

Licence conditions – Religious, cultural and spiritual principles

NSW is a proudly diverse community with various religions and cultures, many with specific rules and practices for burial and cremation (interment).

Licence condition E.1 introduces mandatory principles for how operators understand and meet religious and cultural requirements for burial and cremation. Licence condition E.2 introduces similar conditions for Aboriginal cultural and spiritual requirements.

These conditions reflect recommendations from two recent reviews into the cemetery sector. The recent statutory review of the Cemeteries and Crematoria Act 2013 found that CCNSW should outline the specific interment requirements of religious and cultural groups and for Aboriginal peoples. It found that while operators are on the whole respectful of cultural requirements, the principles will allow them to better meet community needs with less reliance on the community itself overseeing the operational matters of interment requirements for different faiths and cultures.

Similarly, the Independent Pricing and Regulatory Tribunal Review of the costs and pricing of interment in NSW found that CCNSW should work with faith and cultural groups and Aboriginal communities to specify minimum interment requirements.

After speaking with religious and cultural community leaders and representatives in NSW, and industry and consumer representatives, CCNSW has developed draft principles for operators to follow. The principles will govern how operators engage with the diverse communities in NSW and how they meet religious and cultural needs for burial or cremation.

Once the principles are introduced, CCNSW will work with communities to develop guidelines to assist operators in complying with the principles.

The Aboriginal cultural and spiritual principles were drafted in consultation with Aboriginal representative organisations, and are being socialised in community now. CCNSW is working on guidelines to highlight common Aboriginal burial and cremation requirements, noting that these are likely to differ across NSW.

Who is required to comply?

Operators will be subject to conditions in one of four categories. See our fact sheet on licensing and categorisation for more information. Religious, cultural and spiritual principles will apply to all active operators.

Religious, cultural and spiritual principles	Licence condition	Category 1	Category 2	Category 3	Category 4 (caretaker)
	E.1	Yes	Yes	Yes	No
	E.2	Yes	Yes	Yes	No

E.1 Religious and cultural principles

Please note this is a summary of the proposed licence conditions. For more details read the [Licence Conditions for Operators of Cemeteries and Crematoria](#).

All operators must take all reasonable steps to comply with the religious and cultural principles. For larger operators (Category 1 and 2), more will need to be done to show they are meeting their obligations. The principles are:

- 1. Operators must inform themselves of the religious and cultural demographics of the region in which they operate, and about the religious and cultural requirements of the communities that they service.**

All operators should be aware of the communities in their operating area. How they do this may look different for operators of different sizes - for example, operators should know which are the main communities they service and check that they are abreast of their requirements. Communities will have the option to work with CCNSW to develop guidelines for operators, to inform them of the specific requirements for their community.

- 2. Operators must inform themselves of, and record, any religious or cultural requirements in relation to each individual burial or cremation.**

While there are common requirements at a religious/cultural level, every individual and every family is different and not all members of a community will want the full set of requirements. This principle requires operators to ask what people would like. For example, cemetery operators usually learn any requirements from a funeral director when booking or contracting for an interment. This principle would place obligations on the cemetery operator to make sure they have checked with the funeral director or consumer, whether there are any specific requirements every time, and to keep records to ensure accountability of operators to honour the individual wishes of the deceased and their family.

- 3. In addition to the existing legal obligations of an operator in relation to cultural or religious practices for interments, if an operator receives a request to meet religious or cultural requirements in relation to a burial or cremation, the operator must satisfy the request if it is practicable to do so and doing so aligns with all relevant laws, including work health and safety obligations. This principle does not require the dedication of land or the erection of structures.**

Broadly, communities appear to be satisfied that operators facilitate burials and cremations according to religious requirements.

While some religious protections exist under Section 46 of the *Cemeteries and Crematoria Act*, there is currently no equal protection for all religious or cultural groups to have their requirements met and some communities have cited instances where requirements are not met.

This principle makes it clear that operators must meet all requirements for all religions or cultures where the request is within the law and complies with work health and safety obligations.

In interpreting this principle, compliance assessment will also take into account what is reasonably practicable in the circumstances. For example, if a religious requirement involves a Sunday burial, this should be practicable if the operator has staff available and is able to open the cemetery on a Sunday.

The principle explicitly excludes religious requirements which may relate to acquiring a dedicated area of consecrated land for their religion or to the erection of structures. An operator would not be obliged under this principle to meet these larger scale requirements. These factors should however, be considered if raised as community needs or grievances in relation to Principle 5.

