



Fair Trading Amendment (Funeral Goods Services) Bill 2007

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Extract from NSW Legislative Council Hansard and Papers Thursday 28 June 2007.

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.17 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the *Fair Trading Amendment (Funeral Goods and Services) Bill 2007*.

The bill introduces an amendment to the Fair Trading Act 1987 to provide an information standard for funeral products and services to be prescribed.

The Government has been concerned about aspects of the funeral industry for some time. Not because of the level of complaints it receives which is very low but rather by concerns that people organising the funerals of loved ones are often in a vulnerable state and may not be in a position to uphold their rights.

The Government believes that on the whole the funeral industry is run by professional people who are committed to providing an excellent and caring service.

However, research by the Office of Fair Trading has shown that while the majority of consumers were generally satisfied with funeral services, almost half had concerns about money issues. In particular, there were concerns around being billed for unexpected charges or unauthorised services or being refused a breakdown of various charges.

When a person is organising a funeral he or she is likely to be under the twin pressures of bereavement and limited time. The person might also feel that it is disrespectful to compare prices of funerals when organising the funeral of a loved one.

The Government believes that at this difficult time consumers are entitled to be given sufficient information to make an informed choice. In fact, it can be argued that when people are feeling vulnerable and distressed it is even more important that they be given clear information on the products and services they are purchasing, including pricing information, as this information is likely to make the decision process easier.

Members may recall that the Legislative Council Standing Committee on Social Issues conducted an Inquiry into the Funeral Industry in 2005. The Government welcomed the Inquiry and provided a whole-of-Government response to the Inquiry Report which supported many of the Inquiry's recommendations.

The Inquiry examined, among other matters, the issue of transparency of costs of funerals. In providing evidence to the Inquiry, many people noted the need for clear explanations of the costs involved and a more detailed breakdown in the bill for services. In particular, consumers were concerned that the funeral director's

professional fee, which was usually the most expensive item, was not itemised or clearly defined.

The Committee concluded that clearly displayed prices for regular products and services used in funerals, including the funeral director's professional fee, would be beneficial to consumers.

To achieve this goal the Inquiry Report recommended the introduction of an information standard for funerals.

The Government supported this recommendation.

It is clear from the Government's research and the Inquiry Report that there are problems within the industry in regard to the type of information that is given to consumers when organising a funeral.

I believe that most funeral directors in New South Wales are extremely professional and want to do the best for their clients. However, there seems to be a small minority who may not provide information about the costs and services of the funeral in a transparent manner.

I understand there have been cases of funeral directors in New South Wales refusing to provide written quotes and providing final invoices that are not itemised. There also appears to be a lack of consistency across the industry about the definition of items that are part of the funeral service. This is especially the case with regard to the funeral director's professional fee. This can mean that it is impossible for consumers to compare the products and services provided by different funeral directors.

This bill provides for an information standard which will ensure funeral directors provide all the necessary pricing information in a format that is easily understood and will allow for comparisons between products and services provided by different funeral directors.

To develop an information standard for funeral products and services it is necessary to amend the *Fair Trading Act 1987* as the Act presently only allows for the prescription of information standards about goods. There is currently no power to prescribe an information standard about services.

In effect this means only the coffin or casket would be covered by a standard made under the current Act. Funeral services such as the transportation of the body to the cemetery or crematorium or the funeral director's professional fees would not be covered. An amendment to the Act is needed so that an information standard can deal with both funeral goods and services.

The bill will therefore amend to Act to allow an information standard to be prescribed for funeral goods and services. The information standard will stipulate the type and form of information to be provided to the consumer and the way in which the information is to be communicated.

The details of the information standard are still to be finalised, and will be included in a draft regulation which will undergo a Regulatory Impact Statement process involving extensive consultation. The Office of Fair Trading has already done some preliminary consultation with the industry and consumer groups about the kinds of matters that need to be included in the regulation.

Under the proposed information standard the funeral director will need to provide certain information to consumer.

Although the details haven't been finalised, I can give an overview of what is being proposed, based on the consultation so far. For example, when a consumer first comes to see a funeral director to make an inquiry, the funeral director will have to give them written information about a basic funeral if they offer that service. A basic

funeral is a simple, dignified funeral that provides a relatively low cost option for consumers.

This information will need to include a definition of a basic funeral as well as a definition of each component that makes up a basic funeral including the funeral director's professional fee.

