



ICRC

independent competition and regulatory commission

Issues paper
**Public Crematorium
Services: Competitive
Neutrality**

Report 1 of 2020, January 2020

The Independent Competition and Regulatory Commission is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act). The Commission is constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the Commission and takes direct responsibility for delivery of the outcomes of the Commission.

The Commission has responsibilities for a broad range of regulatory and utility administrative matters. The Commission has responsibility under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. The Commission also has responsibility for arbitrating infrastructure access disputes under the ICRC Act. In discharging its objectives and functions, the Commission provides independent robust analysis and advice.

The Commission's objectives are set out in section 7 of the ICRC Act and section 3 of the *Utilities Act 2000*.

Correspondence or other inquiries may be directed to the Commission at the following address:

Independent Competition and Regulatory Commission
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Civic Square ACT 2608

The Commission may be contacted at the above addresses, by telephone on (02) 6205 0799, or by fax on (02) 6207 5887. The Commission's website is at www.icrc.act.gov.au and its email address is icrc@act.gov.au.

How to make a submission

This issues paper provides an opportunity for stakeholders to provide feedback and evidence to inform the development of a draft report. It will also ensure that relevant information and views are made public and brought to the Commission's attention.

Submissions on the issues paper close at **5.00 pm Friday 14 February 2020** and can be emailed to the Commission at icrc@act.gov.au.

Alternatively, submissions may be made online through the form on the Commission's website: www.icrc.act.gov.au or mailed to the Commission's address below.

Independent Competition and Regulatory Commission
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The Commission encourages interested parties to make submissions in either Microsoft Word format or PDF.

The Commission is guided by and believes strongly in the principles of openness, transparency, consistency, and accountability. Public consultation is a crucial element of the Commission's processes. It is the Commission's preference that all submissions it receives be treated as public and be published on the Commission's website unless the author of the submission indicates clearly that all or part of the submission is confidential and not to be made available publicly. Where confidential material is submitted, the Commission prefers that this be under a separate cover and clearly marked 'In Confidence'. The Commission will assess the author's confidentiality claim and discuss appropriate steps to ensure that confidential material is protected while maintaining the principles of openness, transparency, consistency and accountability.

The Commission secretariat may be contacted at the above addresses, by telephone on (02) 6205 0799 or by fax on (02) 6207 5887. The Commission's website is at www.icrc.act.gov.au.

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1. Introduction

On 20 December 2019, the Independent Competition and Regulatory Commission (the Commission) received a request from the Treasurer to provide advice under Section 12 of the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act).

The Australian Capital Territory (ACT) Government has asked the Commission to develop advice to help ensure that the new crematorium facility to be built and operated by the ACT Public Cemeteries Authority (Canberra Cemeteries) operates in a manner consistent with competitive neutrality. In particular, the Government has asked the Commission to use its expertise to develop detailed pricing principles to guide the setting of prices for the products and services to be supplied by the new crematorium facility and ensure that these prices are consistent with the ACT Competitive Neutrality Policy.

The scope of work for the advice specifies a two stage process. Stage one requires the Commission to develop detailed pricing principles to guide Canberra Cemeteries in developing a costing methodology and prices for the public crematorium services and products that will be consistent with the Competitive Neutrality Policy. Stage two requires the Commission to assess Canberra Cemeteries' pricing proposal, including its proposed costing methodology and prices, for compliance with the detailed pricing principles and more broadly with the Competitive Neutrality Policy.

This issues paper relates to stage one of the scope of works for the advice.

1.1 Background to this investigation

The ACT Government announced on 4 October 2019 that a publicly operated crematorium would be built at the Gungahlin Cemetery and operated by Canberra Cemeteries. The Government has stated that the new public facility will contribute to better meeting the cultural needs of the ACT's diverse cultural communities.¹ Currently, Canberra's public cemeteries offer only interment services (burial of a body or cremated remains or 'ashes') and a range of related products and services (such as memorialisation products and services). The ACT currently has one crematorium, Norwood Park, which is privately-owned and operated.

Competitive neutrality is a key element of the Competition Principles Agreement (CPA),² which all Australian governments, including the ACT Government, agreed to in 1995 for implementing the National Competition Policy. The main purpose of the CPA is to support higher and sustainable economic and employment growth by improving economic productivity and efficiency, with a particular focus on the efficiency of government functions and business enterprises. The National Competition Principles impose important constraints on the way governments undertake commercial activities.

¹ ACT Government 2019a

² COAG 1995

One of these constraints is that governments must ensure competitive neutrality in the operations of its business enterprises. Competitive neutrality requirements aim to remove any advantages or disadvantages that a government business enterprise may have purely as a result of its government ownership. This ensures that there is fair competition in the marketplace with private businesses. In addition, it gives government business enterprises an incentive to operate efficiently in meeting their customers' needs.

The policy framework in the ACT is set by the ACT Competitive Neutrality Policy.

1.2 The Commission's role and powers

The Commission is an independent commission within the ACT Government and is governed by the ICRC Act. The Commission has responsibilities for a broad range of competition, regulation and consumer protection matters.

Under the ICRC Act, the Commission is responsible for regulating and advising government about pricing, access and other matters for relevant industries. Its functions under the ICRC Act also include providing advice on competitive neutrality complaints and government-regulated activities and on other industry-related matters referred to it. The Commission has functions under the *Utilities Act 2000* in relation to the licensing of electricity, natural gas, water and sewerage utility services.

This request for advice, to ensure the public crematorium facility is operating consistent with competitive neutrality, has been made under section 12 of the ICRC Act. Sub-section 12(1) provides for the Commission to assist any government agency (or other body or person) 'by providing services within the commission's field of expertise and relevant to its functions'.

The Commission's competitive neutrality functions are set out under Division 3.2 of the ICRC Act and Schedule 1 of the ICRC Act contains extracts from the CPA. The provisions in Division 3.2 provide for the Commission to investigate a competitive neutrality complaint and set out in section 19B the processes and the Commission's considerations for investigating complaints.

While this request for advice relates to competitive neutrality and related issues, the Treasurer has not sought the Commission's advice in response to a complaint. Instead, the Government has decided to engage the Commission to help ensure that the new public crematorium facility operates in a manner consistent with competitive neutrality.

The Commission has previously undertaken work under its competitive neutrality functions. In 2005-06, the Commission conducted an inquiry into Capital Linen Service,³ an ACT Government-owned laundry. Similar to this request for advice in relation to the public crematorium facility, the Capital Linen Service inquiry was not initiated in response to a complaint. Rather, the Government sought the Commission's views on certain matters relating

³ ICRC 2006

to competitive neutrality to ensure that the business operated fairly in the market and did not become subject to a complaint. In 2001, the Commission conducted an investigation in relation to Wheelchair Accessible Taxi Services.⁴

In undertaking its functions under the ICRC Act, the Commission may seek information from persons if there is reason to believe that information will assist it in exercising its functions. Section 41 of the ICRC Act provides for the Commission to require by written notice persons to give information or documents that may assist it in exercising its functions.

