

## **RIGHT OF INTERMENT POLICY**

### **Purpose**

This operational policy guides the Trust in managing a Right of Interment following the death of a Right Holder. It covers 4 key areas:

- A - Interment of a deceased Right Holder
- B - Identifying the new Right Holder(s)
- C - Memorialisation
- D - Disputes

### **Background**

Accurate records are crucial to the effective management and operation of our cemetery. It is critical that information in our Right of Interment register and operational records is correct and current, as it forms the basis for decision making in relation to our powers under the Cemeteries and Crematoria Act (the Act). Specifically:

- The power to authorise the execution of Right Holder entitlements (s. 77(4)).
- The interment of human remains at a place of interment.
- Establishing or altering a memorial at a place of interment.
- Removal of cremated remains or body parts from a place of interment.
- Managing surrenders of an exercised or unexercised Right of Interment (ss. 82–84).
- Authorising a lift and re-position procedure (ss. 88–89).
- The cancellation of a Right of Interment (s. 91).
- Managing and recording the transfer of a Right of Interment (ss. 79–80).

### **Part A - The interment of a deceased Right Holder**

When a Right Holder dies, the Trust receives a request from a funeral director, executor or family representative for a burial in the nominated plot. At this time, it is unlikely they will be able to provide the Trust with sufficient information to update our Right of Interment records with new Right of Interment Holder details, therefore in relation to:

#### **1. Sole Holders**

If the deceased was a sole Right Holder, the Trust can accept instructions regarding the place of interment, depending on circumstances, from:

- A person nominated to administer the deceased's estate (such as an executor) given a Right of Interment forms part of an estate.
- A representative nominated by the deceased's family to manage the funeral arrangements, e.g. a funeral director, family friend or member of the family.

The Trust requires the nominated representative to provide a Statutory Declaration confirming their authority to act on behalf of the deceased Right Holder / Estate.

#### **2. Joint holder(s)**

When a Right is jointly owned (e.g. husband and wife) and one owner dies, their interest passes to the remaining owner(s) via right of survivorship. That Holder can direct the Trust regarding burial and exercising the right. If a Right is owned by multiple holders, the remaining joint holders may give the Trust instructions regarding the interment and exercise of the Right. If multiple Holders nominate a representative, that person will need to provide a Statutory Declaration confirming their authority to act on behalf of the group.

### 3. Disputes

Under normal circumstances a funeral will proceed as directed by the family or their representative. However, if there is a dispute about exercising of a Right relating to a proposed burial, placement of a memorial, transfer of the Right or any other matter relating to exercising the Right, the Trust will recommend the family seek mediation to settle the dispute before taking directions in regard to the Right. See also Part D.

### 4. Executor

The Trust notes that an executor or administrator of an estate may not necessarily become the new Right Holder and will not update Trust records to reflect the executor or anyone else as a new Right Holder(s) without clear supporting evidence.

#### Part B - Identifying new Right Holder(s)

Identifying a new Right Holder(s) is a crucial part of our record validation process. This clearly establishes who is authorised to provide the Trust with directions about the Right and the place of interment in relation to future interments, memorials and exhumations.

If a Right was jointly held, according to the right of survivorship the deceased Right Holder's interest in the right is extinguished and the Right remains with the surviving Right Holder(s).

If the deceased was sole Right Holder, the Right forms part of their estate to be inherited by their residual beneficiaries or by the laws of intestacy, meaning a new sole Right Holder or new joint Right Holders can be identified once the deceased's estate has been settled.

The Trust acknowledges the process of distributing a deceased estate may take some time and be finalised well after a burial has taken place.

Once an estate is settled the new Right Holder(s) is/are likely to be one or several residual beneficiaries. The Trust requires documentary evidence to show they are the new Right Holder(s) e.g. a certified copy of the will or Statutory Declaration from the nearest surviving relatives of the deceased. If there are multiple beneficiaries, they become joint Holders of the Right of Interment.

In order to update our records the Trust may contact an executor or family representative to confirm details of the new Right of Interment Holder(s). If not updated the Right ownership will need to be clarified at a future time of need.

#### Evidence for updating the Trust's records

1. Deceased Holder is identified as sole Right Holder (in Trust's records) and leaves a will:

The Trust requires a certified copy of the will identifying the residual estate beneficiaries or, alternatively, the beneficiaries nominated to manage the Right. Where there are multiple beneficiaries identified in the will the Trust will record each beneficiary as a Right Holder.

2. Deceased Holder is identified as sole right holder (in Trust's records) and no will:

If the deceased Right Holder did not leave a will, prospective beneficiaries will generally apply to court for letters of administration. The Trust requires a certified copy of the letter of administration as evidence to confirm the new Right Holder(s).

If a new Right Holder is not identified via a court-issued letter of administration the Trust requires a Statutory Declaration from anyone claiming to be a new Right Holder showing:

- Why they believe they have a claim.
- Confirming to the best of their knowledge there are no other beneficiaries who can make claim to the Right of Interment.

- Agreeing if any legitimate claimants come forward, the Trust reserves the right to update its Right of Interment records accordingly.

If the Trust determines information provided by an applicant is insufficient to have the Right of Interment record updated, it is not obliged to do so. When rejecting an application, the Trust will provide reasons for its decision in writing and, if possible, be clear about what additional information is required to enable it to update its records.

### Part C - Memorialisation

The Trust will be guided by the Act, which does not place restrictions on who can apply to establish or alter a memorial (s. 98). However, s. 98 of the Act provides that if there is a Right of Interment Holder, their consent is required.

The executor of the deceased's estate can arrange for a memorial to be established for the deceased Right Holder providing the application is made before finalising the estate.

The executor will normally be following the wishes of the deceased when establishing a memorial, but they should also consider the wishes of the beneficiaries of the estate before their decision is finalised.

The Trust requires the executor to provide a Statutory Declaration or certified copy of the will confirming their authority to act on behalf of the deceased Right Holder / Estate.

After an estate is settled an applicant will need the written consent of the Holder(s) of the Right of Interment before the Trust can allow a memorial to be established or altered.

Where there are multiple joint holders, all those holders will need to give their consent to establish a memorial. For practical purposes multiple right holders may nominate a single right holder to act on their behalf, but the Trust still requires a written copy of this authority (Statutory Declaration) before taking direction from the nominated holder.

Where there are multiple holders and the applicant cannot contact them to seek their consent, the Trust will need to establish, via a Statutory Declaration, the applicant has taken reasonable steps to contact the other holders before it provides permission to establish or alter a memorial. Reasonable action could include but is not limited to placing an advertisement in a local news publication or a search of the White Pages. Costs for such steps are borne by the applicant.

### Part D - Disputes

Should there be a dispute about who will become the new Right Holder, the Trust will advise the disputing parties that it is their responsibility and costs to resolve their differences before the Trust records will be updated. In such a situation the Trust will refer its clients to the Dispute Settlement Centre of Victoria <https://www.disputes.vic.gov.au> if necessary.

### Further Reference

- Manual for Victorian Cemetery Trusts

## Interment and memorialisation following the death of a right holder

