South Australia

Burial and Cremation Act 2013

An Act to provide for and regulate the identification, handling, storage, transport, disposal and memorialisation of human remains; to provide for the establishment, administration and closure of cemeteries and natural burial grounds; to provide for the conversion of closed cemeteries into parklands or public parks or gardens; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Burial and Cremation Act 2013*.

3—Interpretation

In this Act, unless the contrary intention appears—

authorised officer means—

(a) a police officer; or

(b) a person appointed by the Minister or a council as an authorised officer under this Act;

bodily remains means the whole or any part of a human body (whatever its physical state may be) but does not include the whole or any part of a human body that has been cremated;

cemetery means a place set apart for the disposal and memorialisation of human remains, but does not include—

(a) a place at which cremated remains are scattered but is not otherwise used for the disposal of human remains; or

(b) an Aboriginal site as defined in the *Aboriginal Heritage Act 1988*; or

(c) a natural burial ground; or

(d) a place which consists of a single interment site where only—

(i) the remains of 1 deceased person; or

(ii) the remains of 2 or more members of the same family,

are, or are intended to be, interred;

cemetery authority means—

(a) in the case of a cemetery administered by the Adelaide Cemeteries Authority under the *Adelaide Cemeteries Authority Act 2001*—the Adelaide Cemeteries Authority;

(b) in any other case—the person or body for the time being responsible for the administration of a cemetery;

certificate of cause of death means—

(a) a certificate under section 36 of the *Births, Deaths and Marriages Registration Act 1996*; or

(b) a certificate of cause of foetal death under section 12 of that Act; or

(c) a *post mortem* certificate of cause of death under section 10;

close relative of a deceased person means—

(a) a spouse or domestic partner of the deceased; or

(b) a child of the deceased of or over the age of 18 years; or

(c) a parent of the deceased; or

(d) a brother or sister of the deceased of or over the age of 18 years; or

(e) if the deceased person was an Aboriginal person or Torres Strait Islander—a person who is an appropriate person according to the tradition or custom of the community to which the deceased person belonged;

council has the same meaning as in the *Local Government Act 1999*;

cremated remains means bodily remains that have been reduced by cremation;

cremation means a process for the reduction of bodily remains involving the use of fire or heat;

cremation permit means a cremation permit granted under this Act, and includes a cremation permit issued under the repealed *Cremation Act 2000*;

crematorium means a facility designed for the cremation of bodily remains;

crematorium authority means the person or body for the time being responsible for the administration of a crematorium;

death includes still-birth;

designated Minister means the Minister for the time being responsible for the administration of the *Health Care Act 2008*;

disposal of human remains means—

(a) cremation of bodily remains; or

(b) burial of bodily remains (including burial at sea); or

(c) placement of bodily or cremated remains in a mausoleum, vault, columbarium or other structure;

disposal authorisation means an authorisation to dispose of human remains granted under the *Coroners Act 2003* or a corresponding authorisation as defined in that Act;

District Court means the Administrative and Disciplinary Division of the District Court of South Australia;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

exhumation of human remains includes the removal of bodily remains from a mausoleum, underground vault or other structure;

funeral director means a person who carries on the business of arranging for the disposal of human remains;

human remains means bodily remains and includes—

(a) the remains of a still-born child; and

(b) bodily remains after they have been cremated;

institution includes part of an institution;

interment of 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);

interment right means an interment right issued under this Act by the relevant authority for a cemetery or natural burial ground;

interment site means—

(a) a mausoleum, vault, columbarium or other structure in which human remains are interred; or

(b) a site in which human remains are buried;

lift and deepen procedure means a procedure that consists of—

(a) opening an interment site; and

(b) recovering any human remains interred in the site; and

(c) deepening or otherwise enlarging the interment site; and

(d) re-interring the existing human remains in the place of interment, whether contained in a receptacle or not, so as to provide space for additional interments in the site;

mausoleum means an above-ground structure erected and designed as a resting place for remains without burial of the remains in the earth, but does not include a structure designed as a resting place exclusively for cremated human remains;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

memorial means—

(a) a gravestone, plaque, cenotaph or other monument; or

(b) any other structure or permanent physical object used to memorialise a deceased person;

Metropolitan Adelaide has the same meaning as in the *Development Act 1993*;

natural burial of human remains means burial in the ground—

(a) without preparation of the remains using chemical preservatives; and

(b) by containment of the remains only in a shroud or biodegradable coffin;

natural burial ground means a place at which human remains are interred by natural burial but does not include a place of a prescribed kind;

non-official record means a record that is not an official record;

official record has the same meaning as in the *State Records Act 1997*;

personal representative of a deceased person means a person aged 18 years or more who is—

(a) the executor of the estate of the deceased person or, if there is more than 1 executor, 1 of the executors acting with the permission of all the other executors; or

(b) the administrator of the estate of the deceased person;

Registrar means—

(a) the Registrar of Births, Deaths and Marriages; or

(b) a Deputy Registrar of Births, Deaths and Marriages,

under the *Births, Deaths and Marriages Registration Act 1996*;

relative of a deceased person means a person aged 18 years or more who is—

(a) a parent or grandparent of the deceased person; or

(b) a brother or sister of the deceased person; or

(c) a spouse or domestic partner of the deceased person; or

(d) a child, grandchild or great grandchild of the deceased person; or

(e) a child, grandchild or great grandchild of a brother or sister of the deceased person;

spouse—a person is the spouse of another if they are legally married;

relevant authority—

(a) for a cemetery—means the cemetery authority; or

(b) for a natural burial ground—means the person or body for the time being responsible for the administration of the natural burial ground; or

(c) for a crematorium—means the person or body for the time being in charge of the crematorium;

State Coroner has the same meaning as in the *Coroners Act 2003*;

State heritage place has the same meaning as in the *Development Act 1993*;

still-born child has the same meaning as in the *Births, Deaths and Marriages Registration Act 1996*;

tissue has the same meaning as in the *Transplantation and Anatomy Act 1983* but does not include a tissue slide or other tissue specimen;

township has the same meaning as in the *Local Government Act 1999*;

unincorporated area means an area of the State outside the areas of councils;

vault means an underground structure designed as a resting place for human remains without burial of the remains in the earth, but does not include a structure designed as a resting place exclusively for cremated remains.

4—Application of Act

Except as expressly provided, this Act does not apply in relation to tissue removed from the body of a deceased person in accordance with the *Coroners Act 2003* or the *Transplantation and Anatomy Act 1983*.

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 *Crown Land Management Act 2009*; and

(b) the *Development Act 1993*; and

(c) the *Heritage Places Act 1993*; and

(d) the *Local Government Act 1999*; and

(e) any other Act or law.

6—Human remains to be treated with dignity and respect

It is the intention of Parliament that human remains be treated at all times with dignity and respect.

Part 2—Disposal of human remains

Division 1—Disposal by burial or cremation

7—Offence to dispose of bodily remains except by burial or cremation

(1) Subject to this Act, a person must not dispose of bodily remains, or cause, suffer or permit bodily remains to be disposed of, except by burial or cremation.

