

Legislative Council—No 152A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 10 February 2022

South Australia

**Criminal Law Consolidation (Human Remains)
Amendment Bill 2021**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Criminal Law Consolidation (Human Remains) Amendment Act 2021*.

2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

10 3—Insertion of Part 6D

After section 174 insert:

Part 6D—Offences relating to human remains

175—Interpretation

- 15 (1) In this Part—
 - cremated* means the reduction of whole or any part of a human body involving the use of fire or heat, whether authorised under the *Burial and Cremation Act 2013* or otherwise;
 - human remains* means the whole or any part of a human body (whatever its physical state may be) and includes the whole or any
 - 20 part of a human body that has been cremated;

interred, in relation to human remains, means—

- (a) the placement of human remains in a mausoleum, vault, columbarium or other structure designed for the placement of such remains; or
- (b) the burial in the earth of human remains (directly in the earth or in a container).

176—Application of Part

- (1) This Part does not apply to, or in relation to, an act or omission relating to human remains that is required or authorised by or under this Act or any other Act or law.
- (2) This Part is in addition to, and does not derogate from, the *Burial and Cremation Act 2013*, the *Coroners Act 2003* and other Act or law relating to human remains.
- (3) This Part applies to human remains whether or not the human remains are interred.

177—Offence to destroy etc human remains to pervert course of justice

- (1) A person who knowingly—
 - (a) destroys, removes, conceals or alters human remains; or
 - (b) performs any other act or omission intended or likely to result in human remains being less likely to be found (whether by a police officer or otherwise),for the purposes of—
 - (c) concealing the commission of an offence relating to the human remains; or
 - (d) concealing or destroying evidence consisting of the human remains; or
 - (e) impeding an investigation of an offence relating to the human remains; or
 - (f) influencing a decision by a person whether or not to charge a person with an offence relating to the human remains; or
 - (g) influencing the outcome of legal proceedings relating to the human remains (whether the proceedings are in progress or proceedings that are to be or may be instituted at a later time),

is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

- 5
- (2) Despite section 26 or any other provision of the *Sentencing Act 2017*, a court sentencing a person for an offence against this section where the person is also found guilty of causing the death of the decedent must direct that the sentence be cumulative on any sentence of imprisonment or detention in a training centre being served, or to be served, by the defendant (other than a sentence of life imprisonment) in relation to that causing of death.
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- (3) In proceedings for an offence against this section, it is not necessary for the prosecution to prove that the defendant was aware of the identity of the person who allegedly committed the relevant offence.
- (4) A person may be found guilty of an offence against this section whether or not a person has been found guilty of the murder of, or otherwise causing the death of, the decedent.
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- (5) A person may be found guilty of an offence against this section whether committed within or outside this State if a court of this State has jurisdiction to deal with the principal offender.

178—Offence to defile etc human remains

A person who—

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- (a) knowingly destroys, mutilates or otherwise defiles human remains; or
- (b) removes any organ or body part from human remains; or
- (c) engages in sexual activity with human remains,

is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

179—Offence to fail to report find of or conceal human remains

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- (1) A person who finds human remains, or a thing that the person reasonably suspects may be human remains, must, as soon as is reasonably practicable after the discovery—
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- (a) report that fact to a police officer; and
- (b) inform the police officer of the location of the remains.
- Maximum penalty: Imprisonment for 5 years.
- (2) However, a person need not make a report under subsection (1)—
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- (a) if the person believes on reasonable grounds that another person has reported the existence and location of the human remains or thing to a police officer, or that SA Police were otherwise aware of the existence and location of the remains or thing; or
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- (b) if the State Coroner or a police officer has been notified of the relevant death in accordance with the *Coroners Act 2003*; or

(c) if the person believes on reasonable grounds that the human remains are Aboriginal remains (within the meaning of the *Aboriginal Heritage Act 1988*) and the discovery of the human remains has been reported in accordance with that Act; or

(d) in any other circumstances prescribed by the regulations for the purposes of this subsection.

(3) A police officer must, on being notified of the finding of human remains under subsection (1), immediately notify the State Coroner of that fact and of any information relating to the matter of which the police officer is aware.

(4) A person who, having found human remains, or a thing that the person reasonably suspects may be human remains, conceals the human remains or thing is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

180—Alternative verdicts

If—

(a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against section 177 has been established; but

(b) the Judge has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of a specified offence against section 178 or 179; and

(c) the jury is satisfied beyond reasonable doubt that the specified offence against section 178 or 179 has been established,

the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the specified offence against section 178 or 179.