

South Australia

## Cremation Act 2000

An Act to regulate the cremation of human remains; and for other purposes.

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### Legislative history

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#### The Parliament of South Australia enacts as follows:

##### 1—Short title

This Act may be cited as the *Cremation Act 2000*.

##### 4—Interpretation

In this Act, unless the contrary intention appears—

**crematorium** means a place for the cremation of human remains;

**doctor** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**human remains** has the same meaning as in the *Births, Deaths and Marriages Registration Act 1996*;

**Register** has the same meaning as in the *Births, Deaths and Marriages Registration Act 1996*;

**Registrar** means the Registrar of Births, Deaths and Marriages or a Deputy Registrar of Births, Deaths and Marriages;

**spouse**—a person is the spouse of another if they are legally married.

## 5—Offence to cremate human remains other than in lawfully established crematorium

A person must not cremate human remains, or cause, suffer or permit human remains to be cremated, other than in a lawfully established crematorium.

Maximum penalty: \$10 000 or imprisonment for 2 years.

## 6—Issue of cremation permit

- (a1) A person must not cremate human remains, or cause, suffer or permit human remains to be cremated, unless he or she has received a cremation permit issued under this section.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (1) Subject to this Act, the Registrar may, on due application made under this section, issue the applicant with a cremation permit in the prescribed form.
- (2) The Registrar must not issue a permit under this section unless the application is accompanied by—
- (a) —
- (i) certificates from 2 doctors (one of whom was responsible for the deceased's medical care immediately before death or examined the body of the deceased after death); or
- (ii) a certificate from a doctor who has completed a *post mortem* examination of all the vital organs of the deceased, certifying that the deceased died from natural causes; or
- (b) an authorisation for the disposal of human remains issued under the *Coroners Act 2003* or a corresponding previous enactment.
- (3) Despite subsection (2), the Registrar may, on application, issue a cremation permit without the documents required under that subsection, if—
- (a) in the case of an application to cremate the remains of a person who died in another State or a Territory of the Commonwealth—the application is accompanied by the documents that would be required under the law of that State or Territory for the issue of a cremation permit or other authorisation for cremation of the remains in that State or Territory;
- (b) in any other case—the Registrar is satisfied that—
- (i) the deceased's death has been registered under the *Births, Deaths and Marriages Registration Act 1996* or a corresponding previous enactment; and
- (ii) the particulars entered in the Register record that the deceased died from natural causes; and
- (iii) there is good reason why the documents cannot be produced; and

### Examples—

- 1 If the age and condition of the body of the deceased are in such a state that the cause of death cannot be determined, a doctor would not be able to issue a certificate under subsection (2)(a)(ii).

2 A document obtained for the purposes of subsection (2) may have been lost or destroyed.

- (iv) the State Coroner does not require the human remains for the purposes of an inquest or for determining whether an inquest is necessary or desirable under the *Coroners Act 2003*; and
  - (v) there is no other reason why the permit should not be issued.
- (3a) The Registrar may require information supplied for the purposes of subsection (3)(b)(iii) to be verified by statutory declaration or some other means.
- (4) A doctor must not give a certificate under this section if the State Coroner or a police officer is required to be notified of the death under the *Coroners Act 2003*.  
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (5) A doctor must not, knowing—
- (a) that he or she has a pecuniary interest in the death of another person under a policy of life insurance; or
  - (b) that he or she is entitled in expectancy of the death of another person to any real or personal property,
- give a certificate under this section.  
Maximum penalty: Imprisonment for 4 years.

### **7—Relatives etc may object to cremation in cases where cremation not directed by deceased person**

A person must not cremate human remains, or cause, suffer or authorise the cremation of human remains, knowing that the personal representative or a spouse, domestic partner, parent or child of the deceased person objects to the cremation, unless the deceased person directed, by a will or some other attested instrument, that his or her body be cremated.

Maximum penalty: \$5 000.

### **8—Attorney-General, State Coroner etc may prohibit cremation**

- (1) The Attorney-General, the State Coroner or a magistrate may, if he or she considers that there is reasonable cause for doing so, by order in writing given to the person in charge of a crematorium, prohibit the cremation of the remains of a specified deceased person, either absolutely or until the viscera or any other organs have been removed from the body and lodged in such manner and custody as the Attorney-General, State Coroner or magistrate may require.
- (2) An order under subsection (1) may be given personally or by post.
- (3) A person in charge of a crematorium who causes, suffers or permits the cremation of human remains in the crematorium in contravention of an order under subsection (1) is guilty of an offence.  
Maximum penalty: \$15 000 or imprisonment for 4 years.

### **9—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe penalties, not exceeding \$2 500, for breach of, or non-compliance with, a regulation; and
  - (b) fix fees and provide for the payment, recovery, waiver or refund of fees.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Repeal of Act

The *Cremation Act 2000* was repealed by Sch 1 cl 1 of the *Burial and Cremation Act 2013* on 1.2.2014.

### Legislation repealed by principal Act

The *Cremation Act 2000* repealed the following:

*Cremation Act 1891*

### Principal Act and amendments

Year	No	Title	Assent	Commencement
2000	52	<i>Cremation Act 2000</i>	20.7.2000	1.2.2001 ( <i>Gazette 1.2.2001 p392</i> )
2003	33	<i>Coroners Act 2003</i>	31.7.2003	Sch (cll 8 & 9)—1.7.2005 ( <i>Gazette 23.6.2005 p1899</i> )
2006	10	<i>Statutes Amendment (Disposal of Human Remains) Act 2006</i>	29.6.2006	Pt 4 (ss 7—9)—24.7.2006 ( <i>Gazette 20.7.2006 p2335</i> )
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 20 (ss 61 & 62)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )
2010	5	<i>Health Practitioner Regulation National Law (South Australia) Act 2010</i>	1.7.2010	Sch 1 (cl 8)—1.7.2010 ( <i>Gazette 1.7.2010 p3338</i> )

### Provisions amended

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.7.2005
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2005</i>
s 4		
doctor	substituted by 5/2010 Sch 1 cl 8	1.7.2010
domestic partner	inserted by 43/2006 s 61(1)	1.6.2007

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Register	inserted by 10/2006 s 7	24.7.2006
spouse	substituted by 43/2006 s 61(2)	1.6.2007
s 6		
s 6(a1)	inserted by 33/2003 Sch (cl 8(1))	1.7.2005
s 6(2)	amended by 33/2003 Sch (cl 8(2))	1.7.2005
	amended by 10/2006 s 8(1)	24.7.2006
s 6(3)	substituted by 10/2006 s 8(2)	24.7.2006
s 6(3a)	inserted by 10/2006 s 8(2)	24.7.2006
s 6(4)	substituted by 33/2003 Sch (cl 8(3))	1.7.2005
s 7	amended by 43/2006 s 62	1.6.2007
s 8		
s 8(1)	amended by 33/2003 Sch (cl 9(1), (2))	1.7.2005
s 9		
s 9(2)	substituted by 10/2006 s 9	24.7.2006

### **Historical versions**

1.7.2005

24.7.2006

1.6.2007