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

(2) In this section—

burial includes the placement of bodily remains in a mausoleum, vault or other structure.

8—Offence to dispose of bodily remains except in cemetery or natural burial ground

(1) Subject to subsection (2), 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) A person may inter bodily remains in a prescribed area on land outside a cemetery or natural burial ground with the permission of the owner of the land and—

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

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

(ii) in accordance with the regulations; or

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

(3) A person must not, without the approval of the Attorney-General, dispose of bodily remains by burial at sea, or cause, suffer or permit bodily remains to be disposed of by burial at sea.

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

(4) In this section—

prescribed area means—

(a) an area outside a township or Metropolitan Adelaide; or

(b) an area defined by the regulations.

9—Offences relating to cremation

(1) A person must not dispose of bodily remains by cremation, or cause, suffer or permit bodily remains to be disposed of by cremation, unless the Registrar has issued a cremation permit in respect of the remains.

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

(2) A person must not dispose of bodily remains by cremation, or cause, suffer or permit bodily remains to be disposed of by cremation, except at a lawfully established crematorium.

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

(3) A person must not dispose of bodily remains by cremation or cause, suffer or permit bodily remains to be disposed of by cremation, if the person knows or is aware that a personal representative or a parent or child of the deceased objects to this method of disposal (unless the deceased directed, by a will or some other attested instrument, that his or her remains be disposed of by cremation).

Maximum penalty: $10 000.

(4) A person must not dispose of bodily remains by cremation, or cause, suffer or permit bodily remains to be disposed of by cremation, in contravention of an order made under section 11.

Maximum penalty: $20 000 or imprisonment for 4 years.

10—Cremation permits

(1) Subject to this section, the Registrar may, on application made by—

(a) a personal representative or close relative of a deceased person; or

(b) a person aged 18 years or more who satisfies the Registrar that he or she is, in all the circumstances, a proper person to make the application,

issue to the applicant a cremation permit authorising the disposal of the remains of the deceased person by cremation.

(2) A cremation permit will be in a form approved by the Registrar.

(3) The Registrar may, before issuing a cremation permit, question any person who may, in the Registrar's opinion, be in a position to furnish information relevant to the cause of death on any matter related to that subject.

(4) An application for a cremation permit under this section must be made in a manner and form approved by the Registrar and be accompanied by the prescribed fee.

(5) Subject to this section, the Registrar must not issue a cremation permit under this section unless the application is accompanied by—

(a) in the case of an application to dispose of the body of a still-born child—a certificate under section 12 of the *Births, Deaths and Marriages Registration Act 1996* certifying the cause of foetal death; or

(b) in any other case—

(i) 2 certificates—

(A) 1 being the certificate under section 36(3) of the *Births, Deaths and Marriages Registration Act 1996* certifying that the deceased died from natural causes signed by—

- the medical practitioner who was responsible for the deceased's medical care immediately before death; or
- a medical practitioner who examined the body of the deceased after death; and

(B) the other being a certificate in a form approved by the Registrar signed by another medical practitioner; or

(ii) a certificate in a form approved by the Registrar signed by a medical practitioner who carried out a *post mortem* examination of the deceased certifying that the deceased died from natural causes; or

(iii) a disposal authorisation.

(6) The Registrar may issue a cremation permit without the documents required by subsection (5) if—

(a) in the case of an application to dispose of the remains of a person who died in another State or a Territory—the application is accompanied by the documents that would be required under the law of that State or Territory for the issue of a cremation permit or other authorisation for disposal of the remains in that State or Territory by cremation; or

(b) in any other case—the Registrar is satisfied that—

(i) the deceased's death has been registered under the *Births, Deaths and Marriages Registration Act 1996*; and

(ii) the particulars entered in the register of deaths under that Act record that the deceased died from natural causes; and

(iii) there is good reason why the documents required by subsection (5) cannot be produced; and

Examples—

1 If the age and condition of the body of the deceased are in such a state that the cause of death cannot be determined, a medical practitioner would not be able to issue a certificate as required by subsection (5).

2 A document obtained for the purposes of subsection (5) may have been lost or destroyed.

(iv) the State Coroner does not require the remains for the purposes of an inquest or for determining whether an inquest is necessary or desirable under the *Coroners Act 2003*; and

(v) there is no other reason why the permit should not be issued.

(7) The Registrar must not issue a cremation permit if—

(a) the Registrar knows or is aware that a personal representative or a parent or child of the deceased objects to the disposal of the remains by cremation (unless the deceased directed, by a will or some other attested instrument, that his or her remains be disposed of by cremation); or

(b) an order prohibiting disposal by cremation has been made under section 11; or

(c) the death is a reportable death under the *Coroners Act 2003*.

(8) If the Registrar becomes aware of a dispute as to who may be entitled at law to possession of the body of a deceased person for the purposes of its disposal, the Registrar may refrain from issuing a cremation permit in respect of the body until the dispute is resolved.

11—Power of Attorney-General, State Coroner or magistrate to prohibit disposal by cremation

(1) The Attorney-General, the State Coroner or a magistrate may, if he or she considers that there is reasonable cause for doing so, by order in writing, prohibit the disposal of the remains of a specified deceased person by cremation, either absolutely or until specified parts of the body of the deceased person have been removed and lodged in such manner and custody as the Attorney-General, State Coroner or magistrate may require.

(2) An order under subsection (1) may be given personally or by post.

(3) A person who makes an order under this section must give the Registrar notice of the order as soon as practicable.

Division 2—Documents to be provided before disposal of bodily remains

12—Documents to be provided before disposal of bodily remains

(1) A person must not, without the approval of the Attorney-General, cremate or inter bodily remains, or cause, suffer or permit the cremation or interment of bodily remains, unless he or she has seen a certificate of identification issued in accordance with the regulations and has recorded the prescribed particulars relating to the certificate.

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

(2) Subject to this section, a person must not cremate or inter bodily remains, or cause, suffer or permit the cremation or interment of bodily remains, unless he or she has seen—

(a) a partial certificate of cause of death; or

(b) a disposal authorisation; or

(c) an authorisation to dispose of human remains granted by the Minister or the Registrar under this section,

and has recorded the prescribed particulars relating to the certificate or authorisation.

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

(3) Subsection (2) does not apply if—

(a) the remains are to be disposed of by cremation; and

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

(4) An approval or authorisation issued by the Minister under this section may be made subject to such conditions as the Minister thinks fit.

(5) The Registrar may not issue an authorisation under subsection (2) unless the deceased's death has been registered under the *Births, Deaths and Marriages Registration Act 1996* and the Registrar is satisfied that—

(a) the particulars entered in the Register under that Act record that the deceased died from natural causes; or

(b) the State Coroner does not require the deceased's remains for the purposes of an inquest or for determining whether an inquest is necessary or desirable under the *Coroners Act 2003*.

(6) In this section—

partial, in relation to a certificate of cause of death, means a certificate that—

(a) certifies that the deceased person to whom the certificate relates died of natural causes; and

(b) contains all the particulars required to be stated in the certificate other than—

(i) particulars relating to the cause of death; and

(ii) particulars relating to any illness or other medical condition.

