

**REPORT OF PROCEEDINGS BEFORE**

**STANDING COMMITTEE ON SOCIAL ISSUES**

**INQUIRY INTO THE FUNERAL INDUSTRY**

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**At Sydney on Tuesday 14 June 2005**

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**The Committee met at 11.45 a.m.**

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**PRESENT**

The Hon. J. C. Burnswoods (Chair)

The Hon. Dr A. Chesterfield-Evans

The Hon. K. F. Griffin

The Hon. C. J. S. Lynn

The Hon. R. M. Parker

The Hon. I. W. West

**MARK LENNON**, Assistant Secretary of Unions New South Wales and Chair of the Funeral Industry of New South Wales, and

**WARWICK HANSEN**, Funeral Director and Member of the Funeral Industry Council, both sworn and examined:

**AIDEN NYE**, State Secretary of the Funeral and Allied Industries Union of New South Wales and member of the Funeral Industry Council of New South Wales, affirmed and examined:

**CHAIR:** Mr Lennon, in what capacity do you appear before the Committee?

**Mr LENNON:** I am appearing today in my capacity as the Chair, not Secretary, of the Funeral Industry Council of New South Wales.

**CHAIR:** Mr Hansen in what capacity do you appear before the Committee.

**Mr HANSEN:** I am supporting Mark in his capacity as Chairman of the Funeral Industry Council.

**CHAIR:** Mr Nye, in what capacity do you appear before the Committee?

**Mr NYE:** As a member of the Funeral Industry Council.

**CHAIR:** Before we get under way, I will explain to you and to members of the public who are present that the Committee seized the opportunity to commence its hearings in respect of this inquiry today. However, we realise that we left a lot of people without very much time to finalise their submissions and preparation to give evidence. From the Committee's point of view it was a great opportunity because we finalised our inquiry into education this morning and were anxious to commence this inquiry. The Committee received your submission late on Thursday or on Friday and, as you are aware, yesterday was a public holiday. It has been difficult for Committee members to read and digest your submission, but we realised it was important for us to have as much information as possible before hearing from this afternoon's witnesses.

That means that—probably more than is usual—we will ask you to spell out a lot of things. In addition, Committee members are probably not as well prepared as usual in so far as questions are concerned. However, we can always ask additional questions at a later stage. This morning will be an opportunity for the Committee to get straight a number of things relating to the Funeral Industry Council, the nature of the industry and the issues paper that you prepared some time ago, and to get those things on the record in order to help us to identify the issues.

**CHAIR:** Mr Lennon, do you or either of the other witnesses wish to make an opening statement? How do you want to proceed?

**Mr LENNON:** I would like to make a few opening remarks, if I may. In addition, Mr Nye would like to make a few opening remarks. I would point out that we have had another quick look through our submission this morning and noted a few typographical errors—mainly references to other sections of the paper—that we will correct and forward to the Committee, if that is all right?

**CHAIR:** That would be welcomed.

**Mr LENNON:** They do not really affect the submission but are merely references to other sections of the paper that need to be corrected.

**CHAIR:** That would help. For some reason we found your submission difficult and various different parts slow to open. That was another thing that held up the printing of the submission. I do not know what computer gremlins were responsible for that, but the Committee certainly will not blame you.

**Mr LENNON:** Thank for the opportunity to make this presentation to the Committee. I would say at the outset that the Funeral Industry Council [FIC] welcomes this inquiry and the opportunity it presents to look at a number of issues affecting the funeral industry. The FIC has been in existence for about 13 years, since 1992. My understanding of its history is that it arose really as a recommendation from some officials in the Department Of Health at that time, that there needed to be some joint consultative committee for the industry. From that it evolved into what became known as the Funeral Industry Council. Unions New South Wales, or the Labour Council is it was then known, has played a role in the council since its inception and has provided the Chair to the council over most of that time, as well as some additional services that were needed, in particular research in areas such as occupational health and safety, and area in which we believe we have some expertise.

Over that time the FIC has effectively been an ad hoc group, with representatives from various industry bodies and consumer associations. We have had representatives who were, in one sense, observers but also active participants—representatives from various government departments, in particular the Department Of Health, WorkCover and the Department of Fair Trading. We have not in that time been successful in getting anyone from local government, but the other government bodies have participated very effectively during my time as Chairman of the Funeral Industry Council. The key message we would like to get across today is that, whatever the outcome of this Committee's deliberations, if it leads to better oversight and enforcement, we think that would be a good result.

