

Licence conditions A – consumer contracts

Commencing 1 July 2024

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 customers 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 customer and community representatives.

Note on terms: For this licence condition and accompanying guidance, the terms “consumer” and “customer” have the same meaning.

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.

A. Consumer contracts	Licence condition	Category 1	Category 2 (including cremation only)	Category 3	Category 4 (Caretaker)
	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 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.

If requested by the Cemeteries Agency, the operator must provide a copy of their consumer contract to the Agency.

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
- All relevant details regarding fees and charges that are being applied
- payment terms.

There must be a summary of the agreement between the customer and operator, including any specific or special conditions. 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:

- include an itemised list of fees and charges : from 1 July 2024 this list must align with the specific breakdown consistent with the pricing transparency requirements (Conditions C)

- Fees and charges must include the basis for any charges to meet religious or cultural, or Aboriginal cultural or spiritual requirements.
- Two itemised lists are included, for a burial/ash interment and for a cremation only service

- 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 resources to support operators with compliance with these licence conditions, which will be made available on our website. [available on the CCNSW website](#).

These will include:

- a model contract, which operators can choose to adopt to be compliant with the licence conditions, or adapt to suit their needs
- a Guide to Conditions A (consumer contracts), providing more information about each element of these conditions

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 customer 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.

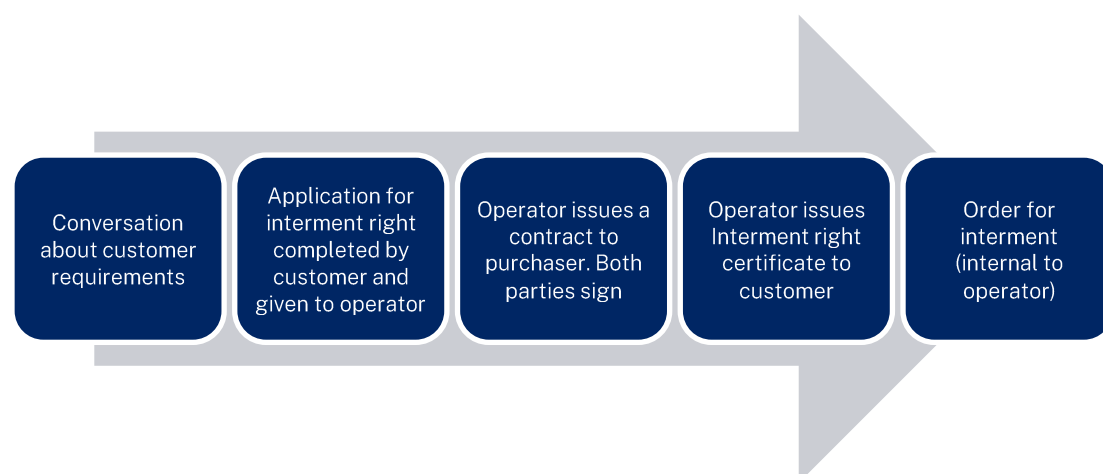
Other parties may also sign interment contracts with customers – in this case they would also be an authorised agent and be required to comply with the requirements on the operators behalf and sign the necessary declaration in the consumer contract.

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

Yes. While CCNSW will make available a model interment rights contract, 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'?

The contract is intended to complement the existing forms required under Part 3 of the *Cemeteries and Crematoria Act 2013*, as shown in the diagram below. The application for interment right is intended to collect the required information from the customer, which can then be incorporated into the contract. The interment rights certificate and order for interment are separate processes, which occur after the contract is signed.



Whether your current forms can be converted into a contract that satisfies the licence conditions will depend on their content. 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.