

SOUTH AUSTRALIA

LOCAL GOVERNMENT (CEMETERY) REGULATIONS 1995

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REGULATIONS UNDER THE LOCAL GOVERNMENT ACT 1934

Local Government (Cemetery) Regulations 1995

being

No. 113 of 1995: *Gaz.* 25 May 1995, p. 2503¹

¹ Came into operation 1 September 1995: reg. 2.

Citation

1. These regulations may be cited as the *Local Government (Cemetery) Regulations 1995*.

Commencement

2. These regulations will come into operation on 1 September 1995.

Revocation

3. The regulations made under the *Local Government Act 1934* relating to cemeteries (see *Gazette* 5 October 1944 p. 444), as varied, are revoked.

Interpretation

4. In these regulations, unless the contrary intention appears—

"**the Act**" means the *Local Government Act 1934*;

"**cemetery authority**" means the person or body for the time being responsible for the administration of a cemetery;

"**exhumation**" includes the removal of non cremated human remains from a vault;

"**human remains**" means the body or part of the body of a deceased person and includes cremated remains;

"**interment**" of human remains includes—

- (a) the placement of cremated remains in a columbarium or other structure designed as a repository for human remains;
- (b) the burial in the earth of cremated remains (with or without a container),

but does not include the scattering of cremated remains;

"**mausoleum**" means a structure—

- (a) that is designed for the interment of human remains; and
- (b) that is designed to hold one or more vaults for the interment of non cremated human remains; and
- (c) in which at least one vault (excluding any memorial attached to the vault) is wholly, or protrudes at least 150 mm or more, above the surface of the ground,

but does not include a structure that is designed for the interment exclusively of cremated remains;

"**underground vault chamber**" means a walk in structure—

- (a) that is designed for the interment of human remains; and

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(b) that is designed to hold one or more vaults for the interment of non cremated human remains; and

(c) in which each vault (excluding any memorial attached to the vault) is wholly below the surface of the ground,

but does not include a structure that is designed for the interment exclusively of cremated remains.

Non-application to Aboriginal sites

5. These regulations do not apply to or in relation to a cemetery that is an Aboriginal site within the meaning of the *Aboriginal Heritage Act 1988*.

Non-application to unclaimed cremated remains

6. These regulations do not apply to or in relation to cremated remains disposed of by a cemetery authority pursuant to regulation 11(2) of the *Cremation Regulations 1994*.

Cemetery to be fenced

7. A cemetery authority must ensure that the cemetery is securely fenced at all times.

Plan of cemetery

8. (1) A cemetery authority must keep a plan of the cemetery showing—

(a) each site at which human remains are interred; and

(b) each site set aside for the interment of human remains.

(2) If an interment right in force identifies the site at which human remains are to be interred in pursuance of the interment right, the cemetery authority must include in the plan of the cemetery the number allocated to, or a description of, that site.

Register of interments

9. (1) A cemetery authority must keep a register of interments in accordance with this regulation.

(2) The cemetery authority must enter in the register—

(a) the following particulars in relation to each interment in the cemetery (including any re-interment of remains following their exhumation from the cemetery):

(i) the name of the deceased;

(ii) the age of the deceased at the date of his or her death;

(iii) the last place of residence of the deceased;

(iv) the date on which the interment occurred;

(v) whether the remains of the deceased were cremated;

4.

- (vi) if the remains of the deceased were interred in the earth—
 - (A) whether the remains were interred in a coffin or other receptacle;
 - (B) the number allocated to the interment site;
 - (C) the location of the interment site;
 - (D) the depth to which the remains were interred;
 - (vii) if the remains of the deceased were interred in a vault—
 - (A) the number allocated to the vault site;
 - (B) the location of the vault site;
 - (C) whether the vault is in a mausoleum or underground vault chamber;
 - (D) whether the remains were interred in a coffin or other receptacle;
 - (E) if the vault consists of more than one compartment—the compartment in which the remains were interred;
 - (F) if the vault is wholly below the surface of the ground and is not in an underground vault chamber—the depth of cover between the highest part of the vault and the surface of the ground; and
- (b) the following particulars in relation to each exhumation of remains interred in the cemetery:
- (i) the name of the deceased whose remains were exhumed;
 - (ii) the date on which the exhumation occurred;
 - (iii) the reasons for the exhumation.

(3) The register will be in a form determined by the cemetery authority.

Register of interment rights

10. (1) A cemetery authority must keep a register of all interment rights granted by the cemetery authority.

(2) The cemetery authority must record in the register the location of and number allocated to, or a description of, each site in the cemetery in respect of which an interment right has been granted.

