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| Right of interment permit fact sheet |
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### Disclaimer notice

This fact sheet contains general information in relation to the right of interment and the *Cemeteries and Crematoria Act 2003* (the Act). This information is provided for general use only and does not form part of the right of interment permit. The information provided in this fact sheet is not intended to constitute formal legal advice or be a definitive guide to the law relating to rights of interment. Therefore, it is not a substitute for legal advice that applies to your particular needs and circumstances.

You should assess whether the information in this fact sheet is relevant to your particular circumstances and where appropriate, seek independent legal advice.

# The right of interment

There is a common misconception that the purchaser of a right of interment actually buys the land associated with a cemetery plot or grave, or the mausoleum crypt or cremation niche when a right of interment is purchased. This assumption is not correct as all public cemeteries in Victoria are situated on Crown land. What is actually purchased is the permit (right) to determine who can be interred in that grave (or other type of place of interment) and the type of memorialisation (if any) to be established at the place of interment (subject to any cemetery trust memorialisation policies or specifications).

A right of interment rests only with the holder/s of the right of interment. Possession of a right of interment permit does not of itself give any person/s the right to make decisions in relation to the right of interment.

# The rights and obligations of right of interment holders

## Rights to inter human remains and establish or alter a memorial at the place of interment

A right of interment gives the holder/s:

* the right to authorise the interment of human remains in the place of interment
* the right to establish or alter a monument or memorial at the place of interment
* the right to endorse or object to an application to exhume bodily remains from the place of interment
* the right to remove body parts or cremated remains with the approval of the cemetery trust in accordance with the Act.

Before exercising any of these rights, the holder/s must obtain the approval of the relevant cemetery trust and abide by any terms and conditions, including fees or specifications, imposed by the cemetery trust in relation to the approval.

## Obligation to maintain memorials at the place of interment

The holder/s of the right of interment 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 the holder/s 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 holder/s of the right of interment.

## Rights to transfer or surrender the right of interment

The holder/s of the right of interment may transfer the right of interment to another person (see transfer of a right of interment). The holder/s are also entitled to surrender the right of interment (see surrender of a right of interment).

# Exercising the right of interment

A right of interment will be considered to have been exercised if:

* human remains (including bodily remains, body parts or cremated human remains) are interred at the place of interment, or
* a memorial is created at the place of interment (regardless of whether any human remains have been interred).

# 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.

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

## Specific information for limited tenure rights of interment

The 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 payment of 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 holder of the right that:

* the right is due to expire
* the holder may request the cemetery trust extend the right for a further 25 years (subject to payment of relevant fee)
* the holder may request the cemetery trust convert the right to a perpetual right (subject to payment of relevant fee).

If the holder of the limited tenure right does not take action in response to the notice 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.

# Transfer of a right of interment

The holder/s of the right of interment may transfer that right to another person, providing that the amount paid for the right of interment does not exceed the current cemetery trust fee payable 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 in excess of this amount and penalties apply.

In order 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.

Where the holder of the right of interment is deceased, 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. This could mean transfer to one or to multiple people. In the case of transfer to multiple people or intergenerational inheritance, the right to use a place of interment becomes very complicated and unclear. Accordingly, right of interment holders should provide cemetery trusts with clear instructions regarding the ongoing management of the right of interment prior to their passing.

# Cancellation of a right of interment

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 holder/s of the right. 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 of interment holder contacts a cemetery trust after the cancellation of their right of interment, the cemetery trust must provide a full refund of the cost of the right based on the current cost of the same or a similar right or provide an equivalent replacement right of interment at no charge.

# Surrender of a right of interment

## Surrender of an unexercised right of interment by the sole holder of the right

The sole holder of a right of interment may surrender an unexercised right of interment to the cemetery trust that granted the right. Upon surrender, the cemetery trust must pay a refund based on the current fee for that type of right of interment, less an administrative charge and any maintenance costs incurred by the cemetery trust. 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.

## Surrender of an exercised right of interment by the sole holder of the right

The sole holder of an exercised right of interment may surrender the right of interment to the cemetery trust. If human remains are no longer interred at the place of interment, the holder of the right of interment is entitled to a refund at the current cemetery fee, less the relevant cemetery trust fee for administration, maintenance and any restoration costs.

Circumstances where this may occur include:

* where a right of interment is purchased for future use and in order to exercise the right a memorial is established even though no human remains are interred. The holder of the right of interment may later decide to remove the memorial and surrender the exercised right to the trust.
* where human remains are interred and then subsequently exhumed and disposed of correctly according to the Act (or, in the case of body parts and cremated remains, where the remains are removed in accordance with the Act) and the holder of the right of interment has no further need of the right of interment.

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 holder of the right of interment will not be entitled to a refund. 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.

## Surrender of an exercised right of interment by a joint holder of the right

A person who holds the right of interment jointly with another/others, may surrender their entitlement to the right of interment by notifying the cemetery trust in writing. On the surrender of their entitlement, no refund is payable by the cemetery trust to the person surrendering the entitlement, and the person has no further entitlements or responsibilities in relation to that right of interment. The surrender of entitlement by one joint holder does not affect the entitlement of any other joint holders of the same right.

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