

Cremation Act, 1891
Competition Policy Review

Chapter 1 Introduction - The Rationale for Competition Review

Background to the Review

This Review is conducted in compliance with an obligation on the South Australian Government arising from the Competition Principles Agreement. The Agreement is one of three agreements signed by State and Territory Governments and the Commonwealth in April 1995, together giving effect to National Competition Policy.

The National Competition Policy reform program seeks to extend the productivity-enhancing effects of competition throughout the Australian economy. Its aim is to encourage greater competition, particularly in markets where there has been little or no competition before. It is hoped that competition will create incentives for producers to use their resources better, resulting in higher productivity, to restrain costs and therefore lower prices, and to be more responsive to market demands in terms of improved quality. If these outcomes can be achieved, it is expected that incomes, employment and living standards will rise.

Considerations in Competition Review

The Competition Principles Agreement aims to review and reform, where necessary, legislation which restricts competition. Clause 5 provides:

“The guiding principle is that legislation....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.”

To this end, legislation is being reviewed as provided by clause 5(9) in order to:

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

In balancing costs and benefits of a restriction, the following matters are, where relevant, to be taken into account as provided by Clause 1(3):

- government legislation and policies relating to
 - ecologically sustainable development, and
 - occupational health and safety

- industrial relations and access and equity
- social welfare and equity considerations
- economic and regional development, including employment and investment growth
- the interests of consumers generally or a class of them
- the competitiveness of Australian business
- the efficient allocation of resources.

The *Cremation Act 1891* and the *Cremation Regulations 1994* (together called “the legislation”) fall to be reviewed in accordance with the above principles. The aim of this review is to analyse the legislation for restrictions on competition, either direct or indirect, and consider whether their retention, or retention in their current form can be justified. Both legislative and deregulatory alternatives are considered. The Terms of Reference for this review are set out in Appendix 1. In addition, the Panel has considered whether the administrative procedures required by the legislation impose an unwarranted burden on any person.

Consultation Draft

A Consultation Draft was circulated to identified stake-holders, and was made available to interested members of the public upon application, for the purpose of criticism, comment and suggestions. The Draft comprised the Panel’s analysis of the legislation and its preliminary views. The following parties were identified as appropriate persons to be consulted and were sent copies of the Draft:

- Councils
- Local Government Association
- Office for Local Government
- operators of crematoria and cemeteries
- Cemeteries Association of SA Inc
- Australian Funeral Directors Association (SA/NT Division)
- South Australian Health Commission
- Environmental Protection Authority
- Environment, Resources and Development Court
- Carers Association of SA Inc
- Australian Nursing Homes and Extended Care Association of SA Inc
- Council on the Ageing
- SA Council of Churches
- SA Council of Social Services
- SA Branch, Australian Medical Association
- Royal Australian College of General Practitioners
- State Coroner
- Registrar of Births, Deaths and Marriages
- Office of the Attorney-General
- Intellectually Disabled Services Council
- Aboriginal Health Council
- Parent Advocacy Inc
- Women’s Health Statewide

- Health Rights and Community Action

Written submissions were invited. In the result, eleven submissions were received. These are analysed in Chapter 6, and form the basis of the recommendations set out in Chapter 7.

Chapter Two - Methodology of Review

The Review is conducted by applying the key concepts and principles of competition policy to the legislation. Some key concepts, and the tools of analysis, are briefly explained in this chapter.

Markets

A market is an area of close competition between rival firms, or other market participants. It is the field of actual and potential transactions between buyers and sellers and is characterised by the possibility of substitution arising from price or other incentives. That is, buyers may choose from among the products available in the market, and in making that choice will be influenced by variables such as price, quality, convenience, service and the like. Likewise, sellers may adjust sources of supply, product mix, price, service features or other variables in order to improve market share.

A market is defined in terms of the following four elements:

- product - the goods or service available for purchase;
- functional level - whether production, wholesale or retail;
- geographic area - the region from which the product or service may be sourced; and
- temporal aspect - any time factors which influence selling or buying behaviour.

Competition in Markets

Because the aim of the review process is to analyse the effect of legislative restrictions upon competition in markets, it is necessary to define what is meant by competition within markets and to identify relevant markets.

The term "competition" in this context refers to rivalry between the providers of a product or service with the aim of increasing one's market share, albeit at the expense of another's share. Such rivalry tends to keep prices down and standards of products and services up, as well as to encourage innovation and to enhance the range of choice open to consumers. Without it, prices may increase and product or service quality decrease.

It is important to understand that "competition within markets" is competition in the broad sense of the ability of persons in general to enter and participate in a market. It does not refer to the opportunity of a particular identified individual to participate in a market. Competition analysis is concerned with broad, general competitive outcomes rather than with marginal behaviour. The impact of any legislative restrictions on a particular individual will therefore only be relevant in so far as this is indicative of broader anti-competitive outcomes. The fact that one particular person can be excluded does not mean that there is an unacceptable restriction of competition.

Restrictions on competition in markets

Such restrictions are often said to be of three types:

- barriers to entering or re-entering a market (such as qualifications, or prudential requirements)
- restrictions on competition within markets (such as monopolies), and
- discrimination between market participants (such as tariffs).

A broader taxonomy which is also sometimes used is to consider restrictions on the “supply side” and the “demand side” of the industry. Thus, restrictions on who may enter a market as a supplier, such as licensing requirements, would be on the “supply side”, whereas restrictions on the purchasing of goods or services, such as rationing, would be on the “demand side”. Reference is made to the above categories where this assists in identifying and understanding restrictions.

Analytic method

This Review seeks to identify any features of the legislation which could potentially restrict competition within the market (such as a requirement that a person attain an educational qualification). It then considers the likely impact of that restriction on the market and accordingly classifies it as trivial, moderate or major. It proceeds to consider whether a market restriction can be justified by comparing the anti-competitive costs of the restriction with any public benefits it may confer (such as consumer protection). The analysis considers cost and benefits of all kinds, not only financial ones. The more serious the restriction, the greater must be the relative benefits which it confers, if it is to be retained.

If there appears to be some desirable public benefit to be obtained by imposing a restriction, the Review also considers possible alternative forms of restriction by which this could be obtained, whether legislative or other, and the costs and benefits of these. Further, consistently with the requirements of the Agreement, the Review examines any administrative burdens associated with the identified restrictions and their alternatives.

Objects of the legislation

In weighing the costs against the benefits of a restriction, it is important to bear in mind that there may sometimes be proper and satisfactory reasons to restrict competition. Competition within a market may have to be kept within bounds so that it does not jeopardize other important public interests (such as public health). It is therefore also necessary to identify clearly those public interests which are served by the restrictions in the legislation. This entails identification of the objects of the legislation. From the objects, one can deduce the benefits which the legislative restriction is intended to confer.

Key Questions

The key questions addressed by this Review, then, are:

- 1) In what ways, if any, does the legislation restrict or discourage competition in the cremation market?
- 2) In relation to each such restriction or discouragement, is it trivial, moderate or major?
- 3) In relation to moderate or major restrictions or discouragements, what are the public benefits conferred, if any?
- 4) Could the same or similar benefits be achieved by other means at less cost to competition in the market?
- 5) Can the retention of the restriction or discouragement be justified? If not, should there be any and what type of restriction in its place?
- 6) Does the legislation impose an administrative burden? If so, can this be justified or could the burden be reduced?

These are the questions which inform the analysis in Chapter Four.

Chapter 3 - Application of Key Concepts to the Cremation Market

The Cremation Market

In the context of cremation, the product for sale is the disposal of human remains by cremation (here called “the service of cremation”), whether or not sold together with other services. The market may be said to be the field of competition:

- among sellers of the service of cremation for the business of those wishing to dispose of the deceased's remains through cremation, and
- between sellers of the service of cremation and of burial services, for the business of those open to dispose of the deceased's remains by either method.

A “crematorium” is defined by the Act as “a place for the cremation of human remains” (s.1A). While in many cases crematoria also incorporate facilities for religious services, social gatherings and memorialisation of the deceased, not all do so. Although these facilities are often provided together with the cremation service, the Act does not require this, and references to a “crematorium” in this Review, as in the Act, are references to any place for the cremation of human remains, whether it provides only a cremation operation or provides also other facilities. The market discussed therefore includes all cremation operations.

Generally, the only substitute service which might be selected instead by the prospective purchaser is burial. While for some purchasers, the choice is purely discretionary and thus is liable to be influenced by price, there will be some whose choice is constrained either by the expressed wishes of the deceased or his/her close family, or by religious or cultural considerations. There may therefore be considered to be a core market of purchasers who will definitely prefer cremation over burial, and for whom the only question is from which seller they will buy the service, as well as a larger potential market of those who might choose either form of disposal depending on the influence of the variables described above.

The functional level is predominantly the retail level, as the product is purchased by the buyer on a one-off, at need basis. However, purchase is generally made through an intermediary rather than by the consumer direct. In practice, it will usually be the funeral director who makes the arrangement with the crematorium. He or she may have their own business practices or preferences which dictate how the crematorium is selected. Within the metropolitan area, there may be a choice, but outside it, geographic factors may be decisive (see below). The use of the funeral director as an intermediary may tend to reduce the effect of direct competition between service providers. Only where the purchaser has a strong preference to select a particular service provider will that exert influence in the choice of crematorium.

