

Legislative Council—No 16A

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South Australia

Burial and Cremation (Interment Rights) Amendment Bill 2026

A BILL FOR

An Act to amend 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 *Burial and Cremation (Interment Rights) Amendment Act 2026*.

2—Commencement

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

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

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

- 10 Section 38(2)(b)—delete paragraph (b) and substitute:
 - (b) the relevant authority has taken reasonable steps to give written notice of its intention to re-use the interment site to 1 or more of the following persons:
 - (i) the personal representative of the deceased;
 - 15 (ii) a relative of the deceased,
- and of those persons so notified at least 1 person must, where possible, not be a person from whom the interment right has been forcibly surrendered in accordance with section 38C; and

4—Insertion of Part 3 Division 3A

Part 3—after Division 3 insert:

Division 3A—Variation or forced surrender of interment right in certain circumstances

38A—Interpretation

(1) In this Division—

affected person means a person who is directly and adversely affected by—

- (a) a prescribed offence that a relevant offender has been convicted of; or
- (b) the death of a person, if there is a responsible person in relation to the death;

conviction—a person is taken to have been ***convicted*** of an offence if—

- (a) the person was convicted of the offence; or
- (b) the person was charged with, and found guilty of, the offence but was discharged without conviction; or
- (c) a court has, under Part 8A Division 2 of the *Criminal Law Consolidation Act 1935*, recorded findings that—
 - (i) the person was mentally incompetent to commit the offence; and
 - (ii) the objective elements of the offence were established; or
- (d) a court has, under Part 8A Division 3 of the *Criminal Law Consolidation Act 1935*, recorded findings that—
 - (i) the person was mentally unfit to stand trial on a charge of the offence; and
 - (ii) the objective elements of the offence were established;

designated relative, of a person, means—

- (a) a spouse or domestic partner of the person; or
- (b) a parent, step-parent or grandparent of the person; or
- (c) a sibling or step-sibling of the person; or
- (d) a child, step-child or grandchild of the person; or
- (e) a child or grandchild of a sibling or step-sibling of the person;

prescribed offence means—

- (a) a serious offence of violence; or

- (b) a serious sexual offence; or
- (c) an offence, or offence of a kind, prescribed by the regulations;

previous holder, of an interment right that is forced to be surrendered under section 38C(2), means—

- (a) the person whose interment right is surrendered; or
- (b) where the holder of the interment right has died—the person who was authorised to exercise or enforce the surrendered interment right;

relevant offender means a person convicted of a prescribed offence (wherever committed) where—

- (a) in a case where an appeal is or was lodged against the conviction within the period provided for lodging an appeal (including any extension of such a period granted by a court)—the appeal has lapsed or been finally determined; or
- (b) in any other case—the period for lodging an appeal against the conviction has expired;

serious offence of violence has the same meaning as in section 83D(1) of the *Criminal Law Consolidation Act 1935*;

serious sexual offence has the same meaning as in the *Criminal Law (High Risk Offenders) Act 2015*.

- (2) For the purposes of this Division, a person is a **responsible person** in relation to another person's death if—

- (a) —
 - (i) the person has been found by a coroner, under the *Coroners Act 2003* or a corresponding law of a State or Territory, to have been responsible (however described) for the death; or
 - (ii) the person has been found to be responsible for the death in accordance with any scheme prescribed by the regulations; and
- (b) the person was themselves deceased at the time of the finding of the coroner or at the time they were found responsible in the manner prescribed by the regulations (as the case requires).

- (3) For the purposes of this Division, a reference to the **holder** of an interment right includes a person who is authorised, pursuant to section 35, to exercise or enforce the right in circumstances where the holder of the right has died.

