

Submission
No 33

INQUIRY INTO FUNERAL INDUSTRY

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Theme:

Summary



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7 June 2005

The Secretary
Legislative Council Social Issues Committee
Parliament House
Macquarie Street
Sydney NSW 2000

SOCIAL ISSUES COMMITTEE

8 JUN 2005

RECEIVED

Dear Secretary

Please find enclosed a submission that has been prepared by the Council of Social Service of NSW (NCOSS) in relation to the Committee's Inquiry into the Funeral Industry in NSW.

In this submission, NCOSS has outlined a series of concerns about price, quality and choice for consumers, especially low income individuals and families, when seeking funeral services.

NCOSS has proposed an integrated package of regulatory reforms and consumer protection measures that we believe would lift the quality, accessibility and affordability of this "essential set of services" in NSW, both in the short and long terms. Such improvements are critical as the NSW population rapidly ages and industry ownership is increasingly concentrated into large corporate conglomerates.

I hope that the Committee will favourably assess our submission. If further information is required, please contact Dev Mukherjee, Senior Policy Officer on tel 9211 2599 or email at dev@ncoss.org.au

Yours sincerely



Gary Moore
Director

**Submission to the
Legislative Council
Standing Committee on Social Issues
Inquiry into the Funeral Industry**



May 2005

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1. ABOUT NCOSS

The Council of Social Service of NSW (NCOSS) is the peak body for the social and community services sector in New South Wales. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in NSW.

NCOSS provides an independent voice on welfare policy issues and social and economic reforms. It is the major coordinator for non-government social and community services in NSW.

2. INTRODUCTION

NCOSS welcomes this inquiry and is pleased to comment and propose improvements to the funeral industry in NSW. Not since the Prices Commission Inquiry in 1977 has there been a systematic review of the funeral industry in NSW.

In developing this submission NCOSS recognises that:

- funerals are an essential service;
- families and friends of the deceased are usually in vulnerable positions;
- families tend to lack knowledge of funerals;
- changes in the funeral industry have led to increased concentration of ownership and vertical integration; and
- the average cost of funerals is excessive and rising.

Particular groups within the NSW community are especially vulnerable. The Ethnic Communities' Council of NSW has indicated that people from non-English Speaking Backgrounds (NESB) and Culturally and Linguistically Diverse Backgrounds (CALDB) are particularly vulnerable in an environment where they often have a very limited ability to comprehend English and where they are often operating outside their own cultural environment. The lack of comprehension together with the diverse cultural backgrounds of these people puts them at a particular disadvantage in those emotionally charged situations when they are arranging funeral services for their loved ones.

Indigenous people are also vulnerable as they have unique needs for funerals. Family attendance is particularly important and funeral ceremonies may be delayed to ensure maximum attendance. The delay can add to the price of the funeral as storage of the deceased has a cost. Although not related to the funeral industry, travel to attend the funeral ceremony is an added financial burden for Indigenous people at a difficult time.

For these reasons NCOSS considers that the NSW Government should take an active part in regulating the industry to ensure the price of funerals come within reach of low income earners. Better protection for consumers from unscrupulous operators and systems to address complaints made against members of the funeral industry are also required.

In particular, NCOSS proposes:

- a licensing system for funeral operators;
- a code of conduct for the industry be developed based on ACCC guidelines;
- an industry ombudsman be established to address complaints and ensure compliance with the code;
- clear pricing and concession prices for pensioners and other low-income groups; and
- a 'basic', affordable funeral to be offered by all funeral directors.

3. CHANGES IN THE FUNERAL INDUSTRY

NCOSS is concerned that the excessive price of funerals is putting financial pressure on people at a time when they are vulnerable. The price of funerals tripled between 1992 and 2002 (Ryle 2002). The price increases are a consequence of increased concentration of ownership, vertical integration, and the hard sell tactics of unscrupulous funeral industry operators.

Since the 1970s there has been an increasing concentration of ownership in the funeral industry in Australia as larger companies, and more recently international corporations, have replaced family-owned firms (Howarth 2000).

As a consequence of this increased concentration of ownership, the industry has become vertically integrated with single firms now controlling cemeteries, crematoria, funeral directors, mortuaries and transport.

For example, the firm InvoCare now dominates the industry. By 2001 InvoCare had 21% of the funeral market and 35% of the cremations market (Macquarie Bank 2004 cited in Cottle & Keys 2004). InvoCare owns one hundred and twenty three funeral homes and twelve cemeteries and crematoria (InvoCare 2005a). InvoCare is now Australia's largest private provider of funerals, burials and cremations (InvoCare 2005b).