The major concern that we have seen in this industry has not been, in a sense, the lack of regulation, for want of a better word, because there is regulation through the Department Of Health, WorkCover and the Department of Fair Trading—also through lands, to some degree. The issue has been that it is spread across four or five different departments and/or industry responsibilities but there has been no effective enforcement of the regulation. I think that has been the key focus of the FIC and its major frustration in our deliberations. Innumerable cases have been brought before us, individuals have come to speak to us about concerns that they have in regard to particular directors and practices in the industry. Clearly there have been cases where intervention is necessary by government and some correction to the practices involved, yet we have failed in most cases to see that happen.

The problems related to practices in the industry have been of such concern that, as members of the Committee will be aware, it led to a major story on the television programme *Four Corners* in late 1992. The story was about the industry in New South Wales and in Victoria. A number of cases involving people we were well aware of where aired on that program. The program served to highlight the problem we have been talking about me: that some of the practices in a the industry, and the lack of oversight of those practices and enforcement of the relevant regulations, was leading to particular problems for consumers in industry.

Going back five or six years the Funeral Industry Council has developed various proposals for better oversight of the industry, and better proposals for enforcement in respect of those who breach the various pieces of legislation and the regulations in the industry. We have looked a number of models and are merely is that they should be a more active role on the part of government, using one of these models, in regard to enforce regulation in the industry. Again, I suppose it would be fair to say that it has been an issue of some frustration and concern that we have not had much progress on this question. Some positive steps were taken by Minister Knowles when he was Minister the Health but— and I am not blaming anyone in particular—it one of these issues that keeps bubbling along but the final step is never taken.

That is what is so frustrating. Everyone has recognised that there are some problems that need to be addressed, yet we have not taken that final step and put forward some solid proposals to fix the problem. I believe that is the second issue of frustration. The first is that the issues keep arising and the second is that there have been a lot of ideas about how to fix them but nothing effective have happened. The FIC is a loose or ad hoc group. Its key players are some of the major players in the industry. It also has community representation, particularly through the Combined Pensioners and Superannuants Association Incorporated, which group, as I understand it, has made its own submission to the Committee. The unions and Unions New South Wales have made it clear that from our perspective we are involved in the FIC to seek to ensure that there are better practices in industry, that, for want of a better word—and I'm sure the Committee will hear this on numerous occasions during this inquiry—"shonky" operators do not remain in the industry.

However, we are not about trying to cut genuine competitors out of the industry. We want to make that very clear. This is about ensuring that there is a transparent, open cost-effective industry that is providing good service to consumers at a good price. There has been some debate in council, that is a good thing as well; that is why you have a wide range of industry participants on these sorts of bodies, so they can neither is sorts of debates. A degree of concern has been expressed by the Combined Pensioners and Superannuants association about the question of costs. That is a legitimate concern and one that needs to be addressed. There is no doubt that a lot of questions need to be asked about the increasing costs of funerals over recent years. I think the key message is: There has to be more openness and transparency about the various elements of costs in a funeral, so that consumers are well aware of what is involved, what the costs are and what particular aspects of a funeral they may or may not need or have to pay for. I believe that is the key elements that we would also like to see some movement on. We would fully support an examination of all aspects of the industry, including that question of costs.

As to the way forward, the issues paper that we forwarded to Minister Iemma in December proposed a number of options relating to oversight and enforcement of the industry. So far as our proposed option is concerned that we are talking about what we have referred to in the issues paper, which is part of our submission, what is known as option D. Without going into the detail now—I might be able to deal with it, if need be, during questions—it involves a two-stage process. First of all, there would be a code of practice for funeral directors in the industry, some elements of which would be mandatory and others voluntary.

The second stage would involve a licensing requirements for cemeteries and crematoria, which would be oversight by the department, as I understand it. There would be a situation where funeral directors would not have access to licensed cemeteries and crematoria unless they appear to be abiding by the code of practice. We cover various options in the issues paper forwarded to Minister Iemma. There was an option of negative licensing and an option called negative licensing plus and an option of accreditation, which basically says that you have to be ticked off first before you can work in industry.

**CHAIR:** We might come back to it, as you have said, but it might be useful if you would explain negative licensing to the Committee.

**Mr LENNON:** Negative licensing means that people are practitioners in the industry until they have breached various provisions and then, fairly simply, their right to practice is removed, as opposed to accreditation where they have to have the right up front in order to practice—that is, they have to be accredited before they can begin to practice in the industry. That is how we would define it. We would press for option D, which would in effect means that people not abiding by the code of practice would not be able to access the facilities of cemeteries and crematoria, nor would they be granted a government contract.

