

Transferring interment rights

Information on the transfer of interment rights between a living holder or holders and another person or persons

Purpose of this fact sheet

To provide guidance on:

- how interment rights can be transferred under the *Cemeteries and Crematoria Act 2013* (the Act)
- the processes that must be followed to ensure that a transfer is valid and that the new right holder will be recognised.

Transfer of interment rights

The Act permits a right holder to transfer an interment right to another person or persons, or to the cemetery operator.

Rights can also pass from one person to another following the death of a right holder, but these are not considered 'transfers' under the Act. For more information on what happens when a right holder dies, please see the fact sheet on *Updating the register following the death of an interment right holder*.

Operators are encouraged to use the moment of a transfer to update full contact details regarding both the interment right holder, and the persons and/or class of persons who may be interred into the interment right. This simplifies required processes at the time of any future interments. Operators should also encourage the new right holder to include the interment right in their will, so that their future intentions are made clear.

1. Transfer to another person or persons (section 58 of the Act)

An interment right holder can apply to transfer the right to one or more other people. If the interment right is held jointly, the application must be made jointly by all joint right holders. If the right is transferred to one person, they will become the sole right holder. If the right is transferred to several people, they will become joint right holders.

Operators may approve or decline a transfer. The Act specifically provides that operators may refuse to transfer a right if they believe the transfer would tend to create a monopoly or encourage dealing in interment rights.

During this process, operators:

- may charge a fee
- may use their own forms (The CCNSW website has an example form available)
- must apply to CCNSW for permission before approving a transfer that would result in a person holding rights over more than 2 unused sites at the cemetery, or more than 10 sites at the cemetery
- must update the cemetery operator's register to reflect the new holder of the interment right as soon as practicable
- must issue a certificate to the new right holder or holders.

2. Transfer to the cemetery operator (section 59 of the Act)

An interment right holder can apply to transfer the right back to the cemetery operator. If the interment right is held jointly, the application must be made jointly by all joint right holders.

Operators are not obliged to approve applications for transfers back to them. However, any provisions in the contract of sale relating to the return of a right to the operator, including whether a refund will be paid for example, must be honoured.

During this process, operators:

- may charge a fee
- may use their own forms
- must update the register to reflect the change in ownership.

Upon approving a transfer, the operator should confirm the decision in writing to the former holder.

Contact details

If you require further information, or have a specific query, please contact CCNSW.

Email: ccnsw.info@cemeteries.nsw.gov.au

Phone: 02 9842 8473

DISCLAIMER

This fact sheet does not constitute legal advice and it should not be substituted for, or relied on, as legal advice. The scenarios included below are examples only. You should always seek your own legal advice if there is a question as to how the law operates in specific circumstances.