

CCNSW Webinar

Using the model contract

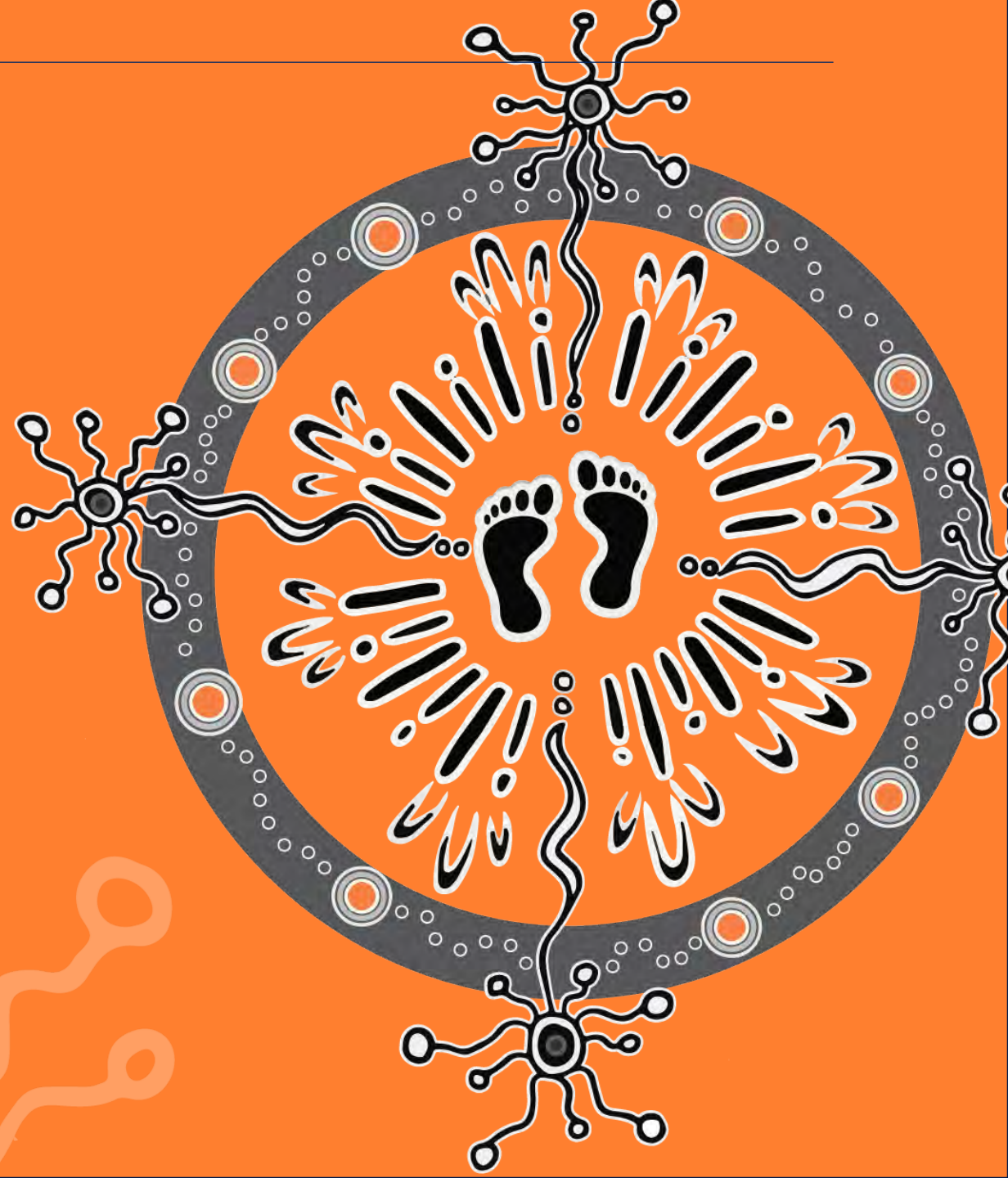
5 June 2024



Acknowledgement of Country

We acknowledge that today we meet on many Aboriginal lands.

We acknowledge the traditional custodians of the lands and we show our respect for elders past, present and emerging through thoughtful and collaborative approaches to our work.



Agenda

1. Updates since last weeks webinar
2. Transferring the interment right
3. The model contract
4. Next steps





1. Updates since the last webinar

Recent announcements

Commencement of levy confirmed

- Levy to commence on 1 July 2024 for those who provided more than 50 interment services in 2022/23
- Levy to commence on 1 July 2025 for those who provided less than 50 interment services in 2022/23
- Hardship policy to be developed prior to July 2025

Coming this week : Levy pamphlet, ATO advice, letters to operators confirming levy start date and payment frequency

- Pamphlet first in English, then in other languages

Delayed commencement of remaining 3 licence conditions to 1 October 2024

- To give operators more time to understand and comply with these conditions, the date has been extended for Consumer Contracts, Pricing Transparency and Maintenance.
- We encourage operators to maintain their momentum and introduce new requirements as soon as possible.
- Updated licence conditions will be sent to licenced operators shortly and published on the website.

