

**Submission
No 41**

INQUIRY INTO FUNERAL INDUSTRY

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Theme:

Summary

CATHOLIC CEMETERIES BOARD

27 June, 2005

Ms Jan Burnswoods, MLC
Committee Chair
Standing Committee on Social Issues
Legislative Council
Parliament House
Macquarie Street,
SYDNEY NSW 2000

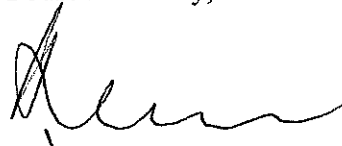
Dear Ms Burnswoods,

The Board welcomes the opportunity to make submissions to the Funeral Industry Inquiry. Our submission is attached.

We offer our apologies for the delay with the submission. This anticipated delay was discussed with your office.

Please contact me should you require any additional information.

Yours faithfully,



HAROLD O'KEEFE
General Manager



CATHOLIC
CEMETERIES
BOARD

CATHOLIC CEMETERIES BOARD

**SUBMISSION TO THE LEGISLATIVE COUNCIL
STANDING COMMITTEE
ON SOCIAL ISSUES INQUIRY INTO THE FUNERAL INDUSTRY**

Dated: 27 June, 2005

**Catholic Cemeteries Board
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1. Terms of Reference

That the Standing Committee on Social Issues enquire into and report on the funeral industry and in particular:

- a) Changes in the funeral industry over the past decade, including the costs of funerals, the degree of competition, vertical integration and ownership;
- b) The availability and affordability of burial spaces and options for increasing the supply of spaces;
- c) The adequacy of existing regulation of the funeral industry to protect consumers, public health and employees;
- d) The role and structure of the Funeral Industry Council;
- e) The adequacy of legislation in meeting community needs;
- f) Any other relevant matter.

2. The Catholic Cemeteries Board

The Board is an agency of the Catholic Archdiocese of Sydney and was established by His Eminence, Edward Cardinal Clancy in 1996 to consolidate cemetery management experience and expertise within the Archdiocese. The Board manages and operates the four Catholic cemeteries at Rookwood, Field of Mars, Liverpool and North Rocks.

The Board is incorporated as a body corporate under the Roman Catholic Communities Lands Act 1942.

The Board is charged with the special mission of disposition of the remains of the deceased Catholic faithful, either by burial, cremation or immurement. This mission includes the protection and fostering of the sacred character of the Catholic cemeteries in accordance with the teachings of the Catholic Church.

The Board is grateful for the opportunity to inform the Legislative Council Standing Committee on Social Issues (the "Committee") of the aspect of the funeral industry for which the Board is responsible and the issues and problems inherent in the current system which are capable of improvement through government initiative.

Whilst the activities overseen by the Board are distinct and separate from the activities of funeral directors, they are complementary and given the Board's extensive interaction with funeral directors the Board feels justified in commenting on this area of the funeral industry in addition to its comments on issues directly within its own activities.

3. Submissions in Relation to Terms of Reference

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

Other submissions to the enquiry will have made detailed comments about vertical integration. The Board merely wishes to point out that there are now two very substantial companies operating in the funeral industry with a significant degree of vertical integration. These companies are InvoCare (formerly SCIA) and Bledisloe (formerly Stewart). This submission does not attempt to describe the corporate structure or extent of vertical integration.

The comments of the Board in relation to these companies is limited to the Sydney Greater Metropolitan area (GMA).

In the case of InvoCare it is the Board's understanding that the company controls approximately 60% of the funeral directors operating in the GMA under a variety of names which does not make it apparent to consumers that they are part of the same operation.

InvoCare owns and operates a significant number of cemeteries and crematoria, transport services, information centres, flower shops, the supply of coffins, the operation of mortuaries and the provision of memorialisation in various forms as well as carrying out embalming and other body preparation and presentation.

Bledisloe Holdings are based in Brisbane, Queensland, but also operate in the Sydney GMA. They operate a number of funeral directors under a variety of names which do not make it apparent to consumers that they are part of the same operation.

Full details of these companies are available in their 2004 Annual Reports.

The size of the two operations appears to have substantially reduced the degree of competition within the funeral directing part of the industry and, in the case of InvoCare, also within the cemetery and crematorium part of the industry.

The Board is not directly involved in the costs of any aspect of funerals other than the costs of Right of burial and interments and (to a limited extent) memorialisation.