4. For services provided to satisfy a request to meet religious requirements under Principle 3 (above), the operator must not charge the customer an amount that exceeds the actual costs incurred in meeting those requirements.

This principle would prevent operators from profiting from meeting purely religious requirements by charging higher costs for interment. This principle aims for only actual costs for religious requirements being met relating to the interment, to be charged to the customer. If there are additional costs in meeting any religious requirement beyond that provided in a standard interment contract, only the actual cost of meeting those requirements can be charged. For example, if there is a religious requirement to backfill a grave by hand, there could be a charge for the additional time and materials required but not an inflated charge that is not based on costs. On the other hand, if you have a preference for a specific location in the cemetery, that would likely not be covered by this principle.

5. Operators must engage with the religious and cultural communities they service, or those seeking to be serviced by the operator, and undertake good faith negotiations to accommodate the identified community needs and to resolve any grievances.

Consultation with communities is already a requirement for Crown operators, but not for all operators in the sector. In addition, the success of consultative committees for Crown operators in resolving concerns at a community level is not systematically monitored by CCNSW.

Communities have raised examples of ongoing issues that are a matter of negotiation between operators and communities, such as provision of facilities at cemeteries or resolution of ongoing logistical issues. This proposed principle requires operators to engage in meaningful consultation with communities they service and any others that approach them for service.

Resolving grievances and accommodating community needs will be subject to a good faith requirement, which doesn't mean community requests must always be met or disputes always resolved in favour of the community, but sets standards for how operators work with communities.

If requested, the operator must provide the Cemeteries Agency with documents or information outlining steps taken by the operator to comply with the Religious and Cultural Principles.

E.2 Aboriginal cultural and spiritual principles

Please note this is a summary of the proposed licence conditions. For more details read the [Licence Conditions for Operators of Cemeteries and Crematoria](#).

The Aboriginal cultural and spiritual principles were developed with input from multiple sources including key Aboriginal stakeholders, CCNSW's Industry Consultation Group, Aboriginal cemetery operators and a survey distributed to Aboriginal peoples through CCNSW's key stakeholders.

These proposed principles are intended to help cemetery and crematoria operators demonstrate their recognition of, and value and respect for Aboriginal peoples, cultures, societies, histories, and connection to Country. This includes recognising the diversity within and between Aboriginal peoples and promoting awareness of the unique significance of what is commonly referred to as Sorry Business to Aboriginal people. It is expected that operators will take reasonable steps to comply with the Aboriginal cultural and spiritual principles. As with the religious principles, the expected level of compliance will be scaled based on the assigned licence category of an operator. The principles include:

- 1. Operators must inform themselves of the Aboriginal communities, including Traditional Owners, in the region in which they operate, and of Aboriginal cultural and spiritual practices and requirements for burial and cremation.**

This is an important principle for all cemetery operators, but the actions taken to inform themselves may look different for operators of different sizes. For smaller operators, this could simply involve knowing which Aboriginal lands their cemeteries are located on, and which key local bodies represent those lands. They should also familiarise themselves with the guidelines on Aboriginal burial and cremation requirements which will be published by CCNSW. For medium or large operators, a deeper level of information could be sought – for example finding more out about Aboriginal communities in their area through ABS data analysis or engaging with relevant Local Aboriginal Land Councils and Registered Native Title Prescribed Body Corporates.

- 2. Operators must inform themselves of, and record (unless expressly asked not to make a record), any Aboriginal cultural and spiritual requirements in relation to each burial or cremation.**

As with religious requirements, not every Aboriginal person will have the same requirements for their burial or cremation. Operators are required to ask whether any consumers have Aboriginal cultural or spiritual requirements they would like met in relation to each burial or cremation. This may be through a funeral director or directly with the consumer. Where an Aboriginal consumer doesn't want their requirement to be recorded, this should be respected by the operator.

- 3. In addition to the existing legal obligations of an Operator in relation to cultural or religious practices for interments, if an Operator receives a request to meet Aboriginal cultural or spiritual requirements in relation to a burial or cremation, the operator must satisfy the request if it is practicable to do so and doing so aligns with all relevant laws, including work health and safety obligations. This principle does not require the dedication of land or the erection of structures.**

This principle makes it clear that operators must meet all requirements for all Aboriginal culture or spiritual needs where the request is within the law and complies with work health and safety obligations.

