

South Australia

Funeral Industry Bill 2021

A BILL FOR

An Act to regulate the funeral industry, to make related amendments to the *Burial and Cremation Act 2013*, and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Interaction with other Acts and laws

Part 2—Administration

- 5 Commissioner responsible for administration of Act
- 6 Annual report

Part 3—Notification and registers

- 7 Requirement to notify Commissioner
- 8 Registers

Part 4—Code of practice

- 9 Code of practice

Part 5—Funeral-related information

- 10 Disclosure of funeral-related information etc by funeral directors

Part 6—Enforcement

Division 1—Authorised officers

- 11 Appointment of authorised officers
- 12 Powers of authorised officers
- 13 Hindering etc persons engaged in administration of Act

Division 2—Investigations and orders

- 14 Complaints about funeral directors
- 15 Investigation of funeral director by Commissioner
- 16 Powers of Commissioner on investigation
- 17 Prohibition orders
- 18 Contravention of prohibition orders

Division 3—Review

19 Review by Tribunal

Part 7—Miscellaneous

20 Delegation
 21 False or misleading statements
 22 Statutory declaration
 23 Confidentiality
 24 Self-incrimination
 25 Commencement of proceedings
 26 Offences by officers of bodies corporate
 27 Vicarious liability
 28 Continuing offences
 29 Evidentiary provisions
 30 Regulations and fee notices

Schedule 1—Code of practice**Schedule 2—Funeral-related information**

1 Funeral goods and services provided by a funeral director
 2 Disbursements
 3 Other funeral-related information

Schedule 3—Related amendments**Part 1—Preliminary**

1 Amendment provisions

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

2 Amendment of section 34—Surrender of interment rights

The Parliament of South Australia enacts as follows:**Part 1—Preliminary****1—Short title**This Act may be cited as the *Funeral Industry Act 2021*.**5 2—Commencement**

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

3—Interpretation

(1) In this Act, unless the contrary intention appears—

authorised officer—see section 11;10 *certificate of identification* means a certificate of identification issued in accordance with the regulations under the *Burial and Cremation Act 2013*;

code of practice means the code of practice published by the Commissioner under section 9;

Commissioner means the person holding or acting in the office of Commissioner of Consumer Affairs under the *Fair Trading Act 1987*;

5 **consumer** means a person who engages a funeral director to arrange for the disposal of human remains;

conduct includes omission;

contravene includes fail to comply with;

10 **disbursements** means any money paid by a funeral director for goods or services purchased from a third party on behalf of a consumer;

funeral ceremony means any ceremony or ritual (whether religious or secular) held after the death of a person;

funeral contract means an agreement under which funeral goods and services are provided to a consumer by a funeral director;

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

funeral goods means any goods supplied in connection with the disposal of human remains;

20 **funeral-related information**, with respect to the supply of funeral goods and services by a funeral director, means—

- (a) the information set out in Schedule 2; and
- (b) any other information prescribed by the regulations;

funeral services means any services provided by a funeral director in connection with the disposal of human remains;

25 **place** includes any premises;

premises means any land, building or structure;

30 **pre-paid funeral contract** means a funeral contract (entered into during the life of the recipient) under which the funeral director agrees to provide funeral goods and services in connection with the disposal of the remains of the recipient, being goods and services that are paid for by a consumer (whether wholly or partly) on the making of the contract;

recipient, in relation to a pre-paid funeral contract, means the person whose remains are to be disposed of pursuant to the contract;

relevant Act means—

- 35
- (a) the *Births, Deaths and Marriages Registration Act 1996*; or
 - (b) the *Burial and Cremation Act 2013*; or
 - (c) the *Competition and Consumer Act 2010* of the Commonwealth; or
 - (d) the *Corporations Act 2001* of the Commonwealth; or
 - (e) the *Fair Trading Act 1987*; or

- (f) a prescribed Act;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

vehicle has the same meaning as in the *Road Traffic Act 1961*.

- (2) In this Act, unless the contrary intention appears—

(a) **cemetery, certificate of cause of death, cremated remains, cremation, cremation permit, crematorium, crematorium authority, death, disposal, human remains, interment, interment right, natural burial, natural burial ground, Registrar and relevant authority** have the same respective meanings as in the *Burial and Cremation Act 2013*; and

(b) **company, director, proprietary company and public company** have the same respective meanings as in the *Corporations Act 2001* of the Commonwealth.

