
Cemeteries & Crematoria NSW

Department of Planning and Environment

cemeteries.nsw.gov.au



Guide to Licence Condition E.2: Aboriginal Cultural and Spiritual 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

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.

In the statutory review, recommendation 6.1 stated that a code of practice enshrining the specific cultural traditions and beliefs of cultural groups should form part of the scheme. Rather than develop a code of practice, we have included these requirements in the scheme's licensing framework.

To recognise the unique cultural importance of Sorry Business in Aboriginal communities, the scheme contains separate requirements under Condition E.2: Aboriginal Cultural and Spiritual Principles and these must be complied with alongside Condition E.1: Religious and Cultural Principles.

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.

This guide

The aim of this guide is to help operators understand how to meet licence condition E.2, relating to the Aboriginal Cultural and Spiritual 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

Aboriginal Cultural and Spiritual Principles

Condition E.2 introduces 5 Aboriginal cultural and spiritual principles.

E.2 – Operator must take all reasonable steps to ensure compliance with the Aboriginal Cultural and Spiritual 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 Religious and Cultural Principles introduced by Condition E.1.

The table below shows that Condition E.2 applies to all active operators (Category 1, 2 and 3).

Licence category	E.2
1	✓
2	✓
3	✓
4	–

Aboriginal guidelines for burial and cremation requirements

CCNSW has worked with Aboriginal communities to develop *Guidelines for Aboriginal cultural and spiritual requirements for burial and cremation in NSW* (referred to in this document as the Guidelines) which are available on our website.

These Guidelines are not mandatory for you to comply with as part of Condition E.2, the Act or the Cemeteries and Crematoria Regulation 2022.

The Guidelines are simply intended to support compliance with Condition E.2 by:

- building your understanding of common Aboriginal cultural and spiritual requirements,
- providing an opportunity for Aboriginal communities to describe their interment requirements in one reference resource

Sorry Business is the term commonly used by Aboriginal and Torres Strait Islander communities to describe a mourning period when a person dies and the associated cultural responsibilities and practices that are expected and performed during that period.

Sorry Business is unique to Aboriginal people and has particular cultural requirements which may vary between Aboriginal communities. There is no one-size-fits-all approach to meeting the needs of Aboriginal cultural and spiritual requirements relating to burial and cremation.

You should always ask customers about their specific cultural and spiritual needs. An individual's needs may differ from the common requirements outlined in the Aboriginal Guidelines, and they are able to choose which practices they wish to adopt.

Related support materials for Aboriginal communities

CCNSW has published resources about burial and cremation and other key topics specifically to support Aboriginal peoples. These documents are available on the CCNSW [website](#) and CCNSW encourages operators to raise awareness of these resources with relevant customers to support engagement.

Understanding the principles

Principle 1 – Understanding the Aboriginal cultural and spiritual requirements and Traditional Owners of your region

Condition E.2, Principle 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.

What Principle 1 means

This Principle requires you to find out about the Aboriginal land and Aboriginal culture of the areas you service and work in and understand common Aboriginal cultural and spiritual practices and requirements for burial and cremation. You are not expected to have a complete understanding of all Aboriginal cultures outside of your region.

CCNSW recognises that there is diversity in Aboriginal cultures and practices and that burial and cremation requirements will vary. Many operators are already aware of the Aboriginal communities in their area and may already undertake activities to develop their understanding and knowledge of Aboriginal burial and cremation requirements.

How you could comply with Principle 1

Undertake demographic research if needed

If you aren't sure, you can identify the Aboriginal land on which you operate by speaking with local communities and/or using the map available through the Australian Institute of Aboriginal and Torres Strait Islander Studies ([AIATSIS](#)) [website](#).

You can also access census data to help you understand the demographics of the communities in the region in which you operate. Census data can be viewed via the [QuickStats](#) webpage on the Australian Bureau of Statistics (ABS) website by entering your Local Government Area (LGA) or postcode. For a further breakdown of census data, visit [this website](#) and select your LGA. Aboriginal cultural information is available under the 'Who are we?' tab.