Again, this has been an issue of some debate and one of our members, the Combined Pensioners and Superannuants Association, has a different view. That is a legitimate position. They submitted an additional paper outlining that association is concerned about that particular proposal. Whatever results, the FIC considers it appropriate to put all these things on the table so that we can bring the issue forward to a Committee such as this and can have the debate about oversight of it. We also welcome incision by the Minister for Fair Trading to set up a hotline. He has set up an internal inquiry relating to the industry. We also consider that to be a positive step. As I say, the key frustration has been that there has not been enough focus on that area called this industry. We welcome both the parliamentary inquiry and the government inquiry on the part of the Department of Fair Trading and we think is a positive move.

**CHAIR:** I might add that the Minister for Fair Trading, the Hon. John Hatzistergos, has undertaken to share with this Committee the results of what is learned from the hotline on the survey conducted by the Department of Fair Trading. In addition, of course, this Committee will receive a submission from the Department of the Trading.

**Mr LENNON:** I think that is an excellent idea. As Chair of the Funeral Industry Council and as a taxpayer, I appreciate that. In option D of our issues paper we have suggested that the Funeral Industry Council would have a role in particular with regard to the code of practice. However, having

said that, we are happy for the Funeral Industry Council to have no role going forward in terms of regulation of this industry, if that is what committees, Ministers and governments decide. The key thing is that we have more effective oversight of the industry, that consumers are protected, that they are getting a good-quality product at an appropriate price, and that it is an opening industry and is competitive, but that questionable operations are removed from the industry. Also, from my perspective and putting my other hat on, we want to ensure that the industry employs people under appropriate wages and conditions, particularly with appropriate standards of health and safety. I think that is even more important given the changes we will see in the industrial relations legislation in our country in the future. I will leave my opening submissions at that.

**CHAIR:** I am sure Committee members have a lot of questions to ask. As I said, because of our rush to get everything ready we have not done what we so often do, that is, send you questions in advance for you to look at so you are prepared. May I seek a little more definition about the membership of the Funeral Industry Council and how it operates. Given that the Funeral Industry Council has played such a major role as an advisory body in the industry over such a long period, we would like to get its membership and its structure straight.

**Mr LENNON:** The membership comprises ourselves, in the chair's role, the Funeral Industry Employees Union of New South Wales, the Australian Funeral Directors Association, the Australian Institute of Embalming, and the Funeral Directors Association of New South Wales. We did have the Cemeteries and Crematoria Association as a member, but it has recently resigned.

**CHAIR:** Did it resign this year or last year?

**Mr LENNON:** The association resigned in December last year. The only reason we asked them to come along to our last meeting, in March or April, was to finalise a few matters that they were involved in, but they formally resigned in December. The membership also comprises InvoCare.

**CHAIR:** That is the company that is the largest player in the industry in New South Wales, is that right?

**Mr LENNON:** That is right. It was formerly called Services Corporation International. The council membership also comprises the Combined Pensioners and Superannuants Association. We also have a consumer representative, Ms Nora McGuire.

**CHAIR:** She is not representing a particular organisation; she is there as a consumer representative. Was she appointed by the Minister, or was she co-opted, or was she appointed by you?

**Mr LENNON:** She was appointed by the council.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Was she a voting member?

**Mr LENNON:** Yes.

**The Hon. ROBYN PARKER:** Was there a wide pool of applicants for that one consumer position?

**Mr LENNON:** No.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** She was co-opted by the people on the committee already?

**Mr LENNON:** Yes. Ms McGuire has been on it for some time. Mr Nye tells me she has been there since the outset, since 1992. She was formerly the representative of the Combined Pensioners and Superannuants Association, but she then informed us she was no longer the representative. Mr Les Elkins is now the Combined Pensioners and Superannuants Association representative. The council members determined that we invite Nora to remain as a community representative given her work on the FIC to date and her expertise in the area.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** So she was co-opted onto the committee, which may have changed the numbers in the sense that the committee took her on although she had retired or left the Combined Pensioners and Superannuants Association; she had different a representative in that structured position?

**Mr LENNON:** That is right. You talked about being voted in and being co-opted. I will not avoid the question, but I will come back to it in a moment. The other representatives who have been sitting there have been representatives of the Department of Health, WorkCover and Fair Trading. We have not invited local government, but to date they have not attended.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Are those government departments voting members also?

