



Minister for City Services
Minister for Multicultural Affairs
Minister for Recycling and Waste Reduction
Minister for Roads and Active Travel
Minister for Transport
Member for Murrumbidgee

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Jones

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its Scrutiny Report 38 in relation to the Cemeteries and Crematoria Bill 2019 (the Bill).

I thank the Committee for its comments relating to potential limitations of human rights. Responses to the Committee's comments are provided below.

Right to reputation and privacy

The Committee has noted that various provisions relating to the provision and access to personal information which may limit the protection of privacy and reputation provided by section 12 of the *Human Rights Act 2004* (HR Act) and that the accompanying explanatory statement (ES) recognises these potential limits. The Committee has referred the Assembly to that ES.

The Committee further noted that the Bill will allow for authorised persons to enter a premises for inspection purposes, which may include entry without consent to residential premises where these are being used as a cemetery or crematorium.

Section 86 (1) (c) of the Bill provides the ability for an authorised person to enter a premises without a warrant if they believe, on reasonable grounds, that there is a risk to the environment or public health, and the risk is so immediate that immediate entry without a search warrant is necessary. This section can apply to a residential premises only if that premises is also a cemetery or crematorium.

This provision potentially limits section 12 of the HR Act which provides everyone the right to not have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily. This limitation is safeguarded by the requirement that an authorised person would need to have reasonable grounds to believe that there is a risk to the environment or public health, and the risk is so immediate that immediate entry without a search warrant is necessary. Additionally, it is very

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia
Phone +61 2 6205 1470 Email steel@act.gov.au



@ChrisSteelMLA



christeellabor



chrissteelmla



unlikely that circumstances will occur where a cemetery or crematoria is also a residential premises. The ACT's planning system prohibits the use of residential land for a cemetery or crematoria, and if a facility were to have a residential component, for example a groundskeepers residence, it is very likely that this would be separated from the facility for practical reasons.

The ES will be updated to provide further justification for this potential limitation.

Right to the presumption of innocence

The Committee notes that the Bill will establish a number of strict liability offences which generally involve obligations on the licensees in operating a facility. However, there are some offences that apply to the community generally. The Committee noted that the ES recognises that these strict liability offences may limit the right to presumption of innocence protected by section 22 of the HR Act and refers the Assembly to the ES.

The Committee suggested consideration should be given to amending the ES to include further justification of the use of strict liability offences where appropriate.

The Committee noted that the offence proposed in section 14 of the Bill, relating to transporting human remains in an acceptable container or wrapping does not direct the reader to the definition in the Bill of 'acceptable container or wrapping'.

The ES will be updated to provide further justification for strict liability offences and to direct the reader to the definition of an acceptable container or wrapping when discussing the strict liability offence in section 14 of the Bill.

Creation of offences by regulation

The Committee notes that the Bill provides for offences to be created by regulation with a maximum penalty of 10 penalty units and requested that a justification be provided for the inclusion of this power.

The Bill aims to provide a best practice regulatory framework for cemetery and crematoria facilities that is flexible and robust. For example, the definition of a crematoria in the Bill can include an alkaline hydrolysis (water cremation) facility. While there are currently none of these facilities operating commercially in Australia there is interest in bringing these technologies to Australia and the ACT. This provision will ensure that the regulatory framework for the operation of these facilities will be robust and appropriate without the need for additional legislative change.

The ES will be updated to provide further justification for the inclusion of this power.

Henry VIII clause

The Committee notes that Part 20 of the Bill includes transitional provisions and includes the power for regulations which modify the transitions provisions, and requested further information on why this is needed in the context of the Bill.

Section 213 of the Bill provides for the Executive to make regulations for transitional arrangements as a result of the Act taking effect. These provide for the use of the words *necessary* or *convenient* which have been judicially considered to be words of limitation when referring to regulation. This means that any transitional regulation will not widen the Act's purpose. This provision is important for achieving the objectives, managing the effective operation, and eliminating transitional flaws in

the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

The ES will be updated to provide further justification for this provision.

I trust the above responses provide the Committee with clarification and addresses their concerns.

Yours sincerely

Chris Steel MLA
Minister for City Services