

## Second Reading

**The Hon. CATHERINE CUSACK** [4.12 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Fair Trading (Mandatory Funeral Industry Code) Bill 2008. The funeral industry in New South Wales has a very special place in our community and provides a unique and empathetic service for deceased citizens and their bereaved loved ones. I place on record my appreciation to the 200 ethical funeral directors in this State who last year arranged some 40,000 funerals. The industry regards itself as a profession and participation in it is a calling. It strives, through its professional associations, to provide the best quality service at an affordable price.

Many funeral directors are small family owned and operated businesses arranging perhaps 80 or 100 funerals a year. They work closely with families in their local communities to understand their wishes, to resolve disagreements in stressful circumstances, and to ensure that the dignity of the deceased is respected in all circumstances, including in the sad cases known as destitute funerals. Calls for this bill were made by these ethical businesses and their representatives, who are concerned about the reputation of their industry and about the special needs of consumers in the delivery of this unique service. It is not a service or a product that can be rectified if things go wrong.

Mistakes can have a catastrophic impact on the wellbeing of loved ones. Indeed, the whole reason for retaining the services of funeral directors is to access professional expertise and avoid mistakes at all costs. This legislation creates a framework in which the high standards of industry can be mandated and consumers can be assured of the good character, qualifications and high standing of the funeral directors on whom they rely in times of grief and bereavement. The object of the bill is to amend the Fair Trading Act 1987 to provide for the establishment, by regulation, of a mandatory code of conduct for the funeral industry. Schedule 1 amendments include the following changes to section 60Z:

### **[1] Section 60Z Provision of information to consumers**

Omit 60Z (5). Insert instead:

(5) A person must not, in trade or commerce, in connection with the supply to a consumer of funeral goods or services fail to comply with an information standard prescribed under this section.

Proposed new section 60ZA, which deals with a mandatory funeral industry code of conduct, defines a supplier of funeral goods and services as "a person who is in the business of supplying funeral goods and services to consumers". Proposed new section 60ZA (2) states:

The regulations may establish a funeral industry code of conduct that prescribes rules to be observed by suppliers of funeral goods and services in the course of carrying on the business of a supplier of funeral goods and services.

Proposed new section 60ZA (3) states:

A funeral industry code of conduct may also include provision for or with respect to the registration by the Director-General of suppliers of funeral goods and services, including provision for or with respect to any of the following:

- (a) prohibiting a person from supplying funerals goods and services to consumers unless registered in accordance with the regulations,
- (b) qualifications for registration,
- (c) the imposition of conditions on registration,
- (d) the cancellation or suspension of registration (for example, a contravention of a provision of the funeral industry code of conduct or a condition of registration),
- (e) the review by the Administrative Decisions Tribunal of decisions made in respect of registration.

This bill is a framework that allows for the establishment of regulations containing the substance of what was contained in the code of conduct. This bill creates only the framework. The code of conduct is not being proposed in this bill; it is merely a means by which it can be introduced and mandated. I envisage that that important process will need to be the subject of careful discussion between consumers and industry. It would be the role of the Office of Fair Trading to organise that discussion to ensure that the best interests of both industry

and consumers are met and that people's concerns are addressed.

Given the positive support from all sides of the debate for a mandatory code of conduct, we believe that is an achievable goal. The bill gives effect to several of the 23 unanimous recommendations of the report of the Legislative Council Standing Committee on Social Issues that was tabled in December 2005 by Jan Burnswoods, Labor Party Chair. Importantly, the committee's recommendations reflected the weight of community submissions to the inquiry and were also welcomed by the industry. The Hon. Jan Burnswoods, as Chair, wrote the following statement in the report:

To better protect consumers the Committee recommends a comprehensive code of practice for the funeral industry. It is hoped this code of practice, developed with stakeholders and Government, will cover areas such as complaints handling, funeral bills and quotes, essential service funerals (basic funerals), professional and ethical practices, and be flexible enough to accommodate the funeral of people's choice.

In other words, the creation of such a consequentiality will provide a disputes forum or a means of dispute resolution that consumers simply do not have at the moment with the funeral industry. This comprehensive report, with its unanimous recommendations, charted a way forward to improve service delivery and eliminate the small number of notorious rogue operators who plague the industry. It is a shame that much of the good work of the committee has been either rejected or ignored by successive Ministers for Fair Trading. For example, only four of the 20 recommendations were supported without qualification, and these included recommendations such as that crematoriums be encouraged as a way for the community to reduce the cost of a funeral and that the Department of Fair Trading be the primary contact point for complaints. Such a recommendation requires no effort on the part of the Government.