**Mr LENNON:** No. At the moment the FIC does not have any formal constitution as a body. We have drafted a constitution and we have made a decision that we should. If we are able to go forward and we are to have a role in regulation one way or another, we should have an appropriate constitution. That constitution was drafted on the basis that there would be voting members, though it was very clear that—

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It is an industry body?

**Mr LENNON:** Yes, but also that the government departments would not be voting members; I think they said they would be observers or something of that nature. They would come to the meetings but they would not be voting members—for obvious reasons; it would be totally inappropriate for government bodies to be on the council unless the Government had regulated or so deemed for them to be there and have voting rights and have some advisory role. With regard to who is on the council and who is not, as I said at the outset, it is an ad hoc body at this stage and it has been so since its inception. That is why we are conscious that we go forward and we have some formal role to play that we will formally try to incorporate under the Associations Incorporation Act, with all the duties and obligations that that brings.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It is an industry body though, similar to the Chamber of Manufactures?

**Mr LENNON:** No, it is not.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** That is how it is envisioned to be?

**Mr LENNON:** It could be, yes, but it is not as formal as the Chamber of Manufactures, which has a long history going back over 100 years and it has a formal constitution, as I understand it, and its own systems of operation.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But its object is to represent the interests of the industry, is it not?

**Mr LENNON:** No. Its object is to represent the industry, and also to talk about the issues in the industry—

**CHAIR:** Was it originally set up by the Minister as an advisory body, or was it set up by the industry as an advisory body?

**Mr NYE:** Perhaps I can answer that question. Back in 1987 there was quite an enormous amount of industrial unrest through lack of standards and protection for employees in relation to infectious diseases and so on, and there were no standards whatsoever in the industry at that time. There was not even a requirement for washbasins, refrigeration, or anything. Gavin Frost carried out some 50 inspections across the State of New South Wales at random. Following Frost's inspections, the matter was then taken over by the funeral industry regulations relating to the disposal of bodies, which are embraced within the Public Health Act. That lasted from about 1988 until about 1991-92, when there was then a change in government and the regulations became watered down. At that stage

licensing was in place, and I think there were grandfather clauses to say that people had to meet certain conditions to be able to operate, such as facilities for the storage of human remains and so on.

When the licensing factor was repealed and the regulations were watered down somewhat, again some malpractices in the industry started to emerge about the way bodies were being stored and so on. At that stage we were dealing pretty exclusively with a fellow by the name of Dr Gavin Frost from the Department of Health. He was the chief health officer with the department at that stage. It was his recommendation that following the collapse of the regulations as such the industry should get itself together and form representatives from all sides, so that it could go there and voice the problems that it had to be confronted with. That was its formation. At that stage it was known as the joint consultative committee. At that stage it was just the industry representatives initially, and that was followed by the consumer, and then an invitation to government departments to follow suit. That has now been in place in that fashion for approximately eight years. I must say, it is probably the best thing that has happened to the industry in those terms.

**The Hon. ROBYN PARKER:** Could you explain the reason why there is such a heavy union involvement? You did not mention the unions in your analysis of who was involved.

**Mr NYE:** Yes. In 1987 we had some 37 notifications of dispute to put to the Industrial Relations Commission about a lack of washbasins, a lack of protection for employees, the way in which bodies were being stored, and the general behaviour of funeral directors.

**CHAIR:** When you say "we", you are referring to the union?

**Mr NYE:** Yes. After we had filed about five or six of those notifications of dispute, the commissioner hearing the dispute, Commissioner Cross, convened a conference of the industry and all the stakeholders to look into what was wrong. He said that clearly it was no good just fixing one and we would be down there with another one.

Following that conference, an inspection was carried out across the State of New South Wales, which related to quite a number of the findings in his report. I might say that those inspections took about six weeks to complete. It had a dramatic impact on the standards in the industry being somewhat raised at that stage. Until that point in time there was no control whatsoever. By that, I mean the very basic things, such as the right to wash your hands and the right for bodies to be stored. There was just no dignity; there was just nothing. It went along well during the course of the time that the regulations were introduced by the government of the day, until such time as the thing collapsed, when they repealed the licensing component and also when the standards were starting to drop. It has just flowed from there, and I would say there has been a gradual deterioration probably over the last five or six years, in that we are now starting to deal with things that we were really dealing with in 1987. It is like 1987 being revisited.