Key themes from questions asked last week (1)



Theme discussed	CCNSW response
<p>How the contract works in relation to the first interment, and any subsequent interments</p>	<p>The consumer contract and pricing transparency licence conditions relate to the initial sale of an interment right. This is because this is a complex purchase, with multiple price components and concepts to understand such as the roles and responsibilities of the interment right holder.</p> <p>Any subsequent interments into an existing interment right do not require a contract and can use the following process:</p> <ul style="list-style-type: none">• Nomination of the person to be interred by a person authorised to do so—our understanding is that this is done through an application for interment/application for burial form or equivalent• Payment of a burial fee, and any associated admin fees
<p>How to identify the interment right holder, and when and how that right needs to be transferred</p>	<p>Slides on this topic on the agenda for today. Flow chart of the interment process has also been updated. There are two separate but related issues here :</p> <ol style="list-style-type: none">1) How does the operator know who is authorised to apply for an interment into an existing interment right?2) When and how does an interment right need to be transferred? <p>These things will also be clarified in our updated fact sheet on the transfer of interment rights, coming soon.</p>

Key themes from questions asked last week (2)



Theme discussed	CCNSW response
How to manage signatures of one or more interment right holders who are not digitally literate	<p>Signatures can be done physically or electronically.</p> <p>If neither of these things are possible, options may include signing the paperwork on the day of the interment (this can be done respectfully and does occur in for example urgent religious burials).</p>
How to manage contract variations	<p>Where the variation impacts on the interment right, the holder or the site, this must be done via contract variation. Where the variation relates to an additional service or a change to the service, this could be a separate invoice and payment in addition to the contract.</p>



2. Transferring interment rights

The holder can transfer their right



1. To the cemetery operator

This may be because they don't want to use the right/site anymore, or they no longer want responsibility for a site which contains historical remains.

You are not obliged to accept the transfer of an interment right to you, and can determine any appropriate payment or refund.

2. To another person(s)

The current holder can apply to you to transfer a right to another person(s) – this must be done in the form approved by CCNSW (currently being updated) and accompanied by the fee.

You could refuse a transfer request if you think it would create a monopoly or encourage dealing in interment rights.

If the holder dies there are several options

- If the deceased person was a **joint right holder**, the remaining joint right holder(s) is automatically entitled to the interment right.
- If the deceased person was a **sole right holder**:
 - If the right holder bequeathed the right by will, the right will transfer to the person(s) to whom it was bequeathed
 - If the right was not bequeathed by will, or the person died without having made a will, the right will be dealt with according to the rules of intestacy (see below), and
 - In either case, the beneficiary does not become the interment right holder until the cemetery operator's register is updated to indicate this.

If the holder is deceased who can authorise interment?



When there is a request to inter somebody into an existing interment right, and the recorded interment right holder is deceased, a decision needs to be made about who is able to authorise the interment.

As operators you need a process to satisfy yourself of this, and are likely to already be doing this.

Key questions to ask (which we have heard from other operators) could include:

- Are you an executor of the deceased's estate, or do you believe you are?
- Are you the nearest surviving relative of the deceased/person to be interred?
- If there are other relatives/executors, have they given you permission to inter the deceased in this grave?
- If neither of the above apply, why are you making this application?

Some operators ask the customer (the person requesting the interment) to complete a statutory declaration asking these types of questions.

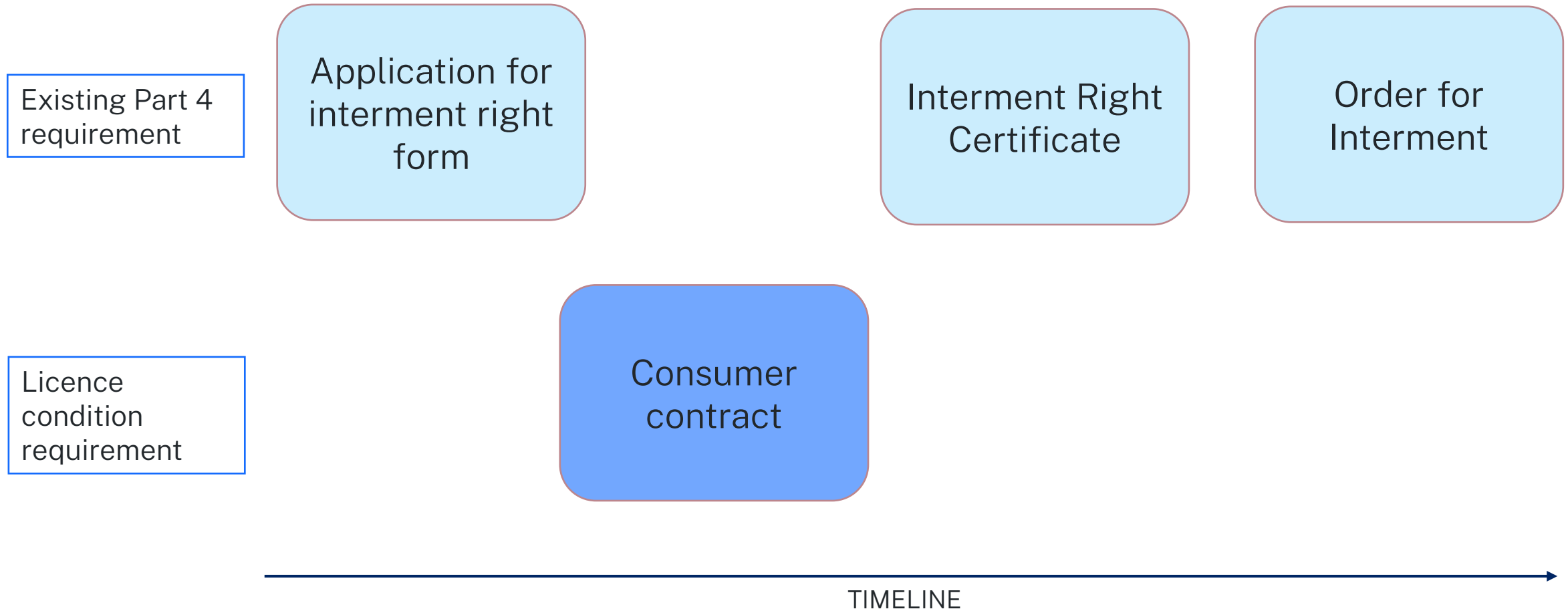
Examples of when the right needs to be transferred

