

Queensland



CREMATIONS ACT 2003

Act No. 14 of 2003

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Cremations Act 2003

Act No. 14 of 2003

An Act to regulate the process of cremating human remains

[Assented to 9 April 2003]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Cremations Act 2003*.

2 Commencement

This Act commences on the day that the *Coroners Act 2003* commences.

3 Definitions

The dictionary in the schedule defines particular words used in this Act.

4 Cremations this Act does not apply to

This Act does not apply to the cremation of—

- (a) human remains that have been buried for 1 year or more; or
- (b) parts of a human body taken during a medical procedure or autopsy; or
- (c) human remains to which the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*, section 34 applies.

5 Permission required for cremation

A person must not cremate human remains unless the person has a permission to cremate the remains, in the approved form, that was issued by—

- (a) if an autopsy of the remains was conducted under the *Coroners Act 1958* or *Coroners Act 2003*—the coroner who ordered the autopsy or, if that coroner is unavailable, another coroner; or
- (b) otherwise—an independent doctor.

Maximum penalty—140 penalty units.

6 Getting permission to cremate

(1) The following persons may apply for a permission to cremate the human remains of a deceased person—

- (a) a close relative of the deceased person, either personally or through an agent;

Example of an agent—

A funeral director.

- (b) a personal representative¹ of the deceased person, either personally or through an agent;
- (c) if no-one mentioned in paragraph (a) or (b) applies for a permission to cremate—another adult, either personally or through an agent, who has a satisfactory explanation as to why those persons did not apply and why the adult is applying.

(2) The application must be made in the approved form.

(3) The way that an application may be sent to the coroner or independent doctor includes by fax or other electronic means.

(4) If the application is made to an independent doctor, the application must be accompanied by—

- (a) a copy of the cause of death certificate, and unless subsection (5) applies, a cremation risk certificate, issued for the deceased person; or
- (b) a certificate that—
 - (i) authorises the release of the body; and
 - (ii) is given by a person who appears to the independent doctor, after appropriate inquiry, to be a coroner, or to hold a position equivalent to a coroner, at the place where the death happened.

(5) For subsection (4)(a), the application need not be accompanied by a cremation risk certificate if—

- (a) the cause of death certificate is not a Queensland cause of death certificate; and

¹ Under the *Acts Interpretation Act 1954*, section 36, a “**personal representative**” of a deceased person is the deceased person’s executor or administrator.

(b) a cremation risk certificate has not been issued for the deceased person.

(6) A coroner may issue a permission to cremate, in the approved form, only if—

(a) the coroner or another coroner has authorised the release of the body; and

(b) the coroner receives confirmation from the doctor who performed the autopsy that the doctor is reasonably satisfied the human remains do not pose a cremation risk.

(7) Human remains pose a “**cremation risk**” if the remains contain something that, if cremated, might expose someone to the risk of death, injury or illness.

Example of something that might expose someone to risk of death, injury or illness—

A cardiac pacemaker or radioactive implant.

(8) An independent doctor may issue a permission to cremate, in the approved form, only if the doctor, after examining the human remains and making any necessary inquiries, is reasonably satisfied—

(a) the human remains do not pose a cremation risk; and

(b) the deceased person’s death is not a reportable death under the *Coroners Act 2003*.

Maximum penalty—80 penalty units.

(9) The way that a permission to cremate may be sent to the applicant, or a person nominated by the applicant on the application, includes by fax or other electronic means.

7 Deceased person’s wish to be cremated

(1) This section applies if a deceased person’s personal representative—

(a) is arranging for the disposal of the deceased person’s human remains; and

(b) knows that the deceased person has left signed instructions for his or her human remains to be cremated.

(2) The deceased person’s personal representative must ensure that—

(a) an application for permission to cremate is made; and

- (b) if the permission to cremate is issued, the deceased person is cremated in accordance with the signed instructions.

(3) This section overrides the common law to the extent that it—

- (a) allows a person to direct the person's personal representative to cremate the person's human remains; and
- (b) qualifies a personal representative's right to decide how to dispose of the deceased person's human remains.

8 Objections to cremation

(1) This section does not apply if the deceased person has left signed instructions that his or her human remains be cremated.

(2) A coroner or independent doctor must not issue a permission to cremate if the coroner or independent doctor is aware that any of the following persons object to the cremation—

- (a) a spouse, adult child or parent of the deceased person;
- (b) a personal representative of the deceased person.

(3) The person in charge of a crematorium must not allow a deceased person's human remains to be cremated at the crematorium if the person in charge is aware that any of the following persons object to the cremation—

- (a) a spouse, adult child or parent of the deceased person;
- (b) a personal representative of the deceased person.

Maximum penalty—100 penalty units.

(4) Subsection (3) applies even if the person in charge has received a permission to cremate.

(5) This section overrides the common law to the extent that it qualifies a personal representative's right to decide how to dispose of the deceased person's human remains.