1.3 What has the Commission been asked to do?

Under the scope of works provided by the Treasurer (reproduced in full in Appendix 1), the Commission has been asked to undertake a two-stage process to ensure the public crematorium facility is operated in line with competitive neutrality principles. The detailed requirements in each stage are set out below.

Stage one

The first stage requires the Commission to develop detailed pricing principles for the ACT public crematorium, to guide the setting of prices for the goods and services in a manner consistent with ACT Competitive Neutrality Policy.⁵

The scope of work identifies the following issues as relevant to the development of the pricing principles for the crematorium:

- Identification of core activities and resources required to deliver crematorium services at an ACT public crematorium
- Detailed analysis of the estimated full costs of supplying crematorium services to ensure all costs are identified and accounted for
- Identification of shared activities and resources that will be used by Canberra Cemeteries to deliver burial and cremation related services, and the development of a methodology for appropriate allocation of these costs between the two areas
- Identification of services related to the operation of the crematorium that are provided by, or could be provided, by the ACT Government
- Identification of any unique circumstances/requirements arising because the facility will be publicly owned and operated that would not apply to a private sector provider
- Consideration of the most appropriate approach to ensuring prices for goods and services provided at the crematorium that could alternatively be provided by private entities, but are not necessarily directly related to core crematorium services (for example memorialisation goods and services), are consistent with competitive neutrality policy.

⁴ ICRC 2001

⁵ ACT Government 2010

The Commission considers that broader funeral industry issues or specific issues that are not related to competitive neutrality are outside of the scope of works. The Commission will not consider broader issues unless they are directly related to competitive neutrality.

Stage two

In the second stage, the Commission will analyse the pricing proposal submitted by Canberra Cemeteries for consistency with the detailed pricing principles developed in stage one. Stage two will require Canberra Cemeteries to submit a proposed costing methodology and pricing schedule (its pricing proposal) to the Commission and demonstrate that they are consistent with the pricing principles and the ACT Competitive Neutrality Policy.

The Commission will review the cost methodology and pricing schedule to ensure they are consistent with the principles, and provide a report to the ACT Government and Canberra Cemeteries on its findings and any recommendations.

1.4 Purpose of issues paper

This issues paper begins the consultation process to assist the Commission in developing detailed pricing principles, as required under stage one of the scope of works provided by the Treasurer. The issues paper explains the process, key issues and the Commission's proposed approach, and seeks input from stakeholders.

Submissions to the issues paper will assist the Commission in developing its understanding of the industry, in particular the costs involved in supplying crematorium products and services, and any competitive neutrality related concerns held by consumers and industry participants. The Commission is also seeking stakeholder comments on the broad pricing principles proposed in this issues paper to assist it in developing more detailed pricing principles that will guide Canberra Cemeteries in developing its costing methodology and prices that are competitively neutral.

The Commission undertook initial targeted consultation with representatives of Canberra Cemeteries and Norwood Park to inform this issues paper.

1.5 Process and indicative timeline for stage one

The scope of work requires the Commission to develop the pricing principles according to the following process:

- consultation with Canberra Cemeteries
- where appropriate, consultation with private crematorium operators within and outside of the ACT
- consultation with relevant cemetery/crematorium authorities in other jurisdictions
- the release of a public issues paper to explain the process and key issues, and to seek input from stakeholders
- the release of a draft report including the proposed pricing principles for consultation with stakeholders

- the provision of a final report incorporating the pricing principles to the Treasurer, the Minister for City Services and Canberra Cemeteries.

The Commission’s indicative timeline for stage one is set out in Table 1.1.

Table 1.1 Indicative timeline for stage one

Task	Date
Release of issues paper	31 January 2020
Submissions on issues paper close	14 February 2020
Draft report	27 March 2020
Submissions on draft report close	16 April 2020
Final report	29 May 2020

Interested parties are invited to make submissions in response to this issues paper by 5.00 pm, Friday 14 February 2020. Submissions should be made in writing (via the Commission’s website, email or post) as shown in the ‘How to Make a Submission’ section on page ii.

The Commission will use the information and views provided in submissions to the issues paper to assist it in developing proposed detailed pricing principles that will be released in the draft report. The Commission will seek further information, evidence and views from stakeholders on its draft report. Submissions to the draft report will be considered by the Commission in finalising its advice and final report to the ACT Government.

1.6 Related inquiries

The New South Wales economic regulator, the Independent Pricing and Regulatory Tribunal (IPART), is currently undertaking an investigation into interment costs and pricing in New South Wales.⁶ Where applicable, the Commission may draw on any relevant information or analysis produced as the IPART investigation.

The Commission will also consider any other relevant material found through its research in relation to this request for advice.

1.7 Structure of this issues paper

The remainder of this issues paper is structured as follows:

- Chapter 2 – Competitive neutrality
- Chapter 3 – Cemeteries and crematoria in the ACT
- Chapter 4 – Approach to developing pricing principles

⁶ IPART 2019a

2. Competitive neutrality

2.1 What is competitive neutrality?

Competitive neutrality requires that government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership. As stated in Chapter 1, competitive neutrality requirements aim to remove any advantages or disadvantages that a government business enterprise may have purely as a result of its government ownership. The purpose of competitive neutrality is to ensure that there is fair competition in the marketplace with private businesses. In addition, it gives government business enterprises an incentive to operate efficiently in meeting their customers' needs.

The OECD has defined competitive neutrality as:⁷

Competitive neutrality means that state-owned and private businesses compete on a level playing field. This is essential to use resources effectively within the economy and thus achieve growth and development.

Australian governments and regulators have adopted similar definitions of competitive neutrality. For example, the Australian Productivity Commission has stated:⁸

Competitive neutrality policies aim to promote efficient competition between public and private businesses. Specifically, they seek to ensure that government businesses do not enjoy competitive advantages over their private sector competitors simply by virtue of their public sector ownership.

As noted in Chapter 1, all Australian Governments, including the ACT Government, signed the CPA in 1995 and committed to apply competition principles to government activities. The CPA states that:⁹

The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership.