The changes in the structure of the industry have been a driving force for price rises. High prices are often listed as 'disbursement' fees such as director's fees, body transfer fees, etc (Cottle & Keys 2004). Already, the price of basic funerals is excessive and places financial difficulties on low-income earners. For example, a pensioner in regional NSW paid \$3200 for the burial of her husband with no ceremony in 2003 (Nolan 2005). She was still paying this off two years later.

People are at their most vulnerable when they are required to lay their loved ones to rest. As a result, unscrupulous operators can add to the cost by using hard sell tactics to promote more expensive coffins and memorial items. Larger coffins are not only more expensive but require larger graves to be dug and this adds to the price (Ryle 2002). Funeral memorial items like plaques can add thousands to the cost of funerals. NCOSS understands that some funeral services promote these items as necessary rather than optional.

The decrease in competition, the rapid increase in the price of funerals, and the vulnerability of consumers all point to the need for appropriate government regulation of the industry.

As the proportion of people aged over sixty will double by 2040, the profit margins of funeral operators are poised to become much more lucrative in the future.

NCOSS recommends that the NSW Government develop a regulatory framework to counter the effects of the changes in the structure of the funeral industry in order to better protect consumers.

4. THE AVAILABILITY AND AFFORDABILITY OF BURIAL SPACES

NCOSS notes that the price of burial spaces has been increasing. This is due to limited availability of burial spaces, particularly in Sydney and the increasing concentration of ownership of cemeteries. Planning systems should ensure that there is sufficient space for cemeteries and appropriate regulation of the industry should limit the effects of the increased concentration of ownership of cemeteries.

In some European countries graves can be recycled. That is remains can be removed and placed on site in a smaller box, allowing the grave to be re-used. This is not permitted in NSW.

Another option for increasing the supply of spaces is permitting vertical burials, as has recently been done in Victoria.

NCOSS recommends that vertical burials be permitted to increase the supply of burial spaces.

5. THE ADEQUACY OF EXISTING REGULATION OF THE FUNERAL INDUSTRY TO PROTECT CONSUMERS, PUBLIC HEALTH AND EMPLOYEES

5.1 Consumer Protection

Media attention given to funeral industry, particularly in 2002, highlighted inappropriate actions by the some operators in regard to the services provided.

The *Sydney Morning Herald* printed an article entitled "The dying game" (Ryle 2002) on 30 September 2002 and ABC Television screened the *4 Corners* program "The Coffin Chasers" (Cohen 2002) on 14 October 2002.

The *4 Corners* program highlighted allegations of the wrong body being cremated, the mistreatment of bodies and inappropriate marketing strategies. These were attributed to the poor practices of some operators.

This *4 Corners* program showed how families and friends of the deceased are usually in vulnerable positions and tend to lack knowledge of funerals. This enables some funeral industry operatives to use exploitative strategies to reduce costs by not following the instructions of the deceased's family. Further, the program highlighted the significant public health issues relating to the storage and treatment of bodies.

In contrast, the *Sydney Morning Herald* article focused on the increasing concentration of ownership of the funeral industry and the escalating price of funerals. The changes to the funeral industry structure have been covered in section 2 of this submission.

As this media coverage has highlighted consumer protection was clearly inadequate in 2002. NCOSS is aware of similar cases occurring more recently. Unfortunately, it appears that the NSW Government has done little to improve the situation for consumers. This is clearly an area for the enhancement of regulation of the funeral industry by the NSW Government.

Consumers in NSW are currently covered by a raft of legislation including the *Fair Trading Act 1987*, *Consumer Claims Act 1998*, and the *Consumer, Trader and Tenancy Tribunal Act 2001*. This legislation seeks to ensure the fair supply, advertising and description of goods and services. The Office of Fair Trading is able to mediate complaints by consumers, and the Consumer, Trader and Tenancy Tribunal is able to resolve disputes. However, there is nothing specific in this legislation to assist consumers with unscrupulous funeral operators and it does nothing to limit the rising price of funerals.

The *Trade Practices Act 1974 (Cwth)* aims to promote competition and fair trading. The Australian Competition and Consumer Commission enforces this Act but only deals with competition and consumer protection matters of national and international significance. It has not yet investigated the increasing concentration of ownership in the funeral industry nor investigated whether there has been abuse of market power by large industry firms.

5.2 Public Health

The *4 Corners* story alleged that some operators had stored bodies in their backyards and without proper refrigeration. Other media pieces have highlighted similar inappropriate storage and disposal of bodies.