In relation to supporting the use of crematoriums, no effort has been made, in spite of the Government's claim that it enthusiastically embraces the concept. The other 19 recommendations contained the substance of reform—recommendations that did not get the support of Government. Five recommendations were responded to with the following statement:

The Government will consult publicly on this recommendation prior to determining its position.

More than two years have elapsed, no consultations have been held, none appear to be planned, and there is no further response from the Government. Regrettably, 8 of the 23 recommendations were rejected outright. These included recommendations 18, 19, 20, 21, 22 and 23, which provided for the licensing of funeral directors and a mandatory code of conduct. The Government's response was a huge disappointment in view of the fine work undertaken by committee staff and members, the 61 detailed submissions provided by industry and the community, and the evidence given at six public hearings and two site visits.

It should concern us all that such in-depth and broadly supported funding has been so easily dismissed by the Government. That sends a strong message to us about how poorly the Government regards this place and the scant attention that was given to what continues to be a highly regarded committee report.

The Fair Trading Amendment (Mandatory Funeral Industry Code) Bill is necessary because a handful of unethical rogues are active in the funeral industry. They ought to be called to account for unethical behaviour and ejected from the industry. I remind the House of cases I have mentioned previously, and I regret that these cases may cause some distress. I begin with the sad case of Daisy Jones and Errol Davidson, whose bodies were mixed up by a Five Dock funeral director, Adam James Lee. The case, which received considerable publicity, unfortunately involved the wrong body being cremated. The *Sydney Morning Herald* reported on the court findings of the case.

Daisy Jones was a frail centenarian whose family wanted a cremation. Mr Davidson, aged 65, died the next day, and his family arranged for a burial. The hearse was to drive past the family home to the Forest Lawns Memorial Gardens and Crematorium, where Mrs Rose Davidson had bought a double plot. But there was a mix-up at the funeral parlour. Mr Davidson was cremated, wrongly. Justice Howie said that Mrs Jones was placed in Mr Davidson's coffin on 7 November, and bricks and pavers were packed in with her to disguise the weight difference. With Mr Davidson's family at the graveside, Mrs Jones was buried in the double plot.

One of the workers at the parlour gave evidence that he was so upset at the deception that he resigned and contacted the Department of Health. There are several features of the case that certainly shocked New South Wales at the time and highlighted the need for legislation. The first is the claim by the Minister for Fair Trading, Linda Burney, that she receives very few complaints about the funeral industry. Of course, there would be a couple of reasons for that. First, the deceased are not able to complain; nor can their families if they are not aware of what has occurred, which was the case in the example I have already cited. In that case a whistleblower came forward, which, unfortunately, is a pretty rare occurrence. Second, it should be noted that the whistleblower did not go to the Department of Fair Trading but went instead to the Department of Health. That obviously would affect the statistics of the Department of Fair Trading.

The third and most significant feature of the story is that the mix-up of the bodies and the attempt to cover that

up were not, and still are not, illegal in New South Wales. The only reason a case could be brought to court against the funeral director was that the invoices sent to the families were fraudulent. By that I mean that Mr Davidson's family was billed for a funeral whereas he was cremated, and Mrs Jones's family was billed for a cremation whereas she had been buried. That is the only ground upon which action could be taken—a technicality in billing. The substance of the matter did not, and still does not, attract any investigation or penalty because the performance of the industry essentially is unregulated.

Other cases I have cited previously that feature unprofessional conduct by a funeral director that has caused enormous anguish to families include the body of an 11-year-old girl that spilled from its casket as it was being lowered into the grave because of failure to properly secure a support. A man's body was transferred 300 kilometres on a warm evening in a vehicle that was not refrigerated or air-conditioned for a pathologist's review in Armidale, and then returned in the same vehicle the next day in 39-degree temperatures which left the body unrecognisable, hissing and, in the words of a family member, "cooking from the inside out", making an open-casket funeral, which had been the wish of the family, out of the question. A mother found the body of her son naked and encrusted with blood on a stainless steel slab three days after the funeral director had taken possession of his body. The young man had been killed in a car accident. He weighed 152 kilograms. The funeral director had not arranged an appropriately sized coffin. Her son could not be fitted into any coffin the funeral director had on offer and his intention had been to conduct the funeral service with an empty coffin.