- When the family wish to erect a monument or memorial
- When there is a specific bequest through a Will regarding a remaining right to inter into the site or to erect a memorial or monument (if requested)
- When an estate is settled via administration and an interment right is identified as an asset to be distributed to the successors (if requested)
- When a memorial or monument (not the responsibility of the cemetery operator) is identified by the cemetery operator as requiring repair or maintenance and reaches out to identify possible transferees
- When family members undertaking family history research and have identified an unmarked or dilapidated interment site, seek permission to erect a memorial or monument or to arrange for maintenance or repairs or wish to take responsibility for an intact interment site/memorial/monument.
- During a family dispute where determination of who has control over an interment right or interment site is being sought
- When the living interment right holder decides they no longer wish to retain the interment right and either wishes to transfer it to another family member or person, sells it privately or transfers the right back to the cemetery operator.

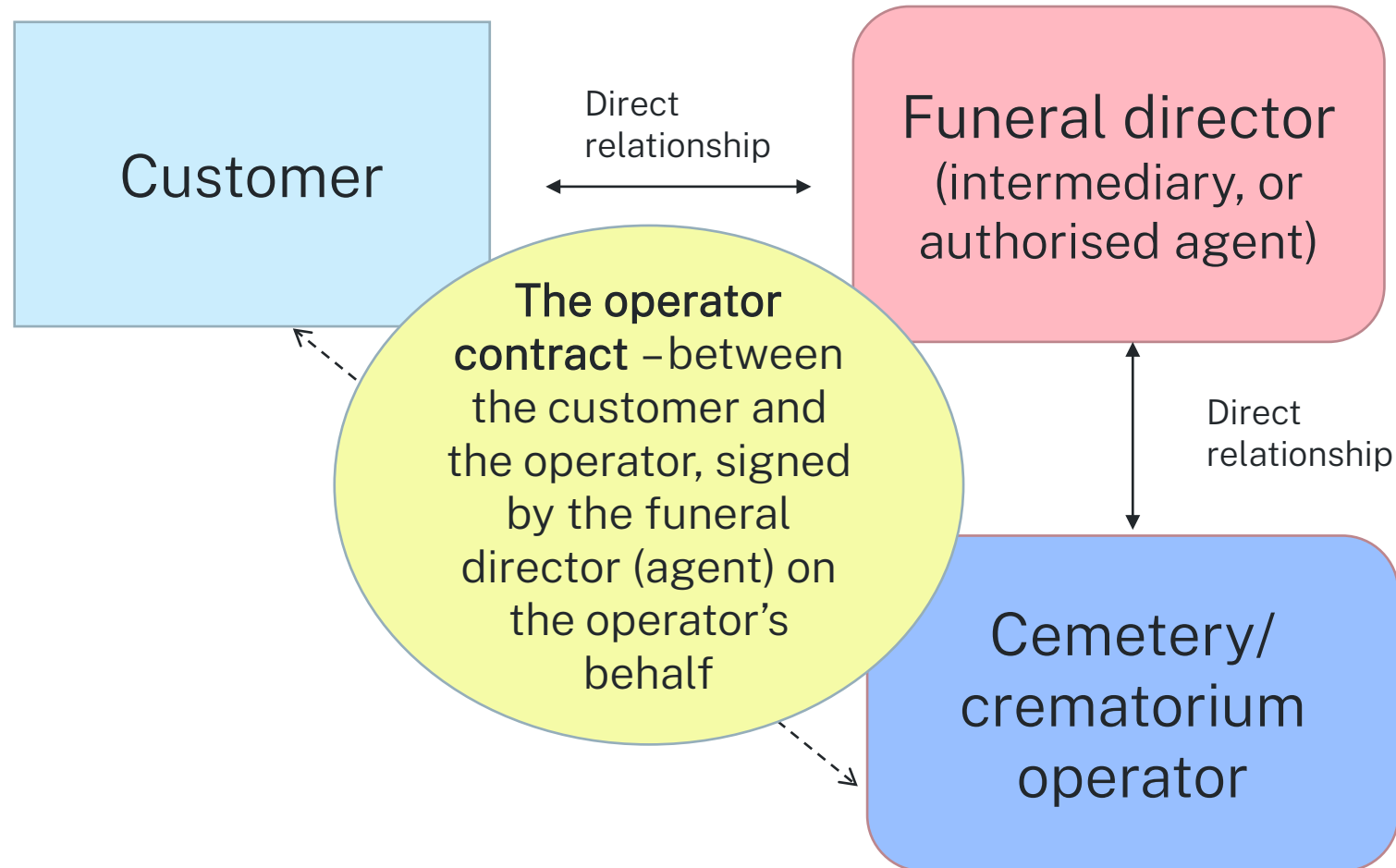
3. The model contract



The consumer contract builds on the existing Part 4 requirements



The contract will clarify the relationship between customer, operator and funeral director



Authorised agents

Funeral directors do not have a power to grant interment rights under the Cemeteries and Crematoria Act 2013 so can only do so (and sell interments) if 'authorised' by an operator.

