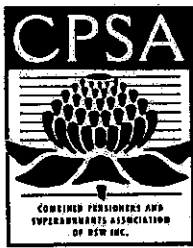


INQUIRY INTO FUNERAL INDUSTRY

Organisation: Combined Pensioners and Superannuants Association on NSW
Inc.
Name: Not Supplied
Telephone: 02 9281 2588
Date Received: 10/06/2005

Theme:

Summary



**COMBINED PENSIONERS AND SUPERANNUANTS
ASSOCIATION OF NEW SOUTH WALES INC.**

Founded 1931.

Serving pensioners of all ages, superannuants and low-income retirees.

Consumer Protection Awards – 2002, 2003, 2004

**SUBMISSION TO THE NSW LEGISLATIVE COUNCIL
SOCIAL ISSUES COMMITTEE**

10 June 2005

Our Ref: ASC.020
IEF.005

Inquiry into the Funeral Industry

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Page 1 of 29

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INDEX

Acronyms	Page	3
Introduction	Pages	3 – 4
Recommendations	Pages	5 – 8

Terms of Reference:

(a)	Pages	9 – 15
(b)	Pages	15 – 16
(c) & (e)	Pages	17 – 22
(f)	Page	28 – 29

Acronyms

AFDA: Australian Funeral Directors Association
AIE: Australian Institute of Embalming Pty Ltd
CPSA: Combined Pensioners and Superannuants Association of NSW Inc
DIY: Do-It-Yourself
FIC: Funeral Industry Council of NSW
MFE: Mortuary & Funeral Educators Pty Ltd
SCIA: Service Corporation International Australia
SMH: Sydney Morning Herald

Introduction

Combined Pensioners and Superannuants Association of NSW Inc (CPSA) was founded in 1931 in response to pension cuts. CPSA is a non-profit, non-party-political membership association serving the interests of pensioners of all ages, superannuants and low-income retirees. The aim of CPSA is to promote the rights and the improvement of the standard-of-living and well-being of its members and constituents. CPSA has approximately 140 branches and affiliated organisations with a combined membership of over 15,500 throughout NSW. CPSA serves the interests of its membership and broader constituency at the local, state and federal levels.

The Older Women's Network (OWN) NSW has requested that CPSA include in this submission the support of OWN NSW of CPSA's submission. The Older Women's Network was first formed in Australia in 1987 when a group of older women in the Combined Pensioners Association saw the need for a network which would focus on the interests and concerns of older women. By July 2001, the Older Women's Network (OWN) New South Wales was established as the peak body for OWN Groups across NSW. The aim of all OWN Groups is to promote the rights, dignity and wellbeing of older women. Groups organise a wide range of activities and advocate on issues of concern to older women.

For at least thirty years CPSA has been expressing concern about the high cost of funerals. About fifteen years ago, CPSA considered establishing its own funeral fund with the purpose of providing members and their families access to cheaper funerals.

CPSA welcomed the statements (see below) made about the Funeral Industry in the Legislative Assembly by The Hon. Mr Morris Iemma MP, in 1995. Mr Iemma is currently the NSW Minister for Health. These statements are still very relevant today:

Extracts from page 3105 NSW Legislative Assembly Hansard 1995
(Funeral Industry, Matter of Public Interest):

Mr IEMMA (Hurstville): I support the motion. It is not surprising that when the Minister addressed the Combined Pensioners and Superannuants Association the organisation expressed concern at the cost of funerals. At the lower end of the scale in the State one pays between \$2,000 and \$5,000 for a standard funeral. At the upper end of the market the price ranges from \$10,000 to \$15,000. Given that cost, it is not surprising that the association expressed concern. When considering why such prices apply in the industry one cannot discount the ownership and the structure of the industry.

One way to reduce the costs of funerals is to introduce greater competition.

SCI is the dominant player when it comes to cremations; it carries out 75 per cent of all cremations in Sydney, 22 per cent of all funerals and owns five of the seven crematoriums. The honourable member for Port Macquarie stated that over the years a series of takeovers of Australian independent operators have placed SCI in the position where it can exert market dominance and influence the price of cremations and funerals. SCI is also the biggest funeral director in Sydney. Its control of cremations allows it to exert pressure on competitors in the industry. That enables SCI to determine the price of funerals. Hence the Combined Pensioners and Superannuants Association have expressed its concern to the Minister about the cost of funerals.

CPSA also applauded the announcement of the Inquiry into the Funeral Industry by the Legislative Council's Standing Committee on Social Issues in March 2005, and welcomes the opportunity to present this submission.

Recommendations

- 1. The burial or cremation of deceased persons is as essential to the survival of our species, as is uncontaminated food, water & air and adequate sanitation. The burial or cremation of deceased people is therefore to be seen as an essential service within our community and should be regarded, regulated and resourced as such.**
- 2. CPSA recommends that an independent pricing authority should set the maximum amount of money any funeral business can charge for a basic funeral, cremation or burial. Every funeral business would be obliged to provide basic funerals at a fee fixed by the independent pricing authority. The business would also be obliged to provide in writing to the customer, the cost (including GST) of any additional goods or services which they would wish to purchase.**
- 3. CPSA proposes a mandatory certification scheme for funeral businesses (which receive a fee for service), run by the NSW Government, to ensure that a central registry be kept, and those funeral businesses and key personnel within them who are engaging in illegal practices can have their certification withdrawn or have their certification suspended. Only certified funeral businesses (and individuals who are not receiving a fee for service) could then use crematoria and cemeteries.**
- 4. To ensure that complaints about the funeral industry and from the industry are dealt with in an independent manner, CPSA also supports the proposal put forward by the NSW Council of Social Service to establish a Funeral Industry Ombudsman.**
- 5. CPSA recommends in the Public Health (Disposal of Bodies) Regulation 2002 that the definition of a hearse be**

broadened enough to encompass a vehicle which is not as expensive as a vehicle which we currently know as being a hearse.

