

Guide to holding multiple interment rights in a cemetery

Section 56(4) of the *Cemeteries and Crematoria Act 2013* (the Act) prohibits a cemetery operator from granting or transferring an interment right if the grant or transfer of a right would result in a person holding more than 2 interment rights in the cemetery. This is to ensure that the grant and transfer of interment rights does not tend to create a monopoly or encourage dealing in interment rights.

Cemetery operators can apply to Cemeteries & Crematoria NSW (CCNSW) for approval to grant or transfer more than 2 interment rights to a person or organisation in that cemetery.

CCNSW will assess applications for approval on a case-by-case basis in accordance with this Guide.

An operator must ensure their cemetery operator register is amended to accurately record any changes to interment rights as a result of an approved application to grant or transfer multiple interment rights.

Application process

Cemetery operators need to apply to CCNSW to request approval to grant more than 2 interment rights in a cemetery to a person or organisation. The application form is available on the CCNSW website. Use of this form will ensure that all the correct information is provided to facilitate assessment of the application.

What to include in an application

Reason for application

A cemetery operator must provide information justifying the need to grant more than 2 interment rights to a person or organisation. Examples of reasons which CCNSW may consider to justify approving an application may include:

For organisations:

- i. specific religious organisations may wish to purchase multiple interment rights to ensure members of their religion can be buried together
- ii. specific cultural or community organisations which are incorporated and not-for-profit may wish to purchase multiple interment rights to ensure members of their community can be buried together
- iii. a community organisation may wish to have interments available to provide at low or no cost in cases of financial hardship,

Note: Where the customer requesting multiple interment rights is an organisation, CCNSW requires this to be a formally incorporated organisation to ensure the interment rights are being granted to an organisation with legal status and minimise future risks.

For individuals:

- i. intergenerational or family transfers where transfer of rights between family members may result in an individual holding more than 2 rights.

Note: Applications from individuals should generally be limited to a maximum of 10 interment rights, unless there are exceptional circumstances.

Information about the proposed transfer

A cemetery operator must:

1. identify the person or organisation to whom the interment rights are to be granted
2. identify whom the interment rights are being transferred from (if applicable), and provide evidence to support the transfer;
3. specify the number of interment rights proposed to be granted or transferred; and
4. advise of any prior granting of interment rights to the same party and the current number of unexercised interment rights that party still holds.

Assurance that the end consumer is protected

Where multiple interment rights are granted to a person or organisation, CCNSW may require a cemetery operator (as a condition of approval):

- i. to guarantee that any on-selling must be at the same or lower cost as charged by the cemetery operator; and
- ii. to obtain a warranty and indemnity from the purchaser that the end consumer will be afforded the same consumer protections as the original purchaser; and
- iii. to ensure its contract with the purchaser contains a condition either requiring the purchaser to only on-sell the interment right:
 - on substantially the same terms as the original purchase; or
 - where the new purchaser agrees to enter into a new contract directly with the cemetery operator.

Where CCNSW seeks to impose the above conditions, this will be set out in CCNSW's letter approving the application.

In the event an organisation holding multiple interment rights becomes insolvent, unused interment rights may be terminated and revert to the cemetery operator, subject to any insolvency laws.

Supporting documentation

CCNSW may require documentation in support of an application. This may include:

- a copy of ACN, ABN or ACNC registration for organisation applications
- a copy of the Will or letters of administration (if applicable) for family personal applications such as grants or transfers for deceased estates OR evidence of consent to a transfer from whom the interment right(s) is/are being transferred

- a copy of the contract of sale from the cemetery operator to verify consumer protection provisions

Additional requirements for more than 100 interment rights

This part of the guide applies to any application made by a cemetery operator to CCNSW under section 56(4) of the Act, where the approval sought will result in an organisation holding (including jointly holding) more than 100 interment rights in the cemetery (a Large Application).

In assessing each Large Application, CCNSW will have regard to:

- the below criteria
- the objects of the Act, and
- the principles of administrative law.

Criteria

Before CCNSW will consider an application for more than 100 interment rights, the cemetery operator must provide CCNSW with sufficient information to satisfy CCNSW that the Large Application addresses the following criteria.

1. **Equitable access / public interest.** Whether the Large Application is necessary or desirable to ensure equitable access to interment services by one or more religious or cultural groups or the community generally or is otherwise in the public interest.

CCNSW may consider:

- the impact of the Large Application on all stakeholders e.g. impact on communities that interact with the cemetery,
- identification and assessment of eligibility criteria to determine which end users are entitled to receive the relevant interment rights, and
- how end users' consumer rights will be protected e.g. appeal or grievance processes.

2. **Cost transparency and affordability.** Whether the Large Application promotes affordable and accessible interment practices in New South Wales.

CCNSW may consider:

- the cost price and structure(s) for burials and cremations, and whether they are disclosed to CCNSW (beyond the Basic packages required to be disclosed in the Licence Conditions), and
- whether the Large Application makes it easier for people to afford interment or for faiths to access interments.

3. **Impact on current and future interment capacity.** How the Large Application impacts upon the current and future interment capacity across the relevant cemetery, the region in which the cemetery is located, and the broader sector.

The Large Application must address the following:

- the number of interment rights sought in the Large Application (including whether they are perpetual or renewable)
- the number and timing of release of interment rights to the end users
- the number of persons whose remains may be interred pursuant to the interment right at each site (e.g., single depth or double depth)
- the percentage of the cemetery space that will be affected by the Large Application
- the percentage of the cemetery space that will be available should the Large Application be granted in full
- how many interment sites will remain available for other persons
- the efficiency of land use, and
- the forecast time period between the approval of the Large Application and the exhaustion of all approved interment rights.

In addition to the information to be supplied above, CCNSW may consider other information regarding current and future interment capacity known to it in exercising its functions.

4. **Reputation and standing / due diligence.** Satisfactory due diligence on both the cemetery operator and the party seeking to acquire the interment rights as required, including corporate standing, reputation and financial capacity.

CCNSW may consider:

- searches from Australian Securities and Investments Commission, Australian Charities and Not-for-Profits Commission, Personal Property Securities Register and Australian Competition and Consumer Commission
- litigation searches from Australian courts
- searches of undertakings registers
- insolvency and bad debt searches
- constitution, corporate governance and financial statements, and
- environmental or planning issues.

5. **Accountability, transparency and integrity.** Whether CCNSW considers that the cemetery operator has demonstrated satisfactory levels of accountability, transparency and integrity in the Large Application.

Outcome

CCNSW will only approve Large Applications in exceptional circumstances. Should CCNSW approve a Large Application, CCNSW may:

- approve the Large Application subject to specified conditions
- approve a smaller number of interment rights than sought by the cemetery operator in its Large Application; and/or
- require the Applicant to report to CCNSW on an ongoing basis.