



Australian  
Competition &  
Consumer  
Commission

19 January 2011

## Statement of Issues — InvoCare Limited - proposed acquisition of Bledisloe Group Holdings Pty Ltd

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (**ACCC**) in relation to the proposed acquisition of Bledisloe Group Holdings Pty Ltd (**Bledisloe**) by InvoCare Limited (**InvoCare**) (**proposed acquisition**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au)) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 4 February 2011 and anticipates making a final decision on 3 March 2011. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at [www.accc.gov.au/mergersregister](http://www.accc.gov.au/mergersregister).
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

### Background

5. On 19 November 2010, the ACCC commenced a public review of the proposed acquisition after receiving a submission from InvoCare seeking clearance from the ACCC for the proposed acquisition.

## The parties

### InvoCare Limited

6. InvoCare owns and operates funeral homes, cemeteries and crematoria in Australia and Singapore. It is the largest provider of funeral services and the largest operator of private cemeteries and crematoria in Australia with 178 funeral homes and 12 cemeteries and crematoria nationally. InvoCare is one of Australia's largest suppliers of pre-paid funeral plans.
7. **Table 1** provides a summary of InvoCare's funeral directing brands, cemetery and crematoria operations in Australia.

**Table 1** – Summary of InvoCare's operations in Australia

State	Funeral directing brands		Cemetery and crematoria
NSW	White Lady Funerals Simplicity Funerals Economy Funerals Guardian Funerals W.N. Bull Funerals Ann Wilson Funerals Liberty Funerals Universal Chung Wah Funerals	David Lloyd Funerals Kevin Geaghan Funerals Twin Towns Funeral Service William Riley & Son Allen Drew Funerals Casino Funerals Byron District Funerals	Rookwood Memorial Gardens and Crematorium Northern Suburbs Memorial Gardens & Crematorium Castlebrook Memorial Park Forest Lawn Memorial Park Pinegrove Memorial Park Tweed Heads Memorial Gardens Newcastle Memorial Park Lakeside Memorial Park
QLD	White Lady Funerals Simplicity Funerals George Hartnett Funerals Value Funerals	J & H Reed / O. Bottcher & Son Cannon & Cripps Funerals Drysdale Funerals Sommerville Funerals	Albany Creek Memorial Park Mt Thompson Memorial Gardens Allambe Memorial Park
VIC	White Lady Funerals Simplicity Funerals Le Pine Funerals	George Richardson Funerals Provinciale Servizio Funebre	Nil
SA	White Lady Funerals Simplicity Funerals	Blackwell Funerals Value Funerals	Nil
WA	Simplicity Funerals Oakwood Funeral Homes Chipper Funerals	Purslowe Funeral Homes Christian Funerals Mareena Purslowe & Associates	Nil
ACT	Tobin Brothers Funerals		Nil

8. InvoCare has made a number of acquisitions of funeral directing businesses in the last two years including the acquisition of W.N Bull Funerals (NSW), Chipper

Pty Ltd (WA), Liberty Funerals (NSW), Southern Cross Funerals (VIC) and Ann Wilson Funerals (NSW).

### **Bledisloe Group Holdings Pty Ltd**

9. Bledisloe operates a funeral directing business in Australia and New Zealand, with 52 funeral homes in total. It also owns and operates three cemeteries and crematoria in Queensland. It also supplies pre-paid funeral plans to customers.
10. **Table 2** provides a summary of Bledisloe's funeral directing brands, cemetery and crematoria operations in Australia.

**Table 2 – Summary of Bledisloe's operations in Australia**

State	Funeral directing brands		Cemetery and crematoria
NSW	Gregory and Carr	Boland Funerals	Nil
QLD	Metropolitan Funerals Beaudesert Funerals Hiram Philip Funerals	Gatton Funerals City Funeral Services Mackay Funerals Sarina Funerals Serenity Funerals	Great Southern Garden of Remembrance, Carbrook Great Northern Garden of Remembrance, Deception Bay Toowoomba Garden of Remembrance Cemetery
VIC	WD Rose Funerals Joseph Allison Funerals	Giannarelli Funerals	Nil
TAS	Turnbull Family Funerals		Nil

### **The proposed transaction**

11. InvoCare is proposing to acquire 100% of the shares in Bledisloe.

### **Other industry participants**

#### **Tobin Brothers Pty Ltd**

12. Tobin Brothers Pty Ltd (**Tobin Brothers**) is a funeral directing business established in 1934. It is currently the largest supplier of funeral directing services in the Melbourne metropolitan area. It operates from 21 locations in Melbourne and one funeral home in Echuca, trading under the brand names of *Tobin Brothers Funerals*, *Abbey Funerals*, *Frances Tobin Funerals* and *Herbert King Funerals*. Tobin Brothers is also a co-owner of the coffin and casket manufacturing businesses Amalgamated Casket Company (**ACC**).
13. Tobin Brothers previously operated funeral directing businesses in the ACT and South Australia. These businesses have been sold but the 'Tobin Brothers' name has been retained by the new owners in these areas.

### **John Allison Pty Ltd**

14. John Allison Pty Ltd (**John Allison**) is a funeral directing business, established in 1860. It operates funeral directing businesses in Victoria, New South Wales and the ACT, trading under the brand names of *John Allison/ Monkhouse Funerals* (Melbourne), *TJ Andrews* (Sydney), *M.H Rourke Funerals* (Canberra), *G. Bevan Funerals* and *Macleay Funerals* (regional NSW).
15. John Allison operates from around 20 locations nationally, including 10 in Melbourne, 6 in Sydney and 5 in regional NSW. John Allison also owns Norwood Crematorium and Memorial Gardens in the ACT

### **David Walker Group Pty Ltd**

16. David Walker Group Pty Ltd (**David Walker**) is a funeral directing business, established in 1995. It operates funeral directing businesses in the Sydney metropolitan area and regional NSW, trading under the brand names of *Joseph Medcalf Funeral Services*, *Albert & Meyer Funerals*, *Max Perram Funeral Services*, *No Funeral No Flowers No Fuss*, *James Murray Funeral Directors* and *Bernard Laverty*. It operates from 10 locations in New South Wales.

### **KM Smith Funerals Pty Ltd**

17. KM Smith Funerals (**KM Smith**) is a funeral directing business operating in the greater Brisbane and Ipswich metropolitan area, established in 1874. It operates from six locations within this area and has an interest in Centenary Memorial Gardens in south western Brisbane in partnership with Alex Gow Funerals Pty Ltd and a third-party.

