

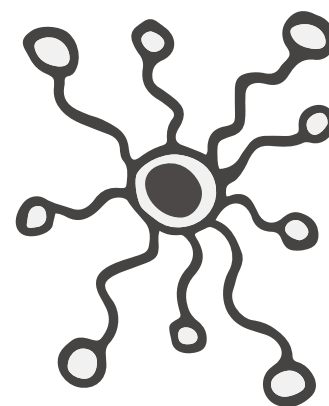
Cemeteries & Crematoria NSW

Regulatory Framework

October 2021

Acknowledgement of country

Cemeteries & Crematoria NSW acknowledges the Traditional Custodians of the land and waters where we work. We pay respect to Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.



Find out more:

www.dpie.nsw.gov.au/ccnsw

Title: Regulatory Framework

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Acknowledgements

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Purpose of this document

This document outlines how Cemeteries & Crematoria NSW ('CCNSW') delivers its regulatory functions and explains the way we regulate the industry.

This regulatory framework is designed to clarify what to expect from CCNSW as a regulator.

For the interment industry

This document will:

- clarify how CCNSW will undertake its regulatory functions
- encourage operators to collaborate with CCNSW and peak industry bodies to improve our approach to regulation.

For co-regulators

This document will:

- make CCNSW's role, scope and approach to regulation clear
- illustrate how CCNSW intends to collaborate and partner with our co-regulators.

Our co-regulators include:

- Crown Lands
- NSW Health
- Heritage NSW
- NSW Fair Trading
- Office of Local Government

For CCNSW staff and board members

This document will:

- provide CCNSW a clear framework to guide regulatory functions according to our principles and vision for people in NSW
- support best practice in the way we regulate
- demonstrate how the regulatory approach aligns with the CCNSW Strategic Plan.

CCNSW is currently developing an industry interment scheme. This CCNSW Regulatory Framework is a central part of that development. We may therefore update the content and requirements of this framework as this scheme comes into effect.

The regulatory framework is part of a hierarchy of document types that together will guide the ongoing delivery of CCNSW's regulatory and compliance functions. The documents will provide for accountability, transparency and flexibility in the context of ongoing industry and regulatory reform. As always, CCNSW is guided by its foundational principle of respect for religious and cultural beliefs.

About Cemeteries & Crematoria NSW

CCNSW is an independent statutory agency created in 2014 under the *Cemeteries and Crematoria Act 2013* and associated Regulation to support and regulate cemetery and crematoria operators in NSW and provide information on burial and cremation options to consumers and families.

We also play a critical role in ensuring land is available for affordable and accessible burial and cremation options in NSW.

The board of CCNSW sets our strategic direction, especially in relation to our regulatory approach. The board sets the policies and directions for CCNSW and actively engages with the broader industry, consumers and communities through consultative groups.

We have three main sets of objectives under which we strive to achieve our vision. These are sector performance, consumer support, and information and strategic advice as shown in **Table 1** overleaf. These objectives guide how we will regulate the sector through monitoring and enforcing sector performance standards, focusing on supporting consumers, and providing information and strategic advice.

Our vision is that all people in NSW have access to sustainable and affordable burial and cremation services that are respectful of culture and faith and provided in a consistent, transparent and accountable manner.



Table 1 - Our objectives guide how, what and why we regulate

Objective (from the Act)	This means we ...
Sector performance	
Provide for the operation of a consistent and coherent regime for the governance and regulation of cemeteries and crematoria	<ul style="list-style-type: none">• Develop, approve and promote codes of practice and licensing and regulatory frameworks to address trends and emerging issues in the interment industry• Report on the adoption of those codes and requirements by the interment industry• Monitor cemetery and crematoria operators to ensure they comply with regulatory requirements and uphold interment rights for consumers• Investigate operators and undertake enforcement activities as appropriate.• Provide advice and recommendations to the minister on the establishment and implementation of the interment industry scheme• Keep policies and procedures under review
Ensure that operators show satisfactory levels of accountability, transparency and integrity	
Ensure that cemeteries and crematoria on Crown land are managed in accordance with the principles of Crown land management	
Consumer support	
Recognise the right of all individuals to a dignified interment and treatment of their remains with dignity and respect	<ul style="list-style-type: none">• Ensure the services offered by cemetery and crematoria operators are<ul style="list-style-type: none">○ respectful○ meet consumers' and families' expectations○ mindful of the varying religious and cultural interment practices• Promote conditions that help cemeteries provide affordable interment options and choices• Assist the community to understand and compare the costs and service levels of burial and cremation services
Promote transparent cost structures across all areas of the interment industry	
Promote affordable and accessible interment practices, particularly for those of limited means	
Information and strategic advice	
Ensure that the interment practices of all religious and cultural groups are respected so that none is disadvantaged and adequate and proper provision is made for all	<ul style="list-style-type: none">• Maintain an up-to-date register of all cemeteries and crematoria in NSW• Assess the burial and cremation needs of the state's growing population and plan strategies to ensure there is enough cemetery space to adequately service these needs• Provide analysis about cemetery capacity and demand to ensure enough land is acquired and allocated to meet cemetery needs• Provide clear guides and fact sheets outlining the requirements of the Act• Help people to understand burial and cremation options, and respond to any enquiries• Consider sustainable use of cemetery and crematorium space and capacity
Ensure enough land is available for equitable access to interment services in NSW	
Provide information to the public and the interment industry on legislation governing interment in NSW	
Promote the environmental sustainability of the interment industry including natural and private burials	

