



CEMETERIES & CREMATORIA NSW

Cemetery and crematorium operator code of practice 2018

Interment rights and general services

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Cemetery and crematorium operator code of practice—Interment rights and general services

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Introduction

The *Cemeteries and Crematoria Act 2013* (the C&C Act) and the *Cemeteries and Crematoria Regulation 2014* (the C&C Regulation) provide a legislative framework for the provision of interment services, and interment rights in NSW. The system includes comprehensive measures to protect consumers.

Section 28 of the C&C Act provides for Cemeteries & Crematoria NSW (CCNSW) to develop codes of practice to give guidance on any interment matter or other matter set out in the objects of the C&C Act. CCNSW has the power to approve, vary or revoke codes of practice under section 30 of the C&C Act.

CCNSW, in consultation with the interment industry, has developed this code of practice. The code requires operators to implement and adhere to best practice in seven broad areas:

- fundamental values
- professional conduct
- staff capability and skills
- provision of information and disclosure
- products and service offerings
- maintenance of graves, vaults, cemeteries and crematoria
- complaints and disputes.

The code standardises specific practices across the interment industry while providing sufficient flexibility for operators to promote interment rights competitively in the market.

Part 1—Objectives

The objectives of the code, drawn from the C&C Act and the C&C Regulation, are to:

- 1.1 provide for the operation of a consistent and coherent regime for governance and regulation of cemeteries and crematoria
- 1.2 ensure that operators demonstrate satisfactory levels of accountability, transparency and integrity
- 1.3 provide certainty for consumers
- 1.4 ensure that operators are aware of, and operate in accordance with, their obligations under the system including the grant, transfer and renewal of interment rights.

Part 2—Application of the code

- 2.1 This code applies to all operators in NSW.
- 2.2 This code provides guidance to operators and is not mandatory until an interment industry scheme is established by regulation under section 31 of the C&C Act.
- 2.3 Until this code becomes mandatory, operators can voluntarily adopt it. Once adopted, the operator must comply with the code.
- 2.4 Each operator will maintain appropriate records as evidence of compliance with the code.
- 2.5 Some obligations under this code replicate obligations in other laws. It is the responsibility of operators to be aware of their obligations under all relevant laws.
- 2.6 The code will be reviewed before an interment industry scheme is introduced. The code is a dynamic document that CCNSW will adjust to address changing circumstances and new practices of operators.

Part 3—Fundamental values

The code is underpinned by the following four fundamental values:

- 3.1 **Respect:** All people in NSW must have access to a range of interment services to ensure that practices and beliefs of all religions and cultural groups are respected so that no one is disadvantaged and adequate and proper provision is made for all.
- 3.2 **Affordability and sustainability:** All people in NSW must have access to affordable and sustainable interment options.
- 3.3 **Land availability:** Sufficient and suitable land must be available to meet future demand for interment services.
- 3.4 **Governance:** Each operator in NSW must function in a consistent, transparent and accountable manner.

Part 4—Professional conduct

Operators will:

- 4.1 act in accordance with the values and objectives of this code, and not lessen the standing of the NSW interment industry or bring the industry into disrepute
- 4.2 comply with all relevant local, state and federal laws in conducting their activities
- 4.3 maintain the privacy and confidentiality of clients and the deceased
- 4.4 treat clients, the deceased, peers and the community with respect, dignity and compassion
- 4.5 be respectful of the cultural and religious beliefs and practices of clients, peers and the community
- 4.6 not deceive, defraud or otherwise harm clients, peers or the community
- 4.7 conduct their business with competency and integrity
- 4.8 not discriminate against clients, the deceased, peers or the community on the basis of gender, age, sexual orientation, disability, religion or ethnicity
- 4.9 be fully transparent with clients, including about the products and services they can and cannot provide
- 4.10 have a code of conduct for all staff and publicly disclose the code of conduct or a summary of it
- 4.11 keep appropriate records in accordance with the C&C Act and other legal requirements.

Part 5—Staff capability and skills

Operators will:

- 5.1 ensure staff are competent and hold any requisite qualifications or accreditation for all activities conducted
- 5.2 ensure staff undertake professional development to apply best practice in the performance of their duties
- 5.3 periodically review operations to identify skills or training deficiencies.

