

INQUIRY INTO FUNERAL INDUSTRY

Organisation: Department of Fair Trading
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Position: Minister
Telephone:
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Theme:

Summary



New South Wales

Minister for Justice
Minister for Fair Trading
Minister Assisting the Minister for Commerce
Minister Assisting the Premier on Citizenship

IDFT: M05/3450

The Hon J C Burnswoods MLC
Committee Chair
Standing Committee on Social Issues
Parliament House
Macquarie Street
SYDNEY NSW 2000

20 JUL 2005

Dear Ms Burnswoods

I refer to your letter of 21 April 2005 regarding the Inquiry into the Funeral Industry, being conducted by the Standing Committee on Social Issues.

As you are aware, there are no national licensing arrangements or regulation of the funeral industry. In 2003, this issue was raised by NSW Fair Trading at the meeting of the Standing Committee of Officials of Consumer Affairs (SCOCA). This is a sub-committee of the Ministerial Council on Consumer Affairs, whose charter is to consider consumer affairs and fair trading matters of national significance and, where possible, develop a consistent approach to those issues. While the issue was discussed, there was little support amongst other jurisdictions regarding the development of any national arrangements other than with respect to consumer education and awareness.

Subsequently SCOCA passed a resolution to establish a working party to consider strategies to raise education and awareness with respect to the funeral industry. The SCOCA Working Party is chaired by NSW and comprises representatives from Western Australia, South Australia, Northern Territory and Tasmania.

The NSW Office of Fair Trading developed the Consumer Guide to Funerals to provide practical assistance for people organising a funeral. In particular, it outlines the process of selecting a funeral director, what is involved in arranging a funeral as well as some useful contacts including those relating to coping with grief, probate and financial advice.

The Consumer Guide to Funerals was publicly released in February 2005 and distributed to relevant stakeholders including industry, consumer groups, government agencies, religious organisations and other community groups. It is available from all Fair Trading centres and can be downloaded from the Office of Fair Trading website www.fairtrading.nsw.gov.au.

The SCOCA Working Party determined that the Consumer Guide to Funerals was a useful document to help consumers with organising a funeral and could quite easily be adapted to the individual circumstances of each jurisdiction. As a result, following its publication, NSW arranged for the release of the content of the *Consumer Guide to Funerals* for use by other jurisdictions.

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There have been media reports that the early draft of the Guide, which was circulated to stakeholders for comment, contained a section on "Do it Yourself Funerals" which the media also suggested had been removed as a result of pressure from industry.

I would like to make it clear that there was never any section in the Guide on organising a Do-It-Yourself funeral. The early draft contained a few sentences stating that while it was not illegal for an individual to organise a funeral, the process was complex and demanding and required specialist resources and adherence to strict public health regulations. Upon review, these sentences were removed to avoid creating a false impression that consumers could easily organise all aspects of a funeral when it is likely that few would possess the knowledge, skills and resources to meet the health regulations required to move, store and dispose of a body.

Both the Office of Fair Trading and I reject any claim that any pressure was placed by industry during the development of the Guide to create the impression that using a funeral director was the only option when organising a funeral. The Guide still contains references to do-it yourself options including using a carpenter to make a coffin and scattering cremated remains or burial at sea.

Funeral directors do not have to be licensed to operate in NSW. However, they must still adhere to certain standards of operation imposed by various agencies including the Office of Fair Trading which is specifically concerned with consumer protection issues.

Fair Trading Legislation

Fair Trading legislation does not regulate the price of goods and services, rather it deals with the relationship between traders and consumers. Businesses are free to set prices according to market conditions as long as they do not contravene fair trading legislation.

The principal protection of consumer interests by regulation in NSW is through the *Fair Trading Act 1987*, and existing consumer protection for funeral services is managed under that legislation. The Act prohibits misleading, deceptive and unconscionable conduct and provides for a range of consumer remedies, over and above those available through common law, which would extend to the activities of the funeral industry.