What we regulate

CCNSW regulates the interment industry – the cemetery and crematoria operators who provide interment services to the public of NSW.

We do not regulate funeral directors or associated public health activities. In NSW, funeral directors are regulated by NSW Fair Trading and the public health aspects of interment are regulated by NSW Health.

Interment means the placement of human remains in the earth or in a mausoleum, crypt, vault, columbarium, niche wall or other structure designed for the placement of such remains. The term 'interment' applies to cremated and un-cremated remains.

Interment services are provided to the NSW community on private and public land, and by state and local government agencies, religious trusts, public corporations, community run organisations, and private companies. Interment services also includes record-keeping and reporting of interment rights and the permitting and maintaining of memorials.

Our regulatory principles

Outcomes-focused

We measure and report on the impact and performance of our activities, based on the outcomes defined in this framework. We lead by example, and ensure that our decision making is in line with the objectives of the [Act](#) under which we were formed. We expect cemetery operators to do the same.

Risk-based and intelligence-led

We apply a risk-based approach to regulatory activities, initiatives and decision-making. The likelihood of an event and the risk it presents to the industry and public determine the priority of regulatory action we take and the tools we use to address the issue. We use the latest research and data to best inform our decisions and actions.

Fair

We act impartially and objectively and give all parties the opportunity to be heard and respond to claims and proposed actions. We use discretion, taking actions appropriate to each situation and taking strong regulatory action where required.

Proportionate

We take actions proportionate to the risk posed and the seriousness of the non-compliance, considering the circumstances, our past actions and all information available. We consider the full range of compliance and enforcement powers available to us when responding to serious matters.

Accountable

We take responsibility for our regulatory decisions and actions and document, report on and measure our regulatory performance. We ensure all staff are capable and equipped to administer the regulations effectively. Our staff are bound by the Department of Planning, Industry and Environment's Code of Ethics and Conduct.

Consistent

We apply this framework, and all associated policies and procedures, in all situations to ensure correct process is followed and consistent actions are taken in similar circumstances.

Transparent

We ensure our decision-making is transparent by making our annual reports publicly available. As we develop further relevant regulatory policies and decision-making frameworks, we will also make these publicly available. We are transparent about our own regulatory performance and aim for continuous improvement.

Financially responsible

We are responsible, practical and transparent with our resources. Before we spend money or allocate resources, we consider the implications, risks and benefits of our decisions, including when selecting appropriate responses to non-compliance.

Timely

We act on issues promptly and in accordance with our customer service standards to ensure that any concerns are promptly addressed.



Our regulatory approach

Our approach to regulation has been developed to deliver our vision. We strive to be a modern, best-practice regulator that exercises its powers in an effective, reliable and positive manner.

We engage and consult with everyone that may be impacted by any planned regulatory activities and initiatives, and will maintain our impartiality and objectivity. We will consider non-regulatory options as part of our approach.

We use a five part regulatory approach to become and remain an effective, best practice regulator, as illustrated in the diagram throughout this section. We will:

- Define desired regulatory outcomes
- Identify, understand and prioritise risks
- Design regulatory interventions and tools
- Implement regulatory interventions and tools
- Measure outcomes and assess impact