The geographic area with which this review is predominantly concerned is the State of South Australia, although the possibility exists for the sale and purchase of cremation services across State borders. In particular, cremation services may be sold by South Australian crematoria which are close to State borders to those across the border, as may occur, for example, at Mount Gambier. Conversely, the possibility exists that circumstances could arise in which South Australian purchasers may wish to purchase interstate cremation

services. Transport costs, time delay and inconvenience are seen as the main competitive restrictions on such purchase.

Geographically, it may also be observed that purchasers will generally wish to purchase the service locally. Typically, a crematorium serves an identified region, although the size of the region may expand or contract depending on the behaviour of competitors and the contingencies which may befall a competitor's business. (For example, the opening of a new crematorium in a particular city or region may reduce an existing supplier's business, or the interruption of power supplies in a neighbouring region may temporarily increase it.) In a country area, there may be only one local crematorium and if so, that crematorium will have a substantial competitive advantage over any other, because of the convenience and price advantage it is able to offer, due to transport and storage costs entailed in selecting another service provider.

There is a temporal limit on the market in that a cremation service will usually be required within a short period after the death of the person concerned. Thus, a particular consumer (the personal representative or next of kin) will only be in the market to purchase the service for a short time, and the occurrence of that time period cannot be predicted in advance. A particular consumer may, or may not, ever re-enter the market again, so there may be less scope to influence market share by practices such as pursuing repeat business, or advertising. Hence, market share in this market is highly dependent on geographic and convenience factors.

Non-legislative restrictions on competition in the cremation market

The temporal and geographic constraints on this particular market, therefore, may act as substantial inhibitors on competition which are liable to remain as underlying limitations on competition in this market, regardless of legislative reform.

It may also be worth pointing out that since the legislation itself deals only with the one product, ie the disposal of human remains by cremation, and the product itself is not susceptible of significant variation in quality, the variations in market share which would result in other markets from variations in product itself are unlikely to occur in this market. (However, there can of course be variation in the products or services which are often sold *together with* the cremation service itself, such as the type of coffin used, whether a funeral service is offered at the crematorium, whether there are facilities for a social gathering of mourners afterwards, or for burial of the ashes and memorialisation, and so on, which may influence choice.)

While not a feature of market analysis in competition policy in general, it may also be worth bearing in mind the general cultural context against which many cremations occur. Purchasers may for cultural, emotional and personal reasons be less liable to be influenced by considerations of price in this market than in other markets. Considerations such as avoiding conflict or confrontation, complying with social and religious conventions and showing respect for the deceased may influence market choices, mitigating the direct competitive effects of features such as price and convenience. On the other hand, there may of course be situations in which these factors are less relevant, as in the case of paupers or those without surviving relatives or friends.

For the above reasons, it is perhaps not to be expected that even a very rigorous competition review of the legislation will greatly increase the competitiveness of this particular market. Rather, the aim of the review is to identify and remove any unnecessary legislative restrictions on such competition as is feasible within the constraints of this particular market.

In considering competition restrictions, therefore, this review examines barriers to entry into the industry by persons wishing to supply a cremation service, restrictions on competition among those persons, and between those persons and other providers of disposal services, and restrictions on market choice affecting consumers of services.

The Cremation Market in South Australia

a) Supply side - entry restrictions

There are six crematoria in South Australia. Three (Centennial Park, Enfield and Gawler) are located in the metropolitan area, and three in the country (Mount Gambier, Port Lincoln and Whyalla).

Applications to establish new crematoria arise infrequently. It is usual first to apply for development and EPA approval, before proceeding to seek SAHC approval and lastly the Governor's licence. In the last five years, there have been only two applications to the Health Commission for health approval for new crematoria pursuant to s.2. One was approved and one is awaiting development approval. There is no known instance of Health Commission approval to set up a new crematorium having been refused, in any case where development and EPA approvals had been obtained. This suggests that development approval (including EPA approval), rather than any requirement of the Cremation Act, is the most onerous requirement confronting applicants who seek to establish new crematoria.

There is no fee for health approval or for the Governor's licence, so again the requirements of the Cremation Act are unlikely to restrict applications from intending new operators. Fees are required for development and EPA approval applications. Development approval fees consist of several fixed fees and an ad valorem fee based on 0.1% of development cost over \$100 000. The fixed fees are:

Lodgement fee for application	\$27.20
Referral fee for EPA consideration	\$54.50
Public notification fee	\$54.50
Advertising fee	\$300.00

Thus, the cost of seeking development approval will vary with the cost of the development. EPA approval entails a licence fee which varies according to the number of cremations proposed to be carried out per year. At present, the fee units per number of cremations are:

Up to 1000	30 fee units
1000 - 2000	45 fee units
2000 - 4000	90 fee units
4000+	165 fee units

At present, licence fee units are equivalent to \$9.75. Both the value of a fee unit, and the number of units applicable, will vary from time to time. However, in comparison with the overall cost of setting up a crematorium, it is not considered that these fees constitute any significant barrier to entry.

These fees are not influenced by the Cremation Act.

b) Demand side

No evidence of any substantial unmet demand for cremation services, or difficulty in accessing cremation services, came to the notice of the panel in the course of the review. As there is no central authority to which any complaints about service unavailability can be made, it is difficult to assess whether there is any community concern on this point.

Death registration records suggest that cremation is selected as the method of disposal in about half of all deaths registered in South Australia. For the last four financial years, the figures are:

Year	Cremation Permits	Deaths in SA	Proportion
1995/6	5 800	11 329	51.2%
1996/7	5 946	11 945	49.8%
1997/8	6 082	11 648	52.2%
1998/9	5 950	11 770	50.6%

This suggests that the two methods of disposal in fact compete effectively and that neither benefits from any substantial market advantages over the other. However, of course, market factors may not be the determinants in this area, as the choice can be influenced by any of several factors, including religious persuasion, wishes of the deceased, family traditions and the like.

There may be a cost difference between the service of burial and the service of cremation, but this may be of little significance to demand for two reasons. One is that the choice is unlikely to be dictated by economic factors, as above. The other is that the disposal service is rarely purchased in isolation. The cost of other variable cost items, such as the coffin, memorials, funeral services, etc, can mean that the total cost incurred in disposal and memorialization may be higher or lower, regardless of which form of disposal is used. This suggests that cost may not be critical to demand.

Storage and transportation facilities are such that most purchasers wishing to arrange a cremation in preference to burial would likely be able to do so, at least in metropolitan and large regional centres, although there may be cost consequences. However, access to facilities and storage and transportation costs may be a significant factor, for example, in remote areas. No evidence came to the panel's attention, however, suggesting any significant unmet demand for cremation services.

Chapter 4 - The Legislation

Brief History of the Act

The Cremation Act came into effect in 1891. Before the Act, cremation was not lawful in South Australia. Indeed, religious objections to cremation still prevailed for many persons, and the predominant justification for introducing cremation as a legally acceptable method of disposal was on public health grounds.

In his second reading speech, the Hon H J Gordon stated that the present mode of disposal of the dead (ie burial) was unsatisfactory and might lead to serious consequences. [Although his speech does not make this clear, he may have been referring to the pressure on the limited cemetery space available for burial in early South Australia, and the difficulty of storing and transporting bodies hygienically.] The Bill aimed to introduce an alternative method of disposal. It was intended to be permissive only. It followed similar legislation in England and other countries. The main concerns expressed in debate related to ensuring that cremation could not be used to conceal suspicious deaths, and that the Attorney-General would have the power to forbid a particular cremation.

There have been 8 amending Acts in the 107 year history of the Act, only three of which were passed in the first 80 years of the Act's operation. For the most part, the amendments have been minor, and have reflected changes extraneous to the Act, for example substituting the SA Health Commission for the former Board of Health, and replacing the words "felony" and "misdemeanour" with "offence".

In 1981, the requirement that the Governor approve by-laws and a scale of fees before a crematorium could be licensed was removed, by the repeal of section 11, reducing the administrative burden on entrants to the industry. In 1988 the citation was simplified, and definitions of a crematorium and of the "registrar" were added. In neither case did this change the substantial effect of the Act.

By No.6 of 1996, the details of the grounds for a cremation permit were varied to provide that such a permit could be issued upon the authorisation of the coroner, where the death had been reported to him or her, whether or not an inquiry had been held. Previously, if the death were a coronial matter, the coroner must inquire into the cause of death and certify that no further examination of the body was required, before the body could be cremated. It also permitted a coroner, as well as the Attorney-General and the police, to forbid a cremation. This amendment also simplified and clarified the requirements for the issue of a cremation permit.

Overall, however, the substance of the Act has remained unchanged since its inception. The Act has always operated to make cremation lawful provided that it is carried out under certain conditions, and that a permit has been obtained in respect of the particular body to be cremated. The substance of the conditions for establishment of a crematorium, in particular, has remained as the framers of the Act intended, notwithstanding the independent

development of the arguably overlapping requirements of the development approval process that govern any substantial change in land use.

Objects of the *Cremation Act*

The *Cremation Act* does not refer explicitly to its objects, but they can be gathered from the provisions of the legislation. They are:

- to permit the disposal of human remains by cremation as an alternative to burial (such disposal was not legal in South Australia before the passage of this Act);
- to ensure that remains are correctly identified at all times during the disposal process;
- to prevent the use of cremation for improper purposes including the concealment of death or of cause of death, and in particular to ensure that bodies are not cremated where there are unresolved issues and/or suspicious circumstances surrounding the death;
- to regulate cremation in the interests of public health;
- to ensure that remains are not cremated against the wishes of the deceased and his or her close family.

