



Minister for Western Sydney
Minister for Fair Trading
Minister Assisting the Minister for Commerce

SOCIAL ISSUES COMMITTEE

7 JUN 2006

RECEIVED

Ms J Burnswoods MLC
Chair
Standing Committee on Social Issues
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Burnswoods

I refer to the inquiry undertaken by the Legislative Council Standing Committee on Social Issues into the operation of funeral industry in New South Wales. The committee tabled its final report on 9 December 2005.

Enclosed is the NSW Government's response to the Committee's report into the funeral industry. The table outlines the response from each responsible agency to the recommendations put forward by the Committee.

Each respective agency will continue to have responsibility for administering the regulations and will progress the Government responses according to their portfolio of responsibilities.

On behalf of the Government, I would like to thank the Standing Committee members for their interest in issues affecting the funeral industry.

Yours sincerely

The Hon Diane Beamer MP

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NSW Government response to the recommendations of the Legislative Council Standing Committee on Social Issues Inquiry into the funeral industry

	Committee recommendation	Government response	Additional comment
1.	<p>That the Office of Fair Trading develop a "Product Information Standard" for the funeral industry under section 38 of the <i>Fair Trading Act 1987</i> and require the funeral industry to display prices including itemisation of the components of the professional fee.</p>	<p>Supported with qualification</p>	<p>The introduction of a "Product Information Standard" for the funeral industry is supported as it promotes transparency and competition and will ensure that consumers are well informed.</p> <p>However it should be noted that currently the legislation only allows for a product information standard. In other words, the legislation as it currently stands does not provide for the development of a service information standard.</p> <p>Therefore with respect to the funeral industry, a product Information Standard would only cover items such as the coffin or casket. Services such as the transportation of the body or the funeral director's 'professional services' would not be covered.</p> <p>To provide information about all aspects of a funeral service, an amendment to the <i>Fair Trading Act 1987</i> would be required to allow the prescription of 'service information standards'.</p>

Committee recommendation	Government response	Additional comment
<p>2. That clear standards for the production and handling of coffins made of cardboard, chipboard or other alternative materials be developed in consultation with industry, manufacturers and WorkCover and that the availability of these coffins be promoted to manufacturers, industry members and consumers.</p>	<p>Not supported</p>	<p>The Government notes that coffins made of alternative materials provide excellent load bearing capabilities and, due to their lighter weight, present a reduced risk of manual handling injuries for pallbearers and cemetery workers as compared to coffins made of traditional materials.</p> <p>The Government also notes that coffins made from alternative materials are likely to be very cost-competitive with traditional coffins.</p> <p>However, the Government does not support the introduction of standards due to the risk of prescriptive standards increasing the costs of compliance by the coffin manufacturing industry and potentially reducing the ability of industry to innovate and continue development of new types of coffins.</p> <p>Nevertheless, if a standard is considered necessary, it is the Government view that such a standard should cover all forms of coffins and not be specifically targeted at coffins made of alternative, non-traditional materials.</p> <p>However, it is also the Government's view that any responsibility for the development of industry standards for cardboard or any other type of material should primarily rest with the funeral industry.</p> <p>The Government's role should be limited to providing assistance to the funeral industry. For example, WorkCover could provide comment on a proposed standard from an occupational health and safety and NSW Health could provide specific expert advice in relation to any public health implications</p>

	Committee recommendation	Government response	Additional comment
3.	<p>That the cost and make up of an essential service funeral (basic funeral) be part of the "Product Information Standard" for the funeral industry, developed by the Office of Fair Trading.</p>	<p>Supported with qualifications</p>	<p>The Government supports as part of the "Product Information Standard" that is proposed in Recommendation 1, the provision of information regarding the cost and make-up of a basic funeral.</p> <p>However, the current legislative limitations on such an information standard, as noted in Recommendation 1, would also apply to the basic funeral.</p> <p>In the development of such an information standard, the Government, in consultation with industry, and other stakeholders such as NCOSS, would examine what elements constitute a "basic funeral."</p> <p>While such a "Product Information Standard" would not compel any Funeral Director to provide a basic funeral, it would increase consumer awareness of the cost and make-up of a basic funeral package.</p>
4.	<p>That the outcomes of the Office of Fair Trading's discussion paper, <i>Funeral Funds Regulation 2001: Potential Areas for Reform</i> be made public and that appropriate changes be made to the Funeral Funds Regulation 2001 that will improve the processes involved with pre-arranged funerals.</p>	<p>Supported with comments</p>	<p>On 15 June 2005 a discussion paper on pre-paid funeral funds that proposed additional changes to the legislation to improve consumer protection was released. Issues being considered include: cooling off periods for pre-paid contracts; mandatory disclosure of items to be included in the contract and the transfer of contracts between funeral funds. Submissions closed on 29 July 2005. The Office of Fair Trading received a number of submissions on this matter.</p> <p>A statutory review of the <i>Funeral Funds Regulation 2001</i> is required in 2006 under the <i>Subordinate Legislation Act 1989</i>. A Regulatory Impact Statement which is currently being prepared will include proposals outlined in, or arising from, the discussion paper and will be publicly released in due course. The submissions to the discussion paper on pre-paid funeral funds will be re-examined during this process.</p>

