

**NATIONAL COMPETITION POLICY
LEGISLATION REVIEW REPORT**

Enfield General Cemetery Act 1944

February 1999

The views expressed in the Review Report are the views of the Review Panel and not the views of the South Australian Government.

TABLE OF CONTENTS

TERMS OF REFERENCE	3
PREAMBLE	3
REVIEW PANEL	3
OBJECTIVES OF THE REVIEW	3
ISSUES TO BE ADDRESSED	4
CONSULTATION	4
LEGISLATION REVIEW REPORT	5
THE REVIEW PANEL	5
HISTORY OF THE ENFIELD GENERAL CEMETERY	6
LEGISLATION REVIEW METHODOLOGY	6
MARKETS	6
Enfield General Cemetery Act 1944 (the EGC Act)	7
Objectives	7
Enfield General Cemetery Regulations 1946	14
West Terrace Cemetery Act 1976 (the WTC Act)	14
Objectives	14
Markets	14
West Terrace Cemetery Regulations 1995	15
SUMMARY OF THE RECOMMENDATIONS OF THE REVIEW PANEL	20
SCHEDULE 1	21
SCHEDULE 2	22
SCHEDULE 3	23

INDEX

Regulation 10	18	Section 20	8
Regulation 11	18	Section 20A	8
Regulation 14	19	Section 20A(2)(d)(ii)	10
Regulation 5	15	Section 21	11
Regulation 6	15	Section 38	11
Regulation 7	16	Section 40, 41, 42	12
Regulation 8	16	Section 43	12
Regulation 9	17	Section 44(1)	13
Section 13	14		

Terms of Reference

Legislative (Competition) Review

Enfield General Cemetery Act 1944

PREAMBLE

Under the Competition Principles Agreement (“the Agreement”) the State is required to review and, where appropriate, reform legislation which restricts competition by the end of 2000. In accordance with the State’s legislative review timetable, the *Enfield General Cemetery Act 1944* (“the Act”) is to be reviewed by the end of 1998.

The Act and Regulations made under the Act will be examined during the legislative review in accordance with the obligation contained in clause 5 of the Agreement.

REVIEW PANEL

The review of the Enfield General Cemetery Act will be undertaken by a panel consisting of:

- Stuart Moseley, Planning SA
- Bob Teague, Planning SA
- Elmer Evans, Planning SA
- Kevin Crowden, Enfield General Cemetery Trust representative
- Catherine Follett, Crown Solicitor’s Office
- John Harley, lawyer with knowledge of the cemetery industry.

OBJECTIVES OF THE REVIEW

When considering the appropriate form of regulation, the Review Panel will consider the following objectives:

- (a) Regulation should only be retained if the benefits to the community as a whole outweigh the costs, and if the objectives of the regulation cannot be achieved more efficiently through other means, including non-legislative approaches.
- (b) Pursuant to clause 1(3) of the Agreement, in assessing the benefits of regulation regard shall be had, where relevant, to:
 - effects on the environment and ecologically sustainable development;
 - social welfare and equity, including community service obligations;
 - occupational health and safety, industrial relations and access equity;
 - economic and regional development, including employment and investment growth;

- consumer interests;
- the competitiveness of Australian business, including small business; and
- efficient allocation of resources.

(c) Compliance costs and the paper work burden on small business should be reduced where feasible.

ISSUES TO BE ADDRESSED

Issues to be addressed by the Review Panel include:

- (a) Clarify the objectives of the Enfield General Cemetery Act, including the identification of the public benefits of the Act, and provide an assessment of the importance of these objectives to the community.
- (b) Identify the restrictions to competition contained in the Act and Regulations made under the Act:
 - describe the theoretical nature of each restriction (eg barrier to entry, restriction on conduct etc);
 - identify the markets upon which each restriction impacts; and
 - provide an initial categorisation of each restriction (ie trivial, intermediate or serious).
- (c) Analyse and describe the likely effects of the restrictions on competition in the relevant markets, and on the economy generally:
 - what are the practical effects of each restriction on the market;
 - assign a weighting to the effect of each restriction in the market; and
 - assess what is the relative importance of each restriction in a particular market to the economy as a whole.
- (d) Assess and balance the costs and benefits of the restriction.
- (e) Where the restriction is justifiable on the basis of public benefit, consider whether there are practical alternative means for achieving the objectives of the Enfield General Cemetery Act, including non-legislative approaches.
- (f) Consider whether any licensing, reporting or other administrative procedures are unnecessary or impose an unwarranted burden on any person.

CONSULTATION

The Review Panel will compile a list of interested persons and organisations, and will provide a copy of the draft Legislation (Competition) Review Report to the them for their comment.

LEGISLATION REVIEW REPORT

ENFIELD GENERAL CEMETERY ACT 1944

As of 11 April 1995, the South Australian Government is committed to implementing the National Competition reform package, comprising the Conduct Code Agreement, the Competition Principles Agreement and the Agreement to Implement National Competition Policy and Related Reforms. As signatories to the National Competition Policy reform package, all Governments in Australia have agreed to implement a nationally co-ordinated package of reforms based on agreed principles.