Inform yourself of the common Aboriginal cultural and spiritual practices and requirements for burial and cremation

You can use the Guidelines published by CCNSW to inform yourself. This resource provides a general understanding of common Aboriginal requirements for burial and cremation and is a starting point for conversations with Aboriginal people when booking burial or cremation. You may wish to seek further information by talking to local Aboriginal communities.

Show that you are informed of the Traditional Owners by sharing your Acknowledgement of Country

To further demonstrate your awareness, you may wish to refer to traditional owners or include an Acknowledgement of Country on display at your place of business, on your website or in customer information material. An Acknowledgement of Country can be a way of showing awareness of, and respect for, the Traditional Custodians of the land upon which a building is located or where an event is taking place.

Principle 2 – Informing yourself of and recording specific requirements

Condition E.2, Principle 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

What Principle 2 means

This Principle requires you to inform yourself of the individual cultural and spiritual requirements of an Aboriginal person at the time of burial or cremation, and at the time of entering into a Consumer Contract (in addition to any religious requirements that Aboriginal person may have in accordance with Condition E.1).

Developing an understanding of Aboriginal cultural and spiritual practices and requirements, as per Principle 1, will assist you in meeting the needs of Aboriginal people. However, the ultimate decision around how a burial or cremation is carried out belongs to an individual or their family. Personal requirements or preferences will vary.

Principle 2 also requires operators to retain records for each burial or cremation and any specific Aboriginal cultural or spiritual 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 Aboriginal cultural or spiritual 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 cultural and spiritual 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 Aboriginal cultural or spiritual requirements in the standard contract and/or booking form

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 Aboriginal cultural or spiritual requirements for a burial or cremation, you should note this in your records to demonstrate that the question has been asked.

Principle 3 – Satisfy Aboriginal cultural or spiritual requests where practicable

Condition E.2, Principle 3 - Operators must satisfy requests to meet Aboriginal cultural or spiritual 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 to meet Aboriginal cultural or spiritual requirements.

To facilitate considering the practicability of a request, you should be aware of what may be asked of you from the Aboriginal communities represented in your region through the information gathered under Principle 1. You can then prepare for such requests ahead of time, if appropriate, as well as advise and educate your staff about how they can meet specific Aboriginal cultural and spiritual requirements. Principle 3 explicitly references alignment with relevant laws, this includes Public Health Regulations applicable to the request.

Information about shrouded burial

Where an Aboriginal community seeks to have a shrouded burial, there are requirements that must be met under Public Health Regulation 2022. CCNSW has created [a fact sheet](#) providing information about burial without a conventional coffin, including shrouded burial, to support Aboriginal communities to understand the necessary steps to apply to NSW Health for an exemption. Operators can support the community by raising awareness of this resource which is published on the CCNSW [website](#).

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

Principle 3 explicitly excludes Aboriginal cultural or spiritual requirements relating to acquiring a dedicated area of land 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 5b.

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 an Aboriginal 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 5b which would need to be considered in good faith as per that principle.

Example Scenario - Smoking ceremony

Smoking ceremonies are commonly requested as part of an Aboriginal burial. Operators may be unsure about the feasibility of allowing such a ceremony. NSW Rural Fire Service (NSW RFS) can provide advice about smoking ceremonies.

Generally, a smoking ceremony can be performed during a Total Fire Ban under certain conditions. Operators should contact NSW RFS for enquiries about conducting a smoking ceremony lawfully.

How you could comply with Principle 3

Include Aboriginal cultural or spiritual 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 Aboriginal cultural or spiritual 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 Aboriginal cultural or spiritual requirement, this could be raised by an Aboriginal community as part of a broader issue which would then need to be dealt with under Principle 5b and require consideration in good faith.

Principle 4 – Explain charges to meet Aboriginal cultural and spiritual requirements

Condition E.2, Principle 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 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 Aboriginal cultural and spiritual requirements relating to burial or cremation. Principle 4 ensures the principles of pricing transparency (as per Licence Conditions B) are applied specifically here for Aboriginal communities.