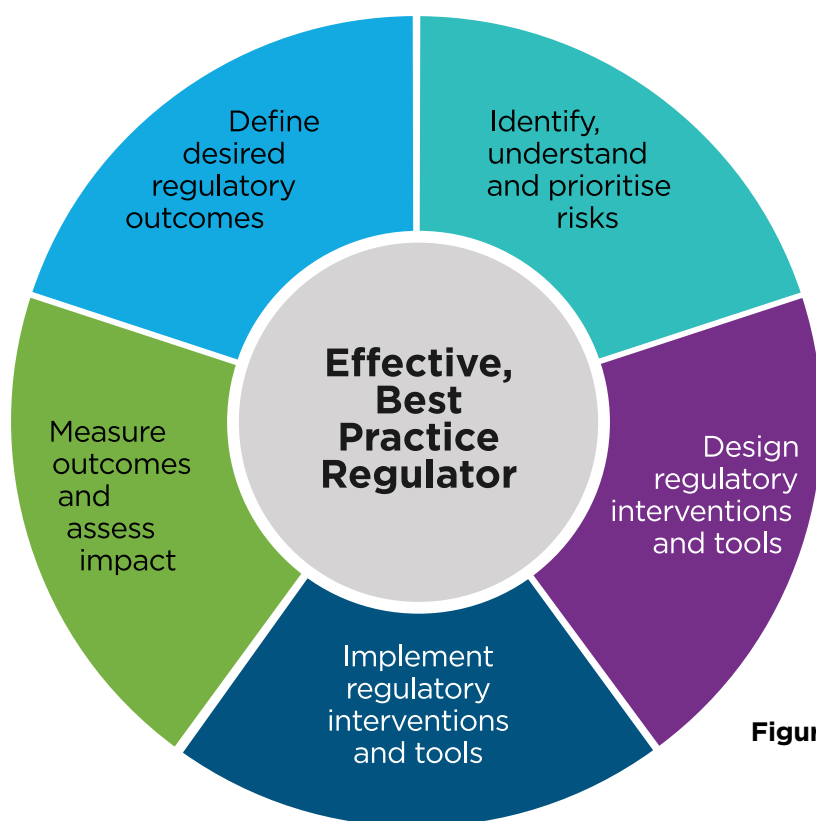


Figure 1- CCNSW Regulatory Approach



Define desired regulatory outcomes

There are three key outcomes that we seek to deliver through our regulatory functions:

- We will ensure people in NSW can access affordable, dignified and culturally appropriate interment services of their choice, along with standardised information to make informed decisions
- We will ensure interment services across NSW are provided in accordance with the Act and Regulation demonstrating integrity, transparency, consistency, affordability, respect and accountability
- We will support Crown cemetery and crematoria operators to conduct their business activities to the standards set out in the Act, leading by example in governance, regulatory compliance, sustainability and service delivery in the interment sector.

We may develop more specific regulatory outcomes that fit under these three broad outcomes, if appropriate.



Identify, understand and prioritise risks

We focus our regulatory efforts on the risks that pose the greatest threats to achieving our stated regulatory outcomes. We always focus first on preventing harm. Where harm has occurred, we use our regulatory powers and tools to ensure matters are addressed swiftly and lessons are learnt. We assess all alleged or suspected instances of non-compliance by anyone in the industry.

In identifying and prioritising risks, we gather data from multiple sources including:

- feedback and complaints made to CCNSW
- consultative groups and industry associations
- operator monitoring and reporting by CCNSW
- analysis of previous non-compliance
- information from other regulators.

Once we have identified and prioritised risks, we focus our resources on those that need the greatest intervention using the risk assessment tool at **Figure 2**. We consider and balance the risk of both serious one-off events, as well as systemic minor issues that may cause significant, cumulative harms over time.



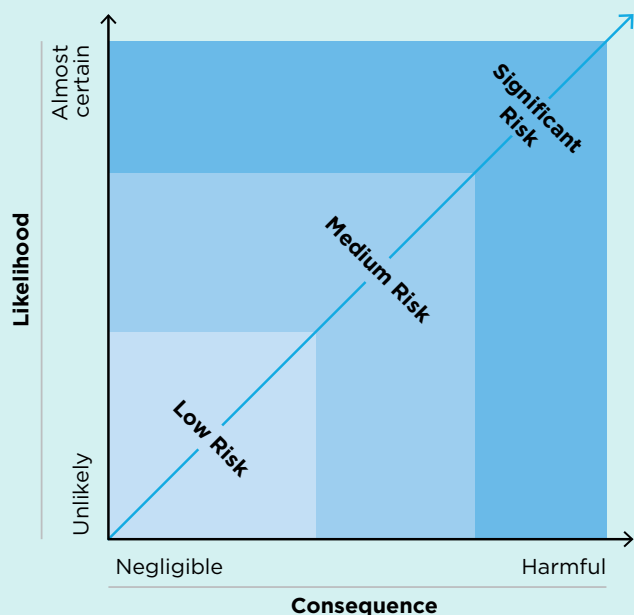


Figure 2 - Risk assessment tool (likelihood and consequence)

We allocate our resources based on our risk assessments across the following activities:

- **proactive and preventative activities** including education and raising awareness of regulatory requirements
- **monitoring and assessment** of compliance with the regulations
- **immediate and rapid investigation** of compliance breaches that cause harm, backed by regulatory enforcement.

Each year, we make our priorities and planned approach publicly available in our annual compliance plan.

Design regulatory interventions and tools

We seek to design regulatory interventions and tools to either remove or minimise the risk of non-compliance by cemetery and crematorium operators and potential harm to the industry, consumers and families.

In designing regulatory interventions, we consider the:

- tools available under the Act and Regulations
- reasons or factors that may lead to non-compliance or drive the risk
- determination and selection of appropriate tools that will reduce the risk or likelihood of the non-compliance occurring.

We seek to understand why non-compliance is occurring to build interventions that will proactively manage and minimise future risk so that harmful events don't occur.