In the early hours of last Friday morning an incident that I can only describe as a horrifying violation of the dignity of the deceased took place in Coffs Harbour. A Government contractor sent two employees to collect a body from a gruesome crime scene to transfer it to the mortuary at the Coffs Harbour hospital. One of the workers photographed the body with his mobile phone and was later showing off the pictures at the hospital. Horrified staff contacted the police. Thank goodness they did. The man was sacked by his employer, and rightly so. The funeral director certainly did the right thing. But what is not right is the great glaring gap in our laws that permits that type of sickening conduct in the first place. What is not right is the inability of police or anyone to confiscate the photographs—which, for all we know, are still out there. What is definitely not right is the inability of Fair Trading, Commerce, Health or the police to investigate, let alone charge, the culprit because the Minister for Fair Trading stubbornly refuses to enshrine community standards in a mandatory code of conduct.

The sacked employee is legally entitled to put the photographs on the Internet and to put up his shingle, calling himself a funeral director, and to carry on, unimpeded by Fair Trading, plying his trade on unsuspecting vulnerable families who are seeking empathic and respectful service. Am I exaggerating these fears? I think not. The appalling case to which I referred earlier, when Errol Davidson was mistakenly cremated and the error was covered up by the funeral director pretending that Daisy Jones was Mr Davidson, ought to have resulted in his being drummed out of the industry. But not only was he not drummed out of the industry; he is still in business today under a new trading name with more complaints.

I turn now to public health regulations governing the funeral industry. The Minister for Fair Trading has argued that the Department of Health regulates the funeral industry. It is true that there are health guidelines for funeral directors but they are related to public health issues and have little bearing on legally enforcing respect for the dignity of the deceased. They certainly do not apply to consumer rights of the families except in some small cases concerning the funerals of destitute people. But, even with such limited jurisdiction, the Opposition still has concerns about the Government's production of health standards for handling deceased persons. On 9 February last year, during the heat of an election campaign, the lemma Government sneaked through new regulations that were published in the *Government Gazette*. The old regulation, the Public Health (Disposal of Bodies) Regulation 2002, required funeral directors to refrigerate bodies. The new regulation replacing it reads:

#### **10 Retention of bodies by a funeral director**

- (1) A funeral director must not retain a body other than in a mortuary or holding room.
- (2) A funeral director who keeps a body in a mortuary or holding room and who has reason to believe that not refrigerating the body will prejudice public health or amenity must put the body in a refrigerated body storage facility.

Mr Ken Chapman of Australian Funeral Directors wrote:

You can see clearly from the amendment that a funeral director can hold a body in the mortuary or holding room without refrigeration for any time. There would be no way of proving an offence under this clause.

Although the definition of "holding room" under the regulations means a room that includes refrigerated body storage facilities it's not hard to see some operators keeping bodies unrefrigerated to save money. We were never told the reason for the change and never given the opportunity to comment on the proposed changes. We were called to a meeting on 29th May at the Environmental Health Branch of NSW Health at Gladesville, a meeting chaired by Neil Shaw, the Manager for Environmental Health, and presented with the regulations and told that they were open for comment but would not be changed.

Mr Chapman went on to indicate that there is confusion in the industry as to whether or not the new regulations have come into effect. He wrote:

I have been advised that these regulations have not yet been promulgated. They were supposed to come into effect in the second half of last year and I, and the rest of the industry, were of the opinion that they were in force.

I am told by Neil Shaw that there has been no regulatory impact statement issued yet and that they have suspended the implementation of the regulations to look at the complete review of the Health Act next year.

There is no doubt that the NSW Health Legal Department will frame regulations without consultation and without explanation of the changes and present them in an environmental impact statement.

I think he might mean a regulatory impact statement. He went on to state:

This will be done I am certain without prior consultation with the industry. And when the proposed regulations are framed it will be impossible to get Legal Branch to vary or change any of the unsatisfactory clauses.

Catherine, there seems to be no valid reason why funeral directors would be given unlimited time to keep a body out of refrigeration.

There are other unsatisfactory clauses in the Regulations for which the industry would like explanation. For example, a person who is not a funeral director can retain a body for five days without refrigeration. Certain cultures do require that bodies be taken home but it is sensible and safer for health reasons that these bodies are [at least] partially embalmed.

I find these downgraded public health standards remarkable. They do not meet community standards and I cannot imagine who or what is driving these changes. I would appreciate urgent clarification by the Government. The Department of Health's website has extensive guidelines for funeral directors. As I have said, in part they seek to plug the gap left by an absence of Fair Trading regulations. However, they are just guidelines and their very existence indicates yet again the need for this bill mandating a code of conduct.

