

CATHOLIC CEMETERIES AND CREMATORIA TRUST BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The purpose of the *Catholic Cemeteries and Crematoria Trust Bill 2024* (the bill) is to implement a two public cemetery operator model for the Crown cemeteries sector in NSW, providing certainty of future operation and clarity regarding key activities undertaken by the Catholic Metropolitan Cemeteries Trust (CMCT) and Metropolitan Memorial Parks Land Manager (MMP).

A new bill is needed to address concerns about the future operation of the Crown cemeteries sector following the NSW Court of Appeal's decision in *Catholic Metropolitan Cemeteries Trust & Anor v Attorney General of New South Wales* [2024] NSWCA 30 (NSWCA Decision). This decision – which found that a previous decision of a similar type was wrongly determined and, in this instance, an equitable trust for a charitable purpose existed over Rookwood Catholic cemetery and the proceeds from the use of that land (the Trust) – has created uncertainty and inconvenience for CMCT, MMP and Government as:

- CMCT has intermixed trust and non-trust funds and assets – it is unclear what proportion of funds and assets is subject to the trust and which are derived from Crown land;
- CMCT has inadvertently breached and continues to breach the Catholic trust by using proceeds on all CMCT-managed cemeteries, and interring the dead of all and no faiths (rather than the Roman Catholic denomination only) – as specified in the narrow trust purpose;
- the funds and assets of the Catholic trust can only be used for burying the dead of the Roman Catholic denomination at Rookwood Catholic cemetery;
- MMP (or its predecessor entities) may have breached a trust by using trust assets across multiple MMP-managed cemeteries, and/or interring the dead of all and no faiths in trust land (contrary to trust purposes); and
- prior trusts and equitable interests that were thought to be abolished by operation of the *Crown Land Management Act 2016* (CLMA) may still exist.

Confirming the two public operator model and the respective operator structures, allows for cemetery services to continue to be provided to a high standard. It also enables burial supply to continue to be created, addressing the growing burial space pressures facing several of Sydney's faith groups for whom burial is the only interment option.

Objectives: What is the policy's objective couched in terms of the public interest?

The purpose of the bill is to:

- Address the outcome of the NSWCA Decision, by affirming the existence of a Catholic charitable trust, and expanding its purpose to allow:
 - interment of people of all faiths and no faith across all CMCT-managed cemeteries;
 - use of funds derived from the CMCT-managed cemeteries across all CMCT-managed cemeteries; and
 - future acquisition of cemetery land (with the Minister's consent)
- Confirm the operational structures of CMCT and MMP, enabling the operators to continue providing cemetery services to a high standard, and create new supply;
- Confirm State ownership of the CMCT-managed cemeteries;
- Abolish all other charitable trusts and equitable interests for MMP; and
- Excuse previous breaches by MMP and CMCT (and their predecessor entities) in using trust assets contrary to the trust purpose (across all CMCT- and MMP-managed cemeteries), including interring people of all and no faiths in trust land.

There is a statutory deadline for implementation – 1 July 2024. If the two public operator model is not implemented prior to 1 July 2024, all of CMCT's assets (including land), rights and liabilities (including those subject to the Catholic trust) will vest in CMCT's corporate manager, the Catholic Cemeteries Board. This is a privately owned entity controlled by the Catholic Archdiocese of Sydney. This situation would arise because of the transitional arrangements in Schedule 7 of the CLMA.

Further, by applying the NSWCA Decision, and noting Treasury's assessment of the Australian Accounting Standards, All Faiths Catholic Land Manager Limited (the proposed Crown land manager) and Catholic Cemeteries and Crematoria Limited (the trustee and cemetery operator) will not be controlled entities of the Minister for the purposes of the *Government Sector Finance Act 2018* in 2024-25 and beyond.

This means that All Faiths Catholic Land Manager Limited or Catholic Cemeteries and Crematoria Limited will not be consolidated in the State's accounts in 2024-25 and beyond, and the Auditor General may remove the qualification from the State's accounts attributed to CMCT.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The NSW Government considers the policy is best implemented through legislative change.

The NSW Government considers the implementation model achieved by the bill best reflects the status quo that existed for the CMCT and MMP cemeteries as understood before the NSWCA Decision.

Alternative options considered include:

- CMCT seeking the Attorney-General or the NSW Supreme Court's approval to modify the Catholic trust under the *cy pres* doctrine on the basis that the original charitable purpose has ceased to provide a suitable and effective method of using the trust property, having regard to the spirit of the trust;
- allowing the transitional provisions to take effect pursuant to the CLMA; or
- further extending CMCT's transition day under the CLMA beyond 1 July 2024, noting that the transition day has already been extended on nine occasions, and further extension should be avoided.

Non-legislative options would not enable the objectives described above to be fully realised.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The bill does not impose any appreciable cost or burden on the public or any group of the public. As such, no alternative policies and mechanisms have been considered or analysed.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The bill will commence upon assent. The bill mirrors existing operations as far as possible, and there will be no change for the current operations of CMCT or MMP in how they provide services to the public.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Targeted consultation has been undertaken with CMCT and MMP as the sector stakeholders directly affected by the bill.

The bill has been prepared in consultation with a number of NSW Government agencies including the Department of Planning, Housing and Infrastructure, NSW Treasury, the Audit Office, the Cabinet Office, Cemeteries and Crematoria NSW and the Department of Communities and Justice.