6. That there be a legal obligation placed on all Local Councils to provide access to an adequate number of cost-neutral burial spaces and crematoria for their Local Government Area, and that no charge is made for inquiring about prices.
7. That the NSW Government works with the other state governments to have the GST removed from the cost of a basic funeral, as the disposal of bodies is a health service, and other health services are exempt from the GST.
8. CPSA proposes that it be mandatory that prices of each item, which when packaged together make up the cost of a funeral, be published; that receipts be issued for any goods or services purchased from outside the business (e.g. coffins, flowers, clergy, published notices); and that the funeral provider be obliged to use items (e.g. coffins, flowers, decorations) which the customer provides as long as they meet necessary standards, health regulations, cultural mores, etc. Further, prices should be published in all advertisements for a funeral home, as well as on the front of the funeral home.
9. CPSA believes that the structure of the FIC mitigates against it becoming involved in any regulatory function. CPSA does not believe that the FIC has shown any leadership in, or has demonstrated that it has any role to play in the protection of the public in NSW. However, if the Social Issues Committee sees that the FIC has a role to play then the structure of the FIC should be expanded to include a much broader representation of consumers and non-aligned small funeral businesses.

10. Undertakers should be obliged to only publish their name and contact phone number at the end of a death notice.
11. If the FIC, or members of the FIC, are aware of operators in the funeral industry breaching the Public Health Act, then they have an ethical obligation and it is their duty-of-care to not only report these breaches, but to follow-up with the appropriate authority if these reports are not acted upon.
12. That the NSW Police Department fully investigate the record keeping and policing of the disposal of bodies to ensure that adequate safeguards are instigated to ensure that there is no illegal disposal of bodies in cemeteries or crematoria.
13. That the Social Issues Committee investigates how decisions are made to tender out funeral services by the NSW Government, to ensure that no more money than is necessary is being spent on funeral services.
14. That the public is not coerced into using the funeral company which has been contracted to provide transportation services for the NSW Government.
15. For people who are transporting the deceased themselves, there needs to be a change to the Disposal of Bodies Regulation that currently stipulates that a body can only be placed in a coffin in a mortuary. If a hospital only has a holding room, then the family doing their own transportation must be able to place a body in a coffin in the hospital holding room.
16. The Office of Fair Trading should publish a plain English guide to DIY funerals in the main community languages for use in metropolitan, regional and more remote areas; and further, undertakers should be obliged to assist customers in their endeavours to conduct some parts of the funeral themselves.
17. A standard for coffins should be set by Standards Australia, and notation that the coffin meets the required standards should be affixed to all manufactured coffins. These

standards should not be so onerous that a member of the public cannot build a coffin for non-profit use. It should be mandatory that a funeral home or crematorium or cemetery be obliged to accept any coffin provided that coffin meets the prescribed standard.

18. The customer should be able to decorate the inside and outside of the coffin as they choose. That advertisements for pre-paid funerals should not be misleading as to the current cost of a basic funeral.

19. CPSA recommends that if a Code of practice / Conduct for the funeral industry is deemed necessary, that it should be developed in consultation with the Australian Government Department of Consumer Affairs, the ACCC and ASIC.

20. To ensure that the funeral industry is operating within the law, CPSA considers that all funeral directors, cemetery and crematoria operators and employees would be obliged to report to the appropriate government agency breaches of the law within the industry, and to report to the Ombudsman if the respective department does not appropriately carry out their regulatory obligations.

TERMS OF REFERENCE

- (a) **Changes in the funeral industry over the past decade including the cost of funerals, the degree of competition, vertical integration and ownership**

The FIC, even when challenged, has never refuted the figures published by the Sydney Morning Herald (SMH) on 30 October 2002, in relation to the high and rapidly increasing cost of funerals. Journalist Gerard Ryle stated that the 'cost of funerals has trebled over the last decade'. In the same publication, he also stated that the median cost of a funeral in Sydney is \$7,782, and in rural NSW is \$4,014. (People on low to moderate incomes simply cannot afford this kind of cost. This is why it is important that any change to the regulation of the funeral industry ensures that the ethical small operators do not get squeezed out of the industry.

We understand that the last ten years has seen a dramatic change in the industry in NSW. Ten years ago we witnessed companies from the USA buying up well known businesses in the industry. The biggest of the companies from the USA was Service Corporation International Australia (SCIA) which bought funeral businesses such as Labor Funerals, Simplicity Funerals and White Lady Funerals. SCIA also bought pre-paid funeral companies and crematoria. SCIA also developed cemeteries in densely populated metropolitan and regional areas.

