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Cemeteries & Crematoria NSW

Department of Planning and Environment

[cemeteries.nsw.gov.au](http://cemeteries.nsw.gov.au)



# Guide to Licence Condition E.1: Religious and Cultural Principles

December 2023



# Acknowledgement of Country

Cemeteries & Crematoria NSW acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally, and economically.

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# Introduction

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## The Interment Industry Scheme

The Interment Industry Scheme was established under the Cemeteries and Crematoria Regulation 2022 (NSW). The scheme was developed in response to recommendations from two 2020 reviews:

- a statutory review of the Cemeteries and Crematoria Act 2013 (NSW)
- the Independent Pricing and Regulatory Tribunal (IPART) review of interment costs and pricing in NSW.

Recommendation 6.1 of the statutory review was that a mandatory code of practice enshrining the specific beliefs of religious groups be included as part of the Interment Industry Scheme. This is consistent with the objectives of the Act - 'to ensure that the interment practices and beliefs of all religious groups are respected so that none is disadvantaged, and adequate and proper provision is made for all'.

Under the scheme's licensing framework, NSW cemetery and crematoria operators must hold a licence to perform interment services, including burials, cremations, ash interments and caretaker services.

Operators will be required to hold one of four licence categories. The licence category determines the conditions Operators must follow. For more information on the application of licence categories see our [Cemetery Operator Licence Categorisation Policy](#). The Conditions will be reviewed by Cemeteries & Crematoria NSW ('CCNSW') periodically.

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## This guide

The aim of this guide is to help operators understand how to meet licence condition E.1, relating to the Religious and Cultural Principles. Operators should read this guide alongside the [licence conditions](#).

The Principles set out in this Guide are not intended to, and do not, override or diminish any rights of any individuals under the Act or any other act, order, statute, rule, regulation, proclamation, or ordinance.

**Note on terms:** In this guide, 'we' and 'our' refers to CCNSW. 'You' and 'your' refers to operators. The terms 'consumer' and 'customer' have the same meaning.

# Introducing the condition

This section gives essential contextual information including:

- the application of the Condition and principles
- related support materials that are being developed (the guidelines)
- related support materials that are available on the CCNSW website
- relevance of other related legislation

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## Religious and Cultural Principles

Condition E.1 introduces 5 religious and cultural principles.

E.1 – Operator must take all reasonable steps to ensure compliance with the Religious and Cultural Principles

**Important note:** When we consider which activities are reasonable for operators to undertake to comply with each principle, we will take into account:

- the operator’s circumstances, size and nature
- the needs and characteristics of the community it services

These principles are closely related to the Aboriginal Cultural and Spiritual Principles introduced by Condition E.2. The table below shows that Condition E.1 applies to all active operators (Category 1, 2 and 3).

Licence category	E.1
1	✓
2	✓
3	✓
4	–

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## Religious and cultural community guidelines

To support compliance with Condition E.1, and build operator understanding of religious and cultural requirements for interment services, community groups may develop guidelines that CCNSW will publish on its website. In this Guide, these resources are referred to as religious and cultural guidelines. The development of guidelines is optional for communities.

Once developed by the community, the religious and cultural guidelines are not mandatory for you to comply with as part of Condition E.1, the Act or the Cemeteries and Crematoria Regulation 2022.

The guidelines are simply intended to support compliance with Condition E.1 by:

- building your understanding of specific religious and cultural requirements,
- providing an opportunity for religious and cultural communities to describe their interment requirements in one reference resource, and
- streamlining communication between operators and customers, and operators and community groups.

You should always ask customers about their specific religious and cultural needs. An individual's needs may differ from the common requirements of a specific community group, and they are able to choose which elements of religious practice they wish to adopt.

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## Related support materials for religious and cultural communities

CCNSW has published translated fact sheets about burial and cremation rights and other key topics to support customers from culturally and linguistically diverse communities. These resources are available in Arabic, Chinese simplified, Chinese traditional, Greek, Italian, Korean and Vietnamese and can be found on the CCNSW [website](#). CCNSW encourages operators to raise awareness of these resources with relevant customers to support engagement.