Division 3—Opening of interment sites, exhumation and re-interment

13—Offences

(1) Subject to this section, a person must not, without the approval of the Attorney-General—

(a) open an interment site in a cemetery or natural burial ground for the purpose of interring additional human remains, or cause, suffer or permit an interment site in a cemetery or natural burial ground to be opened for the purpose of interring additional human remains; or

(b) exhume or remove bodily remains from their place of interment, or cause, suffer or permit bodily remains to be exhumed or removed from their place of interment; or

(c) re-inter in a cemetery or natural burial ground bodily remains that have been exhumed or removed from their place of interment, or cause, suffer or permit bodily remains that have been exhumed or removed from their place of interment to be re-interred in a cemetery or natural burial ground.

Maximum penalty: $20 000 or imprisonment for 4 years.

(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.

(2) Subsection (1)(a) does not apply if—

(a) only cremated remains are interred at the site; or

(b) in the case of a site at which bodily remains are interred (whether or not cremated remains are also interred there)—

(i) additional human remains can be interred without disturbing bodily remains; or

(ii) a lift and deepen procedure is carried out in accordance with the regulations.

(3) Subsection (1)(b) does not apply if the remains have been exhumed or removed pursuant to a warrant issued under the *Coroners Act 2003*.

(4) If, when an interment site in a cemetery or natural burial ground is opened for the purpose of interring additional human remains, bodily remains are found, the relevant authority for the cemetery or natural burial ground must ensure that the remains are—

(a) re-interred at a greater depth; or

(b) dealt with in accordance with the regulations.

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

(5) The Attorney-General must, before giving an approval for an exhumation, make a reasonable attempt to ascertain the views of the surviving close relatives of the deceased person in relation to the proposed exhumation of the deceased's remains.

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

(a) in the case of human remains interred in a cemetery or natural burial ground—the relevant authority for the cemetery or natural burial ground;

(b) in any other case—the relevant Minister.

(7) In this section—

bodily remains and ***human remains*** include—

(a) the remains of a human foetus (other than a still-born child); and

(b) tissue removed from a body or part of a body of a deceased person;

relevant Minister means—

(a) in relation to the remains of an Aboriginal person—the Minister for the time being responsible for the administration of the *Aboriginal Heritage Act 1988*;

(b) in any other case—the designated Minister.

Division 4—Miscellaneous

14—Prohibition on giving certificate of cause of death in certain circumstances

(1) A medical practitioner must not give a certificate of cause of death if the death is a reportable death under the *Coroners Act 2003*.

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

(2) A medical practitioner must not give a certificate of cause of death knowing that—

(a) he or she, or his or her spouse or domestic partner, has a pecuniary or proprietary interest in the hospital, nursing home or aged care facility where the person died; or

(b) he or she, or his or her spouse or domestic partner, has a pecuniary interest in the death of the person under a policy of life insurance or superannuation; or

(c) he or she, or his or her spouse or domestic partner, is entitled to a benefit in the form of property under a will or intestate distribution.

Maximum penalty: Imprisonment for 4 years.

(3) It is a defence to a charge of an offence against subsection (2) if the defendant proves that—

(a) the death occurred outside Metropolitan Adelaide; and

(b) no other medical practitioner was reasonably available, within 24 hours after the death, to give the certificate; and

(c) the defendant complied with any requirements prescribed by the regulations in relation to the certificate.

15—Handling, storage and transport of human remains

A person must comply with the provisions of the regulations relating to the handling, storage and transport of human remains.

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

16—Authority to inter at particular site

A person must not inter human remains, or cause, suffer or permit the interment of human remains, in a cemetery or natural burial ground at a site in relation to which an interment right is in force, unless the remains are those of a deceased person entitled to be interred at that site.

Maximum penalty: $10 000.

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

(1) A relevant authority must not, unless it is necessary to protect the health or safety of any person, prevent or interfere with the performance of a ceremony according to the customs and practices of a person's religion or culture in connection with the disposal of human remains in a cemetery or natural burial ground administered by the authority or at a crematorium that the relevant authority is in charge of.

Maximum penalty: $5 000.

(2) The relevant authority for a cemetery or natural burial ground must allow a member of the clergy of a religion for which a portion of a cemetery or natural burial ground administered by the authority is set apart to have free access and admission to that portion of the cemetery or natural burial ground in order to exercise his or her religious functions.

Maximum penalty: $5 000.

18—Disposal of unclaimed cremated human remains

(1) The relevant authority for a crematorium must ensure that the cremated remains of a deceased person processed at the crematorium are not released except to the person to whom the cremation permit authorising the disposal of the remains was issued or a person authorised in writing by that person.

Maximum penalty: $10 000.

(2) However, if the cremated remains of a deceased person processed at a crematorium are not claimed within 6 months, the relevant authority for the crematorium may dispose of them as it thinks fit.

Part 3—Cemeteries, natural burial grounds and crematoria

Division 1—Establishment of cemeteries, natural burial grounds and crematoria

19—Establishment of cemeteries, natural burial grounds and crematoria

Subject to this Act, any person may establish a cemetery, natural burial ground or crematorium.

20—Power of councils to establish and manage public mortuaries

A council may establish and manage public mortuaries for the temporary repose of bodily remains prior to their disposal.

21—Establishment of mausolea within cemeteries

The relevant authority for a cemetery may, on its own initiative or on application by any person, establish mausolea within the cemetery.

22—Designation of natural burial grounds within cemeteries

The relevant authority for a cemetery may set apart any part of the cemetery as a natural burial ground.

23—Power to set apart part of cemetery or natural burial ground for particular religions

The relevant authority for a cemetery or natural burial ground may set apart any part of the cemetery or natural burial ground for the interment of human remains in accordance with the customs and practices of a particular religion.

Division 2—Closure and conversion of cemeteries and natural burial grounds

24—Closure of cemeteries and natural burial grounds

(1) Subject to this section, the relevant authority for a cemetery or natural burial ground may close the cemetery or natural burial ground if—

(a) the cemetery or natural burial ground is or has become unsuitable for the disposal of human remains; or

(b) 50 or more years have elapsed since human remains were last interred in the cemetery or natural burial ground.

(2) A relevant authority must not close a cemetery or natural burial ground unless—

(a) notice of the proposed closure has been given in accordance with this section; and

(b) in the case of a cemetery or natural burial ground for which a council is the relevant authority—the Minister has approved the closure.

(3) Notice of the proposed closure of a cemetery or natural burial ground must be given—

(a) in a newspaper circulating throughout the State; and

(b) in the case of a cemetery or natural burial ground for which a council is the relevant authority—in the Gazette,

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.

(4) A notice under subsection (3) must comply with the regulations.

(5) A council that proposes to close a cemetery or natural burial ground for which it is the relevant authority must provide the Minister with details of any representations or submissions made to the council in respect of the proposed closure.

(6) If a cemetery or natural burial ground is closed under this section, a person must not dispose of human remains in the cemetery or natural burial ground.

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

(7) If a cemetery or natural burial ground is closed under this section, a person must not knowingly disturb human remains interred there except as may be authorised by this Act, the Attorney-General or the State Coroner.