The Act provides that regulations may prescribe a product information standard to be used for a specified kind of goods. A person must not supply goods unless the person has complied with a mandatory product information standard. A product information standard consists of requirements for disclosure of information such as the price, performance, composition, contents, place and date of manufacture and care and storage of goods. Mandatory product information standards have been prescribed for fibre content labelling, care labelling and petrol price boards.

The *Fair Trading Act 1987* also gives consumers a right to compensation for loss or damage which occurs as a result of conduct that is in contravention of the Act (except in relation to certain unconscionable conduct provisions). This right is available to consumers and is accessed by action in the Supreme, District or Local Courts or the Consumer, Trader and Tenancy Tribunal.

Funeral Funds Act 1979

To save their loved ones from worry or to ensure that the funeral is arranged according to their wishes, many people choose to pre-pay for their own funeral. The Office of Fair

Trading has specific responsibility for regulating contributory and pre-paid funerals through the *Funeral Funds Act 1979*.

The Act provides for the registration of funeral contribution funds, pre-paid funeral funds, and pre-paid contracts and sets out requirements for the administration of trust funds under pre-paid contracts.

The legislation also details other key consumer protection measures such as those designed to ensure that the funeral is delivered as ordered. Such provisions recognise the special nature of the funeral fund industry whereby a service or product is not delivered for many years after it is arranged, and that the original consumer is not able to monitor its delivery.

Consumers would typically approach a funeral director to discuss the purchase of a pre-paid funeral. However, any monies paid in advance by the consumer for a funeral service must be invested with a funeral fund that is registered with the Office of Fair Trading.

The process of registration involves a fund meeting a range of specified requirements. The legislation also details other key consumer protection measures such as those designed to ensure that the funeral is delivered as ordered.

Amendments to Funeral Fund Laws

The *Funeral Funds Amendment Act 2003* was passed by the NSW Parliament in late October 2003 and was assented to on 6 November 2003. The amendments came into force on 30 November 2004. The changes to the Act were designed to strengthen the prudential management of funeral funds and to enhance protection for consumers who deal with these funds. They included:

- a requirement for all previously exempt funeral funds to be registered with the Office of Fair Trading;
- removal of legislative duplication where a fund is subject to other appropriate prudential scrutiny; and
- increased disciplinary powers for the Commissioner for Fair Trading, including imposing conditions on, or cancelling, a fund's registration.

Consumer Protection Initiatives

I am concerned about the funeral industry because people organising the funerals of loved ones are often in a vulnerable state and may not be in a position to uphold their rights. I am also concerned with the difficulties that exist in comparing the prices of individual items and services provided by industry participants.

As a result, I have instigated a number of initiatives to examine this issue.

Inter-departmental Committee on Consumer Protection and the NSW Funeral Industry

I have set up Inter-departmental Committee of all the NSW Government agencies that have some involvement with the funeral industry. The Committee will examine options to optimise consumer protection in the industry.

Consumer Hotline and On-Line Survey

To assist the Inter-departmental committee to determine what problems exist in the industry, how widespread they might be, and the level of consumer detriment they present, I recently

established a telephone hotline and on-line survey to allow consumers the chance to share their experiences when arranging a funeral or using the services of a funeral industry professional.

The telephone hotline was available from 27 May 2005 until 3 June 2005. The on-line survey commenced at the same time as the hotline and closed on 8 July 2005. The Office of Fair Trading is analysing the responses from both the hotline and the on-line survey and will provide information to the Inter-departmental Committee. This material may also inform further research, such as focus groups and customer inquiries, to be commissioned by Fair Trading.

Discussion Paper - Funeral Funds Regulation 2001

On 15 June 2005 I released a discussion paper on pre-paid funeral funds that proposed additional changes to the legislation to improve consumer protection. 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. The closing date for submissions is 29 July 2005.

I thank the Committee for the opportunity to provide comments to the Funeral Industry Inquiry. The examination by the Office of Fair Trading of the consumer protection issues around the funeral industry has not yet been completed. The results of this work by Fair Trading will be made publicly available at the appropriate time. In this context I would be happy to work with the Committee towards advancing the interests of NSW consumers and industry.

Yours faithfully



(J Hatzistergos)