9 Beneficiaries etc. not to issue permission to cremate

(1) This section applies if a coroner or independent doctor reasonably suspects that the coroner or independent doctor, or the coroner's or independent doctor's spouse, may receive a benefit because of a person's death.

(2) The coroner or independent doctor must not issue a permission to cremate the person's human remains.

Maximum penalty—120 penalty units.

(3) In this section—

“benefit”—

(a) includes—

- (i) a payment under a life insurance policy; and
- (ii) property under a will; and
- (iii) property under an intestate distribution; but

(b) does not include fees payable for professional services.

10 Prohibiting cremation

(1) The Attorney-General or a coroner may give the person in charge of a crematorium a written notice prohibiting the cremation of a deceased person's human remains.

(2) The notice may prohibit the cremation—

- (a) absolutely; or
- (b) until any stated organs or other tissue have been removed from the remains and stored in the way stated in the notice.

(3) The person in charge must comply with the notice unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—140 penalty units.

11 Dealing with ashes

(1) The person in charge of a crematorium must not dispose of the ashes remaining after a cremation except in accordance with any reasonable written instructions of the applicant.

Maximum penalty—80 penalty units.

(2) However, the person in charge may bury the ashes in a burial ground if, within 1 year after the cremation, the applicant does not give reasonable written instructions for the disposal of the ashes.

(3) Before burying the ashes, the person in charge must give the applicant at least 28 days written notice of intention to bury the ashes.

Maximum penalty—80 penalty units.

(4) The notice must be sent to the applicant at the applicant's address for service on the permission to cremate.

(5) This section overrides the common law to the extent that it qualifies the personal representative's right to decide how to dispose of the deceased person's human remains.

12 Record keeping—coroner

(1) This section applies if a coroner issues a permission to cremate.

(2) The coroner must keep—

(a) the application for permission to cremate, including any documents accompanying the application; and

(b) a copy of the permission to cremate.

(3) The documents must be kept on the coroner's file relating to the investigation of the deceased person's death.

(4) The chief executive may require a coroner to produce a document required to be kept under this section to the chief executive for inspection.

(5) The coroner must comply with the requirement unless the coroner has a reasonable excuse.

13 Record keeping—independent doctor

(1) This section applies if an independent doctor issues a permission to cremate.

(2) The independent doctor must arrange for the application for permission to cremate, including any documents accompanying the application, to be given to the person in charge of the crematorium where the deceased person is cremated.

14 Record keeping—person in charge of crematorium

(1) The person in charge of a crematorium must keep at the crematorium—

- (a) a record² of particulars, prescribed under a regulation, of each cremation at the crematorium; and
- (b) if, immediately before the commencement of this section, the person in charge was required, under the *Coroners Act 1958*, section 23F(3),³ to keep a register—the register and the information contained in the register.

Maximum penalty—80 penalty units.

(2) The person in charge may combine the record and the register required to be kept under subsection (1) into 1 document.

(3) The person in charge must keep—

- (a) if the permission to cremate was issued by an independent doctor—the application for permission to cremate, including any documents accompanying the application; and
- (b) the permission to cremate; and
- (c) if, immediately before the commencement of this section, the person in charge was required, under the *Coroners Act 1958*, section 23A(4),⁴ to keep a permission or certificate—the permission or certificate;

for each cremation at the crematorium for 15 years after the cremation.

Maximum penalty—80 penalty units.

(4) The chief executive may require the person in charge to produce a document required to be kept under this section to the chief executive for inspection.

(5) The person in charge must comply with the requirement unless the person in charge has a reasonable excuse.

Maximum penalty—100 penalty units.

2 Under the *Acts Interpretation Act 1954*, section 36, a “**record**” includes information stored or recorded by means of a computer.

3 Section 23F (Duties of officer in charge of crematorium)

4 Section 23A (Conditions of cremation)

15 Record keeping—former owner of crematorium

(1) This section applies if, during the period that a document is required to be kept under section 14(3), the business carried on at the crematorium ceases.

(2) The former owner of the crematorium must ask for the chief executive's directions about the document's storage.

Maximum penalty—80 penalty units.

(3) The chief executive must give the former owner written directions about the document's storage.

(4) The former owner must comply with the chief executive's directions about the document's storage.

Maximum penalty—80 penalty units.

(5) The chief executive may require the former owner to produce a document required to be kept under this section to the chief executive for inspection.

(6) The former owner must comply with the requirement unless the former owner has a reasonable excuse.

Maximum penalty for subsection (6)—100 penalty units.

16 False or misleading information

(1) A person must not give information to a coroner or independent doctor that the person knows is false or misleading in a material particular.

Maximum penalty—80 penalty units.

Example—

A person must not falsely state that the person is the deceased person's spouse in an application for permission to cremate.

(2) Subsection (1) does not apply to information given in a document, if the person when giving the document—

- (a) informs the coroner or independent doctor, to the best of the person's ability, how the information is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the information was ‘false or misleading’, without specifying whether it was false or whether it was misleading.