As far as the reasonable cost of the average funeral, the Board is of the view that consumers remain poorly informed of all the options available to them in procuring services from the funeral industry. Consumers rarely have the resources, time or inclination to explore choices in the face of a need to arrange a funeral at short notice.

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

The Board has had previous correspondence with the Department of Lands as well as the Department of Urban Affairs and Planning seeking additional land that might be available for development of cemeteries to serve the greater metropolitan area as well as the whole state. Both departments have indicated to us that there is presently no Crown Land available for cemetery use. The Department of Urban Affairs and Planning has, in addition, indicated that there are no proposals for additional cemeteries in their longer range planning.

It is vital that long term planning for additional cemeteries takes place as a minimum requirement.

(b)(i) Availability of Burial Space

Rookwood Necropolis Catholic Cemetery

It is estimated that the Catholic Cemetery at Rookwood will probably run out of land for new burials in about 2050, assuming continuation of traditional Australian methods. New ways of using the existing space have been examined, while respecting the changing burial needs of Sydney's multicultural population.

One result of this change has been the erection of the Catholic Mausoleum of the Resurrection which opened in September 1998. It has been a tradition for centuries in European countries, for families to choose a mausoleum as a burial place to lay their loved ones to rest. The Mausoleum will provide for the interment of approximately 1,750 burials (compared with approximately 700 graves on the same site) plus approximately 1,300 niche spaces for cremated remains. The Mausoleum also contains a Chapel for families who wish to conduct funeral services, interment services and memorial services on site.

The Cemetery provides a variety of burial options including monumental graves, lawn cemeteries, private family vaults, garden crypts, tombs, the Mausoleum, and various options for the interment of cremated remains.

Field of Mars Catholic Cemetery

The Field of Mars Catholic Cemetery was founded in 1847 under the trusteeship of the Church and has been managed by the Church firstly through individual Catholic trustees, subsequently through the corporate trustee of the Archdiocese and, since 1996, by the Catholic Cemeteries Board.

The Cemetery provides a variety of burial options including monumental graves, lawn cemeteries, private family vaults, garden crypts and various options for the interment of cremated remains. We estimate that the Cemetery will run out of land in 2020.

Liverpool Catholic Cemetery

The Liverpool Catholic Cemetery has a total land area of some 4 hectares. It was first established in 1894 and then managed by individual Catholic trustees, subsequently by the Corporate trustee of the Archdiocese of Sydney and, since 1999, by the Catholic Cemeteries Board.

The Cemetery provides a variety of burial options including monumental graves, lawn cemeteries, private family vaults, garden crypts and various options for the interment of cremated remains. We estimate that the cemetery will run out of land in 2025.

North Rocks Catholic Cemetery

In 1888, approximately four acres of land was donated to the Catholic Church by Mr Edward Maher, a well known fruit grower of Pennant Hills, so that Catholic residents of the district might have a Catholic Cemetery. For most of its 117 years the cemetery was administered from various parishes within the Archdiocese of Sydney and the Diocese of Broken Bay. Its management was vested in the Catholic Cemeteries Board in 2002 and the Board has since then been involved in a program of maintenance and upgrading aimed at fostering its sacred nature and identifying and maximising the burial space available. The Cemetery only provides for in-ground burials. We estimate that the cemetery will run out of land in 2015.

Additional Lands for these Cemeteries

No additional land contiguous with these cemeteries is currently available for the expansion or continuation of any of these cemeteries.

Other Cemeteries

Compared to the Catholic Cemeteries, most of the other Crown Land Cemeteries in the Sydney GMA are similarly placed, or in a worse position, as far as available burial space is concerned.

(b) (ii) Affordability of Burial Spaces

The cost of a right of burial for an in-ground burial is the same at each of the Catholic Cemeteries operated by the Catholic Cemeteries Board. It is approximately in the mid range of that charged for in-ground rights of burial by other cemeteries across the greater GMA.

In cemeteries managed by CCB the cost of a right of burial in a monumental lawn grave is currently \$2,178.00. This provides space for up to three (3) burials.

Our cemetery fees are approved each year by the Minister and published in the Government Gazette.

We are aware that there are substantial variations of the cost of rights of burial across the greater Sydney metropolitan area.

(b) (iii) Options for Increasing the Supply of Burial Spaces

Crown land may be allocated for interment of the dead under the *Crown Lands Act*. Public cemeteries may also be established and maintained under the Local Government Act.

Rookwood Necropolis Catholic Cemetery

1. Within the Rookwood Necropolis there are significant areas which are presently not allocated to cemetery trusts for burial purposes. This should be urgently addressed and the land should be allocated to cemetery trusts immediately adjacent to the areas of land concerned.

