

# Reasonable Notification Guidelines

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These Guidelines specify how cemetery operators and applicants can undertake reasonable notification for prescribed actions under the *Cemeteries and Crematoria Act 2013*.

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## Purpose of these guidelines

Several sections of the *Cemeteries and Crematoria Act 2013* (the Act) require that notification be given to interment right holders and possible right holders before certain actions relating to interment rights are carried out. These Reasonable Notification Guidelines (the Guidelines):

- identify the sections in the Act where the Guidelines apply
  - identify how extensive notification must be in each case based on a set of principles
  - set out notification steps for each section
  - recognise that some cases may require these steps to be applied flexibly.
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## Notification requirements

This section lists the notification steps that operators and applicants must follow.

Not all steps are required for all sections of the Act, and within each step there is scope for flexibility and judgement depending on the circumstances of each case.

**Figure 1** below provides a summary of which steps must be followed for each section and the party responsible for taking each step. Detailed information on what is required for each applicable step is provided in the next section, 'Notification steps'.

### Roles and responsibilities

**Applicants** (consumers/member of the public) only have a role when applying to the cemetery operator to determine that you are the holder of an interment

right, or if you are applying to carry out works on a memorial at an interment site for which you do not hold the interment right.

**Operators** have a role in every case, either in leading the process (of right revocation or renewal and register correction) or responding to the applicant notification process.

Where an applicant undertakes notification, operators should apply their judgement to determine if they are satisfied that notice has been given according to these Guidelines. If reasonable effort has been made it is appropriate to accept this rather than denying the application.

The following principles have been considered and balanced to inform reasonable notification requirements for each section of the Act:

- The potential harm of the proposed action to an interment right holder
- The potential benefit of allowing the proposed action
- The cost, time and effort involved in notifying interested persons
- The likelihood that the notification attempt will be successful.

Details of how the principles have been applied to each section of the Act are contained in **Appendix A** for reference.

**Note:** Operators are not required to follow notification processes where they believe that an urgent decision is required to allow the imminent interment of somebody related by blood or marriage or in a domestic relationship with the right holder.

Figure 1: Summary of notification steps and responsible party for each section of the Act

	Revoking right after 50 years	Notifying holder of joint renewal	Notify holder of entitlement to renew	Notify holder of intention to move/reuse	Notify holder how to reclaim moved memorial	Operator determining right holder (own initiative)	Operator determining right holder (on application)	Confirming unavailability of holder for maintenance
Act section	52(2)	54(3A)	54(6)	55(2)(b), 55(2)(c)	55(2)(d)	60A	61(3)(c)	70I
Use the information on the register	Operator	Operator	Refer to Regulation for notification requirements	Refer to Regulation for notification requirements	Operator	Operator	Applicant	Applicant
Consider any informal information	Operator		Refer to Regulation for notification requirements	Refer to Regulation for notification requirements		Operator	Applicant	Applicant
Identify possible right holders			Refer to Regulation for notification requirements	Refer to Regulation for notification requirements			Applicant	
Contact possible right holders			Refer to Regulation for notification requirements	Refer to Regulation for notification requirements			Applicant	
Use physical signage	Operator		Refer to Regulation for notification requirements	Refer to Regulation for notification requirements	Operator	Operator to consider	Operator to consider	
Publish a notice in newspaper or online	Operator		Refer to Regulation for notification requirements	Refer to Regulation for notification requirements	Operator to consider	Operator to consider	Operator to consider	

	Revoking right after 50 years	Notifying holder of joint renewal	Notify holder of entitlement to renew	Notify holder of intention to move/reuse	Notify holder how to reclaim moved memorial	Operator determining right holder (own initiative)	Operator determining right holder (on application)	Confirming unavailability of holder for maintenance
Verify with a statutory declaration							Operator may request	Operator may request

## Notification steps

This section provides further detail on each of the steps that may be required in a notification process. Not all steps apply in all cases. Use Figure 1 to determine which steps apply for each section of the Act and who is responsible for completing them.

### Use the information on the cemetery operator's register

Contact the right holder using details listed on the cemetery operator's register. Where notification is being done by an applicant, they can request this information from the operator. The Act allows operators to make register entries available free of charge.

Completing this step would ordinarily involve at least one attempt by every contact method available.

**Note:** The register should be kept up to date by all parties. The Act requires cemetery operators to update the register as soon as practicable upon receiving relevant information. Right holders have a corresponding responsibility to manage their rights and inform cemetery operators of changes to right holder details as soon as possible.

Send letters by registered mail and give right holders 28 days to respond to any written communications (letter, email, or text message).

If the right holder cannot be contacted, attempt to contact any secondary contacts. Do this at the same time as attempts to contact the right holder if desired.