To put it another way, the Act aims to permit cremation, but to prevent the following evils:

- any confusion as to the identity of the deceased at any stage of the disposal process;
- the use of cremation to destroy evidence relevant to legal or coronial proceedings or to conceal the fact or cause of a person's death;
- health and safety hazards and nuisances liable to arise from the storage and burning of bodies (such as smoke, odours, disease, etc)
- use of land for the purposes of cremation without the consent of the landowner (or other person entitled to determine the use of the land), or those so close by as to be affected by the use of the land for cremation
- cremation where the deceased has directed otherwise or where members of the family object to cremation
- disputes among bereaved relatives as to whether a body should be cremated and who should be responsible for authorising this step.

Summary of provisions

The Act is reproduced as Appendix II. It is 10 sections long. In brief, it provides that cremation is only lawful in licensed crematoria. To establish a licensed crematorium, an applicant must obtain SA Health Commission approval of the plans, and a licence from the Governor. The licence is granted on proof that the applicant has the permission of the landowner, that neighbours within 100 metres have had an opportunity to object and have not done so, and of any other matters the Governor may require.

The cremation of human remains in a licensed crematorium requires a cremation permit, issued by the Registrar of Births, Deaths and Marriages. The issue of the permit is based on

medical or coronial certification. Cremation cannot however occur where the next of kin objects, unless the deceased left a direction to cremate, or where the authorities for some reason forbid it.

The Regulations under the Act (reproduced as Appendix III) stipulate the forms and certificates required to arrange a particular cremation, the process to be used to ensure that the body is correctly identified, the requirements for coffins and the process for disposal of the ashes.

Other relevant legislation

It is important to understand that the legislation does not operate in isolation, but that the business of cremation is also indirectly regulated by other laws. For example, the *Public and Environmental Health Act* gives local authorities (commonly councils) the power to inspect premises and make orders for the control of health hazards and public nuisances. This can include requiring an operator to take a particular action or cease a particular practice (ss.15 and 17).

Similarly, the establishment of crematoria will require development approval under the *Development Act*, a process which will involve seeking permission from the relevant authority and may also involve notification of adjacent owners, or possibly the public in general. There may be obligations of advertising and rights of objections. Likewise, the crematorium must comply with the *Environment Protection Act*. There will be a requirement for works approval and a licence (ss.35 and 36), because cremation is a prescribed activity of environmental significance. To obtain a licence, the intending operator must advertise their intention in a public newspaper and invite submissions. Conditions, including a time limit and a bond or guarantee requirement, may be imposed on the licence (ss.45 and 51).

Some cremation-related provisions are also found in the *Local Government Act*, which deals with the power of local councils to establish crematoria, and to permit and control their operation (s.585). Relevant laws are also found in the *Coroners Act*, which deals with the disposal of remains in the case of suspicious or unexplained deaths, or deaths from non-natural causes, and, peripherally, in the *Births, Deaths and Marriages Registration Act*, which deals with the registration of deaths.

Thus, in conducting a competition review of the legislation, it is important to be mindful of the broader legislative context and the effect of any restrictions in the *Cremation Act* in combination with other relevant laws.

Comparison with other States and Territories

Not all States and Territories have special Acts regulating cremation. In some cases, comparable provisions are found in Acts or Regulations dealing with coronial enquiries (as in Queensland), local government, public health (as in New South Wales), or elsewhere. The underlying concerns, ie to make cremation lawful, but to prevent health hazards and nuisances, and to ensure that cremation is not used to conceal suspicious deaths or destroy evidence, are similar in all jurisdictions, as is the general requirement for some kind of official authority to operate a crematorium, and to cremate a particular body.

Speaking generally, all jurisdictions require some form of official approval of the plans for a crematorium, some directing the approval mainly to the equipment to be used, and others also requiring approval of the buildings and location. Some have a planning permission process built in to their cremation regulation, but others approach the matter purely as a matter of public health.

Some jurisdictions have an ongoing regulatory regime, in that they not only require an initial approval, but have a system of inspections directed to crematoria in particular, and the power to close down non-compliant crematoria. However, as in South Australia, some deal with this issue by means of general public health or environmental laws.

All jurisdictions set limits on the circumstances in which cremations may occur, requiring proper identification of the body and consent of the next of kin (or an indication that the deceased requested cremation). All prevent cremation in coroner's cases until the coroner gives permission. The exact paperwork required to authorise cremation, and who may prepare such paperwork, varies. In some jurisdictions, permission is given by the Registrar of Births, Deaths and Marriages, while others use a medical referee expressly for determining whether it is in order to cremate. All require crematoria to keep records.

Thus, the broad framework is similar from one jurisdiction to another. The main differences lie in whether cremation laws are gathered together in one Act or scattered through various Acts and regulations, in whether a special planning process is prescribed, and in the details of the process for obtaining a permit to cremate a particular body. Also, some States give the responsible Minister a specific power to revoke approval or close down a crematorium.

New South Wales

Part 5 of the *Public Health Act 1991* deals with mortuaries and crematories. Section 52 requires the approval of the Minister of Health for the equipment and apparatus to be used. Approval may be granted on conditions, and an operator may be required to give security for compliance with the conditions. The Minister has power to revoke an approval, but must give the operator notice of intention to do so and allow him or her to make representations about the proposal.

Public Health Regulation 1991 deals with the disposal of bodies, and Division 5 with crematories in particular. There are provisions concerning cleanliness, inspection and closing of crematories. This Regulation also deals with the documents required for cremation and the records to be kept by a crematorium. A cremation permit is issued by the medical referee on receipt of an application from the executor or next of kin, and a medical certificate from a practitioner who is able to certify definitely the cause of death, or a pathologist who has carried out a post-mortem examination.

The *Coroners Act, 1980*, section 53A, provides that a person must not cremate human remains without a document authorising this. Such a document can only be issued by a medical practitioner, a coroner, or the Registrar of Births, Deaths and Marriages. In the case of a stillborn child, only an authorisation from a medical practitioner or the coroner is

acceptable. In the case where disposal of remains is authorised by the coroner, he or she must give a copy to the Registrar (s.40, *Births, Deaths and Marriages Act 1995*).

Deaths must be notified to the Registrar by a doctor who examines the body after death, or who was responsible for the person's care before death, within 48 hours of death. The notification must include, or be shortly followed by, notice of the cause of death (s.39 *Births, Deaths and Marriages Act 1995*).

It is possible for a person who is not a funeral director to arrange the disposal of human remains (s.41 *Births, Deaths and Marriages Act 1995*). A funeral director or other person arranging the disposal of remains makes a return to the Registrar within 7 days of the disposal, giving details of the deceased's name and address, the place and manner of disposal, and other information.

Queensland

The Coroners Act (ss. 23A to 23F) and Regulations regulate cremation in Queensland.

A place may only be used for a cremation if this is lawful under the *Integrated Planning Act, 1997* (s.3), or if the Minister gives written permission (s.4). The Minister may only give permission if satisfied that public health and safety will not be put at risk. If permission is refused, reasons must be given, and there is a right of appeal to the Magistrates Court (s.5). Conditions may be attached to the permit, and these may also be the subject of appeal. Appeals are dealt with relatively informally. Thus, unlike the position in South Australia, there is no separate planning process in the cremation legislation, but the general development laws apply.

Cremation requires a permit from a government health officer, or a medical practitioner (s.5). That person must see a certificate from a medical practitioner as required under the Registration of Births, Deaths and Marriages Act, or a coroner's certificate. A crematorium officer who permits a cremation without receiving all the required documents commits an offence.

There is a provision, similar to the South Australian provision, that the cremation requires either the consent of the next of kin and executor, or an attested memorandum of the deceased. Likewise, interested persons are not to give certificates, and various authorities including the Attorney-General may forbid cremation.

Victoria

The *Cemeteries Act 1958* provides that a crematorium must not be constructed within 200 metres of any dwelling-house without the consent of the owner, lessee and occupier, nor may it be constructed within 50 metres of a public road, nor in any part of the cemetery set apart for a particular religious denomination (s.66). If the trustees of a cemetery intend to construct a crematorium, they must publish a notice of this intention in the Government Gazette and in a circulating newspaper for at least one month (s.68). These provisions resemble the South Australian provisions.

The Governor-in-Council may direct the discontinuance of cremations in a cemetery or in any crematorium, and may make regulations as to the maintenance and inspection of crematoria. Cremations in a cemetery must be recorded in a register, and a certificate of the cremation must be sent to the Registrar of Births, Deaths, Marriages and Names (ss. 73 and 74).

As in other jurisdictions, it is an offence to cremate without having received the required documents. There is also provision that the remains not be cremated where the deceased had requested that this not be done. In the case of deaths from non-natural causes, *Coroners Act 1985* requires the coroner to issue a disposal permit as soon as possible after the time for application for an inquest expires, or the application for inquest is disposed of.

Western Australia

The *Cremation Act, 1929-1968* regulates cremation. As in South Australia, there may be no cremation outside a licensed crematorium, except that bodies of persons of Asiatic race may be cremated in accordance with their religion (s.3). Licences may be granted to the trustees of a cemetery, or any incorporated association constituted for this purpose.

