

Licence conditions – consumer contracts

The Interment Industry Scheme introduces standard contract terms and conditions for burials and ash interments, along with a requirement for operators to explain contracts to customers and give them time and privacy to consider them (licence conditions A.1–A.3). This is to enable consumers to understand what they are buying and on what terms.

The statutory review of the *Cemeteries and Crematoria Act 2013* found that contracts varied greatly in their level of detail. Both that review and the Independent Pricing and Regulatory Tribunal Review of the costs and pricing of interment in NSW recommended CCNSW develop a standard set of terms and conditions for interment rights to assist consumers to better understand exactly what they are purchasing, and which future obligations sit with them and which with the operator.

These conditions were developed in consultation with industry and key consumer and community representatives, and the standard terms and conditions are based on those commonly used in existing interment rights contracts.

Who is required to comply?

Operators will be subject to one of 4 categories of licence conditions. See our fact sheet on licensing and categorisation for more information. Contracts conditions will apply to Category 1 and 2, and partially to Category 3, as shown below.

	Licence condition	Category 1	Category 2	Category 3	Category 4 (Caretaker)
A. Consumer contracts	A.1	Yes	Yes	Yes	No
	A.2	Yes	Yes	Yes	No
	A.3	Yes	Yes	No	No

Licence conditions summary

Please note this is a summary of the proposed licence condition relating to consumer contracts. For more details read the Licence Conditions for Operators of Cemeteries and Crematoria.

A.1 Operators must comply with pre-contract requirements and ensure consumer contracts are transparent and clear

The operator must ensure consumer contracts are transparent, clear and expressed in reasonably plain language likely to be understood by the average consumer. This will help consumers to better understand what they are signing, at a time when they are likely to be distressed.

Before a contract is offered, an operator must inform the customer of the least expensive products (Basic Adult Burial and/or Basic Ash Interment) available at that cemetery, and what is included in the price. This can be clearly distinguished from the actual product that the consumer is being offered, and choosing to purchase, which will be outlined in the contract. The intention here is to ensure that the consumer is aware of the least expensive option, and is making a rational decision to purchase a more expensive package because it contains inclusions that they consider important.

Operators will need to give consumers time and privacy to think about a quote or contract before they sign, and a copy of the contract once signed. In circumstances where a burial is urgent, a customer may choose to waive that right.

A.2 Operators must not enter into a consumer contract unless it includes certain key details

These are the key standard terms and conditions, which operators who are subject to Category 1, 2 and 3 conditions will all be required to include. They include:

- whether the burial or placement of ashes is perpetual (forever) or renewable (for a fixed time, which can be renewed) tenure and any conditions that affect that tenure
- legal requirements applying to the interment right under the Act or regulations, like
 - who can exercise the right and how the operator will determine who will inherit any rights
 - whether a memorial is included in the contract and if any requirements or standards apply to the memorial
- an itemised list of fees and charges
- payment terms.

There must be a summary of the agreement between the customer and operator, including any specific conditions the customer must comply with. There must be a signed declaration that both parties have shared all relevant information with each other.

This does not preclude the addition of other terms and conditions in a contract, as long as they do not contradict or undermine the mandatory standard terms and conditions.

A.3 Operators must include certain items in all consumer contracts

For operators who are subject to Category 1 and 2 licence conditions, a contract must also:

- detail who is responsible for the maintenance of a grave, monument or memorial, including the costs of maintenance.

This is particularly important as, if not otherwise specified by the contract, the consumer is likely to have ongoing maintenance obligations in relation to any monument or memorial erected on a site. They may be unaware of these obligations if they are not clearly stated in the contract and explained to them.
- have a start date (and end date if renewable tenure). It must also describe for what reasons a contract can be terminated and how much notice would be required

- include information on the requirement to collect information as required by the *Cemeteries and Crematoria Act 2013*
- include information on the rights of customers and operator obligations under the applicable privacy legislation
- include information on how to find and access the complaints resolution process as well as information about customer rights under the Australian Consumer Law.

How will CCNSW support operators?

CCNSW is developing a model contract template which operators can choose to use, or adapt to suit their needs, that contains the minimum standard terms and conditions (A.2). CCNSW will also provide explanatory material in relation to the consumer contract requirements prior to their commencement.

Relevant FAQs

Will requirements for the standard terms and conditions of interment right contracts be fixed?

The standard terms and condition requirements for interment right contracts will be fixed, so that they are used consistently by operators and are clear to consumers. The standard terms and conditions for operators with Category 1 and 2 licence conditions (A.1, A.2 and A.3) will be more extensive than those with Category 3 conditions (A.1 and A.2 only). The terms and conditions may be expressed slightly differently, as long as they are substantively similar. The standard terms will not prevent operators adding their own requirements where these do not contradict the required standard terms and conditions.

Funeral directors usually manage the contract and meet consumers, so as an operator, how am I expected to comply with pre-contractual requirements?

If the funeral director is meeting with the consumer and signing interment contracts with them on behalf of the operators, the funeral directors are acting as the agent of the operator in that circumstance and will need to perform the functions required of an operator. In particular, the funeral director would be required to declare to the operator that they have explained the contract terms and conditions to the customer. If the funeral director does not meet those requirements, the operator will be liable. Operators, in their engagements with funeral directors, need to take all reasonable steps to ensure these requirements will be met.

CCNSW intends to consult and notify funeral directors about these requirements to ensure that they are fully advised of their responsibilities.

The contract I use already contains the required terms and conditions, can I still use it?

Yes. While CCNSW will provide a contract template to help operators, you are not required to use a standard contract so long as the existing terms and conditions in your contract, are substantively similar to those required by the licence conditions. You will still need to review how you engage and contract with customers to ensure they meet the requirements outlined in A.1.