## **Industry background**

### **Funeral directing services**

18. Funeral directors arrange funeral services on behalf of the family members and/or other associates of a deceased person. The services provided typically include collecting the deceased body from place of death, preparing the deceased, procuring coffins, flowers and death certificates, organising funeral and death notices and arranging a burial or cremation. These services, including the charges associated with burial or cremation, will typically be charged to the customer<sup>1</sup> by the funeral director.
19. A funeral service may be purchased from a funeral director on an 'at needs' basis (typically by a family member of the deceased person) or through a pre-paid funeral plan (prior to death). Pre-paid funeral plans are commonly offered by third parties, such as Funeral Plan Management, but marketed and sold by funeral directors who act as an intermediary. The legal requirements associated with managing pre-paid funeral plans may be considered too onerous for many funeral

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<sup>1</sup> Throughout this document 'customer' refers to the commissioner of a funeral, typically the family or an associate of the deceased, or for a pre-paid funeral the customer may make arrangements for their own funeral service.

directors to manage these plans internally. The pre-paid funeral, managed by a third party provider, would subsequently be conducted by the funeral directing company that marketed the pre-paid plan. InvoCare both markets and manages its own pre-paid funerals which are subsequently conducted by InvoCare funeral directors. Customers select a funeral plan and then pay up-front (or in instalments for up to three years) for the current price of a funeral, which is guaranteed to be 'inflation proof' and irrespective of rising prices. InvoCare is a significant supplier of prepaid funeral contracts.

20. Customers may also take out funeral insurance which is offered by most large insurance companies. Market inquiries have suggested that the acquisition of pre-paid funerals is becoming increasingly popular.

*Suppliers of funeral directing services*

21. There are an estimated 900 or more funeral directing businesses operating in Australia. The funeral directing industry has traditionally been characterised by family-owned and operated businesses, however industry consolidation during the mid 1990s has seen the emergence of a number of multi-branded firms. In particular, two US based providers, Service Corporation International (**SCI**) and Stewarts Enterprises Inc (**Stewart**), established operations in Australia during this time by acquiring a number of funeral homes, cemeteries and crematoria, typically within major metropolitan areas. SCI and Stewart exited Australia in the early 2000s and their respective businesses were sold to private investors. SCI was sold and renamed InvoCare and Stewarts was sold to Bledisloe. A number of other funeral directing businesses including Tobin Brothers, John Allison and David Walker also offer funeral services under multiple brands.
22. Customers may not be aware of the common ownership of various funeral directing brands and when seeking competitive quotes for funeral services may often in fact be soliciting quotes from branches of the same company. This may be particularly likely in respect of InvoCare due to the high degree of recognition associated with the InvoCare brands such as *Simplicity*, *White Lady* and *Guardian* and the tendency for multiple InvoCare brands to operate within the same metropolitan areas.

*Prior inquiries into the funeral directing industry*

23. A number of state and territory governments have conducted inquiries into the funeral directing industry, which have aimed to address concerns in the industry including the perceived high cost of funerals, a lack of competitiveness in the industry and the need for increased regulation.
24. The NSW and Victorian government inquiries in 2005-06 led to a number of recommendations principally aimed at increasing the transparency of funeral service pricing, for example through itemised billing. The NSW Government also recommended that the NSW Office of Fair Trading provide information to consumers about the cost and make-up of a basic or low cost funeral.

### **Cemetery and crematoria services**

25. In most states and territories in Australia, the ownership and operation of cemeteries, memorial parks and crematoria remains largely the responsibility of local or state government authorities. However there has been some privatisation of cemeteries and crematoria operations in New South Wales, Queensland, South Australia and Tasmania. A number of cemeteries and crematoria are also operated by churches or religious groups.
26. The involvement of private enterprise in cemeteries and crematoria differs from state to state but local authorities typically remain the major operators of cemeteries (although InvoCare owns a significant cemetery in both north Brisbane and the Gold Coast) with private enterprises having much more significant involvement in crematoria.
27. The operation of a cemetery typically involves the supply of burial plots for deceased remains and related products and services such as crypts, monuments and plaques. An increasing number of cemeteries now also offer 'memorialisation services' for cremated remains by the provision of ashes placements and/or cremation plots.
28. In addition to providing a cremation service, crematoria operators may also operate a chapel and memorial gardens which provide for the memorialisation of cremated remains.
29. Market inquiries have suggested that somewhere between 50 to 60% of deceased persons in Australia are cremated each year and that this rate is increasing over time, in part due to a lack of burial space and the consequent premium cost of burials in major metropolitan areas.

### **With/without test**

30. In assessing a merger pursuant to section 50 of the *Competition and Consumer Act 2010*, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-acquisition if the transaction proceeds (the "with" position) to the likely competitive environment if the transaction does not proceed (the "without" position or "counterfactual" position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
31. The ACCC considers that the most likely counterfactual for consideration of the proposed acquisition would involve Bledisloe continuing to operate as an independent competitor to InvoCare, effectively representing a continuation of the status quo.

### **Market inquiries**

32. On 19 November 2010 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other suppliers of funeral directing services, cemeteries, crematoria and memorial

parks, suppliers of essential inputs such as coffins and caskets, industry associations, consumer representative organisations and regulatory bodies.

## **Areas of overlap**

### **Direct horizontal overlap**

33. The operations of InvoCare and Bledisloe overlap in the supply of funeral directing services in the metropolitan areas of Brisbane, Gold Coast, Melbourne and Sydney. In Sydney, there is a significant overlap between InvoCare and Bledisloe's funeral directing services in the North metropolitan area.
34. In Brisbane, the operations of InvoCare and Bledisloe overlap in the supply of cremation services and burial services (including the memorialisation of cremated remains).
35. The merger parties also overlap in the acquisition of coffins, caskets and hearses.

### **Vertical linkages**

36. As the proposed acquisition would increase InvoCare's share of the funeral directing business in areas where InvoCare also operates crematoria and/or cemeteries (being, Sydney, Brisbane and the Gold Coast), the ACCC is also considering competition concerns resulting from the increased vertical integration in those markets.

## **Market definition**

37. The ACCC's preliminary view is that the following product/service markets are relevant to the consideration of the proposed acquisition:
  - the supply of funeral directing services;
  - the supply of cremation services;
  - the supply of burial services (including burials and also the interment of cremated remains);
  - the acquisition of coffins and caskets; and
  - the acquisition of hearses.
38. The ACCC's preliminary view is that the supply of funeral directing services in metropolitan Sydney, Melbourne and Brisbane takes place in local geographic markets which are a subset of the wider metropolitan area. The exact scope of these markets will depend on the characteristics of the metropolitan area including transportation links, the presence of natural barriers to substitution and population density. In the Gold Coast, the ACCC's preliminary view is that there is a single market for the supply of funeral directing services covering the whole of the Gold Coast metropolitan region.

39. In respect of the geographic markets for the supply of burial services and the supply of cremation services, the ACCC's preliminary view is that the markets are also smaller than metropolitan wide markets, with multiple markets within a large metropolitan area.
40. The ACCC's preliminary view is that the geographic market for the acquisition of coffins and caskets, and the geographic market for the acquisition of hearses is the east coast of Australia.