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## Acting in accordance with applicable cultural or religious practices under the Cemeteries and Crematoria Act

You are already required to comply with section 46 of the Act that states (amongst other things) that an operator must:

- permit the interment of the remains of the person to whom it relates at the site in a cemetery identified in, or in accordance with, the interment right (s46(1)(a)), and
- permit the interment in accordance with the cultural or religious practice applicable to the part of the cemetery in which the interment site is located at the time the interment right is granted (s46(1)(b)), and
- ensure that any remains of a person that are disturbed or removed are dealt with in accordance with any cultural or religious practices applicable to the remains 46(3).

Permitting an interment in accordance with the cultural or religious practices applicable to the part of the cemetery means an operator must permit such interment to occur (and cannot prevent such an interment).

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## Interaction with anti-discrimination laws

Condition E.1 does not affect the operation of anti-discrimination laws and you must ensure that, in complying with the requirements of Condition E.1, you also continue to comply with all other applicable laws.

If, prior to the introduction of Condition E1 under the Interment Industry Scheme, an operator was lawfully permitted to decline to provide an interment service, including on the basis of a person's religion, nothing in Condition E1 will require the operator to do otherwise.

This may apply to cemeteries which are operated by a specific religious denomination, and have historically only serviced that group.

# Understanding the principles

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## Principle 1 — Understanding the religious and cultural demographics and requirements of your communities

Condition E.1, Principle 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.

### What Principle 1 means

CCNSW recognises that many operators have existing knowledge of the specific religious and cultural requirements of communities that they engage with in their day-to-day operations. Principle 1 requires that Operators take steps to ensure they understand the region-specific demographics, which may highlight additional communities that they are not familiar with.

Operators are not expected to inform themselves about all community groups. Operators should inform themselves of the key communities they service and those represented in the demographics of the region in which they operate.

CCNSW recognises that many operators, such as some Church operators, only service a small community group made up of parishioners of a single denomination. The expectation is that in this case you would still have some knowledge of your local communities and that you are able to demonstrate this on request.

### How you could comply with Principle 1

#### Undertake demographic research if needed

If you aren't sure on the demographics of the area that you service, you could review Census data on the Australian Bureau of Statistics (ABS) website for the region in which you operate. You can find this on the [Search Census Data](#) webpage - just search for the Local Government Area (LGA) or postcode and select QuickStats to see the demographics of the region (collected from the most recent Census).



You may want to review this data regularly, or; at least every 5 years in line with the release of new Census data, and use this research to identify the most widely represented regions and cultures in your area.

### **Inform yourself about relevant burial and cremation requirements**

For the communities that you service, you should inform yourself about their common religious or cultural requirements relating to burial and cremation. You can check on the CCNSW website to see if there are religious and cultural community guidelines available for the key communities that you service, and if not see if there are other sources of this information available on the websites of the relevant religious or community organisations. Alternatively, talk to local religious or community leaders to gain an understanding of their needs.

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## **Principle 2 – Informing yourself of and recording specific requirements**

Condition E.1, Principle 2 — Operators must inform themselves of, and record, any religious or cultural requirements in relation to each burial or cremation

### **What Principle 2 means**

Principle 2 expands on Principle 1 and requires operators to engage with each individual customer and ask them if they have any specific religious or cultural requirements for their burial or cremation.

Principle 2 also requires operators to retain records for each burial or cremation and any specific religious or cultural requests associated with them.

If a customer is meeting with a funeral director or other authorised agent to discuss their requirements, then you must obtain this information from the agent and document it in your own records.

If the religious or cultural needs relate to the funeral itself rather than the burial or cremation, the operator may not need to be aware of or record this request (if it does not require involvement of the operator).

As required by Principle 1, operators should be aware of common religious and cultural requirements and can indicate this to facilitate conversations about requirements when liaising with the family, funeral director or other representative. However, every individual is likely to have

different needs, therefore it is always important to ask the question of each customer as to what they require and to record this specifically.

## How you could comply with Principle 2

### **Include questions about individual religious or cultural requirements in your standard contract and/or booking forms**

In some cases, you may not be directly involved in completing the contract or booking form, for example, where a funeral director is completing this step. In those cases the funeral director would need to record these details as part of the individual's application so that relevant requirements can be captured in the contract by the operator.

Operators are responsible for informing any authorised agents, such as funeral directors, about the specific requirements of their contract documents and booking forms and educating them on the steps to be taken to capture the relevant information.

If there are no additional religious or cultural requirements for a burial or cremation, you should note this in your records to demonstrate that the question has been asked.