- (3) For the purposes of this Act, a person occupies a **position of authority** in a body corporate that carries on business as a funeral director if—

(a) the person is a director of the body corporate; or

(b) the person exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs; or

(c) in the case of a body corporate that is a proprietary company—the person is a shareholder in the body corporate; or

(d) in the case of a body corporate that is a public company—the person holds more than 10% of the issued share capital of the company.

- (4) However—

(a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not, for that reason, to be regarded as a person occupying a position of authority; and

(b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority.

4—Interaction with other Acts and laws

The provisions of this Act are in addition to, and do not derogate from, the provisions of any other Act or law.

Part 2—Administration

5—Commissioner responsible for administration of Act

The Commissioner is responsible for the administration of this Act.

6—Annual report

- (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the year ended on the preceding 30 June.

- (2) The Minister must cause a copy of the report to be laid before each House of Parliament within 14 sitting days of that House after receiving the report.

Part 3—Notification and registers

7—Requirement to notify Commissioner

(1) A funeral director must—

- 5 (a) in the case of a funeral director who is carrying on business as a funeral director on the commencement of this section—within 60 days after that commencement; and
- (b) in any other case—within 30 days of commencing business as a funeral director,

give notice to the Commissioner of—

- 10 (c) the full name of the funeral director; and
- (d) the registered business name (if any) of the funeral director; and
- (e) the business address of the principal place of business of the funeral director; and
- (f) the postal address of the funeral director; and
- 15 (g) the address of each place of business of the funeral director in this State; and
- (h) the full name of every person employed or engaged in the funeral director's business; and
- (i) if the funeral director is a company incorporated under the *Corporations Act 2001* of the Commonwealth—
- 20 (i) the company's name; and
- (ii) the address of the company's registered office; and
- (iii) the State or Territory in which the company is taken to be registered under that Act; and
- (iv) the company's Australian Company Number; and
- 25 (v) whether the company is a proprietary company or a public company; and
- (vi) the full name of each director of the company; and
- (vii) the full name of the secretary of the company; and
- (j) any other information prescribed by the regulations.

30 Maximum penalty:

- (a) if the offender is a natural person—\$10 000;
- (b) if the offender is a body corporate—\$20 000.

(2) A person who carries on business as a funeral director must, within 30 days of any change occurring in the information required to be provided to the Commissioner under subsection (1), give the Commissioner notice of the change.

35 Maximum penalty:

- (a) if the offender is a natural person—\$10 000;

- (b) if the offender is a body corporate—\$20 000.
- (3) Notice under this section must be given in a manner and form determined by the Commissioner.

8—Registers

- 5 (1) The Commissioner must establish and maintain—
- (a) a register of funeral directors containing—
- (i) the information notified to the Commissioner under section 7; and
- (ii) such other information as the Commissioner thinks fit to include in the register; and
- 10 (b) a register of prohibition orders made under Part 6.
- (2) The Registrar may, at any time, alter information entered in the registers to ensure that the registers are accurate.
- (3) The Registrar must make the registers available for inspection by members of the public on a website maintained by the Registrar or by other electronic means.

15 Part 4—Code of practice

9—Code of practice

- (1) The Commissioner must formulate, publish and keep under review a code of practice governing the conduct of funeral directors.
- (2) The code of practice—
- 20 (a) must contain the provisions set out in Schedule 1; and
- (b) may contain such other provisions as the Commissioner thinks fit.
- (3) The code practice must be published by notice in the Gazette.
- (4) The Commissioner may, by subsequent notice in the Gazette, vary or revoke the code of practice.
- 25 (5) The code of practice may—
- (a) be of general or limited application; and
- (b) vary in operation according to factors stated in the code; and
- (c) provide for the granting by the Commissioner of exemptions (conditional or unconditional) from specified provisions of the code.
- 30 (6) A notice under this section may come into operation on the day on which it is published or on a later day or days specified in the notice.
- (7) Sections 10 (other than subsection (1)) and 10A of the *Subordinate Legislation Act 1978* apply to a notice published in the Gazette under this section as if it were a regulation within the meaning of that Act.

