

APPLICATION TO TRANSFER PERPETUAL INTERMENT RIGHT

Applies to all Armidale Regional Council cemeteries

What is an Interment Right?

When you “buy a grave or memorial niche” at a cemetery you don’t own the land, you are actually purchasing a right to use that site for a human burial in perpetuity. The right or “Interment Right” as it is known allows the owner or any person they nominate to be buried in that burial site over which they are the registered owner or “Holder”. Only the Holder of the Interment Right can authorise the placement of a monument or inscription on that burial site. An Interment Right is also required for the interment or placement of cremated human remains in a columbarium or niche wall.

What happens when the holder dies?

If the Holder held the Interment Right in joint names, the Right will revert to the surviving Holder. It is not necessary to complete a transfer application unless the deceased Holder was interred in another cemetery. If there is only one Holder, when they die the Interment Right becomes part of their Estate, and their Executor should contact Council to transfer the Right as per the instructions left in the Will.

If there is no Will, then the assets including the burial site or memorial will be distributed as per the laws of intestacy. It may be necessary to supply relevant information such as the Will, Grant of Probate, Letters of Administration or a Statutory Declaration as well as a Death Certificate and evidence of identity to transfer the Interment Right to a new person.

Why should I transfer and Interment Right?

You may not be thinking about it now, but in the future you or a member of your family may wish to use the site for another burial or for the placement of Ash Remains. Keeping the ownership of the Interment Right up to date makes it possible for subsequent generations to use the burial site or memorial and also to update or maintain any memorials upon it.

Transfers of Interment Right from current holder

In this case, the current Holder/s must complete a Statutory Declaration detailing their wish to transfer the Interment Right and provide details of person they wish to transfer to - including their name, address, DOB, phone and email contact details. A copy of original cemetery purchase receipt or certificate should also be attached if available. A person holding a Power of Attorney may act for the Interment Right Holder but must produce proof of the POA.

Transfers where the interment right holder has deceased and an executor or administrator has been appointed

The Executor of an Estate applying for transfer of the Interment Right must provide proof of their status by supplying a copy of the Probate or Letters of Administration. Co-Executors must all agree to the transfer unless they are empowered to act alone.

Transfers where the interment right holder has deceased and there is no will

In this case evidence supporting the claim to the rights will need to be provided, including a Death Certificate for the original Right Holder listing their spouse and/or children (if applicable) as well as a Statutory Declaration outlining the situation.

An Interment Right Certificate will be issued to the new holder/s on approval of the application

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Right of Interment: Transfer or Update

Please read the information below before completing the attached form to transfer or update a Perpetual Interment Right.

You will need to transfer an Interment Right when:

- an application is made for interment in a grave; however, the holder(s) is(are) already deceased
- an application is made for a memorial or inscription on the grave; however, the holder(s) is(are) deceased
- the holder(s) is(are) deceased, and a new holder would like to be registered
- the holder(s) decide to transfer the Right of Interment to another holder, or add joint holder

Current NSW Legislation entitles **ONLY** the registered holder(s) of the Interment Right to:

- Decide who may be interred in the said allotment (e.g. grave/crypt/vault/niche). This control is almost absolute and family members, apart from the holder and their spouse, cannot be interred without the written authority of the holder(s)
- designate individual interment spaces to particular people
- transfer their Interment Right to another person
- Erect or alter a memorial or inscription. It is not possible to place a new memorial (even if the memorial relates to the previous registered holder), alter an existing memorial without the written instruction and permission of the current holder(s).

To Transfer from a Living Holder

1. Complete the attached form, signed by both the current holder(s) and the new holder(s)
2. Attach copies of identification for all parties
3. Submit the completed form to Council@armidale.nsw.gov.au
4. Once we have received the approved documentation and administration fee for each allotment, the cemetery register will be amended to reflect the new holder(s). They will be issued with a Perpetual Interment Right and assume responsibility for the allotment(s).

To Transfer from a Deceased Holder

Next of kin do not automatically inherit the right to hold the Right of Interment. *The Crown Land Management Act (2016)* determines that if the registered holder is deceased, the Interment Right becomes part of the deceased's estate and to be distributed by the Executor(s). Upon the death of a holder, a legal transfer is necessary to transfer the Interment Right to up to two (2) living persons, as described below:

If the Deceased Registered Holder left a Will

1. Complete the attached form, signed by the nominated new holder(s)
2. Attach copies of identification for the nominated new holder(s)
3. Attach copy of the Probated Will, which must have Supreme Court stamp on all pages
4. Return completed form along with the above documentation to Council@armidale.com.au
5. The cemetery register will be updated with the new holder(s) and a new Perpetual Right of Interment will be sent to the new holder(s).

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Understanding Probate

When a person passes away leaving assets in NSW, all assets both real estate and personal property are deemed to be vested in the NSW Trustee by reason of section 61 of the Probate and Administration Act 1898. If the deceased died leaving a valid Will, it is the duty of the Executor(s) named in that Will to call in the assets, pay liabilities and distribute the estate to the beneficiaries so named.

To gain the authority to carry out their duties, the Executor(s) will need apply to the Supreme Court of NSW for a Grant of Probate of the deceased's last Will. **A solicitor may assist with this process.**

The Grant of Probate is not only proof that the person named in the Grant is entitled to handle the assets, but upon the Grant of Probate all assets of the deceased are vested in the name of the Executor and not the NSW Trustee.

Once Probate has been obtained, asset holders (such as the Bank, Department of Lands, Aged Care Facility or Share Registry) will release or transfer the deceased's assets into the Executor's name so that the Executor may go about their duties.