On 4 October 2002, the then NSW Minister for Health, the Hon. Craig Knowles MP, announced tighter regulations for the funeral industry (Knowles 2002), i.e. the *Public Health (Disposal of Bodies) Regulation 2002*. These regulations are permitted under the *Public Health Act 1991*. This legislation appears to adequately cover the public health issues relating to the funeral industry in NSW.

NCOSS is not convinced of the case for more regulation in this area but there is a case for better enforcement of the regulations. While Environmental Health Officers have responsibility for compliance with the legislation, there is no mechanism to prevent people who persistently and deliberately breach the legislation from continuing in the funeral industry. A licensing system could be used to ban such people.

5.3 Employees

Issues relating to employee protection include the level of appropriate training and occupational health and safety (OHS).

In NSW, the main OHS legislation is the *Occupational Health and Safety Act 2000*. WorkCover is the regulator. NCOSS considers that this Act is sufficient to cover the funeral industry as any other industry. However, if there are particular issues of occupational health and safety in the funeral industry then these are best addressed by WorkCover through, for example, a funeral industry OHS code of practice developed in consultation with industry representatives and trade unions.

At present, employment as a funeral attendant does not require any specific training, although some employers offer traineeships or apprenticeships. Rather employees need to be tactful, sympathetic and have good communication skills.

Possessing particular qualifications should not be a requirement of employment within the industry except in areas relating to securing public health. These include embalmers and morticians responsible for the control for infectious diseases. This is already a requirement under the *Public Health (Disposal of Bodies) Regulation 2002*. Other than these areas, employers and industry bodies are best positioned to understand training needs and to provide appropriate training.

5.4 *Enhancing the regulatory framework*

5.4.1 Licensing

The major problems with the funeral industry relate to the lack of consumer protection and enforcement of public health legislation. Licensing can provide greater protection for consumers and enhances enforcement of public health legislation. Other countries, including the USA and Canada, license funeral operators. No such arrangements exist within Australia.

Licensing arrangements have been proposed by industry organisations to a Victorian parliamentary inquiry into the funeral industry. The NSW Funeral Industry Council submission to the NSW Health Minister also included similar proposals (Nolan 2005). There is a degree of scepticism amongst consumer organisations about the licensing system proposed by industry representatives based on the belief that regulation (in the form of licensing, registration or certification) will lead to decreased competition within the industry and, eventually, complete monopolisation. This is particularly true of a self-regulated industry.

Regulation may increase barriers to entry in the industry since the aim of regulation is to set minimum standards of operation and service. Inability to meet these minimum standards prevents entry to the market by new firms and significant or continual breaches can mean exclusion through deregistration. Raising barriers to entry needs to be balanced against the need to protect consumers and public health.

In the case of the funeral industry in NSW there is already a significant concentration of ownership and hence regulation should focus on protecting consumers from the effects of this concentration.

NCOSS proposes that a licensing system be developed that ensures adherence to the public health legislation, adherence to a Code of Conduct, membership of an ombudsman scheme, and fair pricing systems. The following sub-sections provide details of these licensing conditions. Nothing in the licensing system should prevent "do-it-yourself" funerals.

Licensing should not be used as a way of raising significant barriers to entry into the market, further driving small firms out of the market or significantly raising the price. For example, proposals to require funeral directors to own a mortuary will require greater capital investment and so limit entry to the market. Excessive certification of employees will limit the hiring options of small, family firms and likely drive them out of the industry.

Preventing family or friends from acting as pallbearers will raise prices significantly. Such conditions do not relate to service standards or operational standards and so should not be requirement for gaining a funeral industry license.

Similarly, the cost of the license should not be significant to prevent entry to the industry but should be sufficient to cover the basic administrative costs of the scheme. NCOSS estimates that a levy of 0.5% of the price of funerals would raise around \$1,000,000 per year, sufficient to cover the basic costs of a licensing scheme. This may be reduced by the industry agreeing to absorb some of the cost and a subsidy from the NSW Government.

NCOSS recommends that the Office of Fair Trading and NSW Health develop a licensing system to ensure adherence to the public health legislation, adherence to a Code of Conduct, membership of an ombudsman scheme, and fair pricing systems.

5.4.2 Code of Conduct

NCOSS considers that a clear that a Code of Conduct for funeral industry would improve consumer protection. Such a code should establish specific standards for funeral firms in relation to customer service.

The Australian Competition and Consumer Commission (ACCC) has developed guidelines for voluntary industry codes and these guidelines are a good basis for a NSW Funeral Industry Code of Conduct.

While specific conditions within the Code would have to be agreed by the NSW funeral industry and consumer representatives, NCOSS proposes that at a minimum the code would specify that funeral services:

- detail the prices of funeral services;
- provide written estimates of all funeral charges and disbursements;
- respect the wishes of the deceased and their family ; and
- respect the diversity of religious and cultural beliefs in NSW.