Principles of legislation review form a part of each Government's undertaking to pursue National Competition Policy objectives. However, National Competition Policy is not to be pursued unjustifiably in situations where the costs of implementation would outweigh the benefits. In such situations, implementation would be against the public interest.

It is recognised that legislation sometimes restricts competition without intending to. Such restrictions can, for example, create barriers to entry in different markets and industries, without necessarily achieving benefits for those markets and consumers generally, in the form of greater choices and lower prices, or protection from unsafe or undesirable work practices.

However, it is recognised that the removal of such restrictions on competition does not necessarily achieve the best possible outcome for healthy and effective competition. National Competition Policy and the associated processes do not set out to minimise the role of Government in the economy. Rather, it is concerned with the clear identification of proper social objectives and the most efficient and cost effective methods of achieving those objectives. In other words, the process is about identifying government's role in what it can undertake more effectively than the market (and what it should undertake responsibility for) and leaving to the market those things that the market can more effectively provide.

THE REVIEW PANEL

In accordance with the above obligations and the Terms of Reference, a Review Panel has been established to examine the *Enfield General Cemetery Act 1944* and any restrictions on competition found therein. The Review Panel is comprised of:

Stuart Moseley, Director of Development Planning, Planning SA (Chair)
Elmer Evans, Planning SA (Executive Officer)
Bob Teague, Director - Development Adviser, Planning SA
Kevin Crowden, Enfield General Cemetery Trust
Catherine Follett, Crown Solicitor's Office
John Harley, lawyer with knowledge of the cemetery industry.

HISTORY OF THE ENFIELD GENERAL CEMETERY

The land now comprising the Enfield Memorial Park was originally purchased by the Government from the Anglican Church. The *Enfield General Cemetery Act* was assented to on 14 December 1944. Burials commenced in 1947 and the crematorium and chapels opened in 1969. The Trust acquired and assumed responsibility for Cheltenham Cemetery in 1987. The registered business name of the Enfield General Cemetery became Enfield Memorial Park on 24 May 1991. The Trust assumed responsibility for the West Terrace Cemetery in 1997 via amendments to the *Enfield General Cemetery Act*. The Trust currently performs approximately 25% of all funerals (including cremations where requested) in South Australia. The other main cemeteries in the Adelaide metropolitan area are Centennial Park, Smithfield Memorial Park, and the Payneham and Dudley Park Cemetery Trust. The other crematoria are Centennial Park and Northern Regional Crematorium (outside metropolitan Adelaide).

LEGISLATION REVIEW METHODOLOGY

Each 'restriction' in the current provisions of the *Enfield General Cemetery Act* and its Regulations is identified with analysis of the costs and benefits of such a restriction, and the Review Panel has made a classification of each restriction. Many of the 'restrictions' discussed will not in fact be restrictions, but may appear to be at first glance. Any such apparent restrictions will be discussed, and the Review Panel's reasoning will be shown to aid in the transparency of the legislation review process. Because of the interrelationship between the *Enfield General Cemetery Act* and the *West Terrace Cemetery Act*, the *West Terrace Cemetery Act* and its Regulations are also examined for restrictions on competition.

MARKETS

Enfield Memorial Park offers burial, cremation and chapel services within the Adelaide metropolitan area. It is likely that Enfield Memorial Park's cremation facilities essentially only cater for the northern side of metropolitan Adelaide, but those facilities are also available to cater for the whole of metropolitan Adelaide. Centennial Park offers the only other cremation service in metropolitan Adelaide. Enfield Memorial Park's burial and chapel services also cater for the whole of the Adelaide metropolitan area, in competition with all other public and private cemeteries in the case of its burial facilities, and all other locations offering chapel and memorialisation facilities.

Cheltenham Cemetery offers only burial services (whether the human remains are cremated or not), and thus is in competition with all other private or public cemeteries in metropolitan Adelaide for the provision of its services.

West Terrace Cemetery offers burial services, chapel services and tourism-related services to do with the heritage aspects of the Cemetery. West Terrace Cemetery operates within the Adelaide metropolitan area. It does not have any cremation facilities of its own.

In the context of the provision of burial or cremation, services can be defined in terms of the following four elements: product; functional level; geographic area; and temporal aspects.

The **product** being offered is the burial or cremation service and the memorialisation service. All persons or organisations offering burial or cremation services can be said to be competing with each other to provide these services to the public. Between its three cemeteries, the Enfield General Cemetery Trust offers all three of these services. The actual customers making use of these services are not of course the persons being buried or cremated or memorialised, but the families and friends of the deceased. The difference in choice between burial and cremation is a personal one, and depends on the deceased's wishes and those of his or her family.

In terms of the disposal of human remains, burial and cremation are the only options. Due to the fact that death is associated with a myriad of cultural influences, the price of burial or cremation is not the only consideration in choosing a service provider. Cultural and religious considerations will be important, as will family traditions and the express or implied wishes of the deceased.

The **functional** level can include the production or manufacture of the product, the distribution or wholesale aspect and retail. In this instance the functional level is retail. The consumer buys the required service from the Trust on an "as needs" basis. While this is generally done through a funeral director, consumer choice does play a part in the choice of service provider. The fact that the consumer generally organises funerals very infrequently, means that the advice or experience of the funeral director will play an important part in the choice of service provider.