The rationale for pursuing competitive neutrality is to improve the allocation of the economy's resources and to improve competitive processes. Governments compete with the private sector in a variety of markets. If government-owned businesses were to enjoy undue advantages relative to their private sector competitors, there would not be fair competition because the prices charged by the government business would not fully reflect the costs of supplying the products or services in question. Conversely, if government ownership were to impose disadvantages on government-owned businesses, their higher costs and prices would prevent

⁷ OECD 2012

⁸ <https://www.pc.gov.au/about/core-functions>

⁹ Clause 3(1)

them from competing fairly with their private competitors. In either case, a lack of competitive neutrality could reduce choice for consumers and distort decisions on production and consumption, for example where to purchase goods and services, and the mix of goods and services provided by the government sector. It could also distort investment and other decisions of private sector competitors.

Examples of potential advantages and disadvantages resulting from government ownership are outlined in Table 2.1.

Table 2.1 – Potential advantages and disadvantages of government ownership¹⁰

Potential advantages	Potential disadvantages
Exemptions from Commonwealth, State and local taxes	Difficulty in accessing taxation benefits of depreciation, investment allowances and other deductions (e.g. through the transfer of taxation losses)
No requirement to return a profit, a return on investments or interest on borrowings	Public sector award conditions and higher public sector superannuation contributions
Tied clients and the opportunity/ability to cross-subsidise commercial operations from Government funded departmental activities	Lower degree of managerial autonomy, due to the requirement to comply with Ministerial directives
Exemptions from various Commonwealth and State legislation applicable to private sector equivalent entities	Higher accountability costs given the public sector's reporting and regulatory requirements
Access to various corporate overheads free of charge or at reduced rates, including office accommodation, payroll services, human resource services, and marketing and information technology services	Lack of flexibility in reducing or restructuring corporate overheads
Cash flow advantages through budget arrangements which give Agencies access to funds at the start of the financial year	Constitutional and legal constraints (e.g. being subject to Freedom of Information, Ombudsman legislation and Treasurer's Instructions)
Cost of borrowing advantages through being able to secure loans with government guarantees.	Requirement to undertake non-commercial activities.

2.2 ACT competitive neutrality policy framework

In developing its advice for the ACT Government, the Commission will take into account the ACT Government policy framework for implementing competitive neutrality principles, which is established by:

- the Competition Principles Agreement 1995 (as amended on 13 April 2007)
- the ACT Competitive Neutrality Policy 2010, and
- the Commission's Competitive Neutrality Complaints: Guidelines.

¹⁰ Tasmanian Government 1997, p. 4

Competition Principles Agreement

As a signatory to the CPA, the ACT Government has committed to applying competitive neutrality policy and principles to government business activities (see Appendix 2 for an extract from the CPA).

Consistent with the competitive neutrality requirements, government activities and government business enterprises should charge prices that fully reflect costs and should compete on the same footing as private sector businesses in terms of taxation, debt, regulation and earning a commercial rate of return.

The CPA does not require that all businesses competing in a market should be equal or that there should be regulatory intervention to ensure that competitors are equal. On the contrary, markets benefit consumers because there are numerous competitors each offering a choice of products and services with differing characteristics, allowing consumers to choose the products and services that will best meet their individual needs and preferences. Further, competing businesses will typically have different costs and offer products or services with different characteristics due to variations in workforce skills, equipment, managerial competence and innovation. These differences will contribute to differing levels of efficiency across organisations, and differing strengths in offering certain types of products and services and meeting the needs of different types of consumers. It is not an objective of competitive neutrality policy to remove these differences between competing businesses, regardless of their ownership.

ACT Competitive Neutrality Policy

Consistent with its commitments as a signatory to the CPA, the ACT Government has published a policy statement on competitive neutrality in the ACT.¹¹ The policy states that government business enterprises will be required to fully attribute costs on the same basis as private businesses. In addition, subject to a cost/benefit test, significant business enterprises and activities will also be required to:

- pay all Commonwealth and Territory tax or tax equivalent payments
- pay debt guarantee fees if in receipt of concessional interest rates that reflect their government ownership rather than their commercial status, and
- comply with the same regulations that apply to their private sector counterparts.¹²

The Commission's Competitive Neutrality Complaints: Guidelines

As discussed in Chapter 1, the Commission has functions in relation to competitive neutrality under the ICRC Act. These functions include investigating competitive neutrality complaints and providing advice to the ACT Government as requested in relation to competitive neutrality and broader competition issues.

¹¹ ACT Government 2010

¹² ACT Government 2010, p. 10

To inform stakeholders and provide transparency about the Commission's approach to competitive neutrality issues, the Commission has published a Guideline on how it assesses competitive neutrality complaints.¹³ This Guideline will inform the Commission's approach to developing the advice requested by the ACT Government.

¹³ ICRC 2015

3. Cemeteries and crematoria in the ACT

This chapter describes the services provided by cemeteries and crematoria, the market structure in the ACT and relevant legislation to provide context and useful background information for the Commission's development of detailed pricing principles.

3.1 Overview of cemetery and crematorium services

Cemeteries and crematoria offer a range of services and products to bereaved families and friends of the deceased person (the bereaved).

Crematorium services include the actual cremation process, which requires a cremator, a building in which to house the cremator, and associated transport and other equipment. Crematoria usually offer additional services and products for the bereaved, including:

- a range of interment plots for cremated remains (ashes)
- memorial halls or chapels for funeral or remembrance services
- rooms in which functions can be held immediately after the service as well as facilities for visiting clergymen and funeral directors, and lounges for the bereaved
- memorialisation products, such as headstones, plaques, mausoleums, urns, and other products
- maintenance in perpetuity (forever) of the crematoria site.

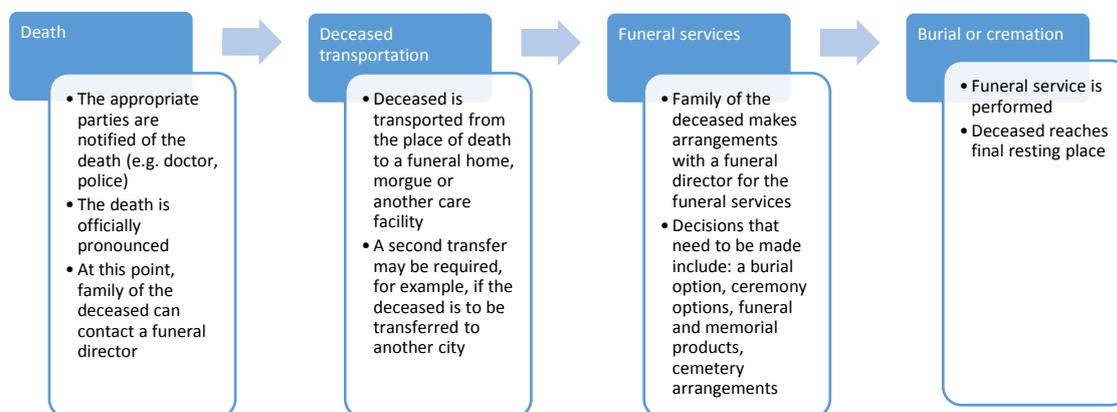
In the ACT, cemeteries offer interment services, which comprise the burial of bodies and interment of ashes, the sale and preparation of burial and interment plots, and a range of associated products and services. Many of the services offered by crematoria are also offered by cemeteries. For example:

- interment plots for ashes
- memorial halls or chapels for funeral or remembrance services, rooms for functions, facilities for visiting clergymen and funeral directors, and lounges for the bereaved
- memorialisation products
- maintenance in perpetuity of the cemetery.