In May 2001, the Macquarie Bank purchased 80% of SCIA's funeral products with a new name of InvoCare, restructured the company, and in December 2003, InvoCare was listed as a public company limited by shares. The entry price was \$28.7 million and the exit price was \$73.3 million. As we understand it, that equates to a profit of \$44.6 million in 17 months.

In 2005, InvoCare is registered in every state and territory in Australia. In NSW they claim to conduct approximately 25% of the funerals. CPSA does not know what proportion of the 'disposal of bodies' takes place through crematoria and cemeteries owned by InvoCare, nor what proportion of pre-paid funeral funds are owned by InvoCare. InvoCare personnel are listed as the sole shareholders of quite a few Pty Ltd companies in the funeral industry. We don't know how much of the funeral industry in NSW is owned by InvoCare, but on the face of it, it would appear to be much larger than 25%.

An extract from ASIC database September 2004 reveals that Kenneth R. Mealey Company Secretary of InvoCare Ltd is also a Director of:

- Beresfield Funerals Pty Ltd
- Catholic Funerals Newcastle Pty Ltd
- Cremations (Newcastle) Pty Ltd
- Cremations (Newcastle) Holdings Pty Ltd
- Dignity Pre-Arranged Funerals Pty Ltd
- InvoCare Australia Pty Ltd
- Kitleaf Pty Ltd
- Labor Funerals Contribution Fund Pty Ltd*
- Macquarie Memorial Park Pty Ltd
- Mead and Purslowe Pty Ltd
- Memorial Guardian Plan Pty Ltd
- Metropolitan Burial & Cremation Society Funeral Contribution Fund Pty Ltd
- New South Wales Cremation Company Pty Ltd
- Novocastrian Funerals Pty Ltd
- Pine Grove Forest Lawn Funeral Benefit Company Pty Ltd
- Purslowe Custodians Pty Ltd
- The Australian Cremation Society Pty Ltd
- The Over 50's Guardian Friendly Society Ltd**

* Labor Funerals Contribution Fund Pty Ltd has two shares owned by InvoCare Australia Pty Ltd with the ultimate holding company being InvoCare Ltd. The directors of Labor Funerals Contribution Fund Pty Ltd are the Company Secretary and CEO of InvoCare Ltd.

** InvoCare uses a pre-paid funeral plan called 'Guardian Funeral Plan' which invests its funds in OFM Investment Group. One of the products of OFM Investment Group is the Over 50s Guardian Friendly Society.

Competition on the whole appears to be on the wane. InvoCare brands do not publicise that they are part of InvoCare, rather they publicise the fact that they are affiliated with the Australian Funeral Directors Association. The 2004 profit (after tax) for InvoCare was \$17.1 million, 37% higher than 2003 which was \$11.6 million. In fact, InvoCare seems to be making money hand over fist – on 19 May 2005 InvoCare announced a fully franked special dividend of 10.5 cents per share to be paid on 24 June 2005. This special dividend is in addition to the ordinary dividends of 15.4 cents already paid in respect of 2004, "reflecting better than expected trading results and cash flows".

Since the SMH published information about the cost of funerals in 2002, we have heard anecdotally that the cost of funerals is still increasing at a rate well above inflation.

The 'American influence' in the industry is becoming more obvious. The use of 'caskets' is on the increase. These are bigger than coffins and therefore the cemetery plot is more expensive. They are also more ornate than coffins. We are seeing a lot more 'add-ons' to the funeral, including memorabilia and after-funeral services such as bereavement counselling, 'wakes', etc.

More insidiously, we are seeing the demand for more regulation and qualifications in the industry coming from within the industry. This pushes up the price of funerals by making it very difficult for new entrants to the industry to achieve the prescribed standards. This then allows the existing providers to form a virtual closed shop, as those without qualifications would probably be allowed to operate under the inclusion of a 'grandfather' clause. The evolution of this in the USA is very well documented in a book titled 'The American Way of Death' written by Jessica Mitford in the 1960's. One effect of making high level qualifications a must before an undertaker can enter the industry is illustrated on the Texas Funeral Service Commission's website, where we find that to become a funeral director it is necessary to study for three years, pass exams set at both the Federal and State level and subsequently complete an additional two years on-the-job training.

Another effect of increasing the number of qualifications is to increase the profits of funeral training providers. In 2001, Mortuary and Funeral Educators Pty Ltd (MFE) (a training provider endorsed by the AFDA), commenced operations. MFE provides short courses in numerous locations throughout Australia, as well as distance education. Its website has 22 links, 9 being links to American companies (including one called 'Slaughter Instrument Company'). It appears to have close links with the Australasian Cemeteries and Crematoria Association. AFDA also endorses another training provider: Funeral Industry Development Australia which we understand is either owned by InvoCare or has close links with InvoCare. The AFDA has a representative on the Board of Directors of National WRAPS (National Wholesale, Retail & Personal Services Industry Training Council).

Extract from article 'Handle with care' written by Jackie Woods, SMH's Radar Magazine, 24 November 2004:
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There is no formal pathway into funeral services; training has traditionally been "on the job", except for specialised roles such as embalming or horticulture. Some companies offer in-house training in areas such as arranging funerals, dealing with grieving people, administration skills and machinery operation. Williams believes nationally accredited training courses would benefit the industry and is working towards this goal through his industry body, the Cemeteries and Crematoria Association of NSW.