Part 6—Provision of information and disclosure

Operators will:

- 6.1 include a sufficiently prominent statement on its website and in all relevant printed materials provided to clients that it is required to comply with this code.
*For example, a statement could read **[Operator Name] is required to comply with the Cemetery and crematorium operator code of practice 2018 approved by CCNSW. Copies of the code of practice are available upon request or online at: [Provide Hyperlink]***
- 6.2 provide clients with information and advice to assist in making informed choices about purchasing products and services, including the use of simple, easy-to-understand terminology
- 6.3 if referring a client to an ancillary provider of any goods or services, disclose to the client any financial, personal, or other relationship or arrangement that exists between the operator and the ancillary provider
- 6.4 endeavour to ensure clients fully understand the inclusions and exclusions in any service, plan or package they purchase by providing information through a standardised format such as an information pack
- 6.5 in the ordinary course of business, assist in the education of the public about the industry, choosing a provider and the costs and procedures relating to funerals, burials, cremations and memorialisation.
For example, relevant and up-to-date guides produced by the industry and/or CCNSW could be made available.

Part 7—Products and service offerings

Operators will:

- 7.1 not pressure clients to purchase services or products
- 7.2 provide clients with accurate, timely and easy-to-understand information about the range and price of their services and products, which must include low-cost options
- 7.3 provide clients with a written statement listing all costs and the terms of trade, in simple, plain language, prior to the client accepting the provider's service or purchasing a product.
Note that Clause 9 of the C&C Regulation requires operators to disclose to applicants for interment rights the fees and charges currently payable in relation to that type of interment and that the disclosed fees and charges are subject to change
- 7.4 allow clients sufficient time and privacy to consider a quote or written statement, prior to the client accepting the provider's service or purchase of a product. For pre-paid interment rights, a cooling off period of at least 10 business days must be provided.
Note that Clause 10 of the C&C Regulation requires a cooling off period of 10 days to be provided for agreements to grant or renew renewable interment rights
- 7.5 ensure clients understand which services or products are required by law and which are optional.

Part 8—Maintenance of facilities, graves, vaults, cemeteries and crematoria

Operators will:

- 8.1 ensure that all facilities and equipment, including vehicles, are adequately maintained for all services rendered to the community and in accordance with all compliance requirements
- 8.2 maintain the grounds of the cemetery or crematorium in a safe, clean and orderly condition and comply with any relevant guidelines in force from time to time for the maintenance of facilities, cemeteries and crematoria
- 8.3 not be responsible, unless otherwise agreed with the holder of an interment right, for the maintenance of any grave markings, monument or memorial. The holder of the interment right is responsible for the maintenance of a grave, monument or memorial unless:
 - (a) they have paid the operator of the cemetery or crematorium a fee, such as an annual fee, for the operator to maintain it
 - or
 - (b) the terms of any agreement provide that the operator will have that responsibility, including the agreement that provides the interment right
- 8.4 clearly explain, in any agreement providing an interment right, any maintenance obligations that exist in relation to a grave, monument or memorial, and which party is responsible for maintenance. Any ambiguity in the agreement in relation to who is responsible, or to the nature or extent of any such obligation, will be construed in favour of the holder of the interment right
- 8.5 acknowledge that maintenance responsibilities for cemeteries (and any contractual obligations in respect of any grave, monument or memorial) extends beyond the closure of a cemetery and into perpetuity. To meet these obligations, operators are to set aside sufficient funds as part of their financial planning and operations. These obligations are often referred to as 'perpetual care obligations'.

Part 9—Complaints and disputes

Operators will:

- 9.1 establish a documented complaints resolution process
- 9.2 publish the complaints resolution process on its website, or if there is no website, as printed material available at its business premises, including any applicable forms. The information must also be provided directly to a client on request
- 9.3 deal with client complaints in a respectful and compassionate manner
- 9.4 acknowledge, in writing, written complaints (that is, received via email, post or hand delivered) about matters covered by the code, the C&C Act or the C&C Regulation within seven calendar days and advise the complainant when a formal response will be provided by the operator
- 9.5 investigate the complaint. This includes obtaining sufficient information to assist in resolving the matter that is the subject of the complaint
- 9.6 reach a final internal determination and provide a formal response to the complainant in writing, within 30 business days of receiving the complaint. This response must advise the complainant that CCNSW can investigate relevant matters if the complaint is about obligations under this code, the C&C Act or the C&C Regulation.
- 9.7 in the event of a complaint:
 - (a) make a genuine attempt to resolve the complaint, directly with the complainant or their representative/s
 - (b) propose mediation if appropriate
 - (c) if attempts to resolve the complaint are not successful, refer the complainant to CCNSW, NSW Fair Trading or another appropriate government agency or determining authority.

Note that depending on the nature of the complaint or dispute, the relevant agency or authority can refer it to another government agency
- 9.8 keep copies of all correspondence relevant to a complaint for at least 12 months from the date of the operator's formal response
- 9.9 keep a summary record of all written complaints received each financial year, including:
 - (a) date complaint was received
 - (b) matters raised by complainant
 - (c) date formal response was provided to complainant
 - (d) the outcome or resolution, if any, of the complaint
- 9.10 provide to CCNSW, upon request, any information relevant to complaints as requested, including, but not limited to, the annual summary records of complaints received.

