

Submission  
No 52

## INQUIRY INTO FUNERAL INDUSTRY

**Organisation:** Department of Local Government  
**Name:** Hon David Campbell MP  
**Position:** Acting Minister  
**Telephone:**  
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**Theme:**

**Summary**



New South Wales

The Hon Tony Kelly MLC  
Minister for Rural Affairs,  
Minister for Local Government,  
Minister for Emergency Services, and  
Minister for Lands

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The Hon Jan Burnswoods MLC  
Chair  
Legislative Council Standing Committee on  
Social Issues  
Inquiry into the Funeral Industry  
Parliament House  
SYDNEY NSW 2000

13 JUL 2005

*Jan*  
Dear Ms Burnswoods

I write in response to the Inquiry's call for submissions of 16 March 2005.

I attach the submission of the Local Government portfolio for the Committee's consideration. As you will note, the bulk of the submission relates to Terms of Reference 1 (a), (b) and (c).

I regret the lateness of this submission.

Yours sincerely

Hon David Campbell MP  
**Acting Minister for Local Government**

## The Standing Committee on Social Issues

### Inquiry into the Funeral Industry

#### Submission from the Acting Minister for Local Government

##### Background

Local government in NSW has a long involvement in the funeral industry as a provider of cemeteries for public burials and in some cases as operators of crematoria and related services (interment of ashes, memorials etc). Cemeteries and associated facilities operated by local government generally fall into two main categories:

- those on land owned by the council; and
- those located on Crown land that has been reserved or dedicated under the *Crown Lands Act 1989* or earlier Acts where council manages the site under a trust arrangement.

Councils provide this service to the community under the general provisions, sections 21-24, of the *Local Government Act 1993*. Where community land is involved, a plan of management must be prepared for the facility in consultation with the local community. Any change in operation or proposed building, such as a crematorium, would require a new or revised plan of management. A draft plan needs to go on public exhibition for 28 days as part of the mandatory consultation process.

Most councils in regional NSW operate cemeteries and/or crematoria for the public. Not all councils within the Greater Metropolitan Area encompassing Sydney, Newcastle and the Illawarra provide the same facilities for public use. Many do. Significant metropolitan cemeteries (in the wider definition) that are council managed include Waverley, Riverstone, Camden, Richmond Lawn, Penrith General, Mona Vale, Toronto, Wollongong Lawn, Katoomba and Lawson.

##### Term of Reference 1(a) Changes in the funeral industry over the past decade including the cost of funerals, the degree of competition, vertical integration and ownership

As outlined above, local government has a limited role in the funeral industry. This limits its ability to influence the sector and its operations. The cost of burial in a local government cemetery may, however, influence the overall price to consumers.

Fees for cemetery and crematoria services provided by local government are levied under section 608 of the *Local Government Act 1993*, which states that a council may charge an approved fee for any service it provides other than those for which an annual charge applies. For non-business activities such as this, section 610D of the Act applies. Under this section, the council must take a number of factors into account in setting fees. These include:

- the cost to council of providing that service;
- the price suggested for that service by any relevant industry body or schedule of charges published by the Department of Local Government;

- the importance of the service to the community; and
- any factors specified in the regulations.

Effectively the fees charged for local government services to the funeral industry are cost reflective. The actual level of fees is an operational matter that councils are best able to resolve having regard to local circumstances. Consequently, the Department of Local Government does not intervene in the setting of such fees.

Councils publish their rates and charges policies as part of their management planning process. The fees charged vary and depend on the circumstances of interment. Purchase of a lawn cemetery plot is normally higher than for a monumental cemetery plot, in line with the differential costs associated with their operation and maintenance.

Some examples of costs from recent management plans are included below for comparison purposes only.

Council	Purchase of plot – lawn \$	Purchase of plot – monumental \$	Reservation or admin fee – lawn \$	Reservation or admin fee – monumental \$	Reopening/2 <sup>nd</sup> burial \$
Camden*		671		220	220
Cowra	1538-1609	835	392	280	678 (lawn) & 370
Lachlan	440	137.50	40	40	
Penrith	880	715	160	160	550
Urana		180 +418 digging			60
Walgett	770	198	150	150	396 (lawn) & 132
Shoalhaven	1286	1171	107		

\* Camden charges non-residents \$1353 for plot purchase

The Department of Local Government does not have any access to information on the cost of funerals, the degree of competition, vertical integration and ownership in the sector.

Term of Reference 1(b) The availability and affordability of burial spaces and options for increasing the supply of spaces

In general there is no apparent shortage of burial space in cemeteries operated by local government in regional NSW with adequate land either available or already set aside. The discussion above is also relevant to the issue of affordability.

The situation for public provision of burial space in the Greater Metropolitan Area is currently under review by an Interdepartmental Committee established by the Minister for Lands. A Stakeholder Discussion Paper was released earlier this year with the closing date for submissions being 30 June 2005.

Term of Reference 1(c) The adequacy of existing regulation of the funeral industry to protect consumers, public health and employees

Local government cemeteries and crematoria facilities are subject to the same operational conditions as private sector facilities. These include the *Occupational Health and Safety Act 2000* in regard to safety of employees and the *Public Health Act 1991* and the Public Health (Disposal of Bodies) Regulation 2002 in relation to the processes of burial and cremation.

This is considered adequate in the context of the sector, the nature of its participants and the principle of appropriate and activity related regulation.

NSW has reviewed legislation in accordance with the Competition Principles Agreement signed in 1995. The review of the *Local Government Act 1993* was an exhaustive process resulting in a comprehensive analysis of the provisions of the Act in light of competition policy.

An Issues Paper was released in 2000 and an invitation to make submissions was widely advertised. A Review Committee, comprising senior officers from the Department of Local Government, The Cabinet Office and NSW Treasury was established. The Review Committee guided the recommendations for reform contained in the 'National Competition Policy - Review of the *Local Government Act 1993*'.

Among other things, the Review Committee recommended the repeal of s.68 approvals F8 and F9, relating to business approvals for undertakers and mortuary businesses. The Review Committee concluded that the requirement to obtain prior approval for a mortuary was already addressed through the development consent requirements under the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Review Committee therefore concluded that the prior approval requirement was in effect anti-competitive with no significant justification apparent on other grounds to justify its retention.

The Review Committee also recommended that the standards for mortuaries, as set out in Schedule 4 of the Local Government (Orders) Regulation 1999, should be retained.

As a result, prior approval for a mortuary business is now solely assessed under the EP&A Act through normal planning and development application processes. Under the EP&A Act approval process (s.78A(4)), council approval takes account of the standards for mortuaries specified under Schedule 4 of the Local Government (Orders) Regulation 1999.

It is submitted that this situation has not changed in the intervening period.

It should be noted that cl.48 of the Public Health (Disposal of Bodies) Regulation has not been subsequently amended to reflect the repeal of s.68 approval F8 from the Local Government Act.

In the event of a mortuary not meeting relevant standards (specified in Schedule 4 for water supply and sewerage, closet and ablution and construction) set out in the Local Government (Orders) Regulation a council may issue an order under section 124 of the Local Government Act for the owner to take any action necessary to bring the premises into compliance. It is submitted that this sufficiently complements the existing health and safety regulation of the activity and adequately safeguards the public interest including in respect of the integrity of reticulated water supply.

The Local Government Act does not provide for any consumer protection role and councils and the Department of Local Government have no relevant experience in this matter. As participants in the sector it is submitted that it would be inappropriate for local government to undertake either a consumer protection or regulatory role for the sector.

Terms of Reference 1(d), (e) and (f).

No comment is made in regard to these.