Funeral industry practices have become much more professional and tightly regulated in recent years, says Aiden Nye, secretary of the Funeral and Allied Industries Union of NSW. In the late 1980s, an extensive investigation of funeral operations found unhygienic and unethical procedures were common.

Now, legislation regulates the handling of bodies and other practices. While occasional transgressions are still discovered, "things are much better now", Nye says.

FOR MORE INFORMATION

* The Cemeteries and Crematoria Association of NSW (www.ccansw.org.au), in conjunction with vocational training body NSW WRAPS (www.nswwraps.com.au), is developing nationally accredited certificate courses in areas related to funeral services and cemeteries and crematoria, to start early next year. For details, phone 8243 1250.

* The best way to get into the industry is to look for casual work with funeral homes in your area. Find details via the Funeral Directors Association of NSW, www.funeralassocnsw.com.au; or InvoCare, www.funerals.com.au, which operates several major brands including Simplicity and White Lady.

* For more information on the industry, try the Australian Funeral Directors Association, www.afda.org.au, and the Australian Institute of Embalming, www.aieptyltd.org

The FIC uses every opportunity to promote that the notion that it is the most appropriate body to determine the Code of Practice to cover all funeral service providers in NSW, however, the FIC refuses to produce a draft Code of Practice. From comments made within the FIC, CPSA believes that if the FIC was to become the body which determined the Code of Practice, the FIC, through the Code of Practice, would be able to proscribe

- qualifications and experience for new entrants;
- industry OH&S standards - in particular the exclusion of family and friends from being pallbearers;
- the exclusion of home built or off-the-shelf coffins, even if they reach the required standards;
- the complete exclusion of any parts of a funeral which are DIY;
- the necessity for each funeral company to own their own mortuary which would be another financial burden on the smaller companies, but easy to comply with by InvoCare for example, which is able to have all of its undertakers (no matter which brand name they operate under) use the same mortuary; and
- the number of hearses in use by a company.

In 2002, we saw the introduction of new legislation in NSW (Public Health (Disposal of Bodies) Regulation 2002). This legislation precludes undertakers from using hospital mortuaries, and also regulates that they have to own a hearse and have access to a vehicle exclusively for the use of transportation of bodies. (NB The meaning of *hearse* is not defined in the Disposal of Bodies Regulation.)

In many medium size country towns there is only one undertaker in the town. This means that there is no competition at all, and the public has no choice but to pay whatever that undertaker charges.

Example from regional NSW: The charge (in 2003) for a basic funeral (where the cemetery plot had been prepaid) was \$4,800. There was a very short service by the graveside. This was the funeral of a pensioner, and his 59 year old, low-skilled and unemployed widow had to use what was left of their superannuation, after paying huge medical bills, to pay for this 'no frills' funeral.

In larger regional areas, anecdotal information leads us to consider that there may be some form of agreement amongst the undertakers to keep the overall price up and also a determination to keep out new competition.

In one instance which was brought to our attention by a CPSA member in 2002, over \$5,000 for a basic funeral with a church service in regional NSW, and quotes from another undertaker was virtually the same. This member tells us that the price in 2005 for the same service is approximately \$6,500.

We have had the opportunity to compare the funeral charges for the funeral of a woman in 1995 and her husband in 2004. These funerals were arranged by one of the children of the deceased, were similar, and were conducted with the same provider. Some of the price differences are staggering:

- Casket fee in '95: \$490 and in '04: \$1,145; and
- Transfer fee in '95: \$160 and in '04: \$755.

The total cost of the funeral (cremation not burial) in 1995 was \$2,617 and in 2004 was \$5,496.10. Although the latter was not a Tax Invoice, we assume that it was GST inclusive. Deducting GST would bring it back to \$5,196.

A recent development has been the purchase over the phone of a funeral. The 2005 Yellow Pages has many full-page advertisements for funeral directors offering services in many locations in Sydney where a single 1800 or 1300 phone number is displayed. The funeral is arranged over the phone rather than at an office or at the home of the bereaved. (These particular undertakers are not represented on the FIC.)

InvoCare also offers a lower cost funeral under the brand name of 'Economy Funerals' in NSW and 'Value Funerals' in other states, also with a single phone number to call. In NSW the phone number for Economy Funerals goes through to the InvoCare office in Lidcombe in Sydney and the funerals are arranged through that office. As InvoCare, via Economy Funerals, provides funerals in the same way as those described in the paragraph above, CPSA wonders at the motivation behind the complaints made by the FIC about the 'Bell Group of Companies' which we understand put the aforementioned full-page advertisements in the Yellow Pages. Their complaints were on the grounds that the company is based in Melbourne and the funeral is arranged over the phone. The result of these complaints was a thorough investigation by the Office of Fair Trading and the NSW Health Department into their operations. Both of these agencies reported back to the FIC that there was nothing illegal or improper found from these investigations. CPSA was therefore stunned when 'Economy Funerals' was discussed at the FIC, that neither CPSA nor the three government agency representatives were informed that Economy Funerals is an InvoCare brand. The only conclusion that CPSA is able to draw from this push by the FIC into an investigation of the 'Bell Group of Companies' whilst they did not want to even discuss the seemingly similarly structured 'Economy Funerals' is that there was a desire by the majority of the FIC to stop new competition being introduced into NSW. (We understand that the 'Bell Group of Companies' has not previously been operating in NSW.)