Applicants for licences must satisfy the Governor that they have authority to use the site, that the Commissioner for Public Health has approved the plans for the building and apparatus, that notice of the intention to establish a crematorium has been advertised in a circulating newspaper for eight consecutive weeks (s.4). There is provision for an objection to be made, but it may be over-ruled by the Commissioner for Public Health. These are generally similar to the South Australian requirements, but in the latter respect, less draconian.

There is also specific provision for licences to be revoked by the Governor (s.16). This may be done if any licensee is convicted of an offence against the Act resulting in a fine of \$100 or more, or imprisonment, or if the Commissioner for Public Health certifies that the crematorium has become unfit. This refers to unfitness to cremate inoffensively, decently and effectively. No equivalent provision exists in South Australia, and this problem would probably be addressed here through public health legislation.

An application for a cremation permit is made to a medical referee (s.8). No permit may be granted if the referee considers that the death is due to violence or unnatural causes, or there are suspicious circumstances. In such cases the death is reported to the coroner. Otherwise, the referee may grant a permit on the basis of a medical certificate from a doctor who was in attendance at the time of death and has made full enquiries as to the cause of death, if he or she is satisfied that the cause of death has been definitely ascertained.

A medical practitioner who is a close relative of the deceased may not give a certificate of death for cremation purposes (s.8A). As in other States, a person with a financial interest is prohibited from signing any certificate concerning the death (s.12). The Attorney-General and any stipendiary magistrate, may forbid cremation, for reasonable cause (s.14).

A written direction by the deceased that his or her body is not to be cremated, or a written objection from the next of kin, will also prevent cremation, similarly to the South Australian provision (s. 8A(b) and s.13).

The Western Australian Act is the closest to the South Australian legislation, differing chiefly in the provision for the Governor to withdraw the licence of an established crematorium.

Tasmania

Cremation in Tasmania is regulated by the Cremation Act 1934. An application for approval of a crematorium is made to the Minister, who must approve the plans for the buildings and apparatus. Notice of intention to apply for approval must be published.

The Governor may make regulations providing for maintenance and inspection of crematories, and prescribing the conditions under which cremation may take place.

It is not lawful to cremate a body where the deceased left a written direction to the contrary, or has not been identified.

The Tasmanian Act is quite brief and it may be that much of the regulation of the industry is done by means of the Statutory Rules from time to time. However, no such rules dealing with cremation appear to be extant at present.

Australian Capital Territory

The ACT Cremation Act, 1966 provides that a person may apply to the Minister for a licence to operate a crematorium on specified premises. The application must be accompanied by a description of the equipment to be used. The Minister has a discretion to approve or refuse the application. There is no requirement to advertise the application or seek the consent of adjoining owners. A body may only be cremated in a licensed crematorium (s.24). A crematorium must be maintained in a clean and tidy state and must not emit noxious gases (s.20), and inspectors may carry out investigations and take samples of gas emissions (s.21)

Permission to cremate can be given by the Minister or the Coroner. An application to the Minister must be supported by a certificate from a medical practitioner and the medical referee, but special provision exists in the case of a stillborn child. Authorities may forbid cremation for reasonable cause (s.10).

In the case of a death outside the ACT, the authority may accept such documentation as would be required in the place of death.

Northern Territory

The *Cemeteries Act* regulates cremation. A cemetery board may, with the approval of the Minister, erect and maintain a crematorium in a cemetery (s.14). It does not appear that crematoria can be established in other places (s.15). The Act does not establish a separate planning consent process, perhaps because the land is already a cemetery.

As in other jurisdictions, a permit is required to cremate a body. There must be a certificate signed by two medical practitioners attesting to death from natural causes, or by one who has conducted a post-mortem examination, or from the coroner. As in other places, an interested person may not give a certificate, and there is a right in the next of kin to object to cremation. Authorities may also forbid it.

The Public Health Act makes general provision for dealing with risks to health, and there are also Nuisance Prevention Regulations under that Act which deal with problems such as noxious emissions.

Summary

In no Australian jurisdiction is cremation deregulated. It appears that regulation is universal in respect of

- in what places a cremation may take place
- what apparatus of cremation may be used
- whether a particular body may be cremated
- consideration of the wishes of next of kin
- investigation of deaths from non-natural causes or in suspicious circumstances, and
- health and environmental aspects.

Although the content of legislative provisions dealing specifically with cremation varies between jurisdictions, when considered in the context of other relevant legislation such as planning, environmental and coronial laws, the level of regulation is much the same.

Chapter 5 - Competition Analysis of the Legislation

As the legislation is comparatively brief, it is convenient for ease of reference to deal with it section by section, omitting those sections which are purely formal and/or appear to have no potential anti-competitive implications. In this case, sections 1, 1A, and 10 are not considered relevant to this review.

1. ss.2 and 3 - Industry entry requirements

Cremation may not lawfully be carried out except in a licensed crematorium (s.4). Requirements for the establishment of a crematorium are prescribed by section 2, as follows:

- a) The proposed site, plans and apparatus of the crematorium must be approved by the South Australian Health Commission (SAHC), as provided in s.2(a).
- b) The crematorium, that is, the place for cremation of the remains, must be licensed (s.2(b)). Licences are issued by the Governor (s.3).

There are no other entry requirements. Any location may be licensed. Any person may operate a crematorium. The Act does not set any requirements as to the *operator* (as distinct from the crematorium itself). He or she need not be a fit and proper person, and there is no qualification or educational requirement. There is no fee and no enquiry into financial resources. Prior criminal history or refusal of licence is not relevant. Nor does the legislation restrict the location of the crematorium, or the number of other crematoria in the vicinity. Hence, the industry is potentially open to a wide range of entrants.

Each of the two entry requirements may be considered restrictive of competition, since if they were not prescribed, freedom to establish crematoria would be greater, and the administrative burden in setting one up would be less. They constitute barriers to entry into the market, or supply side restrictions. They must therefore be examined in turn for the magnitude of the restriction, any benefits conferred by it, and alternate ways of securing those benefits.

SAHC Approval Requirement

Background

SAHC receives the application, usually, after the applicant has secured planning and Environmental Protection Authority approvals, which are attached to the application. It also requires plans of the proposed crematorium showing layout, elevation, distances from boundaries, manufacturer's details of the apparatus to be used, and a covering letter. Although the Act does not specify a requirement to do so, in practice the SAHC consults with the EPA to ensure that the proposed crematorium meets environmental protection (emission control) standards.

Of course, although EPA approval is a necessary precondition for the establishment of a crematorium, it is not a sufficient condition for operation. SAHC approval is needed.

In determining whether the application should be approved, the SAHC has regard to all health aspects of the proposal and in particular:

- hygiene and sanitation
- manufacturer's data as to the cremation apparatus and process, including such issues as provision for power failure, safety considerations in respect of hazardous objects such as metal pins and pacemakers, and the like
- if bodies are to be stored, chill storage facilities
- if other related activities are to take place on the premises, such as embalming, the facilities for these, including sanitation.

The Act does not stipulate the health standards to be met, and the SAHC considers each application individually from the point of view of any health concerns. In some cases, it may attach conditions to the approval, for example, it may approve the crematorium but stipulate that bodies shall not be stored on site.

Restriction of competition?

The imposition of health standards can be seen as a restriction on entry into the market of cremation service provision. It prevents the operator from simply setting up business and running the crematorium as he or she sees fit. It imposes, indirectly, fairly onerous requirements that the cremation apparatus be of a certain standard and that certain hygiene and sanitation standards be met.

The Act does not create any formal review process in the event that an application were to be refused approval, or require the SAHC to give reasons. Of course, an applicant may be told the reasons by SAHC as a matter of practice, and if dissatisfied with a decision, he or she could possibly take the matter up with the Ombudsman.

It may be thought that the requirement for approval in the absence of some formal provision in the Act for a right of review constitutes a restriction on competition.

Degree of restriction

Can the restrictions be classified as trivial? As to the requirement to seek approval, this may be considered to constitute only a small restriction on the grounds that:

- the same requirements apply equally to all applicants, so no intending industry entrant is disadvantaged compared with any other.
- the requirement is once-and-for-all. Once the approval is granted, there is no legislative provision for it to be reviewed or revoked (although the operation would still be subject to ordinary health regulation such as under the *Public and Environmental Health Act*). It may compare favourably, for example, with requirements for regular inspection and recertification;
- if the crematorium is designed, or the apparatus built, to comply with existing standards or is modelled on existing installations, health requirements may be complied with incidentally and may impose no separate burden.

The absence of set criteria and of a mechanism of review from the Act may however be considered more than trivial, in that the approving authority could in theory keep an intending entrant out of the industry, notwithstanding that they have obtained development and

environmental approval and perhaps expended considerable funds, without being accountable for this decision.

Costs and benefits

To the extent that there is an appreciable restriction of competition, are there benefits conferred by the restriction?

It can be argued that the requirement of compliance with health standards is amply justified on the basis of the substantial public benefit conferred. One of the objects of the legislation is to prevent any health hazard or public nuisance arising from this form of disposal.

However, the panel considered that it might be possible to secure the same health benefits with greater transparency and accountability on the part of the approving authority. This could promote competition in that intending entrants may be more willing to seek approval if they are aware of what is required and are able to challenge decisions.

Less regulatory alternatives

The panel considered whether there were other ways of ensuring compliance with health standards, apart from requiring case-by-case approval from the SAHC. For example, it might be possible to prescribe outcome standards only, permitting anyone to establish a crematorium, but dealing with non-compliance with standards as detected.