### ***Supply of funeral directing services***

#### **Product dimension**

41. The parties overlap in the supply of funeral directing services to those people who commission funerals (typically the family of deceased persons). The services typically provided are set out above at paragraph 18. From both a demand-side perspective and a supply-side perspective, the provision of funeral direction services is separate from the provision of the independent component services – e.g. advertising, flowers, clergy and death certificates, cremation services and burial services.
42. Well established providers of funeral directing services typically operate from premises equipped with a mortuary, viewing room, hearses, and potentially a chapel. The ACCC notes the presence of low-volume (and sometimes part time) funeral directors which do not operate from a business premises with such facilities but provide a full funeral directing service through short term arrangements with mortuaries and hiring hearses etc. For the purpose of this review the ACCC considers it is appropriate that these part-time and low-volume providers be considered as operating in the same market as high-volume funeral directors with full facilities.

#### **Geographic dimension**

43. The ACCC's preliminary view is that the geographic area of competition between providers of funeral directing services in large, densely populated cities such as Sydney, Melbourne and Brisbane may be narrower than metropolitan wide. This view is supported by submissions from market participants, customer catchment data from funeral directors as well as the tendency of large-scale funeral directors to establish themselves in multiple local areas within each of these metropolitan areas.
44. This view also accords with the purposive approach of the ACCC to market definition, recognising that market definition is a tool to identify and define the boundaries of competitive overlap between the merger parties and the competitive constraints on the merger parties' activities.
45. Customer catchment data indicates that in large metropolitan areas, in approximately two thirds of cases, the deceased's residence was within 10 kilometres of the funeral director's location. In densely populated areas such as



the lower North Shore of Sydney, in the majority of cases, the deceased's residence was within 5 kilometres of the funeral director's location.

46. The ACCC expects that this data reflects the preference for customers to deal with a locally operated funeral director and the importance of distance and consequentially the driving time between the funeral director's location and where the deceased was living. Travelling time is also an important consideration for funeral directors who will transport the deceased from where he or she was living to the funeral home and from the funeral home to where a service is to be held (typically a local church), as it will influence the number of funerals that can be carried out by a funeral director in a day.
47. Market inquiries emphasised the importance of local presence in order for a funeral director to attract customers from a local area, particularly in Sydney and Melbourne. In addition to the importance of travelling time (particularly in the stressful period following a bereavement), market inquiries indicated that customers in these cities were likely to have a strong local identity with their suburb and local area making them less willing to travel for funeral directing services.
48. However, while market inquiries indicated that most customers have a strong preference to use a funeral director in their immediate locality, funeral directors can and do provide funeral directing services beyond the immediate local area. This will often be the case where a particular funeral service has an established history of servicing a family or cultural group but may also occur when a funeral director has been referred to the customer, engages in direct marketing in the suburb or offers a good service or price. The ACCC notes that a number of funeral service providers advertise in a particular suburb despite the fact that they do not have facilities in that area.
49. Given these factors, the ACCC's preliminary view is that the markets for the supply of funeral directing services in large metropolitan areas are likely to be narrower than metropolitan wide, but the markets are unlikely to be as narrow as local suburban specific markets. The ACCC expects that in large metropolitan areas, the appropriate market for the supply of funeral directing services will be somewhere between a single metropolitan market and narrow suburban local markets, depending on the features of the particular area.

#### *Sydney*

50. Having regard to the factors outlined above, the ACCC's preliminary view is that it is appropriate to identify the following markets for funeral directing services in Sydney:
  - a market for the supply of funeral directing services in North metropolitan Sydney including the inner and outer North Shore and Northern Beaches of Sydney. This area is broadly defined by Sydney Harbour to the south, the Pacific Ocean to the east, Kuring-Gai Chase National Park to the north-west and the M2 motorway, and Lane Cove park to the west and south-west, which appear to operate as natural boundaries;

- a market for the supply of funeral directing services in East metropolitan Sydney including the Eastern Suburbs and central Sydney. This area is broadly defined by Sydney Harbour to the north, the Pacific Ocean to the east, Botany Bay to the south and is likely to reach as far as Redfern to the west;
- a market for the supply of funeral directing services in South metropolitan Sydney, south and immediately west of Botany Bay;
- a market for the supply of funeral directing services in West metropolitan Sydney.

51. However, the ACCC recognises that within these markets, in particular within the market for the supply of funeral directing services in North metropolitan Sydney, there are areas where the proposed acquisition would result in particularly high levels of concentration, such as the Northern Beaches<sup>2</sup>, where post acquisition the merged firm would operate nearly all of the principal funeral directing businesses. In assessing the impact of the proposed acquisition, the ACCC is therefore also considering the impact on more localised segments within the markets identified above.
52. A detailed examination of the likely boundaries of the southern and western markets for the supply of funeral directing services have not been made at this point, as the ACCC takes the view that it is unlikely to impact on the competitive analysis set out below.

#### *Melbourne*

53. While market inquiries indicate that there are similarly likely to be separate markets within the Melbourne metropolitan area, a detailed examination of the likely boundaries of each market within Melbourne has not been made at this point, as the ACCC takes the view that it is unlikely to impact on the competitive analysis set out below.

#### *Brisbane*

54. In Brisbane, market inquiries indicated that a number of participants consider they are able to supply customers Brisbane wide, and that travelling times are unlikely to provide a significant barrier. Nevertheless, market inquiries indicate that the majority of customers in Brisbane do use a funeral director located close to where the deceased lived.
55. Given this information, and the points set out above in paragraphs 43-48, the ACCC's preliminary view is that it is appropriate to identify two separate markets for the supply of funeral directing services in Brisbane:
- a market for the supply of funeral directing services in North metropolitan Brisbane encompassing the area north of the Brisbane river and Brisbane CBD extending to Caboolture; and

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<sup>2</sup> Including the area from Mona Vale to Manly excluding inland areas such as Frenchs Forest

- a market for the supply of funeral directing servicers in South metropolitan Brisbane, encompassing the area south of the Brisbane river, extending south-east to Beenleigh and south-west to Ipswich.

56. Whilst the ACCC has identified the above areas as the likely geographic market areas, it recognises that funeral directors located close to these boundary may also provide some competitive constraint, and where relevant has taken this into account in the analysis below.

#### *Gold Coast*

57. Given the smaller metropolitan area of the Gold Coast, and the results of market inquiries which indicated that Gold Coast funeral directing businesses serve customers across the Gold Coast metropolitan area, the ACCC's preliminary view is that there is a single market for the supply of funeral directing services in the Gold Coast, extending from the area north of Tweed Heads to Labrador and as far west as Nerang.

58. The ACCC's views on the definition of the funeral directing services market are preliminary and the ACCC invites comments on the appropriate market definition, particularly on the geographic dimension of the relevant markets.

#### *Supply of cremation services and burial services*

##### Product dimension

59. The ACCC's preliminary view is that there are likely to be separate product markets for the supply of cremation services and the supply of burial services.