38B—Application for variation or forced surrender of interment right

- (1) Subject to this Division, an affected person, or a person acting on behalf of an affected person, may apply to the Registrar, in a manner and form approved by the Registrar, for—
- (a) the variation of an interment right held by another person; or
 - (b) the forced surrender of an interment right held by another person to the relevant authority which granted the interment right.
- (2) If more than 1 person holds an interment right, an application under subsection (1) may relate to the interment right held by any 1 or more of those persons.
- (3) An application under subsection (1) need not specify a preference as between the variation of the interment right to which the application relates and its forced surrender.
- (4) If an application under subsection (1) specifies a preference as between the variation of the interment right to which the application relates and its forced surrender—
- (a) the application may also specify that if the Registrar proposes not to decide the application in accordance with that preference, the applicant consents to the Registrar deciding the application as if it had not indicated a preference; or
 - (b) if the application does not so specify—the person who made the application may change that preference by written notice to the Registrar before the application is decided.
- (5) The Registrar must, on receipt of an application under subsection (1), take reasonable steps to notify—
- (a) the relevant authority in relation to the interment right; and
 - (b) the holder of the interment right,
- that such an application has been made.
- (6) The Registrar may, on receipt of an application under subsection (1), make any order the Registrar thinks necessary to prevent the holder of an interment right from dealing with or exercising the right until the application has been decided.

38C—Variation or forced surrender of interment right where prescribed offence or finding of responsibility

- (1) This section applies if an application has been made under section 38B(1) for—
- (a) the variation of an interment right held by another person; or

- (b) the forced surrender of an interment right held by another person to the relevant authority which granted the interment right.
- (2) The Registrar may decide to vary the interment right or force the surrender of the interment right (as the case requires) if—
 - (a) the holder of the interment right is—
 - (i) a relevant offender or an associate or designated relative of a relevant offender (whether the relevant offender is alive or deceased); or
 - (ii) an associate or designated relative of a responsible person in relation to another person's death; and
 - (b) the Registrar is satisfied, having regard to the matters specified in section 38D, that—
 - (i) due to the relevant offender's role in the prescribed offence or the responsible person's role in the death of another person (as the case requires) the exercise of the interment right by the current holder would cause significant harm, pain or suffering (whether physical or mental) to an affected person; and
 - (ii) it is appropriate to vary or force the surrender of the holder's interment right.
- (3) The Registrar may decide to vary an interment right by transferring the interment right to another person or to force the surrender of an interment right under subsection (2) only if the Registrar is satisfied that it would not be possible to otherwise vary the interment right in a way that would adequately prevent that further significant harm, pain or suffering to an affected person.
- (4) The Registrar must, when deciding whether it is appropriate to vary or force the surrender of an interment right, take into account any relevant cultural or religious considerations.
- (5) Despite subsection (3), the Registrar may decide to vary an interment right by transferring the interment right to another person or to force the surrender of an interment right under this subsection, without being satisfied of the requirements referred to in subsection (2)(b), if—
 - (a) the Registrar previously varied the interment right under subsection (2); and
 - (b) after giving the holder of the interment right a reasonable opportunity to comment, the Registrar is satisfied that the holder of the interment right has failed to comply with the interment right as varied, including by contravening a condition.

(6) A decision by the Registrar to vary or force the surrender of an interment right under this section—

- (a) takes effect on the date specified in the decision; and
- (b) has effect despite anything to the contrary in this Act or the regulations.

(7) The Registrar must notify the following persons, in accordance with the regulations, of a decision to vary or force the surrender of an interment right under this section:

- (a) the applicant for the variation or forced surrender;
- (b) the holder of the interment right;
- (c) in the case of a forced surrender—the previous holder of the interment right;
- (d) if the interment right is held by more than 1 person—the other persons who remain holders of the interment right;
- (e) the relevant authority for the place of interment to which the interment right applies.

(8) To avoid doubt, if the Registrar makes a decision to vary or force the surrender of an interment right held by a person who is not the sole holder of the interment right, the variation or forced surrender does not apply to the entitlements of the other holders of the interment right, unless the Registrar decides to vary or force the surrender of the rights of the other holders.

38D—Matters to which Registrar must have regard

For the purposes of section 38C(2)(b), the Registrar must have regard to—

- (a) if the holder of the interment right concerned is a relevant offender, or an associate or designated relative of a relevant offender—the following:
 - (i) the nature, category and seriousness of the prescribed offence of which the relevant offender was convicted;
 - (ii) the opinion of any affected person of whom the Registrar is aware;
 - (iii) to the extent that it is reasonably practicable for the Registrar to determine—the opinion of the relevant offender and, if the holder of the interment right is an associate or designated relative of the relevant offender, the opinion of the associate or designated relative;

