

Licence conditions A – consumer contracts

The Interment Industry Scheme (**Scheme**) introduces the Licence Conditions for Operators of Cemeteries and Crematoria (**Conditions**) which include 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 (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 being used by operators varied greatly in their level of detail. 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 the grant of interment rights to assist consumers to better understand what they are purchasing, the services being provided to them and any future obligations of the interment right holder.

These conditions were developed in consultation with industry, key consumer and community representatives.

Who is required to comply?

There are 4 categories of licence. Conditions A – Consumer Contracts will apply to Category 1 and 2 licences, and in part to Category 3 (as shown below). See our fact sheet on licensing and categorisation [on our website](#) for more information.

	Licence condition	Category 1	Category 2 (including cremation only)	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 conditions relating to consumer contracts. For more details read the Licence Conditions for Operators of Cemeteries and Crematoria [on our website](#).

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

Operators must ensure consumer contracts are transparent, clear and expressed in reasonably plain language likely to be understood by the average customer. This will help customers to better understand what they are signing.

Before a contract is offered, an operator must inform the customer of the least expensive products (Basic Adult Burial and/or Basic Ash Interment and/or Basic Cremation) available at that cemetery, and what is included in the price. The purpose of providing this information is to give customers details of the least expensive option, and allows them to make an informed decision about the products they are purchasing.

Operators will need to give customers reasonable time and privacy to think about a quote and contract before they sign, and be provided with a copy of the contract for their records once signed. The amount of time that is reasonable may vary, particularly where there are cultural or religious requirements for an urgent burial. In circumstances where a burial is urgent, it may be reasonable for this time to be very short.

Where the operator is not directly meeting with the customer, for example where the customer purchases an interment right via a funeral director or other third party, that third party is an authorised agent of the operator and will need to comply with these pre-contract requirements on behalf of the operator.

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

The key standard terms and conditions, which Category 1, 2 and 3 operators will all be required to include in consumer contracts are:

- 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 *Cemeteries and Crematoria Act 2013* or regulations, including
 - 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, including the basis for any charges to meet religious or cultural, or Aboriginal cultural or spiritual requirements.
- 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 from both the Operator (or their authorised agent, such as a funeral director) and the customer, that the terms and conditions have been explained and that there has been sufficient time and privacy to consider the contract. The customer must also declare that they have provided true and correct information.

The standard terms and conditions do 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 hold Category 1 and 2 licences, a contract must also:

- detail who is responsible for the maintenance of a grave, monument or memorial, including the costs of maintenance if it is being provided by the operator.

This is particularly important so the consumer is aware of any maintenance obligations they have for 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 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). If an Operator adopts the template contract, the operator will satisfy the requirements of Condition A.2.

CCNSW will also provide explanatory material in relation to the consumer contract requirements prior to their commencement.

Relevant FAQs

Funeral directors usually manage the contract and meet customers, 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 authorised agent of the operator. They will need to perform the functions and satisfy the pre-contractual requirements of the operator.

If a funeral director is acting as an authorised agent, they will be required to declare that they have explained the contract terms and conditions to the customer in satisfaction of the relevant conditions.

CCNSW is currently consulting with the key funeral director bodies to make them aware of these requirements and facilitate dissemination of information to funeral directors. It is the responsibility of operators to ensure any funeral directors that are acting as their authorised agent comply with these obligations.

Other parties may also sign interment contracts with customers – in this case they would also be an authorised agent and be required to comply with the requirements on the operators behalf and sign the necessary declaration in the consumer contract.

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

Yes. While CCNSW will make available a consumer contract template, operators are not required to use this template, provided the terms and conditions in your contract satisfy the requirements of Conditions A. You will still need to review how you engage and contract with customers to ensure they meet the requirements outlined in A.1.

I currently use a Purchase of Interment Rights form and an Interment Order form, do I need to replace one or both of these with a 'contract'?

This will depend on the current forms that you use. If your current forms contain the standard terms and conditions, or can be amended to include them, then they may satisfy these conditions.

Alternatively, you could choose to adopt the template contract which will be provided by CCNSW.

CCNSW can assist with the development of compliant documentation by reviewing any drafts. However, CCNSW cannot provide legal advice.