60. Market inquiries indicated that from a customer's perspective, cremation and burial services would be unlikely to present a close substitute. Religious and cultural factors limit the ability of a significant number of customers to substitute cremation services with burial services for deceased family members. It also appears that a small but significant increase in the price of cremation services would be unlikely to prompt customers to switch to acquiring burial services, given that burials are typically at least twice the cost of a cremation.

61. Market inquiries suggest that there is unlikely to be substitution by suppliers of cremation services into supplying burial services given the significant difficulties involved in obtaining the requisite land space and the substantial capital costs involved.

62. While an existing cemetery may not face the same hurdles in establishing a crematorium and commencing cremation services as a new entrant, the ACCC's preliminary view is that there is unlikely to be supply side substitution between burial services and cremation services given the significant capital investment and lead time required in establishing a crematorium. A lead time of at least two years may be required to establish a crematorium, even on an existing cemetery site due to development approval processes, potential community objections and environmental regulations.

Geographic dimension

63. The ACCC's preliminary view is that there are likely to be separate geographic markets for the supply of burial services and the supply of cremation services within each of the relevant metropolitan areas.
64. While the only direct overlap in the supply of cremation services and burial services between the parties is in the Brisbane metropolitan area, the ACCC has also considered the impact of the proposed acquisition on the cremation and burial services markets in the Gold Coast and Sydney metropolitan areas given that InvoCare supplies cremation and burial services in these areas and the proposed acquisition would increase the level of vertical integration through the aggregation of the Bledisloe and InvoCare funeral directing businesses.
65. Market inquiries indicate that location is a major determinant of a customer's choice of cemetery. A large number of customers will have a strong preference for a particular cemetery due to a family connection and would be reluctant for a deceased family member to be buried elsewhere. Where there is no family tie to a particular cemetery, family members are likely to select a cemetery which is located close to where they live in order to enable them to easily visit the deceased after interment.
66. Further, in respect of the Brisbane metropolitan area, capacity constraints at certain council owned cemeteries mean that interment is only available to rate payers within the immediate council area.
67. Market inquiries revealed that location also appears to be a major determinant of customer choice of cremation facilities. While in the majority of cremation cases cremated remains are not interred in a cremation plot or permanent 'box' on site (and family members are therefore unlikely to visit the site where the family member is cremated), suppliers of cremation services indicated that the majority of their business was drawn from customers within their local area.
68. In the case of Sydney, Brisbane and the Gold Coast the ACCC considers that the appropriate geographic markets for burial services and for cremation services will broadly reflect the geographic boundaries identified above in respect of the funeral directing services markets in these metropolitan areas. The ACCC notes that on this definition, there is no overlap between the merger parties in the supply of burial services in Brisbane.
69. The ACCC's views on the scope of the markets for the supply of cremation services and the supply of burial services are preliminary and the ACCC invites comments on the appropriate market definition.

***Acquisition of coffins and caskets on the east coast of Australia***

70. The ACCC considered the effect of the proposed acquisition on actual and potential suppliers of coffins and caskets to the merged firm's operations on the east coast of Australia (where the merger parties' respective funeral directing businesses overlap). The ACCC's preliminary view is that there is likely to be an

east coast market for the acquisition of coffins and caskets. Market feedback indicated that manufacturers on the east coast typically operated from a centralised manufacturing facility and could viably transport coffins and caskets to customers located anywhere on the eastern seaboard, however this may be aided by a distribution centre in each state or in closer proximity to customers.

***Acquisition of hearses on the east coast of Australia***

71. The ACCC's preliminary view is that there is likely to be an east coast market for the acquisition of hearses. Market feedback indicated that manufacturers and suppliers of hearses on the east coast could viably supply customers in any state on the eastern seaboard from a centralised facility.

*The ACCC invites market participants to comment on its proposed definition of the relevant markets including:*

- the appropriate geographic dimension of the funeral directing services markets in each metropolitan area and, in particular, whether competition in the supply of funeral directing services takes place on a metropolitan basis or in smaller regions within that area. For example in the case of Sydney, whether competition takes place Sydney-wide, in North metropolitan Sydney (as defined above) or in a more localised market such as the Northern Beaches or suburb specific markets. You may wish to provide information on the geographic area within which suppliers can effectively compete and/or the proportion of customers that are drawn from the local versus the broader metropolitan area;
- information on the extent to which customers or suppliers may substitute burial and cremation services; and
- the appropriate geographic dimension of the burial services market(s) and cremation services market(s) in each relevant metropolitan area and, in particular, whether competition in the supply of cremation services takes place on a metropolitan basis or in narrower regions within each of the metropolitan areas.

**Statement of issues**

72. For the purposes of this Statement of Issues, the issues in this matter are divided into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to pose concerns'.

**Issues of concern**

73. The ACCC has identified the following areas of concern where it takes the preliminary view that the proposed acquisition is likely to have the effect of substantially lessening of competition in:
- the market for the supply of funeral directing services in North metropolitan Sydney;

- the markets for the supply of funeral directing services in North metropolitan Brisbane and in South metropolitan Brisbane; and
- the markets for the supply of cremation services in North metropolitan Brisbane and in South metropolitan Brisbane.

*Supply of funeral directing services in North metropolitan Sydney*

74. The ACCC's preliminary view is that the proposed acquisition is likely to have the effect of substantially lessening competition in the market for the supply of funeral directing services in North metropolitan Sydney, including the North Shore and Northern Beaches, as defined in paragraph 50 above.
75. The ACCC considers that this would occur primarily as a result of the removal of Bledisloe and the competitive constraint provided by Bledisloe's *Gregory & Carr* and *Boland* branded funeral directors on the InvoCare funeral directing businesses in the area which operate under high profile brands including *Ann Wilson*, *Guardian*, *Simplicity* and *White Lady*.

Likely limited constraint from existing funeral directors

76. Post acquisition, the merged firm would have a significant share of funeral directing businesses in this market, serving substantially more funerals than its next closest competitors in the local area (Albert & Meyer Funeral Directors, Maurer & Bracks Funeral Directors and TJ Andrews Funeral Services). In certain areas, namely the Northern Beaches (from Palm Beach to Manly), there would be only one other funeral service provider with a funeral home in the area (Peninsula Funeral Services).
77. The remaining suppliers of funeral services in North metropolitan Sydney are significantly smaller in scale than the merged firm, with limited ability to constrain the merged firm given their capacity and brand recognition. The merged firm would have a significant advantage in light of its economies of scale in wholesale procurement of key inputs (such as coffins and caskets), advertising and promotion and also benefits from a high level of brand recognition and the use of shared facilities.
78. Most of the remaining suppliers are single brand firms lacking the high degree of recognition associated with the InvoCare brands. As set out above, customers seeking competitive quotes for funeral services may often in fact be soliciting quotes from branches of the same company and the ACCC is concerned that the proposed acquisition may exacerbate this issue. Prior to the proposed acquisition, a customer soliciting a quote from *Gregory & Carr*, *White Lady* and *Guardian* would have received one quote independent of InvoCare while post-acquisition, a customer contacting the same brands would receive quotes from a single business and there would be no incentive on the funeral directors contacted to reduce prices or price match in order to secure the funeral case.
79. Market inquiries have also indicated that most remaining suppliers of funeral direction services in North metropolitan Sydney have a more limited geographic coverage than the merged firm's operations.