Authority is either implied (exists by nature of the fact that the funeral director is selling interments) or expressed (written down in form of an agreement).

Benefits of the new process



Supports customers to understand key concepts



Reduces complaints



Customers can compare prices for basic products

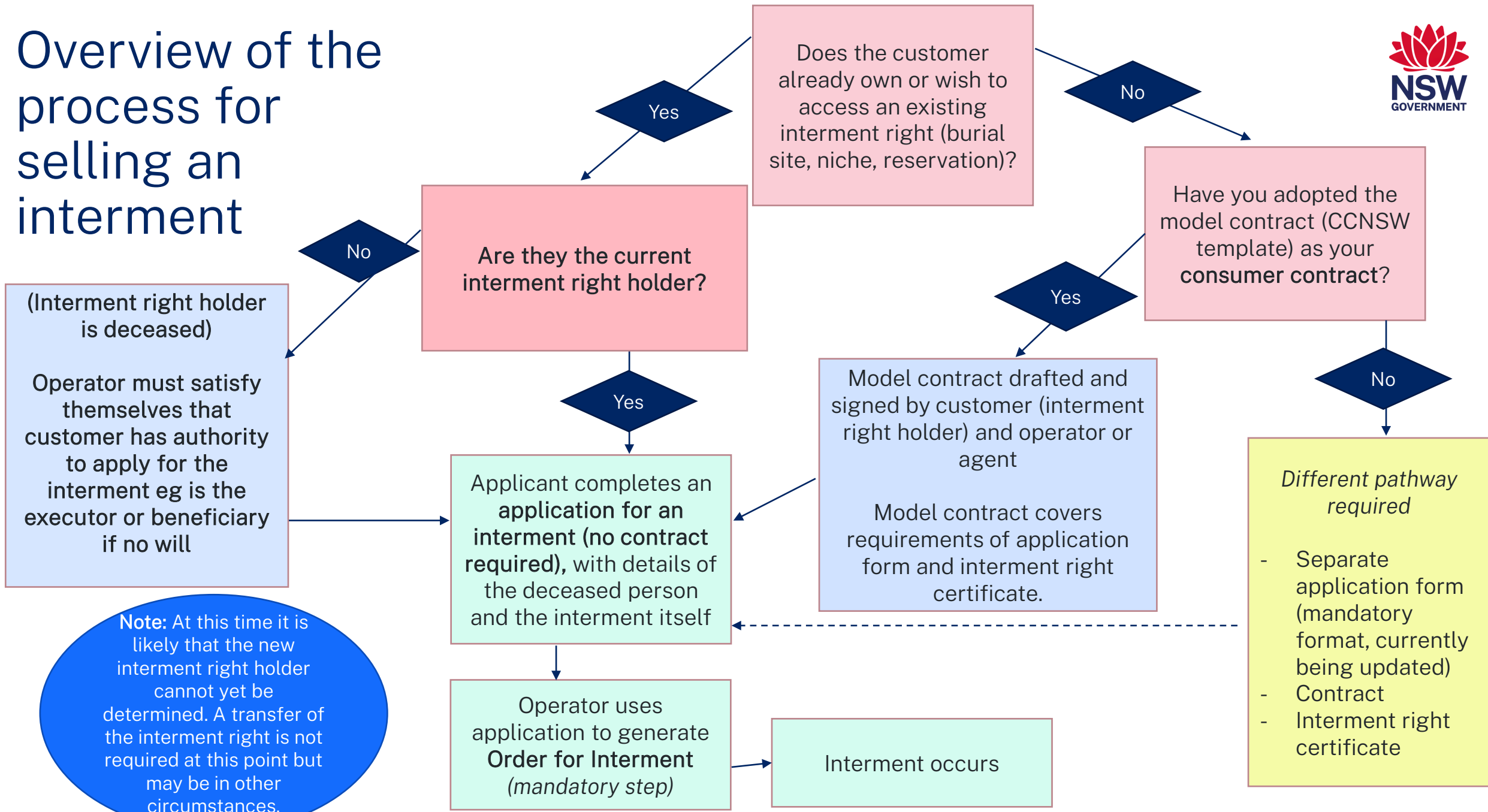


Streamlines current processes required under the C&C Act into fewer forms/forms with multiple uses



Customers have a greater understanding of the roles and responsibilities across the industry

Overview of the process for selling an interment



Note: At this time it is likely that the new interment right holder cannot yet be determined. A transfer of the interment right is not required at this point but may be in other circumstances.

(Interment right holder is deceased)
Operator must satisfy themselves that customer has authority to apply for the interment eg is the executor or beneficiary if no will

Are they the current interment right holder?

Does the customer already own or wish to access an existing interment right (burial site, niche, reservation)?

Have you adopted the model contract (CCNSW template) as your consumer contract?

Model contract drafted and signed by customer (interment right holder) and operator or agent
Model contract covers requirements of application form and interment right certificate.