Comment was sought as to whether

- the requirement for advance case-by-case approval of crematoria should remain at all, or should be abolished or replaced with a requirement for compliance with fixed minimum criteria
- approval, if retained, should be by reference to set criteria,
- the criteria, if any, should be included in the legislation
- there should be a right of appeal or review of the decision of the approving authority
- there should be a requirement to give reasons for a refusal to approve.

Licence requirement

Background

As to the requirement for a licence, the Act stipulates that:

- there must be evidence that the owner of the land (or in the case of a cemetery, the person(s) controlling the cemetery) consents to the proposed crematorium
- there must have been local public advertisement of the proposed crematorium licence application
- where the land is not a cemetery, no objection must have been received from the persons entitled to object.

It should be pointed out that at the time of enactment of the legislation (that is, 1891), there was no general legislative scheme regulating development such as now exists by virtue of the

Development Act 1993. It may be argued that licensing by the Governor was designed to serve the same purpose as is now served by development approval. An applicant to establish a new crematorium will have to obtain development approval in any event, regardless of the requirements of the *Cremation Act*. Arguably, the panel considered, this requirement is now a duplication of development approval requirements and is superfluous.

Restriction of competition

While the first two requirements for a licence present no real difficulties, the objection provisions may be considered to be anti-competitive, because:

1) any objection will result in the refusal of a licence. Anyone owning or occupying land within 100 yards of the proposed crematorium may object. He or she need not give any reasons. The objection cannot be challenged or independently reviewed in any way. It amounts to a right of veto. The fact that development and EPA approval may already have been secured, and the same objection overridden in that process, is not relevant.

As a result, it would be possible for local residents to keep a particular proposer out of the market without proper reasons. This is a potential restriction on market entry and thus could be considered anti-competitive; although equally it must be said that the hazard of objection applies equally to all intending entrants.

Degree of restriction

Is the restriction trivial? In that it could have the effect of keeping an entrant out of the industry for no good reason, the panel considered that the restriction is moderate, not because its effects will be widely felt, but rather because of its arbitrary nature.

Costs and benefits

Does this restriction achieve benefits? When originally enacted, the restriction protected occupiers from any adverse effects of having a crematorium near their homes or workplaces. Since then, however, it may be considered to have been overtaken by the *Development Act* and the objection processes there provided. Arguably, it now provides no benefits that are not already achieved by that Act.

2) There is no objection process where the crematorium is to be built in a cemetery. No account is taken of the size of the cemetery or the location within it of the proposed site. Thus, it could be that neighbours who are in close proximity to the site and who could object were the land otherwise used, lose the right of objection because the land is a cemetery.

Restriction of competition

This means that it is easier for owners/managers of a cemetery to obtain a crematorium licence, and hence to enter the market of providing a cremation service, than for other proposers. Clearly, this is an anti-competitive market entry requirement.

Degree of restriction

Is this restriction trivial? While the number of applications for new licences remains small, the restriction is likely to have little effect in practice. However, if there were to be an increase in competition, as desired by NCP, the restriction might be of greater significance.

Costs and benefits

It is not apparent that this restriction secures any benefit other than to intending operators of crematoria within the grounds of a cemetery. The panel considered that the competitive cost of favouring one group of intending entrants over another cannot be justified.

Consumer protection

Although the licence requirements are predominantly directed to establishing that the applicant has secured the use of the land and that adjoining occupiers do not object, there may be a peripheral consumer protection function entailed, if it is considered that the Governor has a discretion to refuse to licence an applicant. If so, he or she might be able to refuse on the ground that the applicant is not a suitable person to operate a crematorium. For example, it is possible that the Governor may have power to decline an application for a licence to a person who has previously been convicted of offences in respect of disposal of a body, concealment of a crime, dishonesty, etc.

One issue which arises is whether, if the present licensing requirement were to be abolished, it would be appropriate and in keeping with competition policy to require some other market entry restriction excluding such persons from operating crematoria.

Administrative burden

It will be observed that in combination, the requirements of both approval and licensing impose a significant administrative burden on the intending operator. He or she must apply, or provide satisfactory information to, the following bodies:

- the land owner or occupier
- the relevant local government authority
- possibly, higher level development bodies
- SAHC
- EPA
- the office of the Attorney-General, for the Governor as licensing authority.

Moreover, he or she does so without knowing the criteria against which the application will be assessed, and further, a single objection, with or without foundation, will suffice to preclude a licence. It is arguable that this burden should be reduced, either by publication of set criteria for approval, by abolition of the objection procedure, or of the requirement for a licence, or otherwise.

It is also possible that the process imposes an unnecessary administrative burden on the agencies involved in the process. For example, the panel wondered if there is any justification for the requirement that objectors notify the Registrar of Births, Deaths and Marriages? He or she has no authority to approve or reject applications and therefore acts solely as a post office. This could be considered inefficient and confusing to objectors. There is no reason why, if the licensing requirement is retained, objections could not go directly to the licensing authority. However, could the development approval processes required under the Development Act and the requirement of SAHC approval sufficiently regulate the matter?

The panel sought comment on the following issues in relation to licensing:

- Should the licence requirement be abolished altogether? Is there any benefit in retaining this objection process in addition to the ordinary development approval and environmental protection requirements?
- If retained, should it be restricted, for example to grounds of objection not already dealt with in the development approval process?
- Should objection be limited to persons who are able to demonstrate some substantial interference with their use and enjoyment of their land?
- Should applicants intending to establish a crematorium in the grounds of a cemetery be treated differently from other applicants?
- If the licence requirement were to be abolished, ought there to be some other safeguard on entry into the industry to protect the public from unscrupulous operators? For example, should there be a requirement that a crematorium operator must be a fit and proper person? Or a more specific prohibition on such operation for persons who have a criminal history or on some other basis?
- If a licence requirement is to be retained, should it be subject to periodic renewal and/or compulsory inspections?

2. s.4 Requirement for cremation in a licensed crematorium

Background

It is not lawful to cremate a body other than in a licensed crematorium (s.4). A crematorium is defined to mean “a place for the cremation of human remains”. Thus, any place may be licensed as a crematorium. The Act does not require that the crematorium be a building, and does not therefore prohibit cremation in any location, so long as the requirements of the foregoing sections have been satisfied in respect of that place. Legality depends upon licence, not upon location.

Restriction of competition?

It does not appear that this requirement restricts competition, since no preference is given to any place over any other place. That is, it does not add anything to the restrictions already imposed by the licensing and approval requirements.

Costs and benefits

There are several important public benefits conferred by this section.

- It prevents secret disposal of bodies. If cremation were not restricted to licensed crematoria, the requirement of certification of cause of death and authorisation of disposal would in practice be readily avoided and the benefits discussed above would be lost.
- It ensures that bodies are cremated under hygienic conditions and protects the public from any health and safety risks which might result from incomplete, delayed or “amateur” cremation.
- It protects the dignity of the deceased and is in keeping with general community preferences about the privacy of cremation.

The panel sought comment on the following questions:

- Does this constitute any appreciable restriction of competition, beyond that imposed by the licensing requirement?
- If so, do the public benefits outweigh the costs to competition?
- Should other less restrictive approaches be considered?

3. s. 5 - Permit Requirement

Before it is lawful to cremate a body, the applicant requires:

- either medical certification that death was due to natural causes, OR
- coroner's authorisation for disposal of remains,
AND
- a cremation permit.

The aim of this requirement is to ensure that the body has been medically examined and that death from natural causes has been established. This prevents the concealment of any suspicious circumstances surrounding the death.

There is a fee of \$28 for a cremation permit. This cost is only a small fraction of the overall cost of disposal of the deceased's body by either burial or cremation, and is considered unlikely to exert any influence over the choice between burial and cremation.

The panel considered that these requirements do not restrict competition, but that even if they did, they are justified by the objects of the Act. It is considered that because of the close link with criminal and coronial issues, this is a matter for the State and should not be deregulated or turned over to private operators. Comment was sought from any person with a contrary view.

4. s.5A - Interstate certification of death

Section 5A provides that where a death occurs outside South Australia, the Registrar requires the certificates of two doctors entitled to certify cause of death in the jurisdiction concerned. This is so, even where the laws in that State permit certification for cremation by one doctor alone. In that case, the Act imposes a higher requirement if the cremation is to take place in SA than would apply if it were to take place in the other State.

Restriction on competition

This could create a restriction on competition in cases where a crematorium serves both South Australia and another State where a single certificate will do. Consumers may be discouraged from selecting the South Australian crematorium due to the inconvenience of obtaining a second medical certificate. Doctors in the other State may be unfamiliar with our requirements and may be reluctant to complete second certificates. This could give crematoria that only require compliance with the law of the place of death a competitive advantage.

Degree of restriction

This restriction could be classed as a moderate restriction on consumer choice of supplier. It tends to discriminate between market participants, in that some can accept the body for

disposal with only one certificate, and some require two. The availability of local crematoria and the cost and inconvenience of transporting remains interstate for disposal probably tend to minimise competition among crematoria in various States. Most likely, it will affect only those crematoria close to State borders, or those in the vicinity of one which is temporarily out of service. To them, however, it could be of some significance, so as to be considered more than trivial.