The issue of government contractors highlights the need for a mandatory code of conduct and a system of accreditation or licensing to assist the Department of Commerce in managing the contract for funeral directors. At present, the contract for funeral director is overseen by the New South Wales State Contracts Board and managed by the Department of Commerce, and contractors are paid by public health. I have a large and colourful flow chart that explains how that all operates. The last published tender for funeral directors awarded the government contract expired in January this year. A tender was held in November last year but the outcome has not yet been published. I sought advice on this point from the Minister for Commerce on Tuesday and he either did not know or could not find an answer, so we are still in the dark as to whether a new contract is in force. Government contractors under the terms of contract 622 are appointed for the following purposes:

Provides local removal and long haul transfer of deceased persons, and burial/cremation of deceased persons without means. Conveyance of deceased persons is carried out on behalf of NSW Coroner under the direction of the NSW Police Service. Burial and cremation of deceased persons without means throughout NSW is carried out on behalf of the NSW Department of Health, Department of Corrective Services or other approved organisations.

The information paper for the recent tender with the unknown outcome includes the following statements, which are in the Department of Commerce's contract tender and which, in my view, anticipate the introduction of the bill I am moving today:

**NSW Commerce Procurement Services Request for Tender 0702116 Removal of Deceased persons and Burial/Cremation of Deceased Persons without means**

It will be a mandatory condition of any contractor/s being appointed to the contract that any Accreditation/Licensing system or any Government Regulation of the Funeral Industry that is implemented prior to the commencement of the contract or introduced during the currency of this contract be sought and achieved and maintained during the contract period. Contractors will be required to submit all recommended documentation to NSW Procurement upon obtaining Accreditation/Licensing. Failure to gain accreditation/licensing or provision of evidence thereof will be grounds for termination of the Contract.

I find it ironic that this provision has been made because it suggests how obvious the framework is that I am advocating in the legislation before the House today and how clearly beneficial it would be for an organisation such as the Department of Commerce to go to tender. It has to manage numerous tenders and somehow evaluate funeral directors without access to any system of licensing or to information about what is required in terms of quality of service. Frankly I think it is terrible that the Department of Commerce has to make those decisions without the assistance of a mandated code of conduct. There are already some very big question marks over some of the appointments that have been made. I guess in a sense it is difficult for the Department of Commerce when the Department of Fair Trading will not tell it what behaviour requirements and consumer protections should be incorporated in their contracts.

I wish to draw a specific case to the attention of the House. It concerns the government contractor for the

Singleton area. I cannot advise the House whether he is contracted under the old contract or whether he has a new contract and it is in force. Nevertheless, in this case he was certainly presenting himself as the government contractor. I received a complaint last night from Partridge Bros Singleton Pty Ltd, a funeral director in Singleton, the content of which I will share with the House. It reads:

On Tuesday 1<sup>st</sup> April 2008, our office was contacted by the family of the late Margaret Hill, informing us that she had passed away. The late Mrs Hill had recently used our firm to conduct the funeral service for her late husband in 2005, and to this date had been paying off an account via direct debit at \$100 per month. The family of Mrs Hill believed that they would be unable to use our services as their mother still had an outstanding balance, so they contacted Chapman's Funerals (Singleton) to remove the deceased from her place of residence and to make funeral arrangements.

After the initial contact with Mr Chapman, the family informed him that they did not possess the entire funds for the funeral but were willing and able to pay the account in instalments. Mr Chapman told the family that this was unacceptable so the family decided to contact Partridge Bros to inquire about periodic payments for a funeral. As stated previously, we already had an instalment agreement with Mrs Hill and were more than willing to accommodate the family with the same arrangement.

The family were elated that we would allow them this option and in doing so decided to employ us to conduct the funeral service for their mother, Mrs Margaret Hill.

Mrs Hill's family contacted Chapman's Funerals and explained that they would like our firm, Partridge Bros Singleton, to arrange and conduct the funeral for their mother. Mrs Chapman told the family that it was too late as the funeral had been given to a government contractor (LS Apthorpe), to carry out a destitute funeral and that there was no choice as it had to be a cremation. It raises some questions with Chapman's Funerals and LS Apthorpe being so closely affiliated socially and professionally.

The proposed cremation was most distressing for the family and the manner in which the news was given was very traumatic as they did not want their mother cremated. At the time of her husband's funeral in 2005, Mrs Hill had made provisions for her to be buried in the same grave via double depth. It was always her wishes and intention at the time of her death for these directions to be carried out.