2. There is a significant area of land within the Rookwood Necropolis which is subject to the Crematorium Lease. That land is not used for in-ground burial. To the extent to which the land is used at all, it is used for the construction of walls for the interment of cremated remains. The Board appreciates the rights of a current lessee but is concerned that this land, which is a significant in-ground burial resource, is sterilised from that purpose.

CCB recommends that all options be explored to make this land available for in-ground burial purposes.

3. A significant restriction on the use of land within Rookwood is the *Threatened Species Conservation Act 1995*.

The *Threatened Species Conservation Act 1995* restricts and prevents cemetery development on land suitable for the purpose and long set aside for this purpose. Approximately 16 hectares of undeveloped land has effectively been lost as a result of the application of the Act. Solutions and alternatives have to be identified and implemented as a matter of urgency to make this land available for burial.

(b) (iv) Options for Changes to Tenure of Right of burial

Currently the practice in New South Wales is for rights of burial to be granted in perpetuity. This means that the burial right in respect of the grave is sold forever. This practice is not the system that is followed in Europe or in some other states in Australia where the exclusive right of burial in a grave is sold for various periods being 10 – 50 years.

We believe that the logical process for the implementation of greater use of existing family graves and ultimately renewable tenure is as follows:

- (a) The promotion and encouragement of continuing family use of older, and usually multiple graves that have not been fully utilised.
- (b) Digging all graves for a minimum of two interments and increasing burial density in all graves (i.e. the number of interments per grave).
- (c) Reclaiming and re-selling, sixty-year old unused rights of burial:
 - Current legislation permits this course of action.
 - Procedures for this course of action need to be further refined.
- (d) Identification of and planning for the development of all remaining lands, previously not developed for whatever reason, within current cemeteries. Also by improvement of older areas by enhanced maintenance and landscaping, continuing use can be promoted.
- (e) Development of a policy for a “lift and deepen” procedure for family graves to allow further use of older graves by present generations. (The Board entered into correspondence on this topic with the NSW Health Department in August 2001 and, despite several follow-ups, has had no response.)
- (f) The allocation of all unallocated land to the operational Trusts at all current cemeteries for use for burials.

- (g) The redevelopment of unnecessary roadways for the use of burials.
- (h) The development of a policy for “lift and deepen” procedures for all graves previously buried after, say, sixty years for non-related individuals. This may involve the termination of existing exclusive rights of burial.
- (i) The promotion, development and adoption of limited and renewable tenure legislation:

Items (a), (b) and (c) set out above will require an education process within the community as most consumers are not aware that these options exist.

Items (d) and (g) are management issues.

Items (e), (f), (h) and (i) will require change to legislation. The Board has previously discussed item (e) with Minister Kelly who agreed that the proposal was sound and should be further explored.

The benefits of a limited right of burial include:

- The land in the cemetery can be used again and again; and
- Because the land in the cemetery can be used again and again and the right of burial resold, funds continue to flow into the cemetery for use in the maintenance of the cemetery, which would otherwise fall into disrepair for lack of funding, which is not available from any other source.

Many European countries have limited and renewable tenure but the Australian experience is more relevant to what might occur within New South Wales. Both South Australia and Western Australia have different legislation and practices concerning limited and renewable tenure and these should be carefully considered by the Committee in its consideration of the options which might be implemented in New South Wales.

All of the above issues should be addressed at all cemeteries (including Crown and private) in New South Wales, particularly in the Sydney GMA.

(c) *The Adequacy of Existing Regulation of the Funeral Industry to Protect Consumers, Public Health and Employees*

The Board does not wish to draw any matters to the attention of the Committee in relation to the adequacy of existing regulation in relation to public health or employees.

(d) *The Role and Structure of the Funeral Industry Council*

We support the existence of the Funeral Industry Council (FIC). The group provides valuable dialogue between the various diverse groups that make up the Industry.

Should the various Government agencies have properly performed their duties over many years, it may have been less necessary for the FIC to attempt to fulfil the role.

The Board has had the benefit of reading the *Issues Paper – Reform of Funeral Industry Regulation* submitted to the Honourable Morris Iemma, MP, Minister for Health by the New South Wales Funeral Industry Council dated 20 December 2004.