80. The merged firm may also obtain an advantage as a result of InvoCare's ownership of the Northern Suburbs Memorial Garden, a large crematorium and memorial garden. Market inquiries indicate it is common for a cemetery or crematorium to be a first point of call for a customer seeking funeral arrangement services, who is then typically referred to local funeral directors. With the exception of the Eastern Suburbs Memorial Park, no other supplier of funeral directing services in Sydney is vertically integrated.<sup>3</sup>
81. The ACCC is concerned that post acquisition, InvoCare would have the ability and incentive to increase the prices, or lower the quality, of its funeral directing services in North metropolitan Sydney. Given the remaining funeral directors in this region face higher costs than the merged firm, as well as the limited size and brand recognition of these funeral directors, it is expected that existing suppliers of funeral directing services are unlikely to provide an effective constraint on an attempt by the merged firm to increase prices or reduce quality.

Barriers to entry and expansion

82. The ACCC's preliminary view is that the threat of new entry or expansion is unlikely to provide an effective competitive constraint on the merged firm due to the significant lead time that would be necessary to establish a funeral directing business of sufficient scale to effectively compete with the merged firm.
83. Information provided by market participants indicated that in order to develop funeral directing business of such scale, it is necessary to establish a strong reputation and loyal customer base. It appears that new entrants typically perform a small number of funerals for the first five years after commencing operation while the business builds customer relationships, a reputation in the local area, and in some instances, expands capacity. The ACCC therefore considers that the threat of new entry would be unlikely to constrain the merged firm in the foreseeable future.
84. The ACCC's preliminary view is that the cost of commencing funeral direction services of comparable quality to the InvoCare and Bledisloe's funeral directors in Sydney would require significant capital costs, and the extent to which these costs could be recovered on exit may be limited. These costs include the sunk costs associated with creating brand recognition as well as the costs of constructing a mortuary and viewing facilities, the purchase of a hearse and potentially constructing a chapel. These costs may exceed \$1.5 million for one funeral home. Securing suitable premises, through lease or purchase, can also require a significant up-front investment, particularly in areas with high real-estate values, such as in metropolitan Sydney. Some market participants also reported local council approval for the construction of a funeral home as a significant barrier to entry, with resistance from local residents common.
85. The ACCC notes that it is possible to enter the market for the supply of funeral directing services on a small scale, with relatively low sunk costs through hiring hearses, chapels and non-private mortuaries on an as-needed basis. Such small-scale suppliers tend to operate at the low-cost end of the market and have very

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<sup>3</sup> Excluding those funeral directors which operate small scale cremators from funeral homes.

limited capacity. The ACCC's preliminary view is that the limited capacity constraints of these small-scale suppliers in the short term and their lack of privately-owned quality facilities prevents these suppliers from acting as an effective competitive constraint on the established large-scale suppliers of funeral directing services operating self contained facilities.

86. The ACCC notes that cemeteries and memorial parks may be in an advantageous position to enter the market for funeral directing services on a substantial scale in a more timely fashion due to their pre-existing reputation, and ability to provide an integrated service. However, the establishment of self-contained funeral directing facilities would still necessitate significant sunk cost and in North metropolitan Sydney, there are a relatively small number of cemetery and crematorium operators. Further, market inquiries indicate that some cemeteries and crematoria may be reluctant to offer funeral directing services due to the risk of adversely affecting their relationships with local funeral directors which are important to the continuation of their existing operations.

*The ACCC invites market participants to comment and provide further information on:*

- the effectiveness of competition from remaining suppliers of funeral directing services in North metropolitan Sydney including the effectiveness of competition provided by new funeral directing businesses (that is, funeral directing businesses which have been established within the last one to two years);
- the ability of established funeral directors in other areas of Sydney to expand into North metropolitan Sydney by setting up a new facility and leveraging off of their existing reputation;
- the nature and extent of competitive constraint provided by part-time, low-volume providers of funeral directing services without an established self-contained premises;
- the nature and extent to which funeral directing service providers may benefit from being vertically integrated with cemeteries and crematoria; and
- the extent to which the Bledisloe funeral businesses in North metropolitan Sydney (*Gregory & Carr* and *Boland*) may be a driver of competition in the supply of funeral directing services on price (e.g. through low cost funerals or price matching) or service and quality.

*Supply of funeral directing services in North metropolitan Brisbane and the supply of funeral directing services in South metropolitan Brisbane*

87. The ACCC's preliminary view is that the proposed acquisition is likely to have the effect of substantially lessening competition in the market for the supply of funeral directing services in each of North metropolitan Brisbane and South metropolitan Brisbane, as defined in paragraph 55 above.



88. The proposed acquisition would combine the two largest suppliers of funeral directing services in the Brisbane metropolitan area (by number of cases per annum) and would remove InvoCare's closest competitor in each of North metropolitan Brisbane and South metropolitan Brisbane. By removing this competitive constraint, the proposed acquisition would be likely to provide the merged firm with an increased ability and incentive to raise prices and/or reduce the level of service it provides to customers in each of these areas.
89. The ACCC is concerned that the remaining independent suppliers of funeral directing services would be unable to provide an effective competitive constraint on the merged firm in North metropolitan Brisbane and South metropolitan Brisbane.
90. Market inquiries indicated that the merged firm may be up to four times the size of the next largest suppliers in Brisbane - KM Smith Funerals and Alex Gow Funerals (by number of cases per annum) - both of which are present in North metropolitan Brisbane and South metropolitan Brisbane. A range of smaller suppliers would remain that individually account for a limited number of cases per annum. The merged firm's significant share of the supply of cremation services in the Brisbane metropolitan area, discussed in paragraph 94 below, may also increase its market power in the supply of funeral directing services in the region.
91. The ability of independent funeral directors to provide an effective competitive constraint on the merged firm may be limited by the factors referred to in paragraphs 77 to 80.
92. The ACCC also considers that the threat of new entry or expansion in the North metropolitan Brisbane and South metropolitan Brisbane markets is unlikely to provide an effective competitive constraint on the merged firm due to the significant lead time required to establish a funeral directing business of sufficient scale to effectively compete with the merged firm. The ACCC's preliminary conclusions on the barriers to entry set out in paragraphs 82 to 86 apply equally to metropolitan Brisbane.

*The ACCC invites market participants to comment and provide further information on:*

- the effectiveness of competition from remaining suppliers of funeral directing services in South metropolitan Brisbane and North metropolitan Brisbane, including the effectiveness of competition provided by new funeral directing businesses (that is, funeral directing businesses which have been established within the last two years);
- the nature and extent of competitive constraint provided by part-time, low-volume providers of funeral directing services without an established self-contained premises;
- the nature and extent to which funeral directing service providers may benefit from being vertically integrated with crematoria and cemeteries; and

- the extent to which Bledisloe (*Metropolitan Funerals*) may be a driver of competition in the supply of funeral directing services on price (e.g. through low cost funerals or price matching) or service and quality in the North metropolitan Brisbane and South metropolitan Brisbane areas.

