

CREMATIONS BILL 2002

EXPLANATORY NOTES

AMENDMENTS TO BE MOVED IN COMMITTEE BY THE HONOURABLE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

GENERAL OUTLINE

Title of the Bill

Cremations Bill 2002

Objectives of the Amendments

Following the introduction of the bill, certain groups within the funeral industry provided further comment on the bill as introduced.

Those comments highlighted:

- that there should not be any doubt about whether an agent can make the application for permission to cremate on behalf of any of the persons referred to in clause 6 of the bill
- that procedures regarding the disposal of the ashes should reflect what occurs in practice
- the need for a number of technical amendments to the bill.

Achievement of the Objectives

Section 23C of the *Coroners Act 1958* allows an agent (for example a funeral director) to make the application for permission to cremate. Clause 6 of the bill carries this over by footnoting that under the general law any of the persons referred to in clause 6 may act through an agent. Clause 6 of the bill is being amended to provide in the substantive part of the bill that an agent can make an application for permission to cremate on behalf of any of the persons referred to in clause 6. A funeral director is given as an

example of an agent. This will avoid operational disputes about whether an agent can make the application.

Clause 11 of the bill only allows an applicant personal representative to give instructions about what is to happen with the ashes. In all other cases the ashes are to be collected by the applicant. This distinction between collection and disposal depending on who has made the application was inserted because at common law it is the personal representative who is entitled to possession of the ashes for disposal purposes.

However in practice it is usually the applicant, irrespective of whether he/she is the personal representative, who will be making the decision for families about disposal of the ashes. This is reflected in section 23F of the *Coroners Act 1958*. Clause 11 is therefore being amended to more accurately reflect what happens by providing that that:

- the ashes are to be dealt with in accordance with the reasonable written instructions of the applicant
- the clause 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 (ie the ashes).

As noted above, this is consistent with the current provisions contained in section 23F of the *Coroners Act 1958*.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives of the amendments.

Administrative cost to Government of implementation

The implementation of the amendments should not raise any administrative costs to government.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

Some of the amendments are the result of comments by groups within the funeral industry who provided further comment on the bill as

introduced. The significant amendments have been discussed with the Department of Premier and Cabinet.

NOTES ON PROVISIONS

Amendment 1 amends clause 5 to provide that the permission to cremate has to be in the approved form.

Amendment 2 amends clause 6(1) to:

- make it clear that the permission to cremate is a document.
- provide in the substantive part of the clause that an agent can make the application for permission to cremate on behalf of any of the persons referred to in clause 6 ; and
- provide that a funeral director is an example of an agent.

Amendment 3 amends clause 6(6) and clause 6(8) by providing that the permission to cremate has to be in the approved form.

Amendment 4 amends clause 11(1) to 11(3) by providing that:

- the person in charge of the crematorium cannot dispose of the ashes except in accordance with in any reasonable written instructions of the applicant; and
- the person in charge of the crematorium now has to give the applicant 28 days written notice if the person in charge elects to bury the ashes because no reasonable written instructions have been received from the applicant within one year after the cremation.

The removal of the differing procedures governing the disposal of the ashes depending on whether or not the applicant is the personal representative more accurately reflects what happens on the ground in relation to the ashes. This is that all applicants (whether or not they are personal representatives) will, in the vast majority of cases, be the people who will be making the decision regarding the disposal of the ashes. It is consistent with the current provision in section 23F of the *Coroners Act 1958*.

The change from 14 days to 28 days written notice before the person in charge of the crematorium can arrange for burial of the ashes in a burial

ground provides applicants with more time to be advised of the proposed burial.

Amendment 5 amends clause 11(5) to provide that the clause 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 (ie the ashes). This amendment is consequential to Amendment 4.

Amendments 6 and 7 amend the definition of "cremation risk certificate" in the Dictionary in the Schedule to provide that the cremation risk certificate is to be in the approved form or a notation on a copy of the cause of death certificate.