	Committee recommendation	Government response	Additional comment
5.	That legislation be amended or new legislation be introduced to allow intensive reuse of family graves, and reuse of family graves be promoted as an option among the funeral industry and the public.	The Government will consult publicly on this recommendation prior to determining its position on it.	
6.	That the existing legislation be amended to allow for renewable tenure, and that community education be undertaken to ensure there is a clear understanding that a gravesite is not held in perpetuity and that if permanent occupancy is required, tenure must be renewed at specified intervals.	The Government will consult publicly on this recommendation prior to determining its position on it.	
7.	That the current legislation for the revocation of unused burial rights in Crown cemeteries, as set out in the <i>Crown Lands (General Reserves) By-law 2001</i> , be extended to other cemeteries in NSW and the legislation be amended to allow the advertising of unused burial rights to be done on a group basis as opposed to an individual basis. The community should be made more aware of unused burial rights by cemetery administrators ensuring older areas are well maintained and considering offering those graves at a cheaper cost.	The Government will consult publicly on this recommendation prior to determining its position on it.	
8.	That space for new cemeteries and crematoria be included in future planning strategies, such as the Sydney Metropolitan Strategy.	Support is given for cemetery space to be considered in future planning strategies	Space for new cemeteries and crematoria needs to be considered in future planning strategies, however the need for space should be appropriately assessed.
9.	That cremations be encouraged as a way for the community to reduce the cost of a funeral and reduce the land needed for burials.	Supported	

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10.	That the funeral industry promote alternative interment practices to the community as a way of alleviating pressures on burial space in the greater metropolitan area of NSW.	The Government will consult publicly on this recommendation prior to determining its position on it.	
11.	That legislation be developed and implemented to ensure cemeteries put aside sufficient funds to provide income to cover the costs of perpetual care of cemeteries.	The Government will consult publicly on this recommendation prior to determining its position on it.	

	Committee recommendation	Government response	Additional comment
12.	<p>That the results of the Office of Fair Trading discussion paper titled Review of Consumer Protection and the NSW Funeral Industry be made public and an education campaign be run by the Office of Fair Trading to raise community awareness of the processes involved in arranging a funeral.</p>	<p>Partial Support</p>	<p>The Office of Fair Trading received a number of submissions to the discussion paper "Consumer Protection and the NSW Funeral Industry".</p> <p>All stakeholders who provided submissions to the discussion paper also provided similar or identical submissions to this Inquiry</p> <p>The Office of Fair Trading also provided evidence to this Inquiry. In providing that evidence the Office of Fair Trading provided details of its research and the findings that arose from the discussion paper.</p> <p>With regard to an education campaign, in November 2004, the Office of Fair Trading released "a Consumer Guide to Funerals". The Guide is designed to assist consumers make decisions about funeral arrangements.</p> <p>At the time of release the Guide was mailed out to over 100 relevant stakeholders in Federal, State and Local Government, legal industry, community groups, pensioner groups and welfare organisations to inform them of the availability of the Guide.</p> <p>The Guide was also mailed out to the funeral industry to inform them of its availability and to encourage their use.</p> <p>It is anticipated that the Consumer Guide will be updated in the near future and a subsequent consumer education and awareness campaign conducted which would enhance the community's understanding of the process involved in arranging a funeral.</p>
13.	<p>That the Office of Fair Trading be the primary contact for consumer complaints regarding the funeral industry and that the complaints process be widely advertised to consumers.</p>	<p>Supported</p>	<p>The Office of Fair Trading currently deals with all consumer protection complaints concerning the funeral industry. The Government supports the Office of Fair Trading being the primary contact for consumer complaints and when appropriate the Office of Fair Trading will refer matters to other agencies.</p>

