

(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Territory or the Northern Territory of Australia, if the jurisdiction concerned has signed the agreement and has not withdrawn. The Australian Capital Territory has signed the agreement and has not withdrawn from it; thus it is a party.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.

Appendix 3 Summary of submissions

Table A3.1 Summary of submissions to the issues paper

	Date received	Submitter	Key issues raised/information:
1	14 February 2020	Canberra Cemeteries	<p>Industry structure</p> <p>There are operating models of various types in the sector ranging from standalone crematoria with or without a chapel and/or memorialisation service to private operators that are vertically integrated with funeral directors.</p> <p>Crematoria and cemeteries are not always co-located.</p> <p>Transport is not provided by all crematoria.</p> <p>Contrary to the Commission's view, mausoleums are not included within a crematorium and a perpetual maintenance fund is not needed for cremation or the crematorium but is needed for memorialisation.</p> <p>Schedules of fees for various operators vary. There can be combined chapel and cremation fees, 'no service no attendance' fees, same day cremation fees, and differing fees between weekend and weekend events. There is a general move towards increasing transparency and simplicity in fee structures.</p> <p>Pricing principles</p> <p>Canberra Cemeteries supported the Commission's approach to developing pricing principles.</p> <p>The Commission should not include memorialisation as part of the pricing principles as these products and services are already priced in a competitively neutral way. Canberra Cemeteries sees the cremation and cremation memorialisation industry is currently self-regulated effectively. Canberra Cemeteries currently provides cremation memorialisation across its three existing cemeteries and these prices are benchmarked and determined by the Minister.</p> <p>The Commission should consider whether memorialisation revenue should be included in operations since this would reduce perpetual maintenance fund contributions.</p> <p>Canberra Cemeteries supported the principle that equivalent tax payments, regulations and borrowing neutrality should be applied to the public crematorium.</p> <p>Costs</p> <p>Canberra Cemeteries supported the Commission's broad identification of costs associated with the crematorium but questioned whether the costs associated with memorialisation and consumables such as flowers and refreshments were appropriate to be included as crematorium costs as they are not specific to crematorium operations.</p> <p>Canberra Cemeteries cautioned against 'spreading the net too far' in relation to roads, buildings, paths, gardens and fences as the majority of these activities relate to core burial and memorisation activities at the cemetery site.</p> <p>Private operators may gain a competitive advantage from the vertical integration of funeral director services with crematorium operations.</p> <p>The new public crematorium will operate under a 'hybrid model' as a separate business unit.</p> <p>Canberra Cemeteries should not be required to charge additional fees for use of the viewing room.</p> <p>Fees for use of chapel and function facilities should not be packaged with cremation fees.</p> <p>Canberra Cemeteries' financial model is based on FTE staffing to allow appropriate allocation of overheads.</p> <p>Canberra Cemeteries supported the Commission's view that WACC can be difficult to determine given the thinness of the crematorium market and lack of publicly traded crematorium operators.</p>

Date received	Submitter	Key issues raised/information:
		<p>Finding comparable benchmarks to determine a rate of return is difficult because of the lack of profits and lack of disclosure as well as variation in legislative and regulatory requirements in different jurisdictions.</p> <p>The Commission could use the return on debt as a proxy for return on equity since crematoria are low risk and high volume.</p> <p>The Commission should apply a discounted average rate of return based on other government-owned businesses that have competitive neutrality arrangements in place. The discount would reflect the lower risk of a crematorium compared to other government businesses.</p>
2 14 February 2020	Cemeteries and Crematoria Association of NSW	<p>Industry structure</p> <p>The Commission's description of the cemetery market is broadly accurate but not all crematorium operators provide transport facilities or additional products and services. A crematorium site usually refers to just the furnace area and does not need perpetual maintenance.</p> <p>Canberra Cemeteries provides interment for both buried and cremated remains, incurring a perpetual maintenance liability.</p> <p>The Commission should identify whether there are any barriers that would make the cremation and ashes interment market in the ACT less competitive than in NSW.</p> <p>The perpetual maintenance of monuments is not the cemetery's responsibility; it is the interment right holder's responsibility.</p> <p>Pricing principles</p> <p>The Association supported the Commission's approach to developing competitive neutrality principles and promoting transparent pricing.</p> <p>The act of cremation should be treated as a distinct business activity for the purpose of consistency, transparency and comparability.</p> <p>The Association supported the Commission's requirement to identify any competitive advantage that Canberra Cemetery may have.</p> <p>Canberra Cemeteries may also have a competitive disadvantage compared to private operators (e.g. reporting obligations or broader service to the community).</p> <p>Private operators may have competitive advantages from their bulk purchasing power and vertically integrated operations.</p> <p>Private crematoria that are part of larger businesses already have industry technical expertise which gives them a competitive advantage.</p> <p>Costs</p> <p>Fees for the actual cremation should be separate from fees for related facilities and memorialisation and not be packaged together, to allow for transparency and consistency.</p> <p>Interment offerings should include a fee that covers direct costs of memorialisation and contributes to the perpetual maintenance obligation of cemetery/crematorium grounds.</p> <p>The Commission should exclude the costs of associated facilities such as chapels, flowers, refreshments and memorialisation services. These should be costed and charged in their own right.</p> <p>Other comments</p> <p>Transparency of prices and separate pricing of different aspects of the interment process (e.g. act of cremation, use of chapel/function facilities, actual interment location, memorialisation) are important.</p> <p>The Association is unaware of any differences between the ACT and New South Wales market that would make the ACT market for cremation and ashes interment any less competitive.</p>
3 14 February 2020	Harris McDonald Pty Ltd	<p>Industry structure</p> <p>The funeral director industry would be concerned if government crematoria provided services similar to those provided by the industry.</p>

Date received	Submitter	Key issues raised/information:
		<p>Pricing principles</p> <p>The Commission did not consult with industry stakeholders who can be impacted by pricing considerations.</p> <p>Harris McDonald questioned whether the new public crematorium will create public value or provide customers with a price advantage and whether the government has the capability to run it.</p> <p>Harris McDonald questioned whether the new crematorium would be in line with competitive neutrality since private operators have to face planning constraints if they want to provide alternative cremation locations.</p> <p>The Commission should consider when setting pricing principles that if there was an increase in burial space and prices were adjusted, the rate of cremation could decrease.</p>
4 21 February 2020	InvoCare	<p>Industry structure</p> <p>The Commission's understanding of the cemetery and crematorium services market characteristics and operation is accurate.</p> <p>Pricing principles</p> <p>InvoCare has no issues with the Commission developing detailed pricing principles for a public crematorium in the ACT.</p> <p>Pricing principles should not apply to for private operators as this would prevent the provision of a wide range of products and interment rights at cost effective prices appropriate for target customers.</p> <p>Prices should recover the full costs of providing crematorium services.</p> <p>Competitive neutrality is a key factor in attracting private operators into the industry.</p> <p>The Commission should ensure the crematorium is operating efficiently and providing essential and innovative services and is also financially strong as a stand-alone business.</p> <p>Private operators should not have to pay any levy, tax or financial obligation that a government enterprise is not subject to for the purpose of funding cemetery operations.</p> <p>Costs</p> <p>The Commission should aim to have prices cover value-add memorial services and not just operating and capital costs since a modern crematorium needs additional profit margins.</p> <p>The Commission should consider if the new crematorium will be a source of income for Canberra Cemeteries to fund perpetual maintenance.</p> <p>Other comments</p> <p>Ancillary goods and services such as memorialisation should be made more affordable by reducing government regulated barriers to entry.</p>
5 24 February 2020	Norwood Park	<p>Industry structure</p> <p>Other local government operators are moving away from owning and operating cemeteries and crematoria.</p> <p>Norwood Park questioned whether it is logical to open a new crematorium 200 meters away from an existing one with plenty of capacity.</p> <p>Pricing principles</p> <p>Norwood Park supported the Commission's broad pricing principles.</p> <p>The Commission should not assume that any shared cost allocation methodology that falls within a range of a stand-alone operation and a joint operation as economically efficient.</p> <p>Norwood Park assumes that government enterprises are subject to the same taxes as private enterprises (both direct and indirect taxes).</p> <p>Norwood Park assumes that government enterprises are subject to the same regulatory requirements as private enterprises and sought clarity that this extends to environment, traffic or industrial relations regulations.</p>

Date received	Submitter	Key issues raised/information:
		<p>Costs</p> <p>Norwood Park agreed with the Commission's analysis of the types of costs incurred in providing crematorium services and suggested other operating and capital costs that should be included.</p> <p>A simplified approach to allocating shared costs would use a fully distributed approach, where indirect (shared) costs are allocated to activities on a pro-rate basis. Apportionment methods could include staff time, budget or resource share.</p> <p>The Commission should apply either a fully distributed cost approach or activity-based costing approach to allocating shared costs.</p> <p>The Ramsey Pricing approach is difficult to apply consistently and transparently given that the market is competitive.</p> <p>The marginal cost pricing approach would unfairly disadvantage other operators.</p> <p>It is unlikely that debt will be available to the new crematorium. It will have to be funded entirely by equity.</p> <p>The Commission should recognise that if Canberra Cemeteries was a private entity, it would have a high cost of debt given its credit risk profile.</p> <p>Other comments</p> <p>The Commission should specify whether a competitive analysis will be conducted on an on-going basis or done just once.</p> <p>The Commission should consider the current and future capacity of Norwood Park.</p> <p>The Commission should consider the possible negative economic and employment impacts of the public crematorium on Norwood Park.</p> <p>The Commission provide research or evidence to show that the new crematorium will be commercially viable and will not disadvantage the private sector.</p>

Table A3.2 Summary of submissions to the draft report

Date received	Submitter	Key issues raised/information provided
1 20 April 2020	Canberra Cemeteries	<p>Implementation issues</p> <p>The crematorium construction has been brought forward as part of the COVID-19 public health response and is expected to start operating in August 2020.</p> <p>An initial pricing structure (the 'interim pricing structure') will set prices based on comparable crematorium providers' prices as this will ensure alignment with market rates and promote competitive neutrality.</p> <p>Further analysis and benchmarking of cost inputs is likely to take place to confirm the interim pricing structure.</p> <p>Any revised pricing structure will only be implemented after the Commission completes stage two of the competitive neutrality process in the second half of 2020.</p> <p>Once the pricing process is complete, the pricing structure will be reviewed to ensure prices are in line with the principles.</p> <p>Canberra Cemeteries proposes that the pricing structure and cost base be subject to an independent annual review to ensure it aligns with the pricing principles.</p> <p>Pricing principles</p> <p>Supported the Commission's broad draft pricing principles and the requirement to uphold competitive neutrality.</p> <p>Committed to meeting the Commission's draft pricing principles.</p> <p>Canberra Cemeteries noted the Commission's discussion on determining an appropriate risk-adjusted commercial rate of return and stated that it aims to apply a suitable risk-adjusted commercial rate of return on retained earnings.</p> <p>Canberra Cemeteries has no plans to borrow to fund the crematorium. If it does, it will be through the ACT Treasury at a commercial rate.</p> <p>It is unlikely that equity will be received from the ACT Government for the crematorium and if it does, the equity will earn a commercial rate of return.</p>

Date received	Submitter	Key issues raised/information provided
		<p>Depreciation of capital assets will be recovered.</p> <p>An allowance for tax and other costs applicable to an equivalent private operator will be included in setting prices. Canberra Cemeteries is seeking further advice from ACT Treasury on this issue.</p> <p>Canberra Cemeteries agreed with the Commission's identification of regulations applicable to public and private sectors and considered no competitive neutrality adjustments are needed in respect of regulation.</p> <p>Canberra Cemeteries agreed with the Commission's identification of regulations applicable to solely to the public or private sector and suggested that public-sector regulations are more costly to comply with hence no additional adjustments for obligations on equivalent private-sector operators should be required.</p> <p>Costs</p> <p>Canberra Cemeteries proposes to use an activity-based costing methodology in order to capture full direct costs as well as the crematorium's share of shared costs.</p> <p>Cost pools will be identified based on relevant cost drivers (determined for each shared cost).</p> <p>Relevant costs have been identified and measured based on historical costs as well as using financial forecasting and modelling to identify costs specific to the crematorium.</p> <p>Inputs are likely to be sourced at prices that are comparable to market rates.</p> <p>Other inputs and services for providing crematorium services will be obtained in accordance with the ACT Government's procurement policy.</p> <p>The rates paid for accessing services via Shared Services Agreements are periodically benchmarked but determining an appropriate rate to adjust for a profit margin on Shared Services costs is challenging.</p> <p>An analysis will be undertaken to determine whether the cost of shared services is at commercial rates. If not, an adjustment will be made to reflect market rates.</p> <p>The project management firm for the crematorium project has been procured at a market rate.</p> <p>The services provided by Major Projects Canberra are driven by public sector procurement requirements, which may not be faced by private operators.</p> <p>The cost of land will be based on a market rate, including land holding costs.</p> <p>An opportunity cost exists from not using the crematorium land for grave stock, which if not considered could place Canberra Cemeteries at a competitive disadvantage.</p> <p>Memorialisation goods and services will continue to be priced such that they recover all costs as well as include a commercial profit margin, while following the pricing principles.</p> <p>Interment service prices will continue to recover associated perpetuity maintenance costs and perpetual care obligations will be considered under the new legislation.</p> <p>The cost allocation methodology should be comparable to each price point's potential revenue.</p> <p>Competitive neutrality requirements will be met through a 'hybrid model' and this approach will be outlined in the Financial Governance Model.</p>
2	9 April 2020 Cemeteries & Crematoria Association of NSW	<p>Costs</p> <p>Land used for the cremator facility should be clearly specified when considering the recovery of land costs.</p> <p>The costs used to determine the price of cremations should be 'ring fenced' from costs related to interment services and memorialisation since most cremations in NSW do not lead to the creation of memorials or interment.</p> <p>The Association supported transparency of fees from cemetery and crematorium operators and funeral directors.</p> <p>The crematorium facility's costs should be distinct from interment, memorialisation and perpetual maintenance costs.</p>

Date received	Submitter	Key issues raised/information provided
		<p>Other comments Referring to the activities of a crematorium as 'general' activities is misleading since it is not the correct representation of the industry in other states as these activities are not offered at all cremation facilities.</p>

Appendix 4 Crematorium industry jurisdictional summary

This appendix briefly summarises the structure of the crematorium industries in jurisdictions other than the ACT.

New South Wales

Across New South Wales, crematoria are operated by a variety of providers, including crown land trusts (State Government Authorities), private operators, local governments, churches, and community groups, which provide a range of service options.¹⁴⁵

In Sydney, private operators provide around 70 per cent of cremations and 21 per cent of burials, with a market share of 55 per cent of total burials and cremations across metropolitan Sydney.¹⁴⁶ There are also different operating models in Sydney. For example, some providers of death services offer cemetery services only, others offer crematorium services only, while some offer both cemetery and crematorium services. Further, some crematoriums offer services such as ashes interment while others offer cremation only.¹⁴⁷

Local governments in New South Wales are required by the *Local Government Act 2003* (NSW) to determine fees and charges for their services and publish their pricing methodologies. For business activities provided in competition with the private sector, these methodologies are expected to comply with the *Pricing and Costing for Council Businesses: A guide to competitive neutrality guidelines*.¹⁴⁸ These guidelines include:

- setting fees and charges based on full cost attribution
- clearly identifying any subsidies
- operating under the same regulatory framework as a private entity in the same sector
- ensuring efficient allocation of resources.¹⁴⁹

The New South Wales Government has a competitive neutrality policy that applies to ‘significant business activities in contestable markets’¹⁵⁰ for government agencies, public trading enterprises, state owned corporations and general government businesses.¹⁵¹

¹⁴⁵ NSW Government 2017, p. 1

¹⁴⁶ NSW Government 2017, p. 3

¹⁴⁷ NSW Government 2020

¹⁴⁸ NSW Government 1997

¹⁴⁹ NSW Government 1997, p. 3

¹⁵⁰ NSW Government 2002, p. 4

¹⁵¹ NSW Government 2002, p. 4

Victoria

In Victoria, every crematorium is located within a public cemetery and managed by a cemetery trust. There are no private crematoria in Victoria.¹⁵² However, this does not preclude Victorian funeral directors providing private crematorium services through the use of an interstate crematoria.

Competitive neutrality principles are only applicable on the supply and sale of memorialisation of goods and services since these are in direct competition with the private sector.¹⁵³ These principles require cemetery trusts to:

- allow the promotion of substitute supplier products at facilities
- consider using competitive tendering to source memorialisation products
- be transparent and specific with pricing by including both the direct cost of a product as well the indirect cost such as allowance for tax.¹⁵⁴

Queensland

Crematorium services are provided by local governments, private operators and church businesses in Queensland.¹⁵⁵ There are around ten crematoria operating in the greater Brisbane area, with three operated by the Brisbane City Council, one by the Catholic Archdiocese of Brisbane, one by a small cemeteries trust, and the rest by private operators. In regional areas, there is a mix of cemeteries and crematoria managed by local government and private operators.¹⁵⁶

In applying National Competition Policy to local government business activities, the Queensland Government recognises these operations are unlikely to be significant business operations which require full application of competitive neutrality.¹⁵⁷ Hence, competitive neutrality principles only apply to government business operations for certain activities that are in direct competition with the private sector as significant business activities. When local government entities apply competitive neutrality principles, this involves:

- eliminating any advantage that may arise due to government ownership
- encouraging efficient use of resources
- considering the advantages and disadvantages of government ownership when setting fees and charges.¹⁵⁸

¹⁵² Victorian Government 2020

¹⁵³ Victorian Government 2020b

¹⁵⁴ Victorian Government 2020b

¹⁵⁵ <https://www.gatheredhere.com.au/brisbane-crematorium-and-cremation-services-guide/>

¹⁵⁶ <https://barecremation.com.au/crematoriums-and-scattering-ashes-in-queensland/>

¹⁵⁷ Queensland Government 1996, p. 20

¹⁵⁸ Queensland Government 1996, p. 12

South Australia

In South Australia, crematoria are operated by state government authorities, local governments and private operators. In Adelaide, three crematorium facilities are currently operating. Enfield Memorial Park is operated by the Adelaide Cemeteries Authority (a state government authority), Centennial Park by the Centennial Park Cemetery Authority (a local government authority jointly owned by two local governments) and Western Region Crematorium by a private operator. Outside of Adelaide, both public and privately operated crematoria provide crematoria services.

The Adelaide Cemeteries Authority is subject to competitive neutrality as a corporatised entity.¹⁵⁹ Local government operated cemeteries and crematoria that are considered significant business activities (annual turnover of greater than \$2.0 million) are subject to competitive neutrality requirements.¹⁶⁰ They are required to implement competitive neutrality principles to their full extent, which includes requirements such as payment of dividends to the Government.¹⁶¹

Tasmania

Five crematoria operate in Tasmania, with four privately owned and one operated by Launceston City Council as a cemetery and crematorium.

Local governments in Tasmania are required to apply competitive neutrality principles for operations they identify as a significant business activity.¹⁶² The City of Launceston does not classify the cemetery and crematorium as a significant business activity.¹⁶³

Western Australia

Crematoria in Western Australia can only be operated by a cemetery board, or by an association incorporated specifically for undertaking cremations.¹⁶⁴ The Metropolitan Cemeteries Board is a self-funded statutory authority that manages six major cemeteries and memorial park sites across Perth.¹⁶⁵ Crematoria in regional Western Australian cemeteries are operated by local cemetery boards.

¹⁵⁹ South Australian Government 2002a, p. 18

¹⁶⁰ South Australian Government 2002b, p. 9

¹⁶¹ South Australian Government 2002b, p. 6

¹⁶² Tasmanian Government 2013, p. 6

¹⁶³ City of Launceston, p. 118

¹⁶⁴ Section 4 *Cremation Act 1929* (WA)

¹⁶⁵ Metropolitan Cemeteries Board 2018, pp. 2-6

The supply and sale of memorialisation goods and services by the Metropolitan Cemeteries Board is subject to competitive neutrality, which involves sourcing memorial goods from suppliers that have been selected through a formal tender process.¹⁶⁶

Northern Territory

The Northern Territory has two crematoria, one operated by a local government and co-located with a cemetery and one operated by a private operator. The local government owned crematorium is not subject to competitive neutrality requirements as it is not considered a significant business,¹⁶⁷ but it does prepare special purpose financial reports under the *Cemeteries Act 1952* (NT).

¹⁶⁶ Metropolitan Cemeteries Board 2020

¹⁶⁷ Northern Territory Government 2020, p. 7

Abbreviations and acronyms

ACT	Australian Capital Territory
ACTIA	Australian Capital Territory Insurance Agency
CC Act	<i>Cemeteries and Crematoria Act 2003</i>
CC Act 2020	<i>Cemeteries and Crematoria Act 2020</i>
CMTEDD	Chief Minister, Treasury and Economic Development Directorate
COAG	Council of Australian Governments
Commission	Independent Competition and Regulatory Commission
CPA	Competition Policy Agreement
CSO	Community service obligations
ICRC	Independent Competition and Regulatory Commission
ICRC Act	<i>Independent Competition and Regulatory Commission Act 1997</i>
IPART	Independent Pricing and Regulatory Tribunal
OECD	Organisation for Economic Co-operation and Development
TCCS	Transport Canberra and City Services Directorate
WACC	Weighted average cost of capital

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ICRC
independent competition and regulatory commission

Mr Andrew Barr MLA
Treasurer
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Public Crematorium Services: Competitive Neutrality

Dear Treasurer,

On 20 December 2019, you asked the Independent Competition and Regulatory Commission (Commission) to provide 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.

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 ACT 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.

In accordance with the scope of work, I attach the final report for stage one of the advice. The final report has been informed by submissions received on a draft report and issues paper, as well as through targeted consultation with ACT Government agencies and funeral industry stakeholders.

As required by the scope of work, I have also provided copies of the report to the Minister for City Services, Mr Chris Steel MLA, and Canberra Cemeteries.

I understand that Canberra Cemeteries intends to send its pricing proposal and costing methodology to the Commission during the second half of 2020 for assessment by the Commission and the stage two advice.

If you have any questions, please do not hesitate to contact me, or you may wish to ask your staff to contact Patrick Hamshere at patrick.hamshere@act.gov.au or 02 6205 8773.

Yours sincerely

Mr Joe Dimasi
Senior Commissioner
29 May 2020



ACT
Government

Chief Minister, Treasury and
Economic Development

Fees and Charges

Policy and Guidelines

March 2021

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10.2.4 Competitive Neutrality Principles

Agencies should be aware of competitive neutrality principles, which refer to the elimination of competitive advantages or disadvantages that arise solely through an entity's public ownership status. Competitive neutrality promotes efficiency in the production of goods and services and allocation of resources between public and private businesses.

Under the ACT’s competitive neutrality policy, all Government business entities that compete directly or potentially against the private sector in the provision of goods and services in the open market are required to fully attribute costs on the same basis as private firms. As a minimum this requires that the entity produce a set of accounts each year reflecting attributable costs.

Subject to cost benefit analysis, significant business entities may also be required to pay taxes (or tax equivalents), fees and comply with private sector regulations. Application of competitive neutrality requirements needs to be clearly documented, as those documents will be subject to scrutiny in the event of a competitive neutrality complaint.

The table below details current ACT Government Business Entities that are wholly, or partially, subject to the application of Competitive Neutrality.

Icon Water Limited	Icon Distribution Investments Limited	Icon Retail Investments Limited
Transport Canberra Operation	ACT Pathology	ACT Property Group
Yarralumla Nursery	Cemeteries and Crematoria Authority	Capital Linen Service
CIT Solutions Pty Limited	Cultural Facilities Corporation	EventsACT
Suburban Land Agency	City Renewal Authority	Venues Canberra

- Affected Government business entities can include specific entities in a parent Directorate (such as Property Group in CMTEDD, or ACT Pathology in Health) or separate commercial entities (such as Icon Water).
- ACT significant business entities subject to tax and tax equivalents payments are prescribed by regulation under the *Taxation (Government Business Enterprises) Act 2003*.

For more information about competitive neutrality, please refer to the following documents:

- the ACT Government’s Competitive Neutrality Policy Statement, which provides comprehensive guidance on Competitive Neutrality in the Territory – accessible at: <http://treasury.act.gov.au/documents/Policy%20-%20Competitive%20neutrality%20in%20the%20ACT%202.pdf>;
- a Fact Sheet on Competitive Neutrality Policy in the ACT, which provides a quick guide on the application of Competitive Neutrality in practice when considering new Government business activities – accessible [here](#);
- the Independent Competition and Regulatory Commission, as the body responsible for competitive neutrality complaints – see www.icrc.act.gov.au; and

- the Commonwealth Government – see <https://www.pc.gov.au/about/core-functions/competitive-neutrality>.

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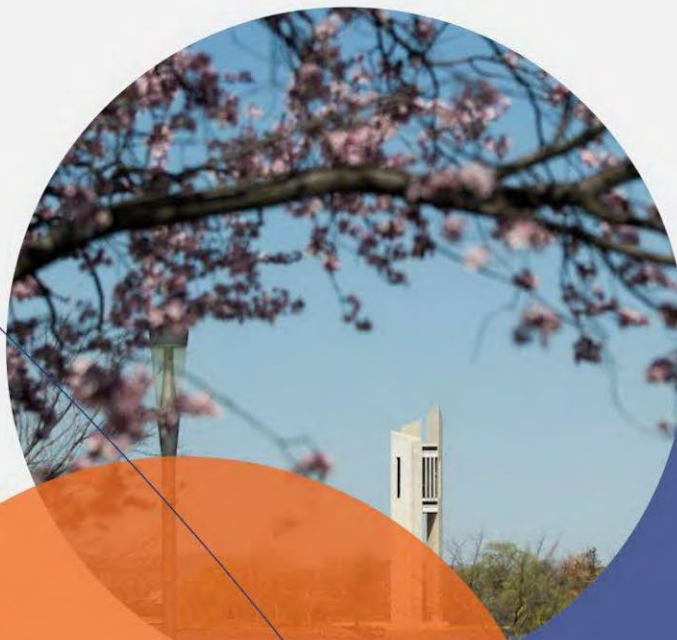


ICRC
independent competition and regulatory commission

CONFIDENTIAL REPORT

Public Crematorium Services: Competitive Neutrality – Stage 2 advice

Report 5 of 2021, March 2021



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.

The Commission is responsible for managing the utility licence framework in the ACT, established under the *Utilities Act 2000* (Utilities Act). The Commission is responsible for the licensing determination process, monitoring licensees' compliance with their legislative and licence obligations and determination of utility industry codes.

The Commission's objectives are set out in section 7 and 19L of the ICRC Act and section 3 of the Utilities Act. In discharging its objectives and functions, the Commission provides independent robust analysis and advice.

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

Independent Competition and Regulatory Commission
PO Box 161
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The Commission may be contacted at the above address or by telephone on (02) 6205 0799. The Commission's website is at www.icrc.act.gov.au and its email address is icrc@act.gov.au.

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1. The Commission's findings and recommendations

In December 2019, the Treasurer asked the Independent Competition and Regulatory Commission to develop advice for the ACT Government and the Public Cemeteries Authority (operating as Canberra Cemeteries) to help ensure that the new public crematorium facility operates consistent with competitive neutrality.

In the first stage of the advice, the Commission developed 5 detailed pricing principles to guide Canberra Cemeteries in developing a costing methodology and prices for its crematorium services and products that are consistent with the ACT Competitive Neutrality Policy. The Commission gave its stage 1 advice to the ACT Government and Canberra Cemeteries in May 2020.

In November 2020, Canberra Cemeteries gave the Commission its pricing proposal with its proposed costing methodology and price schedule. The Commission has assessed the proposal against the detailed pricing principles and the ACT Competitive Neutrality Policy. This report presents the Commission's findings and recommendations and is stage 2 of its advice to the Treasurer, Minister for City Services and Canberra Cemeteries. The Commission has now completed the advice requested by the Treasurer.

1.1 The Commission's findings

The Commission has found that Canberra Cemeteries' proposed costing methodology and prices for crematorium services comply with the pricing principles and the ACT Competitive Neutrality Policy. The Commission has concluded that Canberra Cemeteries' public crematorium operations and its proposed prices are competitively neutral.

Summary of reasons

The Commission has made these findings for two reasons.

First, the methodology used in Canberra Cemeteries' costing model complies with each of the pricing principles. The costing methodology identifies the full costs of operating the crematorium, including an appropriate share of the costs of goods and services used by both the crematorium facility and the cemeteries part of Canberra Cemeteries' operations. These costs reflect the market rates that would be paid by a private crematorium operator. Where Canberra Cemeteries does not pay market rates (for example, for services supplied by the ACT Government), the costing model makes adjustments so that the costs used in setting prices reflect market rates. Details on how these adjustments were made are set out in this report.

Second, the prices proposed by Canberra Cemeteries are competitively neutral because they are based on costs calculated using methods that comply with competitive neutrality.

Canberra Cemeteries' proposed pricing schedule is available in Table 1.1.

Table 1.1 Canberra Cemeteries' proposed pricing schedule

Charge Point ¹	2020-21 (ex. GST)	2020-21 (inc. GST)
Cremation – Monday to Friday		
Adult – Delivery Only	\$900	\$990
Child 6 to 17 years - Delivery Only	\$810	\$890
Child 1 to 5 years - Delivery Only	\$810	\$890
Stillborn ² to 1 year - Delivery Only	\$0	\$0
Cremation - Saturday		
Adult – Delivery Only	\$1,155	\$1,270
Child 6 to 17 years - Delivery Only	\$1,060	\$1,165
Child 1 to 5 years - Delivery Only	\$1,060	\$1,165
Stillborn to 1 year - Delivery Only	\$0	\$0
Cremation – Sunday		
Adult – Delivery Only	\$1,305	\$1,460
Child 6 to 17 years - Delivery Only	\$1,215	\$1,335
Child 1 to 5 years - Delivery Only	\$1,215	\$1,335
Stillborn to 1 year - Delivery Only	\$0	\$0
Cremation - Public Holidays		
Adult – Delivery Only	\$1,510	\$1,660
Child 6 to 17 years - Delivery Only	\$1,420	\$1,660
Child 1 to 5 years - Delivery Only	\$1,420	\$1,560
Stillborn to 1 year - Delivery Only	\$0	\$0
Viewing Room		
Witness insertion (room booking fee)	\$170	\$175

For memorialisation products, Canberra Cemeteries sets prices to recover the costs of supply and other directly attributable costs. Specifically, prices are set to recover the merchandise cost (purchase price, direct and associated labour costs, and an allowance to cover other expenses and depreciation) and a profit margin.

1.2 The Commission's recommendations

The Commission has made two recommendations to ensure that Canberra Cemeteries will continue to operate its crematorium facility and set prices in accordance with the ACT Competitive Neutrality Policy and the Commission's detailed pricing principles in future:

¹ Rounded to the nearest \$5

² Canberra Cemeteries policy is not to charge a fee for cremations of still born or children aged under 12 months. The costs for these services are recovered from prices charged for the other services.

Recommendation 1: Canberra Cemeteries should prepare a detailed manual that explains:

- a) the costing methodology, including:
 - the process for identifying and accounting for all the costs of goods and services used in supplying crematorium services and memorialisation products, including goods and services shared with the cemeteries part of Canberra Cemeteries' operations
 - the process to verify that these costs reflect market rates and make any required adjustments to costs that do not reflect market rates
 - a description of information sources used for these calculations, including benchmarking approaches
- b) how to use the costing model to determine prices.

Recommendation 2: Regular external audits should be conducted to confirm that Canberra Cemeteries' operations are still compliant with the ACT Competitive Neutrality Policy and the detailed pricing principles.

Reasons for these recommendations

Some aspects of competitive neutrality and the detailed pricing principles are straightforward, such as paying equivalent taxes as private competitors. Other aspects of competitive neutrality may differ from standard commercial practices, such as increasing costs for inputs above the prices actually paid, benchmarking costs against market rates, ring-fencing different parts of a business' accounts, or methods for allocating the costs of shared assets that are used by different parts of the business.

The Commission recognises Canberra Cemeteries' efforts to develop a tailored costing methodology for its crematorium operations. The Commission understands that some of the costing methods used to ensure competitive neutrality were not familiar to Canberra Cemeteries as they were not previously used in its cemetery operations. The Commission appreciates Canberra Cemeteries' cooperative and collaborative approach to working through the issues and providing additional information in response to the Commission's requests.

The Commission's first recommendation will help Canberra Cemeteries continue to apply its costing methodology consistently in future by recording the details of how to apply the methodology and the reasons for adopting particular costing methods, including why they are needed for competitive neutrality. Canberra Cemeteries' current costing model manual, which was given to the Commission, explains how to use the model (e.g. it explains how to insert new rows or where certain information is located in the spreadsheet). But it does not currently discuss competitive neutrality requirements, such as why or how competitive neutrality adjustments are made in the model or how information to determine these adjustments should be sourced.

In making its second recommendation, the Commission has recognised that the public crematorium facility has not yet started operating and so Canberra Cemeteries does not have experience in running the crematorium business. Canberra Cemeteries has advised that it intends to review its costing methodology and pricing approach after its first year of operations and may revise aspects of its methodology.

The Commission sees benefit in regular external audits of Canberra Cemeteries' compliance with the costing methodology, and of any revisions to the methodology or how it is applied, to ensure that Canberra Cemeteries' crematorium operations and prices remain consistent with competitive neutrality in the future.

2. Background and process

On 20 December 2019, the Independent Competition and Regulatory Commission received a request from the Treasurer to provide advice under Section 12 of the *Independent Competition and Regulatory 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, operated by the ACT Public Cemeteries Authority (Canberra Cemeteries), operates consistent with competitive neutrality.

The scope of work requested by the ACT Government specified a two-stage process. In stage 1, the Commission was asked 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 ACT Competitive Neutrality Policy. The Commission provided stage one advice to the ACT Government and Canberra Cemeteries in May 2020.

In stage 2, the Commission is required 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 ACT Competitive Neutrality Policy. This report presents the Commission's assessment and recommendations that comprise its stage 2 advice.

2.1 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 stated that the new public facility will contribute to better meeting the cultural needs of the ACT's diverse cultural communities.³

Before the public crematorium was built at the Gungahlin Cemetery, Canberra's public cemeteries only offered 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). There was only one crematorium, Norwood Park, which is privately-owned and operated.

What is competitive neutrality?

Competitive neutrality is a key element of the Competition Principles Agreement,⁴ which all Australian governments, including the ACT Government, agreed to in 1995 for implementing the National Competition Policy.

Competitive neutrality requires that government business activities do not have net competitive advantages over their private sector competitors just because they are in the public sector. Competitive neutrality requirements aim to remove any advantages or disadvantages that a government business enterprise may have purely because of its government ownership. Competitive neutrality does not aim to

³ ACT Government 2019

⁴ COAG 1995

remove competitive advantages or disadvantages that may result from different operating models, service offerings or management practices. These differences between businesses are part of competition in the marketplace, providing consumer choice and creating incentives for businesses to innovate to better meet customer needs and preferences.

Australian governments, including the ACT Government, have agreed to implement competitive neutrality policies so that there will be fair and effective competition in the marketplace between government-owned businesses and private businesses. An added benefit of competitive neutrality is that it gives government business enterprises an incentive to operate efficiently in meeting their customers' needs.

Competitive neutrality will result in Canberra Cemeteries not having a net competitive advantage over a competing private crematorium operator simply because it is publicly owned.

The policy framework in the ACT is set by the ACT Competitive Neutrality Policy.⁵

2.2 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.

The ACT Government's request for competitive neutrality advice regarding the public crematorium facility was 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. Schedule 1 of the ICRC Act contains extracts from the Competition Principles Agreement. Division 3.2 provides for the Commission to investigate a competitive neutrality complaint and section 19B sets out 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 asked 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; details are available in the issues paper for stage 1 of this request for advice.⁶

⁵ http://treasury.act.gov.au/documents/Policy%20-%20Competitive%20neutrality%20in%20the%20ACT%20_2.pdf

⁶ ICRC 2020a

2.3 What was the Commission asked to do?

The Treasurer asked the Commission to undertake a two-stage process to ensure the public crematorium facility is operated in line with competitive neutrality principles. The scope of work is set out in appendix 1.

Stage 1

For the stage 1 advice, the Commission developed a set of detailed pricing principles for Canberra Cemeteries to guide it in setting prices consistent with the ACT Competitive Neutrality Policy.

The Commission gave its stage 1 advice to the Government in May 2020. The advice on detailed pricing principles is in the Commission's final report on Public Crematorium Services: Competitive Neutrality⁷ and is summarised in chapter 3 of this report.

In developing its detailed pricing principles, the Commission undertook public consultation to give interested stakeholders opportunities to raise issues and provide information and feedback. The Commission released an issues paper for public comment on 31 January 2020, followed by a draft report on 27 March 2020. The Commission received seven submissions (five on the issues paper and two on the draft report), all of which are available on the Commission's website.

The Commission also sought information and views through targeted consultation with Canberra Cemeteries, private operators in the industry, funeral directors, the Transport Canberra and City Services Directorate, other government agencies, relevant cemetery and crematorium authorities in other jurisdictions, and industry bodies.

In developing its final pricing principles, the Commission considered the information and feedback provided in submissions and in its targeted consultations with stakeholders. The Commission also considered relevant information and findings from the investigation into interment costs and pricing in New South Wales which was undertaken by the New South Wales economic regulator, the Independent Pricing and Regulatory Tribunal (IPART).⁸

Stage 2

The second stage required the Commission to check whether Canberra Cemeteries' proposed costing methodology and prices comply with the pricing principles and the ACT Competitive Neutrality Policy.

This report presents the Commission's assessment of Canberra Cemeteries' proposal and the additional information requested by the Commission. The Commission has made two recommendations to the ACT Government to help ensure that Canberra Cemeteries continues to operate and set prices consistent with the ACT Competitive Neutrality Policy and the detailed pricing principles developed in stage 1. The recommendations are in chapter 1 of this report.

The Commission has now completed its advice to the Government on the competitive neutrality of Canberra Cemeteries' crematorium operations.

⁷ ICRC 2020b

⁸ IPART 2019a

2.4 The process and approach for stage 2

The Treasurer's scope of work asked the Commission to review the proposed costing methodology and prices in consultation with Canberra Cemeteries. It also asked the Commission to:

- confirm the validity of proposed costs and their allocation between the cemetery and crematorium operations
- check that the proposed prices and costing methodology comply with the pricing principles developed in stage 1 and ACT Competitive Neutrality Policy
- develop draft findings from the initial analysis
- give Canberra Cemeteries an opportunity to respond to the draft findings and to propose revisions to address any identified issues
- give the final report, including findings and any recommendations, to the Treasurer, the Minister for City Services and Canberra Cemeteries on a confidential basis, with a summary of the final report suitable for public release.

Canberra Cemeteries submitted its proposal, which included its costing methodology, proposed prices and explanatory material, to the Commission on 30 November 2020. The Commission asked for and received additional information from Canberra Cemeteries during its assessment of the proposal (confidential details are in appendix 2).

On 24 February 2021, the Commission gave Canberra Cemeteries its draft findings. The Commission invited Canberra Cemeteries to respond to the draft findings and give details of any proposed revisions to address issues identified by the Commission by 12 March 2021. Canberra Cemeteries gave its response to the Commission on 9 March. The response supported the Commission's findings and recommendations.

The timeline for this stage 2 advice is shown in Table 2.1.

Table 2.1 Stage 2 advice timeline

Milestone	Date
Canberra Cemeteries' pricing proposal received	30 November 2020
Commission requests for further information and responses from Canberra Cemeteries	8 December 2020 – 10 February 2021
Commission's draft findings given to Canberra Cemeteries	24 February 2021
Canberra Cemeteries' response received	9 March 2021

2.5 Outline of this report

This report is structured as follows:

- Chapter 1 summarises the Commission's findings on Canberra Cemeteries' costing methodology and proposed prices and sets out its recommendations to the ACT Government.
- This chapter explains the background to the request for advice and summarised the Commission's process and timeline.
- Chapter 3 summarises the Commission's stage 1 advice on detailed pricing principles.
- Chapters 4 to 8 describe the Commission's findings on Canberra Cemeteries' costing methodology and pricing approach against each pricing principle.
- Appendix 1 contains the scope of work given to the Commission by the Treasurer.
- Appendix 2 provides confidential information which is not included in the public version of the Commission's report.

3. Summary of stage 1 advice

The first stage of the Treasurer's request for advice 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. The pricing principles are set out below. The remaining chapters of this report outline the Commission's assessment of Canberra Cemeteries' costing methodology against these pricing principles and the ACT Competitive Neutrality Policy and set out the Commission's findings.

In developing the pricing principles, the Commission examined the activities undertaken in, and costs of, providing cremation and associated services to ensure the detailed pricing principles are appropriately tailored to achieve competitive neutrality of the public crematorium facility's operations and pricing.

3.1 Commission's pricing principles

Pricing principle 1: Prices should recover the full costs of providing crematorium services. This includes direct costs associated with the crematorium and a portion of relevant costs that are shared between the crematorium and cemetery.

To ensure competitive neutrality, the prices charged by Canberra Cemeteries for cremation and related services must recover the full costs incurred in providing those services. Importantly, these costs include those directly attributable to the crematorium and those that are expected to be shared between the cemetery and crematorium (such as corporate overheads and administration buildings).

In the final report for the stage 1 advice, the Commission stated that Canberra Cemeteries will need to demonstrate that its costing methodology will accurately identify and quantify all these costs. These costs include operating costs and capital costs. Operating costs are expenses associated with running the business on a day-to-day basis, while capital costs relate to equipment and buildings and other infrastructure assets that are used over a number of years.

Pricing principle 1.2: Canberra Cemeteries should demonstrate that inputs are sourced (a) through a competitive tender process or open marketplace, or (b) at prices comparable to market rates that would be paid by a similar private crematorium operator.

A key factor that affects competitive neutrality is how goods and services used by the crematorium facility are sourced. Goods and services that are sourced via a competitive tender process or an open marketplace would reflect commercial costs and therefore meet the conditions for competitive neutrality. If goods and services are not sourced in this way (for example, if they are provided by the ACT Government), then Canberra Cemeteries will need to demonstrate that the costs reflect market rates and are competitively neutral.

In the final report for the stage 1 advice, the Commission stated that Canberra Cemeteries should provide evidence where inputs used in providing crematorium services were bought on the market or procured through a competitive tender process. For goods and services sourced in other ways, the Commission stated that Canberra Cemeteries will need to provide evidence that prices reflect commercial rates. Such evidence could, for example, be obtained by using a benchmarking approach.

Pricing principle 1.3: The prices charged by the public crematorium should recover the costs of land, including land holding costs.

In the final report for the stage 1 advice, the Commission noted that the public crematorium would be built on existing land at the Gungahlin Cemetery. To satisfy competitive neutrality, the prices charged by the public crematorium should recover the cost of the land as this is what a private operator in the same position would be required to do. In estimating land costs, Canberra Cemeteries could consider what a private operator would be required to pay at market rates for equivalent land, taking into account the impact of zoning on the market value of the land.

In addition to land value, there is a cost of holding land that is used for memorialisation before it is used to provide services, for example, garden space that will be used for ashes interment in the future. The holding cost is the cost of financing the purchase, or acquisition, of the land until it is used to provide services by the crematorium operator.

Pricing principle 1.4: The price of memorialisation goods and services should at least recover their costs of supply and any other directly attributable costs. These prices may also include a contribution to shared costs and a commercial profit margin.

Economic efficiency requires that the price of a product or service should at least recover the direct costs of supplying it; the direct costs are the costs that would be avoided if the product or service was not supplied. Put simply, if consumers are not willing to pay the direct costs of supplying the product or service, it would be better to use the resources to produce a different product or service that consumers value enough to pay its costs of supply.

For memorialisation products, this means that prices should at least cover the costs of the products themselves (where they are purchased from an external supplier, such as urns and plaques) and any other direct costs that can be identified as incurred in supplying the product to the bereaved. For memorialisation services, the prices should at least recover costs that Cemeteries Canberra would not incur if it did not supply the services. For example, for ashes interment in a garden area, the direct costs of supplying these memorialisation services are the direct costs involved in interring the ashes, the foregone revenue that would be earned if the garden area was used for a different purpose, and the maintenance costs of maintaining the garden (usually in perpetuity).

It may also be appropriate for the prices of memorialisation products and services to contribute to the profit margin earned by Canberra Cemeteries and to pay a portion of relevant shared costs, such as corporate overheads. Economic efficiency requires that businesses should recover their full costs and earn an appropriate commercial rate of return across their products and services overall. It is a commercial decision as to how much of these costs, if any, are allocated to individual products and services.

In the final report for the stage 1 advice, the Commission stated that Canberra Cemeteries' pricing proposal will need to demonstrate that its prices for memorialisation products and services will recover at least the direct costs of providing these products and services. It will also need to explain whether the prices make a contribution to Canberra Cemeteries' profit margin and to relevant shared costs, and how Canberra Cemeteries reached its decision on the magnitude of the contribution (if any).

Pricing principle 1.5: The price of interring cremated remains should recover the associated perpetuity maintenance costs.

When ashes are interred at a cemetery or crematorium in the ACT, this interment is in perpetuity (forever).⁹ Canberra Cemeteries currently offers interment of ashes at its Gungahlin Cemetery (as well as its Woden and Hall sites).

At the time of interment, fees are usually paid to: (a) recover the costs of the interment of ashes at the cemetery or crematorium, and (b) contribute to the perpetual care trust and perpetual care trust reserve, which are trusts used to fund the short-term and long-term maintenance of the cemetery or crematorium site (such as the grounds, roads and paths). To ensure the full direct costs of memorialisation services are recovered in prices for these services (pricing principle 1.4), it is important that an appropriate share (that can be attributed to the service) of the perpetuity maintenance costs is included in calculating the price of the service.

In the ACT, the Minister, under section 106 of the *Cemeteries and Crematoria Act 2020*, determines on a regular basis (usually every five years) the percentage of revenue that interment providers must put aside in the perpetual care trust and perpetual care trust reserve. This requirement is competitively neutral as it applies equally to both public and private operators.

Pricing principle 2: Shared costs and overheads should be appropriately attributed.

The public crematorium facility is likely to share some of the services that are provided at the Gungahlin Cemetery. For example, some activities, such as corporate overheads, the provision of shared physical assets (such as roads), 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 developing its costing methodology, Canberra Cemeteries will need to demonstrate that it has allocated its shared costs and overheads in a competitively neutral manner.

Pricing principle 2.1: Canberra Cemeteries should employ an appropriate allocation methodology to assign shared costs to the crematorium facility. An activity-based allocation method or method based on appropriate cost drivers is likely to be a pragmatic and appropriate cost allocation method.

There are several approaches that can be used to allocate shared costs and overheads. The Commission considered that an allocation based on a measure of use is likely to satisfy competitive neutrality and be economically efficient. In its final report for the stage 1 advice, the Commission stated that the pricing proposal and costing methodology developed by Canberra Cemeteries should explain how it has determined its allocation methodology and the evidence used to apply the methodology.

Pricing principle 2.2: The crematorium facility's accounts should be ring fenced from the accounts of the cemetery operations.

Ring-fencing means that Canberra Cemeteries would maintain financial accounts for the crematorium facility and for its cemetery operations that sufficiently separate the accounts to:

- allow for easy identification of the costs charged to the crematorium operations and the source, nature and timing of those costs

⁹ *Cemeteries and Crematoria Act 2003*, section 8 (1)

- give transparency about how costs are attributed between the crematorium facility and Canberra Cemeteries' other business activities
- allow for verification that the allocation methodology has been applied as described in Canberra Cemeteries' documentation of its methodology.

Effective ring fencing does not require full operational separation. The Commission noted that full operational separation may not be cost effective and that ring fencing of the crematorium facility's costs within Canberra Cemeteries' financial accounts, if implemented appropriately, can achieve the three points listed above.

In the context of competitive neutrality, ring-fencing will simplify the process of checking that Canberra Cemeteries has correctly applied the pricing principles. Ring-fencing will help ensure that crematorium activities do not enjoy a competitive advantage due to cross-subsidisation of its costs by Canberra Cemeteries' cemetery operations.

Pricing principle 3: The prices charged by the public crematorium should recover the costs of financing its investments in capital assets, including both an appropriate commercial rate of return that includes an appropriate risk allowance and an appropriate allowance for depreciation.

The costs of financing a business' investments in capital assets typically include interest payments on loans, an allowance for the depreciation of assets over time which generates a return of the initial capital investment, and a commercial profit margin that provides a return on the investments required to run the business. Competitive neutrality requires that the prices charged by the public crematorium recover equivalent capital financing costs that a private operator in the same position would face.

Several approaches are available to determine an appropriate commercial rate of return. In its pricing proposal, Canberra Cemeteries will need to explain the method it has applied for determining the rate of return and the reasons for why its method is appropriate. The pricing proposal should include evidence and reasons for supporting the inputs used in estimating the rate of return.

Pricing principle 3.1: The prices charged by the public crematorium should generate an appropriate rate of return on retained earnings used to fund the construction of the crematorium.

The Commission understands that Canberra Cemeteries funded the construction of the crematorium from existing retained earnings.¹⁰ These retained earnings were accumulated from profits on its cemetery operations.

Economic efficiency requires that the price of a product or service should generate an appropriate rate of return on the funds used to finance the capital investments used in supplying the products or services. Such funds include retained earnings. Put simply, if consumers are not willing to pay prices that recover these costs, the funds would be better used to invest in assets that produce products or services that consumers value enough to pay prices that recover their financing costs (and other relevant costs).

A private business would not be able to continue in operation on a sustained basis if it was unable to earn a commercial return on its investments, including an appropriate risk premium. Private businesses typically use an appropriate risk-adjusted commercial rate of return as a 'hurdle rate' in deciding whether to

¹⁰ Based on discussions with Canberra Cemeteries.

proceed with proposed investments; investments that are not expected to earn at least the 'hurdle rate' do not proceed.

In the final report for the stage 1 advice, the Commission stated that Canberra Cemeteries' costing methodology will need to ensure that its prices generate an appropriate risk-adjusted commercial return on retained earnings used to finance crematorium facility investments in order to satisfy competitive neutrality.

Pricing principle 3.2: The prices charged by the public crematorium should recover a commercial rate of interest on any borrowings. If the public crematorium operator receives any interest rate concessions because of its government ownership, prices must include an allowance to offset the financial savings from any such concessions.

Debt neutrality is important because 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 because of its government ownership.

If Canberra Cemeteries were to borrow through the ACT Government, it would need to demonstrate that it has not received any interest rate concessions because of its government ownership. Many government treasuries charge government businesses a debt guarantee fee to offset the interest rate discount received by borrowing through whole-of-government arrangements to ensure the borrowing is at commercial rates and competitive neutrality requirements are satisfied.

As for retained earnings, the price of a product or service should generate an appropriate rate of return on any borrowings used to finance the capital investments used in supplying the products or services.

Pricing principle 3.3: The prices charged by the public crematorium should allow for an appropriate rate of return on any equity provided by the ACT Government as its shareholder.

The shareholders of private businesses expect to receive an appropriate risk-adjusted return on the equity they have provided to the business to finance its investments and operations. Without such a return on their equity, the shareholders would sell their shares and transfer their funds to investments that do provide an appropriate rate of return.

For competitive neutrality, the prices charged by the public crematorium should recover a commercial rate of return on any equity invested by its shareholder, the ACT Government.

Pricing principle 3.4: The prices charged by the public crematorium should, over time, recover depreciation of capital assets. Depreciation allowances should be consistent with generally accepted accounting principles and based on appropriate asset lives.

Depreciation allowances recover the capital invested in an asset over the life of that asset. Together, the rate of return earned on the funds used to finance the investment in an asset, and depreciation of the cost of constructing or purchasing the asset, ensure that the full costs of capital assets are recovered.

There are four main ways to recover depreciation which are consistent with generally accepted accounting principles. Three of these methods are based on time and the fourth is based on usage of the asset. The most commonly used, and most straightforward method, is straight-line depreciation. Canberra

Cemeteries' costing methodology will need to explain which method it has chosen and why, and ensure the chosen method is applied consistently over the life of the asset.

Canberra Cemeteries' costing methodology will also need to explain how it has estimated the asset life for each of its capital assets and the evidence it has based its estimate on. An appropriate asset life is important as an excessively long asset life will artificially reduce the annual depreciation allowance and reduce the costs used in calculating prices. This would confer a competitive advantage.

In the final report for the stage 1 advice, the Commission stated that some of the assets used in supplying crematorium services by the public crematorium facility will be shared across Canberra Cemeteries' cemetery operations. For example, shared capital assets will include some internal roads and administration buildings. Pricing principle 2 will apply to allocating depreciation for such shared assets.

The Commission considered that the costing methodology and prices to be developed by Canberra Cemeteries should include depreciation that reflects generally accepted accounting standards and appropriate asset lives. A similar approach should also apply to the amortisation of any non-tangible assets.

Pricing principle 4: The prices charged by the public crematorium operator must recover all Commonwealth and Territory taxes that a private operator, in the same position, would face.

An important element of competitive neutrality is that the public crematorium facility should face the same tax obligations as private crematorium operators. A government-owned business would obtain a competitive advantage if it was not subject to the same tax obligations as its private competitors.

Pricing principle 4.1: The prices charged by the public crematorium should include an allowance that is equivalent to the company tax that would be paid by a private operator in the same position.

For consistency with the ACT Competitive Neutrality Policy, the prices charged by the crematorium facility should include tax allowances that are equivalent to the taxes a comparable private crematorium operator would pay.

In developing its stage 1 advice, the Commission found that Canberra Cemeteries is subject to the same taxation requirements as a private operator, with the exception that it is not required to pay company tax or make an equivalent payment under the National Tax Equivalent Regime (NTER) to the ACT Government.¹¹ This is due to Canberra Cemeteries' exemption from the NTER under Section 6 of the *Taxation Act*.¹²

Pricing principle 5: The public crematorium operator must be subject to, and comply with, the same or equivalent regulations that apply to its private sector counterparts.

Regulations require businesses to undertake certain activities or restrict businesses from doing certain activities. Complying with regulations and reporting on compliance (if required) imposes costs on businesses subject to those regulations. Canberra Cemeteries would gain a competitive advantage if it was not subject to the same, or equivalent, regulations as private crematorium operators. Conversely, if Canberra Cemeteries was subject to more regulation, or more stringent regulations than private operators, it would have a competitive disadvantage.

¹¹ The NTER requires that ACT Government businesses that are exempt from taxes make payments to the ACT Government that are equivalent to the taxes for which they are exempt.

¹² Section 3 *Taxation (Government Business Enterprises) Regulation 2003*