

# ***Cremations Regulation 2025***

## **Human Rights Certificate**

### **Prepared in accordance with Part 3 of the *Human Rights Act 2019***

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity provide this human rights certificate with respect to the *Cremations Regulation 2025* (the Regulation) made under the *Cremations Act 2003* (the Act).

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

### **Overview of the Subordinate Legislation**

The primary purpose of the Act is to ensure that the body of a person whose death is suspicious or should otherwise be reported is not cremated without discovery. The secondary purpose is to ensure, as much as possible, that bodies which still contain cremation risks (for example pacemakers) are not cremated.

The purpose of the Regulation is to place obligations on crematoriums with respect to the labelling of ashes and recordkeeping.

The Act requires that permission is required to cremate the human remains of a deceased person and outlines the process for persons to apply for a permission to cremate.

Section 11 of the Act imposes requirements on a person in charge of a crematorium in relation to dealing with ashes once cremation has occurred. Section 11(1)(a) of the Act requires the person to label the ashes in accordance with the requirements prescribed under a regulation. Section 11(1)(b) of the Act prevents the person from disposing of the ashes except in accordance with reasonable written instructions of the applicant. Section 11(1) of the Act contains a maximum penalty of 80 penalty units for contravention of the labelling requirements. Section 11(2) of the Act provides that if an applicant does not give reasonable written instructions within 1 year after the cremation, then the person in charge may bury the ashes in a burial ground.

Section 3 of the Regulation prescribes, for section 11(1)(a) of the Act, the labelling requirements for ashes, such as where and how the label should be placed on a container in which ashes are stored and what information must be included on the label, including the cremation date and the name and address of the crematorium.

Section 14(1)(a) of the Act requires the person in charge of a crematorium to keep a record of particulars, prescribed under a regulation, of each cremation at the crematorium and permission to cremate. Section 14(1) of the Act contains a maximum penalty of 80 penalty units for contravention of the record keeping requirements. Section 14(5) of the Act also enables the

chief executive to require the person to produce a document requirement to be kept under the section to the chief executive for inspection.

Section 4 of the Regulation prescribes, for section 14(1)(a) of the Act, required particulars for a record of cremation, such as the deceased person's name, age at the date of death, the deceased person's last known place of residence and details about how the ashes were dealt with.

## Human Rights Issues

### **Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

The human right relevant to the Regulation is the right to privacy and reputation (section 25 of the HR Act).

### **Consideration of reasonable limitations on human rights (section 13 HR Act)**

#### **(a) the nature of the right**

The *right to privacy and reputation* under section 25 protects the individual from unlawful or arbitrary interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is broad. It protects privacy in the sense of personal information, data collection, and correspondence, and extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence, and reputation. Case authority suggests that 'arbitrary' in the human rights context refers to conduct that is capricious, unpredictable, or unjust, and refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought.

The Regulation prescribes, under section 4(d) and (e), certain information about how ashes are to be dealt with in the record of cremation.

The Regulation limits the right to privacy because the prescribed information includes personal information obtained from an application for permission to cremate made by a close relative or personal representative of the deceased or another adult. The application form currently requires an applicant to provide their personal details, including their name and address for service. The Regulation also requires details of the applicant's reasonable written instructions about the disposal of ashes to be retained.

The right to privacy is further limited by the Regulation because it also enables the information required to be kept by the Regulation to be shared with the chief executive under section 14(5) of the Act.

#### **(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom**

The purpose of the limit on the right to privacy is to promote compliance with obligations that ensure cremations are conducted lawfully and appropriately.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves this purpose by requiring the provision of certain information relevant to the obligations for disposal under the Act. Specifically, recording personal information about the applicant for permission to cremate ensures that they are readily identifiable, so that a person in charge of a crematorium can meet their obligations for dealing with ashes under section 11 of the Act.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available ways to achieve the purpose. It would be less restrictive to not require a person in charge of a crematorium to keep records of an applicant's personal information. However, this could result in the person failing to obtain relevant information and take due care during the cremations process.

There is no more effective alternative to ensuring compliance than a requirement that the relevant information is kept in accordance with the Regulation. Further, the Regulation only prescribes the information which is necessary to support the obligations under the Act, which ensures the limit only goes as far as necessary to achieve the purpose. Placing such obligations on a person in charge of a crematorium is considered the most direct and least restrictive way of obtaining and retaining such information.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

While keeping records about an applicant limits the right to privacy, this has to be balanced against the importance of, and public interest in, ensuring transparency and accountability and that the integrity of the cremation process is safeguarded.

Accordingly, the interference with the right to privacy is not arbitrary but proportionate to the consequences of no record being kept regarding the applicant or their written instructions regarding disposal of ashes.

- (f) any other relevant factors

Nil.

## Conclusion

I consider that the Regulation is compatible with the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**DEB FRECKLINGTON MP**  
Attorney-General and Minister for Justice  
Minister for Integrity