Different pathway required

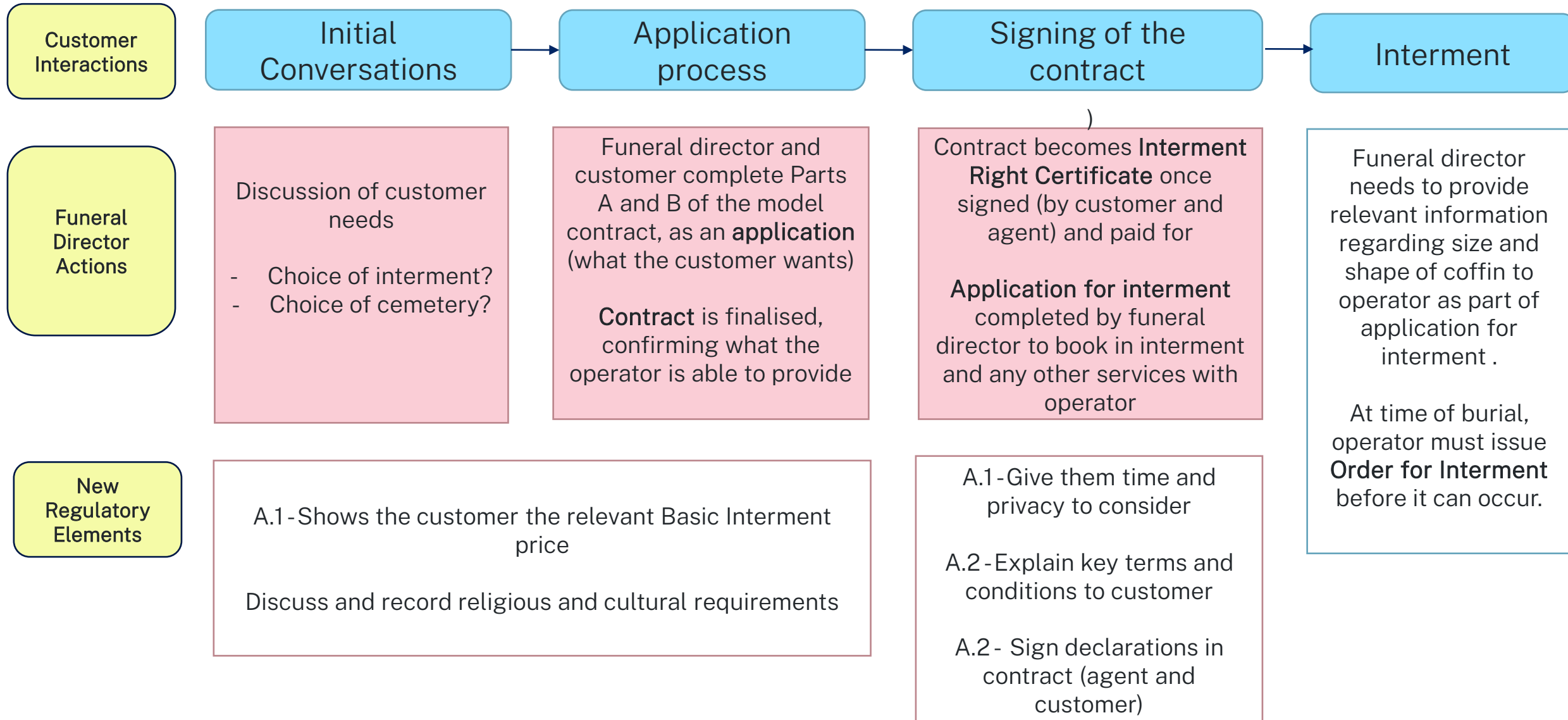
- Separate application form (mandatory format, currently being updated)
- Contract
- Interment right certificate

Applicant completes an application for an interment (no contract required), with details of the deceased person and the interment itself

Operator uses application to generate **Order for Interment** (mandatory step)

Interment occurs

Example of the process for an at-need burial – purchase via funeral director using model contract



The Guide to Contract Conditions

The purpose of the Guide is to **support operators** (and funeral directors) to **understand and comply with the conditions**

Key sections are:

- **Introducing the Conditions (pp 6 – 11):** includes interaction with Part 4 requirements and the role of the funeral director as authorised agent
- **Understanding the Conditions:** detail on A.1, A.2 and A.3
- **Showing compliance:** suggestions are included
- **Resources :** Includes a **guide to using the model contract**, both pre-need and at-need (pp 23 – 35)