We design a tailored approach for each potential risk, considering the drivers for the risk and the most effective tool or combination of tools to mitigate it. These combinations of tools are often specific, targeted mixes of education, compliance activities and enforcement as appropriate.

When designing an intervention, we examine each situation on its own merits and consider:

- whether the non-compliance was accidental or a result of negligence
- whether there has been a history of non-compliant activity
- the seriousness of the non-compliance and its potential harm.

Possible tools and interventions are shown in **Table 2** overleaf.

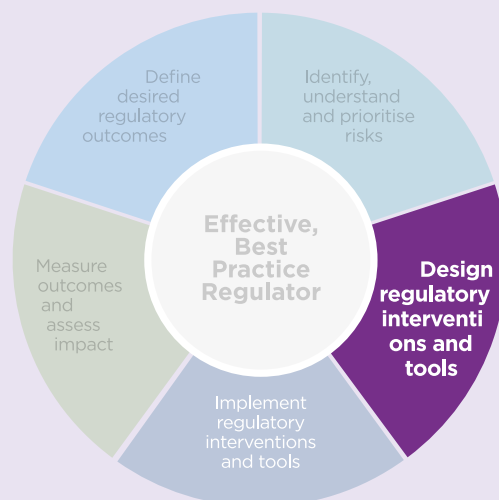
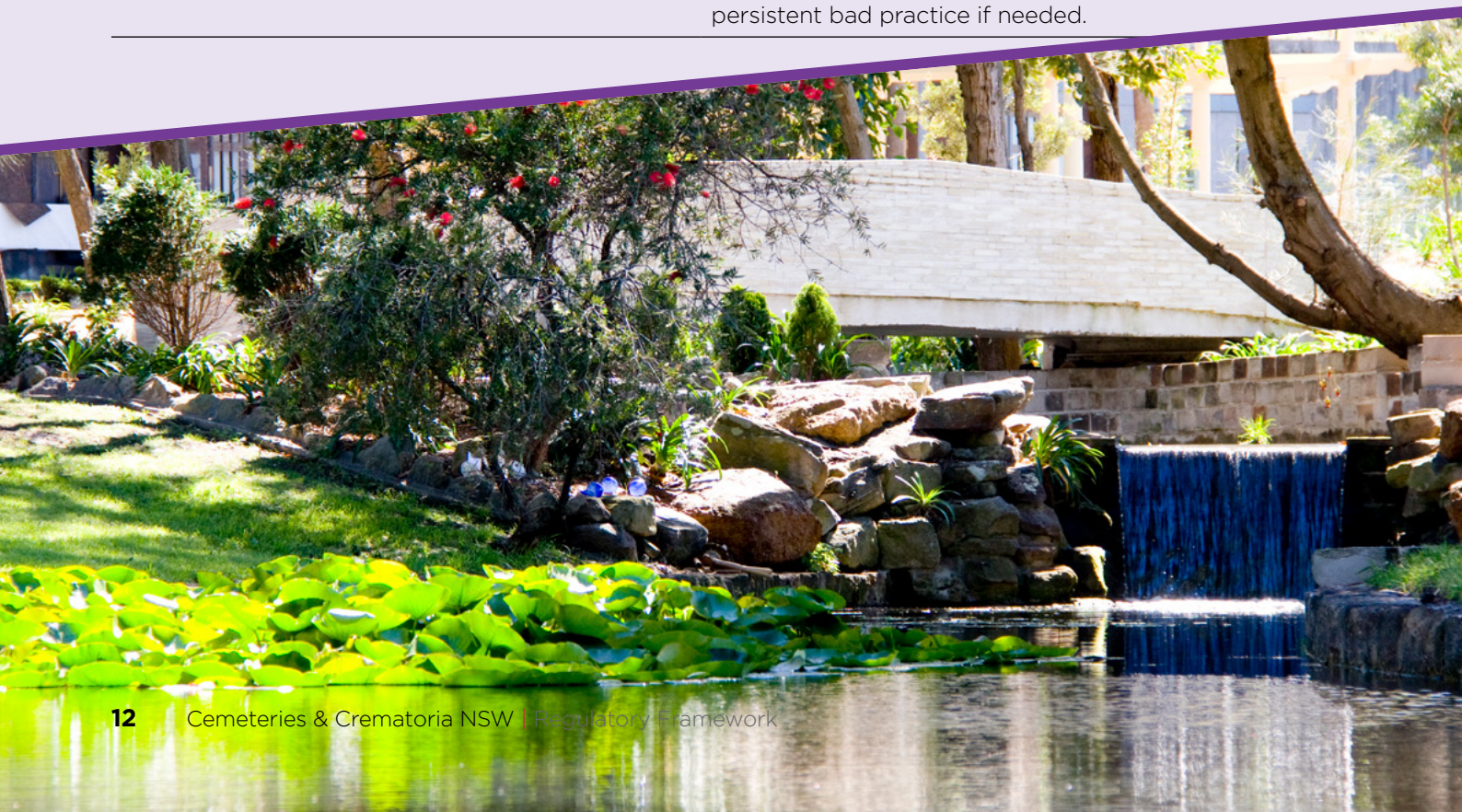