In addition, the Code should prohibit the funeral service from:

- misrepresenting legal, crematoria or cemetery requirements;
- embalming without permission;
- requiring consumers to buy certain funeral goods or services as a condition for furnishing other funeral goods or services;
- taking actions that prevent "do-it-yourself" funerals; and

- engaging in other deceptive or unfair practices.¹

NCOSS recommends that the funeral industry develop a Code of Conduct in line with the ACCC Guidelines and in consultation with consumer representatives.

5.4.3 Funeral Industry Ombudsman

A funeral industry ombudsman would provide an independent way of resolving customer complaints. Industries that currently have an ombudsman include the energy and water industries, the telecommunications industry, and banking and financial services industry. These ombudsmen are independent and able to make decisions without any interference, based on what is fair and reasonable.

It would appear that the level of complaints relating to the funeral industry is low.² The Funeral Industry Council has stated it receives few complaints (although it is not a complaints body) and the Office of Fair Trading does not publish the number of complaints received by industry. It is difficult to determine accurately the number of consumers who are dissatisfied with the service provided.

It is likely that many people do not make a complaint when they are unhappy with the service provided because there is no recognised industry complaints procedure. Before the establishment of the then Energy Industry Ombudsman of NSW (EION), now the Energy and Water Ombudsman of NSW (EWON), the number of complaints about electricity providers to the NSW Ombudsman was very low, less than 50 each year (NSW Ombudsman 1999). As a specialist complaints body, EION received over 2,000 complaints in its first year, with the number of complaints increasing each year (EWON 2004).

Funding for the ombudsman should come from the funeral services' membership fees and fees for service based on complaints processed. While membership fees will, most likely, be passed on to consumers as price rises, they should only be modest. NCOSS has estimated that the annual cost of an ombudsman would be in the vicinity of \$500,000 per annum. If the price of a funeral (apart from 'basic' funerals – below) rises by approximately 0.1% this would raise approximately \$200,000 per annum. The remainder would be made up of user fees based on complaints received from member organisations.

NCOSS recommends that the funeral industry establish an industry ombudsman to provide an independent way of resolving customer complaints.

¹ Adapted from the US Federal Trade Commission Trade Commission's Funeral Rule (FTC 2004)

5.4.3 Fair and clear pricing

One of the biggest issues for consumers is lack of clarity about the price of funeral services and the total price of the funeral. In the United States, the US Federal Trade Commission Funeral Rule requires funeral services to provide a written price list to consumers. This list must itemise the price of sixteen items.

NCOSS proposes that funeral services should give consumers accurate, itemised price information in writing. The list should include, at a minimum, the prices of coffins, transport, burials, cremations, directors' fees and charges for relevant permits. Optional items, such as memorial items, could also be listed. A price list requirement in NSW would ensure clarity in the price of the funeral.

In addition to the price list, NCOSS proposes that consumers be provided with the total estimated cost of the funeral in writing as soon as possible after their needs have been determined with the funeral service. The consumer should approve any additional charges prior to them being incurred.

Further, NCOSS proposes that funeral services offer concession prices to pensioners and other low-income groups. Where such concessions are offered they should be clearly indicated on the price list.

When disclosing prices, the funeral service should provide contact details of the ombudsman scheme and indicate that the consumer is able to make a complaint in regard to the conduct of the funeral system.

NCOSS recommends that the Office of Fair Trading in consultation with the funeral industry and consumers develop a price list for funeral directors to provide to consumers.

NCOSS recommends that the funeral industry develop concession pricing for pensioners and other low-income earners in consultation with consumer representatives.

5.4.4 Basic Funeral Option

It has already been noted that the price of funerals has been increasing dramatically. While competition is usually considered to be the most efficient option for controlling prices, NCOSS notes that the increasing concentration of ownership and vertical integration of the industry has significantly reduced competition. Clear pricing will facilitate greater competition.

In addition, to ensure funerals remain within reach of low-income earners, NCOSS proposes that funeral services be required to offer a price-controlled basic funeral. A basic funeral would include a simple container (e.g. a cardboard coffin), transport, storage, and minimal price for burial/cremation.

It would not include a cost for a celebrant, flowers or memorial items etc. Some funeral services already advertise in the Yellow Pages a funeral at low prices.

NCOSS would prefer that payment for the basic funeral be made by installments extending after the funeral. However, NCOSS recognises that this may cause some difficulty for funeral services in that some individuals may not maintain payments once the service has been provided.

