



**Legislative Council
Standing Committee on Social Issues**

INQUIRY INTO THE FUNERAL INDUSTRY

REPORT TABLED

The Legislative Council's Standing Committee on Social Issues has released its report on the funeral industry. The Inquiry was referred to the Committee by resolution of the House on 23 March 2005. The terms of reference required the Committee to examine a number of issues, including the cost of funerals, availability of burial space and the adequacy of current regulation of the industry. The Committee also considered the ability of existing legislation to protect consumers and address community needs.

The Chair of the Social Issues Committee, Jan Burnswoods MLC, said "The Committee makes strong and positive recommendations aimed at addressing consumer and industry concerns about transparency of funeral costs, a clear complaints mechanism and enforcement of the public health regulations."

"The Committee recommends a comprehensive mandatory code of practice for the funeral industry to better protect consumers and provide more comprehensive regulation of the industry." Ms Burnswoods continued, "The Committee recommends that this code of practice be developed with stakeholders and Government and cover areas such as complaints handling, funeral bills and quotes, basic funerals, and professional and ethical practice."

"The need to raise community awareness of what is involved in organising a funeral and what to expect in terms of service and cost were key issues raised throughout this Inquiry." Ms Burnswoods commented. "In response the Committee recommends that the Office of Fair Trading develop a Product Information Standard for the funeral industry, be the primary contact for complaints and undertake an education and information campaign about funeral arrangements.

"This report also highlights industry concerns relating to breaches of the public health regulations by some funeral directors." Ms Burnswoods said, "The Committee recommends that NSW Health and local government authorities increase enforcement of the regulations and NSW Health consider increasing penalties."

To address long-term needs for burial space in the Greater Metropolitan Area, the Committee recommends that Government ensure the need for burial space is included in future planning strategies for the GMA and consideration is given to renewable tenure of gravesites and the revocation of unused burial rights.

The Executive summary and list of the Committee's recommendations is attached. The report can be obtained via the Committee's website at www.parliament.nsw.gov.au/socialissues or be obtained from the Committee Secretariat on 02 9230 3078.

*For further comment please contact Jan Burnswoods MLC, Committee Chair,
on 9230 2488 or 0419 412 154*

Executive summary

Chapter 1 – Background to the inquiry

The Inquiry into the funeral industry was referred to the Committee by resolution of the House on 23 March 2005. The motion to conduct the Inquiry was moved by the Hon Dr Chesterfield-Evans, in response to community concerns that the Funeral Industry Council's proposed option for regulation of the industry might exclude smaller operators and impact on costs.

The Committee conducted six days of hearings and heard from over 100 participants, including NSW Health, the Office of Fair Trading, the Department of Lands, the Funeral Industry Council, representatives of the industry and community groups, representing consumer concerns. The Committee visited Port Macquarie and Broken Hill to gain an understanding of different aspects of the funeral industry in regional and rural areas of New South Wales.

Chapter 2 – The funeral industry

This chapter provides an overall description of the funeral industry, including major stakeholder organisations, as well as relevant government departments involved in the oversight of legislative requirements. The number of deaths, funerals, burials and cremations per annum is also outlined to provide an indication of the size of the funeral industry in New South Wales and the degree to which demographic change may have affected the industry. In addition, a number of differences between rural, regional and metropolitan areas have important implications for this industry.

This chapter also examines the changes in the funeral industry over the past decade including the cost of funerals, the degree of competition, vertical integration and ownership.

Some of the issues raised in this Inquiry are currently being investigated by Government agencies. These include consumer protection issues and the shortage of burial space in the greater metropolitan area. In particular, interdepartmental committees have been established and are being coordinated by the Office of Fair Trading and the Department of Lands.

Chapter 3 – Costs

The issue of costs was a key one for consumer groups who spoke to the Committee. This chapter examines the different cost elements of a funeral service, as well as the rise in the price of a funeral service above the consumer price index or the general rate of inflation.

Consumer groups expressed concern regarding the adequacy and transparency of pricing information available from funeral directors. The need to protect and educate vulnerable consumers about the products and choices available to them was highlighted to the Committee. In this regard the Committee recommends the Office of Fair Trading develop a Product Information Standard for the funeral industry. The Committee also recommends in Chapter 7 that a code of practice be developed which will include funeral bills and quotes and the cost of an essential service funeral (basic funeral).

Witnesses gave the Committee a number of reasons why they believe that the cost of funerals has increased above the rate of inflation. These include an increase in the professional service fee charged by funeral directors, an increase in the demand for and expectation of services included in the funeral package requested by consumers and the increased cost of burial space. The

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Committee examines these issues and cheaper alternatives to reduce the cost of a funeral are discussed. This chapter also looks at the provision of pre-paid arrangements for a funeral.

Chapter 4 – Burial space

This chapter examines the current supply of, and future demand for, additional burial space, particularly in the Sydney Greater Metropolitan Area. This chapter considers and recommends ways in which burial space may be increased, or used more efficiently. In particular, the Committee recommends the inclusion in future planning strategies of cemeteries and crematoria, the renewable tenure of gravesites and the revocation of unused burial rights.