If a right holder is successfully contacted, no further attempts using other methods are required. If information is received during enquiries that the details on the register are no longer accurate, then further attempts using those details are not required.

Assess whether attempts to contact a right holder cannot be successful. For example, if the right holder is known to be deceased, an attempt to contact them is not reasonable; but consider whether the contact information available is

reasonably likely to be useful in contacting a possible right holder, for example by reaching family members.

## **Consider any available informal information**

Use any available additional information that might assist in contacting a right holder. For example, relatives may be known to operators in smaller communities or congregations.

There is no obligation to seek out additional information if it is not already available.

## **Identify possible right holders**

Use available documents such as wills, death certificates and letters of probate to demonstrate how the right would have passed to the applicant.

In practice, it is unlikely that documentation such as wills will be readily available after a certain period has passed (e.g. 2 generations).

If these documents are not available, assume that a solely held right passed according to the laws of intestacy, unless there is evidence to the contrary. In most cases, this means assuming the right passed to:

- their living spouse, or
- if they had no living spouse, their children, or
- if they had no children, their parents or siblings.

There may also be instances where a legal representative noted on a death certificate would have inherited the right.

Jointly held rights will have passed to the surviving joint holder(s).

Repeat these assumptions for as many generations as necessary.

Applicants may provide other evidence (e.g. photos, death notices in newspapers, family letters, or assertions supported by a statutory declaration) to establish the order of death and so how rights passed in intestacy.

The absence of formal documentation should not preclude operators from approving an application, if they are satisfied with the balance of evidence provided.

Operators may, but are not obliged to, request that the information compiled by applicants and a description of the steps taken to compile it be included in a statutory declaration.

### **Contact possible right holders**

If people other than the applicant(s) also have a claim to be the right holder, attempt to contact them. Applicants should use all means of contact available to them and follow the same steps outlined above in '*Use the information on the register*'.

Before approving an application, the operator must be satisfied attempts have been made to contact all possible right holders and they have either renounced their right to be listed as a right holder or failed to respond after 28 days.

### **Use physical signage**

Publish a notice (as a physical sign) describing the proposed action (e.g. revocation of a right) at the interment site.

### **Publish a notice in a newspaper or online**

Publish a notice regarding the proposed action either online (website and/or social media), and/or in the newspaper.

Where the revocation of more than 5 interment rights is involved, this step must include publication in a newspaper.

The newspaper can be that which is most appropriate to the situation. This may include a state-wide newspaper, local newspaper, a newspaper published by a specific community group or the Koori Mail.

### **Verify with a statutory declaration**

When relying on research and documentary evidence from an applicant, the operator could consider requesting that the applicant make a statutory declaration attesting to the accuracy of all claims made.

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## Definitions

Term	Definition
Right holder	The person recorded on the cemetery operator's register as the holder of the interment right.
Possible right holder	A person eligible to be the holder of a given interment right, for example through inheritance, but whose name is not recorded as the right holder in the register.

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## Version history

Date	Version	Amendment
5 August 2025	1.0	-



## Appendix A – Notification rationale for each section of the Act

This appendix maps the principles that were considered in developing these notification steps against each relevant section of the Act. The principles are:

- The potential harm of the proposed action to an interment right holder
- The potential benefit of allowing the proposed action
- The cost, time and effort involved in notifying interested persons
- The likelihood that the notification attempt will be successful.

### Section 52(2): Revoking a perpetual right

Section 52(2) allows operators to revoke a perpetual interment right 50 years after it is granted.

Applying the principles, the **potential harm** is higher than other actions as it will result in the loss of the interment right. However, this is lowered by the time that has passed. The **effort required** to locate the right holder is high, and the **likelihood that the notification is successful** is low, given the passage of time – which also lowers the risk of harm. The **benefit** of the right being revoked is considered high as it can help unlock additional burial space.

As a result, this section of the Act would reasonably involve a **more detailed notification** process than other sections.

#### Reasonable notification process

1. Use the information on the register
2. Consider any available informal information
3. Use physical signage
4. Publish a notice in a newspaper or online

**Note:** The 90 days referred to in the Act starts from the last action taken.

## Section 54(3A): Notifying holder of joint renewal application

Section 54(3A) applies if a subset of joint holders apply to renew an interment right. Operators are required to contact the remaining holder(s) to inform them of the application and provide a period in which they can join the application.

Applying the principles, **potential harm** is higher as it could result in one or more joint holders losing their interment right, but lowered by the fact that the right is renewable (possibly always intended to be for a shorter period). The **effort required** to locate the remaining holder(s) is reduced by the other joint holders who have made the application and may be able to provide information. The **likelihood** that notification is successful is moderate given the passage of time. There is a moderate **benefit** to the operator allowing the opportunity to join the application as the right was possibly always intended to expire.