NCOSS is not proposing a price for these services and it may be that the prices vary from location to location as transport costs and burial spaces prices could vary significantly. To determine an appropriate pricing system for a basic funeral, NCOSS suggests that a body with significant expertise in pricing be commissioned to undertake this task. The obvious choice is the Independent Pricing and Regulatory Tribunal, which could conduct an investigation, seek submissions from consumers and industry representatives and make a determination on the price of a basic funeral.

NCOSS recommends that a referral be made to IPART to determine the price of a basic funeral.

6. THE ROLE AND STRUCTURE OF THE FUNERAL INDUSTRY COUNCIL

The Funeral Industry Council of NSW is a body whose main function is to represent its members. NCOSS understands that its membership is comprised of representatives from the following organisations:

- Australian Funeral Directors Association
- Australian Institute of Embalming Pty Ltd
- Combined Pensioners and Superannuants Association of NSW Inc (CPSA)
- Cemeteries and Crematoria Association of NSW
- Funeral and Allied Industries Union
- Funeral Directors Association of NSW
- InvoCare Ltd
- Unions NSW

NSW Health, the Office of Fair Trading and WorkCover attend meetings of the Funeral Industry Council as observers.

NCOSS considers that the membership of the Funeral Industry Council is not representative of the funeral industry in NSW. In particular, small funeral businesses are excluded from representation.

Membership of the Australian Funeral Directors Association and the Funeral Directors Association of NSW is restricted to funeral businesses that own a mortuary. Many small funeral businesses use hospital mortuaries and hence are excluded from membership of these associations.

The Australian Funeral Directors Association wholly owns the Australian Institute of Embalming Pty Ltd.

The Cemeteries and Crematoria Association of NSW has a wide membership including local government, cemetery trusts and private owners of cemeteries and crematoria. Small funeral firms do not usually own cemeteries or crematoria.

Hence, small operators are excluded from the Funeral Industry Council.

Further, the Funeral Industry Council is dominated by InvoCare Ltd. InvoCare brands are members of the Australian Funeral Directors Association. InvoCare also owns cemeteries and crematoria. InvoCare is the only funeral firm to have direct membership of the Funeral Industry Council.

While the Funeral Industry Council does have representation from consumers (the CPSA) and employees (Unions NSW and the Funeral and Allied Industries Union) these are in a minority.

Given its membership, NCOSS considers that the Funeral Industry Council is primarily a body representing the interests of the large funeral industry operators. Its proposals for self-regulation of the industry, while having laudable aims of protecting consumers, could also further concentrate ownership of the industry in the hands of large operators.

Earlier in this submission NCOSS has indicated that it is the responsibility of the NSW Government to license the funeral industry in NSW. Given the nature of the Funeral Industry Council, it is not appropriate for it to be delegated these licensing functions. Rather, given the nature and importance of this industry, it is appropriate for the NSW Government to enhance its regulatory functions.

7. THE ADEQUACY OF LEGISLATION IN MEETING COMMUNITY NEEDS

This submission has already indicated that current legislation is sufficient to meet community needs in relation to public health. However, the community could be better protected through improved enforcement of the public health legislation. Further, while employee protection could be enhanced, and is likely to be further eroded by proposed Commonwealth legislation, this applies to all employees and is not a key issue for this Inquiry.

The main area of need relates to consumer protection. NCOSS, in this submission, has already proposed a licensing system. To proceed with a licensing system new legislation will be required.

NCOSS recommends that the NSW Government prepare legislation to develop a licensing system for the funeral industry.

8. CONCLUSION

NCOSS considers that the NSW Government should take an active part in regulating the industry to:

- ensure the price of funerals come within reach of low income earners,
- better protect consumers from unscrupulous operators, and
- develop mechanisms to address complaints made against members of the funeral industry.

NCOSS recommends that:

1. the NSW Government develop a regulatory framework to counter the effects of the changes in the structure of the funeral industry in order to better protect consumers.
2. vertical burials be permitted to increase the supply of burial spaces.
3. the Office of Fair Trading and NSW Health develop a licensing system to ensure adherence to the public health legislation, adherence to a Code of Conduct, membership of an ombudsman scheme, and fair pricing systems.
4. the funeral industry develop a Code of Conduct in line with the ACCC Guidelines and in consultation with consumer representatives.
5. the funeral industry establish an industry ombudsman to provide an independent way of resolving customer complaints.
6. the Office of Fair Trading in consultation with the funeral industry and consumers develop a price list for funeral directors to provide to consumers.
7. the funeral industry develop concession pricing for pensioners and other low-income earners in consultation with consumer representatives.
8. a referral be made to IPART to determine the price of a basic funeral; and
9. the NSW Government prepares legislation to develop a licensing system for the funeral industry.

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