The funeral director will need to provide the consumer with information on the components, and the fees for each component of a basic funeral, as well as the total cost of the basic funeral.

In addition to these details, a funeral director will need to provide the consumer with a list of the coffins or caskets that the funeral director has for sale and their prices.

If the consumer does not want a basic funeral, the funeral director will need to provide the consumer written information on the cost of all components of the funeral that is proposed to be supplied and a description of what each component covers. A total cost of the funeral must also be included.

The information on the funeral service is to be given to the consumer in the form of a written quote. The written quote is to be given to the consumer at the first meeting between the consumer and the funeral director.

Once the funeral service has been supplied, the funeral director will need to issue the consumer with a final invoice detailing the separate cost of all components and a total price.

The details of the information standard I have just described are the ones we have identified as being the most important to consumers in giving them enough information to make an informed choice. However, other information requirements may be considered after the consultation process on the draft Regulation.

It is important to highlight that the information standard will include information on the cost and make-up of a basic funeral.

I know that consumer groups such as the Council of Social Service of New South Wales and the Combined Pensioners and Superannuants are very supportive of the proposal that the information standard include a basic funeral. I understand that the Legislative Council Inquiry also recommended that the basic funeral be included in the information standard. The industry has advised that it also supports this proposal.

It is clear there are many people in NSW who want to provide their loved one with a dignified funeral but are concerned about the possible cost.

There has been much debate and confusion as to what constitutes a basic funeral as until now there has not been an agreed definition within the industry or the community.

The Government has worked hard with the funeral industry and consumer groups to reach consensus on what constitutes a basic funeral and I am pleased to say that agreement has been reached.

A basic funeral would consist of a single service at the point of internment, whether this is at the cemetery or the crematorium. Charges would include the funeral director's professional services fee, the cost of basic transportation and mortuary services, all necessary legal disbursements, such as a death certificate, and the cheapest coffin the funeral director has for sale.

There is no intention to compel the funeral industry to provide a basic funeral. The Government's view is that this approach would be an unnecessary overregulation of the market. I understand that most funeral directors in NSW do provide a basic funeral option.

However, as I have previously mentioned, under the proposed regulation a funeral

director that offers a basic funeral service will now have to provide information to consumer about the service, whether the consumer asks about it or not.

The information standard will assist consumers by clearly defining a basic funeral. It will also ensure that funeral directors provide detailed information on the cost of the basic funeral they provide, allowing consumers to compare prices.

I now turn to matters of remedies and enforcement provisions of the bill.

It will be an offence for a funeral director when supply funeral goods and services to fail to comply with information standard.

Many of the current enforcement and remedy provisions of the *Fair Trading Act 1987* will apply to the supply of funeral goods and services. This means, for example, that funeral directors who do not comply with the information standard can be liable to penalty of up to 1000 penalty units (currently worth \$110,000) if they are a body corporate or 200 penalty units (which is currently \$22,000) for an individual. The Office of Fair Trading can also apply to the Court for an injunction against a funeral director which could result in the funeral director not being allowed to trade for a period of time or only under specific conditions.

Clearly these actions would not be taken lightly and action by Government to impose these penalties would depend on the seriousness of the offences.

The bill also allows consumers to make a claim for loss or damage against a funeral director in the Consumer, Trader and Tenancy Tribunal or the Court if they have suffered a loss as a result of noncompliance with the information standard.

It is also proposed that under the regulation Fair Trading inspectors will be able to issue penalty notices of \$550 if a funeral director is found to be not complying with the information standard.

The bill has been developed in consultation with the funeral industry and consumer groups. The Government is committed to continuing to work with stakeholders in further developing the funeral information standard and ensuring compliance by industry.

The Government will also continue to work with stakeholders to ensure that consumers are aware of what they can expect from funeral directors under the information standard.

I would like to thank the funeral industry and consumer groups for their contribution and commitment to the bill and the development of the funeral product and services information standard.

The bill reflects excellent consumer protection policy by providing for an information standard for funeral goods and services that will make sure consumers receive sufficient information to make an informed consumer choice at a time when they are distressed and vulnerable. It will also promote greater choice and competition and transparency within the industry. Importantly, it doesn't burden the funeral industry with too much red tape and overregulation.

Organising a funeral for a loved one is a stressful and difficult situation. The introduction of an information standard as outlined in the bill will help consumers by making sure they have enough information to make informed decisions at a very difficult time and not be subjected to unexpected charges when the final invoice arrives.

I commend the bill to the House.