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

(8) If, when a cemetery or natural burial ground is closed under this section, there are unexercised interment rights in force in relation to the cemetery or natural burial ground, the relevant authority for the cemetery or natural burial ground may, by agreement with the holder of such an interment right—

(a) discharge the interment right and give the former holder a refund equal to the current fee payable for an interment right of the same kind; or

(b) discharge the interment right and issue to the former holder, free of charge—

(i) a new interment right in relation to another cemetery or natural burial ground administered by the relevant authority; or

(ii) if the closure relates only to part of the cemetery or natural burial ground—a new interment right in relation to another part of the cemetery or natural burial ground.

(9) If, when a cemetery or natural burial ground is closed under this section, there are interment rights in force in relation to the cemetery or natural burial ground pursuant to which human remains have been interred, the relevant authority for the cemetery or natural burial ground may, by agreement with the holder of such an interment right—

(a) discharge the interment right and issue to the former holder, free of charge—

(i) a new interment right in relation to another cemetery or natural burial ground administered by the relevant authority; or

(ii) if the closure relates only to part of the cemetery or natural burial ground—a new interment right in relation to another part of the cemetery or natural burial ground; and

(b) remove any human remains interred at the original interment site and re-inter the remains pursuant to the new interment right; and

(c) remove any memorial erected at the original interment site and re-position the memorial at the new interment site.

(10) If the relevant authority and the holder of an interment right cannot reach an agreement to discharge the interment right, the relevant authority may refer the matter to an independent party for mediation in accordance with guidelines approved by the Minister.

(11) The costs of mediation will be borne by the relevant authority.

(12) If a cemetery or natural burial ground closed under this section has been lawfully consecrated according to the rites or practices of a particular religious or ethnic group—

(a) the owners of the land must offer the closed cemetery or natural burial ground as a gift to that group; and

(b) the relevant authority must not, unless the gift is refused by the group, demolish, remove, relocate or replace any grave in the cemetery or natural burial ground.

(13) Section 25 of the *Crown Land Management Act 2009* does not apply to a disposal of Crown land made in accordance with subsection (12)(a) (and such land will, for the purposes of that Act, be taken to have been declared surplus).

(14) Before demolishing, removing, relocating or replacing any grave or memorial in a closed cemetery or natural burial ground, the relevant authority must prepare an inventory that—

(a) identifies all graves and memorials that the relevant authority proposes to demolish, remove, relocate or replace; and

(b) contains a record of all the inscriptions and other particulars appearing on each memorial that the relevant authority proposes to demolish, remove, relocate or replace; and

(c) contains a photograph of each such memorial.

(15) The relevant authority must make the inventory available for inspection by members of the public during ordinary office hours at the office of the relevant authority.

Maximum penalty: $2 500.

(16) If a relevant authority acts in accordance with this section, it will not be taken to be in breach of its obligations under interment rights relating to human remains interred in the cemetery or natural burial ground.

(17) In this section, a reference to a ***cemetery*** or ***natural burial ground*** includes a reference to a part of a cemetery or natural burial ground.

(18) In this section—

unexercised interment right means a current interment right under which human remains are yet to be interred.

25—Dedication of closed council cemeteries as park lands

(1) If a cemetery closed under section 24 is on land held on trust by a council or includes dedicated land under the care, control and management of a council, the council may petition the Minister requesting that the Minister take such steps as are necessary to have—

(a) the trust (if any) on which the land is held by the council determined; and

(b) the land dedicated as park lands.

(2) On receipt of a petition under this section, the Minister—

(a) must publish the substance of the petition at least twice in a newspaper circulating in the area, and at least twice in a newspaper circulating throughout the State, calling on any persons objecting to the exercise of the powers under this section to state their objections to the Minister; and

(b) must cause any inquiries the Minister may think fit to be made with a view to ascertaining whether any interment rights exist over the land and for otherwise ascertaining whether there is any reason why the matters requested in the petition should not occur.

(3) If 6 months have elapsed since publication of the last notice referred to in subsection (2) and the Minister is satisfied that the petition should be granted, the Minister may comply with the petition.

(4) Subject to section 24, if a closed cemetery is dedicated as park lands, the relevant authority for the closed cemetery may do any of the following:

(a) remove memorials to deceased persons;

(b) relocate memorials to deceased persons in the park lands;

(c) replace memorials to deceased persons with some other form of memorial in the park lands.

(5) A council must pay the costs of any advertisement and inquiry under this section.

(6) If a council acts in accordance with this section, it will not be taken to be in breach of its obligations under interment rights relating to human remains interred in the cemetery.

(7) This section does not apply in relation to a closed cemetery that is, or forms part of, a State heritage place.

(8) In this section, a reference to a ***cemetery*** includes a reference to a part of a cemetery.

26—Conversion of closed cemeteries into public parks or gardens

(1) In this section, a reference to a ***closed cemetery*** is a reference to a cemetery closed under section 24, and includes a part of a cemetery that has been closed under that section, but does not include a cemetery, or part of a cemetery, that is on land held on trust by a council or that includes dedicated land under the care, control and management of a council.

(2) The relevant authority for a closed cemetery may convert the cemetery into a public park or garden.

(3) A relevant authority must not act under this section unless it has given notice of its intention to convert the cemetery into a public park or garden by public advertisement in a newspaper circulating throughout the State on at least 3 occasions within a period of 12 months.

(4) A notice under subsection (3) must comply with the regulations.

(5) If a closed cemetery is converted into a park or garden under this section, a person must not knowingly disturb human remains interred there except as may be authorised by this Act, the Attorney-General or the State Coroner.

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

(6) Subject to section 24, if a closed cemetery is converted into a public park or garden, the relevant authority for the closed cemetery may—

(a) remove memorials to deceased persons;

(b) relocate memorials to deceased persons in the park or garden;

(c) replace memorials to deceased persons with some other form of memorial in the park or garden.

(7) If a relevant authority acts in accordance with this section, it will not be taken to be in breach of its obligations under interment rights relating to human remains interred in the cemetery.

(8) This section does not apply in relation to a closed cemetery that is, or forms part of, a State heritage place.

27—Powers of relevant authorities in relation to closed cemeteries

(1) The relevant authority for a closed cemetery may, for the purpose of converting the cemetery into park lands or a public park or garden—

(a) construct roads and pathways on the land; and

(b) erect or construct buildings or structures on the land; and

(c) construct on or under the land any vault or other structure as a repository for human remains that are not to be removed from the cemetery for interment elsewhere; and

(d) erect lighting, seating and any other infrastructure or public amenity; and

(e) take such other action as the relevant authority thinks fit for laying out the land as park lands or a public place or garden.

(2) In this section, a reference to a ***cemetery*** includes a reference to a part of a cemetery.

28—Obligations of relevant authorities on closure of cemeteries etc

(1) If a cemetery or natural burial ground is closed, the relevant authority must, within 30 days after the closure, give the Registrar notice of the closure.

Maximum penalty: $5 000.

