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Regulatory Reform and Policy,
People, Operations, Legal and Regulation Division
Department of Health
50 Lonsdale Street, Melbourne, VIC 3000

By email only: legandregreform@health.vic.gov.au

Submission to the Review of the Cemeteries and Crematoria Regulations 2015

Dear Regulatory Reform and Policy team,

Thank you for the invitation to make a submission to the Review of the Cemeteries and Crematoria Regulations 2015 (**the Regulations**).

In making this submission, the Office of the Victorian Information Commissioner (**OVIC**) has drawn on its experience in regulating and providing guidance to Victorian Public Sector organisations (**organisations**) on information security, information privacy and freedom of information.

OVIC's submission focuses on the collection and use of personal information by cemeteries and crematoria, as proposed by the Regulations. The privacy protections in the *Privacy and Data Protection Act 2014 (PDP Act)* do not apply to persons who are deceased, however OVIC notes that information about a deceased person may include personal information about an individual who is living.¹

Collection of personal information

OVIC acknowledges the Department of Health's (**the Department**) comments in the provided discussion paper that cover the collection of unnecessary information. Organisations subject to the PDP Act must only collect personal information that is necessary for their functions or activities.²

Interment authorisation forms should only collect the information necessary to administer the interment. Any other information should be removed from the forms listed in Schedule 1 of the Regulations.

¹ See the Guidelines to the Information Privacy Principles, at https://ovic.vic.gov.au/book/key-concepts/#Living_natural_persons.

² See IPP 1.1 in the PDP Act.

Using personal information for secondary purposes

Further, personal information can only be used for the primary purpose for which it was collected. For example, organisations cannot use personal information collected for the purpose of administering interment for another unrelated purpose.

Some exceptions for secondary use apply, such as if the secondary use is related to the primary purpose of collection and the individual would reasonably expect the organisation to use the information for that secondary purpose.³

The discussion paper notes that feedback from stakeholders suggested that some information ‘should be retained for identification purposes, historical or research purposes, or for operational efficiency’.⁴ Cemetery trusts and crematoria should consider whether personal information collected through interment authorisation forms can be used for these purposes under Information Privacy Principles (IPPs) 2.1(a) – (h).

The more information an organisation collects and stores, the higher the risk of harm from an information security incident. Organisations with greater volumes of information are more likely to be targeted by malicious actors. This, and the requirements for collection and use above, mean that the best privacy protection for organisations and the public is for organisations to collect and store as little personal information as possible.

Notice of collection

The requirements for collection and use of personal information are easier to navigate when there is a clear purpose identified and expressed by the organisation collecting the information. IPP 1.3 requires organisations to provide a notice of collection to individuals whose personal information is collected.⁵ Currently, the forms in Schedule 1 of the Regulations do not have notices of collection written into them. It is unclear whether cemeteries and crematoria are providing these notices of collection together with the forms.

OVIC is of the view that the Department should prescribe a notice of collection on each of the forms listed in Schedule 1. Further, the Department should prescribe text for the elements of the notice that will be consistent across all cemeteries and crematoria, such as information explaining that the individual is able to gain access to the information provided. Most importantly, notices of collection require organisations to express a clear purpose for collection to the individual that is providing the information, enhancing both transparency and accountability.

In summary, it is OVIC’s view that:

- All information that is not necessary for the primary purpose of collection be removed from the forms listed in Schedule 1 of the Regulations.

³ See IPP 2.1(a) in the PDP Act.

⁴ See page 28 of the discussion paper, in relation to form 1.

⁵ See IPP 1.3 in the PDP Act.

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- The Department should prescribe a notice of collection on those forms and prescribe text for the elements that are consistent across organisations.

If you would like to discuss anything in this submission, please contact us through the provided contact details. I intend to publish a copy of this submission on OVIC's website.

Yours sincerely

Sean Morrison

Information Commissioner