Cemeteries & Crematoria NSW

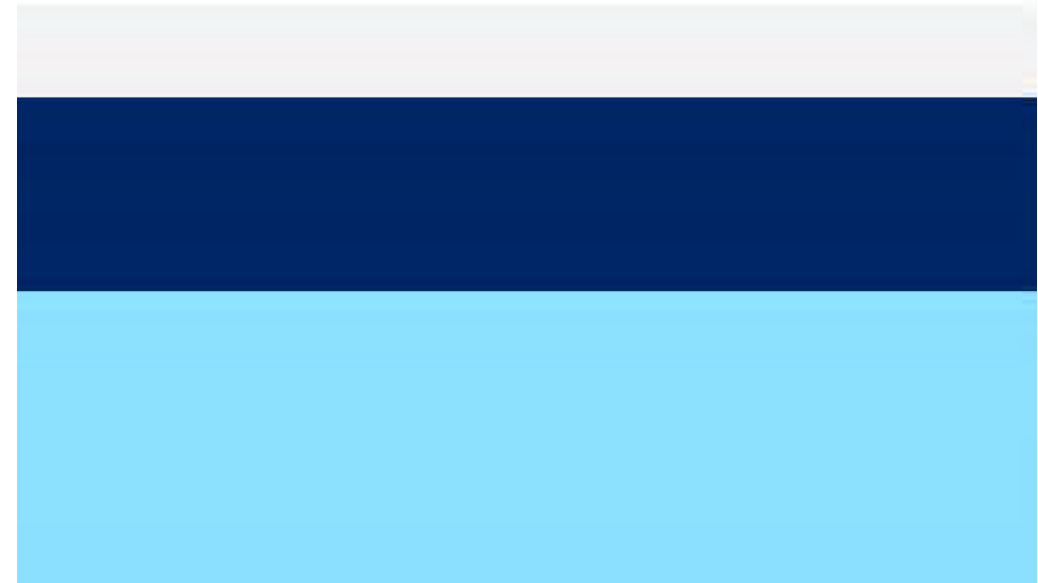
Department of Planning, Housing and Infrastructure

www.cemeteries.nsw.gov.au



Guide to Licence Conditions A: Consumer Contracts

May 2024




The model contract

- Non-mandatory

- Compliant with Conditions A

Cemeteries & Crematoria NSW
Model Contract for Perpetual Interment - Category 1 and 2



Model contract for sale of a perpetual interment right

Agreement statement

We (**the operator**) grant you (the interment right holder) the perpetual interment right and related services in this contract.

Our agreement includes:

- the Perpetual Interment Right Contract (this contract)
- the Perpetual Interment Right Terms and Conditions (Annexure A)
- the Price breakdown (Annexure B)
- the details of any related services (Annexure C)
- any other annexures to this contract.

Some terms in this agreement are defined or explained in Annexure A. Notes on the right side of this contract highlight useful terms and tell you where to find them in Annexure A.

See Definitions for: we, you, perpetual interment right

Part A: Perpetual interment right

1. Premises

Name	<Insert>
Address	<Insert>

2. Interment site **describe the site as relevant**

Type	<Insert>
Denomination	<Insert>
Area	<Insert>
Section	<Insert>
Row	<Insert>
Plot	<Insert>
Other detail	<insert>

3. Type and maximum number of interments included in the interment **right**

Burial Number of bodily interments: _____

Ash interment Number of ash interments: _____

See Definitions for: premises, interment site



Structure of the model contract

Agreement statement	Summary of all the contract elements
Part A: Perpetual interment right	Details in relation to the interment right : where it is, burial or ash, who is buying it (the Interment Right Holder), who will be interred (the Person to be Interred)
Part B: Services	Information on the interment and related services to be provided by the operator, such as the interment costs, any monument or memorial, etc.
Part C : General details	Price, payment terms, contractual details
Declarations and signatures	
Annexure A : Terms and Conditions (Mandatory)	Key terms and conditions relating to the sale of the interment right, and other ongoing rights and responsibilities
Annexure B: Price breakdown (Mandatory to include, operator can choose the format)	Details of the price as per the required format
Annexure C : Details of related services	Specific details of any other services to be provided

At-need and pre-need use of the contract

Part A: Perpetual interment right

Premises	
Name	<Insert>
Address	<Insert>

Pre need = Part A only (if paying for interment right now and services at time of need)

Part B is non-binding – can use ‘Option 2’ clauses in Sections 7,8 and 13 to clarify that services and costs will be reconfirmed at time of need.

Part B: Services

7. Interment service

We will provide you with the interment(s) (the burial or placement of ashes into the interment site specified above).

[include one of the following options as relevant]

[Option 1: for operators that charge the full amount at the time of contract (at-need and prepaid pre-need)]

This service is included in the charges in Part C.

[Option 2: for operators that charge for interment services in the future when selling a pre-need interment right]

This service is not included in the charges in Part C and will be charged later at the price that applies at the time of need.

8. Related services

We will provide the below services in addition to the perpetual interment right (see full details of these related services at Annexure C):

- Cremation
- Memorial service
- Memorial, monument or plaque
- Other: _____

[include one of the following options as relevant]

At Need and Pre need (if paying for all services now) = Part A and Part B

Use ‘Option 1’ clauses in Sections 7, 8 and 13

Part C pricing works for both At Need and Pre need.

Part C: General details

13. Price

Part A: perpetual interment right	[\$ <insert>]
Part B: services	[include one of the following options as relevant] [Option 1: For operators that charge the full cost at the time of contract (at-need and pre-need)] [\$ <insert>] [Option 2: for operators that charge for interment services in the future when selling a pre-need interment right] [<To be Determined>]
Other fees and discounts	[\$ <insert>]
Total price*	[\$ <insert>]

[If related services are still to be determined under Part B, insert the note below]

*This total price only reflects the services being paid for now.

The 'customer'

The interment right holder is the person purchasing the interment right – previously referred to as the 'applicant'.

This could be the interment right holder, if pre-need, but preferably is another person that they nominate.