Costs and benefits

In theory, the benefit gained from this requirement is additional certainty that the death was due to natural causes and that there is no reason why the body should not be cremated. In practice, the protection conferred by requiring the second certificate is virtually none, since the second practitioner is not required to examine or even see the body, and need not have known or treated the deceased. He or she is merely required to certify satisfaction that the deceased died from natural causes. It is sufficient if the ground upon which they are satisfied is the certificate of the first doctor. Thus, no additional benefit is gained by requiring a second certificate.

The panel sought comment on the following:

- Is the restriction of competition trivial, moderate or major?
- Is any appreciable benefit gained from requiring the second certificate where the law of the place of death does not?
- Ought special provision to be made, for example by seeking a dispensation from the Registrar?
- Should the requirements of the place of death, if within Australia, be accepted as adequate?

5. s.6 - Power of objection by next-of-kin

Background

Section 6 provides that cremation is not lawful unless:

- the deceased has left an attested memorandum directing cremation, OR
- the next-of-kin and the executor(s) consent.

This may mean that there are some situations where an executor, or one or more family members, would wish the body to be cremated, but because a close relative objects, cremation cannot proceed. In that case, burial is compulsory.

Restriction of competition

In competition terms, this could be seen as a legislative bias toward burial, in that a class of persons may veto cremation who may not veto burial. In effect, the Act has a "default" setting to burial. Conceivably, this could be said to restrict competition in the sense that it imposes a "demand side" restriction on who may purchase cremation services, or gives vendors of burial services an advantage over vendors of cremation services.

Degree of restriction

Is this restriction trivial? It will only arise in occasional individual cases. Its occurrence in any one case has no across-the-board implications for the market. It may be considered to be of no significance in broad market terms.

Costs and benefits

The benefits conferred by this restriction might be:

- It ensures that the wishes of close family members, particularly the surviving spouse and children, will be respected.
- It provides a decision rule which prevents the need for disputing family members to litigate the matter, and
- burial leaves open the option of exhumation should there be issues of criminal investigation, and is thus a more conservative option.

The panel requested comment on the following:

- Does this requirement appreciably restrict competition?
- Should the requirement for the consent of relatives be retained in view of the benefits?

6. s.7 - Interested persons not to give certificates

This section prevents persons who have any pecuniary interest in the death from giving the certificates of death. The rationale for this is obvious and is in keeping with the objects of the legislation. It is not considered to have any competition implications.

7. s.8 - Authorities may forbid cremation

Section 8 provides that the Attorney-General, a coroner or a magistrate may forbid cremation, either absolutely or until organs have been removed to safe-keeping. This power enables prompt action to prevent the disposal of a body, even where a permit has been obtained. There must be reasonable cause.

This section prevents the destruction of evidence and is in keeping with the general requirement for a permit to cremate. It is a safeguard against the situation where a permit has been granted by the Registrar in ignorance of some circumstance or on an inaccurate certificate, and is justified on the same basis as the general requirement for a permit.

Because of the requirement of reasonable cause, this section could not be used to stop all cremations, or to arbitrarily and permanently stop the operation of particular crematoria. (This issue was adverted to by the House of Assembly at the debate of the Bill). It could, potentially, stop the operation of a given crematorium for a time if there was suspicion about its activities in general, but it is submitted that this is desirable in the public interest. Ordinary appeal or judicial review remedies would be open.

Comment was sought as to whether any restriction of competition is thought to arise from this section.

8. s. 9 - Mode of signifying consent of cemetery authorities

This section appears to relate to the requirements of section 3, in which the permission of a cemetery authority is required before a crematorium can be established in the grounds. This is not considered to restrict competition, but unless it also serves some other purpose, would appear to be unnecessary if the licence requirements of s.3 were to be abolished.

Comment was sought as to whether there is a basis to retain this section.

Regulations

The Panel's preliminary view was that with two exceptions, the Regulations do not infringe competition policy and require no change from a competition point of view. It seeks comment from persons holding any different view.

The exceptions are:

Regulation 8 refers to "a funeral director arranging the cremation" as the person who must give the identification form to the person in charge of the crematorium. Although the legislation does not stipulate that cremations may only be arranged by funeral directors, the argument is open that this Regulation implies that this is the case. Some crematoria in practice decline to accept identification forms from other persons, apparently on this basis. If the regulations are so interpreted, this could be considered a restriction on competition, in that persons other than funeral directors will not be able to make cremation arrangements direct with crematoria, should they wish to do this.

Restriction on competition

Such a restriction would mean that persons who, for whatever reasons, would prefer to make their own direct arrangements for the cremation of a relative's remains without engaging the services of a funeral director are unable to do so. Given that there is no such restriction on who may arrange a burial, and that it is lawful to arrange a burial without engaging the services of a funeral director, this restriction could be considered to favour the supplier of burial services over the supplier of a cremation service, and so restrict competition. It may also be considered to be protectionist in that it gives an advantage to funeral directors as compared with those who would wish to make their own arrangements for a funeral.

Degree of restriction

This situation is perhaps likely to be unusual and it could be argued that the restriction is trivial in terms of the number of persons who would wish to purchase this service.

However, it may be that to arrange the cremation in their own way may be of emotional or religious significance to the family, especially if they had agreed with the deceased to do so. Moreover, particularly where family or friends are able to perform relevant services (such as preparation of the body, making the coffin, etc) at no cost, there could be a significant cost difference between cremations arranged through funeral directors and those arranged directly. Further, the lack of demand for such services at present may result from the absence of a demand for such services in the community, or it may reflect the unavailability of such

services at present. One cannot say. For these reasons, it could be argued that the restriction is moderate.

Costs and benefits

The Panel could not readily identify any benefits commensurate with the competitive costs of this restriction and sought comment on the following:

- Assuming that the legislation does not at present permit persons other than funeral directors to arrange cremations, does this constitute a restriction on competition?
- If so, is it trivial, moderate or major?
- If there is a restriction on competition which is not trivial, what public benefits does it confer?
- If there are such benefits, could they be obtained by the use of a less regulatory alternative?

Regulation 9 sets out the requirements on funeral directors as to the construction of coffins to be used in cremation. They may only be made of timber suitable for combustion in the course of cremation, or other materials approved by the SAHC. There are also specifications as to thickness, robustness, lining, name-plating etc. These rules are directed to safety, hygiene, environmental protection (emission control) and identification considerations.

Restriction of competition

This regulation could be considered to restrict competition in relation to manufacture of coffins, but it would appear to be relatively easy of compliance, and to leave open the use of a range of materials and styles. It is always open to a manufacturer seeking to use novel materials to apply for permission to do so.

The argument is also open that because this regulation refers only to "funeral directors", other persons arranging a funeral (were there such) would not be bound by these requirements. The regulations define "funeral director" to mean "a person who carries on a business consisting of or including arranging for the cremation of human remains". Thus, one who does not carry on a business, but is only, for example, arranging one particular burial, could claim to be exempt from this requirement. To this extent, this regulation could be considered to restrict competition.

Degree of restriction

The panel considered that as to the requirement that coffins meet specifications, the restriction of competition created by this Regulation, if any, is trivial. To the extent that there may be minor anti-competitive effects, these rules are considered justified on health and environmental grounds. Since in the ordinary course, complying materials can be used without reference to SAHC, the requirement is not onerous and self-regulation will be the norm. It will only be in the case of a novel material that application to SAHC will be needed. Since one cannot prescribe in advance for novel materials, it is submitted that this requirement is reasonable.

The discrimination between funeral directors and others, however, may create a moderate restriction. It is difficult to assess the degree of restriction as it is not known how many

persons would choose to dispense with the services of a funeral director in arranging a cremation, or would choose to provide a coffin rather than purchase one, if permitted to do so.

Costs and benefits

It is arguable that the specifications for coffins are justified by the health, environmental, safety and dignity benefits conferred. However, is there any reason why these specifications should not be equally applicable to all cremations? The panel requested comment:

- Does this Regulation significantly restrict competition? In what way?
- If so, is the restriction justified by the health or other benefits conferred?

In other respects the panel considered that the Regulations had no anti-competitive effects.

Consultation

The panel advertised the review in the press and sent copies of the Consultation Draft to over 100 identified stakeholders. A consultation period of six weeks was allowed. Eight persons contacted the panel seeking copies of the Draft. The next chapter analyses the submissions received.

Chapter 6 - Outcome of Consultation

Eleven submissions were received. Appendix IV lists the persons or organisations making submissions. Of the 11, however, 4 were substantially the same (two of these simply stating that they endorsed the submission of another party), one simply indicated general agreement with the Draft, and one commented only on one aspect of the Draft. There was not, therefore, a great diversity of comment on this review.

Analysis of Submissions

Industry entry requirements

It was this issue which attracted the most comment.

a) SAHC Approval

Generally, submitters considered that the requirement for case-by-case approval of applications for crematoria should remain (7 in favour, one against, and 3 submissions not commenting on this issue). There was little discussion of the rationale for this preference.

The panel notes that applications for approval for new crematoria are not very numerous and that although case-by-case approval is a more regulatory approach, given the small size of the industry, the restriction may be trivial. There is also the possibility that the SAHC could play a consultative or advisory role which may be of help to applicants. For this reason, the Panel considered that the case-by-case approval requirement should remain. (One submission suggested that approval could be carried out by other agencies than the SAHC, such as by local government environmental health officers, but another submission appeared to consider that this would be burdensome on the resources of councils. This did not appear to be a competition issue and was not raised by the draft.)