(2) If a crematorium is closed, the relevant authority must, within 30 days after the closure, give the Registrar and the Environment Protection Authority notice of the closure.

Maximum penalty: $5 000.

(3) Subject to the regulations, if a cemetery, natural burial ground or crematorium is closed, the relevant authority must, within 60 days after the closure, forward to the Libraries Board of South Australia any record relating to the cemetery, natural burial ground or crematorium in the custody of the relevant authority.

Maximum penalty: $5 000.

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

(a) official records dealt with in accordance with the *State Records Act 1997*; or

(b) non-official records relating to a cemetery, natural burial ground or crematorium closed before the commencement of this section.

(5) The Libraries Board of South Australia may, with the approval of the Minister, dispose of any records forwarded to the Board under this section if satisfied that the records are of insignificant historical value.

Division 3—Interment rights

29—Interpretation

In this Division—

human remains includes the remains of a human foetus (other than a still-born child).

30—Issue of interment rights

(1) Subject to this section, if the relevant authority for a cemetery or natural burial ground agrees to the interment of human remains in the cemetery or natural burial ground, it must issue an interment right that—

(a) identifies the person to whom the interment right is issued; and

(b) identifies the person or persons whose remains may be interred pursuant to the interment right or provides that a specified person or person of a specified class may, at some future time, nominate the person or persons whose remains may be interred pursuant to the interment right; and

(c) identifies the site at which remains may be interred pursuant to the interment right or provides for determination, in a manner set out in the interment right, of the site at which the remains may be interred pursuant to the interment right; and

(d) specifies the period for which the interment right is granted; and

(e) sets out the rights to renewal of the interment right; and

(f) specifies whether the interment right may be cancelled or transferred and sets out the conditions (if any) governing its cancellation or transfer.

(2) Before issuing an interment right to a person, the relevant authority must give the person a written statement in plain English that—

(a) includes the matters required by subsection (1) to be included in the interment right; and

(b) sets out the rights and responsibilities of the relevant authority and relatives of a deceased person whose remains may be interred pursuant to the interment right in relation to any memorial (including any unclaimed memorial) to the deceased person; and

(c) specifies the cost of the interment right and any options for periodic payment.

Maximum penalty: $2 500.

(3) An interment right may provide for the interment of such number of deceased persons at the site in which remains are to be interred pursuant to the interment right as the relevant authority considers to be within the capacity of the site to hold.

(4) Subject to this Act, an interment right obliges the relevant authority—

(a) to permit the interment of the remains of the person to whom it relates at the site identified in, or determined in accordance with, the interment right; and

(b) to permit a memorial to the deceased person to be erected at the site with the approval of the relevant authority and in accordance with the terms of the interment right; and

(c) to leave the remains undisturbed at that site for so long as the interment right remains in force; and

(d) to leave any memorial to the deceased person lawfully erected at that site, with the permission of the relevant authority, undisturbed (provided that the interment right remains in force and the memorial is kept in good repair).

(5) A relevant authority may, at the request of the holder of an interment right, carry out a lift and deepen procedure at the site to which the interment right relates for the purpose of interring additional human remains there.

31—Duration of interment rights

A relevant authority may issue an interment right—

(a) for the period specified in the interment right; or

(b) in perpetuity.

32—Renewal of interment rights

(1) A relevant authority must, on application by the holder of an interment right and payment of the renewal fee fixed by the relevant authority, renew the interment right for a period of not less than 5 years.

(2) Subject to the regulations, a relevant authority must, at least 12 months before an interment right issued by the relevant authority is due to expire, take reasonable steps to give the holder of the interment right a written notice in a form approved by the Minister—

(a) setting out the holder's entitlement to renew the interment right; and

(b) informing the holder that if the interment right is not renewed and there is a memorial to the deceased in the cemetery or natural burial ground, the memorial may be reclaimed from the relevant authority; and

(c) informing the holder of prescribed matters.

Maximum penalty: $2 500.

(3) If—

(a) a person other than the person to whom the interment right was originally issued applies for the renewal of the interment right; and

(b) the applicant has not previously renewed that interment right,

the relevant authority must give the applicant a written statement in plain English that—

(c) includes the matters required by section 30(1) to be included in the interment right; and

(d) sets out the rights and responsibilities of the relevant authority and relatives of a deceased person whose remains may be interred pursuant to the interment right in relation to any memorial (including any unclaimed memorial) to the deceased person; and

(e) specifies the cost of renewing the interment right and any options for periodic payment.

Maximum penalty: $2 500.

33—Transfer of interment rights

(1) An interment right 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 who adhere to a particular religion or belong to some other specified class.

(2) Subsection (1)(a) does not apply to a transfer of a class determined by the Minister.

(3) A transfer of an interment right does not take effect until it is recorded by the relevant authority in its register of interment rights.

34—Surrender of interment rights

(1) The holder of an interment right 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 cemetery or natural burial ground,

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—

(a) human remains are yet to be interred; and

(b) a memorial is yet to be erected.

35—Exercise or enforcement of interment rights

(1) If the holder of an interment right has died, the interment right may be exercised or enforced by—

(a) the personal representative of the deceased; or

(b) if there is no personal representative—a person determined in accordance with the regulations.

(2) If an interment right is held by more than 1 person, it may be exercised or enforced jointly or severally.

(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.

36—Interment right not required for scattering of cremated remains

No interment right is required for the scattering of cremated remains in a cemetery or natural burial ground.

37—Register of interment rights

(1) The relevant authority for a cemetery or natural burial ground must keep a register of all interment rights issued by the relevant authority.

Maximum penalty: $5 000.

(2) The relevant authority for a cemetery or natural burial ground must record in the register the location of and number allocated to, or a description of, each site in the cemetery or natural burial ground in respect of which an interment right has been issued.

Maximum penalty: $5 000.

38—Re-use of interment sites

(1) Subject to this Act, if an interment right expires, the relevant authority may—

(a) re-use the interment site to which the interment right related; and

(b) remove any memorial to a deceased person erected on or at the site.

(2) A relevant authority must not act under subsection (1) unless—

(a) the relevant authority has given notice of its intention to re-use the interment site by public advertisement in a newspaper circulating throughout the State; and

(b) the relevant authority has taken reasonable steps to give written notice of its intention to re-use the interment site to the personal representative of the deceased or 1 or more relatives of the deceased; and

(c) either—

(i) the personal representative or a relative of the deceased has informed the relevant authority that there is no objection on the part of the relatives to the re-use of the interment site; or

(ii) 2 years have elapsed from the date on which notice was given under paragraph (b) and the interment right has not been renewed during that period.

(3) The advertisement or notice referred to in subsection (2) must—

(a) set out the rights to renewal of the interment right; and

(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

(c) inform the personal representative or relative of the deceased of any prescribed matters.

Division 4—Memorials

39—Ownership of memorial

(1) For the purposes of the law of this State, a memorial to a deceased person in a cemetery or natural burial ground is the personal property of the person who holds the interment right in respect of the interment site where the memorial is situated.

(2) However, the relevant authority for a cemetery or natural burial ground in which a memorial is situated may deal with and dispose of the memorial in accordance with this Act.