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## Principle 3 – Satisfy religious or cultural requests where practicable

Condition E.1, Principle 3 — Operators must satisfy requests to meet religious or cultural requirements in relation to burial and cremation, where the request is reasonably practicable and aligns with all relevant laws, and work health and safety obligations. For the avoidance of doubt, this Principle does not require the dedication of land or the erection of structures.

### **What Principle 3 means**

Principle 3 requires you to take action to address requests for religious and cultural requirements in relation to each burial or cremation. Principle 3 strengthens the protections that already exist under section 46 of the Act.

To facilitate considering the practicability of a request, you should be aware of what may be asked of you from your key religious and cultural communities (through the information gathered under Principle 1, and from any specific religious and cultural guidelines). You can then prepare for common requests ahead of time, if appropriate, as well as advise and educate your staff about how they can meet specific religious and cultural requirements.

## **Acquiring or dedicating land, or erecting of structures, is not required**

Principle 3 explicitly excludes religious requirements relating to acquiring a dedicated area of consecrated land for their religion or the erection of structures. An operator would not be obliged under this Principle to meet these larger scale requirements. These requirements should, however, be considered if raised as community needs or grievances in relation to Principle 5.

Principle 3 also explicitly excludes the erection of structures (other than memorials or monuments), as this would not be economically feasible for the operator to do to meet an individual request.

If a religious or cultural community wishes to discuss higher level matters relating to land or structures, this should be raised with the operator as a community need under Principle 5 which would need to be considered in good faith as per that principle.

## **Further guidelines will be developed**

Information for operators on common religious and cultural requirements will be available from CCNSW and/or relevant religious and cultural organisations. Requirements can differ between community groups and individuals, and there is no one-size-fits all approach.

## **How you could comply with Principle 3**

### **Include religious and cultural matters in your complaints register**

Your complaints register (required under Licence Condition D.5) should document any grievances, disputes or complaints relating to the satisfaction of religious and cultural requests, along with the steps taken to find a resolution and the outcome of the matter.

### **Document your process for determining what is practicable**

Operators can use their judgement about what is practicable, noting there are other legal frameworks that apply such as work health and safety legislation, council regulations and so on.

However, it is important to be clear and consistent about how the practicability of requests is determined, and to record reasons for not satisfying a particular request. Policies or procedures can be used to guide staff on how to determine when a request is “practicable” and how to record reasons.

You should not say something is not practicable simply because you have never done it, it is not how you normally do it, or you don’t know how to do it.

Where an operator is consistently denying requests to meet a particular religious or cultural requirement, this could be raised by a religious or cultural community as part of a broader issue which would then need to be dealt with under Principle 5, and require consideration in good faith.

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## Principle 4 – Explain charges to meet religious or cultural requirements

Condition E.1, Principle 4 — For services provided to satisfy a request to meet religious or cultural 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 and A.3.1)

### What Principle 4 means

Principle 4 expands on Principle 3 and requires operators to disclose and justify the basis for charges incurred in meeting religious or cultural requirements relating to burial or cremation. Principle 4 ensures the principles of pricing transparency (as per Licence Conditions B) are applied specifically here for religious and cultural communities.

CCNSW acknowledges that operators need to cover the costs incurred of meeting religious or cultural requirements. If charging a customer for these services, these charges need to be documented in contracts (as required by Licence Conditions A) and itemised on customer invoices, so it is clear what is being charged for and why.

If a fee relates to a religious or cultural requirement relating to the funeral or other service element, rather than the burial or cremation, and costs are charged by another party, the operator is not expected to outline this service or cost in their contract.

### How you could comply with Principle 4

#### Outline additional fees in contract and invoices

Include the reason for the fee, for example, additional staffing requirements, offering a service outside standard working hours etc. Each new charge should appear separately in the contract alongside the specific service being provided. Prices should be itemised, clearly explained and broken down into components.

#### Keep records of pricing details up to date and accessible

Clearly document what additional costs have been applied for which types of additional services and how these have been communicated to customers and reflected in invoicing. Records should be clear about why those costs are incurred. Such evidence should be readily accessible and available to be shared with CCNSW if requested.

### **Document how you determine fees and charges**

Policies or procedures can be used to guide staff on how to determine fees and charges for meeting religious and cultural requests, where those requests are not commonly delivered and do not have a standard price, and how to explain fees and charges to customers.