	Committee recommendation	Government response	Additional comment
14.	<p>That NSW Health review the definition of an exhumation in the Public Health (Disposal of Bodies) Regulation 2002 taking into account whether an exhumation fee should apply to: cremated remains being removed from a grave or memorial garden and moved within a cemetery /crematorium a coffin in a crypt or vault that is removed for repair that takes longer than a day reuse of family graves.</p>	Supported	
15.	<p>That NSW Health consider the definitions of a body collection vehicle and a hearse as part of the next review of the Public Health (Disposal of Bodies) Regulation 2002.</p>	Supported	<p>Funeral directors must have access to both vehicles. The Committee considered that defining such vehicles would lower the cost of purchase or manufacture. This issue will be further considered at the next legislative review of the Public Health (Disposal of Bodies) Regulation 2002, due in 2007.</p>
16.	<p>That NSW Health and local authorities increase their efforts in enforcing the Public Health (Disposal of Bodies) Regulation 2002 and NSW Health consider increasing the penalties for breaches under the Public Health Act 1991 and regulation to act as more of a deterrent.</p>	Partially Supported	<p>The current review of the Public Health Act is considering the level of penalties for its subordinate legislation and the issue of on the spot fines. Both of these actions would serve to enhance the enforceability and enforcement activity of the Public Health (Disposal of Bodies) Regulation. In view of the relatively low number of complaints, as indicated by the committee, it is appropriate to maintain the current level of enforcement activity.</p>
17.	<p>That NSW Health use the audit tool for the funeral industry to collect data on industry performance and non-compliance to help determine future enforcement needs for the funeral industry.</p>	Not supported	<p>While regulatory compliance rates could be determined from a one off auditing survey, this use of resources is difficult to justify in terms of the very low public health risk of the funeral industry. This aspect can be pursued in the future if an upward trend of complaints is detected. A self audit tool which allows determination of compliance with legislative standards has been designed to be used by the industry to improve compliance with current legislation.</p>

	Committee recommendation	Government response	Additional comment
18.	<p>That the funeral industry develop a mandatory, industry wide code of practice based on the Australian Consumer Complaints Commission guidelines, in conjunction with appropriate stakeholders and government agencies, ensuring that the code is consistent with current consumer and public health regulations.</p>	<p>Not Supported</p>	<p>The development of a mandatory code of practice for the funeral industry is not supported.</p> <p>It has not been demonstrated to the Government that there is widespread market failure in the funeral industry. As such, it is the Government's view that legislative prescription such as the mandatory code of practice recommended is unnecessary.</p> <p>It should be noted that the Australian Competition and Consumer Commission guidelines are for voluntary, not mandatory codes (Guidelines for developing effective voluntary industry codes of practice- March 2005)</p> <p>Moreover, it is the Government's view that improvements to the current legislative framework such as the introduction of a "Product Information Standard", which would include information on the cost of a basic funeral, as well as other initiatives such as a centralised complaints handling system run by the Office of Fair Trading and an consumer education campaign, will enhance consumer protection with regard the funeral industry. Such improvements are adequate and appropriate given the level of demonstrated consumer detriment.</p>

	Committee recommendation	Government response	Additional comment
19.	<p>That the code of practice developed for the funeral industry provide: that funeral directors provide a written quote prior to finalisation of the funeral arrangements that includes the total cost, itemisation of costs, such as specific costs that make up the professional fee and disbursements that disbursements must not include commissions or mark up.</p>	Not Supported	<p>See comments Recommendation 18</p> <p>Recommendation 1 is relevant as it provides for the development of a "Product Information Standard" which would cover the matters raised in this recommendation.</p>

	Committee recommendation	Government response	Additional comment
20.	That the code of practice developed for the funeral industry include the cost of an essential service funeral (basic funeral), as well as the costs associated with any enhancements or additions.	Not Supported	See comments Recommendation 18

Committee recommendation	Government response	Additional comment
<p>21. That the funeral industry code of practice include: both mandatory criteria and voluntary best practice criteria commercially significant sanctions for non-compliance an education and information campaign to raise consumer awareness of the code. That the code of practice cover areas such as complaint handling, funeral bills and quotes, essential service funerals (basic funerals), professional and ethical practices and be flexible enough to accommodate cultural and religious practices.</p>	Not Supported	See comments Recommendation 18
<p>22. That a Code of Practice Committee be established and composed of: trade associations, such as the Australian Funeral Directors Association, Funeral Directors Association of NSW, Cemeteries and Crematoria Association of NSW and small operators representatives of consumers, local government and Unions NSW regulatory authorities and consumer affairs agencies, such as NSW Health, Office of Fair Trading and possibly the Department of Lands. That the Code of Practice Committee include representatives from metropolitan and regional NSW.</p>	Not Supported	See comments Recommendation 18
<p>23. That the Government review the scope of existing legislation to accommodate a mandatory code of practice and, if necessary, amend existing legislation to incorporate a mandatory code of practice for the funeral industry.</p>	Not Supported	See comments Recommendation 18