Table 2 - Tools used to design regulatory interventions

Tool	How we use it
Statements of regulatory intent, codes of practice, policies, guidance documents	These documents outline the standards and clarify how CCNSW both interprets the Act and Regulations and how we apply them.
Education and information	CCNSW provides user-friendly, accessible education and information to support the industry's and the community's understanding of the Act and Regulations.
Licences	Licensing of operators within the interment industry allows CCNSW to ensure compliance with requirements and minimum practice standards.
Compliance and monitoring	<p>CCNSW ensures practical and constructive tools are available for compliance and interpretation of regulatory requirements.</p> <p>CCNSW provides advice to resolve non-compliance or change behaviours where non-compliance is detected.</p> <p>CCNSW uses data and information from a variety of sources, including audits and inspections, to monitor and detect non-compliance and ensure the compliance of the interment industry.</p>
Enforcement	Where non-compliance is detected, CCNSW uses its enforcement powers to change behaviours or punish and deter further non-compliance.
Communicating outcomes	CCNSW publicly reports on its activities and the outcomes achieved by its work. We will highlight good practice where we see it and call out persistent bad practice if needed.



Implement regulatory interventions and tools

We will apply regulatory interventions or tools in line with the characteristics and nature of the non-compliance or risk. This information will define the scale and timing of the intervention. In some instances, we may pilot an intervention to test its effectiveness.

We will publish an annual compliance plan that outlines our compliance priorities (resulting from our regulatory risk analysis, and taking into account identified industry practices, past compliance activity and intelligence, and consumer concerns). It will outline the new and existing interventions that we propose to implement, and our desired outcomes. This plan will provide background and context for our planned (or continued) activities, resourcing, co-regulator collaborations, timeframes for implementation, and how we will measure the impact and performance.

The relevant minister may sometimes provide CCNSW with a Statement of Regulatory Expectations, which outlines ministerial priorities for our regulatory work. CCNSW will respond to any such statements with a Statement of Regulatory Intent, which describe how we will respond to the identified priorities. These will then also be reflected in subsequent compliance plans.

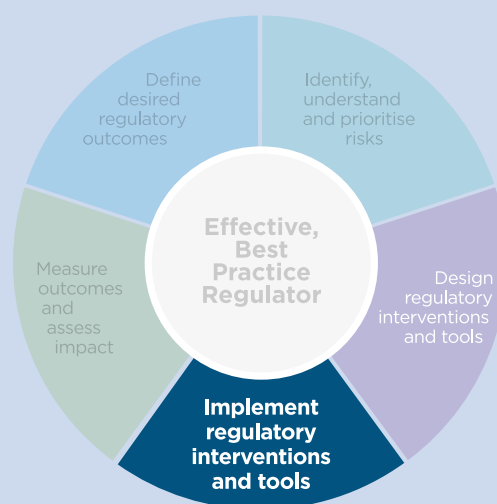


Figure 3 below illustrates how these documents fit together.