Day-time TV and seniors magazines are being flooded with advertisements for pre-paid funerals and funeral service providers. There is even a magazine which is sold for \$4.95 called 'Peace of Mind' which promotes pre-paid funerals and InvoCare brand names through editorial content.

Since July 2000, the GST has been paid on funerals. To our knowledge, the disposal of bodies is the only health service to attract the GST.

(b) **The availability and affordability of burial spaces and options for increasing the supply of spaces**

A Cooma based CPSA member researched costs of plots in their area: A single plot at Cooma Cemetery is \$1,600, Bombala is \$1,700 and in the Snowy River Shire \$850. The Goulburn Mulwaree Council charge \$880.

A Bathurst based CPSA member also researched the cost of plots in Bathurst. One undertaker quoted \$1,906 and another \$1,600 for a plot in the same cemetery. (There also was a disparity in charges quoted for the use of the same crematorium \$800 and \$748.)

When looking for the cost of plots on a website of Kempsey Council, we found that the prices which are published are for vases, plaques and headstones. There is no published price for a plot, or even a range of prices. To find out the cost of a plot, one has to pay an 'Inquiry Fee' of \$65!

Recently in Victoria, a local Shire has given approval for a funeral service provider to perform vertical burials within the Shire. CPSA can see no reason why this practice could not become widespread.

CPSA recommends that there be a legal obligation placed on all Local Councils to provide access to an adequate number of cost-neutral burial spaces and crematoria for their Local Government Area, and that no charge is made for inquiring about prices.

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

&

(e) **The adequacy of legislation in meeting community needs**

CPSA considers that the health regulations are generally OK with some changes being recommended (elsewhere in this submission) in relation to DIY funerals. A question has been raised elsewhere in this submission about the definition of a hearse. CPSA is concerned that a small funeral service business is obliged to own a hearse (which we understand are extremely expensive).

CPSA recommends in the Public Health (Disposal of Bodies) Regulation 2002 that the definition of a hearse be broadened enough to encompass a vehicle which is not as expensive as a vehicle which we currently know as being a hearse.

CPSA considers that regulations around Fair Trading issues are not adequate.

Funeral homes/directors charge a service fee for the conduct of a funeral. This fee can run to many thousands of dollars. In addition, the purchaser of the funeral is (generally) given an itemised account which leads the purchaser to believe that the 'disbursements' are in fact the correct amount.

There is no way that the customer can tell if there has been a mark-up by the funeral home on any item. Members of the FIC quite openly state that there is a mark-up on coffins. A clergyman reported to us that he believed that there was a mark-up on the amount charged by the funeral director for the clergy. We don't know what else attracts a mark-up, but it would be hard to believe that other items don't attract a mark-up. We understand that these mark-ups are defined as being a 'secret commission' and are in fact illegal. As a 'service' or 'professional' fee is being charged already, it seems to us to be extraordinarily unethical to present to the customer accounts of disbursements without any documentary evidence to support these costs (eg receipts).

A standard for coffins should be set by Standards Australia, and notation that the coffin meets the required standards should be affixed to all manufactured coffins. These standards should not be so onerous that a member of the public cannot build a coffin for non-

profit use. It should be mandatory that a funeral home or crematorium or cemetery be obliged to accept any coffin provided that coffin meets the prescribed standard.

People should be able to decorate the inside and outside of the coffin as they choose. CPSA has heard of a person who was not able to put a personally hand embroidered pillow in a coffin. They were told that they had to purchase one from the funeral home. CPSA has also heard of a child being stopped by the undertaker from applying little drawings using sticky tape to the coffin of an immediate member of their family, on the grounds that it 'made the coffin look untidy'.

Funeral industry customers are making choices at an extremely vulnerable, emotional time. Few customers select service providers in advance of having to arrange a funeral, and consequently at the time of choice are not necessarily in the most stable state. There is no 'cooling off' period in which to reconsider decisions.

CPSA has received numerous complaints about the cost of funerals. The complaints are about the very high overall cost and the high cost of particular components which go up to make the funeral service package.

CPSA recommends that an independent pricing authority should set the maximum amount of money any funeral business can charge for a basic funeral, cremation or burial. Every funeral business would be obliged to provide basic funerals at a fee fixed by the independent pricing authority. The business would also be obliged to provide in writing to the customer, the cost (including GST) of any additional goods or services which they would wish to purchase.

It could be seen that the above may be construed as being anti-competitive by the ACCC. The ACCC in 2002 held wide consultation about a proposal by the major banks to establish a basic bank account. The ACCC made a determination in this matter, which is also on their website. The ACCC however rejected the basic bank account agreement proposal as "the proposal does not expand consumers' choice". The ACCC also reported that it "strongly supports the need for improvements in the current level of banking services available to low-income consumers". Given this, we are sure that the ACCC, having already made an agreement in Western Australia in relation to funerals, and having demonstrated their willingness to seriously consider the banks proposal for a basic bank account, that any proposal which would make funerals more affordable for those on low-

incomes would also be seriously considered and probably be accepted by the ACCC.