However, there was a strong view among submitters that the criteria for approval should be made known to applicants in advance (8 in favour and 3 not commenting). Submitters referred to the desirability of transparency. The panel considers that it is in the interests of competition that persons contemplating industry entry should be able readily to find out the requirements so as to form an estimate of likely costs and make an informed choice as to whether to proceed. If they decide to proceed, the information will assist them to prepare an application with maximum prospect of success. No submission mentioned any negative consequences of greater transparency.

There was little support, however, for the inclusion of the criteria in the legislation (1 in favour, 2 against, 8 not commenting). The panel considered that it would be equally effective if the criteria were made publicly available in some other way, such as on request to the SAHC. In this way, the requirements could be readily varied and updated as technology and industry best practice change. This would also mean that there may be some flexibility to negotiate with SAHC in the event of a difference of opinion between an applicant and SAHC as to best or adequate practice. Some submissions (4) considered that in setting standards SAHC should have regard to national guidelines prepared by the Australian Cemeteries and

Crematoria Association. There was no discussion as to how this would enhance competition, however, and the Panel took this to be an incidental suggestion not related to this review.

All submitters who addressed the issue (7) favoured a **right of appeal** against the refusal of an application for approval. One submission argued that this would both add to transparency and possibly influence the applicant in favour of the industry, on the basis that they were seen to be given a fair opportunity to enter. The panel agreed that a right to appeal if refused approval could enhance competition.

Only one submission made any specific suggestion about the appeal process. One option would be an internal review by the SAHC. Another would be an appeal to a court, such as the Administrative and Disciplinary Division of the District Court, which already deals with many appeals against government decisions, particularly in the field of entry into various industries or occupations. This was suggested by the submission which dealt with this issue. It is important that any appeal should be reasonably accessible and not involve any unduly burdensome process. Generally, this Court is able to offer speedy hearings, and can depart from the strict rules of evidence and proceed without undue formality.

Another option would be a two-stage process, consisting of a right to internal review of the decision first, followed by a right of appeal to the ADD.

One submission noted that **reasons for refusal** would be desirable, a view with which the panel agrees, but nine did not comment on this point. One suggested that the reason given should be "did not meet criteria". The panel considers that it would be necessary to identify which criteria were not met.

b) **Licensing Requirement**

The panel had raised for discussion the s.3 requirements of the Act, which provide, in effect, a rudimentary planning process, giving neighbours an opportunity to object to a crematorium within a 100 yard radius, and requiring proof of the owner's consent. Most submissions which commented on this advocated the **abolition** of this requirement, as it appears to duplicate the development process (5 in favour, 2 against, and 4 not commenting).

Those in favour believed that the same purpose was already served by the development application and EPA approval. Those against argued that this was not necessarily so, as development approval may not be consistent among all councils, depending on whether the development is treated as Category 1, 2 or 3. There was a concern that the right to object may be lost if the development is assigned to Category 1.

The panel did not consider this to be a significant risk. The *Environment Protection Act*, Schedule 1, provides that the cremation of bodies is a 'prescribed activity of environmental significance'. This means that it cannot be assigned to Category 1 under the *Development Act* (s.38(2a)). It can only be either Category 2 or 3.

If it is assigned to Category 2, there must be notification to every adjacent owner. Such persons may make representations in writing as to the granting of consent, and may be permitted to appear personally in support of these representations. While this does not give

the objector the absolute right of veto given by the present *Cremation Act*, it ensures that the merits of the objection are considered by the relevant authority. The present right of veto may be considered anti-competitive, particularly as no grounds need be given and no review is possible.

If the development is assigned to Category 3, there must be notification to the public as well as to any owner or occupier directly affected. Such a person has again a right to make submissions, and also to appeal the authority's decision. (One submission asserted that no right of review/appeal existed in relation to Category 3 developments, but this appears contrary to the provisions of s.38 of the *Development Act*).

The panel was inclined to the view that the *Development Act* provided adequate protection for the interests of affected landowners, and that there was no need for any planning process to be included in the *Cremation Act*. It is true to say that there may be differences between council areas as to whether a crematorium development is assigned to Category 2 or 3. However, no clear argument was put to the panel as to why this was of concern. Some councils may be more open to this type of development than others. It may depend on the types of land use and housing density in the area. Differences between development plans for different council areas are to be expected. There were not considered to be any anti-competitive effects of regional diversity.

Of greater concern was the suggestion in one submission that a council may have a conflict of interest, for example in a case where it already operates a crematorium or cemetery in the area and wishes to maintain a monopoly. There is provision in the *Development Act* for the Minister to make the Development Assessment Commission the relevant authority where a conflict of interest arises because of a council's previously stated position on a development, but not where the conflict arises in other ways. There is provision for the Regulations to prescribe that a particular class of development not be dealt with by a council, but this may not cover the situation of a particular development only. It may be that some special provision is needed in the Act or Regulations to deal with this issue.

Of course, this problem exists under the present legislation and would not be influenced either by the retention or repeal of s.3. No submission referred to it as having been a problem in any development application to date, however.

One submission pointed out that under the *Development Act*, it was possible to apply for development approval without control of the land, or approval of the landowner. The panel thought that this was unlikely to be a problem in practice, as there appeared little risk that a person would apply to set up a crematorium on land over which they had no legal right of control, except possibly with the intention of acquiring the land for that purpose. Frivolous applications would seem unlikely. Also, before assessing the merits of a development application, the relevant authority must be satisfied that the applicant has a reasonable prospect of undertaking the development. If not, there will be no approval.

One submission also suggested that if section 3 were repealed and the planning aspect left to the relevant development authority, councils would be required to resource their health sector to deal with this. The panel did not understand this submission and was inclined to treat it as a misunderstanding. Since, under the *Development Act*, development approval is generally

required at present, there should be no change in the workload or resource needs of a council as a result of the repeal.

Alternate Licensing Proposals

Most commentators agreed that the present s.3 requirements were otiose and burdensome, but many argued instead that there should be some limitations as to the persons who should be permitted to operate crematoria, and that this was best achieved by a different type of licensing provision.

Four submissions advocated a threefold licensing process, based on the concepts of liquor licensing, in which licences should be required for:

- the use of premises as a crematorium
- an individual taking responsibility for the organisation
- the operator of the crematorium plant.

It was further suggested that these licences be subject to regular three- or five-yearly review. Some suggested random inspections as well. Unfortunately, none of these submissions analysed this suggestion from a competition point of view. Clearly, such a regime would be much more regulatory than the present one. Possibly, it would also be burdensome in so far as it duplicates the present effects of public health legislation.

It would seem that these proposals were designed to address existing concerns in industry which were not disclosed to the Panel, and/or perhaps, to impose a stringent 'fit and proper person' test on an ongoing basis. Without the benefit of detailed argument to support them, the Panel considered that they were contrary to the deregulatory and simplificatory ethos of competition policy, and would add a considerable administrative burden both for industry and government. It may be that they have merits, but if so, these fall outside the scope of this review.

One submission was concerned at the administrative burden imposed by the licensing requirement, and suggested that this could be dealt with by making this a local government function. That is, as well as approving the development, the council should grant the permission to operate the crematorium. (It may be to this question that the submission warning of an increased demand on the resources of councils was directed.) This submission also suggested that councils undertake periodic reviews of the operation of crematoria, so as to protect the public. There was concern that if the licence requirement is simply abolished, a level of consumer protection may be lost.

Finally, three submissions referred to the need for industry entrants to be **fit and proper persons**. Again, little detail was given as to criteria. One submission suggested that they required "impeccable credentials", but did not suggest what these should be. No submission discussed how such a test would work in practice.

The panel considered whether the licence requirement could be adapted to deal with the question of whether the applicant is a fit and proper person to operate a crematorium. It concluded, on balance, that this would not be effective. A person may appear fit and proper at the time of application, but later prove not to be so. Also, there is no control over who may

operate a crematorium after the date of issue of the licence. It is the crematorium itself, not the applicant, which is licensed by the Governor (s.2(b)). Thus, an initial requirement that an applicant for a licence be a fit and proper person may not work in practice.

Another possibility would be an ongoing requirement that an operator be 'fit and proper'. Several submitters supported the concept of some ongoing oversight of the fitness of industry operators. However, an ongoing test of fitness would necessarily entail a power to continue to require information, and to veto the operation or continued operation of a crematorium by a particular person. No such powers exist at present. While these powers might well be desirable in the interests of high industry standards, the panel did not consider that the introduction of new and substantially more regulatory processes was the province of a competition review. For this reason, the panel did not consider that it could recommend such a mechanism.

Where a person commits a criminal offence in the course of operating a crematorium, this will be a matter for police. Where the operation of the crematorium poses a public health risk, this can be addressed by the health authority under the Public and Environmental Health Act. Where there is reason for wishing to prevent a particular cremation, the Attorney-General, the coroner or a Magistrate may forbid this under s.8. The panel was unable to justify the imposition of a novel fitness requirement in addition to these powers, as part of a competition review.

Conclusions as to industry entry requirements

The panel considered that there was general support for

- the retention of a case-by-case assessment of applications by the SAHC, on the basis that benefits significantly outweighed costs,
- disclosure of the criteria against which applications are assessed,
- a right to reasons for refusal,
- a right to appeal against refusal, and
- the repeal of the requirements of s.3.

A complex licensing system, which would require ongoing monitoring and periodic reviews was considered by the panel to impose further administrative burdens. To the extent that there may be concerns within industry as to the general conduct of crematorium operators, these may be addressed by any of several approaches, such as an industry Code of Practice, a complaints mechanism, quality assurance processes, membership of official bodies and the like. It was not considered to be the brief of the competition review to attempt to address these issues.

