

Submission  
No 35

## INQUIRY INTO FUNERAL INDUSTRY

**Organisation:** LawConsumers Incorporated

**Name:**

**Telephone:** 95646933

**Date Received:** 9/06/2005

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**Theme:**

**Summary**

# **LAWCONSUMERS**

***Incorporated***

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**WEBSITE: [www.lawconsumers.org](http://www.lawconsumers.org)**

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7 June 2005

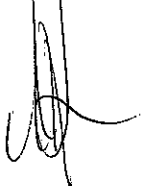
The Director,  
Standing Committee on Social Issues,  
Legislative Council,  
Parliament House,  
Macquarie Street,  
Sydney, 2000

Dear Sir/Madam

It is confirmed it was our intention that the submission referred in your letter dated 3 June, 2005 was intended to be registered as a submission to the Legislative Council Inquiry into the Funeral Industry.

Yours faithfully

**LAWCONSUMERS *Incorporated***

A handwritten signature in black ink, appearing to be a stylized 'M' or similar character, positioned below the typed name of the organization.

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26 May 2005

The Hon Morris Iemma MP,  
Minister for Health,  
C/- Parliament House,  
Macquarie Street,  
SYDNEY, 2000.

Dear Minister,  
Re:

**FUNERAL INDUSTRY REGULATION**

We are very concerned that an unrepresentative group from the funeral industry is pressing for regulation. Regulation effectively establishes a monopoly. Monopolies are anti-competitive.

This is not what consumers want or need.

Herewith our submission.

Yours faithfully  
**LAWCONSUMERS *Incorporated***

# REFORM OF FUNERAL INDUSTRY REGULATION

## SUBMISSION

### LAWCONSUMERS INCORPORATED

There is little to be said to support any moves to place external controls over the funeral industry. In the absence of compelling evidence of market failure, for the government to step in to allow the creation of a monopoly would be a complete reversal of public policy.

If the industry wishes to protect the consumer from 'bad apples' it can do so efficiently by private certification of its membership and setting standards. Those not certified would carry an implied caveat and assist in solving the information problem for consumers.

Funerals in Australia are fast becoming a circus in which one family is encouraged to out-perform the other in the public display of veneration for the deceased which exceeds the needs and, at times, the financial capacity of most families. It is imperative simple, inexpensive funerals be available for those who do not wish to participate in the 'circus'.

It is imperative that those who wish to have a self-run funeral should see an outcome where the barriers to doing this are lowered rather than raised. In this regard, all hospitals should allow a person nominated by the family of the deceased to have access to the mortuary facilities at the hospitals for the purpose of storage and collection of the body prior to a funeral. General Cemeteries and Crematoriums should not exclude or impose restrictions on self-run funerals.

In a market where competition is limited only to those within the industry, prices will rise disproportionately to the cost. Examples of where external competition has been introduced are in the regulation of conveyancers under the Conveyancers Licensing Act 1995 where an external group (licensed conveyancers) have maintained prices current at what they were 15 years ago when only lawyers competed with lawyers and the current assault on the legal monopoly's stranglehold on their control of prices by clients going off shore, "ANZ's and Westpac's threats to send legal work to New Zealand (an external group) have left large and mid-tier law firms admitting that the pressure to cut legal costs is forcing them to move away from traditional hourly billing." The Australian Financial Review, Tuesday 17 May 2005.

It is a fallacy to believe competition exists within a monopoly.

## CONCLUSION

Unless the industry can produce any, let alone, compelling evidence for the need for regulation there is no case for regulation. To the contrary, facilities available from the state - cemeteries and hospital morgues - and from private sources - crematoriums - should be more readily available with no penalties.

Following an analysis of the advantages of licensing from the Introduction of "Occupational Regulation", Albon & Lindsay published by The Centre for Independent Studies, 1984, the editors Robert Albon and Greg Lindsay say:

"Against these possible advantages, it has to be noted that licensing has the adverse consequence of giving suppliers monopoly power not available under either registration or certification. Again to quote Friedman (Capitalism and Freedom):

The most obvious social cost is that any one of these measures, whether it be registration, certification, or licensure, almost inevitably becomes a tool in the hands of a special producer group to obtain a monopoly position at the expense of the public. There is no way to avoid this result. One can devise one set or another set of procedural controls designed to avert this outcome, but none is likely to overcome the problem that arises out of the greater concentration of producer than of customer interest. The people who are most concerned with any such arrangement, who will press most for its enforcement and be most concerned with its administration, will be the people in the particular occupation or trade involved. They will inevitably press for the extension of certification to licensure. Once licensure is attained, the people who might develop an interest in undermining the regulations are kept from exerting their influence. They don't get a licence, must therefore go into other occupations, and will lose interest. The result is invariably control over entry by the members of the occupation itself and hence the establishment of a monopoly position.

Perhaps the best evidence in favour of the view that occupational regulation is for the benefit of the regulated comes from an examination of the demand for regulation. The demand does not come from users of services as might be expected if, as some suggest, it truly is in the interest of customers. Rather the pressure emanates from the groups who are regulated. This is a theme running through many of the papers in this volume. It is perhaps best exemplified in Officer's paper on real estate agents.

The private interest theory has a long tradition stretching back as far as Adam Smith (1723-1790). The following oft-quoted passage from *The Wealth of Nations* contains an important warning.

People of the same trade seldom meet together, even for merriment and diversion,

but the conversation ends in a conspiracy against the public; or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed or would be consistent with liberty or justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies, much less to render them necessary.

The fundamental message is that ‘conspiracy against the public’ should not receive official backing in the form of the coercive power of the state. Under most circumstances private agreements without government support will either break down or serve a useful purpose (for example, private certification). The demand for regulation from self interested groups should not find a sympathetic ear in government.”

## CHECK LIST

- |    |  |                              |                              |                             |
|----|--|------------------------------|------------------------------|-----------------------------|
| 1. | Who wants the regulation?                  | Industry                     | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Consumers                    | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Bureaucracy                  | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Academics                    | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| 2. | What regulation is sought?                 | Registration                 | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Certification                | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Licensing                    | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| 3. | Who will benefit from regulation?          | Consumers                    | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Industry                     | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Bureaucracy                  | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Academics                    | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Other                        | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| 4. | Who will pay?                              | Consumers                    | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Industry                     | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Bureaucracy                  | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Academics                    | <input type="checkbox"/> yes | <input type="checkbox"/> no |
|    |  | Other                        | <input type="checkbox"/> yes | <input type="checkbox"/> no |
| 5. | Is there presently competition?            | <input type="checkbox"/> yes | <input type="checkbox"/> no  |                             |
| 6. | Will there be an increase in competition?  | <input type="checkbox"/> yes | <input type="checkbox"/> no  |                             |
| 7. | Are there excessive complaints to the OFT? | <input type="checkbox"/> yes | <input type="checkbox"/> no  |                             |