4. The interment right holder **[duplicate the table if there is more than 1 holder (joint holders)]**



Full name	<Insert given name, middle name(s) and surname>
Home address	<Insert residential address including suburb, state and postcode>
Postal address (if different)	<Insert postal address including suburb, state and postcode>
Phone	<Insert contact phone number>
Email	<insert address>



See Definitions for:
interment right
holder

5. The person(s) to be interred **[duplicate the table if there is more than 1]**



Full name	<insert given name, middle name(s), surname>
Date of birth	<insert date of birth>
Date of death	<insert date of death if the person is to be interred now>
Home address	<insert residential address including suburb, state and postcode>
Postal address (if different)	<insert postal address including suburb, state and postcode>
Phone	<insert contact phone number>
Email	<insert address>

See Definitions for:
person(s) to be
interred

Clear recording of religious and cultural requirements

9. Religious and cultural requirements

This section reflects those requirements that you have requested, and we have agreed to provide.

[If no requirements write 'None']

10. Aboriginal cultural or spiritual requirements

This section reflects those requirements that you have requested, and we have agreed to provide.

[If no requirements write 'None']

Responsibility for maintenance

In the
contract

12. Maintenance responsibilities

[This indicates default responsibilities – operator can amend this if alternative maintenance arrangements part of contract]

You are responsible for the costs and activity of maintaining any memorial or monument erected on your interment site.

We are responsible for maintaining the premises, including any part of your interment site that does not contain a memorial or monument.

In the terms
and
conditions

- (f) We must maintain the premises regularly, at least to the minimum standard the law requires us to meet. This includes your interment site, with the exception of any memorial or monument built on your site. We may reduce the maintenance level in the future where we are no longer offering future interments at the premises.
- (g) You are responsible for the costs or activity needed to install or maintain a memorial or monument unless otherwise specified in the contract.
- (h) If the contract states we are responsible for maintaining the memorial or monument, we will take all reasonable steps to make sure that the maintenance:
 - is in line with agreed standards
 - respects any religious, spiritual or cultural requirements in the contract.

The operator or agent declaration



Operator declaration and signature [option 1 – use for representative, delete option 2]

Our representative (eg our employee) confirms the following:

- (a) Before offering, negotiating, or making this agreement, we gave you information about our least expensive packages (such as basic adult burial, basic ash interment, and basic cremation), our Price breakdown (Annexure B) and the goods and services included in the price.
- (b) We explained the terms and conditions of this contract to you.
- (c) We gave you reasonable time and privacy to read these materials and ask questions about them and about the terms of this agreement.

Operator declaration and signature [option 2 – use for authorised agent, delete option 1]

Our authorised agent confirms the following:

- (a) Before offering, negotiating, or making this agreement, we gave you information about our least expensive packages (such as basic adult burial, basic ash interment, and basic cremation), our Price breakdown (Annexure B) and the goods and services included in the price.
- (b) We explained the terms and conditions of this contract to you.
- (c) We gave you reasonable time and privacy to read these materials and ask questions about them and about the terms of this agreement.
- (d) They are authorised by us to act for us, and they are doing so with our authority.

The interment right holder declaration

Interment right holder declaration and signature [duplicate section if there is more than 1 interment right holder (joint)]

You confirm and declare that:

- (a) The operator, our representative or our authorised agent has explained the terms and conditions of this contract to you.
- (b) Before offering, negotiating, or making this agreement, we gave you information about the operator's least expensive packages (such as basic adult burial, basic ash interment, and basic cremation), our Price breakdown (Annexure B) and the goods services included in the price.
- (c) You have had reasonable time and privacy to read these materials and ask questions about them or about the terms of this agreement.
- (d) All information you have given the operator, in this contract or other documents, is true and correct.

Key terms and conditions (Annexure A)

Clause A.1 – Perpetual interment right

Explains what an interment right is, and what an interment right holder is.

A perpetual interment right gives the right to be interred permanently, but does not give any title or land right.

Clause A.2 – Memorials, maintenance and goods and services

Gives key information like the need for approval to erect a memorial/monument (if not in this contract), and that the interment right holder is responsible for erecting and maintaining any memorials.

Explains that materials considered hazardous on a grave could be removed by the operator.

Clause A.7 – Consumer protections, disputes and complaints

Tells a customer how to provide feedback, how disputes will be dealt with, and that they can come to CCNSW as the regulator if they are not satisfied.

End of agreement (Clause A.5) – clarification

An agreement (contract) can end when the parties have done all that the contract requires of them.

In this contract, **the agreement ends** when all of the goods and services specified and paid for have been provided. A.5(d) refers to this.

This **does not mean that the interment right ends** or is extinguished.

Some obligations can continue after the end of the contract, and the rights and duties listed at A.5(e) are all of the perpetual obligations relating to the sale of a perpetual interment right.

Price breakdown (Annexure B)

Overlap between Conditions A (contracts) and Conditions D (pricing).

Category 1 and 2 operators need to break down the prices in each contract ‘in accordance with the approved format for Licence Condition C.1, known as the price breakdown template.

This means you need to use the same sub-headings as the price breakdown templates. The sub-headings align with the Parts of the model contract.

Category 3 operators need to provide all relevant details regarding fees and charges being applied. This should include as much detail as possible.

Model contract	Price breakdown sub-heading
Part A – Interment Right	Right to inter
Part B – Services - Interment Service	Burial or placement of bodily remains or ashes
Part B – Services - Related Services	All of the ‘if applicable’ sub-headings - Memorial - Religious, Cultural or Spiritual Requirements - Additional fees, services or products

Category 3 contract – adapting the model

Category 3 not required to use certain sections of the model contract (and the related terms and conditions) – but using them is recommended to achieve the full benefits of the consumer contract

Non-mandatory element	Benefit to including	Related terms and conditions
Section 12 – Maintenance responsibilities	Clarifies maintenance responsibilities for the premises vs the site – common source of complaints later on	A.4 (f) – (h)
Section 17 – End of agreement	Useful to clarify ways in which the agreement can end	A.5
Certain terms and conditions	Good practice to include and/or may be required under other legislation	A.6 – Personal information A.7 – Consumer protections, disputes and complaints

Where to find more information

On our [Interment Industry Scheme page](#), open the Licence Conditions A accordion to find all the guidance and support materials relating to pricing.