Typically, most interactions between the bereaved and cemetery and crematorium operators occur through funeral directors. Funeral directors help the bereaved plan and organise the funeral service, including coordinating with the cemetery or crematorium and performing services like care, preparation, presentation, final disposition of the deceased, and completing statutory documentation requirements. There is no legal requirement to use a funeral director. However, many bereaved find it easier to engage an experienced professional to undertake at least some of the tasks involved.

The typical process required following a bereavement is shown in figure 3.1.

Figure 3.1: Typical process following bereavement



3.2 Relevant legislation and regulation

Cemeteries and crematoria, both public and privately owned, operating in the ACT are governed by the *Cemeteries and Crematoria Act 2003* (CC Act). The CC Act sets out a framework for the operation of cemeteries and crematoria in the ACT, including: the functions of a cemetery authority; private cemetery and crematoria operations; acceptance of human remains for burial, cremation and interment; obligations to put aside revenues for the perpetual maintenance of cemeteries and crematoria; powers of the Minister to issue regulations and codes of practice and guidelines; and offences.

Under the CC Act, where a cemetery or crematorium gives a person the right of burial, or the right of interment of ashes, the right lasts in perpetuity.¹⁴

The ACT Cemeteries and Crematoria Code of Practice 2007 sets out the maintenance responsibilities of a cemetery or crematorium operator and the holder of a right of burial or right of interment. Cemetery and crematoria operators are generally responsible for maintaining the grounds of a cemetery in a safe, clean and orderly condition, while the holder of the right of burial or right of interment is responsible for maintenance of a grave, monument or memorial.¹⁵ Holders of a right of burial or right of interment may pay additional fees for the ongoing maintenance of a grave, monument or memorial. Generally, a bundled one-off fee is charged by a cemetery or crematorium for the purchase of a burial/interment spot, the burial/cremation and interment, contribution to the long-term maintenance of the cemetery or crematorium, and contribution to the long-term maintenance of graves/monuments/memorials.

In addition, cemetery and crematorium operators are subject to a range of legislation, regulations, standards and responsibilities associated with the normal operation of a business,

¹⁴ Section 8(1)

¹⁵ Section 5 and 6 of the *ACT Cemeteries and Crematoria Code of Practice 2007*

such as those relating to employment, occupational health and safety, and environmental protection.

The ACT Legislative Assembly is currently considering the Cemeteries and Crematoria Bill 2019 (the CC Bill), which if approved, would introduce a range of contemporary updates to legislation and a flexible best-practice framework and licencing for cemetery and crematoria operators in the ACT.¹⁶ The CC Bill also seeks to ensure that cemetery and crematorium operators demonstrate respect for the diversity of people's religious and cultural beliefs and practices.

3.3 Current industry structure

Currently, the ACT cemetery and crematoria industry consists of two main providers: Canberra Cemeteries as a government owned provider of burial and ashes interment at three sites, and a private operator, Norwood Park, operating a crematorium and ashes interment site. A second private operator is currently working on a development application to build another private crematorium in the ACT.

Canberra Cemeteries

The ACT Public Cemeteries Authority (trading as Canberra Cemeteries) is a public authority whose functions are to develop, build and manage public cemeteries and crematoria for which the authority has been appointed operator by the Minister under the CC Act.¹⁷ The key purpose of Canberra Cemeteries is to ensure the equitable availability of interment options and maintain burial capacity in the medium to long term for the ACT.¹⁸ Canberra Cemeteries was appointed to operate the Gungahlin, Hall and Woden cemeteries offering burial and interment of ashes on 31 January 2006. Canberra Cemeteries also operates a memorial hall for memorial and wake services at the Gungahlin Cemetery.

As a public authority, Canberra Cemeteries is governed by the *Financial Management Act 1996*, with a governing board of between 4 and 12 persons appointed by the Minister for Transport and City Services. Employees of Canberra Cemeteries are employed as public servants under the *Public Sector Management Act 1994*. The board and executive of Canberra Cemeteries are required to ensure that the authority operates in a proper, effective and efficient way.¹⁹

Canberra Cemeteries is fully self-funded, with income received from fees and the perpetuity maintenance trust investment earnings and drawdowns from fee income put aside for the long-term maintenance of cemeteries. Fees charged by Canberra Cemeteries are approved by the

¹⁶ ACT Legislative Assembly 2019

¹⁷ Section 28A(1)

¹⁸ ACT Government 2019 b, p. 10

¹⁹ *Financial Management Act 1996* section 77(1)(c)

responsible Minister annually and published in an annual determination.²⁰ As part of this process, fees are benchmarked biennially against similar cemeteries across jurisdictions to assess equity in fees across different services and offerings.²¹

On 4 October 2019, the ACT Government announced that it would build a publicly operated crematorium at the Gungahlin Cemetery to be operated by Canberra Cemeteries to meet the cultural needs of the ACT's diverse cultural communities.²²

Norwood Park Crematorium

Norwood Park Crematorium is the only crematorium operator in the ACT.²³ It operates the cremator, chapel facilities, and a burial park for ashes in Mitchell. It offers a range of memorialisation products and services. Norwood Park was founded in 1966 as a privately owned business and since 2018 has been owned by the ASX listed Propel Funeral Partners Limited.

New developments

In addition to the existing cemetery and crematorium operators in the ACT, several new developments are expected to expand the industry.

The ACT Government has commenced design and costing work for stage one of the new Southern Memorial Park burial and ashes interment cemetery in Long Gully Road in south Canberra.²⁴ The new facility is expected to provide interment capacity for the next 100 years for the greater Canberra community.