### **Publish key information**

Depending on how frequently the requirement is requested, common requests could be published alongside standard prices so that these can be shared with customers as needed. These could be published on an operator's website, included as an attachment to be sent with an e-mail or printed and provided to the customer.

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## **Principle 5 – Engage with the communities you service in good faith**

Condition E.1, Principle 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 identified community needs and resolve any grievances

### **What Principle 5 means**

This Principle relates to identified community needs or grievances, relating to the interactions of a community with an operator rather than to an individual interment. For example, a religious group may request additional seating in an area of the cemetery to cater for an elderly population, or access to washing facilities.

Principle 5 places an expectation on operators to consider such religious and cultural requests meaningfully and engage in consultation to address community needs or resolve grievances. When negotiating with a community, operators should ensure that they understand their requirements by asking questions and allowing for community representatives to express their needs. Operators should consider whether the request can be accommodated in part or in full and clearly communicate reasons for their decision, as well as any steps to be taken by the community.

### **How you could comply with Principle 5**

#### **Engage with your local communities**

Operators should consider a range of engagement strategies.

Start by contacting representatives from key religious and cultural communities, identified through steps taken under Principle 1, to establish communication channels. Regular communication with these representatives is important and could include newsletters, operational updates such as holiday operating hours and/or invitations to local events.

Consider hosting specific consultative events or forums for religious and cultural communities to better understand their specific needs and seek involvement from key representatives. Ensure records of events, including any minutes, are kept, noting attendees, issues and grievances raised, and any agreed outcomes. This information should be readily accessible and available to be shared with CCNSW if requested.

### **Establish a stakeholder contact list**

Maintain a register of key religious and cultural contacts in the region in which you operate, including identified funeral directors, vendors, such as monumental masons or other identified service providers relevant to religious and cultural communities. This list can be used to support internal processes for operators to familiarise themselves with providers chosen by specific community groups.

### **Include religious or cultural community issues in your complaints register**

This should reflect when a religious or cultural community need, complaint or grievance has been raised and whether it has been addressed, including the reasoning.

### **Create a broad community engagement strategy or policy**

A strategy or policy could outline how you will engage with the religious and cultural communities you service, or who would like to be serviced by you, how you will seek to understand their needs and how you will ensure you undertake good faith negotiations. This might include creation of a community advisory group which has representation from key religious and cultural communities.

# Showing compliance

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## Compliance strategies

In this section, we share some tips about how you can show compliance with condition E1: Religious and Cultural Principles.

### Maintain records

Maintaining good records is critical to demonstrating compliance. You should:

- Take reasonable steps to record specific religious and cultural requirements requested at the time of booking in the Operator's booking system (whether paper-based or online) and document how these requests have been responded to.
- Document all religious and cultural requests and the corresponding action being taken to address such requests. If requests cannot be met, the reason should be recorded.
- Ensure the records capture specific services relevant to communities, such as when cemetery land is consecrated, along with any documentation provided from the religious or cultural representative who carried this out.
- Inform yourself of the privacy laws that apply to you, including what information you are permitted to collect and use, and restrictions on disclosure.

### Keep compliance records up to date

You should clearly document what steps you have taken and are taking to ensure ongoing compliance with this Condition and the principles. Such evidence should be readily accessible and available to be shared with CCNSW if requested.

### Offer training to staff

Consider offering training to staff in religious and cultural capacity building and/or other training specific to religious and cultural practices and beliefs. This will help embed the principles in your organisation, and aid in a deeper understanding of religious and cultural requirements and their importance in this industry, t Document any training and work experience provided to staff.

### Ensure funeral directors and third parties comply

If you use a funeral director or other third party as your authorised agent, talk to them about the requirements under the principles. Have a documented procedure for them to record the

conversations they are having with customers regarding religious or cultural requirements, and how they must pass those on to you where they relate to burial and cremation.

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## Our compliance approach

CCNSW will monitor Operators' compliance with the Conditions. For more information on CCNSW's compliance approach see its [Regulatory Framework](#).

We believe in working with you to help you understand your compliance obligations and improve industry practices. If we identify non-compliance, we may take regulatory action to enforce compliance where appropriate.

When preparing to engage with us to show compliance with condition E.1, you should have relevant documentation available and be prepared to answer questions relating to compliance with the principles.

When we consider which activities are reasonable for operators to undertake, we will take into account:

- the operator's circumstances, size and nature
- the needs and characteristics of the communities it services.