Licence Conditions A - Consumer contracts



- [Fact sheet – Licence conditions A – Consumer contracts \(PDF, 1,050 KB\)](#)
- [Guide to Licence conditions A: Consumer contracts \(PDF, 547 KB\)](#)
- [Model contract for sale of a perpetual interment right \(DOCX, 495 KB\)](#)



4. Next steps

Next steps – for operators

- Updating the materials on the Interment Industry Scheme webpage to reflect new commencement dates and additional information clarified at roadshows and webinars
- Continue engagement on the model contract, collating and sharing common questions and answers on how it can be used
- Finalise funeral director engagement materials to support operators engaging with their funeral directors about the new requirements
- Clarify the pathways for selling an interment
 - If the model contract is used: streamlined
 - If the model contract is not used : multiple forms
- Update the Part 4 (interment rights) guidance and forms and create a simpler website view



Any
questions?



Additional slides if needed - pricing

Overview of the pricing conditions

Condition	Applies to?	What do I need to do?	How often?	Practical implication
C1	Category 1 and 2	<p>Prepare a breakdown of your basic products –your least expensive - Basic Adult Burial, Basic Ash Interment and/or Basic Cremation</p> <p>Make these available on your website and/or in your office</p>	Ongoing	Supports customer understanding of the key price components, consistent and comparable terminology.
C2	Category 1 and 2	Publish prices for all available interment services on your website (or in your office if you don't have a website)	Ongoing	Full transparency about the range of products and prices available.
C3	Category 1 and 2	<p>Show customers the relevant basic product before entering into a contract</p> <p><i>(Aligns with A.1 requirement to do this)</i></p>	Ongoing	Makes sure customers understand what they are buying and why it may cost more

Understanding the price breakdown formats (C.1)

Basic Adult Burial

Basic Ash Interment

Basic Cremation

KEY ELEMENTS

Mandatory:

- Right to inter bodily remains
- Burial or placement of bodily remains

If applicable:

- Memorial
- Religious, cultural or spiritual requirement
- Additional fees or services
- Discounts

Mandatory:

- Right to inter ashes
- Placement of ashes

If applicable:

- Cremation
- Memorial
- Religious, cultural or spiritual requirement
- Additional fees or services
- Discounts

Mandatory:

- Collection and storage
- Administration
- Cremation

If applicable:

- Religious, cultural or spiritual requirement
- Additional fees or services
- Discounts

Example of an Operator Price Breakdown –

Basic Adult Burial (first section)

Price Breakdown Element	Description of this Element	Operator Specific Information (if relevant)	Price (GST applicable element, includes GST)	Price (GST not applicable, excludes GST)
Right to inter (place) ashes in a particular location in a cemetery				
Administration – Interment right	Preparation of key documentation and associated activities to issue an interment right (the right to place (inter) ashes in a particular location) including: - Consumer Contract - Interment Right Certificate	Also includes time spent with the customer to choose a specific site	-	\$1,000
Land value	Relevant proportion of the cost of purchasing land for the cemetery	Cemetery purchased in 1890 – no land value reflected in pricing.	n/a	n/a
Site development	Relevant proportion of the cost of developing land for the cemetery, or the specific area of the cemetery (<i>Applies to new cemetery development only</i>).	Basic Ash Interments are placed into a niche the Cherry Tree Wall section of the cemetery which was developed in 2015 – no development costs included in the price.	-	n/a

Intersection with Funeral Information Standard

Disbursements		
<i>Note: these are 3rd party charges. Below are our reasonable estimates, which are subject to change. There may also be other disbursements that are not captured below.</i>		
Death certificate	Approximately \$X	
Cremation certificate	Approximately \$X (at local cemetery in XYZ Town 2XXX)	N/A
Fees charged by a cemetery	N/A	Local cemetery \$X
Crematorium fees	\$X	N/A
Viewing of body outside of business hours	\$X per hour	
Newspaper notice	\$X	
Family limousine	\$X	
Flowers	\$X	
Funeral Packages		
<u>LEAST EXPENSIVE PACKAGE</u>	\$X	
Cremation - no funeral service – no attendance This package includes the use of a cremation capsule and does not include a funeral service. Package covers transport from the location of death (within 30km) and care and preparation of the body prior to cremation.		
Standard funeral package – cremation This package includes cremation at our crematorium in a composite board coffin. Package covers transport from the location of death (within 30km), care and preparation of the body prior to cremation and a 1 hour funeral service.	\$X	
Standard funeral package - burial This package includes burial at a local cemetery in an A1 timber veneer coffin and a 1 hour funeral service. Package covers transport from the location of death (within 30km) and care and preparation of the body prior to burial.	\$X	
Deluxe funeral package - burial This package includes burial at a local cemetery in an A2 mahogany coffin and a 1.5 hour funeral service. Package covers transport from the location of death in a luxury car (within 30km) and care and preparation of the body prior to burial.	\$X	