

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CEMETERIES AND CREMATORIA AMENDMENT BILL 2024

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
TARA CHEYNE MLA**

CEMETERIES AND CREMATORIA AMENDMENT BILL 2024

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

INTRODUCTION

This explanatory statement relates to the Cemeteries and Crematoria Legislation Amendment Bill 2024 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

This explanatory statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE BILL

The Bill seeks to amend the *Cemeteries and Crematoria Act 2020* (the Act). It will clarify an ambiguity regarding the responsibility for long-term maintenance of cemetery and crematoria facilities after they are closed. The Bill seeks to clarify that the Territory and not the ACT Cemeteries and Crematoria Authority (the Authority) is ultimately responsible for the ongoing maintenance of cemeteries and crematoria facilities in perpetuity after they have stopped operating.

Multiple options have been explored and the only option to address this issue is through legislative change.

The Bill introduces a new section into the Act that provides that the Territory is responsible for maintaining closed facilities. The Bill also provides that the Authority may be authorised by the Minister to maintain closed facilities on the Territory's behalf; however, the Territory would remain responsible for the financial liability even while another entity is authorised to maintain the facility.

The Act already requires that perpetual care trust (PCT) funds may only be used for long-term maintenance of facilities. The Bill clarifies this further by stating the PCT funds may be used only for the maintenance of closed facilities.

The Bill further sets out closing provisions for Authority operated facilities and technical consequential changes to the Act.

CONSULTATION ON THE PROPOSED APPROACH

The Authority, the ACT Cemeteries and Crematoria Regulator, the Transport Canberra and City Services Chief Financial Officer, and the Chief Minister, Treasury and Economic Development Directorate's Treasury and Policy and Cabinet have been consulted in the development of the Bill and their feedback has been incorporated.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the Bill due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (the HR Act) noting the Bill is not a Significant Bill and does not engage human rights.

The Bill does not impact on individuals within the ACT community, instead impacting only the Territory and the Authority.

Rights Engaged

Nil human rights are engaged by the Bill.

Rights Promoted

Nil human rights are promoted by the Bill.

Rights Limited

Nil human rights are limited by the Bill.

CEMETERIES AND CREMATORIA AMENDMENT BILL 2024

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Cemeteries and Crematoria Amendment Bill 2024**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the title of this Act is the *Cemeteries and Crematoria Amendment Act 2024*.

Clause 2 Commencement

This clause provides that the Act commences on the day after its notification day.

Clause 3 Legislation amended

This clause sets out the legislation that is amended by this Act is the *Cemeteries and Crematoria Act 2020*.

Clause 4 Closing facility – application Section 54 (1)

This clause makes superficial changes to the structure of existing section 54 (1) of the Act to be consistent with the structure of the equivalent subsection at new section 116A (2). The Bill also replaces the use of the word ‘cemetery’ with ‘facility’ to be clearer and consistent with use of the word ‘facility’ elsewhere in section 54 and the Act. These are technical drafting changes and do not affect the current application of section 54 in the Act.

Clause 5 Section 54 (7), new note

This clause inserts a note into section 54 (7) of the Act providing that the Territory is responsible for the maintenance of a facility after it is closed, referring to new section 112A.

Clause 6 Sections 103 and 104

This clause substitutes the existing sections 103 and 104 of the Act.

Both prior to this Bill and following, section 103 establishes a perpetual care trust (PCT) for the maintenance of the facilities operated by the Authority. This section does not create a new PCT from the one under the existing Act; transitional provisions are included at new section 215 of the Bill to determine that the existing PCT is ongoing. The section specifies that the trust may be used only for the maintenance of a closed facility, where previously this section referred only to long-term maintenance but there was no definition of what constituted long-term maintenance. The trust is taken to be a charitable trust established for public trust charitable purposes and is not for profit, as carried over from the existing Act.

Both prior to this Bill and following, section 104 establishes a trust for the maintenance of each facility operated by a licensee who is not the Authority. This section does not create a new PCT from the one under the existing Act; transitional provisions are included at new section 215 of the Bill to determine that the existing PCT is ongoing. The section specifies that the trust may be used only for the maintenance of a closed facility, where previously this section referred only to long-

term maintenance but there was no definition of what constituted long-term maintenance. The trust is taken to be a charitable trust established for public trust charitable purposes and is not for profit, as carried over from the existing Act.

The clause provides for a substitution of the term long-term maintenance with the new term maintenance of a closed facility. It also provides for a clarification of closed facility as a facility that was closed in accordance with a declaration made under section 116A (2) for facilities previously managed by the Authority and under section 54 for facilities previously managed by a licensee that is not the Authority.

Clause 7 New part 7A

This clause inserts a new Part 7A, section 112A into the Act: Maintenance of closed facilities. New section 112A provides that the Territory is responsible for maintaining closed facilities to an acceptable standard and provides examples of maintenance.

This clause provides that the Minister may authorise an entity to maintain a closed facility on behalf of the Territory. The authorisation will be a notifiable instrument. The clause also sets out that, if another entity is authorised to maintain a closed facility, the Territory remains responsible for costs where the PCT funds are insufficient. This means that, while an entity such as the Authority may be responsible for maintaining a closed facility, the Territory remains responsible for the ongoing financial liability.

This clause also provides for a clarification of closed facility as a facility that was closed in accordance with a declaration made under section 116A (2) for facilities previously managed by the Authority and under section 54 for facilities previously managed by a licensee that is not the Authority.

Clause 8 New section 116A

This clause provides for the Minister to make a declaration closing an Authority operated facility while ensuring that further rights to burial and internment are exercised. This is similar to the existing framework for closing facilities operated by private licensees at existing section 54; however, there is no application process required for the Authority given the Authority is an entity appointed by the Minister to operate a facility. For closing an Authority operated facility, a declaration is a notifiable instrument.

This clause specifies that the Minister may only make a declaration closing an Authority operated facility if the Minister is satisfied that the rights to burial and interment have been fulfilled or will be fulfilled even if the facility is closed. The clause also provides that other closure requirements may be prescribed by regulation.

Clause 9 New Part 21

This clause inserts transitional provisions at new section 215, set to expire five years after commencement under new section 216. These transitional provisions are to ensure it is clear that the substitution of existing sections 103 and 104 with amended wording by this Bill does not mean a new PCT is established from the existing funds. Wording in sections 103 and 104 was amended to clarify that the existing funds may only be used after a facility is closed. This does not re-establish the existing trusts. This continues to be the case following expiry of the transitional provisions, as explained by the explanatory note in new section 216.