

|  |
| --- |
| Updating historical right of interment records |
| Guidance for cemetery trusts |
| OFFICIAL |

**Disclaimer: This guidance does not constitute legal advice. Interested parties may wish to seek independent legal advice when seeking to update historical right of interment records.**

# Introduction

Victorian cemetery trusts manage right of interment records for the public cemeteries under their control and many of these records date back to the mid-1800s and early 1900s.

It is not uncommon for historical right of interment records to be lost, accidentally destroyed, incomplete or out-of-date. This can create challenges for members of the public and cemetery trusts seeking to determine current right of interment holders for graves and other places of interment that were issued many years ago.

# Scope

This guidance applies to historical right of interment records only. The department considers historical right of interment records to be those where the recorded right of interment holder is either known to be deceased (for example, there is a record of the original holder’s interment in the trust’s records) or is very likely to be deceased (for example, the right of interment was purchased more than 75 years ago and the recorded holder is uncontactable).

This guidance does not apply where it is reasonable to assume that trust records are current as the right of interment was purchased within the past 75 years and there is no evidence that the recorded holder is deceased.

# Managing enquiries from interested parties

Members of the public may contact cemetery trusts seeking to determine who currently holds a right of interment that was issued many years ago. There are many reasons for requesting this information, for example when someone wishes to establish or alter a memorial on an ancestor’s grave.

## Step 1 – Review trust records

The trust should review its records to determine if the trust holds any information relevant to the enquiry. Note that cemetery records must only be accessed by trust members and employees deemed eligible and suitable by the trust.

The trust may charge a fee for searching its records, provided the department has approved and gazetted this fee.

## Step 2 – Privacy considerations

Under the provisions of the Privacy and Data Protection Act 2014, trusts are required to protect the privacy of people from whom they collect personal information. The Privacy and Data Protection Act protects the privacy of living persons and therefore does not apply to deceased persons. However, information about a deceased person may include personal information about the living.

Before providing personal information to interested parties, the trust must ensure that it acts in accordance with the Information Privacy Principles (IPPs) established under the Privacy and Data Protection Act. More information about the IPPs is available on the [Office of the Victorian Information Commissioner website](https://ovic.vic.gov.au/privacy/information-privacy-principles-full-text/) <https://ovic.vic.gov.au/privacy/information-privacy-principles-full-text/>.

Generally, trusts should not use information for any purpose other than the purpose for which it was originally collected and should not disclose personal information about living people without their consent.

## Step 3 – Provide copies of relevant records

The trust may make copies or extracts of records relevant to the enquiry. Any personal information in the documents that the trust considers to be a privacy risk should be redacted.

The trust may then provide the information to the interested parties.

## What happens if the trust has no records relevant to the enquiry?

If, after a thorough search of its records, a trust determines that it holds no records relevant to the enquiry, the trust should visit the place of interment to determine if there is a memorial containing relevant information, such as the names of the deceased interred therein.

The trust should refer the interested parties to the Public Records Office Victoria (PROV) for advice on conducting family research. More information is available on the [PROV website](https://prov.vic.gov.au/explore-collection/explore-topic/family-history) <https://prov.vic.gov.au/explore-collection/explore-topic/family-history>.

# Next steps

Once the trust has responded to an enquiry for information about a right of interment holder, it is the responsibility of the interested parties to put together a case for who they believe should be recorded as the current holder/s for the trust’s consideration.

The trust has no role in conducting further research but may be required to provide general information about the transfer of rights of interment where the recorded right of interment holder is deceased. The transfer of a right of interment following the death of a holder differs depending on whether there was one holder (a sole holder) or more than one holder (joint holders) as explained below.

## Joint holder

When a joint right of interment holder dies, the right will likely be transferred to the surviving right holder(s) in accordance with the right of survivorship.

### Example

A right of interment was issued in 1920 to three brothers. Two of the brothers died in the 1930s and the surviving brother became the sole holder of the right.

## Sole holder

When a sole right of interment 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 previous example, 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.

# Considering a request to update historical right of interment records

When the trust receives a request to update historical right of interment records it will need to consider the case put forward and determine if it is satisfied that sufficient evidence has been provided.

Evidence may include (but is not limited to):

* wills identifying beneficiaries of estates
* death certificates as evidence that family members have passed away and identification of their dependents
* family trees and other genealogical research
* correspondence
* statutory declarations.

Certified copies of documents should be provided where possible.

The trust may request interested parties provide statutory declarations to support statements made as part of their case indicating why they believe they have a claim to the right of interment.

**Note: It is recommended that the trust request a statutory declaration stating that the interested parties are aware that the trust reserves the right to review and reconsider its decision at any time which may result in further updates to right of interment records.**

If the evidence indicates multiple interested parties have equal claim to the right of interment, the trust may request evidence to demonstrate that either:

* all interested parties with equal claim wish to be recorded as joint holders of the right, or
* all interested parties with equal claim agree that they wish a specified person or persons be recorded as the holder/s of the right.

If the trust is satisfied with the case put forward, it may then agree to update its right of interment records.

When a trust has agreed to update its records, it should provide information to the right of interment holder/s to ensure they are aware of and understand their rights and obligations. The trust may provide the holder/s with a copy of the *Right of interment permit fact sheet* and/or direct them to the [health.vic website](https://www.health.vic.gov.au/cemeteries-and-crematoria/rights-of-interment) <https://www.health.vic.gov.au/cemeteries-and-crematoria/rights-of-interment>.

# What happens if there is a dispute?

If there is a disagreement between interested parties, for example amongst family members, about who they believe should be recorded as the current holder/s, it is the responsibility of the disputing parties to resolve their differences before the trust can consider a request to update its records.

The trust should remain independent and advise the disputing parties that the trust will not take any action until the dispute has been resolved.

# Record keeping

When the trust receives a request to update historical right of interment records it is important that the process is documented in the trust’s records. This includes documenting the evidence provided and the justifications for the trust’s decision.

If the trust has agreed to update its records, the reasons for the update should be noted in the right of interment register.

|  |
| --- |
| 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](mailto:cemeteries@health.vic.gov.au) <cemeteries@health.vic.gov.au>.  Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.  © State of Victoria, Australia, Department of Health, April 2022.  ISBN 978-1-76096-771-0 (pdf/online/MS word)  Available at [health.vic](https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment) <https://www.health.vic.gov.au/cemeteries-and-crematoria/right-of-interment> |