The **geographic** area concerned is the Adelaide metropolitan area. Within this State, there are two crematoria in the Adelaide metropolitan area (located at Enfield Memorial Park and Centennial Park), one north of Gawler (and therefore just outside the Adelaide metropolitan area), one in Whyalla and one in Mt Gambier. There is no reason why South Australian residents cannot use crematoria located interstate, but obviously the cost of transport would tend to be prohibitive.

The **temporal** limits on the market for cremation or burial are obvious. These services will, unless there are exceptional circumstances, be required within several days of the death of the person. Geographic factors will also play a part in relation to the temporal limitations at play. In addition, there may not be the opportunity for "repeat business" that may exist in other areas of business. The convenience of geographic proximity at the relevant time may be the deciding factor in the choice of service provider in relation to burial or cremation.

Enfield General Cemetery Act 1944 (the EGC Act)

Objectives

The objectives of this Act are to establish a public cemetery at Enfield, to establish or acquire cemeteries in other areas, and for incidental purposes. In general terms, the Act establishes the Enfield General Cemetery Trust and provides for its membership and operation, and provides that the Trust may establish, acquire and administer cemeteries. The Act specifically provides that the Trust will administer and maintain West Terrace Cemetery in

accordance with the *West Terrace Cemetery Act 1976*, and imposes special requirements on the Trust in relation to the operation of West Terrace Cemetery. In particular, the Trust must maintain and foster the heritage aspects of the West Terrace Cemetery according to the requirements of the *West Terrace Cemetery Act*. In total, the Trust has responsibility for the operation and maintenance of Enfield Memorial Park, Cheltenham Cemetery and West Terrace Cemetery.

-oOo-

Restriction: Section 20 of the Enfield General Cemetery Trust Act allows the Trust to administer and maintain the Enfield General Cemetery (now the Enfield Memorial Park), and establish, acquire or dispose of any other cemetery. Section 20A allows the Trust to administer and maintain the West Terrace Cemetery. Section 24A allows the Trust to erect a crematorium on one of its cemetery sites. Section 37 allows the Trust to grant burial rights over one of its cemeteries. Section 39 gives the Trust general power of maintenance over its cemeteries. The Trust's functions and powers are limited to those of burial, cremation, and the administration and maintenance of its cemeteries. The Trust is not given the power to do any more than those several functions.

Costs: No quantifiable cost. See "Effects on Competition".

Benefits: There are no benefits to the Trust in this restriction, and competition in general is restricted within the markets in question.

Effects on Competition: The fact that the Trust is restricted in its operations means that the Trust is unable to compete on a level playing field with other businesses or individuals who are not hampered by restrictions such as those placed on the Trust. This places the Trust at a disadvantage in relation to other businesses. Others, however, are free to enter the markets for the provision of memorialisation, burial and cremation services and can compete with the Trust's operations.

Alternatives to Legislation: Not applicable.

Recommendation: The Review Panel recommends the amendment of s20 to allow the Trust to expand its areas of operation to include areas not currently allowed under the Enfield General Cemetery Act.

-oOo-

Restriction: S20A of the EGC Act provides that the Trust will administer and maintain the West Terrace Cemetery. S20A(2)(a) provides that the Trust has the powers and duties of the Minister under the WTC Act, and the Trust must administer and maintain West Terrace Cemetery in accordance with the WTC Act. S20A of the EGC Act provides additional factors to be taken into account in the operation of the West Terrace Cemetery. The Trust must:

- consult with the State Heritage Branch (now Heritage South Australia), an agency of the Department of Environment, Heritage and Aboriginal Affairs in relation to the management of the West Terrace Cemetery; and

- consult with other persons who, in the opinion of the Trust, have a particular interest in the management of the West Terrace Cemetery;
- and must
- prepare plans of management for West Terrace Cemetery;
 - present those plans at public meetings convened by the Trust; and
 - these plans must encompass various matters in relation to the plans, and must take into account the historical significance of the cemetery.

Background: These requirements are not usually imposed on other public cemeteries, but are imposed on WTC because of its historical significance.

Costs: S20A places various requirements on the Trust. The costs associated with fulfilling these requirements involve the time and effort needed to consult with Government and preparing and presenting plans. This would involve a significant number of hours on the part of the Trust, and possibly the Department of Environment, Heritage and Aboriginal Affairs. S20A requires the Trust to take into account a wide range of factors in the administration of the West Terrace Cemetery. The Trust is responsible for the administration of the West Terrace Cemetery, regardless of whether or not it would choose to do so without the statutory requirement in s20A. This is a burden that is not placed on other cemetery administrations, and is a significant cost both in time and money to the Trust. This legislative requirement is a fetter on how the Trust would conduct its usual operations and requires the Trust to not only administer and maintain the West Terrace Cemetery, but to do so in a certain prescribed way.