The family were adamant that Partridge Bros were to conduct the funeral and after contacting the Hunter New England Health and the Muswellbrook Police Station it was discovered no authority had been given by either party for a destitute funeral to take place. After the family informed Chapman's Funerals that they had no authority to make such a decision the family were informed the deceased would be returned to the Singleton Hospital the following day by LS Apthorpe (the government contractor).

Some points to consider

? The family had not signed any documentation with Chapman Funerals so felt they were not obligated to remain with their firm.

? A death certificate had been issued by Dr Cecil Ford on 31<sup>st</sup> March 2008.

? The Hunter Service Manager for New England NSW Health has written that no instructions were issued for a destitute funeral for Mrs Margaret Hill (letter attached).

I can confirm that the Area Health Service confirmed that advice. I continue:

? Constable Jason Patterson of the Muswellbrook Police Station has specified that no authority from the NSW Police was given for a destitute funeral to take place for Mrs Margaret Hill

As stated in the letter from the New England Health and the confirmation from the Police, we are yet to determine who authorised a destitute funeral.

On arriving at our office on 4<sup>th</sup> April 2008 we discovered two faxes from LS Apthorpe dated 2<sup>nd</sup> April 2008. The fax informed us that an account of \$1782-00 had been placed in the hands of their legal representatives and debt collection agency.

The demeanour of the letter (attached), is most distressing to us both personally and professionally and we insist that urgent action be taken.

The attached letter is actually an invoice from the government contractor, who appears to have been in the middle of doing a body snatch for a destitute funeral without any authorisation whatsoever, and certainly not with the knowledge or agreement of the family. He is based at Kurri Kurri, so he has transported the body all the way to Kurri Kurri and then had to return it when family members resisted the pressure being placed on them most inappropriately and insisted that their mother's body be returned for a burial, not a cremation. I have an invoice that the government contractor sent to Partridge Bros for \$1,782, basically to pay for the cost of transporting the body 180 kilometres, backwards and forwards twice from Singleton to Kurri Kurri. That is extraordinary. The rate charged per kilometre is \$3.25, which I presume is the government rate. There is a \$25 charge for a body bag

and a \$380 charge for miscellaneous materials, labour and time of staff. I find this quite stunning, and there needs to be an immediate investigation into this matter. There needs to be an investigation into what on earth is going on when government contractors feel that they can remove bodies without approval.

I note that under the previous contract this funeral director had the government contract for the Hunter Valley, Lake Macquarie and Lower Hunter regions. In fact two contracts are let in each of those regions. I presume that is to provide choice. In those regions the Luke Apthorpe Family Trust held one contract in each region. In relation to burial, it held hold contracts in the Hunter Valley, Lake Macquarie and Newcastle regions, and likewise for cremations. I am not quite sure why there was insistence on a cremation when clearly health department guidelines provide for burial and not simply cremation. I have those guidelines here, which outline the procedure that ought to be followed. They state:

Where the death of a person comes within the Coroner's jurisdiction, or when a medical certificate as to the cause of death has not been issued, and the Police have determined that the State is ultimately responsible for the burial or cremation then—

Those are situations in which the State has authority—

? Police will complete forms and forward them to the Coroner;

? In all cases the Coroner will issue an Order for Disposal of a Destitute Person;

? The Coroner will forward the forms to the Director of the appropriate Public Health Unit and request the burial or cremation to be conducted; and

? An Environmental Health officer will complete Form HEALTH 373 contact the contracted funeral director and request to arrange the burial or cremation.

I acknowledge that they are circumstances in relation to which the Coroner is presiding, but a similar procedure would have applied in the case of Mrs Margaret Hill. The guidelines do not state that funeral directors can refer cases to their competitors. I strongly urge the Department of Commerce to conduct an investigation into this matter; it obviously has some jurisdiction over such issues. Tragically, until the Minister for Fair Trading takes on board the views of the community and the industry, there will be no regulation, and that means that no consumer protection will be provided for Mrs Hill's family in this matter. It is appalling state of affairs that the Department of Fair Trading cannot investigate the matter.

For several years now many people have argued with great passion for reform in this industry. I acknowledge the thousands of hours of research, discussion, lobbying and liaison that have led to the introduction of this legislation. I acknowledge the contribution of Mr Ken Chapman of the Funeral Directors Association of New South Wales, and of Ms Cate Bell of the Australian Funeral Directors Association. Both organisations have put in many hours very much at the behest of their members, who overwhelmingly support mandated legislation. It is very unusual in any industry to have such a consensus for regulation. [*Time expired.*]

**Debate adjourned on motion by the Hon. Michael Veitch and set down as an order of the day for a future day.**