

Question on Notice

No. 540

Asked on Tuesday, 17 April 2007

Mr FOLEY asked the Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland (Mr Shine) -

QUESTION:

With reference to a constituent who cannot collect her grandmother's cremated ashes because she was not the initial applicant with the crematorium and as the ashes are therefore due to be destroyed –

Will he review the situation so that appropriate family members of the deceased can apply for cremated ashes?

ANSWER:

Section 6 of the *Cremations Act 2003* provides that a close relative (that is a spouse, adult child, parent, adult brother or sister) of the deceased; or where the deceased was an Aboriginal person or Torres Strait Islander – an appropriate person according to the tradition or custom of the community to which the deceased person belonged; can apply either personally or through an agent (for example a funeral director) for a permission to cremate. The section also allows the deceased person's executor or administrator; or where none of the previously mentioned persons have applied, another adult person, to apply for a permission to cremate.

Section 11 of the *Cremations Act 2003* provides that the crematorium must not dispose of the ashes except in accordance with any reasonable written instructions of the applicant for cremation. The person in charge of the crematorium may bury the ashes in a burial ground if, within one year after the cremation, the applicant for cremation has not given reasonable written instructions for the disposal of the ashes. Before burying the ashes the person in charge must however give the applicant at least 28 days written notice of intention to bury the ashes.

Similar provisions exist in a number of Australian jurisdictions.

The Queensland Law Reform Commission currently has a reference dealing with the law in relation to the final disposal of a dead body. In Chapter 8 of the Commission's Information Paper (WP58) 'A Review of the Law in Relation to the Final Disposal of a Dead Body' (which can be accessed through the Commission's website) the Commission discusses the operation of section 11 and specifically poses the question whether there is a need to enlarge the group of persons entitled to a deceased person's ashes. The Commission notes that it has been informed that disputes over ashes are not common and, when they occur, are generally resolved between the parties.

Given that the Commission's current reference considers the operation of section 11, I do not propose to undertake a separate review of this section. The Commission hopes to finalise its report to me on this reference by June 2008. I will consider the Commission's report before making any decision about whether there needs to be any legislative amendment.