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| Managing the voluntary surrender of a right of interment |
| OFFICIAL |

# Introduction

Under the *Cemeteries and Crematoria Act 2003* (the Act), a right of interment holder may choose to surrender their right of interment to the cemetery trust that issued the right.

How a cemetery trust manages 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 of interment holder or multiple joint holders.

# Scope

This guidance applies to rights of interment that are surrendered voluntarily. It does not apply to a forced surrender of a right of interment directed by the Secretary of the department under Division 2A of Part 6 of the Act.[[1]](#footnote-1)

# What is the status of the right of interment?

When managing the surrender of a right of interment it is important to determine the status of the right of interment to determine if a refund is payable by the cemetery trust. The table below defines each status:

| Status | Definition |
| --- | --- |
| Unexercised | Human remains have not been interred at any time **and** a memorial has not been established at the place of interment at any time. |
| Exercised with no human remains interred | Human remains have not been interred but a memorial has been established at the place of interment and may or may not remain at the place of interment.  **or**  Human remains have been interred and subsequently disinterred 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?

In addition to determining the status of the right of interment, it is also necessary to identify whether the right is being surrendered by a sole holder, all joint holders or one joint holder to determine if the cemetery trust is required to pay a refund.

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

## Surrender by a sole holder of the 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 of interment holder. |

## Surrender by all joint holders of the 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 of interment holder. |

Note: It is recommended that trusts require joint right of interment holders to nominate a bank account or representative to receive the refund.

## Surrender by one joint holder of the 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 person has no further entitlements or responsibilities under that right of interment. |
| Exercised with no human remains interred | No | The person has no further entitlements or responsibilities under that right of interment. |
| Exercised with human remains interred | No | The person has no further entitlements or responsibilities under that right of interment. |

# How is the refund calculated?

If a refund is due, it is calculated by determining the current fee for that type of right of interment, less an administrative charge (if gazetted) 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 applicable scale and example below.

## Sliding scale for the surrender of a right of interment for bodily and cremated remains (perpetual tenure)

| Year | Maintenance charge |
| --- | --- |
| 1 | 3.00% |
| 2 | 4.75% |
| 3 | 6.50% |
| 4 | 8.25% |
| 5 | 10.00% |
| 6 | 11.75% |
| 7 | 13.50% |
| 8 | 15.25% |
| 9 | 17.00% |
| 10 | 18.75% |
| 11 | 20.50% |
| 12 | 22.25% |
| 13 | 24.00% |
| 14 | 25.75% |
| 15 | 27.50% |
| 16 | 29.25% |
| 17 | 31.00% |
| 18 | 32.75% |
| 19 | 34.50% |
| 20 | 36.25% |
| 21 | 38.00% |
| 22 | 39.75% |
| 23 | 41.50% |
| 24 | 43.25% |
| 25 | 45.00% |

### Example

|  |  |
| --- | --- |
| Current value of right of interment | $10,000 |
| Purchased 10 years previously – maintenance rate | 18.75% |
| Maintenance fee | ($10,000 × 0.1875) = $1,875 |
| Current gazetted administration charge | $75 |
| Refund payable | ($10,000 – $1,875 – $75) = $8,050 |

**Note:** The maximum a trust can charge for maintenance is 45 per cent (25 years).

## Sliding scale for the surrender of a right of interment for cremated remains (limited tenure)

| Year | Maintenance charge |
| --- | --- |
| 1 | 4.00% |
| 2 | 8.00% |
| 3 | 12.00% |
| 4 | 16.00% |
| 5 | 20.00% |
| 6 | 24.00% |
| 7 | 28.00% |
| 8 | 32.00% |
| 9 | 36.00% |
| 10 | 40.00% |
| 11 | 44.00% |
| 12 | 48.00% |
| 13 | 52.00% |
| 14 | 56.00% |
| 15 | 60.00% |
| 16 | 64.00% |
| 17 | 68.00% |
| 18 | 72.00% |
| 19 | 76.00% |
| 20 | 80.00% |
| 21 | 84.00% |
| 22 | 88.00% |
| 23 | 92.00% |
| 24 | 96.00% |
| 25 | 100.00% |

### Example

|  |  |
| --- | --- |
| Current value of right of interment | $10,000 |
| Purchased 10 years previously – maintenance rate | 40% |
| Maintenance fee | ($10,000 × 0.4) = $4,000 |
| Current gazetted administration charge | $75 |
| Refund payable | ($10,000 – $4,000 – $75) = $5,925 |

**Note:** The maximum a trust can charge for maintenance is 100 per cent (25 years). If the surrender is in the final year the following percentages may be used:

* 97 per cent for the first three months
* 98 per cent for the first six months
* 99 per cent for the first nine months
* 100 per cent anything over the first nine months

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1. More information about the Secretary’s directions power is available on the [department’s website](https://www.health.vic.gov.au/cemeteries-and-crematoria/seeking-variation-or-forced-surrender-of-a-right-of-interment-held-by) <https://www.health.vic.gov.au/cemeteries-and-crematoria/seeking-variation-or-forced-surrender-of-a-right-of-interment-held-by>. [↑](#footnote-ref-1)