The union itself has been around since 1903; we were first registered in 1903. I have held the position of secretary of the union for the last 32 years. It is an elected position; it is one that I still hold to this day. In a funny way, we were the only organisation at that time that could really bring pressure to bear on matters. The industry had a terrible problem with not wanting to promote anything that was bad. It just did not want anything highlighted; it was something that was always put under the carpet. With the assistance of the then Labor Council of New South Wales, we were able to at least go to them with quite a number of complaints that had been lodged with us; we saw the need to get the thing going forward. That is our role to this day. Even to this day, we have many complaints brought to us that we refer on to the Funeral Industry Council for its determination or assistance. By doing that, we also refer them on to the appropriate government departments, whoever they might be.

As an example of what I am talking about, one day I answered the phone in the office. The person on the other end merely wanted the telephone number of a funeral director. My response to him was, "I'm sorry, you are going to have to find somebody else; they no longer exist." His response to me was, "I hope they do, because I have some prepaid funds with them; I have paid them \$5,000." So we had to embark upon a chain of advice to this fellow about the Office of Fair Trading. I might say, in this case we knew where the funeral director had absconded to, to the country area. We had a little chat to him, and we were able to get that man's money back. But again, we processed all that through the Funeral Industry Council.

In the past, people have been accused of forging doctors' certificates. We take that to the Funeral Industry Council, so that it can be channelled back through the various responsible government departments. We monitor general standards in the industry, such as whether bodies are cared for or stored in an appropriate manner or in a safe environment. All in all, as Mark has already outlined, our position is that all we want to see are some standards set for the industry. It does not really matter to us who sets those standards, as long as those standards are set and maintained.

**The Hon. ROBYN PARKER:** Has your organisation ever refused membership to anybody?

**Mr NYE:** No.

**Mr LENNON:** Are you referring to the FIC?

**The Hon. ROBYN PARKER:** Yes.

**Mr LENNON:** No, not that I can recall.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you mean that anybody could turn up and say, "I want to be a member"? You could not do that; you might have thousands turning out.

**Mr LENNON:** I understand your point. We have not had any one "turn up". Obviously, we would have to give due consideration to that issue if anyone did.

**The Hon. ROBYN PARKER:** But you do not have a constitution, so in effect anyone could front. You could have more than one consumer representative, could you not?

**Mr LENNON:** That is correct. We do, in effect; we have both Mr Byer and we have the CPSA.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But membership is by invitation. People are not fronting up, because effectively it is your club, is it not? You are saying it is ad hoc, but surely it must be a body of people that you put together. I mean, I could not just front up. I could not say, "You are having a dinner, and I'm coming," could I?

**Mr LENNON:** I understand that. That is why we are trying to formalise procedure is by way of a constitution. I just go back to your question: Is it an industry body along the lines of the Chamber of Manufactures? No—for the various reasons that I have outlined. Also, the Chamber of Manufactures represents one particular group, that being one of employers. We have, basically and hopefully, everyone who has an interest in the industry on the council.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** So, effectively, you are saying you are a body representative of the whole of the industry, is that correct?

**Mr LENNON:** We are trying to be, yes.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You have represented on the council consumer, union and employer organisations, so you are not like the Chamber of Manufactures, which is constituted only of representatives of the employers in the industry.

**Mr LENNON:** No.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But the numbers on your committee are controlled by the industry?

**Mr LENNON:** I would not go that far. We have never gone to a vote on an issue. That is why we went forward with an issues paper that had concerns about the issues paper of the CPSA attached. We made it very clear that we were not going to set an issues paper based simply on a vote of the majority and have that go forward. That is not the way we operate. That is not the way we should operate. We are an ad hoc, loose alliance of people, and if people have contrary views then those views should go forward as well. That is why the CPSA attachment to the issues paper went



with the issues paper. The issues paper did not contain a unified view; not everyone agreed with it; there were differences of opinion. But, at least, all those opinions are out there, and governments can start to look at them and make some decisions, hopefully.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But you would like a significant controlling or directing role in the regulation of the funeral industry in New South Wales, would you not? Is that not your aim eventually?

**Mr LENNON:** Our preferred position, which we have thrown up at various times over some years, is for government, if it saw fit, to establish a funeral industry registration board, along the lines of that of the dental industry and other industries. That is not what has been coming forward. We have put up a number of proposals, and in particular we have put up a preferred option, option D, whereby we have said the council could play a role. But if governments or anyone else tell us we do not have a role to play, fine.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But you have had to take a role. You say that problems get referred to you and, for instance, you chased up money for some person whose pre-paid funeral fund had disappeared or been retired, or whatever else happened to it. You were, in a sense, still acting in a regulatory role.

**Mr LENNON:** Put it this way: the frustration was that no-one else was taking such a role, so we are trying to do something about it.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Technically, that should have been done by Fair Trading, should it not, because the person had bought a commercial product and that commercial product had disappeared?

**Mr LENNON:** Any of the issues that have come before us and we have had concerns about, we have raised with the appropriate body, be it Health, Fair Trading or whatever. I have had a meeting with Fair Trading to raise concerns about practices of a particular operator. It is not that we are out there doing it ourselves; we do not have the resources to be chasing up every issue.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** In your submission you say you established standards for coffin construction. Was there not a proposal for a cardboard coffin, and has that not now fallen by the wayside because it has become too expensive?

**Mr LENNON:** Yes. I would make one thing very clear: We put out material to various places about particular practices, be they related to cardboard coffins or occupational health and safety issues. But we have never done that on the basis of saying, "Here is our position, here is our decision, and you must follow it." The practice is to say, "Here is the FIC's position." It is in the form of a recommendation. There has a lot correspondence flying around, so there may have been correspondence at some stage that has gone under the FIC's name that I cannot recall, or there may be correspondence out there that is not appropriately worded, but our intention has always been: here is our position, here is our recommendation, but we cannot enforce it.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** If the Funeral Industry Council says, "Your cardboard coffins are not up to scratch; put the body in a wooden one," that would, in a sense, be what could be called a restriction of trade practice, in strict terms, would it not?

**Mr LENNON:** The Funeral Industry Council spent money to have the particular cardboard coffins you are talking about tested by TestSafe Australia, and the results came back and we forwarded those to the other players in the industry. Recently—

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You mean the funeral directors, presumably.

**Mr LENNON:** The various industry players, that is right.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** They then, on the basis of your findings, chose not to use cardboard coffins anymore, is that right?

**Mr LENNON:** Sure.

**Mr NYE:** In reference to the first cardboard coffin put up, there were a number of very fundamental problems with it and why it could not be used. Number one, it was a one size fits all; number two, it was not capable of being stored under refrigeration for any period of time; and, number three, it was not capable of being manually handled. What the Funeral Industry Council did at that time was invite those people to send their cardboard coffins along with wooden coffins to TestSafe for testing, but that company declined to do so, and we have never heard from it since. The next cardboard coffin provider that arrived on the scene went out to TestSafe of their own accord to reach that standard. That is all there is to that cardboard issue—no more, no less.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** They have a new name, haven't they? Did they not put in a submission?

**Mr NYE:** I do not know.

**Mr HANSEN:** Life Art.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes. So Life Art now produces a satisfactory standard cardboard coffin, is that right?

**Mr NYE:** That is correct.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But the other mob went broke, presumably.

**Mr NYE:** I cannot answer the question whether they went broke or not. I merely say that there were many fundamental problems with the original cardboard coffin, in terms of its capacity to be used. As another example, it was not capable of being charged into a furnace with a bar that pushes the trolley into the furnace. It did not have the capability that the lid would come off once it had been sealed. There were just so many issues that had failed to be addressed by that particular organisation. As soon as the invitation was made to take the cardboard coffin to TestSafe—which, I think, would have reduced the costs—they just were not interested. Nobody has heard from them from that day to this.

**CHAIR:** How long ago are we talking about, Mr Nye?

**Mr NYE:** Probably three or four years.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But those were cheaper than all the other coffins by a significant margin, were they not?

**Mr NYE:** No offence, but you might as well put them in a paper bag? At least you would have had the right size for it.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** If people want to put a body in a paper bag, should not they have that right?

**Mr NYE:** That is fine, providing it can be safely handled by those who must deal with it. This industry should not be treated as second-rate, or those employed in and around it should not have to cop second-best all the time. I went through that in the eighties, so I know what it is like, and we are not going to go back to it. It is as simple as that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** I am not advocating something that is second-rate, but if you are saying you are an ad hoc committee, and that you do not have any particular status, and you are establishing standards for coffin construction, effectively ensuring somebody cannot sell the product they are making, you are acting far beyond the realm of an ad hoc committee.

**Mr LENNON:** The people who made the cardboard coffin came to us in the first place. We did not ask them to come to us. We said, "What do we do?" We send it off to TestSafe and get it tested and put forward the outcomes." In the case of Life Art, formerly Apogee, they have now sent out some correspondence that I have sighted that said we have endorsed their coffins. We cannot endorse anything; that is not our role. That is the very point you were making. We are an ad hoc body; we cannot endorse. So I have asked them to change the wording from "endorse" to a statement that we have no objection to it.

**The Hon. ROBYN PARKER:** Given you are an ad hoc committee—which surprises me, given the balance of your membership, because I would have assumed you would have been tied up in constitutions and corporations and rules and regulations—I am surprised that you have been in existence for so long and have not got those things in place. Therefore I wonder how representative you are, and why we and all other groups should be taking you seriously and consulting you in this process of going forward. You talk about the need for regulation, yet you are a long way behind in getting yourselves organised to go forward. I just wonder what it is that you have been occupying yourselves with over this time, and why we should regard you as a representative group at all.

**Mr LENNON:** What we have been occupying ourselves with over time is trying to get effective regulation in the industry. We have spent most of the five or six years I have been chair putting together various submissions regarding the issue of standards in the industry, laws in the industry, regulations in the industry and how all of those are enforced. From time to time we have also had a number of issues to deal with in particular cases that have come forward and raised concerns in the industry. Yes, you are quite right. That is why I, as chair, have been insisting that we try to get a constitution together. There have been some difficulties—there always are, as you could imagine, with a group that is as diverse as ours—in trying to get agreement on issues such as a constitution or indeed on submissions. But we have had a constitution draft.

It has been a bit of a chicken and egg argument. Do we have a formal role to play, or are there some positive steps that could be taken by government that would mean that this council should take the next step and be more formalised? That has been part of the issue as well put forward by a number of the players on the council, saying: Once we see that government is serious about this, have taken some steps and made changes to the law and brought in some new provisions, then, yes, we believe that the council should be more formally established, with a constitution, and be properly funded. One of our problems, I am quite happy to tell you, is funding. Obviously, we do not have a huge budget. Basically, we are funded on an as-needs-be basis by the major players.

**The Hon. ROBYN PARKER:** Do independent funeral operators have membership of your council?

**Mr LENNON:** No. However, from time to time, one or two of our members have given independent operators briefings on particular issues. As I recall, we had one at Rookwood a few years ago regarding one of our submissions. But, no, they do not have a formal role.

**CHAIR:** Perhaps Mr Hansen could explain representation by the New South Wales Funeral Directors Association and the Federal body, with InvoCare being represented separately. Would it be useful if you explained to us whom those different people represent, and what percentages of the industry in New South Wales they comprise?

**Mr HANSEN:** The structure within the Funeral Industry Council is that the Funeral Directors Association of New South Wales is one group. That is a group that broke away originally from the Australian Funeral Directors Association. So you have the Funeral Directors Association of New South Wales, the Australian Funeral Directors Association, and then you have InvoCare. Those are three of the industry representatives on the Funeral Industry Council.

**CHAIR:** Which is the group that you belong to, Mr Hansen?

**Mr HANSEN:** I represent InvoCare, which will be making a separate submission to the inquiry. I would ask that any information regarding that be directed to the chief executive officer, or that questions be forwarded to them at that time.

**CHAIR:** If I remember rightly, it has been promised that the submission will be made to us by the end of this week.

**Mr HANSEN:** Good. The Australian Funeral Directors Association—and that is why Mr Strathie is not here today—is finalising its submission to send to you. He will be representing at the presentation of that. Mr Chapman is working on the Funeral Directors Association's submission, and we will be submitting that at some time. Collectively, amongst the two funeral directing associations, they would represent the vast majority of funeral directors in New South Wales. Each association has a structure to admit members under certain guidelines and some independents would not fit those guidelines, but that is an issue to discuss with them, and obviously there are people who do not wish to join any industry association, which I do not think is probably different to any other industry that is operating in this State.

**CHAIR:** Is InvoCare a member of one of those associations?

**Mr HANSEN:** Yes. InvoCare is a member of the Australian Funeral Directors Association.

**CHAIR:** I am not quite sure how you measure it in terms of funerals conducted or whatever your measure is, but what sort of percentage of the industry does InvoCare have?

**Mr HANSEN:** Within New South Wales?

**CHAIR:** Yes.

**Mr HANSEN:** That would be a part of their presentation that they will be presenting to you.

**CHAIR:** But it is the largest player?

**Mr HANSEN:** Yes, it is certainly the largest in Australia and certainly, obviously, in New South Wales.

**The Hon. CHARLIE LYNN:** Could you tell us what other State organisations exist? Are they more advanced than you, if they do exist, and do they have constitutions and so forth?