- (8) A funeral director must not contravene the code of practice.

Maximum penalty: \$10 000.

Expiation fee: A fee of an amount (not exceeding \$2 000) prescribed by the regulations.

- 5 (9) Expiation fees prescribed by the regulations for the purposes of subsection (8) may be differential, varying according to any factor specified in the regulations.

Part 5—Funeral-related information

10—Disclosure of funeral-related information etc by funeral directors

- 10 (1) A funeral director must display funeral-related information in relation to goods and services supplied by the funeral director—

(a) in a prominent position at each place at which the funeral director carries on business; and

(b) prominently on any public website maintained by the funeral director.

Maximum penalty: \$10 000.

15 Expiation fee: \$2 000.

- (2) A funeral director must provide a person with funeral-related information in relation to goods and services supplied by the funeral director—

(a) within 72 hours after receiving a request from the person for such information; or

20 (b) within such other period as may be agreed between the person and the funeral director.

Maximum penalty: \$10 000.

Expiation fee: \$2 000.

- 25 (3) A funeral director must, before entering into a funeral contract with a person, provide the person with—

(a) funeral-related information; and

(b) the price of each of the particular goods and services to be supplied under the contract; and

30 (c) the costs of any disbursements that will be payable by the person under the contract; and

(d) the total amount that will be payable by the person under the contract.

Maximum penalty: \$10 000.

Expiation fee: \$2 000.

- 35 (4) Subsection (3)(a) does not apply if funeral-related information has been provided to the person in compliance with subsection (2) before a funeral contract is entered into with the person.

- (5) If a funeral director fails to provide a person with information as required by subsection (3), any agreement entered into with the person for the supply of goods and services in relation to the disposal of human remains is void and of no effect.

-
- (6) Nothing in this section prevents a funeral director from supplying—
- (a) any goods or services in relation to the disposal of human remains not referred to in Schedule 2 or the regulations; or
 - (b) goods or services in relation to the disposal of human remains in the form of a package (provided that the funeral director has complied with this section).

Part 6—Enforcement

Division 1—Authorised officers

11—Appointment of authorised officers

- (1) The following persons are authorised officers for the purposes of this Act:
- (a) the Commissioner;
 - (b) persons appointed as authorised officers under section 76 of the *Fair Trading Act 1987*;
 - (c) persons appointed as authorised officers under this section.
- (2) The Minister may appoint a suitable person to be an authorised officer for the purposes of this Act.
- (3) An appointment under this section may be made subject to conditions specified in the instrument of appointment.
- (4) The Minister may, at any time, revoke the appointment of an authorised officer or vary or revoke a condition of appointment or impose a further condition of appointment.
- (5) A person appointed as an authorised officer under this section must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act.
- (6) If the powers of an authorised officer have been limited by conditions, the identity card issued to the authorised officer must indicate those limitations.
- (7) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise powers under this Act, produce for the inspection of the person the authorised officer's identity card.

12—Powers of authorised officers

- (1) Subject to this Act, an authorised officer may, for the purposes of an investigation by the Commissioner under this Part, or for any reasonable purpose connected with the administration or enforcement of this Act—
- (a) enter and inspect any place or anything on or in the place; and
 - (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
 - 5 (d) with the authority of a warrant issued under this Part, use reasonable force to break into or open any part of, or anything in or on, any place or vehicle; and
 - (e) 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
 - 10 (f) require a person to produce any documents, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; and
 - (g) 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; and
 - (h) take photographs, films, audio, video or other recordings; and
 - 15 (i) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act; and
 - (j) 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; and
 - 20 (k) 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; and
 - 25 (l) 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 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.
- 30 (3) A warrant may not be issued under this section unless the magistrate is 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 any place or a vehicle; or
 - 35 (b) that something may be found in or on a place that has been used in, or constitutes evidence of, a contravention of this Act; or
 - (c) that the circumstances require immediate action.
- (4) An application for the issue of a warrant under this section—
- (a) may be made either personally or by telephone; and
 - 40 (b) must be made in accordance with any procedures prescribed by the regulations.

- (5) An authorised officer, in exercising powers under this Act, may be accompanied by such assistants as are reasonably required in the circumstances.
- (6) The powers conferred by subsection (1) must be exercised so as to avoid any unnecessary disruption of, or interference with, the conduct of business or the performance of work.