(3) The register will be in a form determined by the cemetery authority.

Grant of interment rights

11. An interment right granted by a cemetery authority must—

- (a) identify the person to whom the interment right is granted; and
- (b) —
 - (i) identify the person or persons whose remains are to be interred in pursuance of the interment right; or
 - (ii) provide that a specified person or class of person may nominate at some future time the person or persons whose remains are to be interred in pursuance of the interment right; and
- (c) —
 - (i) identify the site at which remains are to be interred in pursuance of the interment right; or
 - (ii) provide for determination, in a manner set out in the interment right, of the site at which the remains are to be interred in pursuance of the interment right; and
- (d) specify the period for which the interment right is granted; and
- (e) set out the rights (if any) to renewal of the interment right; and
- (f) specify whether the interment right may be cancelled or transferred and set out any conditions governing cancellation or transfer.

Authority to inter at particular site

12. A person must not inter human remains, or cause, suffer or permit the interment of human remains, in a cemetery at a site in relation to which an interment right is in force, unless the remains are those of a person entitled to have his or her remains interred at that site.

Transportation of remains within cemetery

13. A person must not transport, or cause, suffer or permit the transportation of, non cremated human remains within a cemetery unless the remains are in a coffin or other sealed and rigid container.

Interment of name plate with remains

14. (1) A person must not inter, or cause, suffer or permit the interment of, non cremated human remains in a cemetery unless a name plate made of a durable material with the surname, at least one given name and the date of the death of the deceased engraved, printed or stamped on it in a manner approved by the South Australian Health Commission is—

- (a) in the case of remains interred in a coffin—affixed to the coffin;
- (b) in the case of remains interred without a coffin—placed on top of the remains.

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(2) A person must not inter, or cause, suffer or permit the interment of, cremated human remains in a cemetery unless a name plate made of a durable material with the surname, at least one given name and the date of the death of the deceased engraved, printed or stamped on it in a manner approved by the cemetery authority is affixed to the outside of, or placed within, the receptacle that contains the remains.

(3) Subregulation (2) does not apply in relation to the interment of cremated remains in the earth without a container.

Depth of interment in earth

15. A person must not inter, or cause, suffer or permit the interment of, non cremated human remains in a cemetery so that any of the remains are at a depth of less than one metre from the surface of the ground unless the remains are interred in a vault in accordance with regulation 16.

Interment in vault

16. (1) A person must not inter, or cause, suffer or permit the interment of, non cremated human remains in a vault in a cemetery unless—

- (a) the vault is constructed of brick, stone, concrete or other material approved by the cemetery authority; and
- (b) subject to subregulations (2) and (3), the vault is air tight; and
- (c) subject to subregulations (4) and (5), the vault is water tight; and
- (d) in the case of a vault not in a mausoleum or underground vault chamber—no part of the vault (excluding any memorial attached to the vault) is more than 150 mm above the surface of the ground.

(2) A vault may have a vent if—

- (a) the vent is insect and vermin proof; and
- (b) the vent—
 - (i) is equipped with a filter; or
 - (ii) terminates at least one metre below the surface of the ground,

so as to prevent the discharge of any offensive odours or noxious gases into the atmosphere.

(3) A vault not in a mausoleum or underground vault chamber must, unless it is air tight or has a vent that complies with subregulation (2), be impervious to air for at least one metre below the natural surface of the ground.

(4) A vault may have a drain if—

- (a) the drain is insect and vermin proof; and

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- (b) the drain terminates—
 - (i) in the case of a drain for a vault in a mausoleum or underground vault chamber—at least one metre below the lowest part of the mausoleum or chamber;
 - (ii) in any other case—at least one metre below the surface of the ground.

(5) A vault not in a mausoleum or underground vault chamber must, unless it is water tight or has a drain that complies with subregulation (4), be impervious to water for at least one metre below the natural surface of the ground.

Sealing of vault after interment

17. (1) A person who interrs, or arranges for the interment of, human remains in a vault in a cemetery must ensure that the opening of the vault is sealed to the satisfaction of the cemetery authority as soon as practicable after the interment.

(2) A vault must be sealed so that the opening is at all times air tight, water tight and secure against unauthorised access.

Powers of cemetery authority in relation to vaults

18. (1) If a cemetery authority suspects on reasonable grounds that—

- (a) a vault in the cemetery does not comply with these regulations; or
- (b) offensive odours or noxious gases or fluids have escaped or are escaping from a vault in the cemetery,

the cemetery authority may open the vault and inspect it.