- (iv) the detriment that may be caused to the relevant offender and, if the holder of the interment right is an associate or designated relative of the relevant offender, to the associate or designated relative, including any mitigating circumstances; and
- (b) if the holder of the interment right concerned is an associate or designated relative of a responsible person in relation to the death of another person—the following:
- (i) if the responsible person is a responsible person pursuant to section 38A(2)(a)(i)—the coroner's findings as to the circumstances of the death of the other person;
- (ii) the nature of the responsible person's responsibility for the death of the other person;
- (iii) the opinion of any affected person of whom the Registrar is aware;
- (iv) to the extent that it is reasonably practicable for the Registrar to determine—the opinion of the associate or designated relative;
- (v) the detriment that may be caused to the associate or designated relative, including any mitigating circumstances; and
- (c) in any case—the following:
- (i) the proximity of plots;
- (ii) whether or not human remains have already been interred;
- (iii) the availability of alternative arrangements for the relevant offender, responsible person or associate or designated relative of the relevant offender or responsible person, as the case requires;
- (iv) any matter prescribed by the regulations;
- (v) any other matter the Registrar considers relevant.

38E—Variation may involve imposition of conditions on interment right

- (1) Without limiting the manner in which an interment right may be varied under section 38C(2), the Registrar may impose conditions on the interment right for or with respect to the following:
- (a) the interment of human remains at the place of interment to which the interment right applies;
- (b) the establishment or alteration of a memorial at the place of interment;

- (c) the removal of cremated remains from the place of interment;
- (d) the transfer of the interment right to another person (who need not necessarily be the affected person who made the application);
- (e) the providing or withholding of consent to the exhumation of interred bodily remains.

(2) Subject to this section, a variation of an interment right, whether by the imposition of a condition or otherwise, may expressly or impliedly override a provision of this Act or the regulations.

(3) The Registrar may only decide to vary an interment right in a manner which would require the exhumation of bodily remains if the Registrar has the approval of the Attorney-General to do so.

(4) The Registrar may only transfer an interment right to a person if the person to whom the Registrar proposes to transfer the right to consents to the transfer.

38F—Compliance with varied interment right

The holder of an interment right that has been varied under section 38C(2), including by the imposition of conditions—

- (a) must exercise the interment right as varied; and
- (b) must not contravene (whether by act or omission) any condition of the interment right as varied.

Note—

A failure to exercise the interment right as varied, including by contravening an imposed condition, may result in the forced surrender of the interment right (see section 38C(5)).

38G—Effect of forced surrender of interment right

(1) If the Registrar makes a decision under section 38C(2) to force the surrender of an interment right held by a person, the previous holder of the interment right has no further entitlements or responsibilities under that interment right on and after the date of effect of the decision.

(2) On the date of effect of the decision, the relevant authority for the place of interment to which the interment right applies—

- (a) becomes the sole holder of the interment right if there are no persons who on that date hold an interment right in relation to the place of interment; or
- (b) becomes a holder of the interment right jointly with any persons who on that date hold an interment right in relation to the place of interment.

(3) A relevant authority that becomes the holder of an interment right under this section—

- (a) may exercise the rights of a holder of an interment right under this Act with or without the consent of any other holders of the interment right; and
- (b) is not required to perform the obligations of a holder of an interment right under this Act.

(4) If, on the date of effect of the decision referred to in subsection (1), there are no human remains interred at the place of interment to which the relevant interment right applies—

- (a) the relevant authority must pay to the previous holder or previous holders of the interment right a refund based on the current fee payable for an interment right of the same kind, less a reasonable fee—
 - (i) for administration and any maintenance costs; and
 - (ii) the restoration costs, if any, determined in accordance with the regulations; and
- (b) if the relevant authority becomes the sole holder of the interment right, the relevant authority may—
 - (i) remove any memorial on the place of interment; and
 - (ii) grant an interment right under section 30 in respect of the place of interment.

38H—Information gathering

The Registrar may, by notice in writing, require—

- (a) the Commissioner of Police; or
- (b) a court,

to provide to the Registrar information about a person for the purposes of determining whether the person is a relevant offender for the purposes of this Division.

38I—Review by Tribunal

A person who is dissatisfied with a decision of the Registrar under this Division may, within 30 days of receipt of the notice of the decision, apply to SACAT under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision.