

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

ADELAIDE CEMETERIES AUTHORITY ACT 2001

No. 25 of 2001

[Assented to 26 July 2001]

An Act to establish the Adelaide Cemeteries Authority; to provide for the administration and maintenance of Cheltenham Cemetery, Enfield Memorial Park and West Terrace Cemetery; to repeal the Enfield General Cemetery Act 1944 and the West Terrace Cemetery Act 1976; and for other purposes.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 ADELAIDE CEMETERIES AUTHORITY

DIVISION 1—ESTABLISHMENT OF AUTHORITY

4. Establishment of Adelaide Cemeteries Authority
5. Application of Public Corporations Act 1993
6. Functions
7. Powers
8. Special provisions relating to Authority's powers
9. Minister must give notice of certain proposed transactions of Authority
10. Surplus West Terrace Cemetery land to form part of Adelaide Park Lands
11. Common seal and execution of documents

DIVISION 2—BOARD

12. Establishment of board
13. Conditions of membership
14. Vacancies or defects in appointment of directors
15. Remuneration
16. Board proceedings
17. Committees

DIVISION 3—STAFF

18. Staff

PART 3 MISCELLANEOUS

19. Adelaide Cemeteries Authority Heritage and Monument Committee
20. Plans of management for Authority cemeteries
21. Non-application of s. 586 of Local Government Act 1934
22. Ministerial approvals
23. Regulations

SCHEDULE 1 *Plan of West Terrace Cemetery*

SCHEDULE 2 *Repeal and Transitional Provisions*

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Adelaide Cemeteries Authority Act 2001*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

"**Authority**" means the *Adelaide Cemeteries Authority* established under Part 2;

"**Authority cemetery**" means a cemetery administered by the Authority under this Act;

"**board**" means the board of directors established as the governing body of the Authority under Part 2;

"**burial**" of human remains includes placement of the remains in a tomb, mausoleum or vault;

"**director**" means a member of the board under Part 2;

"**human remains**" has the same meaning as in the *Births, Deaths and Marriages Registration Act 1996*.

PART 2
ADELAIDE CEMETERIES AUTHORITY

DIVISION 1—ESTABLISHMENT OF AUTHORITY

Establishment of Adelaide Cemeteries Authority

4. (1) The *Adelaide Cemeteries Authority* is established.

(2) The Authority—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name; and
- (d) has the functions and powers assigned or conferred by or under this Act.

Application of Public Corporations Act 1993

5. The Authority is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

Functions

6. (1) The Authority's primary functions are—

- (a) the administration and maintenance of the following as public cemeteries:
 - (i) Cheltenham Cemetery;
 - (ii) Enfield Memorial Park;
 - (iii) West Terrace Cemetery; and
- (b) the administration and maintenance of any other cemetery established or acquired by the Authority; and
- (c) the burial or other disposal of human remains in an Authority cemetery; and
- (d) activities associated with the heritage or historical significance of an Authority cemetery; and
- (e) any other function assigned to the Authority by or under this or any Act, or by the Minister.

(2) The Authority's functions may extend to the following as the Authority thinks fit:

- (a) activities or services relating to the burial or other disposal of human remains;
- (b) other activities or services utilising Authority property and buildings.

Powers

7. Subject to this Act, the Authority has all the powers of a natural person together with the powers conferred on it under this or any other Act.

Special provisions relating to Authority's powers

8. (1) The Authority may not acquire a cemetery or part of a cemetery, or establish a cemetery, without the written approval of the Minister.

(2) The Authority may not grant a right for burial purposes for a term longer than 99 years but may, from time to time, renew a burial right for any lesser period.

(3) The Authority must not disturb or interfere with a grave within the area delineated and marked *Jewish Granted MEM. No. 443 Bk. 42* on the plan of West Terrace Cemetery in Schedule 1 without the written approval of the Board, the Trustees, or the Chief Minister, of the Adelaide Hebrew Congregation Inc.

(4) The Authority must not, without the approval of the Minister, use for any other purpose a portion of an Authority cemetery set apart (before or after the commencement of this subsection) for the burial or other disposal—

- (a) of persons of particular religious denominations; or
- (b) of members or former members of an arm of the Defence Forces of Australia or of the naval, military or air force of some other country.

(5) The Authority must not prevent or interfere with the performance of a ceremony according to the usage of a person's religion in connection with the burial or other disposal of the person's remains.

(6) The Authority must allow a minister of a religious denomination for which a portion of an Authority cemetery is set apart to have free access and admission to that portion of the cemetery at all times in order to exercise his or her functions as a minister.

(7) The Authority's charter under the *Public Corporations Act 1993* must contain specific limitations on the Authority's activities designed to prevent the Authority, through its control of access to Authority cemeteries, from unduly restricting competition in the provision of funeral, floral, monument making or other services, or the supply of goods.

Minister must give notice of certain proposed transactions of Authority

9. (1) The Authority must not—

- (a) sell an Authority cemetery or part of an Authority cemetery; or
- (b) grant a lease or licence in respect of an Authority cemetery, or part of an Authority cemetery, in order to enable the Authority's primary functions, or a substantial part of the Authority's primary functions, with respect to the cemetery to be performed otherwise than directly by the Authority and its staff; or
- (c) enter into any partnership, joint venture or other profit sharing arrangement,

unless the Minister has approved a proposal for the transaction and has, at least two months before the proposed transaction is entered into—

- (d) given notice of the proposed transaction in the *Gazette* and in a newspaper circulating generally throughout the State; and

- (e) provided a written report on the proposed transaction to the Economic and Finance Committee of the Parliament.

(2) Subsection (1) does not apply to the disposal of land comprising or forming part of West Terrace Cemetery that is surplus to the requirements of the Authority.

Surplus West Terrace Cemetery land to form part of Adelaide Park Lands

10. The Authority may only dispose of land comprising or forming part of West Terrace Cemetery that is surplus to the requirements of the Authority—

- (a) with the written approval of the Minister; and
- (b) by surrender of the fee simple in the land to the Crown; and, on surrender, the land will form part of the Adelaide Park Lands and come under the care, control and management of The Corporation of the City of Adelaide.

Common seal and execution of documents

11. (1) The common seal of the Authority must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) The Authority may, by instrument under its common seal, authorise a director, an employee of the Authority (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Authority subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Authority.

(4) A document is duly executed by the Authority if—

- (a) the common seal of the Authority is affixed to the document in accordance with this section; or
- (b) the document is signed on behalf of the Authority by a person or persons in accordance with an authority conferred under this section.

DIVISION 2—BOARD

Establishment of board

12. (1) A board of directors is established as the governing body of the Authority.

(2) The board consists of not more than seven directors appointed by the Governor on the nomination of the Minister, of whom—

- (a) one must be a person with practical knowledge of and experience in local government selected from a panel of three persons nominated by the Local Government Association of South Australia; and

(b) the remainder must include—

- (i) three who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Authority's business and management obligations; and
- (ii) one with experience in historical and heritage matters; and
- (iii) one with experience in religious and community affairs; and
- (iv) one with management experience in government (other than local government).

(3) The Minister must, in nominating persons for appointment to the board, have regard to the need for the Authority, in carrying out its functions, to be sensitive to the cultural diversity of the State.

(4) At least two directors must be women and at least two must be men.

(5) One director will, on the nomination of the Minister, be appointed by the Governor to chair meetings of the board.

Conditions of membership

13. (1) A director will be appointed for a term, not exceeding four years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.

(2) However, the term of office of a retiring director will continue until he or she is reappointed or a successor is appointed (as the case may be).

(3) The Governor may remove a director from office on the recommendation of the Minister.

(4) The Minister may recommend the removal of a director on any ground that the Minister considers sufficient.

(5) The office of a director becomes vacant if the director—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (f) is removed from office under subsection (3).

Vacancies or defects in appointment of directors

14. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

Remuneration

15. A director is entitled to be paid from the funds of the Authority such remuneration, allowances and expenses as may be determined by the Governor.

Board proceedings

16. (1) A quorum of the board consists of four directors.
- (2) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.
- (3) In the absence of the director appointed to chair meetings of the board, a director chosen by the directors present at the meeting will preside.
- (4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.
- (6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—
- (a) notice of the conference is given to all directors in the manner determined by the board for the purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.
- (7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
- (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
 - (b) a majority of the directors expresses concurrence in the proposed resolution by letter or by facsimile transmission or other electronically transmitted written communication setting out the terms of the resolution.
- (8) The board must have accurate minutes kept of its proceedings.
- (9) Subject to this Act, the board may determine its own procedures.

Committees

17. (1) The board may establish such committees (including advisory or subcommittees) as the board thinks fit.
- (2) The membership of a committee will be determined by the board and may, but need not, consist of, or include, directors.
- (3) The procedures to be observed in relation to the conduct of the business of a committee will be—

- (a) as determined by the board;
- (b) insofar as a procedure is not determined under paragraph (a), as determined by the committee.

DIVISION 3—STAFF

Staff

18. The Authority may employ such staff as it thinks necessary or desirable on terms and conditions determined by the Authority.

PART 3
MISCELLANEOUS

Adelaide Cemeteries Authority Heritage and Monument Committee

19. (1) The Minister will establish the *Adelaide Cemeteries Authority Heritage and Monument Committee*.

(2) The Committee will consist of not less than three, nor more than five, members appointed by the Minister, of whom—

- (a) one must be a director; and
- (b) the remainder must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Committee's functions.

(3) The members of the Committee will hold office on such terms and conditions as the Minister thinks fit.

(4) The Committee has the following functions:

- (a) to advise the Authority on heritage and historical matters relating to Authority cemeteries;
- (b) to advise the Authority on activities associated with the heritage or historical significance of Authority cemeteries;
- (c) to advise the Authority on the establishment and implementation of policies relating to monuments, headstones and memorials;
- (d) any other function assigned to the Committee by or under this Act, or by the Minister or the Authority.

(5) Subject to this section, the Committee may determine its own procedures.

(6) The Committee must submit to the Authority for inclusion in each annual report of the Authority a report prepared by the Committee on its operations during the financial year to which the report relates.

(7) A report submitted to the Authority under subsection (6) must be included in the relevant annual report of the Authority in unaltered form.

Plans of management for Authority cemeteries

20. (1) The Authority must, in accordance with this section—

- (a) prepare plans of management for each Authority cemetery; and
- (b) present the plans at public meetings convened by the Authority.

(2) Plans of management must be prepared and presented as follows:

- (a) the first plan must cover a five year period and be prepared and presented within 18 months after the commencement of this section;

(b) subsequent plans must cover subsequent five year periods and each plan must be prepared and presented at least six months before it is to take effect.

(3) A plan of management for a cemetery must take into account the heritage and historical significance of the cemetery and establish policies relating to the following matters:

- (a) retention or removal of existing headstones;
- (b) re-use of burial sites;
- (c) the scale and character of new memorials or monuments;
- (d) planting and nurturing of vegetation in the cemetery.

(4) In preparing a plan of management for a cemetery, the Authority must consult with the relevant local government council, the administrative unit of the Public Service responsible for State heritage matters and other persons who, in the opinion of the Authority, have a particular interest in the management of the cemetery.

(5) The Authority must, at least 30 business days before the date of a public meeting to be convened under this section, in a newspaper circulating generally throughout the State, publish a notice—

- (a) of the date, time, place and purpose of the meeting; and
- (b) of the place, determined by the Minister, where the plan of management may be inspected, without charge and during normal office hours, during the period of 30 business days immediately prior to the meeting.

(6) A plan of management for an Authority cemetery must, if the cemetery is, or includes, a State heritage place (within the meaning of the *Development Act 1993*), be approved by the Minister before it takes effect.

(7) The Authority may amend a plan of management at any time during the course of the five year period covered by the plan (and, in that event, the amendment must be presented at public meetings convened by the Authority and subsections (4), (5) and (6) will apply to the amendment process in the same way as to the initial preparation of a plan of management).

(8) The Authority must keep a copy of each current plan of management available for inspection by members of the public, without charge and during normal office hours, at a place determined by the Minister.

(9) In this section—

"business day" means any day except a Saturday or a Sunday or other public holiday within the meaning of the *Holidays Act 1910*.

Non-application of s. 586 of Local Government Act 1934

21. Section 586 of the *Local Government Act 1934* does not apply to an Authority cemetery.

Ministerial approvals

22. (1) An approval given by the Minister under this Act may be—

(a) specific or general; and

(b) conditional or unconditional.