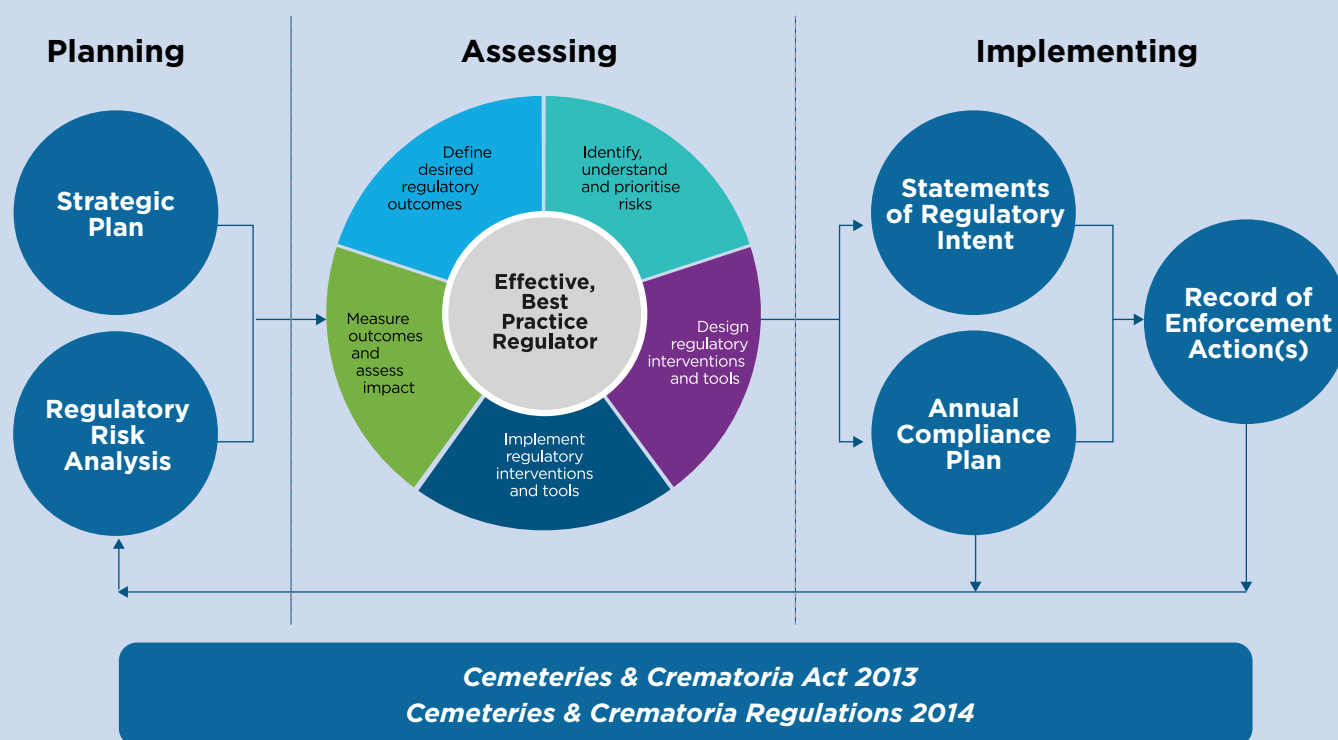


Figure 3 – Overview of regulatory documents

Measure outcomes and assess impact

We build into all interventions practical and achievable measures of our impact and performance. To continuously improve our impact and effectiveness as a regulator, we benchmark ourselves against other regulators and regulatory standards. This includes reviewing our regulatory activities against the NSW Better Regulation Principles and the Quality Regulatory Services Initiative tool.

Benchmarks for our regulatory activities

The NSW Better Regulation Principles are seven key principles that outline good regulation practices and are designed to improve the quality of regulation.

The Quality Regulatory Services Initiative Tool allows a regulator to assess and improve their outcomes and risk based approaches to ensure it minimises regulatory burden is minimised, while using resources effectively.

CCNSW uses both NSW Government frameworks to ensure we are a best practice regulator.



Assessing our impact and measuring outcomes can be challenging. Factors outside our regulatory activities may influence those outcomes. We will learn, revise and adapt our interventions over time and be transparent about the process with our stakeholders.

Feedback forms a vital part of our continuous improvement. We place a high value on feedback from the industry, consumers and families, and our team's observations on how we go about our work. We will ensure there are appropriate avenues for all stakeholders to engage, consult, and collaborate with us.

To aid transparency, we publish the Cemeteries & Crematoria NSW Annual Report, which includes information on our activities and performance over the year, including regulatory interventions, risk management, compliance and enforcement activities. Also, we may make publicly available information about specific compliance and enforcement activities that are in the interest of the industry, consumers and families.



Promoting compliance

CCNSW has a range of powers under the Act and the tools described in the previous section that it can use to support and enforce compliance.

One key objective of this framework is to promote a high level of voluntary compliance with the law. Our compliance efforts include a commitment to working with cemetery and crematoria operators, peak industry associations and other government agencies to promote voluntary compliance throughout the sector.

Consumers and families are best served when cemetery and crematoria operators act in compliance with the law, rectify any compliance breaches quickly and voluntarily, and where consumers can make fully informed and accurate choices about interment.

Most operators treat their customers fairly and comply with the law. But sometimes cases of non-compliance occur, be it deliberately or inadvertently. We seek to understand compliance behaviour to address the root causes of non-compliance and to respond appropriately and proportionately.

In line with the principles outlined in this framework, we allocate our resources where they will have the greatest benefit to operators, consumers and families. We give priority to investigating conduct that:

- could result in significant detriment to consumers
- affects disadvantaged or vulnerable consumers or small faith-based groups
- is of significant public interest
- suggests a pattern of non-compliance by a cemetery operator or is indicative of a risk of future misconduct
- demonstrates a clear disregard for the law
- involves a significant new or emerging interment sector issue.

We also consider whether action is likely to have a worthwhile educative or deterrent effect in the industry.

CCNSW has a range of published guides, templates and information resources for industry to help them meet compliance obligations, and for consumers to help them understand their options and rights. Visit the [CCNSW website](#) for more information.

Investigating non-compliance

We assess all alleged or suspected cases of non-compliance reported by industry, consumers and families, or detected by CCNSW or our co-regulators. We keep appropriate records of all assessments and use this as part of our risk analysis and compliance planning cycle.

Our investigations may include inspections by authorised officers, requests for information, interviews, and expert assessments. The methods and intensity of the investigation is tailored to suit the seriousness and complexity of the issue.