13—Hindering etc persons engaged in administration of Act

- (1) 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 the person's knowledge, information or belief; or
 - (c) produces a document or record that the person knows, or ought to know, is false or misleading in a material particular; or
 - (d) being the person in charge of a place or vehicle subject to an inspection and having been required to provide reasonable assistance to facilitate the inspection, refuses or fails to provide such assistance; or
 - (e) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or
 - (f) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
 - (g) falsely represents, by words or conduct, that the person is an authorised officer,

is guilty of an offence.

Maximum penalty: \$20 000.

- (2) A person who assaults an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: \$20 000.

Division 2—Investigations and orders

14—Complaints about funeral directors

A person may make a complaint about a funeral director to the Commissioner.

15—Investigation of funeral director by Commissioner

If the Commissioner receives a complaint about a funeral director, the Commissioner must investigate the complaint unless the Commissioner considers the complaint to be frivolous or vexatious.

16—Powers of Commissioner on investigation

- (1) For the purposes of an investigation under this Part, the Commissioner may require any person—
- (a) to answer any questions, orally or in writing; or

- (b) to produce any documents or records.
- (2) The Commissioner may, for the purposes of subsection (1), by notice given in the prescribed manner, require a person to attend at a specified time and place.
- (3) A person must not—
 - (a) refuse or fail to comply with a reasonable requirement under this section; or
 - (b) without reasonable excuse, refuse or fail to attend at the time and place specified in a notice under subsection (2).

Maximum penalty: \$20 000.

17—Prohibition orders

- (1) If, after conducting an investigation under this Act, the Commissioner is satisfied that—
 - (a) a person who carries on business as a funeral director has contravened this Act or a relevant Act; and
 - (b) the conduct involved is likely to bring the funeral industry into disrepute or diminish public confidence or trust in the funeral industry,the Commissioner may make 1 or both of the following orders:
 - (c) an order prohibiting the person from carrying on business as a funeral director;
 - (d) an order prohibiting the person from occupying a position of authority in a body corporate that carries on business as a funeral director.
- (2) The Commissioner may—
 - (a) stipulate that a prohibition under subsection (1) is to apply—
 - (i) permanently; or
 - (ii) for a specified period; or
 - (iii) until the fulfilment of specified conditions; and
 - (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person's business until that time.

18—Contravention of prohibition orders

- (1) A person who carries on business as a funeral director in contravention of a prohibition order under section 17 is guilty of an offence.
Maximum penalty:
 - (a) if the offender is a natural person—\$20 000;
 - (b) if the offender is a body corporate—\$100 000.
- (2) A person who occupies a position of authority in a body corporate that carries on business as a funeral director in contravention of a prohibition order under section 17 is guilty of an offence.
Maximum penalty: \$20 000.

- (3) If a person contravenes a condition imposed by the Commissioner under section 17 as to the conduct of the person's business as a funeral director, the person is guilty of an offence.

Maximum penalty:

- 5 (a) if the offender is a natural person—\$20 000;
(b) if the offender is a body corporate—\$100 000.

Division 3—Review

19—Review by Tribunal

- 10 (1) A person against whom a prohibition order is made by the Commissioner under section 17 may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of the decision of the Commissioner to make the order.
- (2) Subject to subsection (3), an application for review must be made within 1 month of the making of the relevant decision of the Commissioner.
- 15 (3) If the reasons of the Commissioner are not given in writing at the time of making the decision and the person (within 1 month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for commencing proceedings before the Tribunal runs from the time at which the person receives the written statement of those reasons.

20 Part 7—Miscellaneous

20—Delegation

- (1) The Commissioner or Minister may delegate to a person (including a person for the time being performing particular duties or holding or acting in a particular position) a function or power under this Act.
- 25 (2) A delegation—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in a matter; and
 - (d) is revocable at will.
- 30 (3) A delegated function or power may, if the instrument of delegation so provides, be further delegated in accordance with that instrument.

21—False or misleading statements

35 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 a particular) in information provided, or records kept, under this Act.

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—\$10 000;
- (b) in any other case—\$5 000.