As a result, a **lower notification process** is likely reasonable for this section of the Act.

### Reasonable notification process

1. Use the information in the register
2. Consider any available informal information

## Section 54(6): Notifying holder of entitlement to renew a right

Section 54(6) applies 12 months before a renewable interment right expires.

Notification requirements are set out in clause 8 of the *Cemeteries and Crematoria Regulation 2024*.

## Sections 55(2)(b) and 55(2)(c): Notify holder of intention to move a memorial or reuse a renewable right

Sections 55(2)(b) and 55(2)(c) apply to renewable interment sites when an operator intends to reuse a site or remove a memorial.

Notification requirements are set out in clause 13 of the *Cemeteries and Crematoria Regulation 2024*.

## Section 55(2)(d): Notify holder of how to reclaim a moved memorial

Section 55(2)(d) applies to renewable interment sites when an operator intends to remove a memorial 2 years after the right has expired.

Applying the principles, the **potential harm** is low as the operator has already attempted to contact the right holder under Sections 54(6), 55(2)(b) and 55(4)(c) above and any risk to historically significant graves is limited by section 55(3)(a). The **effort** required to locate the right holder is high given the passage of time, while the **likelihood** that the notification is successful is low. Given this, the **benefit** of continuing to attempt to contact the holder is low.

As a result, a **lower notification process** is likely reasonable for this section of the Act.

### Reasonable notification process

1. Use the information in the register
2. Use physical signage
3. Consider publishing a notice in a newspaper or online

## Section 60A: Operator determining right holder of their own initiative

Section 60A applies when operators determine the holder of an interment right on their own initiative, as opposed to on application under section 61(3)(c). Operators are likely to use this section when they become aware of an error in their register.

Applying the principles, the **potential harm** is low because operators are likely correcting known and possibly administrative errors. The **effort required** is also likely to be low as the operator will have clear existing information, making the **likelihood** that the notification is successful high. The **benefit** of correcting the right holder in the register is considered high.

As a result, a **moderate notification process** is likely reasonable for this section of the Act.

### Reasonable notification process

1. Use the information in the register

2. Consider any available informal information
3. Consider using physical signage
4. Consider publishing a notice in a newspaper or online

### Section 61(3)(c): Operator determining right holder on application

Section 61(3)(c) applies where the register has not been updated to reflect the new right holder following the original holder's death. It can also apply where the applicant thinks the right holder recorded in the register is incorrect.

Applying the principles, the **potential harm** is high as it could remove a person's interment right. The **effort** required could be high depending on the time that has passed and the accuracy of the existing contact information, making the **likelihood** of success mixed. The **benefit** of correcting the right holder in the register is considered high.

As a result, this section of the Act would reasonably involve a **more detailed notification** process than other sections.

#### Reasonable notification process

1. Use the information in the register
2. Consider any available informal information
3. Identify potential right holders
4. Contact potential right holders
5. Consider using physical signage
6. Consider publishing a notice in a newspaper or online

**Note:** under section 68A of the Act, operators are not liable for determinations under section 61 if those decisions are made in good faith and in accordance with the Act.

## Section 70I: Confirming unavailability of the holder for maintenance

Section 70I applies where somebody other than the right holder wishes to repair or maintain a memorial or erect a memorial at least 5 years after the last interment. This is likely to be used in cases where time has passed and the right holder is unclear. Recent interments are likely to have known right holders.

The applicant must use the Guidelines to demonstrate that the holder is not available to consent to the works. The passage of time is a good reason the right holder may be unavailable.

Applying the principles, the **potential harm** is low as the actual right holder does not change, recent interments are likely to have known right holders, and the Act permits only limited kinds of works without the holder's permission. Where a larger amount of time has passed, the **effort** required to locate the holder is likely to be high and the **likelihood** that the notification is successful is low. The **benefit** of allowing maintenance works is considered high as it generally means memorials can be kept in a good state.

As a result, a **lower notification process** is likely reasonable for this section of the Act.

### Reasonable notification process

1. Use the information in the register
2. Consider any available informal information

**Note:** under section 68A of the Act, operators are not liable for approving a memorial works approval under section 70D if those decisions are made in good faith and in accordance with the Act.

### *Determining whether an applicant has given reasonable notice*

Ultimately operators should apply their judgement to determine if they are satisfied that reasonable notice has been given. If reasonable effort has been made it is appropriate to accept this rather than denying the application.

When relying on research and documentary evidence from an applicant, you may consider requesting that the applicant make a statutory declaration attesting to the accuracy of all claims made.