Section 4 - Requirement for cremation in a licensed crematorium

Only one submission advocated any change to section 4. This submission contended that there was no appreciable restriction of competition, but that less regulatory approaches should nevertheless be considered. However, it did not propose any such approaches. Given the general agreement that this section constitutes no appreciable restriction on competition, and

is justified on health and crime prevention grounds, the panel considered that it should be retained.

Section 5 - Requirement for a cremation permit

There was no comment on this section and the panel accordingly adhered to the views expressed in the Consultation Draft, that this section should be retained unchanged.

Section 5A - Interstate certification of death

There was general support for the acceptance of such certification as would be acceptable in the State or Territory where the death occurred (7 in favour, 1 against, 3 not commenting). The submission which did not agree with this suggestion relied on the fact that several other States do in fact require a second certificate for cremation. However, this would not seem to be a reason not to accept their requirements in the event of an application to cremate the body of a person who had died interstate. No other argument was put forward.

The panel noted that differences in permit requirements could have minor anti-competitive effects for those crematoria close to State borders which might be able to provide a cremation service in both jurisdictions. It therefore recommends that the Registrar be permitted to accept such certification of death as would be acceptable under the laws of the place of death.

Section 6 - Power of objection by next of kin

Only two submissions commented on this section and both agreed with the panel that there was no appreciable restriction of competition and that the section should be retained.

Section 7 - Interested persons not to give certificates

Those submissions which commented on this section saw no anti-competitive effects and favoured its retention.

Section 8 - Authorities may forbid cremation

No submission advocated any change to this section. One submission argued that it was meaningless, but did not appear to advocate either repeal or any change. That submission did not refer to any anti-competitive effects of the section. The panel agrees that there are no anti-competitive effects and that there is ample justification for retaining this section.

Section 9 - Mode of signifying consent of cemetery authorities

This section relates to the consents needed for a licence under s. 3. It was the view of the panel that if the planning requirements of s. 3 were abolished, then s. 9 should likewise be repealed, as it would serve no purpose. One submission agreed that it would stand or fall with the corresponding requirements of s. 3. Five suggested that it should be retained, but did not disagree that much of s. 3 is now obsolete, and did not offer any separate rationale for its retention. One submission expressed concern that under the *Development Act* there was no

requirement to establish the landowner's consent, and therefore that s. 9 should be retained until this problem is overcome.

As discussed above, the panel thought it unlikely that applicants would seek development approval to construct a crematorium on land over which they had no control or expectation of control. Were they to do so, approval would probably not be granted. The panel considered that s.9 is merely an ancillary provision, dealing with how the consent of cemetery authorities may be signified, when an application is made under s. 3 to licence a crematorium in a cemetery. If, as the panel proposes, s. 3 should be limited to a licence establishing approval and fitness, this requirement is unnecessary and should be repealed.

Regulations

Regulation 8

Five submissions argued that while this may constitute a restriction on competition, it is justified on health, or health and dignity, grounds. One of these mentioned the need for safeguards if the restriction were to be relaxed, but it was not clear whether the reference was to health or other issues. One submission simply argued that it was trivial.

Two submissions argued that the Regulation is not being interpreted in the industry as the panel had suggested, and that private individuals in fact can and do arrange cremations without using funeral directors. One of these argued that this option should remain for those who wished to use it.

One submission argued that consumers should be free to choose not to use the services of a funeral director, should they so wish, and that it was in the public interest that this option be well known. This submission suggested that there could be greater competition for a range of services within the industry as a result.

Two submissions did not comment on this issue.

The panel agrees that there may be health and dignity issues in permitting private individuals to arrange cremations directly, without the use of a funeral director. The main issues would seem to be storage and transport of the body. However, it was inclined to the view that where private individuals were in a position to address these concerns, they should be at liberty to do so. If, as two submissions reported, this already occurs, then this tends to suggest that those issues can be satisfactorily addressed. One solution would be to provide that a crematorium may in its discretion accept a body for cremation on the authority of the next of kin upon presentation of a cremation permit. In the exercise of its discretion, it would need to be satisfied that adequate arrangements could be made for storage and transport.

This would also allow crematorium operators to compete with funeral directors and with other operators, if they chose, in providing transport and storage facilities directly to the market.

Regulation 9

Some submissions made reference to this regulation, but apparently intended to refer to Regulation 8. One submission expressed support for the retention of Regulation 9. One

indicated that the same requirements should apply to everyone, not just funeral directors. Otherwise no comment was received. The panel accordingly adheres to its view that this requirement should apply to anyone and not only to a funeral director.

Summary

Having regard to all submissions, the panel considered that there was sufficient evidence that some aspects of the legislation may operate to restrict or reduce competition, and that some of these restrictions cannot be justified. They therefore tend to conflict with National Competition Policy. The panel's recommendations for legislative change are summarized in the next chapter.

Chapter 7 - Summary of Recommendations

The panel was satisfied that the legislation in its present form has some unjustifiable anti-competitive effects. These are, principally, the licence requirement, the non-recognition of interstate certificates for the purpose of issue of a cremation permit, and the (possible) restriction on direct contracts between purchasers and crematoria without the intermediation of funeral directors.

Other restrictions on competition, such as the requirement for case-by-case health approval and the limitation of cremation to licensed crematoria, were considered amply justified in view of the public health benefits conferred, and the relatively minor degree of restriction imposed.

The panel considers that the legislation should be amended as follows:-

1. Section 2(a) should be amended to provide:
 - that an enquirer is entitled to a copy of the criteria against which an application would be assessed, and
 - a right of appeal against the refusal of approval, perhaps to the Administrative and Disciplinary Division of the District Court. There should be a right in the appellant to require reasons for refusal of approval.
2. Section 2(b) should be amended to refer to an 'approved' crematorium.
3. Section 3 should be repealed.
4. Section 5A should be amended to provide that in the case of death in another part of the Commonwealth, the Registrar may accept such certification as would be accepted for the issue of a cremation permit in the place of death.
5. Section 9 should be repealed.
6. Regulation 8 should be amended to make clear that a crematorium can accept a body for cremation, together with the relevant documentation, from any person and not only from funeral directors.
7. Regulation 9 should be amended to make clear that the requirements for coffin materials apply to all cremations.

APPENDIX I

Terms of Reference - Competition Review of Cremation Act, 1891

Preamble

Under the Competition Principles Agreement (“the Agreement”), the Government of South Australia is required to review designated legislation for compliance with national competition policy.

For this purpose, the *Cremation Act, 1891*, and associated *Cremation Regulations, 1994*, (together called “the legislation”) are referred to the Review Panel for evaluation and report. The Review is to consider the legislation in light of the guiding principle set out in Clause 5 of the Agreement:

- “5.(1)The guiding Principle is that legislation ... 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.”

Review Panel

Ms Val Edyvean
Registrar of Births Deaths and Marriages
Office of Business and Consumer Affairs

Ms Catherine Follett
Business, Competition and Industrial Unit
Crown Solicitor’s Office

Ms Katherine O’Neill
Policy and Legislation Section
Attorney-General’s Department

Objectives of the Review

The Review Panel is to report on the legislation in its present form and any appropriate alternative arrangements for regulation, if any such regulation can be justified, taking into account the following objectives:

1. Legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches.
2. In assessing the benefits of regulation, regard should be had, where relevant, to
 - effects on the environment,

- social welfare and equity,
 - occupational health and safety,
 - economic and regional development,
 - consumer interests,
 - the competitiveness of business including small business, and
 - efficient resource allocation.
3. Compliance costs and the paperwork burden on small business should be minimised.

Issues to be addressed

In making assessments in relation to the objectives of the Review, the Panel is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The Review should:

- Clarify the objectives of the legislation and the social or other problems it addresses. This will include identification of the public benefits of the Act and an assessment of the importance of these objectives to the community.
- Identify whether, and to what extent, the legislation restricts competition. This will include:
 - describing the nature of each restriction (eg barrier to market entry, restriction on competitive conduct within a market, discrimination between market participants);
 - identifying the market which is affected by each restriction;
 - providing an initial categorisation of each restriction (ie trivial, intermediate or serious).
- Analyse and describe the likely effects of the restrictions on competition in the relevant markets, and on the economy generally, including:
 - identifying the practical effects of each restriction on the market
 - assigning a weighting to the effect of each restriction on the market
 - assessing the relative importance of each restriction in a particular market to the economy as a whole.
- Assess and balance the costs and benefits of the restriction.
- Where restriction is justifiable on the basis of public benefit, consider whether there are practical alternative means of achieving the objects of the legislation, including non-legislative approaches.
- Consider whether any licensing, reporting or other administrative procedures are unnecessary or impose an unwarranted burden on any person.
- Determine a preferred option for regulation, if any.

Consultation

The Review will be advertised statewide, for the purpose of soliciting submissions from interested members of the public. The Panel will also identify key interest groups likely to have a particular interest in the Review and will provide a copy of the draft report to those groups, seeking comments. The draft report will be revised in light of all submissions received.

Report

The Panel will submit a report to the Attorney-General comprising

- the Terms of Reference for the review
- a list of the key interest groups to whom the draft report was sent
- a list of the persons and groups from whom submissions were received
- an analysis of the legislation in accordance with these Terms of Reference
- recommendations.