*Supply of cremation services in North metropolitan Brisbane and in South metropolitan Brisbane*

93. The ACCC considers that the proposed acquisition is likely to have the effect of substantially lessening competition in the market for the supply of cremation services in North metropolitan Brisbane and the market for the supply of cremation services in South metropolitan Brisbane.
94. In North metropolitan Brisbane, the proposed acquisition would combine the two largest suppliers of cremation services in the region (Albany Creek Memorial Park operated by InvoCare and the Great Northern Garden of Remembrance operated by Bledisloe). Post acquisition, the only remaining suppliers would be the Brisbane City Council and Moreton Bay Regional Crematorium both of which conduct significantly fewer cremations than the merged firm.
95. Although market inquiries indicated that Nudgee Catholic Cemetery is expected to expand its cemetery operations to include the supply of cremation services within the foreseeable future, the extent to which it is likely to afford an effective competitive constraint on the merged firm is unclear.
96. In South metropolitan Brisbane, the proposed acquisition would also combine the two largest suppliers of cremation services in the region (Mt Thompson Memorial Gardens operated by InvoCare and Great Southern Garden of Remembrance operated by Bledisloe).
97. Although there are a number of alternative crematoria in South metropolitan Brisbane, including the Brisbane City Council (Mt Gravatt), Centenary Memorial Gardens (Sumner), Newhaven Crematorium (Stapylton) and Heritage Park Crematorium (Goodna), market inquiries suggest that their operations appear to be of a considerably smaller scale to the merged firm (in terms of number of cases per annum) and may not have the ability to constrain the merged firm.
98. Market inquiries also indicated that barriers to entry and expansion in the supply of cremation services are high, given the significant capital investment and lead time associated with new entry and expansion. In some instances, a period of 3–5 years was required by market participants to obtain local council approval for new crematorium developments, largely due to local community objections and environmental regulation.
99. However, the ACCC notes that barriers to entry and expansion may be lower for an existing cemetery operator that may be able to utilise existing land and infrastructure in establishing crematoria operations, providing a potential competitive constraint on the merged firm. Evidence of expansion into crematoria

operation by cemeteries includes the Brisbane City Council and Nudgee Catholic Cemeteries.

*The ACCC invites market participants to comment and provide further information on:*

- whether there would be sufficient alternative suppliers of cremation services available to funeral directors in each of North metropolitan Brisbane and South metropolitan Brisbane and, in particular whether these crematorium have sufficient capacity to expand their operations to constrain the merged firm;
- whether crematoria outside of the geographic market, e.g. South metropolitan Brisbane, are likely to provide a constraint on the pricing and quality of services in that geographic market (and vice versa);
- the extent to which existing cemetery operators may be able to expand their operations to include the supply of a cremation service, including the likely costs and lead times (e.g. for complying with development and environmental regulations) of establishing a crematorium on existing land; and
- the constraint provide by funeral directors who commence cremation services on a small scale through the acquisition of a cremator and associated cremation equipment (and locating in an industrial area).

#### **Issues that may raise concerns**

100. The ACCC has identified the following areas where it takes the preliminary view that the proposed acquisition may raise competition concerns in relation to:

- the supply of funeral directing services in the Gold Coast;
- the supply of funeral directing services in East metropolitan Sydney;
- the increased ability and incentive of InvoCare to foreclose rival funeral directors' access to cremation services in North metropolitan Brisbane and South metropolitan Brisbane;
- the increased ability and incentive of InvoCare to foreclose rival cemeteries and crematoria in North metropolitan Brisbane and South metropolitan Brisbane; and
- the increased ability and incentive of InvoCare to foreclose rival cemeteries and crematoria in North metropolitan Sydney.

#### *Supply of funeral directing services in the Gold Coast*

101. The ACCC considers that the proposed acquisition may raise competition concerns in the market for the supply of funeral directing services in the Gold Coast.

102. Although the proposed acquisition would result in a relatively small aggregation to InvoCare's existing share of supply, the merged firm would have a substantial share of the supply of funeral directing services in the Gold Coast (by number of cases per annum) and would be at least three times the size of its next largest competitor. InvoCare is also the largest supplier of cremation services in the Gold Coast and this may increase its market power in the market for the supply of funeral directing services in the Gold Coast.
103. The ACCC is concerned that the remaining suppliers in the Gold Coast may not provide an effective competitive constraint on the merged firm, as per the reasons outlined in paragraphs 77 to 79.
104. However, the ACCC notes that some market participants have suggested that Bledisloe's presence in the Gold Coast metropolitan area has been in decline, evidenced by the closure of its Palm Beach funeral home and that Bledisloe may not be a particularly effective competitor in the future, absent the proposed acquisition.
105. The ACCC's preliminary conclusions in respect of the barriers to entry in respect of the North metropolitan Sydney market outlined in paragraphs 82 to 86 apply to the Gold Coast.

*The ACCC invites market participants to comment and provide further information on:*

- the effectiveness of competition from remaining suppliers of funeral directing services in the Gold Coast including the impact of new funeral directing businesses (that is, funeral directing businesses which have been established within the last two years) on competition;
- the nature and extent to which funeral directing service providers may benefit from being vertically integrated with cemeteries and crematoria;
- the nature and extent of competitive constraint provided by part-time, low-volume providers of funeral directing services without an established self-contained premises; and
- the extent to which the Bledisloe funeral directing businesses provide a competitive constraint on the InvoCare funeral directing businesses in the Gold Coast metropolitan area and whether, in the absence of the proposed acquisition, Bledisloe is likely to be a vigorous and effective competitor to InvoCare in the future.

*Supply of funeral directing services in East metropolitan Sydney*

106. The ACCC considers the proposed acquisition may raise competition concerns in the market for the supply of funeral directing services in East metropolitan Sydney.
107. The ACCC considers that competition concerns may arise primarily as a result of the removal of Bledisloe and the competitive constraint provided by Bledisloe's

*Boland Funerals* in Maroubra on the InvoCare funeral directing businesses in the area, which operate under high profile brands including *Simplicity*, *White Lady*, and *WN Bull*.

108. Bledisloe's *Boland Funerals* in Maroubra is currently one of the largest providers of funeral directing services in East metropolitan Sydney (by number of cases per annum) and may be considered InvoCare's closest competitor in the region. Although the proposed acquisition would result in a more highly concentrated market, there would remain a number of medium sized providers which may effectively constrain the merged firm including Joseph Medcalf (part of the David Walker Group) and TJ Andrews (Newtown). The ACCC also notes the successful entry of the Eastern Suburbs Memorial Park into the supply of funeral directing in East metropolitan Sydney.
109. The ability of independent funeral directors to pose an effective competitive constraint on the merged firm may be limited by the factors referred to in paragraphs 77-80.
110. The ACCC's preliminary conclusions in respect of the barriers to entry and expansion to the supply of funeral directing services in North metropolitan Sydney, as outlined in paragraphs 82-86, apply equally to East metropolitan Sydney.