The Department of Lands informed the Committee that a Cemeteries Interdepartmental Committee had been established to address the issue of burial space. The Interdepartmental Committee includes the Department of Planning, NSW Health, local government, the Department of Environment and Conservation and Treasury, among others.

The Interdepartmental Committee has commenced a consultation process with the funeral industry and intends to extend this process to the broader community, to raise the awareness of the issue of burial space and gauge community opinion in relation to acceptable alternatives. The Committee strongly supports this consultation process and believes the Interdepartmental Committee has the potential to be an effective mechanism for the future planning of burial space.

Chapter 5 – Community needs

This chapter considers the burial, cremation and other practices related to a funeral service among different ethnic, cultural and religious groups in NSW. People from many religions are able to conduct their preferred funeral service and the Committee is committed to ensuring the options currently available to consumers continue to exist. The Committee also highlights the importance of informing consumers of these alternatives, so they can more effectively negotiate the kind of funeral service they would like.

The Committee heard that the level of complaints against the funeral industry is low. However the Committee also heard that there is a need for improved complaints handling within the industry and improved consumer awareness of the services and products available to them.

The Committee believes that distributing information relating to the funeral industry needs to be enhanced, so people may have some initial knowledge of and contact with the funeral industry, rather than waiting until they have a specific need for the service to discover their options. The Committee recommends that the Office of Fair Trading be the primary contact for consumer complaints against the funeral industry and run an education campaign to raise community awareness of the processes involved in arranging a funeral.

Chapter 6 – Regulatory framework

The funeral industry is regulated by a variety of legislation, including public health, fair trading and occupational health and safety legislation. In this chapter, the Committee examines the adequacy of the existing regulation of the funeral industry to protect consumers, public health and employees.

This chapter considers whether existing legislation protects public health and employees, as well as the role that the legislation plays in protecting consumers and addressing community needs.

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Overall, the Committee believes that the current legislative framework is adequate for the protection of public health and employees. We note that some concerns were raised in relation to current legislation and the Committee has proposed a number of specific areas for amendment to address these issues.

This chapter also addresses the need to enforce existing legislation, which was a key issue for industry members. The Committee notes that the NSW Health enforcement regime of public health regulations is based on complaints. The Committee believes that NSW Health and local authorities should increase enforcement efforts and NSW Health consider increasing the penalties for breaches under the *Public Health Act 1991* and regulation to act as more of a deterrent.

Chapter 7 – To license or not?

This chapter addresses the proposal for a licensing system for the funeral industry. Currently, funeral directors do not have to be licensed to operate in New South Wales, although they must adhere to relevant legislation and regulation governing the industry. Some witnesses told the Committee that they believed the industry required a licensing system to ensure consumer protection, legislative compliance and a more structured complaints mechanism.

The Committee examined a number of options to increase regulation in the industry, including positive and negative licensing, an industry ombudsman scheme, accreditation and an industry wide code of practice. After examining the various options, and given the relatively low level and nature of the complaints against the funeral industry, the Committee recommends that a mandatory code of practice be developed. The Committee makes a number of recommendations regarding the development, content and enforcement of a code of practice including a clear complaints handling process.

If the level of complaints against the industry increases, the Committee believes that there will be a need to consider increasing the regulation of the industry through a licensing scheme.

In this chapter the Committee also considers the role and structure of the Funeral Industry Council (FIC), primarily in relation to the Council's potential to act as an industry regulator or licensee. While the Committee acknowledges that the FIC has played an important role in self-regulating the industry the Committee is concerned that the FIC, as currently constituted, is not representative of all stakeholders in the funeral industry, and in particular of small operators and consumers. Instead, the Committee supports a primary role for Government agencies, such as the Office of Fair Trading, in regulating the industry and developing a code of practice with the participation of industry and stakeholders.

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Summary of recommendations

Recommendation 1

That the Office of Fair Trading develop a “Product Information Standard” for the funeral industry under section 38 of the *Fair Trading Act 1987* and require the funeral industry to display prices including itemisation of the components of the professional fee.

Recommendation 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.

Recommendation 3

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.

Recommendation 4

That the outcomes of the Office of Fair Trading’s discussion paper, *Funeral Funds Regulation 2001: Potential Areas for Reform* 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.

Recommendation 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.

Recommendation 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.

Recommendation 7

That the current legislation for the revocation of unused burial rights in Crown cemeteries, as set out in the *Crown Lands (General Reserves) By-law 2001*, 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.

Recommendation 8

That space for new cemeteries and crematoria be included in future planning strategies, such as the Sydney Metropolitan Strategy.

Recommendation 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.

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Recommendation 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.

Recommendation 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.

Recommendation 12

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.

Recommendation 13

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.

Recommendation 14

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.

Recommendation 15

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.

Recommendation 16

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.

Recommendation 17

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.

Recommendation 18

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.

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Recommendation 19

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.

Recommendation 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.

Recommendation 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.

Recommendation 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.

Recommendation 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.

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