The Whitby Group in conjunction with InvoCare is undertaking a development application to develop a crematorium, memorial park and associated facilities in Symonston.²⁵

3.4 Use of crematorium services in the ACT

Currently, the ACT experiences around 2,200 deaths each year.²⁶ As the ACT population grows and ages, the annual number of deaths is expected to increase to around 2,700 deaths each year by 2040.²⁷ Information published by Canberra Cemeteries indicate that

²⁰ Cemeteries and Crematoria (Public Cemetery Fees) Determination 2019 (No 1)

²¹ ACT Government 2019b, p. 18

²² ACT Government 2019a

²³ <https://www.norwoodpark.com.au/>

²⁴ ACT Government 2019c

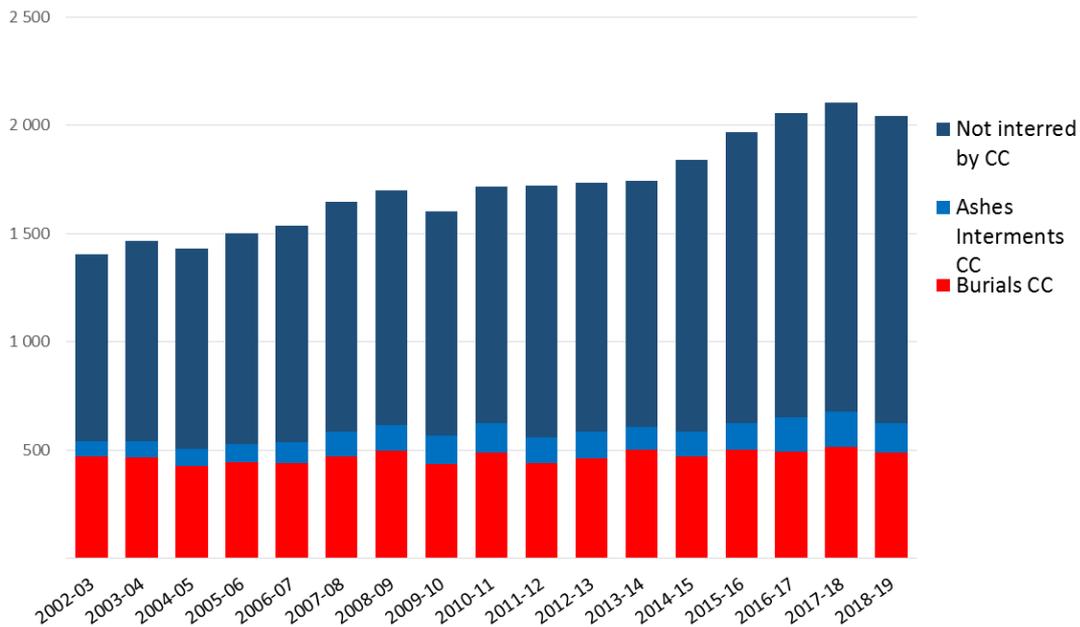
²⁵ <https://www.purdon.com.au/home/consultation/block-1-section-3-symonston-crematorium-and-memorial-park/>; ACT Government 2020

²⁶ Australian Bureau of Statistics

²⁷ ACT Government 2019d

around 75 per cent of people in the ACT are cremated, with the remainder being buried.²⁸ This rate is slightly higher, but similar to, the rate of cremation reported in New South Wales of around 68 per cent for 2017-18.²⁹

Figure 3.1 Deaths in the ACT and interment at Canberra Cemeteries³⁰



Services for residents of the greater Canberra region are provided by the cemeteries and crematorium operating in Canberra. Residents of the ACT may also choose to obtain cemetery or crematorium services from cemeteries and crematoria in towns and cities outside Canberra.

The Commission is seeking feedback on:

1. Do you wish to make any comments on the Commission’s description of the cemetery and crematorium services market characteristics and the operation of the industry? Are there any other features of the market that the Commission should be aware of?

²⁸ ACT Government 2019b, page 18

²⁹ IPART 2019b, page 5

³⁰ ACT Government 2019b, page 18

4. Approach to developing pricing principles

As described in Chapter 1, the Commission has been asked to develop pricing principles to guide the development of a costing methodology and prices for the services and products provided by Canberra Cemeteries to ensure competitive neutrality.

The Commission intends to develop the detailed pricing principles based on the objectives of the ACT Government's Competitive Neutrality Policy, namely:

- Prices should recover the full costs of providing crematorium services.
- Shared costs and overheads should be appropriately attributed.
- Prices should allow for an appropriate commercial rate of return to be achieved.
- The public crematorium facility must pay debt guarantee fees if in receipt of concessional interest rates that reflect its government ownership rather than its commercial status.
- The public crematorium facility must pay all Commonwealth and Territory tax or tax equivalent payments.
- The public crematorium facility must comply with the same regulations that apply to its private sector counterparts.

In developing the detailed pricing principles, the Commission will examine the activities undertaken in, and costs of, providing cremation and associated services to ensure the detailed pricing principles are appropriately tailored for achieving competitive neutrality in relation to the operations of the public crematorium facility. The Commission will consider carefully any activities and costs that may be affected by public ownership. The process will involve identifying and assessing the actual or potential competitive neutrality impacts of:

- the activities and resources required to deliver crematorium services at an ACT public crematorium, including related services and products such as memorialisation
- any goods or services directly provided by, or potentially provided, by the ACT Government to Canberra Cemeteries that may affect the costs of operating the crematorium
- activities undertaken by Canberra Cemeteries in relation to its provision of cemetery and ashes interment services, such as corporate functions, that may be shared in operating the public crematorium facility and affect the costs of operating the facility
- any circumstances or obligations arising because the facility will be publicly owned and operated that would not apply to a private sector provider.

4.1 Prices should recover the full costs of providing crematorium services

To ensure competitive neutrality, the prices charged by Canberra Cemeteries for crematorium and related services must recover the full costs incurred in providing those services. An important aspect of the costing methodology to be developed by Canberra Cemeteries and

used to set prices will be accurately identifying and quantifying all the costs of supplying services by the public crematorium facility.

The Commission's preliminary research and analysis has identified the following types of costs that may be incurred to operate a crematorium facility:

- staff salaries and salary on-costs, including for crematorium, grounds and building maintenance, and administration staff
- costs of purchasing and holding land used for a crematorium facility
- security costs
- vehicle costs
- insurance costs
- purchase of chemicals
- costs of purchasing memorialisation products, such as plaques and urns, for sale at the facility
- costs of purchasing consumables such as flowers and refreshments, used for ceremonies and memorial services
- administration and marketing costs
- utility charges (electricity, gas, water, internet, phone)
- information and communications technology (ICT) costs
- purchases of other services not provided in-house, such as accounting services or personnel-related services
- consultancy fees
- fees and permits
- taxes and rates
- maintenance costs for cremators and associated equipment, memorialisation facilities (such as mausoleums), roads, buildings, paths, gardens and fences
- refurbishment costs for cremators and associated equipment
- depreciation costs for cremators and associated equipment, roads, buildings, paths, vehicles and fences
- financing costs.

These costs may be categorised into operating costs and capital costs. Capital costs relate to equipment and buildings and other infrastructure assets that are used over a number of years. While operating costs are recovered in the year in which they are incurred, capital costs are recovered over time through depreciation and a return on investment (which allows for the recovery of financing costs for those capital assets).

The costs identified in this section are not intended to be comprehensive. In developing the detailed pricing principles, the Commission's aim will be to ensure that all costs are identified and appropriately quantified and the method by which capital costs are recovered is appropriate.

Box 4.1: Capital costs relating to the supply of crematorium facilities

Major equipment items associated with cremation:

- cremator unit(s) (or furnaces)
- a processor (for reducing remains into ash)
- scissor trolleys for moving coffins between the chapel and crematorium
- pans for collection.

Other equipment association with supplying the cremation service:

- cool room for storage of corpses
- drying machine (e.g., for ashes that have been placed for display purposes in a temporary memorial)
- vehicles for staff movements
- trolley hoists and gantries associated with memorialisation.

Other building and related assets:

- memorial halls, chapels, rooms for functions following the services, facilities for clergy and funeral directors, lounges for the bereaved, and rooms for reflection
- roads, paths, and fences
- land purchase and holding costs
- vehicles for transport, including transport of bodies
- audio-visual equipment for use during the service.

Note: A major capital cost is the cost of the buildings that house the cremator. Most cremators are located in purpose-built structures which may also include a chapel and associated rooms. The building requirements include significant equipment such as air conditioning, monitoring and air outtakes.

In ensuring that all costs are appropriately quantified, the Commission will pay particular attention to assessing whether the public crematorium facility has the ability to source inputs at a lower price than a private operator would be able to obtain them commercially, solely as a result of government ownership.

Government owned businesses may be able to access a range of services related to, for example, financial reporting, human resources, marketing, payroll and ICT as part of whole of government service delivery (often described as shared services). For example, Canberra Cemeteries notes in its 2018-19 Annual Report that it receives financial and accounting services through the ACT Government, for which it reimburses the Government.³¹ Supply of such services is not a concern in itself. However, there would be a breach competitive neutrality principles if the services are not supplied for a commercial price.

In addition, government owned businesses may be able to use the government's purchasing power to obtain inputs at a lower price. If this were the case for Canberra Cemeteries, it could

³¹ ACT Government 2019b, page 10

give the public crematorium facility an advantage in competing against the private crematorium facility. This may also be relevant for those goods and services that are not directly related to core crematorium services, which could be provided by other private sector businesses (such as memorialisation products).

Competitive neutrality requires that any such advantages that are obtained solely as a result of government ownership are taken into account, and an appropriate adjustment is made to remove any such advantages, when developing prices for the public crematorium facility.

4.2 Shared costs and overheads should be appropriately attributed

The public crematorium facility will be built at the Gungahlin Cemetery and operated by Canberra Cemeteries, which already operates three cemeteries and provides associated services and products, many of which are also supplied by crematoria (see Chapter 3). The Commission expects that some activities, such as corporate functions and other overheads and potentially the purchase and sale of memorialisation products, are likely to be undertaken by Canberra Cemeteries for both its cemeteries operations and its public crematorium operations.

In addition, some assets, such as roads and fences, are likely to be shared due to the co-location of the public crematorium facility at the Gungahlin Cemetery. The costs relating to shared assets are called shared costs.

The Commission considers that a competitively neutral costing methodology will ensure that shared costs and overheads that are jointly provided across cemetery and crematorium operations should be allocated in a manner that ensures competitive neutrality.

It is important to note that this does not mean that any efficiencies that arise from operating both a cemetery and a crematorium facility, such as from economies of scale or scope, should not be reflected in prices charged by the public crematorium facility. Allowing consumers to benefit from lower prices resulting from such efficiencies is not a breach of competitive neutrality principles.

Economic theory states that the efficient costs of operating a crematorium lie between the costs of stand-alone operation and the marginal (or incremental) costs incurred in operating a crematorium as part of a joint operation (that is, in conjunction with a cemetery). Any allocation methodology that falls within this range will be economically efficient and will, in the Commission's view, meet the competitive neutrality requirements.

The Commission notes that there will be several costing methodologies for attributing shared costs and overheads that satisfy the condition described in the above paragraph. For example, economic theory has identified the following potential approaches:

- Ramsey pricing – allocating a higher proportion of common costs to services with more inelastic demand
- Marginal cost pricing – setting the price of a service equal to its marginal cost of production

- Activity based pricing – allocating common costs to services based on measurable indicators of use.

The Commission considers that the choice of an appropriate costing methodology for allocating shared costs and overheads is a commercial decision for Canberra Cemeteries, provided it satisfies the condition to be competitively neutral. Noting that there are a number of acceptable approaches, the Commission considers that a practical and pragmatic allocation methodology that recognises commercial realities and is based on measurable data would assist Canberra Cemeteries in demonstrating that its approach is competitively neutral.

4.3 Prices should allow for an appropriate commercial rate of return to be achieved

For competitively neutrality, a government business must earn a commercial rate of return on the investment required to run the business that is equivalent to the rate of return paid by a private business that is providing the same services. The commercial rate of return should include an appropriate risk allowance.

If a government business was not required to earn a commercial rate of return on its investments, this would give it an advantage in competing with private businesses. Similarly, if the rate of return included a lower risk allowance due to the government ownership of the business, there would be a competitive advantage for the government business.

A further consideration is whether the government business is required to pay a commercial return on any equity contributed by government. Since shareholders in a private business expect an appropriate risk-adjusted return on their investment, a government business would have a competitive advantage if it was not required to make equivalent returns on any equity investment from government.

There are several options for determining an appropriate commercial rate of return, such as:

- developing a weighted average cost of capital—this approach will estimate an appropriate risk-adjusted commercial return on debt and an appropriate risk-adjusted return on equity and weight these by a standard debt-equity ratio that reflects a typical business operating in the industry
- benchmarking against the commercial rate of return earned by comparable businesses operating in the industry—this requires good information on the rate of return for the provision of crematorium services (not the rate of return for a diversified business that provides crematorium services as well as other services)
- implied rate of return calculated using information on assets and acquisition prices for companies in the industry—this would require good information on the rate of return for the provision of crematorium services (not the rate of return for a diversified business) and would need to adjust for any acquisition premium paid above the prevailing commercial rate of return for the industry.