The Board wholly concurs with the Funeral Industry Council that:

- The existing legislation is fragmented;
- The existing system of regulation is reactive and inadequate;
- The current penalty regime is insufficient and does not and will not serve as a deterrent while government agencies responsible for supervision and regulation do not comply with their obligations;
- Consumers are poorly informed and powerless at a time when they are most vulnerable;
- A Code of Conduct is an important step towards improving the standards of service within the industry, providing there are adequate sanctions available to ensure compliance. It is doubtful whether adequate sanctions can be put in place through a voluntary Code of Conduct.
- There should be:
 - Licensing of all operators within of the funeral industry
 - The dissemination and effective enforcement of a Code of Practice
 - Effective regulation of the funeral industry

As indicated earlier, the Board is of the view that consumers remain poorly informed of all the options available to them in procuring services from the funeral industry. Consumers rarely have the resources, time or inclination to explore choices in the face of a need to arrange a funeral at short notice.

- Funeral costs can be made up as follows:
 - Funeral director's fee;
 - Embalming;
 - Coffin;
 - Viewing;
 - Flowers;
 - Cars;
 - Church fees/Chaplain;
 - Organist;
 - Newspaper advertisements;
 - Cemetery fees:
 - Purchase of right of burial;
 - Interment fees;
 - Chapel fees/Chaplain;
 - Cremation fees;

Consumers need to be aware that they do not need to utilise all of these services and that by eliminating or reducing some of them, costs of a funeral can be contained and reduced.

(e) The Adequacy of Legislation in Meeting Community Needs

The Board is of the view that more expansive legislation is required to manage all aspects of the funeral industry.

Given the extraordinarily large and disparate volume of legislation in New South Wales relevant to the funeral industry (refer Annexure 1) there is abundant reason for the consolidation of relevant State legislation into a single comprehensive Funeral Industries Act.

Currently there is no act of general application to govern the administration of cemeteries and crematoria in New South Wales while significant areas of cemetery and crematoria activity are not regulated.

The subjects which require regulation range from the nature of a right of burial and its devolution to the establishment and regulation of perpetual care funds and the care and conservation of cemeteries which no longer provide operational income.

Not only should the new act encompass existing legislation but it should be expansive enough to address:

- the critical need for regulation of all operations in the industry - including funeral directors - preferably by way of licensing with appropriate penalties to ensure compliance;
- regulation of rights of burial;
- cemetery perpetual care funds and on-going management; and
- the co-ordination of the procurement of future supplies of land for publicly owned cemeteries.

Such focused legislation would provide for certainty for operators within the industry and consumers alike.

Example of legislation from other Australian jurisdiction

Although not as extensive as what is required in New South Wales (because all cemeteries in Victoria are Government Trust operated), an act illustrative of the type of legislation envisioned by the Board is the *Cemeteries and Crematoria Act 2003* (Victoria) which is currently in the process of being implemented. In summary, the *Cemeteries and Crematoria Act 2003* (Victoria) deals with all or most of the issues under discussion.

(f) Any Other Relevant Matter

Other issues that the Board believes need to be addressed include:

- Perpetual Care Funds

The whole of the income of the Catholic Cemeteries operated by the Board in the GMA is devoted to the care and maintenance of those cemeteries, with the surplus being allocated to the perpetual care of those cemeteries. The Board recognises this perpetual care as being one of its principal obligations.

The Board recognises the need for adequate perpetual care funds to be provided for the ongoing maintenance of cemeteries. The Board has used its best endeavours to provide from within its resources perpetual care funds for the ongoing maintenance of those cemeteries which are under its control. There is currently no statutory requirement for either public or privately owned cemeteries to provide for any perpetual care funds. This has had very significant adverse impact upon the public cemeteries which have filled and closed in the past. We have not as yet been confronted by the situation where privately owned cemeteries have been filled and no longer have operational income to support their ongoing maintenance. It can be expected that this will be a significant issue in the future as there are now privately owned cemeteries of significant size which have for many years been selling perpetual burial rights and which will inevitably fill while they have no perpetual care funds to ensure their ongoing maintenance.

Perpetual care has been a long term expectation of consumers but there has been no statutory or other support for this expectation.

- Rights of Burial

The Board is particularly concerned with the law relating to a "Right of Burial" and the complications which arise from administration of the right of burial, particularly given the complex legal environment, the paucity of case law on the topic and that fact that, owing to the universal urgency of decision-making on the issue, legislative clarity would greatly assist those who manage cemeteries, as well as consumers.