Benefits: Given the West Terrace Cemetery's historical significance in this State, it is of enormous benefit to this State that the West Terrace Cemetery should be administered and maintained along certain guidelines. These kinds of restrictions are designed to protect the historical significance of the West Terrace Cemetery, for the benefit of the State. A monetary value cannot be placed on this kind of benefit.¹ These requirements can also be said to be a potential benefit due to revenue from heritage related tourism activities. Section 20A is appropriate given West Terrace Cemetery's status as one of the most historically significant cemeteries in the State.

Effects on Competition: The restrictions outlined in s20A affect competition in that they restrict the operations of the Trust in relation to its operation of the West Terrace Cemetery and how it may compete in the market for the provision of burial services. The Trust is not free to conduct its operations as it sees fit, as it is restricted by the requirements of s20A.

Alternatives to Legislation: The policy objective achieved by the current restriction in s20A is that the heritage aspects of the West Terrace Cemetery is protected and maintained through requiring the Trust to deal with the West Terrace Cemetery in certain ways. In general, possible non-legislative methods of achieving policy objectives include:

¹ The Review Panel recognises that the Trust would take these heritage considerations into account in its management of the West Terrace Cemetery without this legislative requirement, however this Report is intended to identify what restrictions on competition are contained in the legislation controlling the Trust's behaviour. The fact remains that this requirement to take heritage considerations into account restricts the conduct of the Trust.

- a less intrusive method of legislative intervention, such as an “outcomes” oriented regulation rather than mandated actions;
- requiring the provision of consumer information, rather than mandating particular standards;
- industry self-regulation;
- codes of conduct;
- relying upon private contractual arrangements; or
- altering other factors adversely affecting the legislative policy so that “market forces” provide the necessary degree of regulation.

The Review Panel does not consider that the above “alternatives to legislation” would be appropriate given the nature of the benefit to the community that the legislative restrictions affect, and considers that the policy objective contained in s20A is best served by maintaining the restriction within the legislation.

Classification: This is an intermediate restriction on competition because while s20A dictates how the Trust may operate the West Terrace Cemetery, and lays down definite guidelines for its management, and these restrictions reflect requirements imposed on all such heritage locations, the Trust is still required to undertake these requirements and these requirements affect how the Trust may conduct the business of operating West Terrace Cemetery.

Recommendation: No action.

-oOo-

Restriction: S20A(2)(d)(ii) provides that West Terrace Cemetery is non-rateable property.

Background: S168(2)(d) of the *Local Government Act 1934* states that public cemeteries are exempt from paying local Government rates. S20(3) of the EGC Act states that all cemeteries acquired or established by the Trust will be administered and maintained as public cemeteries.

Costs: No cost to the Trust, but private cemeteries are not afforded the same exemption.

Benefits: The Trust is exempt from paying local Government rates, as are all other public cemetery authorities.

Effects on Competition: This section does not restrict competition. It provides for the West Terrace Cemetery to be non-rateable property. S20(3) of the EGC Act has already provided for the West Terrace Cemetery to be a public cemetery. S168(2)(d) of the Local Government Act provides that all public cemeteries are exempt from paying local Government rates. S168(2)(d) is the expression of a Government intention that public cemeteries should not be required to pay local government rates. Consequently all public cemeteries are exempt from paying local government rates. This is an advantage not available to private cemeteries. However, the Government has decided that as a matter of policy, public cemeteries will be exempt.

Alternatives to Legislation: This kind of reiteration of an exemption is only possible in legislation. No other methods are appropriate to achieve the same result.

Classification: S20A(2)(d)(ii) is not a restriction on competition.

-oOo-

Restriction: S21 provides that s586 of the *Local Government Act 1934* does not apply to the Enfield General Cemetery or to a cemetery established or acquired by the Trust.

Background: S586 provides that a cemetery must not be established or extended within an area by any person other than the local council without the consent in writing of the council. Therefore, pursuant to s21 of the EGC Act, the Trust does not need any council's permission to establish or acquire a cemetery and s21 is not a restriction on competition. However, the Trust still needs approval under the *Development Act 1993* for such changes, as do all other cemeteries and crematoria.

Costs: S21 does not confer a cost on the Trust.

Benefits: S21 removes an unnecessary administrative burden on the Trust in that it removes the duplication of a requirement for permission to establish or extend a cemetery within its control. The requirement for approval under the *Development Act* still applies.

Effects on Competition: The removal of the application of s586 of the *Local Government Act* allows the Trust to comply with just the *Development Act* approval, and means that an unnecessary layer of administrative duplication has been removed. However, as the *Development Act* approval requirement remains, the Trust is still required to comply with planning approval requirements.

Alternatives to Legislation: None applicable.

Classification: This is not a restriction on competition.

-oOo-

Restriction: Section 38 gives the Trust power to publish a scale of fees and charges in relation to the grant of burial rights and in respect of other rights and services granted or given in respect of the Trust's cemeteries.

Background: The costs of memorial work permits in relation to Enfield Memorial Park currently range between \$30 and \$120, and between \$60 and \$150 in relation to Cheltenham Cemetery. These permit fees may restrict competition in the stonemason industry if such fees impact too greatly upon the practice of stonemasonry. There is a benefit in having such fees published and available to the public. The fees referred to are for work performed (administration, memorial removal or installation), for the supply of goods (concrete bearers) and ongoing memorial maintenance. These fees are paid by the client and not the monumental mason.