CCNSW acknowledges that operators need to cover the costs incurred of meeting Aboriginal cultural or spiritual 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 Aboriginal cultural or spiritual 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 Aboriginal cultural and spiritual 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.

Principle 5a – Engage with relevant Aboriginal communities about their burial and cremation requirements

Condition E.2, Principle 5.a – An Operator commonly providing Aboriginal burials or cremations for Aboriginal communities must, in respect of each community, engage with relevant Aboriginal community about their cultural and spiritual requirements relating to interment

What Principle 5a means

This Principle expands upon the requirement under Principle 1 for operators to inform themselves of the Aboriginal communities in the region they service and operate. If you commonly provide Aboriginal burials, this Principle requires you to actively engage with local Aboriginal communities about their specific cultural and spiritual requirements.

Contact CCNSW if you need assistance making connections with Aboriginal communities in your region.

The Guidelines, which refer to general requirements across NSW, can be used as a template to guide conversations with community on each key area of potential requirements to gain more specific information. If additional specific requirements for a particular community are identified, these should be recorded.

How you could comply with Principle 5a

Engage with your local Aboriginal communities

Engagement could be carried out by:

- strengthening communications and ensuring stakeholder lists capture details of key Aboriginal representatives
- hosting events and inviting Aboriginal representatives to attend
- establishing a broad community engagement strategy, which might include creation of a community advisory group with a local Aboriginal representative.

You should meet on a regular basis with the Aboriginal communities you service, such as with

- Aboriginal elders
- Aboriginal community groups.

Document evidence of your engagement, such as keeping a record of meeting agendas, discussions and any decisions made.

Seek feedback from local Aboriginal communities or leaders on key decisions relating to your operations.

If appropriate for the size and capacity of your operation, you could support compliance by:

- employing an Aboriginal Liaison Officer
- participating in meetings of the Local Aboriginal Land Council (LALC), if invited to do so.

Principle 5b – Negotiate in good faith relating to community needs and grievances

Condition E.2, Principle 5b – An Operator commonly providing Aboriginal burials or cremations for Aboriginal communities must, in respect of each community, undertake good faith negotiations to accommodate identified community needs and resolve any grievances

What Principle 5b 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, an Aboriginal community may request for a dedicated area of the cemetery to be set aside for smoking ceremonies, or for additional seating to be provided for Aboriginal services as a lot of Aboriginal elders often attend.

Principle 5b places an expectation on operators to consider such Aboriginal cultural and spiritual 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 5b

Identify needs and grievances through your engagement channels

Active engagement with your local communities is required under Principle 5a. Through that engagement, you should be able to identify community needs proactively, as well as having clear channels for communities to come to you with their own identified needs or grievances.

Consider hosting specific consultative events or forums for local Aboriginal 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.

Include Aboriginal community issues in your complaints register

This should reflect when an Aboriginal community complaint or grievance has been raised and whether it has been addressed, including the reasoning.

Showing compliance

Compliance strategies

In this section, we share some tips about how you can show compliance with condition E2: Aboriginal Cultural and Spiritual Principles.

Maintain records

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

- take reasonable steps to record specific Aboriginal cultural and spiritual 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 Aboriginal cultural and spiritual requirement requests and the corresponding action being taken to address such requests. If requests cannot be met, the reason should be recorded.
- inform yourself of the NSW and Commonwealth 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

To embed the principles in your organisation, and a deeper understanding of Aboriginal cultural and spiritual requirements and their importance in this industry, you may wish to offer training to staff in Aboriginal cultural capacity. Document any training and work experience provided to staff.

Training can ensure staff are informed about the local Aboriginal communities, the cultural and spiritual practices and requirements for burial and cremation, and provide general cultural competency. Cultural competence is the knowledge and ways of working that assist Operators and staff to work effectively with local Aboriginal communities.

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 Aboriginal cultural and spiritual requirements, and how they must pass those on to you where they relate to burial and cremation.

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.