Following on from the example above, the third brother who became the sole holder of the right of interment had two daughters who inherited his estate when he died. He did not leave a specific bequest identifying who should inherit the right of interment. His two daughters became joint holders of the right.

The cemetery trust is not responsible for investigating who will become the new right holders when a right holder dies. It is up to interested parties to provide the trust with sufficient evidence, for example a will.

Rights of interment cancelled by a cemetery trust

A cemetery trust may cancel a right of interment if, at least 25 years after being granted, it has never been exercised and the cemetery trust cannot, after diligent enquiry, find the right holders. At least 14 days prior to doing so, the cemetery trust must publish notice of its intention to cancel the right of interment in a daily or weekly newspaper circulating in the vicinity of the cemetery to which the right of interment applies.

Where a right holder contacts a cemetery trust after the cancellation of their right of interment, the cemetery trust must provide a refund of the cost of the right based on the current cost of the same or a similar right, less the relevant administration fee, or provide an equivalent replacement right of interment at no charge.

To receive this document in another format, phone 1800 034 280, using the National Relay Service 13 36 77 if required, or email the Cemetery Sector Governance Support Unit <cemeteries@health.vic.gov.au>.

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Available at [Right of interment](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment) <<https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment>>