The Commission notes that all of these options have limitations and a pragmatic and practical approach should be taken in deciding on an appropriate commercial rate of return.

4.4 The public crematorium facility must pay debt guarantee fees if in receipt of concessional interest rates that reflect its government ownership rather than its commercial status

Private businesses can borrow to fund their capital investments and will pay a commercial borrowing rate that reflects the risk rating of the business, the expected returns on the particular investment, and any specific risk associated with the investment.

Government businesses may be able to borrow through a government treasury and take advantage of a lower risk premium that reflects the (better) risk rating of the government as a whole compared to the business if it were to borrow in its own right. A lower risk premium would reduce the costs to the government business and confer a competitive advantage as a result of its government ownership.

Typically, to ensure competitive neutrality, government businesses are required to pay debt guarantee fees to the government treasury to offset the competitive advantage that it would otherwise gain.

The Commission will consider any financial and borrowing arrangements that are in place for Canberra Cemeteries to ensure these meet the competitive neutrality requirements.

4.5 The public crematorium facility must pay all Commonwealth and Territory tax or tax equivalent payments

An important element of competitive neutrality is that competing businesses, whether public or private, face the same tax obligations. If a government business was subject to lower tax obligations than competing private businesses, as a result of government ownership, it would gain a competitive advantage.

The Commission notes that the ACT Government agreed in 1995 to a tax equivalent regime by which it sought to establish a tax burden for its wholly owned businesses that would be equivalent to the tax regime imposed on privately owned businesses. The tax equivalent regime adopted by the ACT Government imposed Commonwealth equivalent taxes, such as the GST, and Territory taxes such as payroll tax, company tax, workcover premiums or rates, and other relevant duties on transactions by ACT Government-owned businesses. The tax equivalent regime aims to ensure that even if an ACT government business is not required to pay certain taxes due to its government ownership, an equivalent payment must be made to the ACT Government for the taxes that would be paid by a comparable private business.

The Commission will consider whether there are differences in the tax obligations of Canberra Cemeteries compared to a private crematorium business, as a result of its public ownership.

4.6 The public crematorium facility must comply with the same regulations that apply to its private sector counterparts

As noted in Chapter 3, cemeteries and crematoria operating in the ACT are governed by the CC Act which covers both public and privately owned businesses. There may be other regulations that apply to the operation of crematorium facilities in the ACT. The Commission will identify and assess the applicable regulations to confirm whether the private crematorium facility will be subject to the same regulations as apply to private crematorium facilities.

The Commission will also consider broader obligations imposed by legislation or regulation on government businesses. As noted in Chapter 3, Cemeteries Canberra is, as a result of its government ownership, subject to the *Financial Management Act 1996* and the *Public Sector Management Act 1994*. It may be subject to other obligations imposed on ACT Government agencies, which may confer either an advantage or a disadvantage compared to comparable private businesses. For example, there may be differences in the reporting obligations for government businesses and private businesses.

Government owned businesses may be directed to provide services that in the usual course of commercial activity would not be provided or would be provided at a higher price, usually to meet government social objectives. These services are referred to as community service obligations (CSOs). If a government business (but not a private business in the same industry) was required to meet CSOs without an offsetting CSO payment, this could increase the government business' costs and prices, resulting in a competitive disadvantage.

The Commission's current understanding is that CSOs are provided through obligations on and payments to funeral directors and that no CSOs are applicable to crematorium facilities.

The Commission will undertake further inquiries to assess whether the private crematorium facility will be subject to the same regulations as apply to private crematorium facilities.

The Commission is seeking feedback on:

2. Do you have any comments on the overall approach the Commission has proposed to develop detailed pricing principles? Are there other broad pricing principles that the Commission should consider?
3. Has the Commission identified the full costs that are likely to be incurred in operating a crematorium facility? Are there other costs or cost categories that should be included?
4. Do you have any suggestions on how shared costs and overheads could be allocated to ensure competitive neutrality?
5. Do you have any views on the commercial rate of return on investment by a private crematorium facility?
6. Do you have any comments on whether competitive neutrality is likely to be satisfied in regard to borrowing costs, tax and tax-equivalent payments, and regulation?
7. Do you have any comments on the most appropriate approach to ensuring that prices for goods and services not directly related to core crematorium services (such as memorialisation products) are consistent with competitive neutrality policy?
8. Do you have any other comments or information you would like to give the Commission to assist it in ensuring that the private crematorium facility will operate in a manner that is consistent with competitive neutrality?

Appendix 1

Scope of Work



Andrew Barr MLA

Chief Minister
Treasurer
Minister for Social Inclusion and Equality
Minister for Tertiary Education
Minister for Tourism and Special Events
Minister for Trade, Industry and Investment
Member for Burdett

Mr Joe Dimasi
Senior Commissioner
Independent Competition and Regulatory Commission
PO Box 161
CIVIC SQUARE ACT 2608

Dear Mr Dimasi

I am writing to you about the recently announced public crematorium facility at Gungahlin, which will be built and operated by the ACT Crematoriums Authority (the Authority).

In approving the proposal, the Government decided to engage the Commission to help ensure that the new facility operates in a manner consistent with competitive neutrality. In particular, the Government wishes to use the Commission's expertise to develop an appropriate costing methodology and prices to apply to goods and services at the facility, which will be provided in direct competition with private sector operators already present in the market.

Please find enclosed a scope of works for the project, which I provide under section 12 of the *Independent Competition and Regulatory Act 1997*. The Commission will be required to undertake two main tasks, an initial process to develop pricing principles to guide the development of the costing methodology and prices for the facility, and a subsequent process to review and assess the Authority's pricing proposal for its compliance with the pricing principles and competitive neutrality policy more broadly.

I thank the Commission in advance for providing assistance to the Government on this matter, and I look forward to the outcomes of your work in due course.

Yours sincerely


Andrew Barr MLA
Treasurer

20 DEC 2019

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Scope of Work: ICRC process to assist the determination of prices for the ACT Public Crematorium

In September 2019, the Government agreed to proceed with a proposal by the ACT Public Cemeteries Authority (the Authority) to build and operate a public crematorium facility at the Gungahlin Cemetery. As part of that approval, to ensure the facility is operated in line with competitive neutrality principles, the Government agreed to engage the Independent Competition and Regulatory Commission (ICRC) to:

- develop a set of pricing principles to guide the development of a costing methodology and prices for the public crematorium facility; and
- formally review the Authority’s proposed costing methodology and prices to ensure compliance with the pricing principles and the ACT Competitive Neutrality Policy.

