

# Interment Industry Scheme – licensing and categorisation

The Interment Industry Scheme (**Scheme**) is established under the *Cemeteries and Crematoria Regulation 2022* (**Regulation**). The Scheme was developed from recommendations of both the recent statutory review of the *Cemeteries and Crematoria Act 2013* and the Independent Pricing and Regulatory Tribunal Review of the costs and pricing of interment in NSW.

The Scheme introduces a licensing framework which requires operators to hold a licence to perform interment services (burials, cremations, ash interments and caretaker services). There are 4 categories of licence. The category of licence determines the conditions, outlined in Licence Conditions for Operators of Cemeteries and Crematoria (**Conditions**), that apply to an operator and with which it must comply to operate in NSW. The Conditions will be reviewed periodically by the CCNSW Board and will be updated, amended or added to as determined by the Board.

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## Who needs a licence?

All NSW cemetery and crematorium operators must apply for a licence, including stand-alone crematoria. In recognition of the diversity of the services provided throughout the industry, there are 4 categories of licence with different Conditions applying depending on the category of licence.

In determining the category of licence to be granted, CCNSW can consider the following matters to determine whether to grant a licence and the category of licence to be granted:

- the volume of interments (bodily and/or ash) likely to be carried out during the term of the licence
- the total number of existing interments and likely future interments across all the operator's cemeteries
- the compliance history of the operator
- the heritage value of any of operator's site(s)
- whether the operator intends to operate a cemetery and/or a crematorium
- any other relevant information.

In assessing the initial licence applications, CCNSW will only be considering the number of interments (using the three year average interments conducted for the past three financial years), whether the operator operates a cemetery or crematoria or both, and any other relevant information.

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## What are the licence categories?

The following table provides an overview of the licence categories. While each operator will be individually assessed using the criteria above, this table gives an indication of how operators are likely to be assessed and categorised by CCNSW.

Categorisation may take into account other relevant information, for example, if the number of interments have been steadily increasing or decreasing in previous years. This would be relevant information when assessing an operator that is on the border of a higher or lower category.

For new (not yet operational) cemeteries, categorisation would be based on the projected volume of future interments.

If an operator does not wish to conduct any future interments they can apply for a Category 4 caretaker licence.

Category	Number of burial or ash interments average of last 3 years)
1	Over 100
2	50 to 99 Cremation only operators
3	Less than 50
4 (Caretaker licence)	Inactive Exemptions for interment may be available in limited circumstances

### Category 1

An operator that is undertaking 100 or more interments annually will likely be granted a Category 1 licence.

Category 1 licence holders will be required to comply with all Conditions, except G.1 (prohibition of interment services).

### Category 2

An operator that is undertaking 50-99 interments annually will likely be granted a Category 2 licence.

Cremation only operators will also be subject to Category 2 conditions.

Category 2 licence holders will be required to comply with all Conditions **excluding**:

- B.6 (additional site maintenance standards)
- D.2 (ensuring staff are trained appropriately)
- D.4 (promoting high standards for customer service)
- G.1 (prohibition of interment services).

Cremation only operators will additionally not be required to comply with conditions B.1 to B.5 (cemetery maintenance).

### Category 3

An operator that is undertaking fewer than 50 (49 and under) interments annually is likely to be granted a Category 3 licence.

Category 3 licence holders will be required to comply with a reduced subset of the Conditions which are:

- maintaining cemeteries to minimum standards for public access and safety (condition B.1)
- including certain standard terms and conditions in contracts for the sale of interment rights (conditions A.1 and A.2)
- abiding by customer service standards outlined in the Scheme, including behaving professionally and ethically and maintaining a register of complaints (conditions D.1, D.3, D.5 and D.6)
- complying with the religious and cultural principles, and Aboriginal cultural and spiritual principles (conditions E.1 and E.2).

### Category 4 – caretaker licence

Operators managing a cemetery that is at capacity (cannot accept any more interments) or at which no future interments are intended to be carried out may apply for a Category 4 caretaker licence.

Category 4 licence holders are subject only to conditions B.1 (site maintenance and public access) and G.1 (prohibition of interment services).

Exceptions to Condition G.1 permitting future interments may be granted for plots that have been pre-sold, or for cemeteries where a small number of plots remain that will be made available to person(s) from a specified group, for example a member of the church congregation. These exceptions need to be sought by operators as part of their licence application and may be granted on a case by case basis at the discretion of CCNSW.

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## How will licence applications be made and assessed?

To apply for an operator licence, the relevant person or entity will need to complete the licence application form which will be available on the CCNSW website. Information that will be required to be provided includes, details of the operator, the cemeteries and/or crematoria that they operate, and additional information required to make a category assessment.

CCNSW will assess applications and assign a category of licence using the self-reported information provided, along with previously reported activity data. The category determination will be provided on the licence documents at the time the licence is granted together with a copy of all Conditions applying to the licence.

Applications must be assessed and determined by CCNSW within 60 business days. However, for initial licence applications this timeframe will be a target rather than a fixed deadline.

If information is missing from an application, CCNSW will need to go back to the operator to request that information. A new 60 day period commences when the information is provided. We will notify operators of the outcome of their licence application once the assessment process is complete.

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## When will the Scheme and licensing conditions take effect?

The Scheme commenced on 14 October 2022. Operators will be grouped and required to apply for licences in phases within a prescribed period. Groupings are based on the number of interments conducted by an operator in the 2021-22 financial year. The first period will commence in July 2023, with applications due by no later than 30 September 2023. There will be a number of phases, with the last phase closing in September 2024.

The Conditions will turn on in stages to allow operators time to become compliant with them. For more information, see our fact sheet on implementation and transition [on our website](#).