(2) If, after inspecting a vault, the cemetery authority is satisfied that—

- (a) the vault does not comply with these regulations; or
- (b) offensive odours or noxious gases or fluids have escaped or are escaping from the vault,

the cemetery authority may, by notice in writing to a person who holds an interment right in force in relation to that vault or who is, under such an interment right, entitled to have his or her remains interred in that vault, require the person to take specified remedial action within a reasonable period specified in the notice.

(3) If a person refuses or fails to comply with a notice under subregulation (2), the cemetery authority may cause the work to be carried out and recover the costs as a debt from the person.

Filling of sunken interment sites

19. If the surface of any interment site in a cemetery sinks below the level of the natural surface of the ground, the cemetery authority may cause the site to be filled up to that level.

Exhumation, removal and re-interment

20. (1) Subject to subregulation (2), a person must not cause, suffer or permit non cremated human remains to be—

- (a) exhumed or removed from their interment site in a cemetery; or
- (b) re-interred in a cemetery,

without the consent in writing of the Attorney-General.

(2) Subregulation (1) does not apply where a coroner has issued a warrant for the exhumation of human remains pursuant to section 13 of the *Coroners Act 1975*.

(3) The Attorney-General must, before giving a consent under subregulation (1), consult with the relevant cemetery authority.

(4) A consent under this regulation may be made subject to such conditions as the Attorney-General thinks fit.

(5) A person must not contravene or fail to comply with a condition of a consent under this regulation.

Opening of interment sites

21. (1) Subject to subregulation (2), a person must not, without the consent of the Attorney-General, open, or cause, suffer or permit the opening of, an interment site in a cemetery for the purpose of interring additional human remains.

(2) The consent of the Attorney-General under subregulation (1) is not required if—

- (a) only cremated remains are interred at the site; or
- (b) in the case of a site at which non cremated remains are interred (whether or not cremated remains are also interred there)—
 - (i) additional human remains can be interred without disturbing non cremated remains; or
 - (ii) the non cremated remains last interred were interred in a vault that is air tight and water tight and—
 - (A) the remains were those of a child who at the time of death was not more than five years of age and three years or more have elapsed since the remains were interred; or
 - (B) the remains were those of a child who at the time of death was more than five but not more than 10 years of age and four years or more have elapsed since the remains were interred; or
 - (C) six years or more have elapsed since the remains were interred; or

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- (iii) the non cremated remains last interred were interred otherwise than in a vault that is air tight and water tight and—
 - (A) the remains were those of a child who at the time of death was not more than five years of age and 18 months or more have elapsed since the remains were interred; or
 - (B) the remains were those of a child who at the time of death was more than five but not more than 10 years of age and two years or more have elapsed since the remains were interred; or
 - (C) three years or more have elapsed since the remains were interred.

(3) If, when an interment site is opened, human remains are found, the remains must—

- (a) in the case of remains interred in a vault—be re-interred within the vault;
- (b) in any other case—be re-interred at a greater depth.

(4) The Attorney-General must, before giving a consent under subregulation (1), consult with the relevant cemetery authority.

(5) A consent under this regulation may be made subject to such conditions as the Attorney-General thinks fit.

(6) A person must not contravene or fail to comply with a condition of a consent under this regulation.

Dangerous driving

22. A person must not drive a motor vehicle within a cemetery in a dangerous or careless manner or without reasonable consideration for others.

Drivers to comply with directions of cemetery authority

23. A person must, while in charge of a motor vehicle within a cemetery, comply with any lawful directions of the cemetery authority as to the driving or parking of vehicles.

Prohibited activities

24. A person must not remove, damage, deface or interfere with—

- (a) any building, memorial or other fixture or structure in a cemetery; or
- (b) any part of the grounds of a cemetery, including a tree, shrub, plant, flower or lawn, or a stake or label on or near any such thing.

Power of cemetery authority in relation to things on interment sites

25. A cemetery authority may—

- (a) cause to be removed from an interment site in the cemetery any unattached ornament, empty flower container, broken masonry, decayed or broken wreath or dead flowers; and

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- (b) cause to be pruned, cut down or removed any plant on an interment site in the cemetery that is, in the opinion of the cemetery authority, unsightly or overgrown.

Power of cemetery authority to require persons to leave cemetery

26. (1) If a cemetery authority has reason to suspect that a person has committed, is committing or is about to commit an offence in the cemetery, the cemetery authority may require the person to leave the cemetery.

(2) A person must not fail or refuse to comply with a requirement of a cemetery authority under subregulation (1).

General offence

27. A person who contravenes or fails to comply with these regulations is guilty of an offence.

Penalty: \$200.