

South Australia

Local Government (Cemetery) Regulations 2010

under the *Local Government Act 1934*

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Schedule 1—Revocation of *Local Government (Cemetery) Regulations 1995*

Legislative history

1—Short title

These regulations may be cited as the *Local Government (Cemetery) Regulations 2010*.

2—Commencement

These regulations will come into operation on 1 September 2010.

3—Interpretation

In these regulations, unless the contrary intention appears—

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;

certificate as to cause of death means a certificate as to the cause of the death of a person given under the *Births, Deaths and Marriages Registration Act 1996*, the *Coroners Act 2003* or the *Cremation Act 2000*, as the case may be;

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 1 or more vaults for the interment of non cremated human remains; and
- (c) in which at least 1 vault (excluding any memorial attached to the vault) is wholly, or protrudes at least 150 millimetres or more, above the surface of the ground,

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

memorial means—

- (a) a gravestone or other monument; or
- (b) a plaque; or
- (c) any other structure or physical object used to memorialise a deceased person;

underground vault chamber means a walk in structure—

- (a) that is designed for the interment of human remains; and
- (b) that is designed to hold 1 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.

4—Non-application to Aboriginal sites

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*.

5—Non-application to unclaimed cremated remains

These regulations do not apply to or in relation to cremated remains disposed of by a cemetery authority under the *Cremation Regulations 2001*.

6—Cemetery to be fenced

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

Maximum penalty: \$200.

7—Plan of cemetery

- (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.

Maximum penalty: \$200.

- (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.

Maximum penalty: \$200.

8—Register of interments

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

Maximum penalty: \$200.

- (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;
- (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 1 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.

Maximum penalty: \$200.

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

9—Register of interment rights

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

Maximum penalty: \$200.

- (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.

Maximum penalty: \$200.

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

10—Grant of interment rights

- (1) Before granting an interment right to a person, a cemetery authority must give the person a statement written in plain English that—

- (a) includes the matters required by subregulation (2) to be included in the interment right; and
- (b) sets out the rights and responsibilities of the cemetery authority and relatives of a deceased person whose remains may be interred pursuant to the interment right in relation to any memorial (including any unclaimed memorial) to the deceased person; and

- (c) specifies the cost of the interment right and any options for periodic payment.
Maximum penalty: \$200.
- (2) An interment right granted by the cemetery authority must—
- (a) identify the person to whom the interment right is granted; and
 - (b) identify the person or persons whose remains may be interred in pursuance of the interment right or provide that a specified person or class of person may, at some future time, nominate the person or persons whose remains may be interred in pursuance of the interment right; and
 - (c) identify the site at which remains may be interred in pursuance of the interment right or provide for determination, in a manner set out in the interment right, of the site at which the remains may 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 its cancellation or transfer.

11—Authority to inter at particular site

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.

Maximum penalty: \$200.

12—Transportation of remains within cemetery

A person must not transport, or cause, suffer or permit the transportation of, non cremated human remains within a cemetery unless—

- (a) the remains are contained in a coffin or other rigid container; or
- (b) the remains are transported on a rigid base and contained within a shroud or other wrapping,

from which no offensive odours or noxious gases or fluids may escape.

Maximum penalty: \$200.

13—Interment of name plate with remains

- (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 1 given name and the date of the death of the deceased engraved, printed or stamped on it in a manner approved by the relevant Minister is—
- (a) in the case of remains interred in a coffin—affixed to the coffin; or
 - (b) in the case of remains interred without a coffin—placed on top of the remains.

Maximum penalty: \$200.

- (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 1 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.

Maximum penalty: \$200.

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

- (4) In this regulation—

relevant Minister means the Minister to whom the administration of the *Health Care Act 2008* is committed.

14—Depth of interment in earth

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 1 metre from the surface of the ground unless the remains are interred in a vault in accordance with regulation 15.

Maximum penalty: \$200.

15—Interment in vault

- (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 millimetres above the surface of the ground.

Maximum penalty: \$200.

- (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 1 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 1 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

- (b) the drain terminates—
 - (i) in the case of a drain for a vault in a mausoleum or underground vault chamber—at least 1 metre below the lowest part of the mausoleum or chamber;
 - (ii) in any other case—at least 1 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 1 metre below the natural surface of the ground.

16—Sealing of vault after interment

- (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.
Maximum penalty: \$200.
- (2) A vault must be sealed so that the opening is at all times air tight, water tight and secure against unauthorised access.

17—Powers of cemetery authority in relation to vaults

- (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.

18—Filling of sunken interment sites

If the surface of an 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.

19—Re-interment

- (1) A person must not cause, suffer or permit non cremated human remains that have been exhumed or removed from their place of interment to be re-interred in a cemetery without the consent in writing of the Attorney-General.

Maximum penalty: \$200.

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

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

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

Maximum penalty: \$200.

20—Opening of interment sites

- (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.

Maximum penalty: \$200.

- (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 5 years of age and 3 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 5 years but not more than 10 years of age and 4 years or more have elapsed since the remains were interred; or

(C) 6 years or more have elapsed since the remains were interred; or

(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 5 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 5 years but not more than 10 years of age and 2 years or more have elapsed since the remains were interred; or
 - (C) 3 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.
Maximum penalty: \$200.

21—Disposal of unclaimed memorials

If—

- (a) an interment right relating to an interment site in a cemetery has expired; and
 - (b) 2 years or more have elapsed since the interment right expired; and
 - (c) a memorial is situated at the interment site; and
 - (d) the cemetery authority has given notice of its intention to dispose of the memorial—
 - (i) by public advertisement in a newspaper circulating throughout the State; and
 - (ii) by letter to relatives of the deceased person whose name appears on the memorial (being relatives whose names and addresses are known to the cemetery authority); and
 - (iii) by notice affixed to the memorial; and
 - (e) 6 months have elapsed since the cemetery authority gave notice under paragraph (d) and no person has claimed the memorial within that period,
- the cemetery authority may dispose of the memorial in such manner as it thinks fit.

22—Dangerous driving

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

Maximum penalty: \$200.

23—Drivers to comply with directions of cemetery authority

- (1) 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 of vehicles.

Maximum penalty: \$200.

Expiation fee: \$50.

- (2) 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 parking of vehicles.

Maximum penalty: \$200.

Expiation fee: \$21.

24—Prohibited activities

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

- (a) a building, memorial or other fixture or structure in a cemetery; or
- (b) a 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.

Maximum penalty: \$200.

25—Power of cemetery authority in relation to things on interment sites

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
- (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.

26—Power of cemetery authority to require persons to leave cemetery

- (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).

Maximum penalty: \$200.

Schedule 1—Revocation of *Local Government (Cemetery) Regulations 1995*

The *Local Government (Cemetery) Regulations 1995* are revoked.

Legislative history

Notes

- 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.

Principal regulations

Year	No	Reference	Commencement
2010	182	<i>Gazette 12.8.2010 p4022</i>	1.9.2010: r 2