CPSA proposes that it be mandatory that prices of each item, which when packaged together to make up the cost of a funeral, be published; that receipts be issued for any goods or services purchased from outside the business (e.g. coffins, flowers, clergy, published notices); and that the funeral provider be obliged to use items (e.g. coffins, flowers, decorations) which the customer provides as long as they meet necessary standards, health regulations, cultural mores, etc. Further, that the 'Service' or 'Professional' fee be broken down into component parts such as happens with a tradesperson or a solicitor.

CPSA believes that the structure of the FIC mitigates against it becoming involved in any regulatory function. CPSA does not believe that the FIC has shown any leadership in, or has demonstrated that it has any role to play in the protection of the public in NSW. However, if the Social Issues Committee sees that the FIC has a role to play then the structure of the FIC should be expanded to include a much broader representation of consumers and non-aligned small funeral businesses.

Code of Practice / Code of Conduct:

CPSA's strongly held view is that if, and only if, a code of practice is deemed to be necessary, then it should only be developed by government (using the accepted practices of consultation etc for the development of a code) and compliance mechanisms to be administered by government. CPSA strongly opposes the FIC being the body which oversees compliance with a Code of Practice.

CPSA recommends that if a Code of practice / Conduct for the funeral industry is deemed necessary, that it should be developed in consultation with the Australian Government Department of Consumer Affairs, the ACCC and ASIC.

At the end of a death/funeral notice published in the newspaper, it is usual that the name of the funeral director and the phone number is published. This is very helpful for people who wish to check up about details of the funeral etc. Many funeral directors however put in a lot more information about their business. One example is a death notice in the Sydney Morning Herald, in which there were nine extra lines of type which included

the name of the funeral director, phone numbers of three different homes run by the same director, fax number and the fact that the funeral director is a member of FDA. (In fact many publicise the fact that they are a member of FDA or AFDA, an irrelevancy for the reader.) This extra information turns what was basically useful information into being an advertisement for the funeral director, at the expense of the customer. (The nine extra lines on that Sydney Morning Herald death notice cost \$69.99 to the funeral director, and the whole notice cost \$342.19. Standard practice is to charge more to the customer to cover overheads. Does this mean that the customer not only paid for the funeral director's notice + overheads, but also paid for their advertisement + overheads?)

Undertakers should be obliged to only publish their name and contact phone number at the end of a death notice.

CPSA has been informed by NSW Health Department officials that personnel within the industry are very loathe to report breaches of public health regulations. FIC members have informed CPSA that there is no point in reporting these as the complaints which they make are not acted on.

If the FIC, or members of the FIC, are aware of operators in the funeral industry breaching the Public Health Act, then they have an ethical obligation and it is their duty-of-care to not only report these breaches, but to follow up with the appropriate authority if these reports are not acted upon.

CPSA's proposal for a mandatory certification scheme for funeral directors:

CPSA understands that mortuaries keep a list of funeral directors which use that mortuary. Given that there is no centralised register of funeral directors in NSW, and there is concern about funeral directors who breach the law being able to set up a new business in a different location with no-one being aware that they may previously have been found guilty of breaches of the law, CPSA proposes that a mandatory registration system be established by the NSW Government:

- 1) The Certification Board would be convened by the NSW Government and would be comprised of representatives from the relevant government agencies & departments;

- 2) The Board's first task would be to define just what duties fall under the classification of 'funeral director'.
- 3) Authorisation to operate as a funeral director would be issued to all funeral directors who paid their certification fee and agreed to operate within the relevant laws which cover the industry. (A list of relevant legislation and regulations, and a list of relevant unions operating in the industry and employer advice bodies would be given to each registered funeral director.) The registration could be revoked or suspended if there were breaches of legislation or regulation which covers the industry;
- 4) Only registered funeral directors and individuals who are not receiving a fee for service, can use crematoria and cemeteries.
- 5) The Certification Board would inform each local government health inspector of the registered funeral directors in their local government area;
- 6) If the NSW Government decided to establish a code of practice for NSW funeral directors, it would only be drafted and implemented after full consultation with the public and all the industry had taken place, ensuring that the code complied with ASIC and ACCC requirements. ASIC and ACCC would be asked to examine the draft code which would only be implemented after the approval was given by ASIC and the ACCC. (NB the code would only cover NSW as consultation would not have occurred with relevant stakeholders in the other states.);
- 7) Complaints would be heard by the Certification Board using Natural Justice Procedures. Actual breaches of the law would be referred to the appropriate regulator. An appeal mechanism for someone who is de-registered would be established;
- 8) All funeral directors in NSW would be obliged to provide a basic funeral at a maximum price, set by IPART;
- 9) Registration would be compulsory for all funeral directors who receive a fee for service. The registration scheme would not cover "DIY" funerals;

10) NSW Office of Fair Trading and NSW Health Department would develop a guide to "DIY" funerals; and

To ensure that the funeral industry is operating within the law, CPSA considers that all funeral directors, cemetery and crematoria operators and employees would be obliged to report to the appropriate government agency breaches of the law within the industry, and to report to the Ombudsman if the respective department does not appropriately carry out their regulatory obligations.

(d) **The role and structure of the Funeral Industry Council**

As we understand it, the current composition of the Funeral Industry Council (FIC) is made up of members and observers:

Members:

- Unions NSW
- Funeral and Allied Industries Union
- Australian Funeral Directors Association (NSW/Act Division)
- Funeral Directors Association of NSW
- InvoCare
- Australian Institute of Embalming Pty Ltd
- Combined Pensioners and Superannuants Association of NSW Inc
- An individual

(NB The Cemeteries and Crematoria Association submitted their resignation from the FIC at the meeting held on 20 December 2004, and the last meeting the Association attended was on 4 April 2005.)

Observers:

- NSW Health Department
- NSW Office of Fair Trading
- WorkCover NSW

InvoCare is a publicly owned company and is the biggest company in the Australian funeral industry claiming to have 20% of the market share. However, InvoCare makes up a far greater than 20% component of the providers on the FIC:

- InvoCare has various brand names which are listed as being close to a majority of the membership of the Australian Funeral Directors Association;
- The Australian Institute of Embalming is a fully owned Pty Ltd company of the Australian Funeral Directors Association.

The Australian Funeral Directors Association (NSW/ACT Division) and the Funeral Directors Association of NSW represent most of the larger businesses in the funeral industry. The smaller businesses are not represented on the FIC.

The previous representative of CPSA was replaced in December 2002 by another representative. The FIC, by majority but not unanimous decision, has chosen to keep this person on the Council, and she has had three titles attributed to her over the last 2.5 years:

- 'Consumer Representative';
- 'Consumer Adviser'; and
- 'Community'.

In answer to a question put to him in the NSW Parliament in early 2005, the Minister for Health stated:

"There are 2 consumer representatives on the Funeral Industry Council; one from the Combined Pensioners Superannuants Association of NSW and one representing both the Waterloo Neighbourhood Advisory Board and the General Geriatric and Rehabilitation Committee, South West Sydney."

CPSA understands that neither the Waterloo Neighbourhood Advisory Board nor the General Geriatric and Rehabilitation Committee, South West Sydney are 'consumer' organisations. In fact, the Waterloo Neighbourhood Advisory Board (of which the NSW Department of Housing is a member) is a board which advises about matters pertaining to public tenants; and the General Geriatric and Rehabilitation Committee, South West Sydney is a committee of a NSW Health Department Area Health Service.

Unions NSW (formerly known as the Labor Council of NSW) chair the meetings. In The Sydney Morning Herald on 10 March 2003, Ken Chapman representing the Funeral Directors Association of NSW was quoted as saying that 'the NSW Labor Council ... had given them the ear of government'. "We have utilised their expertise in that area. They have opened doors for us, there is no question about that."

There is confusion about the role of the observers on the FIC; as to how the observers perceive the role of the FIC; and their own role within the FIC:

- In The Sydney Morning Herald on 10 March 2003, Ken Chapman representing the Funeral Directors Association of NSW stated that "... The Funeral Industry consists of more than just the funeral directors." 'One of those, he said, was the Health Department.';
- At the 2005 April 4 meeting, the NSW Health Department representative seconded a motion;
- At the same meeting, the NSW Health Department representative disclosed the name of a funeral company which was being investigated by the NSW Health Department as well as some information about the company's operations in NSW;

- the NSW Office of Fair Trading describes on its 'Shopping' web page that the role of the FIC in the funeral industry as: 'Oversees funeral industry in NSW';
- the NSW Office of Fair Trading states also on its 'Shopping' web page that the role of the NSW Health Department in the funeral industry is that they can be contacted to: 'Obtain a list of medical referees who are able to sign cremation certificates and contact details of your public health unit' and also that the reader can: 'Download relevant funeral information from the website including burial or cremation of a deceased person who has no money or assets', however there is no mention of the NSW Health Hotline (1800 658 014) which members of the public can call to report breaches of the Public Health Act / Disposal of Bodies regulation 2002;
- the NSW Health Department representative tabled at a meeting of the FIC a letter of complaint (which had not been fully de-identified) about a funeral director. The letter had originally been sent to an Area Health Service. The name of the deceased person and the Area Health Service were still there, so it may not have proven too difficult for a member of the FIC to discover the identity of the person who had made this complaint and the identity of the funeral company about which the complaint was made; and
- the Office of Fair Trading representative tabled at a meeting of the FIC a copy of a letter with unsubstantiated allegations about an individual which had been made by a funeral director to the NSW Department of Police which had subsequently forwarded the complaints to the Office of Fair Trading. The name of the individual and the serious allegations made against him were not removed from the letter.

The FIC is not incorporated as a company, cooperative or association, so therefore is not a legal entity. It does not carry insurance. It does not have a constitution with aims and objectives and as far as we can ascertain, its role is not defined elsewhere.

Most members of the FIC take great pain to explain that their aim is to ensure that adequate regulation and structures are in place which will "rid the funeral industry of shonky operators". We are aware that the FIC has commissioned at least two submissions (1998 and 2004) to the Minister for

Health which make proposals to establish regulation and structures to achieve this aim. CPSA does however find this perplexing, as FIC members state that there are only about 20 funeral service businesses which are not represented on the FIC, this being akin to getting a sledge hammer to crack a walnut. CPSA believes that all of this is in fact a deliberate attempt to eliminate competition.