(3) This section applies to memorials whether erected before or after the commencement of this Act.

40—Duty to maintain memorial

The holder of an interment right in respect of an interment site in a cemetery or natural burial ground is responsible for the maintenance of a memorial at that site unless he or she has entered into an agreement with the relevant authority for the cemetery or natural burial ground under which the relevant authority has agreed to maintain the memorial.

41—Power to require repair, removal or reinstatement of memorial

(1) If a memorial to a deceased person in a cemetery becomes unsafe, the relevant authority for the cemetery may, by notice in a form approved by the Minister given personally or by post to the owner of the memorial, require repair, removal or reinstatement of the memorial within the period specified in the notice.

(2) If the required work is not carried out within the time allowed in the notice, the relevant authority may itself have the work carried out and recover the cost of doing so as a debt from the owner of the memorial.

(3) If—

(a) a memorial to a deceased person in a cemetery becomes unsafe; and

(b) urgent action to repair, remove or reinstate the memorial is considered necessary by the relevant authority for the cemetery,

the relevant authority may, instead of giving a notice under subsection (1), have the work carried out and recover the cost of doing so as a debt from the owner of the memorial.

(4) A notice cannot be given under this section if the relevant authority has itself agreed to maintain the memorial.

(5) This section does not apply in relation to a cemetery that is, or forms part of, a State heritage place.

42—Power of relevant authority to dispose of unclaimed memorial

(1) If—

(a) 2 years or more have elapsed—

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

(ii) since a cemetery was dedicated as park lands or converted into a public park or garden; and

(b) a memorial to a deceased person interred in the cemetery or natural burial ground is situated at the interment site or elsewhere in the cemetery or natural burial ground; and

(c) the relevant authority for the cemetery or natural burial ground has given notice of its intention to remove and dispose of the memorial—

(i) by public advertisement in a newspaper circulating throughout the State; and

(ii) by written notice affixed to the memorial; and

(d) the relevant authority has taken reasonable steps to give written notice to the owner of the memorial of its intention to remove and dispose of the memorial; and

(e) 6 months have elapsed since the cemetery authority gave notice under this subsection and no person has claimed the memorial within that period,

the relevant authority may remove the memorial from the cemetery or natural burial ground and dispose of it as it thinks fit.

(2) If a memorial is disposed of by a relevant authority under this section, the authority must keep prescribed records in relation to the memorial.

Maximum penalty: $5 000.

Division 5—Miscellaneous

43—General powers of relevant authority

A relevant authority for a cemetery, natural burial ground or crematorium may—

(a) enlarge the cemetery, natural burial ground or crematorium; and

(b) improve or embellish the cemetery, natural burial ground or crematorium; and

(c) restrict interments in any part of the cemetery or natural burial ground, except as may be required by interment rights granted before the commencement of this Act; and

(d) take any other action that the relevant authority considers necessary or desirable for the proper management and maintenance of the cemetery, natural burial ground or crematorium.

44—Multicultural needs to be recognised

(1) The relevant authority for a cemetery or natural burial ground must, in the establishment, administration, extension or improvement of the cemetery or natural burial ground, have due regard to the customs and needs of the various ethnic and religious communities that may resort to the cemetery or natural burial ground for the disposal of human remains.

(2) A relevant authority is required to comply with subsection (1) in relation to a cemetery established before the commencement of this Act only to the extent that is reasonably practicable.

45—Power to restrict interments in any part of cemetery or natural burial ground

(1) The relevant authority for a cemetery or natural burial ground may restrict interments in any part of the cemetery or natural burial ground.

(2) Subsection (1) does not authorise a relevant authority to do anything that may be in breach of the terms of an interment right.

46—Neglected cemeteries and natural burial grounds

(1) If—

(a) a council is of the opinion that a cemetery or natural burial ground within its area—

(i) is in a neglected condition; or

(ii) fails in any manner to comply with the requirements of this Act; or

(b) the designated Minister is of the opinion that a cemetery or natural burial ground in an unincorporated area—

(i) is in a neglected condition; or

(ii) in any manner fails to comply with the requirements of this Act,

the council or the Minister, as the case may be, may by notice in writing to the relevant authority, require the relevant authority to carry out specified work for the purpose of remedying the condition of neglect or complying with that requirement.

(2) A notice under subsection (1) must—

(a) be given personally or by post to the relevant authority; and

(b) specify a period (not being less than the prescribed period) within which the works specified in the notice must be carried out; and

(c) include a statement setting out the right of the relevant authority to apply to the District Court for a review of the decision to give the notice; and

(d) include a warning that if the works specified in the notice are not carried out within the period specified in the notice or, if relevant, within 14 days after the completion of any review, then the council or designated Minister (as the case may be) may—

(i) carry out the works required by the notice (subject to the outcome of any review); and

(ii) recover the costs incurred by the council or designated Minister in carrying out the works required by the notice from the relevant authority.

(3) If—

(a) the work required by a notice under subsection (1) is not carried out within the time specified in the notice; and

(b) no application for review of the decision to give the notice is made within 14 days after the notice is given,

the council or designated Minister (as the case may be) may have the work carried out.

(4) If—

(a) the work required by a notice under subsection (1) is not carried out within the time specified in the notice; and

(b) an application for review of the decision to give the notice is determined in favour of the council or the designated Minister (as the case may be),

the council or the designated Minister may, within 14 days after the determination of the review, have the work carried out.

(5) The costs incurred by a council or designated Minister in carrying out works required by a notice given under this section may be recovered as a debt from the relevant authority to whom the notice was given.

47—Right of review

(1) A relevant authority to which a notice is given under section 46 may, within 14 days after receipt of the notice, apply to the District Court for a review of the decision of the council or designated Minister (as the case may be) to give the notice to the relevant authority.

(2) On a review, the District Court may—

(a) confirm or reverse the decision of the council or designated Minister; and

(b) make consequential and ancillary orders and directions.

48—Power of councils to accept conveyance of cemetery or natural burial ground land from trustees

(1) The trustees of land held on trust for a cemetery or natural burial ground may convey it to the council in whose area the land is situated if the council is willing to accept the trust.

(2) If a council accepts a trust, the council will hold the cemetery or natural burial ground on the original trusts or such of the trusts as are applicable.

(3) The trustees are, from the time of the conveyance, discharged from the trusts.

(4) A council must not accept a conveyance of a cemetery or natural burial ground under this section if, under the trusts on which the council will hold the cemetery or natural burial ground, the use of the cemetery or natural burial ground is confined to the interment of the remains of deceased persons who belonged to a particular religion.

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

(1) Subject to this section, a council may assume the administration of a cemetery or natural burial ground within its area if—

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

(b) the relevant authority for the cemetery or natural burial ground is unknown and is not reasonably ascertainable; or

(c) the relevant authority for the cemetery or natural burial ground agrees to transfer it to the council.

(2) If a council assumes the administration of a cemetery or natural burial ground, it must observe the terms of any trust affecting the administration or use of the cemetery or natural burial ground, except to the extent that the Supreme Court relieves it from the obligation to do so.