Many asset holders (such as the Department of Lands, Aged Care Facility or Share Registry) will not release or transfer the assets of the estate until a Grant of Probate is provided and in these circumstances the Executor(s) will have no choice but to obtain Probate.

If the deceased owned only joint assets, then Probate is not required to transfer those assets, for at law, those assets pass to the surviving joint tenant.

If probate is applied for, Council will require a copy of the entire Probated Will including the cover page showing the Supreme Court seal along with each page of the Will showing the Supreme Court of NSW stamp.

Relinquishment

If more than one executor is named in the probated will, an accompanying letter from the other executors will be required. In this letter a maximum of two (2) people will need to be nominated as the new holder(s) for the Right(s) of Interment. Copies of identification (such as driver's licence, pension card or passport) will be required for verification of the signatures appearing on the letter.

If the Deceased Registered Holder did not leave a Will (Intestacy)

The death certificate (issued by Births, Deaths and Marriages) which identifies the spouse and/or children would be required. The Land Manager may request further information to support your claim prior to updating the Right of Interment, such as letters of relinquishment.

Registered Death Certificate:

A NSW Standard Death Certificate is the official certified copy of registration data held by the NSW Registry. You can apply online for the certificate of a death that occurred in NSW.

If you are the next of kin named on the death certificate, the death certificate can be issued to you. If you are not listed on the certificate, the certificate can be issued to you if the deceased had no living spouse, children, or parents.

If you do not have the registered certificate, you must provide:

- A letter giving permission from the next of kin, including address, daytime phone number and signature
- A copy of identification from the person giving permission
- A copy of your own identification

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Change of Name

When transferring an Interment Right from either a living or deceased registered holder, if your name is different to what appears on the Probated Will or Registered Death Certificate further documentation is required. Council will only accept a registered marriage certificate from NSW Births, Deaths and Marriages as identification.

You may change your name once in a 12-month period and three times in your lifetime (exceptions may apply). A person that marries in Australia can change to their spouse's name by providing a marriage certificate issued by the registry to NSW Births, Deaths and Marriages.

Documentation Checklist

- Application for Permission to Update or Transfer Interment Right Form completed by each current holder and/or applicant
- Copy of Probated Will or Registered Death Certificate of grantee
- Copy of registered marriage certificate (if name has changed)
- Signed letters and identification from executors and or descendants relinquishing their share to the allotment(s) and naming the new holder
- Proof of identity x 2 for new grantee applicant such as a current driver licence, Government issued pension card or RMS photo card
- Administration fee

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Location details		
Cemetery:	Denomination:	
Section:	Row no:	Lot no:
Niche wall	No.	
Columbarium	No.	
Other location	Site	

Name/s of previous interments (including ash remains)
1.
2.
3.
4.

Original interment right holder (if not the applicant)	
Name:	<input type="checkbox"/> is deceased? Interment Right no:
Last known address:	

Applicant details		
Name:		
Are you the current interment right holder?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Relation ship to the original interment right holder (if not one and the same)		
Residential Address:		
Postal address:		
Email:		
Phone:	Mobile:	

Proposed new interment right holders (if not the applicant above)	
Holder 1	
Name:	
Residential Address:	
Email:	
Phone:	Mobile:

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Holder 2 (if required)	
Name:	
Residential Address:	
Email:	
Phone:	Mobile:

To be completed where a living holder is transferring the Interment Right to a new holder

Registered holder/s Transfer Acknowledgement

I/we understand as registered owners of the interment rights do hereby transfer all my/our interest and title in the described in the register as..... In the cemetery.

I/we hereby request that you transfer and re-register the Interment Right in the name of listed above.

Signature:	Date:
Current owners name:	

New Owner(s) Acceptance Acknowledgement

I/we, the undersigned accept the transfer of the Interment Right of In the Cemetery. I/we, acknowledge that the transfer will not take effect until the transfer fee and stamp duty have been paid and the Cemetery Register has been updated.

Signature:	Date:
New owners name:	
Signature:	Date:

Proof of Ownership and Identification

You will need to provide copies of identification with this transfer request to prove you are the person to whom the Interment Right should be transferred to.

Acceptable documentation – At least two of the following current documents:

- Drivers licence
- Birth certificate or birth extract
- Medicare card
- Credit card
- Passport
- Citizenship certificate
- Pension card

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To be completed where the Registered Owner is deceased

A copy of this form including the following statement must be attached to a statutory declaration form

A statutory declaration made in New South Wales must be, or must in effect be, in the form given in either the Eighth or Ninth Schedule of the *Oaths Act 1900*.

I/we, the undersigned being *(a) the executor/s of the Will, (b) the beneficiaries of the Will, or (c) Administrator

of the Estate of the Late..... The Registered Owner of the Interment Right

in location row, plot, niche no..... in the Cemetery,

do hereby request that Council transfer and re-register the Interment Right in the above mentioned name(s).

If more than 2 new owners please attach additional pages with the signature of acceptance for each new owner.

Signature:	Date:
New owners name:	
Signature:	Date:
New owners name:	

PLEASE NOTE: The new owner does not take possession of the Interment Right UNTIL all of the above requirements are met and the cemetery register is updated.

Legislative references

- *Cemeteries and Crematoria Act 2013*
- *Cemeteries and Crematoria Regulation 2014*
- *Crown Land Management Act 2016*
- *Crown Land Management Regulation 2018*
- *Probate and Administration Act 1898*
- *Public Health Regulation 2012*

Office Use Only

Received date/Time:	Received by:
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Privacy Information

Any personal information that you have supplied to or have been collected by Council will only be stored and processed by Council for lawful purposes directly related to the functions and activities of Council. Any personal information supplied will only be disclosed to a third party for the purpose of performing a lawful function and for no other purpose.