In interpreting this principle, compliance assessment will also take into account what is reasonably practicable in the circumstances.

The principle explicitly excludes Aboriginal cultural or spiritual requirements which may relate to acquiring a dedicated area of land for Aboriginal peoples or to the erection of structures. An operator would not have an obligation to automatically meet these larger scale requirements. These factors should, however, be considered if raised as community needs or grievances in relation to Principle 5.

- 4. For services provided to satisfy a request to meet Aboriginal cultural and spiritual requirements under Principle 3 (above), the Operator must not charge the customer an amount that exceeds the actual costs incurred in meeting those requirements.**

This principle would prevent operators from profiting from meeting purely Aboriginal cultural or spiritual requirements by charging much higher costs for interment. This principle aims for only actual costs for Aboriginal requirements being met relating to the interment, to be charged to the customer. If there are additional costs in meeting any Aboriginal cultural or spiritual requirement beyond that provided in a standard interment contract, only the actual cost of meeting those requirements can be charged. For example, if there is an Aboriginal cultural requirement to backfill a grave by hand, there could be a charge for the additional time and materials required but not an inflated charge that is not based on costs.

- 5. An Operator commonly providing Aboriginal burials or cremations for Aboriginal communities must, in respect of each community:**

- a. engage with relevant Aboriginal communities about their cultural and spiritual requirements relating to interment, and**
- b. undertake good faith negotiations to accommodate the identified community needs and to resolve any grievance**

Where Principle 1 requires operators to have a high-level understanding of local Aboriginal peoples and of Aboriginal requirements in general, Principle 5 requires those operators who commonly provide burials to seek a deeper level of understanding and to engage with local communities about what their specific requirements are. Again, this may look different for operators of different sizes - larger cemetery operators may have an Aboriginal Liaison Officer on staff or have a local Aboriginal person/people on their consultative committee/s which will assist with compliance with this principle. Smaller operators may not yet have connections with local Aboriginal communities and could seek to build more informal relationships.

Resolving grievances and accommodating community needs will be subject to a good faith requirement, which does not mean community requests must always be met or disputes always resolved in favour of the community, but sets standards for how operators work with communities.

If requested, the operator must provide the Cemeteries Agency with documents or information outlining steps taken by the operator to comply with Aboriginal Cultural and Spiritual Principles.

How will CCNSW support operators?

CCNSW is developing explanatory material in relation to the two sets of principles, which will help operators understand what meeting the requirements looks like in practice.

To assist operators to inform themselves about relevant requirements, CCNSW will work with interested religious and cultural groups to develop guidelines which can be used to assist operators in understanding their specific burial and cremation requirements. A template for the guidelines will be developed in consultation with operators and religious and cultural groups to ensure it is fit for purpose and clear for the operators and captures the key information of specific religious and cultural groups. These guidelines, as they are developed, will be available on the CCNSW website...

CCNSW is also currently consulting with Aboriginal communities to develop high level guidelines on Aboriginal cultural and spiritual requirements, noting Aboriginal culture is diverse and requirements may differ between specific communities.

Relevant FAQs

How do these principles relate to any other rights or protections?

These principles are not intended to, and cannot, override or diminish any rights of any individuals under the Act or any other law.

How will the principles be scaled so that they can be met by small operators, including small councils?

All operators are expected to take reasonable steps to meet the Religious and Cultural Principles and the Aboriginal Cultural and Spiritual Principles. However, compliance will be scaled to suit the different categories of operators. CCNSW expects operators to meet requirements in a way that suits the context of the size and location of the operator and the communities they service. For example, to demonstrate compliance with Principle 1 a larger operator might have a Community Plan or specific document outlining how they service different communities, while a smaller operator may just have a working knowledge of their local communities and be able to demonstrate this on request.

Explanatory material on each set of principles is being developed to assist operators and will provide more details relevant to each category of operator.

What should operators do if an Aboriginal person has both cultural/spiritual and religious requirements?

Both sets of principles apply. Operators should ensure that all requirements are met according to the principles.

Will an operator need to allocate or consecrate land for each faith?

The principles require operators to inform themselves of the demographics of their region (Principle 1) and strive to meet community needs (Principle 5). Demographic information will help operators know any communities who they may be underservicing and consider how to accommodate their needs if requested. Where a community requests allocation of land the operator would need to consider the request and negotiate with community in good faith.

However, operators will not be required to create specifically allocated land where it is not practicable, e.g. where land is not available.