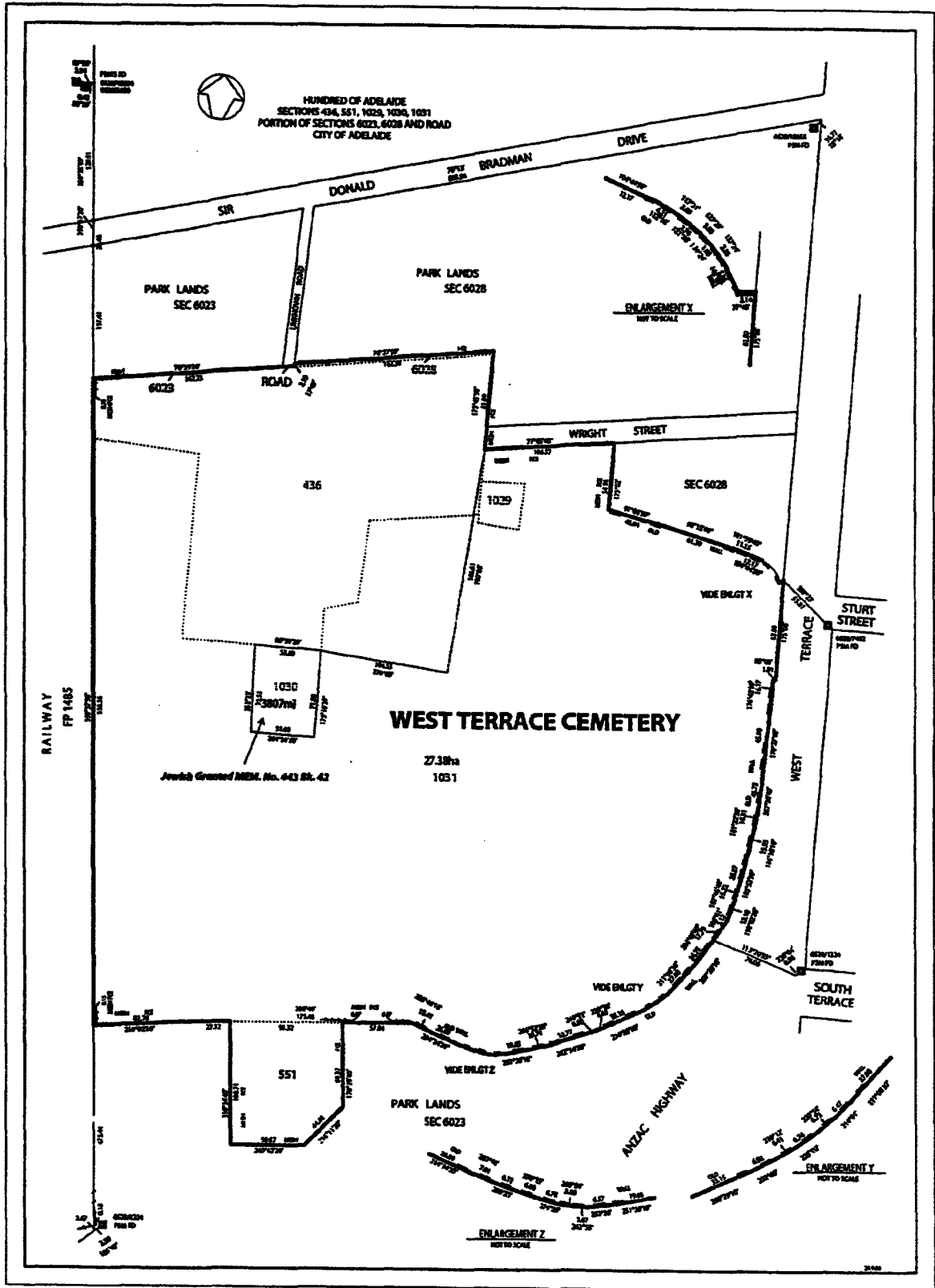
(2) An approval given by the Minister may be varied or revoked by the Minister at any time.

Regulations

23. (1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may apply other specified regulations (with or without modifications) to an Authority cemetery.

SCHEDULE 1
Plan of West Terrace Cemetery



SCHEDULE 2*Repeal and Transitional Provisions***Acts repealed**

1. The following Acts are repealed:

- (a) the *Enfield General Cemetery Act 1944*;
- (b) the *West Terrace Cemetery Act 1976*.

Enfield General Cemetery Trust continues as Adelaide Cemeteries Authority

2. (1) The Authority is the same body corporate as the Enfield General Cemetery Trust established under the *Enfield General Cemetery Act 1944*.

(2) A reference in an Act or instrument to the Enfield General Cemetery Trust is (where the context admits) to be read as a reference to the Authority.

(3) The offices of the members of the Enfield General Cemetery Trust are vacated on the commencement of this clause.

Vesting of West Terrace Cemetery in Authority

3. (1) The land situated in the Hundred of Adelaide delineated and marked *West Terrace Cemetery* on the plan set out in Schedule 1 is vested in the Authority for an estate in fee simple.

(2) The Authority will hold the land vested under subclause (1) subject to any rights or interests granted and in force in respect of the land immediately before the commencement of this clause.

(3) Despite section 29(1) of the *Public Corporations Act 1993*, where property vests by virtue of this clause in the Authority, the vesting of the property, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

Application of Real Property Act

4. (1) The Registrar-General must, on the application of the Authority, register the Authority as the proprietor of an estate in land that has vested in the Authority under this schedule.

(2) No registration fee is payable in respect of an application under subclause (1).

(3) An instrument relating to land that has vested in the Authority under this schedule must, if the instrument is executed by the Authority and is otherwise in registrable form, be registered by the Registrar-General despite the fact that the Authority has not been registered as the proprietor of the land under subclause (1).

Continuation of West Terrace Cemetery plan of management

5. The plan of management for the West Terrace Cemetery made under section 20A of the *Enfield General Cemetery Act 1944* in operation immediately before the commencement of this clause continues in operation as if it had been made under Part 3 of this Act, took effect at the commencement of this clause and covered the five year period from that commencement.