*The ACCC invites market participants to comment and provide further information on:*

- the effectiveness of competition from remaining suppliers of funeral directing services in East metropolitan Sydney including the impact of new funeral directing businesses (that is, funeral directing businesses which have been established within the last two years) on competition;
- the nature and extent of competitive constraint provided by funeral directors in neighbouring suburbs outside of East metropolitan Sydney;
- the nature and extent of competitive constraint provided by part-time, low-volume providers of funeral directing services without an established self-contained premises; and
- the extent to which Bledisloe may be a driver of competition in the supply of funeral directing services on price (e.g. low cost funerals or price matching) or service and quality in East metropolitan Sydney.

*Impact of increased vertical integration in Brisbane – foreclosure of rival funeral directors access to cremation services*

111. The ACCC considers that the proposed acquisition may raise competition concerns in the market for the supply of funeral directing services in Brisbane by providing the merged firm with an increased ability and incentive to foreclose rival funeral directors' access to cremation services in each of North metropolitan Brisbane and South metropolitan Brisbane by:

- restricting or limiting rival funeral directors' access to its crematoria facilities in the Brisbane metropolitan area; and/or
  - raising rivals' costs in obtaining crematoria services, such as increasing the price for independent funeral directors or by otherwise discriminating against independent funeral directors seeking access to its crematoria.
112. The ACCC is concerned that any such foreclosure strategy would have an adverse effect on the funeral directing service markets in North metropolitan Brisbane and South metropolitan Brisbane.
113. As set out above in paragraphs 94 and 96, post acquisition the merged firm would be a significant supplier of cremation services in each of North metropolitan Brisbane and South metropolitan Brisbane.
114. Market participants suggested that the proposed acquisition may provide InvoCare with an increased ability and incentive to provide preferential treatment to its own funeral directing brands, such as by providing discounts or special pricing for cremation fees or allocating preferential time slots for funeral services at its crematoria facilities. While InvoCare operated crematoria do not appear to currently provide preferential treatment to InvoCare funeral directing businesses, there is a concern that the proposed acquisition and the increase in InvoCare's share of cremation services and funeral directing services in Brisbane may make such a strategy profitable.
115. The ACCC notes that the merged firm's ability to foreclose rival funeral directors' access to cremation services appears to be particularly significant in North metropolitan Brisbane where there would be a very limited number of alternative suppliers of cremation services available to funeral directors.
116. The ACCC is concerned that the adoption of such a foreclosure strategy would enhance the market position of InvoCare's downstream funeral directing businesses and reduce competition in the supply of funeral directing services in each of North metropolitan Brisbane and South metropolitan Brisbane.

*The ACCC invites market participants to comment and provide further information on:*

- whether there would be sufficient alternative suppliers of cremation services available to rival funeral directors in each of North metropolitan Brisbane and South metropolitan Brisbane and, in particular any limitations in using such alternative suppliers such as capacity constraints, costs, distance or customer preferences to use a facility operated by the merged firm;
- any examples of an attempt by InvoCare or Bledisloe to restrict access to, or price discriminate against, independent funeral directors seeking access to their facilities; and
- whether and how the proposed acquisition may provide the merged firm with an increased ability and incentive to restrict access to and/or raise rivals' costs in obtaining access to cremation services.

*Impact of vertical integration in Brisbane - foreclosure of rival crematories and crematoria access to funeral cases*

117. The ACCC considers that the proposed acquisition may raise competition concerns in the markets for supply of cremation and burial services in North metropolitan Brisbane and South metropolitan Brisbane. In particular, the ACCC is concerned that the proposed acquisition may provide the merged firm with an increased ability and incentive to foreclose rival suppliers of cremation or burial services by:
- restricting or limiting access to the merged firm's funeral directing customers; and/or
  - raising rivals' costs by requiring them to seek customers from more fragmented channels.
118. The ACCC is concerned that the adoption of such a foreclosure strategy may have an adverse effect on competition in the supply of cremation services and the supply of burial services in North metropolitan Brisbane and South metropolitan Brisbane. In particular, the increase in InvoCare's market share in funeral directing may enhance barriers to entry or expansion by existing suppliers of burial or cremation services. This concern is in addition to the concern with the horizontal aggregation identified in paragraph 93 above.
119. As set out above, following the proposed acquisition, InvoCare would have a substantial share of the funeral directing business in South metropolitan Brisbane and North metropolitan Brisbane and the ACCC is concerned that the increase in InvoCare's market position may increase its ability or incentive to tie its cremation or burial services to its funeral directing services or otherwise recommend its funeral directing customers use InvoCare crematoria and cemetery facilities.
120. However, as set out above, market inquiries indicated that in many cases customers have already decided where the deceased will be cremated or interred before coming to a funeral director. Where a decision has not yet been made, the funeral director may attempt to sway the customer but market inquiries have indicated that a customer would be unwilling to use cremation or burial facilities that are distant from where the funeral service has been conducted, where they live or where other family members have been previously buried or cremated.
121. The ACCC also notes that the ability for the merged firm to foreclose rival suppliers of burial services by diverting case volumes to its own facilities may be limited by the extent to which customers pre-purchase burial plots from a pre-determined cemetery.

*The ACCC invites market participants to comment and provide further information on:*

- whether there would be sufficient case volume from other funeral directors available to rival crematoria and cemeteries in each of North metropolitan Brisbane and South metropolitan Brisbane;

- the proportion of a cemetery operators annual case load which would be derived from customers who have pre-purchased a burial plot at their cemetery; and
- whether and how the proposed acquisition may provide the merged firm with an increased ability and incentive to restrict access to and/or raise rival cemeteries and rival crematoria's costs in obtaining access to funeral cases.

*Impact of vertical integration in North metropolitan Sydney - foreclosure of rival cemeteries and crematoria access to funeral cases*

122. The ACCC considers that the proposed acquisition may raise competition concerns in the supply of cemeteries and crematoria in North metropolitan Sydney by providing the merged firm with an increased ability and incentive to foreclose rival suppliers of these services by:
- restricting or limiting access to funeral directing customers; and/or
  - raising rival costs by requiring them to seek customers from more fragmented channels.
123. The ACCC is concerned that the increased vertical integration of InvoCare in North metropolitan Sydney as a result of the proposed acquisition may lead to an adverse effect on competition in the market for the supply of cremation services in North metropolitan Sydney. In particular, the increase in InvoCare's market share in funeral directing may enhance barriers to entry or expansion by existing providers of cremation services.
124. As set out above in paragraph 76, the proposed acquisition would result in the merged firm providing a large majority of the funeral directing services in North metropolitan Sydney.
125. The ACCC is concerned that this increase in InvoCare's market position in the funeral directing services market may increase its ability or incentive to divert funeral directing customers to its own crematorium, e.g. to the Northern Suburbs Memorial Garden at the exclusion of other interment facilities in North metropolitan Sydney, such as Macquarie Park Cemetery and Crematorium or potential new entrants.
126. However, as set out above, market inquiries indicated that most customers have already decided where the deceased will be cremated or interred before coming to a funeral director, limiting the extent to which a funeral director can influence a customer to use a particular crematorium or cemetery. Market inquiries also indicated that Macquarie Park Cemetery and Crematorium, the main competitor to InvoCare's Northern Suburbs Memorial Garden is considered to have superior facilities to the Northern Suburbs Memorial Garden and that this might limit the extent to which InvoCare funeral directors would be able to sway customers to use the Northern Suburbs Memorial Garden.