Definitions

Relevant section numbers from the *Cemeteries and Crematoria Act 2013* are shown.

C&C Act means the *Cemeteries and Crematoria Act 2013*

cemetery means a building or place used primarily for the interment and memorialisation of human remains (whether or not it contains an associated building for conducting memorial services) but does not include the following:

- (a) an Aboriginal place, or land reserved as a historic site, within the meaning of the [National Parks and Wildlife Act 1974](#)
- (b) a place at which cremated remains are scattered but which is not otherwise used for the disposal of human remains
- (c) a place on private land, where the area of the landholding is five hectares or more and the location has been approved by a local government authority for the purposes of placing a body in a grave or vault
- (d) any other place, or place of a class, prescribed by the regulations.

cemetery as defined includes the following places:

- (a) a reserve or part of a reserve dedicated or reserved as a cemetery under the [Crown Land Management Act 2016](#)
- (b) a private cemetery or other place approved for that purpose by a local government authority
- (c) land reserved (otherwise than as a historic site) under the [National Parks and Wildlife Act 1974](#) (NPW Act) or acquired under Part 11 of the NPW Act where the location has been approved for that purpose by:
 - (i) a person or body (including a local council, trust board or board of management within the meaning of the NPW Act) in which the care, control and management of the land is vested
 - or
 - (ii) if no such person or body has been vested with the care, control and management of the land, the Director-General of the NSW Department of Premier and Cabinet

CCNSW means Cemeteries & Crematoria NSW

client means applicants for interment rights, clients and prospective clients

cremation means a process for the reduction of bodily remains by fire or heat, alkaline hydrolysis or by other means prescribed by the regulations

crematorium means a building in which deceased persons are cremated (whether or not it contains an associated building for conducting memorial services) and includes premises in which bodily remains are disposed of by alkaline hydrolysis

human remains means bodily remains and includes:

- (a) the remains of a stillborn child
- (b) bodily remains after they have been cremated

interment of human remains—section 44, means the placement of human remains in a mausoleum, vault, columbarium or other structure or the burial in the earth of human remains (directly in the earth or in a container)

interment industry—section 26, means cemetery and crematorium operators, funeral directors, funeral funds and any other persons or class of persons prescribed by the regulations

interment matter means any matter relating to the following:

- (a) burials, exhumations and cremations
- (b) the operation of cemeteries and crematoria
- (c) the design, construction and maintenance of the following:
 - (i) buildings, memorials, mausoleums, vaults and other structures and things in cemeteries and crematoria
 - (ii) walls, fences, paths, drains and other works of cemeteries and crematoria
- (d) without limiting paragraph (c) (i), responsibility for the maintenance of structures and things referred to in that subparagraph
- (e) the equipment used in cemeteries and crematoria, including for maintenance
- (f) the grounds of cemeteries and crematoria, including their maintenance
- (g) the position, depth and maintenance of graves
- (h) the construction of coffins to be placed in vaults
- (i) interment and other rights in relation to cemeteries and crematoria
- (j) the making and keeping of records about cemeteries and crematoria, including records of burials, exhumations and cremations and other rights in relation to cemeteries and crematoria
- (k) the inspection of cemeteries and crematoria and their records

interment right—section 48, means an interment right granted under the C&C Act, either perpetual or renewable

interment service means any service (other than the supply of goods) provided with respect to the interment of human remains

interment site—section 44, means a place in a cemetery for the interment of human remains

maintenance of a cemetery, crematorium, structure or thing includes alteration, removal, renewal, relocation and repair of the cemetery, crematorium, structure or thing

mausoleum means a structure erected and designed as a resting place for human remains without the burial of the remains in the earth, but does not include a structure designed as a resting place exclusively for cremated human remains

memorial means:

- (a) a gravestone, plaque, cenotaph or other monument

or

- (b) any other structure or permanent physical object used to memorialise a deceased person

operator means:

- for a Crown cemetery or crematorium in NSW—the Crown cemetery operator
- for a cemetery or crematorium administered by a council in NSW having control under section 48 of the *Local Government Act 1993*—the council
- in any other case—the person or body for the time being responsible for the management of the cemetery or crematorium in NSW

This includes the operator of part of a cemetery or crematorium

Note: a **Crown cemetery operator** —section 71, means:

(a) the Crown land manager of a Crown cemetery

or

(b) any other person responsible under the *Crown Land Management Act 2016* for the care, control and management of a Crown cemetery.

Regulation means the *Cemeteries and Crematoria Regulation 2014*

Further information

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