

South Australia

Burial and Cremation (Interment Rights) Amendment Act 2023

An Act to amend the *Burial and Cremation Act 2013*.

Contents

Part 1—Preliminary

1 Short title

Part 2—Amendment of *Burial and Cremation Act 2013*

2 Amendment of section 13—Offences

3 Amendment of section 35—Exercise and enforcement of interment rights

4 Amendment of section 38—Re-use of interment sites

5 Amendment of section 39—Ownership of memorial

6 Amendment of section 42—Power of relevant authority to dispose of unclaimed memorial

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Burial and Cremation (Interment Rights) Amendment Act 2023*.

Part 2—Amendment of *Burial and Cremation Act 2013*

2—Amendment of section 13—Offences

Section 13—after subsection (1) insert:

- (1a) Subject to this Act, a person must not—
- (a) remove cremated remains from an interment site in a cemetery or natural burial ground; or
 - (b) re-inter in a cemetery or natural burial ground cremated remains that have been removed from an interment site; or
 - (c) cause, suffer or permit an act referred to in paragraph (a) or (b),

while an interment right is in force in relation to the interment site unless authorised to do so by—

- (d) the holder of the interment right; or
- (e) if the holder of the interment right has died—a person referred to in section 35(1).

Maximum penalty: \$10 000.

- (1b) Subsection (1a) does not apply in relation to cremated remains interred directly in the earth.
- (1c) Subsection (1a) does not apply to the removal or re-interment of cremated remains in a cemetery or natural burial ground by the relevant authority for the cemetery or natural burial ground to enable works for the improvement or embellishment of the cemetery or natural burial ground, or the maintenance or repair of anything in, or any part of, the cemetery or natural burial ground, to be carried out.

3—Amendment of section 35—Exercise and enforcement of interment rights

Section 35—after subsection (2) insert:

- (3) An interment right may be enforced against the relevant authority for the cemetery or natural burial ground in respect of which the interment right was issued.
- (4) The relevant authority for a cemetery or natural burial ground must not fail to comply with its obligations under an interment right issued in respect of the cemetery or natural burial ground.

Maximum penalty:

- (a) if the offender is a natural person—\$10 000;
 - (b) if the offender is a body corporate—\$20 000.
- (5) This section applies to the person or body for the time being responsible for the administration of the cemetery or natural burial ground regardless of when the interment right was issued, and regardless of whether the interment right was issued by that person or body or by some other person or body.
 - (6) It is not a defence to a charge of an offence against subsection (4) that the defendant was not aware of the existence of the interment right when the defendant assumed the administration of the cemetery or natural burial ground unless the defendant proves that the defendant took reasonable steps to identify interment rights in existence at the time that the defendant assumed the administration of the cemetery or natural burial ground.

4—Amendment of section 38—Re-use of interment sites

Section 38(3)(b)—delete paragraph (b) and substitute:

- (b) inform the personal representative or relative of the deceased that if the interment right is not renewed and there is a memorial to the deceased at the interment site, the person who held the interment right immediately before its expiry may reclaim the memorial from the relevant authority; and

5—Amendment of section 39—Ownership of memorial

Section 39(1)—delete "cemetery, natural burial ground or other place of interment" and substitute:

cemetery or natural burial ground

6—Amendment of section 42—Power of relevant authority to dispose of unclaimed memorial

Section 42(1)(a)(i)—delete subparagraph (i) and substitute:

- (i) since an interment right in respect of an interment site in a cemetery or natural burial ground has expired; or