(3) A council must not assume the administration of a cemetery or natural burial ground if, under the terms of any trust, the use of the cemetery or natural burial ground is limited to the interment of human remains in accordance with the usages of a particular religion.

(4) The powers of a council under this section extend to closed cemeteries and natural burial grounds and cemeteries that have been converted to public parks or gardens.

50—Public access to cemeteries, natural burial grounds and crematoria

(1) Subject to this section, a relevant authority must allow a person access, free of charge, at any reasonable time, to a cemetery, natural burial ground or crematorium—

(a) for the purpose of visiting graves or monuments or conducting or attending a funeral or religious service; or

(b) for any other legitimate non-commercial purpose.

Maximum penalty: $5 000.

(2) If the relevant authority for a cemetery, natural burial ground or crematorium has reason to suspect that a person has committed, is committing or is about to commit an offence in the cemetery, natural burial ground or crematorium, the relevant authority may require the person to leave the cemetery, natural burial ground or crematorium.

(3) A person must not fail or refuse to comply with a requirement of a cemetery authority under subsection (2).

Maximum penalty: $2 500.

51—Disposal of surplus cemetery land etc

(1) Subject to subsection (2), nothing in this Act prevents land that comprises or forms part of a cemetery or natural burial ground that has not been used for the interment of human remains being dealt with in the ordinary course of commerce.

(2) However, before dealing with such land, the relevant authority for the cemetery or natural burial ground must discharge any unexercised interment right in force in relation to that land and—

(a) give the former holder a refund equal to the current fee payable for an interment right of the same kind; or

(b) issue to the former holder, free of charge—

(i) a new interment right in relation to another cemetery or natural burial ground administered by the relevant authority; or

(ii) if the land in question does not constitute the whole of the cemetery or natural burial ground—a new interment right in relation to another part of the cemetery or natural burial ground.

(3) In this section—

unexercised interment right means a current interment right under which human remains are yet to be interred.

52—Disposal of land after closure of cemetery etc

(1) If—

(a) a cemetery or natural burial ground has been closed in accordance with this Act; and

(b) all human remains interred in the cemetery or natural burial ground, and all memorials to deceased persons erected in the cemetery or natural burial ground, have been removed from the cemetery or natural burial ground,

nothing in this Act prevents the land comprising that cemetery or natural burial ground being dealt with in the ordinary course of commerce.

(2) In this section, a reference to a ***cemetery*** or ***natural burial ground*** includes a reference to a part of a cemetery or natural burial ground.

53—Registers, records and plans to be kept by relevant authorities

(1) The relevant authority for a cemetery or natural burial ground must keep—

(a) a register that—

(i) identifies (so far as possible) persons whose remains are interred in the cemetery or natural burial ground; and

(ii) identifies the site in which the remains of each such person are interred; and

(iii) records exhumations of human remains interred in the cemetery or natural burial ground; and

(b) a register containing prescribed particulars of—

(i) interment rights issued by the relevant authority; and

(ii) memorials erected in the cemetery or natural burial ground; and

(iii) any other matters specified by the regulations; and

(c) a plan of the cemetery or natural burial ground that shows—

(i) each site at which human remains are interred; and

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

Maximum penalty: $5 000.

(2) If an interment right in force identifies the site at which human remains are to be interred pursuant to the interment right, the relevant authority must include in the plan of the cemetery or natural burial ground the number allocated to, or a description of, that site.

Maximum penalty: $5 000.

(3) The relevant authority for a crematorium must keep prescribed records of cremations carried out at the crematorium.

Maximum penalty: $5 000.

(4) The registers kept by a relevant authority under this section must be made available for inspection by members of the public during ordinary office hours on payment of a fee fixed by the authority.

Maximum penalty: $5 000.

(5) A relevant authority must, at the request of an authorised person, produce a register kept by the authority under this section for inspection by that authorised person.

Maximum penalty: $5 000.

Part 4—Miscellaneous

54—Minister responsible for *Crown Land Management Act 2009* to facilitate exercise of powers, functions and duties under this Act

If a power, function or duty under this Act is to be exercised or performed in relation to land that is dedicated land under the *Crown Land Management Act 2009* or is subject to a Crown condition agreement under that Act, the Minister responsible for the administration of that Act must take such action under that Act as may be necessary or expedient to facilitate the exercise or performance of the power, function or duty under this Act.

55—Exemptions

(1) The Minister may, by instrument in writing or notice in the Gazette—

(a) exempt a person or class of persons, subject to such conditions as the Minister thinks fit and specifies in the instrument or notice, from specified provisions of this Act; or

(b) vary or revoke an exemption, or a condition of an exemption, under this section or impose a further condition.

(2) A person who contravenes, or fails to comply with, a condition of an exemption is guilty of an offence.

Maximum penalty: $10 000.

56—Power of Public Trustee to act on behalf of holder of interment right etc

(1) If reasonable attempts by the relevant authority for a cemetery or natural burial ground to ascertain or locate—

(a) the holder of an interment right in relation to the cemetery or natural burial ground; or

(b) the owner of a memorial erected in a cemetery or natural burial ground,

fail, the Public Trustee may, at the request of the relevant authority, act on behalf of the holder or owner (and in that case, a reference in this Act to the holder of an interment right, or the owner of a memorial, will be read as a reference to the Public Trustee).

(2) Nothing in this section requires the Public Trustee to assume any financial responsibility on behalf of the holder of an interment right or the owner of a memorial.

57—Approvals and authorisations

(1) An approval or authorisation given by the Attorney-General or State Coroner under this Act—

(a) must be in writing; and

(b) may be made subject to such conditions as the Attorney-General or State Coroner thinks fit; and

(c) may be varied or revoked.

(2) A person must not contravene, or fail to comply with, a condition of an approval or authorisation given by the Attorney-General or State Coroner under this Act.

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

58—Authorised officers

(1) The Minister may appoint a person to be an authorised officer for the purposes of this Act.

(2) A council may appoint as an authorised officer a specified officer or employee of the council, or an officer or employee of the council of a specified class.

(3) An appointment under this section may be made subject to conditions limiting the period during which, the area within which or the purposes for which the appointee may exercise the powers of an authorised officer.

(4) An authorised officer (other than a police officer) must be issued an identity card—

(a) containing a photograph of the authorised officer; and

(b) stating any conditions of appointment limiting the authorised officer's appointment.

(5) An authorised officer (other than a police officer) must produce the identity card for inspection before exercising the powers of an authorised officer under this Act in relation to any person.

(6) The Minister may, at any time, revoke an appointment made by the Minister under this section, or vary or revoke a condition of such an appointment or impose a further such condition.

(7) A council may, at any time, revoke an appointment made by the council under this section, or vary or revoke a condition of such an appointment or impose a further such condition.