Costs: The cost of publication of a scale of fees and charges would be minimal.

Benefits: Public certainty about costs and charges before commissioning services.

Effects on Competition: It is a benefit to the Trust that it has a scale of fees and charges published, so it is not a detriment to the Trust's ability to compete in the marketplace that the scale be published.

Alternatives to Legislation: Section 38 is discretionary: the Trust may fix a scale of fees and charges. There is therefore no need to consider alternatives to legislation.

Classification: Section 38 is not a restriction on competition, but allows for transparency in costs to the client.

-oOo-

Restriction: Sections 40, 41, 42 provide that the Trust is required to have a plan made of each of its cemeteries, keep a register of burials and keep a register of cremations.

Costs: The costs of keeping these sorts of records would be minimal and would be necessary in any event for the orderly operation of cemeteries.

Benefits: It is a benefit both to the Trust itself and the public that there should be records kept of cemetery plots, for historical and public record keeping reasons. These are the sorts of requirements expected for the operation of a cemetery and crematorium, and which benefit the community by providing information on deaths and burials and cremations in South Australia.

Effects on Competition: This requirement does not restrict or foster competition.

Alternatives to Legislation: This kind of requirement should be a legal requirement. It is important enough to justify having this requirement in legislation.

Classification: None of these requirements restrict competition.

-oOo-

Restriction: S43 provides that the Trust may make regulations not inconsistent with any regulations made pursuant to section 595 of the *Local Government Act 1934*.

Background: Regulations currently exist under the EGC Act, but do not conflict with the Local Government (Cemetery) Regulations 1995. The Local Government (Cemetery) Regulations 1995 consequently regulate all cemeteries. From a public policy perspective, it is desirable that there be uniform regulation of cemeteries, both for health and hygiene reasons, and out of respect for the dead.

Costs: The costs of making regulations would be the time and effort involved in providing drafting instructions to Parliamentary Counsel to draft the regulations on behalf of the Trust.

Benefits: S43 allows the Trust to make any other regulations it desires, provided they do not conflict with the regulations under section 595 of the Local Government Act. This means that the standard regulations under the Local Government Act will continue to apply to all cemeteries, which is desirable, but also that the Trust has the freedom to make regulations for other purposes not covered in the Local Government Act regulations.

Effects on Competition: As any such regulations made by the Trust only apply to the Trust's own cemeteries, the ability to make these regulations, or any such regulations, does not affect competition between the Trust and any other cemeteries or providers of cremation or memorialisation services.

Alternatives to Legislation: The granting of the ability to make regulations must be granted in legislation, so there is no alternative method of allowing the Trust to make its own regulations.

Classification: There is no restriction on competition.

-oOo-

Restriction: S44(1) provides that the Trust is liable to the duties and liabilities imposed by the *Local Government Act*. S168(2)(d) of the *Local Government Act* states that public cemeteries are not rateable. S44(2) provides that the rates payable on the Enfield General Cemetery (now known as Enfield Memorial Park) are not to be determined under the *Local Government Act*, but instead are \$200 for each financial year. The effect of s44 is to make Enfield Memorial Park liable for \$200 a year in rates, a sum which is not charged to any other public cemetery. S44(2) appears no longer to be enforced.

Costs: The Trust is liable to pay \$200 a year in rates for Enfield Memorial Park. All other public cemeteries are not liable for these rates.

Benefits: There are no benefits accruing under s44(2).

Effects on Competition: No other public cemeteries are liable for these rates, even though in practice the Trust is not billed for the rates.

Alternatives to Legislation:

Classification: This is a trivial restriction.

Recommendation: Section 44(2) should be removed from the Act as it is irrelevant. As a matter of policy, obsolete provisions should not remain in legislation. The fact that public cemeteries are non-rateable under s168(2)(d) of the Local Government Act reflects a policy decision of the Government not to rate public cemeteries. The Trust administers public cemeteries and is therefore covered by s168(2)(d).

-oOo-

Enfield General Cemetery Regulations 1946

These Regulations are essentially enabling regulations, dealing with the establishment of the Trust, and are concerned with the business of the Trust in relation to burial grants, interments and monumental work undertaken by or on behalf of the Trust. The Regulations do not restrict competition in any way.

West Terrace Cemetery Act 1976 (the WTC Act)

Objectives

The objectives of this Act are to vest certain land known as the West Terrace Cemetery in a certain body corporate; to make provision for the present management and the future development of that land and for other purposes. The WTC Act itself is straightforward in terms of what its objectives are. The *Enfield General Cemetery Act* places requirements on the Trust in relation to the operation and maintenance of West Terrace Cemetery, but that fact does not alter the objectives of the WTC Act itself.

Markets

- burial services at West Terrace Cemetery
- chapel services at West Terrace Cemetery
- tourism within the West Terrace Cemetery grounds due to the history of the Cemetery.