The Right of Burial is the right to inter human remains in a burial space – whether it be a grave, crypt or vault site. It is not the purchase of real estate. The purchaser or owner of the Right of burial is called the "Grantee" and his or her successor, as owner of the right of burial, is called the "owner for the time being".

The grantee of a Right of burial has the right to the perpetual use of the burial space or spaces for the burial of human remains. While the original Grantee is alive he/she can authorise who may be interred in the burial space. If the Grantee dies, he/she is entitled to be interred in the burial space. Where the Grantee has died and an Executor or Administrator has been appointed, the legal personal representative becomes the "owner for the time being". If that legal personal representative dies the Right of burial is passed to his or her legal personal representative. Thus, ownership of the Right of burial continues from the legal personal representative to legal personal representative and the next of kin or other family members, not being the Executor, do not have authority over the grave, burials or inscriptions. A legal personal

representative can transfer the right of burial to a person or persons entitled to it under the will or intestacy. This makes it necessary for cemetery management to obtain copies of wills to determine the correct ownership of the Right of burial. Under the *Necropolis Act*, section 24(2) (prior to its repeal this year), the Right of burial could be assigned by the Grantee during his or her life time or bequeathed by his or her will. The consent in writing of the "owner for the time being" of the Right of burial was specifically required before any burial could take place pursuant to section 24(3) of the *Necropolis Act* (before its repeal).

Owing to the process, as outlined above, one difficulty which often arises is the inability to urgently identify the current owner of the Right of burial. The Board has often drawn attention to the need for a more pragmatic system than that currently in place. The Department of Lands did not disagree, where there is uncertainty, with the suggested approach of the trust managing the cemetery determining that the person shown in the Burial Register as authorising the last burial as being the owner for the time being of the Right of burial.

There is a need for any new legislation for the funeral industry to address the creation and devolution of rights of burial. The present right of burial issues generally cannot be solved by reference to existing legislation or clear case law.

Any claim for a burial right that may have previously been granted should not command compensation in excess of the original price paid or 50% of the present day value of the burial right, whichever is the greater, and should be able to be satisfied by grant of a replacement burial right (at the discretion of the Trust).

A brochure should be issued to persons to assist in explaining the issue and process of right of burial.

Any new funeral industry legislation needs to contain provisions for the creation and devolution of rights of burial throughout the state of New South Wales, covering all cemeteries whether public or privately owned.

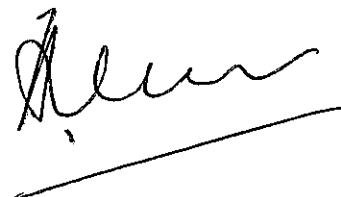
4. Burial Space Discussion Paper

The CCB draws the Committee's attention to the fact that the Department of Lands issued a discussion paper entitled "Burial Space in the Sydney Greater Metropolitan Area" in May 2005, which should be taken into account by the Committee. The CCB is responding to this discussion paper regarding this subject, as requested, directly to the Department of Lands.

5. Conclusion

The Board is supportive of the Inquiry. It will happily supply further information on the subjects dealt with in the submission or any other subjects which might assist the Committee and would welcome the opportunity of supplementing this submission with oral evidence before the Committee.

Date: 27 June, 2005

A handwritten signature in black ink, appearing to be 'J. Allen', written over a horizontal line.

“Annexure 1”

Current Legislation Relevant to the Funeral Industry in New South Wales

New South Wales

Births Deaths and Marriages Registration Act 1995.
Cemeteries Legislation Amendment (Unused Burial Rights) Act 2003.
Conversion of Cemeteries Act 1974.
Crown Lands Act 1989, Regulations
Crown Lands Act 1989 Regulation 2000.
Crown Lands (General Reserves) By-Law (1996) (2001).
Environmental Planning and Assessment Act 1979
Funeral Funds Act 1979.
Heritage Act 1997.
Human Tissue Act 1983.
Local Government Act 1993
Occupational Health and Safety Act
Protection of the Environment Operations Act 1997.
Public Health Act 1991
Public Health Act Regulations 1991
Public Health (Disposal of Bodies) Regulation 2002.
Roman Catholic Church Community Land Act 1942.
Rookwood Necropolis Act 1901.
Rookwood Necropolis Regulations.
Threatened Species Conservation Act 1995.
Trustee Act 1925
Workers Compensation Act

Federal

Civil Liberty Act 2002 No. 22.
Environmental Protection and Biodiversity Conservation Act 1999.
Goods and Services Act
Income Tax Assessment Act
Privacy and Personal Information Regulation 1988 No. 133.