59—Powers of authorised officers

(1) Subject to this section, an authorised officer may, as may reasonably be required for the administration or enforcement of this Act, do any of the following:

(a) enter and inspect any cemetery, natural burial ground, crematorium, mortuary or any other place or premises;

(b) enter and inspect any vehicle used for or in connection with the transportation of human remains, and for that purpose require a vehicle to stop, or to be presented for inspection at a place and time specified by the authorised officer; or

(c) give directions with respect to the stopping or movement of a vehicle, plant, equipment or other thing used for or in connection with the handling, storage, transportation, preparation or disposal of human remains; or

(d) require a person apparently in charge of a vehicle used for or in connection with the transportation of human remains to facilitate entry and inspection of the vehicle; or

(e) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act;

(f) require a person who the authorised officer reasonably suspects has committed, is committing, or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;

(g) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;

(h) with the authority of a warrant issued by a magistrate, require a person to produce specified documents or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;

(i) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of such a document or information;

(j) take photographs, films, audio, video or other recordings;

(k) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act.

(2) An authorised officer, in exercising powers under this section, may be accompanied by such assistants as are reasonably required in the circumstances.

(3) An authorised officer must not exercise the power conferred by subsection (1)(a) in relation to residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.

(4) An authorised officer may, on the authority of a warrant issued by a magistrate, use reasonable force to enter premises or a place, vessel or vehicle.

(5) A magistrate must not issue a warrant under this section in relation to a place, vessel or vehicle unless satisfied that there are reasonable grounds to believe—

(a) that a contravention of this Act has been, is being, or is about to be, committed in or on the place, vessel or vehicle; or

(b) that something may be found in or on the place, vessel or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or

(c) that the circumstances require immediate action.

(6) An application for the issue of a warrant under this section—

(a) may be made either personally or by telephone; and

(b) must be made in accordance with any procedures prescribed by the regulations.

60—Hindering etc persons engaged in administration of Act

A person who—

(a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration of this Act; or

(b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or

(c) produces a document or record that he or she knows, or ought to know, is false or misleading in a material particular; or

(d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or

(e) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or

(f) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: $10 000.

61—False or misleading statement

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

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

62—Statutory declarations

If a person is required under this Act to furnish information to the Minister or the Registrar, the Minister or the Registrar may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Minister or the Registrar.

63—Self-incrimination

A person is not required to answer a question or to produce, or provide a copy of, a document or information under this Act if the answer, document or information would tend to incriminate the person of an offence or make the person liable to a penalty.

64—Offences by body corporate

(1) If a body corporate is guilty of an offence against section 9, each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the member proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(2) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—

(a) the member knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and

(b) the member was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and

(c) the member failed to exercise due diligence to prevent the commission of the offence.

(3) Subsection (2) does not apply if the principal offence is an offence against section 17, 18, 24(15), 28, 50 or 61.

(4) The regulations may make provision in relation to the criminal liability of a member of the governing body of a body corporate that is guilty of an offence against the regulations.

65—Service

(1) A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—

(a) be given to the person personally; or

(b) be posted in an envelope addressed to the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address; or

(c) be left for the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or

(d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

66—Regulations

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

(2) Without limiting the generality of subsection (1), the regulations may—

(a) impose special requirements in relation to the transportation, storage, handling or disposal of human remains where the deceased person was, or may have been, suffering from a prescribed disease at the time of his or her death; and

(b) prescribe processes for the identification of human remains; and

(c) regulate the construction, operation and use of mortuaries and crematoria; and

(d) regulate the construction of coffins, shrouds and other products designed to contain human remains; and

(e) regulate the construction and use of mausolea and underground vaults; and

(f) regulate the position, depth and maintenance of graves; and

(g) regulate natural burials; and

(h) regulate the keeping and inspection of records for the purposes of this Act; and

(i) provide for the management of cemeteries, natural burial grounds and crematoria; and

(j) regulate the conduct of persons in cemeteries and natural burial grounds; and

(k) regulate the movement and parking of vehicles in cemeteries and natural burial grounds; and

(l) prescribe fees for the purposes of this Act; and

(m) provide for the payment and recovery of fees for the purposes of this Act; and

(n) provide for the waiver, reduction, remission and refund of fees payable under this Act; and

(o) prescribe penalties, not exceeding $10 000, for breach of, or non-compliance with, a regulation.

(3) The regulations may—

(a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and

(b) be of general or limited application; and

(c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and

(d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and

(e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Registrar, a council or a prescribed authority; and

(f) include evidentiary provisions to facilitate proof of breaches of the regulations for the purposes of proceedings for offences; and

(g) make provisions of a savings or transitional nature consequent on the enactment of this Act or the commencement of specified provisions of this Act or specified regulations under this Act.

(4) If a code, standard or other document is referred to or incorporated in the regulations—

(a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Schedule 1—Transitional provisions

Part 3—Transitional provisions

9—Transitional provision relating to interment rights

An interment right granted before the commencement of this Schedule will be taken to be an interment right granted under this Act (as if this Act had been in force when the interment right was granted) and—

(a) if the interment right was granted in perpetuity—the presumptive interment right will be taken to have been granted in perpetuity;

(b) if the interment right was granted for a fixed term—the presumptive interment right will be taken to have been granted for the same term;

(c) in any other case—the presumptive interment right will be taken to have been granted for a term prescribed by the regulations.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Burial and Cremation Act 2013* repealed the following:

Cremation Act 2000

Legislation amended by principal Act

The *Burial and Cremation Act 2013* amended the following:

Adelaide Cemeteries Authority Act 2001

Births, Deaths and Marriages Registration Act 1996

Local Government Act 1934

Transplantation and Anatomy Act 1983

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2013	20	*Burial and Cremation Act 2013*	14.6.2013	1.2.2014 except s 53—1.8.2014 (*Gazette 16.1.2014 p120*)
2014	25	*Statutes Amendment (Attorney-General's Portfolio) Act 2014*	11.12.2014	Pt 2 (s 4)—1.4.2015 (*Gazette 19.2.2015 p793*)
2022	20	*Statutes Amendment (Attorney-General's Portfolio) Act 2022*	24.11.2022	Pt 3 (s 7)—24.11.2022: s 2(1)
2023	**5**	***Burial and Cremation (Interment Rights) Amendment Act 2023***	**23.2.2023**	**23.2.2023**
2026	15	*Burial and Cremation (Interment Rights) Amendment Act 2026*	22.10.2026	uncommenced

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under *Legislation Revision and Publication Act 2002*	1.4.2015
Pt 1		
s 2	*omitted under Legislation Revision and Publication Act 2002*	*1.4.2015*
Pt 2		
s 10		
s 10(5)	amended by 25/2014 s 4	1.4.2015
	amended by 20/2022 s 7	24.11.2022
s 13		
s 13(1a)—(1c)	**inserted by 5/2023 s 2**	**23.2.2023**
Pt 3		
s 35		
s 35(3)—(6)	**inserted by 5/2023 s 3**	**23.2.2023**
s 38		
s 38(3)	**amended by 5/2023 s 4**	**23.2.2023**
s 39		
s 39(1)	**amended by 5/2023 s 5**	**23.2.2023**
s 42		
s 42(1)	**amended by 5/2023 s 6**	**23.2.2023**
Sch 1		
Pts 1 and 2	*omitted under Legislation Revision and Publication Act 2002*	*1.4.2015*

Historical versions

1.4.2015

24.11.2022