-oOo-

Restriction: S13 provides that the Governor may make regulations for the interment of remains. S13(2) provides for issues that may be covered in those regulations, for example burials, exhumations, record keeping etc.

Costs: All persons or organisations wishing to participate in the market for the disposal of human remains must comply with these standards. Thus, the costs affect all participants.

Benefits: As a matter of public policy it is important that there be standards relating to the interment of human remains.

Effects on Competition: All participants in these markets are affected equally. These regulations would be essential to ensure the uniform treatment of human remains.

Alternatives to Legislation: It is appropriate that there be legislation providing for the disposal of human remains. The regulation of such disposal should be by legislation to show that the community takes this issue seriously.

Classification: This is not a restriction on competition.

-oOo-

West Terrace Cemetery Regulations 1995

Restriction: The WTC Regulations do not provide for the issues listed in s13(2) of the WTC Act, but regulation 5 of the WTC Regulations provides that the Local Government (Cemetery) Regulations 1995 apply in relation to West Terrace Cemetery.

Cost/benefit analysis: The Local Government (Cemetery) Regulations 1995 apply to all cemeteries. It is desirable that all cemeteries in South Australia are subject to the same regulations. Those Regulations are not restrictive.

Costs: The Local Government (Cemetery) Regulations provide for the operation of all cemeteries. Any costs involved apply to all cemeteries.

Benefits: It is desirable, as a matter of public policy, that all cemeteries be subject to the same standards with respect to interment, coffin depth etc. The benefit that accrues is to do with health and hygiene and the protection of public sensibility in relation to the treatment of the dead, by far outweighs any "costs" involved in complying with these regulations. In the Review Panel's opinion, these "costs" are what would generally be required in the operation of this kind of business.

Effects on Competition: All operators of cemeteries are subject to the same requirements. Any operators who are not able to afford to comply with these requirements, or would prefer not to, should not be operating in this line of work.

Alternatives to Legislation: It is not appropriate to provide for these issues in any form other than legislation.

Classification: The application of the Local Government (Cemetery) Regulations is not a restriction on competition for the Trust.

-oOo-

Restriction: R6 deals with the length of an interment right - 25 years, unless the Minister sees fit to grant an interment in perpetuity. This regulation limits the period of an interment right. This is a shorter length of time than other cemeteries.

Costs: The Review Panel understands that this relatively short interment period results from a Government decision that due to the age and illegibility of some of the old leases, if a shorter lease period were imposed it would be easier to locate family members when the time came to renew the leases. R3 provides that all leases in force under the previous revoked regulations will expire on 31 December 2032, if still in force, but such leases may be renewed at that time or at any time before that date. Leases granted under the current regulations (enacted in 1995) do not expire on 31 December 2032.

Benefits: There are no benefits associated with this short interment period.

Effects on Competition: The relatively short interment period of 25 years is a significant restriction on competition, as persons approaching the Trust concerning interments at the

West Terrace Cemetery may choose other cemeteries on learning of this short interment period. Most other cemeteries offer fifty year interment periods.

Alternatives to Legislation: It is not appropriate to have an interment period in any form other than legislation.

Classification: This is a serious restriction on competition for the Trust.

Recommendation: The Review Panel recommends altering regulation 6 to allow the Trust to grant interment rights of between 25 and 50 years (on a discretionary basis), or for 50 years only, to allow West Terrace Cemetery to compete on an equal basis with other cemeteries. Such an extension of the interment period would not alter the Trust's current obligation to maintain the sites for the duration of the interment period. Such an extension would also not affect the Trust's maintenance obligations with respect to interment sites granted in perpetuity.

-oOo-

Restriction: R7 provides that in order to erect, replace, repair, alter or carry out other work on a memorial site, a memorial work permit must be granted by the Minister. Also, a person must not erect, or cause to be erected, a memorial on an interment site in the cemetery in relation to which no interment right is in force.

Costs: The cost of such permits range between \$75 and \$300, depending on the kind of work to be carried out. The fees are paid by the client through the monumental mason. These costs do not act as a barrier to entry for stonemasons, as the cost is set by the Trust and paid for by the client, and so is not met by the stonemason.

Benefits: Such a restriction is desirable to enable the Trust to ensure that work carried out on memorials in West Terrace Cemetery is authorised, and in order to maintain the cemetery's records. A further benefit is the resulting increase in "value" of the cemetery as a heritage site.

Effects on Competition: This is a restriction on competition in the market for the provisions of memorials. Such work permit fees can impact upon competition in the stonemason industry if such fees dissuade competition in that market.

Alternatives to Legislation: It is appropriate that this requirement for a permit be in legislation.

Classification: This is a minor restriction on competition.

Recommendation: No action.

-oOo-

Restriction: R8 requires a site number to be engraved, printed or stamped on memorials, in letters of at least 30 mm in height, in a manner approved by the Minister.

Costs: This is more of an administrative requirement than anything else, and does not act as a barrier to entry into the stonemason industry.

Benefits: This is a double checking mechanism, to ensure that the correct memorial is placed on the correct site. This section has no other purpose. It is desirable that this requirement apply, for the ordered management of the cemetery.

Effects on Competition: Stonemasons are unlikely to object to a requirement to advertise their work.