The FIC has not demonstrated that it has any real understanding of ethical and legal obligations (eg conflict of interest, privacy laws, complaints handling procedures, representation, consumer protection, consultation, role of government departments in regulation, duty of care).

CPSA's estimate (from newspaper funeral notices randomly collected) of the number of funeral directors in NSW which are not members of either the Australian Funeral Directors Association (NSW/Act Division) or the Funeral Directors Association of NSW, is approximately 50%. The only way to find out how many undertakers there are in NSW is to compile a list from the cemeteries and crematoria of the funeral businesses which use their cemeteries and crematoria.

The FIC is not representative of the funeral industry. CPSA's guesstimate is that only 50% of funeral directors are represented on the FIC. The FIC is dominated by InvoCare and the very small operators / businesses are not represented on it. CPSA is of the opinion that as the FIC is not representative of all of the funeral industry in NSW, that there would be a conflict of interest if the FIC were to be involved in regulation of the non-members of the FIC or if it was involved in the development and/or implementation of a code of conduct for the funeral industry.

CPSA firmly believes that the covert purpose / hidden agenda of the FIC is to decrease competition and to increase the cost (read profits) of funerals. Examples:

- We understand that all AFDA and FDA members own their own mortuary. It has been stated at FIC meetings that there should be a mandatory requirement for a funeral provider to own their own mortuary. This could be a prohibitive cost for the small operators, providing low-cost funerals, who currently use the local hospital mortuary;
- It has also been discussed at the FIC that the use of family and friends should be barred from being pallbearers on the grounds that

they constituted a high OH&S risk. This is despite the WorkCover statement: 'WorkCover is not opposed to family members acting as pallbearers, so long as the Funeral Director provides adequate instructions commensurate with the risk to health and safety.' The use of a number of paid pallbearers would push up the cost of all funerals and would be a prohibitive impost on very small businesses which operate with only a couple of staff;

- There is a push by FIC members to have mandatory certified training requirements through certified institutions for funeral directors and other key people in the industry. If this were to be instituted, it would not be an onerous cost for a large funeral business to engage staff with the necessary qualifications who could oversee the work of unqualified staff, but it would be an onerous cost for a small business. If instituted, small business owners would have to either engage staff with costly qualifications or else undergo costly training programmes themselves. Either way, this requirement would strongly discourage new businesses (and thus competition) from entering the funeral industry, and would increase the profits to private funeral industry training providers such as those endorsed by the Australian Funeral Directors Association.

CPSA believes that the structure of the FIC mitigates against it becoming involved in any regulatory function. CPSA does not believe that the FIC has shown any leadership in, or has demonstrated that it has any role to play in the protection of the public in NSW. However, if the Social Issues Committee sees that the FIC has a role to play then the structure of the FIC should be expanded to include a much broader representation of consumers and non-aligned small funeral businesses.

(f) Any other relevant matter

CPSA has been contacted by a person who claimed to be an employee in the funeral industry. This caller alleged that at the crematorium at which he works that he had witnessed the cremation of more than one body in the same coffin. This serious allegation made by this funeral industry employee gave rise to the following recommendation:

That the Social Issues Committee recommend that the Police Department fully investigate the record keeping and policing of the disposal of bodies to ensure that adequate safeguards are instigated to ensure that there is no illegal disposal of bodies in cemeteries or crematoria.

At the meeting of the FIC held on 23 May 2005, the Health Department Spokesperson stated that the NSW Government (through the NSW Health Department) was paying more for "pauper's" funerals than the price advertised by InvoCare for its 'Economy Funerals'.

CPSA recommends that this Inquiry investigate how decisions are made to tender out funeral services by the NSW Government, to ensure that no more money than necessary is being spent on funeral services.

The public should not be coerced into using the funeral company which has been contracted to provide transportation services for the NSW Government.

People should have the right 'to bury their own' if they so wish. Obviously there are health and legal constraints which must be adhered to. It is surely possible though that people can do parts of the funeral themselves, and as long as they are operating within the law, undertakers should be obliged to assist them.

Extract from the SMH 25 May 2005 article about the funeral of Father Ted Kennedy in Redfern: "The Aboriginal people wanted to carry the simple casket, topped with gum leaves and kangaroo paws, to The Block for the main service under a huge tent but funeral directors urged that they use a hearse."

The NSW Multicultural Health Communication Service Home Page (9 June 2005): "What to do? When a patient dies in hospital you do not have to do anything straight away. The deceased will be moved to the hospital mortuary and you may ask to see them there if you would like to. The deceased will be kept there until you contact a funeral director. You will be able to discuss with him the preparation of the deceased for burial according to your wishes (see below). Removal of the remains from the hospital should be discussed with the funeral director when an interpreter is present." (NB There is no suggestion here that the family may wish to transport the body themselves.)

For people who are transporting the deceased themselves, there needs to be a change to the Disposal of Bodies Regulation that currently stipulates that a body can only be placed in a coffin in a mortuary. If a hospital only has a holding room, then the family doing their own transportation must be able to place a body in a coffin in the hospital holding room.

The Office of Fair Trading should publish a plain English guide to DIY funerals in the main community languages for use in metropolitan, regional and more remote areas; and further, undertakers should be obliged to assist customers in their endeavours to conduct some parts of the funeral themselves.