

Licence conditions E – Religious, cultural and spiritual principles

NSW is a proudly diverse community with many religions and cultures, each with specific requirements, values and traditions for burial and cremation (interment).

Condition E.1 introduces mandatory principles for how operators understand and meet religious and cultural requirements for burial and cremation. 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. This means less reliance on the community itself to oversee the operational matters of interment requirements for different faiths and cultures.

Similarly, the Independent Pricing and Regulatory Tribunal (IPART) 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.

Following consultation with religious and cultural community leaders and representatives in NSW, and industry and consumer representatives across a range of platforms and events, CCNSW has developed licence conditions for operators which will require them to abide by religious and cultural principles (Condition E.1). The principles will govern how operators engage with the diverse communities of NSW and how they meet religious and cultural requirements for burial or cremation. Explanatory material will be available to support operators in applying the principles.

CCNSW will also work with specific communities to develop guidelines to assist operators in complying with the principles by understanding their requirements. These guidelines will inform operators about the religious practices, cultural beliefs and other key features of a community's requirements as they relate to the cemetery and crematorium industry.

Operators will also be required to comply with licence conditions that include Aboriginal cultural and spiritual principles (Condition E.2), which were drafted in consultation with Aboriginal representative organisations, and socialised in some Aboriginal communities. CCNSW has drafted guidelines for operators to highlight common Aboriginal burial and cremation requirements, noting that these are likely to differ across NSW. These guidelines are being tested with some operators and key Aboriginal stakeholders now, and will be published on the CCNSW website when finalised.

Who is required to comply?

Operators will be subject to conditions in one of four categories. See our fact sheet on licensing and categorisation [available on our website](#) for more information. Religious, cultural and spiritual principles (E.1 and E.2) will apply to all Category 1,2 and 3 operators.

Religious, cultural and spiritual principles	Licence condition	Category 1	Category 2 (including cremation only operators)	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 licence conditions. For more details read the Licence Conditions for Operators of Cemeteries and Crematoria [on our website](#).

All operators must take all reasonable steps to comply with the religious and cultural principles. The steps that would be considered reasonable may be different in different circumstances. For example, the location and size of the cemetery, or the cultural diversity of the region are likely to impact that assessment. Some examples for guidance are indicated below. 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 range of communities in their operating area. Awareness of demographics could be demonstrated by looking at the ABS data for your area, or as part of a creating a broader Community Engagement Plan, depending on the size and capacity of the operator.

Communities will have the option to work with CCNSW to develop guidelines for operators, to inform them of the specific needs for their community. These guidelines, which will be available on the CCNSW website when finalised, will then support operators to inform themselves about the burial and cremation requirements of different communities.

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

This principle requires operators to ask what people would like in relation to their religious and cultural beliefs or specific requirements. 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 or crematorium operator to make sure they have checked with the funeral director, customer or other representative, whether there are any specific requirements, 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.**

While some religious protections exist under Section 46 of the *Cemeteries and Crematoria Act*, 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 set out the basis for any charge incurred to meet these requirements (and this must be reflected in the fees and charges itemised in the contract as per A.2.3.v).**

This principle requires operators to disclose and justify the basis for charges for meeting religious or cultural requirements relating to the interment, and any profits from meeting a religious or cultural requirement

Transparency will empower communities to negotiate and compare the market for the operators that provide appropriate and fairly priced interments and cremations.

- 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 (CCNSW) 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 [on our website](#).

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 crematorium 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 customers 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 customer. Where an Aboriginal customer 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 set out the basis for any charge incurred to meet these requirements (and this must be reflected in the fees and charges itemised in the contract as per A.2.3.v).**

This principle means that Operators need to show and justify all charges related to meeting Aboriginal cultural and spiritual requirements relating to the interment, and that these charges need to be included in the contract. This principle aims to provide information on the actual costs for Aboriginal requirements relating to the interment, and that the costs be clear and transparent.

Transparency will empower communities to negotiate and compare the market for the operators that provide appropriate and fairly priced interments and cremations

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 CCNSW 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 form 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 has been consulting with Aboriginal communities to develop high level guidelines on Aboriginal cultural and spiritual requirements for burial and cremation. The guidelines are high level as Aboriginal culture is diverse, and requirements may differ between specific communities. Draft guidelines will be released, and updated as needed based on information provided by Aboriginal communities and key Aboriginal stakeholders.

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. If, prior to the introduction of the Scheme, an Operator was lawfully permitted to decline to provide an interment, including on the basis of a person's religion, nothing in the Scheme requires the Operator to do otherwise.

The Scheme does not affect the operation of anti-discrimination laws and Operators must ensure in complying with the requirements of the Scheme, they also continue to comply with all other applicable laws.

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 Community Advisory Group, or a 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.

Are single-faith cemeteries now required to bury people from outside of their faith?

As per the first question above, these principles don't require cemeteries to do anything that they were not previously required to do by law.