Alternatives to Legislation: It is appropriate that this requirement be in the legislation.

Classification: This is not a restriction on competition.

-oOo-

Restriction: R9 provides that a person must not mix any materials used for masonry work in the cemetery, other than materials used in the preparation of concrete or mortar.

Costs: There is no cost to the Trust arising from R9.

Benefits: This restriction is not intended to restrict competition, but is intended to preserve the dignity of the cemetery and protect the sensibility of mourners. The Review Panel understands that this restriction is administered in a commonsense manner by the Trust.

Effects on Competition: This is a restriction on the conduct of stone masonry in that a stone mason can only conduct the on-site aspect of his or her work in accordance with these sections. If a stone mason does not comply with these sections, then the mason is prohibited from conducting this aspect of his or her work in West Terrace Cemetery.

Alternatives to Legislation: The Review Panel considers an alternative method of ensuring the Trust's power to oversee work conducted within the cemetery is to place this restriction in the conditions imposed in a memorial work permit. If the contents of regulation 9 were to be made a permit condition, it would be a breach of the Regulations not to comply with that condition. The Minister (Trust) has the power to revoke the permit (under regulation 14(4)), a \$200 fine may be imposed, and anyone can bring proceedings for a contravention of the condition.

If regulation 9 remains as it is, it would be a breach of the Regulations not to comply with regulation 9. As this would be an offence, the Trust could ask the person to leave the cemetery and a \$200 fine could be imposed.

The benefit of retaining regulation 9 in its current form is that it provides a general rule that only the fixing of monuments with mortar or concrete can be allowed on site. If regulation 9 is removed and such a restriction is relegated to a permit condition, there is no general policy statement in the Regulations about the amount of work to be performed on site. In the view

of the Review Panel, there is benefit in having such a transparent policy statement in the Regulations.

Classification: This is an intermediate restriction on this aspect of the work.

Recommendation: The Review Panel recommends that regulation 9 be retained.

-oOo-

Restriction: R10 provides that a person who erects a memorial in the cemetery must ensure that the foundations are proper and substantial and will not endanger any surrounding memorials.

Costs: This is a usual requirement to be expected for the safe and reliable operation of a cemetery, and desirable to protect the surrounding memorials from damage.

Benefits: The overall appearance and maintenance of the cemetery improves if all memorials are erected properly and safely.

Effects on Competition: This is a reasonable requirement for the operation of cemeteries.

Alternatives to Legislation: There is no other appropriate method of achieving this protection of the cemetery.

Classification: This requirement is not a restriction on competition.

-oOo-

Restriction: R11 provides that stonemasons must comply with the directions of the Minister in relation to carrying out work in the cemetery. The Minister (Trust) may require a person to take specified action in relation to work in the cemetery.

Costs: This regulation does not constitute a barrier to entry in the stonemason industry, or a barrier to conduct within the stonemason industry.

Benefits: This is an enabling section that empowers the Trust to direct persons performing work in the cemetery to perform certain work if it is considered necessary in the opinion of the Trust. As the Trust has the overall operation of the cemetery to consider, this power is warranted to enable the Trust to direct that certain work is undertaken a certain way for the benefit of the cemetery.

Effects on Competition: This section allows the Trust to ensure work within the cemetery is carried out to its satisfaction. It has no effect on competition.

Alternatives to Legislation: It is appropriate that this requirement be in legislation.

Classification: This can operate as a trivial restriction on competition, but is justified by the above analysis.

Recommendation: No action.

-oOo-

Restriction: R14 prohibits the solicitation, promotion or conduct of business in the cemetery without a permit obtained from the Trust. If a permit holder does not comply with such conditions as the Trust sees fit to impose, the Trust may revoke the permit.

Costs: This is a definite restriction on competition in that a permit is required in the circumstances outlined in the section. This is a barrier to certain conduct.

Benefits: Such a restriction is justified for reasons of public policy. Mourners should not have their private moments interrupted by persons soliciting, promoting or conducting business in the cemetery.

Effects on Competition: This regulation restricts the solicitation, promotion or conduct of business without a permit. This is a restriction on conduct within the various markets that persons or businesses may be engaged in and are trying to ply within the cemetery.

Alternatives to Legislation: This is an appropriate restriction to be within the legislation. Other methods would be ineffective.

Classification: Trivial.

Recommendation: No action.

Summary of the Recommendations of the Review Panel

The Review Panel recommends the following amendments to the legislation reviewed in this Report:

- Amend section 20 of the *Enfield General Cemetery Act 1944* to allow the Trust to expand its operations into areas into which it has not traditionally ventured, for example the operation of funeral parlours.
- Remove section 44(2) of the *Enfield General Cemetery Act 1944* as it is obsolete.
- Amend regulation 6 of the *West Terrace Cemetery Regulations 1995* to allow for a fifty year interment period in the West Terrace Cemetery.

SCHEDULE 1

REPORT

The Review Panel will present to the Minister for Transport and Urban Planning a report detailing:

- (a) the Terms of Reference for the Review;
- (b) a list of the persons and organisations consulted during the Review;
- (c) the analysis of the *Enfield General Cemetery Act* in accordance with these Terms of Reference; and
- (d) the recommendations of the Review Panel.