This work is to be undertaken under section 12 of the *Independent Competition and Regulation Commission Act 1997*, which allows the ICRC to assist any agency, body or person by “providing services within the Commission’s field of expertise and relevant to its functions.”

The following documents provide the policy framework for the work to be undertaken:

- the *Competition Principles Agreement 1995* (as amended 13 April 2007);
- the *ACT Competitive Neutrality Policy*; and
- the ICRC’s *Competitive Neutrality Complaints: Guidelines*.

Stage 1: Development of pricing principles

The first stage of this work will require the ICRC to develop detailed pricing principles for the ACT public crematorium, to guide the setting of prices for the goods and services, in a manner consistent with ACT Competitive Neutrality Policy. The issues identified below are considered to be relevant to the development of the pricing principles for the facility.

Key issues to be considered by the ICRC

- Identification of core activities and resources required to deliver crematorium services at an ACT public crematorium;
- Detailed analysis of the estimated costs of supplying crematorium services, to ensure all costs are identified and accounted for;
- Identification of shared activities and resources that will be used by the Authority to deliver burial and cremation related services, and the development of a methodology for appropriate allocation of these costs between the two areas;
- Identification of services related to the operation of the crematorium that are provided by, or could be provided, by the ACT Government;

- Identification of any unique circumstances/requirements arising because the facility will be publicly owned and operated that would not apply to a private sector provider; and
- Consideration of the most appropriate approach to ensuring prices for goods and services provided at the crematorium that could alternatively be provided by private entities, but are not necessarily directly related to core crematorium services (for example memorialisation goods and services), are consistent with competitive neutrality policy.

Process

To understand the activities, resources and costs of delivering public crematorium goods and services, and to identify any synergies and/or shared costs in supplying goods and services resulting from the Authority providing both crematorium and burial services, the process to develop the pricing principles should include:

- consultation with the Authority;
- where appropriate, consultation with private crematorium operators within and outside of the ACT;
- consultation with relevant cemetery/crematorium authorities in other jurisdictions;
- the release of a public Issues Paper to explain the process and key issues, and to seek input from stakeholders;
- the release of a draft report including the proposed pricing principles for consultation with stakeholders; and
- the provision of a final report incorporating the pricing principles to the Treasurer, the Minister for City Services and the Authority.

Deadline for provision of final report for Stage 1: 31 May 2020

Stage 2: Competitive neutrality analysis of pricing schedule developed by ACT Public Cemeteries Authority

The second stage will require the Authority to submit a proposed costing methodology and pricing schedule to the ICRC and demonstrate that these are consistent with the pricing principles developed in Stage 1, and ACT Competitive Neutrality Policy more generally. The ICRC will review the cost methodology and pricing schedule to ensure they are consistent with the principles.

In its submission, the Authority may include explanatory material and describe any issues, or unexpected outcomes identified by the Authority in developing its proposed cost methodology and prices.

The key outcome of this work will be to ensure that prices have been appropriately developed, that all relevant costs have been accounted for and the crematorium does not receive a net competitive advantage solely arising from its public ownership.

Process

The process to review the proposed costing methodology and prices should be undertaken in consultation with the Authority, and should include:

- the verification of the validity of proposed costs, and their allocation between the cemetery and crematorium operations;
- a review of the proposed prices and costing methodology for compliance with the pricing principles determined in Stage 1 and ACT competitive neutrality policy;
- development of draft findings from the initial analysis;
- an opportunity for the Authority to respond to the draft findings, and to provide detail of any proposed revisions to address any identified issues; and
- the provision of the final report, including any findings and recommendations, to the Treasurer, the Minister for City Services and the Authority on a confidential basis, with a summary of the final report suitable for public release also prepared.

Appendix 2 Competition principles agreement

[competition principles agreement cl 3 (1) & (4)-(7)]

3 (1) The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.

(4) Subject to subclause (6), for significant Government business enterprises which are classified as “Public Trading Enterprises” and “Public Financial Enterprises” under the Government Financial Statistics Classification:

(a) the Parties† will, where appropriate, adopt a corporatisation model for these Government business enterprises (noting that a possible approach to corporatisation is the model developed by the intergovernmental committee responsible for GTE National Performance Monitoring); and

(b) the Parties† will impose on the Government business enterprise:

(i) full Commonwealth, State and Territory taxes or tax equivalent systems;

(ii) debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and

(iii) those regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.

(5) Subject to subclause (6), where an agency (other than an agency covered by subclause (4)) undertakes significant business activities as part of a broader range of functions, the Parties† will, in respect of the business activities:

(a) where appropriate, implement the principles outlined in subclause (4); or

(b) ensure that the prices charged for goods and services will take account, where appropriate, of the items listed in subclause (4)(b) and reflect full cost attribution for these activities.

(6) Subclauses (4) and (5) only require the Parties† to implement the principles specified in those subclauses to the extent that the benefits to be realised from implementation outweigh the costs.

(7) Subclause (4) (b) (iii) shall not be interpreted to require the removal of regulation which applies to a Government business enterprise or agency (but which does not apply to the private sector) where the Party† responsible for the regulation considers the regulation to be appropriate.

Note [not included in the agreement]:

† Party is defined in the agreement (cl 1 (1)) to mean the Commonwealth, a State, the Australian Capital Territory or the Northern Territory of Australia, if the jurisdiction concerned has signed the agreement and has not withdrawn. The Australian Capital Territory has signed the agreement and has not withdrawn from it; thus it is a party.

Legislation review [competition principles agreement cl 5 (1) & (9)]

5 (1) The guiding principle is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

(a) the benefits of the restriction to the community as a whole outweigh the costs; and

(b) the objectives of the legislation can only be achieved by restricting competition.

(9) Without limiting the terms of reference of a review, a review should:

(a) clarify the objectives of the legislation;

(b) identify the nature of the restriction on competition;

(c) analyse the likely effect of the restriction on competition and on the economy generally;

(d) assess and balance the costs and benefits of the restriction; and

(e) consider alternative means for achieving the same result including non-legislative approaches.

Abbreviations and acronyms

ACT	Australian Capital Territory
CC Act	<i>Cemeteries and Crematoria Act 2003 (ACT)</i>
CC Bill	<i>Cemeteries and Crematoria Bill 2019 (ACT)</i>
COAG	Council of Australian Governments
Commission	Independent Competition and Regulatory Commission (ACT)
CPA	Competition Policy Agreement
CSO	Community service obligations
ICRC	Independent Competition and Regulatory Commission (ACT)
ICRC Act	<i>Independent Competition and Regulatory Commission Act 1997 (ACT)</i>
IPART	Independent Pricing and Regulatory Tribunal
OECD	Organisation for Economic Co-operation and Development

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