

Legislative Council—No 163

As introduced and read a first time, 14 October 2021

South Australia

Statutes Amendment (Aboriginal Ancestral Resting Places) Bill 2021

A BILL FOR

An Act to amend the *Births, Deaths and Marriages Registration Act 1996* and the *Burial and Cremation Act 2013*.

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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 *Statutes Amendment (Aboriginal Ancestral Resting Places) Act 2021*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

10 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 *Births, Deaths and Marriages Registration Act 1996*

4—Amendment of section 4—Interpretation

(1) Section 4—before the definition of *adult* insert:

15 *Aboriginal ancestral remains*—see section 3 of the *Burial and Cremation Act 2013*;

(2) Section 4, definition of human remains—delete the definition and substitute:

human remains has the same meaning as in the *Burial and Cremation Act 2013*;

20 *Minister responsible for the Aboriginal Heritage Act* has the same meaning as in the *Burial and Cremation Act 2013*;

(3) Section 4, definition of *registrable information*—delete the definition and substitute:

registrable information means information that must or may be included in the Register under section 40;

(4) Section 4—after its presents contents as amended by this section (now to be designated as subsection (1)) insert:

(2) A reference in this Act to the *Register* extends to all the registers kept under section 40.

5 **5—Amendment of section 38—Notification by funeral director etc**

Section 38—after subsection (3) insert:

(4) This section does not apply in relation to the disposal of Aboriginal ancestral remains.

6—Insertion of Part 6A

10 After Part 6 insert:

**Part 6A—Notification of disposal of Aboriginal
ancestral remains**

39A—Notification by funeral director etc

15 (1) A funeral director or other person who arranges for the disposal of Aboriginal ancestral remains must, within 7 days after the disposal of the remains, give the Registrar a written statement of—

(a) the prescribed particulars of the place and manner of disposal; and

(b) any information required by regulation.

20 Maximum penalty: \$1 250.

(2) If the Registrar is given a written statement of the disposal of Aboriginal ancestral remains under subsection (1), the Registrar must ensure that the Minister responsible for the Aboriginal Heritage Act is notified of the particulars of the disposal provided in the statement.

25 **7—Amendment of section 40—The Register**

(1) Section 40(1)—delete subsection (1) and substitute:

(1) The Registrar must maintain—

(a) a register or registers of registrable events; and

30 (b) a register of disposal of Aboriginal ancestral remains notified under section 39A.

(2) Section 40(2)(a)—delete paragraph (a) and substitute:

(a) must contain—

(i) the particulars of each registrable event required under this Act, or another law, to be included in the Register; and

35 (ii) the particulars of each disposal of Aboriginal ancestral remains notified under section 39A; and

Part 3—Amendment of *Burial and Cremation Act 2013*

8—Amendment of long title

Long title—after "grounds;" insert:

to provide for the establishment, administration and closure of Aboriginal
ancestral resting places;

9—Amendment of section 3—Interpretation

(1) Section 3—before the definition of *authorised officer* insert:

Aboriginal ancestral remains—see subsection (2);

Aboriginal ancestral resting place means a place set aside for the interment
of Aboriginal ancestral remains (including remains that have been cremated);

(2) Section 3—after the definition of *bodily remains* insert:

burial ground means an Aboriginal ancestral resting place, cemetery or
natural burial ground;

(3) Section 3, definition of *cemetery*—after paragraph (a) insert:

(ab) an Aboriginal ancestral resting place; or

(4) Section 3, definition of *cremation permit*—delete the definition and substitute:

cremation permit means a cremation permit granted under this Act;

(5) Section 3—after the definition of *institution* insert:

inter includes re-inter;

(6) Section 3, definition of *Metropolitan Adelaide*—delete the definition and substitute:

Metropolitan Adelaide means Metropolitan Adelaide as defined by the
Development Act 1993 immediately before 1 July 2019;

Minister responsible for the Aboriginal Heritage Act means the Minister for
the time being responsible for the administration of the *Aboriginal Heritage
Act 1988*;

(7) Section 3, definition of *natural burial ground*—delete the definition and substitute:

natural burial ground means a place at which human remains are interred by
natural burial but does not include—

(a) an Aboriginal ancestral resting place; or

(b) a place of a prescribed kind;

(8) Section 3—after the definition of *personal representative* insert:

Recognised Aboriginal Representative Body, in respect of an area, means the
Recognised Aboriginal Representative Body in respect of the area determined
or appointed in accordance with Part 2B of the *Aboriginal Heritage Act 1988*;

- (9) Section 3, definition of **relevant authority**—delete the definition and substitute:

relevant authority—

- (a) for an Aboriginal ancestral resting place within a cemetery—means the cemetery authority; or
- 5 (b) for an Aboriginal ancestral resting place outside a cemetery—means the person or body for the time being responsible for the administration of the Aboriginal ancestral resting place; or
- (c) for a cemetery—means the cemetery authority; or
- (d) for a crematorium—means the person or body for the time being in charge of the crematorium; or
- 10 (e) for a natural burial ground within a cemetery—means the cemetery authority; or
- (f) for a natural burial ground outside a cemetery—means the person or body for the time being responsible for the administration of the natural burial ground;
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reserve has the same meaning as in the *National Parks and Wildlife Act 1972*;

- (10) Section 3, definition of **State heritage place**—delete "*Development Act 1993*" and substitute:

Planning, Development and Infrastructure Act 2016

- (11) Section 3—after the definition of **vault** insert:

wilderness protection area has the same meaning as in the *Wilderness Protection Act 1992*;

wilderness protection zone has the same meaning as in the *Wilderness Protection Act 1992*.

- (12) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) For the purposes of this Act and any other Act or law, the bodily remains of a deceased Aboriginal person are **Aboriginal ancestral remains** if a person of a prescribed class has, in accordance with the regulations, given a certificate certifying that, in the opinion of that person, the remains are Aboriginal ancestral remains.
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10—Substitution of section 5

Section 5—delete the section and substitute:

5—Relationship of Act with other laws

The provisions of this Act are in addition to, and do not derogate from, the provisions of—

- (a) the *Aboriginal Heritage Act 1988*; and
- (b) the *Crown Land Management Act 2009*; and
- (c) the *Heritage Places Act 1993*; and
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- (d) the *Local Government Act 1999*; and
- (e) the *Planning, Development and Infrastructure Act 2016*; and
- (f) any other Act or law.

11—Amendment of section 8—Offence to inter bodily remains except in cemetery, natural burial ground or Aboriginal ancestral resting place

(1) Section 8(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) A person must not, without the approval of the Attorney-General, inter bodily remains, or cause, suffer or permit bodily remains to be interred, except in a lawfully established cemetery or natural burial ground.

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

(2) Subsection (1) does not apply to—

- (a) the interment of Aboriginal ancestral remains in a lawfully established Aboriginal ancestral resting place; or

- (b) the interment of Aboriginal ancestral remains on land in a reserve—

- (i) with the permission of the person or body responsible for the management of the reserve under the *National Parks and Wildlife Act 1972*; and

- (ii) if the land is within a council area—with the approval of the council for the area in which the land is situated; and

- (iii) in accordance with the regulations; or

- (c) the interment of Aboriginal ancestral remains on land in a wilderness protection area or wilderness protection zone—

- (i) with the permission of the person or body responsible for the management of the wilderness protection area or zone under the *Wilderness Protection Act 1992*; and

- (ii) if the land is within a council area—with the approval of the council for the area in which the land is situated; and

- (iii) in accordance with the regulations; or

- (d) the interment of Aboriginal ancestral remains on land (other than land in a reserve, wilderness protection area or wilderness protection zone) within Metropolitan Adelaide, a township or a designated area with the permission of the owner of the land and—

- (i) in the case of land within a council area—

(A) with the approval of the council for the area in which the land is situated; and

(B) in accordance with the regulations; or

(ii) in any other case—in accordance with the regulations; or

(e) the interment of any bodily remains on land (other than land in a reserve, wilderness protection area or wilderness protection zone) outside Metropolitan Adelaide, a township or a designated area with the permission of the owner of the land and—

(i) in the case of land within a council area—

(A) with the approval of the council for the area in which the land is situated; and

(B) in accordance with the regulations; or

(ii) in any other case—in accordance with the regulations.

(2) Section 8(4)—delete subsection (4) and substitute:

(4) In this section—

designated area means an area designated by the regulations for the purposes of this section.

12—Amendment of section 10—Cremation permits

After subsection (6) insert:

(6a) The Registrar may issue a cremation permit authorising the cremation of Aboriginal ancestral remains without the documents required by subsection (5).