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## Relevant FAQs

### Who will need to be licensed? Who does the Scheme apply to?

The Scheme applies to operators of cemeteries and crematoria. All operators must be licensed, including operators of inactive cemeteries.

The Scheme does not apply to funeral directors or celebrants unless they are acting as agents of cemetery operators, or if they also operate a cemetery and/or crematoria.

### How much does a licence cost?

The licence application fee is \$800. Operators who perform 49 or fewer interments on average in the previous 3 years may be eligible for a reduced fee of \$400.

Any operator who is experiencing financial hardship may also apply to CCNSW for a waiver of the application fee. Applications will be assessed according to a policy which will be published prior to the opening of the first application period.

The fee will be waived for operators who are granted a Category 4 caretaker licence.

### How long does a licence last before it must be renewed?

A licence may be granted for up to 5 years, at the discretion of CCNSW.

Category 4 caretaker licences do not expire.

### Are you including private family cemeteries in the Scheme?

No. The Scheme does not cover a private family cemetery that is exempted under the *Public Health Regulation 2012*.

### Are licences granted per operator or per cemetery?

Operators are required to hold a licence, not individual cemeteries. A licence holder may manage multiple cemeteries under the licence provided they were listed in the licence application. If an operator buys or sells a cemetery, they must notify the regulator and have that cemetery added to or removed from their licence. There will be no cost for this amendment.

If an operator has several cemeteries, some of which are inactive, the maintenance licence conditions will permit different standards of maintenance for those identified inactive cemeteries.

### Who can be a licence holder?

A licence holder must be a 'legal person', that is a person or entity capable of entering into legally binding relationships. This includes individuals, companies and incorporated associations.

Unincorporated associations are not legal persons and cannot apply for a licence.

### Will categorisation be done on a case-by-case basis?

Yes, each operator will be considered individually. Initial assessments will be based on activity levels only, but future assessments will become more sophisticated over time as CCNSW gathers more data and intelligence to inform risk assessments of operators.

### Will heritage listing impact on the categorisation?

A small cemetery operator with a state heritage listing will be subject to Category 3 licence conditions. Nothing in the Scheme affects any state heritage obligations imposed on the operator by the *Heritage Act 1997*.

### When will operators know their category so they can start planning to implement the licence requirements?

CCNSW will begin initial analysis of operators at the end of 2022, when all activity data for 2021/22 has been received, to assess likely categorisation in preparation for the commencement of licensing. Operators will be supported through the application process and will be informed of their allocated category when granted a licence.

### What licensing rules apply to leased cemeteries?

Leasing arrangements vary, accordingly licence applications for these arrangements will be determined on a case-by-case basis. Where a lease gives the care, control and management of a cemetery to the lessee and the lessee sells interment rights, allocates burials sites, and maintains the cemetery, the lessee will most likely be required to hold the licence. If the lease was to be assigned, transferred or subleased the incoming lessee or sublessee will be required to be licenced.

Further, as a cemetery is a permanent use of land, upon the termination of any lease or other arrangement, the landowner would be left with responsibility for the cemetery and required to hold a licence.

### **We rely on volunteers to manage or maintain the cemetery, what support is available for us to meet licensing requirements?**

Many cemeteries which are run by volunteers are small cemeteries which are likely to be subject to Category 3 conditions. CCNSW will provide support through templates, model contracts and charters that can be adopted along with detailed guidance and explanatory materials on how to comply with licence conditions. CCNSW are also intending to have staff available to provide advice to volunteers.

### **Are crematorium operators regulated as part of the Scheme? What licence conditions will apply to crematorium operators?**

Yes, all crematorium operators will be required to be licensed. Given the current and projected significance of cremation to the NSW interment industry, the statutory review recommended that all crematorium owners and operators should be required to hold a licence.

All cremation only operators will be subject to Category 2 licence conditions (excluding the maintenance conditions). If a crematorium also operates a memorial garden or other area for ash interment, they will be categorised based on their number of interments as per other types of operators.

For further information see our fact sheet on requirements for cremation only operators [on our website](#).

### **Can an operator with a Category 4 (caretaker) licence perform occasional interments if requested?**

When applying for a Category 4 licence, an operator can indicate if there are existing interment rights; or other remaining plots which it is proposed will be available to a specified group (for example members of a church congregation). CCNSW may issue a Category 4 licence with an exemption to perform a specified number of future interments, for the holders of existing interment rights and/or for members of the nominated group only. The grant of an exemption is at CCNSW's discretion.

Interments cannot be performed if the proposed interments were not declared in the licence application and approved by CCNSW upon granting the licence.

### **What if an operator has both active and inactive cemeteries? Can each cemetery be licensed separately, with inactive cemeteries receiving a Category 4 licence?**

Licences are issued to an operator – it is not an option to apply for a licence at a cemetery level.

However, if an operator operates multiple cemeteries of which one or more is inactive, those cemeteries can be identified and only maintenance Condition B.1 will apply for those identified cemeteries. (see Further information is available on our fact sheet on cemetery maintenance [on our website](#)).

### Which licence do I apply for if my cemetery did not perform any interments last year?

Operators should consider their circumstances when applying for a licence. Operators may wish to apply for a Category 4 (caretaker) licence if:

- a. they will not perform any more interments
- b. the cemetery has only a few pre-sold plots remaining
- c. the cemetery has only a few plots remaining which are allocated for a particular group, such as members of a church congregation.

In circumstances referred to in (b) and (c), in the licence application the operator should specify how many plots are available, who holds the interment right for pre-sold plots and/or who other remaining plots are intended for. If these details are not included in an application, an exemption to perform interments will not be granted.

In its discretion CCNSW may grant a Category 4 licence, however, if the level of activity indicates the cemetery is in fact an active cemetery a Category 3 licence will be granted instead.