Once an issue has been thoroughly investigated, we will determine the appropriate or action to remedy the situation. We may take enforcement actions directly. Where a matter is better managed or resolved by alternative mechanisms, we will facilitate engagement between the appropriate parties or agencies.

Enforcement

In cases of non-compliance, we draw from a range of available remedies designed to promote behavioural change, stop ongoing breaches and achieve future compliance. Our goal is always to promote voluntary compliance to remedy issues where possible. When necessary, we can prosecute operators where their behaviour warrants it. We always ensure our response is proportionate and appropriate to the circumstances of the non-compliance.

The desired outcomes from any enforcement action we take is to:

- stop the non-compliant conduct
- change the behaviour of the people or operators involved
- educate the operators on appropriate behaviours to avoid future non-compliance
- address any unlawful financial gain or benefit from non-compliance (where CCNSW's powers allow this) and achieve some level of redress for the victims of the non-compliance
- demonstrate the requirements of the relevant law
- deter those businesses or individuals who would deliberately ignore their legal obligations, including punishing wilful wrongdoing where appropriate
- improve community confidence in our ability as a regulator.

We make information on our enforcement activities available in our annual reports and through other mechanisms, if it is in the public interest. We ensure outcomes are communicated to the parties who have reported the potential non-compliance and to other co-regulators as required.



Determining enforcement actions

The range of enforcement actions for non-compliance available to CCNSW includes administrative action and legal proceedings, as shown in **Figure 4** below. We determine the level to which matters are pursued after considering:

- the seriousness of the non-compliance
- the potential or actual harm to CCNSW's regulatory priorities
- whether the non-compliance is accidental or a result of negligence
- how widespread the non-compliance is
- how foreseeable the non-compliance or harm was
- whether the non-compliance is new and how it effects CCNSW's regulatory framework
- which enforcement tools are appropriate and likely to be most effective
- the cost versus the benefit of undertaking the enforcement action and the likelihood of a successful outcome
- the circumstances of the case, including the compliance history of the cemetery or crematoria operators

We are less likely to pursue a full investigation for matters that:

- are isolated events, unless there is an overriding public interest in protecting consumers or the seriousness of the breach warrants action even if it is an isolated incident
- are more appropriately resolved directly between the parties privately under a complaints management process, an industry code, by mediation or through the NSW Ombudsman
- involve issues more effectively dealt with by another agency.

When we take a compliance or enforcement action, our priority is always to achieve the best outcome for consumers and the families. Wherever possible, we give the operator concerned a reasonable opportunity to respond.

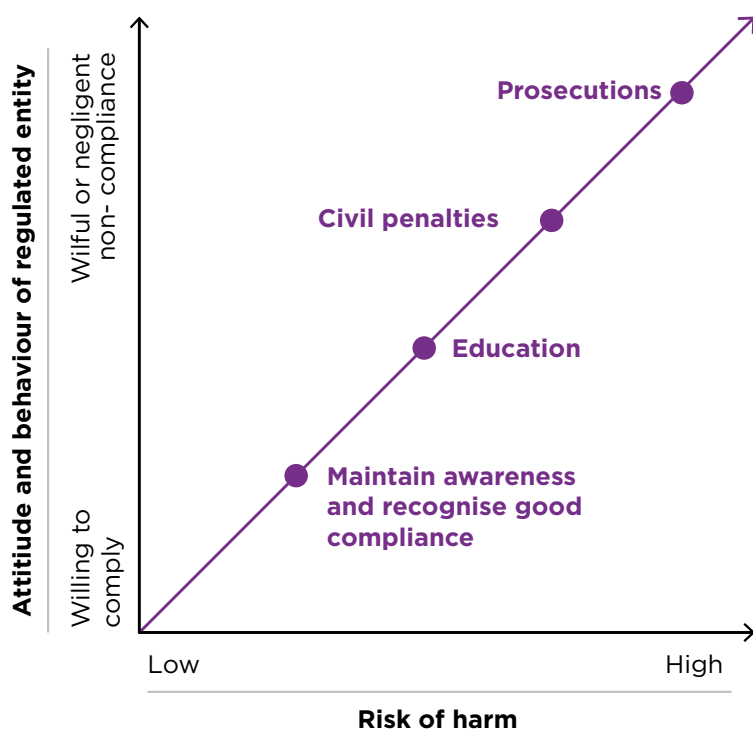


Figure 4 - Compliance and enforcement approach

Administrative actions

Without prejudice discussion

Without prejudice discussions are informal discussions with a cemetery or crematoria operator about an alleged or potential non-compliance. The discussions are based on voluntary disclosure and aimed at promptly resolving an issue of concern raised with CCNSW.

Formal written warning

A formal written warning is given to a cemetery operator in circumstances where we believe that a person or the cemetery operator has not complied with the Act or the Regulation. It serves as a reminder to the operator of its obligations under the law.