13—Amendment of section 12—Documents to be provided before disposal of bodily remains

(1) Section 12—after subsection (1) insert:

(1a) Subsection (1) does not apply in relation to the cremation or interment of Aboriginal ancestral remains.

(2) Section 12(3)—delete subsection (3) and substitute:

(3) Subsection (2) does not apply in relation to—

(a) the interment of Aboriginal ancestral remains; or

(b) the cremation of any bodily remains in respect of which the person has received a cremation permit issued by the Registrar.

14—Substitution of heading to Part 2 Division 3

Heading to Part 2 Division 3—delete the heading to Division 3 and substitute:

Division 3—Offences related to interment sites and human remains

5 **15—Amendment of section 13—Opening of interment sites, exhumation and re-interment**

(1) Section 13(6)—delete subsections (6) and substitute:

(6) The Attorney-General must, before giving an approval for the purposes of subsection (1), consult with—

- 10 (a) in the case of Aboriginal ancestral remains interred in an Aboriginal ancestral resting place—
- (i) the relevant authority for the Aboriginal ancestral resting place; and
 - (ii) the Minister responsible for the Aboriginal Heritage Act;
- 15 (b) in the case of Aboriginal ancestral remains not interred in an Aboriginal ancestral resting place—the Minister responsible for the Aboriginal Heritage Act;
- 20 (c) in the case of the remains of an Aboriginal person that are not Aboriginal ancestral remains—
- (i) if the remains are interred in a cemetery or natural burial ground—the relevant authority for the cemetery or natural burial ground; or
 - (ii) if the remains are not interred in a cemetery or natural burial ground—the Minister responsible for the Aboriginal Heritage Act;
- 25 (d) in any other case—
- (i) if the remains are interred in a cemetery or natural burial ground—the relevant authority for the cemetery or natural burial ground; or
 - (ii) if the remains are not interred in a cemetery or natural burial ground—the designated Minister.
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(2) Section 13(7), definition of *relevant Minister*—delete the definition

16—Insertion of section 13A

35 After section 13 insert:

13A—Desecration of interment sites and human remains

- (1) A person must not—
- (a) wilfully break open, damage, deface, desecrate or destroy an interment site; or

- (b) improperly or indecently interfere with, or offer any indignity to, human remains (whether or not interred).

Maximum penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply in relation to an act authorised by or under this Act or any other Act or law.

17—Amendment of section 17—Religious and other ceremonies not to be interfered with etc

- (1) Section 17(1)—after "cemetery" insert:

, Aboriginal ancestral resting place

- (2) Section 17(2)—after "cemetery" wherever occurring insert in each case:

, Aboriginal ancestral resting place

18—Amendment of heading to Part 3

Part 3 Heading—delete "natural" and substitute:

other

19—Amendment of heading to Part 3 Division 1

Part 3 Division 1 Heading—delete "natural" and substitute:

other

20—Substitution of section 19

Section 19—delete the section and substitute:

19—Establishment of cemeteries, other burial grounds and crematoria

Subject to this Act, any person may establish—

- (a) a cemetery; or
(b) an Aboriginal ancestral resting place; or
(c) a natural burial ground; or
(d) a crematorium.

21—Substitution of section 22

Section 22—delete the section and substitute:

22—Designation of Aboriginal ancestral resting places and natural burial grounds within cemeteries

The relevant authority for a cemetery may set apart any part of the cemetery as—

- (a) an Aboriginal ancestral resting place; or
(b) a natural burial ground.

22—Insertion of Part 3 Division 2A

After section 28 insert:

Division 2A—Closure of Aboriginal ancestral resting places

28A—Closure of Aboriginal ancestral resting places

- 5 (1) Subject to this section, the relevant authority for an Aboriginal
ancestral resting place may close the Aboriginal ancestral resting
place if—
- (a) the capacity of the Aboriginal ancestral resting place to hold
human remains has become exhausted; or
- 10 (b) the Aboriginal ancestral resting place has for any other
reason become unsuitable for the disposal of human
remains.
- (2) A relevant authority for an Aboriginal ancestral resting place must
not close the Aboriginal ancestral resting place unless—
- 15 (a) notice of the proposed closure has been given in accordance
with this section; and
- (b) the Minister has approved the closure.
- (3) Notice of the proposed closure of an Aboriginal ancestral resting
place must be given—
- 20 (a) in a newspaper circulating throughout the State on
2 separate occasions, the first being at least 18 months
before, and the second being not more than 9 months before,
the date of the proposed closure; and
- (b) to the Recognised Aboriginal Representative Body (if any)
25 for the area in which the Aboriginal ancestral resting place is
situated at least 18 months before the date of the proposed
closure; and
- (c) to the Minister responsible for the Aboriginal Heritage Act
at least 18 months before the date of the proposed closure.
- 30 (4) A notice under subsection (3) must comply with the regulations.
- (5) A relevant authority that proposes to close an Aboriginal ancestral
resting place must provide the Minister with details of any
representations or submissions made to the relevant authority in
respect of the proposed closure.
- 35 (6) If an Aboriginal ancestral resting place is closed under this section, a
person must not dispose of human remains in the Aboriginal
ancestral resting place.
- Maximum penalty: \$10 000 or imprisonment for 2 years.

- (4) Subject to this Act, an interment right issued in relation to an Aboriginal ancestral resting place within a cemetery obliges the relevant authority—
- (a) to permit the interment of Aboriginal ancestral remains in the Aboriginal ancestral resting place in accordance with the interment right; and
 - (b) to permit memorials to be erected in the Aboriginal ancestral resting place with the approval of the relevant authority and in accordance with the terms of the interment right; and
 - (c) to leave Aboriginal ancestral remains interred in the Aboriginal ancestral resting place undisturbed in perpetuity; and
 - (d) to leave any memorials in the Aboriginal ancestral resting place lawfully erected in the Aboriginal ancestral resting place, with the permission of the relevant authority, undisturbed (provided that the memorials are kept in good repair).
- (5) An interment right in respect of an Aboriginal ancestral resting place may be issued to a natural person or a body corporate.

38B—Duration of interment rights

An interment right issued in respect of an Aboriginal ancestral resting place within a cemetery remains in force in perpetuity.

38C—Transfer of interment rights

- (1) An interment right issued in respect of an Aboriginal ancestral resting place may be transferred but—
- (a) the consideration payable for the transfer of the interment right must not exceed the current fee payable for the issue of an interment right of the same kind; and
 - (b) the interment right may contain conditions limiting the right of transfer to persons of a specified class.
- (2) A transfer of an interment right does not take effect until it is recorded by the relevant authority in its register of interment rights.

38D—Surrender of interment rights

- (1) The holder of an unexercised interment right relating to an Aboriginal ancestral resting place may surrender the interment right to the relevant authority that issued it.
- (2) On the surrender of an unexercised interment right, the relevant authority must give the former holder of the interment right a refund equal to the current fee payable for an interment right of the same kind, less a reasonable fee—
- (a) for administration and maintenance costs; and

(b) for costs involved in the establishment of the Aboriginal ancestral resting place,

determined in accordance with the regulations.

(3) On the surrender of an unexercised interment right, that interment right is discharged.

(4) In this section—

unexercised interment right means a current interment right under which no human remains have been interred.

38E—Exercise or enforcement of interment rights

If the holder of an interment right issued in respect of an Aboriginal ancestral resting place has died or no longer exists, the interment right may be exercised or enforced by a person of a class determined in accordance with the regulations.

38F—Register of interment rights

The relevant authority for a cemetery must keep a register of interment rights issued by the relevant authority in respect of any Aboriginal ancestral resting place within the cemetery.

25—Amendment of section 43—General powers of relevant authority

(1) Section 43—after "cemetery," first occurring insert:

Aboriginal ancestral resting place,

(2) Section 43(a)—after "cemetery," insert:

Aboriginal ancestral resting place,

(3) Section 43(b)—after "cemetery," insert:

Aboriginal ancestral resting place,

(4) Section 43(c)—after "cemetery" insert:

, Aboriginal ancestral resting place

(5) Section 43(d)—after "cemetery," insert:

Aboriginal ancestral resting place,

26—Amendment of section 44—Multicultural needs to be recognised

Section 44(1)—after "cemetery" wherever occurring insert in each case:

, Aboriginal ancestral resting place

27—Amendment of section 46—Neglected cemeteries, Aboriginal ancestral resting places and natural burial grounds

Section 46(1)—after "cemetery" wherever occurring insert in each case:

, Aboriginal ancestral resting place

28—Amendment of section 49—Power of councils to assume administration of cemeteries and natural burial grounds

Section 49(1)(a)—delete paragraph (a) and substitute:

- 5 (a) there is no existing relevant authority for the cemetery or natural burial ground; or

29—Insertion of section 49A

After section 49 insert:

49A—Power of councils to assume administration of Aboriginal ancestral resting places

- 10 (1) A council may, with the approval of the Minister, assume the administration of an Aboriginal ancestral resting place if—
- (a) there is no existing relevant authority for the Aboriginal ancestral resting place; or
- 15 (b) the relevant authority for the Aboriginal ancestral resting place is unknown and is not reasonably ascertainable; or
- (c) the relevant authority for the Aboriginal ancestral resting place agrees to transfer it to the council.
- (2) A council that proposes to assume the administration of an Aboriginal ancestral resting place must give notice of its intention to do so to the Recognised Aboriginal Representative Body (if any) for the area in which the Aboriginal ancestral resting place is situated.
- 20 (3) Notice under subsection (2) must be given in accordance with the regulations.
- (4) If a council assumes the administration of an Aboriginal ancestral resting place, it must observe the terms of any trust affecting the administration or use of the Aboriginal ancestral resting place, except to the extent that the Supreme Court relieves it from the obligation to do so.
- 25

30—Amendment of section 50—Public access to cemeteries, other burial grounds and crematoria

- 30 (1) Section 50(1)—after "cemetery," insert:

Aboriginal ancestral resting place,

- (2) Section 50—after subsection (1) insert:

- 35 (1a) Subsection (1) does not prevent the charging of a fee for entry to a reserve, wilderness protection area or wilderness protection zone within which an Aboriginal ancestral resting place or a cemetery or natural burial ground is situated or relieve any person from the obligation to pay a fee for entry to a reserve, wilderness protection area or wilderness protection zone.

(3) Section 50(2)—after "cemetery," wherever occurring insert in each case:

Aboriginal ancestral resting place,

(4) Section 50(3)—delete "cemetery authority" and substitute:

relevant authority

5 **31—Amendment of section 53—Registers, records and plans to be kept by relevant authorities**

(1) Section 53—after subsection (2) insert:

(2a) A relevant authority for an Aboriginal ancestral resting place must keep—

10 (a) a register that—

(i) identifies each site in which Aboriginal ancestral remains are interred; and

15 (ii) records exhumations of Aboriginal ancestral remains interred in the Aboriginal ancestral resting place; and

(iii) contains prescribed particulars of any matters specified by the regulations; and

(b) a plan of the Aboriginal ancestral resting place that shows—

20 (i) each site at which Aboriginal ancestral remains are interred; and

(ii) each site set aside for the interment of Aboriginal ancestral remains.

Maximum penalty: \$5 000.

(2) Section 53—after subsection (5) insert:

25 (6) If the ownership or administration of a cemetery, Aboriginal ancestral resting place or natural burial ground is transferred, the transferor must ensure that the registers and plan kept under this section in relation to the cemetery, Aboriginal ancestral resting ground or natural burial ground are transferred to the new owner or administrator.

30 Maximum penalty: \$5 000.

32—Amendment of section 55—Exemptions

Section 55—after subsection (2) insert:

35 (3) The Minister may delegate the Minister's powers under subsection (1).

(4) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

- (c) does not derogate from the ability of the Minister to act in any matter; and
- (d) is revocable at will.

33—Amendment of section 59—Powers of authorised officers

5 Section 59(1)(a)—delete "natural" and substitute:
 other

34—Amendment of section 65—Service of notices and other documents

 Section 65(1)(d)—delete paragraph (d) and substitute:

- 10 (d) be sent to an email address known to be used by the person (in which case the notice or other document will be taken to have been served or given at the time of transmission); or
- (e) be served or given in some other manner prescribed by the regulations.

35—Amendment of section 66—Regulations and fee notices

15 (1) Section 66(2)(i)—delete "natural" and substitute:
 other

 (2) Section 66(2)(j)—delete "natural" and substitute:
 other

 (3) Section 66(2)(k)—delete "natural" and substitute:
20 other

 (4) Section 66(2)(l)—delete paragraph (l)

 (5) Section 66—after subsection (4) insert:

- (5) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.