22—Statutory declaration

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

23—Confidentiality

- (1) A person must not divulge information obtained (whether by that person or some other person) in the administration or enforcement of this Act except—
- (a) as authorised by or under this Act or any other Act or law; or
 - (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
 - (c) in connection with the administration or enforcement of this Act; or
 - (d) for the purposes of legal proceedings arising out of the administration or enforcement of this Act; or
 - (e) to an authority responsible under the law of a place outside this State, where the information is required for the proper administration or enforcement of that law; or
 - (f) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
 - (g) in accordance with the regulations.

Maximum penalty: \$20 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
 - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$20 000.

24—Self-incrimination

If a person is required to answer a question or to produce, or provide a copy of, a document or information under this Act and the answer, document or information would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless answer or produce, or provide a copy of, the document or information, but the answer, document or information will not be admissible in evidence against the person in proceedings for an offence other than proceedings in respect of the making of a false or misleading statement or declaration.

25—Commencement of proceedings

- (1) Proceedings for an offence against this Act must be commenced—
- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Criminal Procedure Act 1921*; or
 - (b) in any other case—any time within 3 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 6 years after the date of the alleged commission of the offence.
- (2) An apparently genuine document purporting to be signed by the Attorney-General authorising the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

26—Offences by officers of bodies corporate

- (1) If a body corporate contravenes a provision of this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the director could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.
- (2) A director of a body corporate may be prosecuted and convicted of an offence against subsection (1) whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.

27—Vicarious liability

For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

28—Continuing offences

- (1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—
- (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence; and
 - (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one fifth of the maximum penalty prescribed for that offence.
- (2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

29—Evidentiary provisions

- (1) In any proceedings an apparently genuine certificate, purporting to be signed by the Minister, stating that a person named in the certificate is an authorised officer is, in the absence of proof to the contrary, proof that the person is an authorised officer.
- 5 (2) In any proceedings an apparently genuine certificate, purporting to be signed by the Minister or the Commissioner (as the case requires) containing particulars of a delegation under this Act is, in the absence of proof to the contrary, proof of the particulars.

30—Regulations and fee notices

- 10 (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting subsection (1), the regulations may—
- (a) impose fines, not exceeding \$10 000 for offences against the regulations;
- (b) fix expiation fees, not exceeding \$2 000 for alleged offences against the regulations.
- 15 (3) Regulations under this Act may—
- (a) be of general application or limited application; and
- (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- 20 (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Commissioner; and
- (d) include evidentiary provisions to facilitate proof of breaches of the code of practice or regulations for the purposes of proceedings for offences; and
- 25 (e) make provisions of a saving 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) Expiation fees prescribed for alleged offences against the regulations may be differential, varying according to any factor specified in the regulations.
- 30 (5) Regulations under this Act may refer to or incorporate, wholly or partially and with or without modification, a specified code or standard as in force at a specified time or as in force from time to time.
- (6) If a code or standard is referred to or incorporated in the regulations—
- (a) a copy of the code or standard must be kept available for inspection by members of the public, without charge on a website determined by the Commissioner; and
- 35 (b) evidence of the contents of the code or standard may be given in legal proceedings by production of a document apparently certified by the Registrar to be a true copy of the code or standard.
- 40 (7) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

(8) A fee notice may provide for the waiver, reduction or remission of fees.

Schedule 1—Code of practice

A funeral director must treat human remains in the custody of the funeral director with dignity and respect at all times.

5 A funeral director must ensure that the funeral director has access to suitable facilities and equipment to enable the funeral director to care for the remains of any deceased persons in the custody of the funeral director.

A funeral director must ensure that the funeral director has access to sufficient space to appropriately store the remains of deceased persons in the custody of the funeral director.

10 A funeral director must not embalm human remains or carry out any other invasive procedure on human remains without the consent of the funeral director's client.

A funeral director must ensure that any mortuary owned or operated by the funeral director is secure and is accessible only by persons authorised by the funeral director.

15 A funeral director must ensure that any personal property of a deceased person in the possession of the funeral director is stored securely and that an accurate record of that property is made and kept.

A funeral director must ensure that any personal or other confidential information relating to a deceased person in the custody of the funeral director is secured against unauthorised access.

20 A funeral director must ensure that any information relating to a client of the funeral director is kept confidential and secured against unauthorised access.