SCHEDULE 2

Issues for interested persons or organisations to consider

The Review Panel invites comments or suggestions on the above draft Report, especially in relation to the points reiterated below.

1. Section 44(2) of the *Enfield General Cemetery Act* allows for the Enfield General Cemetery (now the Enfield Memorial Park) to be charged \$200 a year in rates by the local council. Only Enfield Memorial Park, out of all cemeteries in South Australia, is subject to this charge. This restricts competition. The fact that this charge is not enforced means that effectively the subsection is otiose. If the charge is not enforced, should it be removed from the Act?
2. Section 20A of the *Enfield General Cemetery Act* provides that the Trust must take certain factors into consideration when managing the West Terrace Cemetery. Section 20A imposes various restrictions on the Trust, namely:
 - the Trust must prepare plans of management for West Terrace Cemetery;
 - those plans must be presented at public meetings convened by the Trust;
 - those plans must take into account the historical significance of West Terrace Cemetery;
 - the Trust must consult with the State Heritage Branch of the Department of Environment and Natural Resources (now the Department of Environment, Heritage and Aboriginal Affairs) about the management of West Terrace Cemetery; and
 - the Trust must also consult with any other person interested in the management of West Terrace Cemetery.

All of these section 20A requirements are unique to West Terrace Cemetery, as a result of its unique history. The requirements listed above would be imposed on other heritage listed cemeteries or cemetery trusts. Should these restrictions be duplicated in the *Enfield General Cemetery Act*? Do the public benefits arising from these requirements justify such restrictions?

3. Regulation 7 of the West Terrace Cemetery Regulations requires a memorial site work permit to be obtained before any work is done on a memorial site. Is this requirement justified by the public interest in the Trust being able to control what work is done in the West Terrace Cemetery, especially in light of West Terrace Cemetery's special heritage considerations that need to be taken into account by the Trust?
4. Regulation 9 of the West Terrace Cemetery Regulations only allow materials used in preparing concrete or mortar to be mixed in the cemetery. Is this an undue restriction on the practice of stonemasonry? Could the same objective be achieved more simply by placing this requirement in the permit conditions and removing it from the Regulations?

SCHEDULE 3

List of persons or organisations invited to provide comments on the draft report

Mr Don Noblett
Chairman
Enfield General Cemetery Trust
Browning Street
CLEARVIEW SA 5085

Mr Harry Weirda
City Manager
City of Port Adelaide Enfield
PO Box 110
PORT ADELAIDE SA 5015

Ms Susan Law
Chief Executive Officer
City of Charles Sturt
PO Box 1
WOODVILLE SA 5011

Ms Jude Munro
Chief Executive Officer
Corporation of the City of Adelaide
GPO Box 2252
ADELAIDE SA 5001

Mr Martin Brine
Manager Heritage SA
Department of Environment, Heritage and Aboriginal Affairs
GPO Box 1047
ADELAIDE SA 5001

Mr John Comrie
Executive Director
Local Government Association
GPO Box 2693
ADELAIDE SA 5001

Ms Lesley Swans
Secretary
Cemeteries Association of SA Inc
PO Box 109
SMITHFIELD SA 5114

Mr Tim Mee
Executive Officer
Funeral Directors Association
136 Greenhill Road
UNLEY SA 5061

Mr Norm Orchard
General Manager
Centennial Park Cemetery Trust Inc
760 Goodwood Road
PASADENA SA 5042

Ms Carol Proctor
Executive Director
Office for Local Government
Riverside Centre
North Terrace
ADELAIDE SA 5000

Mr Lindsay Thompson
General Manager
SA Employers Chamber of Commerce and Industry
136 Greenhill Road
UNLEY SA 5061

Ms Helen Hele
Executive Officer
Statutory Authorities Review Committee
Parliament House
North Terrace
ADELAIDE SA 5000

Mr Tim Mee
Executive Officer
Monumental Masons Association
136 Greenhill Road
UNLEY SA 5061

List of persons responding with comments on the draft report

Ms Carol Proctor
Executive Director
Office for Local Government
Riverside Centre
North Terrace
ADELAIDE SA 5000

Mr Harry Weirda
City Manager
City of Port Adelaide Enfield
PO Box 110
PORT ADELAIDE SA 5015

Ms Jude Munro
Chief Executive Officer
Corporation of the City of Adelaide
GPO Box 2252
ADELAIDE SA 5001

Mr Martin Brine
Manager Heritage SA
Department of Environment, Heritage and Aboriginal Affairs
GPO Box 1047
ADELAIDE SA 5001

Mr Kevin Crowden
Secretary
Enfield General Cemetery Trust
Browning Street
CLEARVIEW
PO Box 294
Enfield Plaza SA 5085

Mr Rod Williams
Principal Policy Officer
Department of Premier and Cabinet
State Administration Centre
Victoria Square
ADELAIDE SA 5000

Mr Don Noblett
Chairman
Enfield General Cemetery Trust
Browning Street
CLEARVIEW SA 5085