

(Reprint No. 2)

SOUTH AUSTRALIA

CREMATION ACT 1891

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 January 1995.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

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CREMATION ACT 1891

being

Cremation Act 1891 No. 520 of 1891
[Assented to 19 December 1891]

as amended by

Cremation Act Amendment Act 1918 No. 1333 of 1918 [Assented to 21 November 1918]

Statute Law Revision Act 1936 No. 2293 of 1936 [Assented to 8 October 1936]

Cremation Act Amendment Act 1964 No. 15 of 1964 [Assented to 17 September 1964]

Cremation Act Amendment Act 1981 No. 82 of 1981 [Assented to 26 November 1981]

Statutes Amendment (Public and Environmental Health) Act 1987 No. 37 of 1987 [Assented to 23 April 1987]¹

Cremation Act Amendment Act 1988 No. 34 of 1988 [Assented to 21 April 1988]

Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to 27 October 1994]²

¹ Came into operation 1 July 1991: *Gaz.* 6 June 1991, p. 1776.

² Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to regulate the process of cremation.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Cremation Act 1891*.

Interpretation

- 1A. In this Act, unless the contrary intention appears—

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

"registrar" means—

- (a) the Principal Registrar of Births, Deaths, and Marriages; or
- (b) the Deputy Registrar of Births, Deaths, and Marriages; or
- (c) a district registrar of births, deaths, and marriages.

Crematoria may be established

2. Subject to this Act, a crematorium may be established if—

- (a) the site and plans for the crematorium, and the apparatus to be used for cremation, are approved by the *South Australian Health Commission*; and
- (b) the crematorium is licensed in accordance with this Act.

Applicant to fulfil certain requirements

3. Every applicant for a licence for a crematorium must satisfy the Governor, by statutory declaration and by such other evidence as the Governor may require—

- (I) that he is the owner in fee-simple of the site for such crematorium described in his application: or
- (II) that he has the written consent to such application of such owner: or
- (III) that, if such site be situated in any cemetery or burial-ground, he has the written consent to such application of the persons having the control and management of such cemetery or burial-ground:
- (IV) that notice of intention to apply for such licence shall have been given by advertisement at least once in each week for eight successive weeks immediately preceding the date of such application in a public newspaper circulating in the city, town, or place within which it is proposed to erect such crematorium: and
- (V) that no objection to the establishment of such crematorium shall have been lodged with the registrar of births, deaths, and marriages of the district within which such crematorium is proposed to be erected by any owner or occupier of any house or land situated within one hundred yards of the site of such proposed crematorium; but this last condition shall not apply to any crematorium which it is proposed shall be erected within any cemetery.

Cremation, when illegal, etc.

4. The cremation of the body of any human being, otherwise than in a licensed crematorium, shall be deemed illegal and a common nuisance.

Conditions of cremation

5. (1) The cremation of any human body after death shall not be lawful unless the person having charge of such body or taking the same to a crematorium shall lodge with the person in charge of such crematorium a "cremation permit", issued by the registrar (which permit such registrar is hereby required, subject to the provisions hereinafter contained, to grant in the prescribed form to any person demanding the same). But no such permit shall be issued by the registrar—

- (I) unless upon the receipt by the registrar of certificates from two legally-qualified medical practitioners, one of such certificates stating that the practitioner giving the same had been in professional attendance on the deceased, and both such certificates stating that the deceased died from natural causes: or
- (II) unless a legally-qualified medical practitioner shall, after a *post mortem* examination of all the vital organs of the deceased, certify to the registrar that the deceased died from natural causes: or
- (III) unless a coroner or justice of the peace who has held an inquest or inquiry as to the cause of death of any person shall first have certified to the registrar that such cause has been duly inquired into, and that no further examination of the body was necessary.

Provided that the registrar shall not issue any such permit until the death of the person to be cremated has been duly registered, unless—

- (a) the person died in some part of Australia other than South Australia; and
- (b) the law in force in that place provides that a body of a person may be cremated before his death is duly registered;

And if any registrar shall issue any "cremation permit" without having first received the proper certificates as prescribed by this section, or if any person in charge of any crematorium shall without any such "cremation permit", or before receipt of the same, cremate or permit the cremation of any human body, such registrar or person, as the case may be, shall be guilty of an offence, and may be fined in any sum not exceeding one thousand dollars, or be imprisoned (with or without such fine) for any term not exceeding two years.

(2) In this section, "coroner", in relation to a person who has died in some part of Australia other than South Australia, includes a person who is constituted a coroner pursuant to the law in force in that place.

Certificate where death occurs in other State of Commonwealth

5A. In cases where the death in respect of which the certificates mentioned in section 5 are required, occurred in some part of the Commonwealth other than South Australia, the registrar may accept for the purposes of that section the certificates of two medical practitioners who are by the law of the part of the Commonwealth wherein such death occurred entitled to practise and are actually practising as medical practitioners and who are by such law entitled to give a certificate of the cause of death, if the registrar is satisfied that such certificates are genuine.

Relatives, etc. may object to cremation in cases where not directed by deceased person

6. It shall not be lawful, except as hereinafter mentioned, to cremate the body of any deceased person if his widow or any of his next of kin, whether under or above the age of twenty-one years, or his executors or any of them, shall object thereto; but in all cases where a deceased person shall have left an attested memorandum directing that his body shall be cremated, it shall be the duty of his executors or administrators to carry out his directions.

Interested persons not to give certificates

7. If any person, knowing that he has any pecuniary interest in the death of any other person in terms of any policy of life insurance, or that he is entitled in expectancy of such death to any real or personal property, shall give or join in giving a certificate concerning the death of such person for the purposes of this Act, such first-mentioned person shall be guilty of an offence, and may be sentenced to penal servitude for any term not exceeding three years.

Attorney-General may forbid cremation, etc.

8. The Attorney-General or any special or police magistrate may, in any case, when there shall appear to be reasonable cause for doing so, by order in writing under his hand addressed to the person in charge of any crematorium, forbid the cremation of any human body after death specified in such writing, either absolutely or until the viscera or any other organs have been removed from such body and lodged in such manner and custody as he may require; and if any person in charge of any crematorium shall, in contravention of such order, cremate or permit the cremation of such body, he shall be guilty of an offence, and may be fined in any sum not exceeding one thousand dollars, or be imprisoned (with or without such fine) for any term not exceeding three years.

Consent of cemetery authorities to application for a crematorium

9. The body corporate, authority, or persons in whom any cemetery or burial-ground or the control and management thereof is vested for the time being, may consent by their common seal or in writing under their hands and seals to the application for any site for a crematorium made by any person under this Act.

Regulations

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

(2) The regulations may prescribe penalties not exceeding \$200 for breach of any regulation.

(3) An offence constituted by the regulations is a summary offence.

(4) Proceedings for an offence against the regulations cannot be commenced except upon the complaint of a person acting on the written authority of the Chairman of the *South Australian Health Commission*.

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Cremation Act 1891

APPENDIX

LEGISLATIVE HISTORY

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 3 of The Public General Acts of South Australia 1837-1975 at page 112.
- Legislative history since 3 February 1976 (entries in bold type indicate amendments incorporated since the last reprint) is as follows:

Section 1:	substituted by 34, 1988, s. 2
Section 1A:	inserted by 34, 1988, s. 2
Section 2:	substituted by 37, 1987, s. 5
Section 5(1):	amended by 59, 1994, Sched. 2
Sections 7 and 8:	amended by 59, 1994, Sched. 2
Section 10:	substituted by 37, 1987, s. 6
Section 11:	repealed by 82, 1981, s. 2