17 Meaning of “de facto partner”

(1) In this Act, a reference to a “**de facto partner**” is a reference to either 1 of 2 persons who are living together as a couple on a genuine domestic basis but who are not married to each other or related by family.

(2) In deciding whether 2 persons are living together as a couple on a genuine domestic basis, any of their circumstances may be taken into account, including, for example, any of the following circumstances—

- (a) the nature and extent of their common residence;
- (b) the length of their relationship;
- (c) whether or not a sexual relationship exists or existed;
- (d) the degree of financial dependence or interdependence, and any arrangement for financial support;
- (e) their ownership, use and acquisition of property;
- (f) the degree of mutual commitment to a shared life, including the care and support of each other;
- (g) the care and support of children;
- (h) the performance of household tasks;
- (i) the reputation and public aspects of their relationship.

(3) No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether 2 persons are living together as a couple on a genuine domestic basis.

(4) Two persons are not to be regarded as living together as a couple on a genuine domestic basis only because they have a common residence.

(5) For subsection (1)—

- (a) the gender of the persons is not relevant; and
- (b) a person is related by family to another person if the person and the other person would be within a prohibited relationship within

the meaning of the *Marriage Act 1961* (Cwlth), section 23B, if they were parties to a marriage to which that section applies.⁵

(6) This section, and the definitions “**de facto partner**” and “**spouse**” in the dictionary, expire on the commencement of the *Acts Interpretation Act 1954*, section 32DA.

18 Approval of forms

(1) The chief executive may approve forms for use under this Act.

(2) A person must not combine an approved form with advertising material.

Example—

An application for permission to cremate must not contain a business logo.

Maximum penalty for subsection (2)—40 penalty units.

19 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may—

- (a) prescribe fees for this Act; or
- (b) impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.

20 Transitional provision

If an application for a permission and certificate to cremate was made before the commencement of this section, the *Coroners Act 1958*, sections 23A to 23G, continue to apply in relation to the cremation despite the repeal of those sections.

5 *Marriage Act 1961* (Cwlth), section 23B (Grounds on which marriages are void)

SCHEDULE

DICTIONARY

section 3

“autopsy” means an autopsy or post mortem under—

- (a) the *Coroners Act 1958*, the *Coroners Act 2003* or the *Transplantation and Anatomy Act 1979*; or
- (b) a law of another State or country that corresponds to an Act mentioned in paragraph (a).

“burial ground” includes a place reserved for the burial of ashes remaining after a cremation.

“cause of death certificate” means—

- (a) a Queensland cause of death certificate issued by a doctor; or
- (b) a certificate stating the cause of death that is issued by a doctor.

“close relative” means—

- (a) a spouse of the deceased person; or
- (b) a child of the deceased person who is at least 18 years; or
- (c) a parent of the deceased person; or
- (d) a brother or sister of the deceased person who is at least 18 years; or
- (e) if the deceased person was an Aboriginal person or Torres Strait Islander—a person who is an appropriate person according to the tradition or custom of the community to which the deceased person belonged.

“coroner” means—

- (a) a coroner under the *Coroners Act 2003*; or
- (b) if the reference to coroner is made in the context of the *Coroners Act 1958*, a coroner under that Act.

“cremation risk” see section 6(7).

SCHEDULE (continued)

“cremation risk certificate” means a certificate in the approved form, or a notation on a copy of the cause of death certificate, that—

- (a) states whether the deceased person’s human remains pose a cremation risk; and
- (b) is signed by either—
 - (i) the doctor who signed the cause of death certificate; or
 - (ii) if the doctor who signed the cause of death certificate is not available—another doctor.

“de facto partner” see section 17.

“doctor”, other than in the term independent doctor, includes a person who, in another State or country, is equivalent to a doctor.⁶

“human remains” means the remains after death of a human body, or part of a human body, and includes the body of a stillborn child.

“independent doctor” means a doctor who did not sign—

- (a) the cause of death certificate; or
- (b) the cremation risk certificate.

“medical procedure” means a diagnostic or surgical procedure.

“Queensland cause of death certificate” means either of the following certificates under the *Registration of Births, Deaths and Marriages Act 1962*—

- (a) a medical certificate of the cause of death, other than a certificate mentioned in section 31 of that Act; or
- (b) a medical certificate of the cause of peri-natal death, other than a certificate that section 24(4) of that Act deems not to be a medical certificate as to the cause of death.

“spouse” includes de facto partner.

“stillborn child” means a child not born alive as defined in the *Registration of Births, Deaths and Marriages Act 1962*, section 5(2)(b).

⁶ Under the *Acts Interpretation Act 1954*, section 36, a **“doctor”** is a medical practitioner under the *Medical Practitioners Registration Act 2001*, schedule 3, that is, a person registered under the *Medical Practitioners Registration Act 2001*.