Preliminary and improvement notices

Where we have reasonable grounds to believe there is a contravention that is not an offence under the Act or the Regulation, we can issue a preliminary notice that invites the operator to provide in writing reasons as to why they should not be required to end the contravention or remedy the consequences of the contravention, or both.

If, after considering the written representations, we are satisfied that the operator should be made to end the contravention or remedy the consequences, or both, we may give the operator an improvement notice under section 33 of the Act.

Enforceable undertaking

CCNSW can seek an enforceable undertaking (Division 6 of Part 3 of the Act) from an operator for non-compliance with the law.

We can apply for a court order if the breach continues despite the undertaking. The court may order the operator to comply with the undertaking, repay any financial benefit received as a result of the non-compliance and/or take other actions such as compensating those who have suffered a loss as a result of the non-compliance.

Short-term order

Until an industry interment scheme is created, we may also issue a short term order (under Section 36 of the Act) if we consider it reasonably necessary in the public interest to prevent or lessen a serious threat or risk of non-compliance.

Civil infringement notices

CCNSW can issue civil infringement notices with possible penalties (under Division 3 of part 6 of the Act). A civil infringement notice allows an operator to pay an amount to CCNSW within the timeframe specified in the notice, instead of having the matter determined by the local court.

Under the Act, a civil infringement notice can be issued where an operator has failed to:

- provide information for the cemeteries and crematoria register (section 27 (5))
- comply with any requirement of an interment industry scheme (section 31 (3))
- end a contravention under an improvement notice (section 34)
- comply with a short-term order (section 38)
- provide performance monitoring information (section 41 (3))
- keep records as prescribed by the Regulation or by CCNSW (section 42)
- provide reports to CCNSW in such form and times as CCNSW directs (section 43 (1) and (2))
- leave remains undisturbed in perpetuity unless otherwise authorised, or fails to not disturb any memorial to the deceased person lawfully erected at that site unless otherwise authorised (section 46 (2))
- ensure that a site of a renewable interment has not been re-used where the human remains of a deceased person have been interred for less than 25 years (section 55 (6) (a))
- keep a cemetery register, update the register, make the register available for inspection by CCNSW, or fails to send the register to CCNSW or otherwise dispose of the register if the operator ceases to operate the cemetery (section 63 (1), (5) and (6) and (12))
- keep all documentation relating to cremation carried out by the operator in the operator's register, or fails to send all registers and documents relating to cremations to the CCNSW when the crematorium closes (section 64 (1) and (3))
- provide information when directed by CCNSW for the annual report (section 101 (2)).

Court proceedings

Injunction

An injunction is an order that may be made by a court. An injunction requires a person or business that has breached a law to do certain things or to cease doing certain things.

Pecuniary penalty

We can apply to a local court for an order that the party at fault pay a pecuniary penalty for non-compliance with a civil penalty provision of the Act (section 114 of the Act).

Communicating and promoting regulation

As part of our compliance and enforcement, we may undertake a range of communication and information sharing to inform industry, consumers, families and co-regulators of activities and outcomes.

Releasing information at the conclusion of enforcement action

A major reason that we undertake targeted compliance and enforcement action is to achieve outcomes that act as an incentive for compliance. We may publicise the outcomes of our compliance and enforcement actions to provide a positive deterrent effect.

Releasing information to other regulators

CCNSW may exchange information with other NSW Government agencies and regulators for the purposes of compliance and enforcement action. This information sharing and cooperation strengthens and coordinates regulatory activities and promotes consistency of enforcement actions across agencies.

Releasing information publicly

Releasing information in the public interest

NSW laws permit CCNSW to release information about compliance and enforcement activities. Information may be released to the public, social media or broadcast media when we consider it is in the public interest to do so. We only release information in compliance with privacy law and after considering the circumstances of the case, the stage of an investigation and the parties involved in the matter.

Generally, we will not release information that would jeopardise an ongoing investigation. However, we may consider that the public interest is served in releasing information about an investigation where:

- there is potential or likelihood of ongoing consumer detriment
- the release of information is likely to restore consumer confidence in the industry, or to clarify what actions are being taken against an operator
- the release of information will assist CCNSW to progress the investigation (for example, by encouraging other consumers to report non-compliant behaviour by an operator).

Releasing information to complainants

CCNSW will provide information on the status and outcomes of investigations to complainants. We provide complainants with status updates during the investigation of their complaint and inform them of any decision made to finalise the matter.

We provide complainants with all relevant information in relation to our investigation of their complaint, except where disclosure would jeopardise the investigation.





Feedback and review

CCNSW intends to formally review this framework in two years (2023) to ensure it remains relevant and up to date.

We invite your feedback on the published framework at any time.

Contact us

Cemeteries & Crematoria NSW

Phone: 02 9842 8473

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

Address: Locked Bag 5022, Parramatta NSW 2124