*The ACCC invites market participants to comment and provide further information on:*

- whether there would be sufficient case volume from other funeral directors available to rival crematoria and cemeteries in North metropolitan Sydney;
- the proportion of a cemetery operators annual case load which would be derived from customers who have pre-purchased a burial plot at their cemetery; and
- whether and how the proposed acquisition may provide the merged firm with an increased ability and incentive to restrict access to and/or raise rival cemeteries and crematoria's costs in obtaining access to funeral cases in North metropolitan Sydney.

**Issues unlikely to pose concerns**

*Supply of funeral directing services in Melbourne*

127. The ACCC considers that the proposed acquisition is unlikely to raise competition concerns in the market for the supply of funeral directing services in Melbourne.
128. While InvoCare and Bledisloe are currently two of the largest providers of funeral directing services in Melbourne, the proposed acquisition would be unlikely to result in significant market concentration metropolitan wide or on a more localised basis. The ACCC considers that the merged firm would be likely to be effectively constrained by the remaining funeral directors in Melbourne, notably *Tobin Brothers Funerals* which is currently the largest provider of funeral directing services in Melbourne.
129. Neither InvoCare nor Bledisloe operate cemeteries, crematoria or memorial gardens in Melbourne and as such there are no vertical integration issues in Melbourne which may raise competition concerns.
130. Market inquiries to date have not identified any competition concerns in Melbourne.

*Supply of funeral directing services in South and West metropolitan Sydney*

131. The ACCC considers that the proposed acquisition is unlikely to raise competition concerns in the markets for the supply of funeral directing services in South metropolitan Sydney and West metropolitan Sydney. Although InvoCare and Bledisloe overlap in these markets, Bledisloe has a very low share of annual case volumes in these areas. The ACCC considers that the merged firm would be likely to be effectively constrained by the remaining funeral directors in southern and western metropolitan Sydney such as *Mannings Funeral Home, Olsens Funerals and TJ Andrews*.
132. Market inquiries have not identified any significant competition concerns in southern or western metropolitan Sydney.

*Supply of burial services in North metropolitan Brisbane and South metropolitan Brisbane*

133. The ACCC considers that the proposed acquisition is unlikely to raise competition concerns in the markets for the supply of burial services in North metropolitan Brisbane and South metropolitan Brisbane, as there would be no overlap between the operations of the merger parties<sup>4</sup>. The merged firm would account for a very limited number of burials per annum when considered within the context of the broader Brisbane metropolitan area.

*Vertical integration in the Sydney metropolitan area – foreclosure of rival funeral directors’ access to cremation services*

134. The ACCC considers it unlikely that the proposed acquisition would increase InvoCare’s ability or incentive to foreclose rival funeral directors’ access to burial or cremation services in metropolitan Sydney.
135. The proposed acquisition does not increase InvoCare’s share of cremation or burial services in any market within Sydney. While the proposed acquisition increases InvoCare’s share of funeral directing cases in North metropolitan Sydney and East metropolitan Sydney, the ACCC considers that this is unlikely to change InvoCare’s incentives to provide rival funeral directors access to its crematoria and cemeteries. InvoCare does not operate a cemetery or crematorium in East metropolitan Sydney, and while InvoCare operates a crematorium in North metropolitan Sydney (the Northern Suburbs Memorial Garden), this facility competes with the Macquarie Park Cemetery and Crematorium, which market inquiries indicated has superior facilities. The ACCC considers it unlikely that InvoCare would seek to refuse rival funeral directors from using the Northern Suburbs crematorium but even if this was the case, independent funeral directors and their customers would be able to use the Macquarie Park crematorium as well as alternative providers of burial services in this area.

*Vertical integration in the Gold Coast metropolitan area*

136. The ACCC considers it unlikely that the proposed acquisition would increase InvoCare’s ability or incentive to foreclose rival suppliers of burial and cremation services in the Gold Coast by restricting access to funeral directing customers. The proposed acquisition would result in only a small increment in InvoCare’s share of funeral directing case volumes in the Gold Coast and this is unlikely to enable InvoCare to foreclose rival cemeteries and crematoria’s access to funeral cases. The ACCC also notes that in many cases, a funeral director will have little influence over where the deceased will be cremated or interred.
137. The ACCC also considers it unlikely that the proposed acquisition would increase InvoCare’s ability or incentive to foreclose rival funeral directors’ access to burial or cremation services in the Gold Coast. While InvoCare is the largest supplier of cremation services in the Gold Coast, the proposed acquisition does not increase

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<sup>4</sup> InvoCare operates one cemetery in North metropolitan Brisbane, the Albany Creek Memorial Park and Bledisloe operates one cemetery in South metropolitan Brisbane, the Great Southern Garden of Remembrance in Carbrook.

InvoCare's share of cremation (or burial) services and the increment in InvoCare's share of funeral directing case volumes as a result of the proposed acquisition would be unlikely to change InvoCare's incentives to provide rival funeral directors access to its crematoria or cemeteries.

*Acquisition of coffins and caskets*

138. The ACCC considers that the proposed acquisition is unlikely to raise competition concerns in the market for the acquisition of coffins and caskets on the east coast of Australia. The ACCC conducted market inquiries with a number of suppliers and purchasers of coffins and caskets and no significant competition concerns were raised in relation to the proposed acquisition's likely effects on the market for the acquisition of coffins and caskets in the east coast of Australia.

*Acquisition of hearses*

139. The ACCC considers that the proposed acquisition is unlikely to raise competition concerns in the market for the acquisition of hearses on the east coast of Australia. The ACCC conducted market inquiries with a number of suppliers and purchasers of hearses and no significant competition concerns were raised in relation to the proposed acquisition's likely effects on the market for the acquisition of hearses on the east coast of Australia.

**ACCC's future steps**

140. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
141. The ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
142. Submissions are to be received by the ACCC no later than 4 February 2011. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view in light of the issues raised above.
143. The ACCC intends to publicly announce its final view by 3 March 2011. However the anticipated timeline may change in line with the *Merger Review Process Guidelines*. A public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.