A funeral director must ensure that any crematorium owned or operated by the funeral director is secure and is accessible only by persons authorised by the funeral director.

25 A funeral director must not solicit, or cause, suffer or permit the solicitation of, human remains for disposal by the funeral director (whether after a person has died or while the death of a person is imminent).

A funeral director must not pay, or offer to pay, a commission, fee or any other valuable consideration, to a health professional, hospital, nursing home, hospice or other health care facility to secure human remains for disposal by the funeral director.

30 A funeral director must not sell, or offer to sell, any funeral goods that have previously been sold to any person.

A funeral director must not rent a casket or coffin without the approval of the funeral director's client.

A funeral director must act in the best interests of the funeral director's clients.

35 A funeral director must inform a client of the funeral director of any proprietary or pecuniary interest that the funeral director has in any business that manufactures or supplies funeral goods.

A funeral director must inform a client of the funeral director of any conflict between the interests of the client and the interests of the funeral director of which the funeral director is aware.

40 A funeral director must not advertise or promote any funeral life insurance or funeral expenses insurance.

A funeral director must not advertise or promote any estate planning or financial planning services.

A funeral director must not provide, offer to provide, or advertise or promote, any service for the making of wills (including self-made wills).

5 A funeral director must establish and maintain a procedure for dealing with complaints from clients.

A funeral director must deal promptly and courteously with complaints from clients.

A funeral director must ensure that clients are informed of their right to make a complaint about the funeral director to the Commissioner.

10 A funeral director must ensure that all persons employed or engaged by the funeral director in the funeral director's business are adequately trained to carry out their respective duties.

A funeral director must ensure that the funeral director and all persons employed or engaged by the funeral director in the funeral director's business are familiar with—

- (a) this Act and any regulations under this Act; and
- 15 (b) the code of practice under this Act; and
- (c) the *Births, Deaths and Marriages Registration Act 1996* and any regulations under that Act; and
- (d) the *Burial and Cremation Act 2013* and any regulations under that Act; and
- (e) the *Fair Trading Act 1987*; and
- 20 (f) any relevant industry code prescribed under the *Fair Trading Act 1987*; and
- (g) any other relevant Act or law.

A funeral director must not engage in any conduct that may bring the funeral industry into disrepute or diminish public confidence or trust in the funeral industry.

Schedule 2—Funeral-related information

25 1—Funeral goods and services provided by a funeral director

A reasonable estimate of the price of each of the following goods and services provided by the funeral director:

The transport of human remains before burial or cremation

The storage of human remains at a mortuary or other place

30 The hire of a refrigeration plate

Each type of coffin, casket and shroud or the price range of all coffins, caskets and shrouds

Each type of cinerary urn or other container for cremated ashes or the price range of all cinerary urns or other containers

35 The care and preparation of human remains before burial or cremation (including embalming)

The viewing of human remains before burial or cremation

The transport of mourners

The arrangement and conduct of a funeral service

The burial or cremation of human remains

2—Disbursements

A reasonable estimate of the following disbursements:

5 The cost of placing death and funeral notices in a newspaper (including online)

The cost of floral arrangements

The cost of memorial cards

The cost of hiring a church, crematorium chapel or other venue for a funeral ceremony

10 The cost of catering for food and beverages for refreshments or a wake after a funeral ceremony

Any fee payable to a minister of religion or other funeral celebrant

The cost of obtaining a certificate of identification of the human remains

The cost of obtaining a death certificate from the Registrar

15 The cost of obtaining a cremation permit from the Registrar

The cost of acquiring an interment right for the interment of human remains in a cemetery or natural burial ground

The costs payable to a relevant authority for the cremation of human remains

20 Any other costs payable to a relevant authority in connection with the burial or cremation of human remains

3—Other funeral-related information

The location of the mortuary used by the funeral director and the name of the owner or manager of the mortuary

25 The location of the crematorium used by the funeral director and the name of the crematorium authority

The method of transporting human remains before burial or cremation

Schedule 3—Related amendments

Part 1—Preliminary

1—Amendment provisions

30 In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

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

2—Amendment of section 34—Surrender of interment rights

Section 34—after subsection (2) insert:

- (2a) If a relevant authority fails to comply with subsection (2), the relevant authority is guilty of an offence.

5

Maximum penalty: \$20 000.