**Mr HANSEN:** Do you mean the Australian Funeral Directors Association?

**The Hon. CHARLIE LYNN:** Yes, Victoria, Queensland, Western Australia?

**Mr LENNON:** No, there is no sort of similar body to the FIC, as we understand it, in the other States.

**The Hon. CHARLIE LYNN:** What sort of organisations do they have?

**Mr LENNON:** They have their own independent organisations as in the AFDA here, et cetera, representing their interest in other States, I think.

**Mr HANSEN:** The advantage obviously of the Funeral Industry Council in the setting up of it is that you brought together groups who possibly in the past were not united in getting together to discuss issues of the industry with the cemeteries and crematoria people, and, once again, with the vast majority of funeral directors, at least in the formation of the FIC, it was an opportunity for those groups to get together to discuss issues of the industry.

**The Hon. IAN WEST:** In terms of the cost structures, can you give us some advice as to how the cost of a funeral is broken up?

**Mr HANSEN:** There is the funeral director's costs, his or her professional fees that are made up to run their particular businesses, to cover all overheads, et cetera. So there are the basics in their professional fees. On top of that would be the cost of coffins, which is an issue that should be shown separately on the accounts, but it depends on funeral directors; sometimes different funeral directors have different policies of specifying the coffins separately; sometimes they include it in one combined

amount. You then move to areas of disbursements, which are items of cost that are paid by funeral directors on behalf of families, and fees could cover such issues as cemetery fees or cremation fees; if it is a cremation there will be medical certificates to be completed by respective doctors; there could be donations made on behalf of funeral directors to clergy or celebrants; if families wish funeral directors to organise flowers there would be the cost of flowers. Funeral directors can be in a situation that they can cover as much as what families want them to or not want them to.

**The Hon. IAN WEST:** And the actual burial plot?

**Mr HANSEN:** I think Mark can look at that figure.

**Mr LENNON:** It ranges from a cost of around \$3,000 up to, out the eastern suburbs way I think it is \$11,000 for the actual plot. The average is around the \$6,000 mark in Sydney, in the metropolitan area.

**The Hon. IAN WEST:** And that has nothing to do with the costs of the director?

**Mr HANSEN:** No. The funeral director generally would make the arrangement with the family and would book the cemetery plot on behalf of the family and generally pay for that on behalf of the family. Some funeral directors may ask for that amount to be paid at the time when the funeral is arranged. As Mark has pointed out, we are not talking small amounts of money here, we are talking thousands of dollars, and certainly there is quite a cross-section of costs that are covered. In the fees that Mark has mentioned, that would cover the actual plot itself and generally the digging of the first burial in that cost. An average digging fee, like an opening free for a grave in Sydney, is somewhere in the vicinity of anywhere between \$1,000 to \$1,200.

**The Hon. KAYEE GRIFFIN:** If it is a double plot—

**Mr HANSEN:** There is a reopen fee of another thousand-odd dollars. Big issues that come into it these days, of course, are occupational health and safety and digging safety requirements.

**The Hon. IAN WEST:** So in terms of the actual fees that go to the director, you have got fees, you have got disbursements, then you have got plot costs?

**Mr HANSEN:** I think it is fair to say, in the submission—and I am sorry not to answer your question directly—there will be specific costs, I believe, presented in information supplied by those three other organisations, being the FDA, the AFDA and InvoCare. But it is fair to say that if you are looking in terms of a simple service at the crematorium, then the professional fees as part of the total costs will be higher than what they would be if it is a burial in the eastern suburbs, because, to just pick a figure—not to be specific—if we pick a figure of, say, \$5,000 for a cremation, as compared with \$15,000 for a burial, it is obvious the professional fees would be at a higher ratio in the former figures.

**The Hon. IAN WEST:** So the obvious important question involves the issue of the ability for small operators to operate in the industry in a competitive way—

**Mr HANSEN:** Of course.

**The Hon. IAN WEST:** But operating in an ethical and proper fashion. Do you see any contradictions or anything in your submissions in option (d) that you are putting forward that assists in that arrangement?

**Mr HANSEN:** Unless I am misunderstanding the question, if it is a smaller operator or a larger operator, the cemetery or the crematorium that are accepting the booking would still expect payment of their fees within, I would think, a very, very short period of time.

**The Hon. IAN WEST:** So if you have, say, the Department of Health in your recommendations as the lead agency and the various government departments involved, such as WorkCover, fair trading, local government, lands, et cetera, and the appropriate regulations are in

place, that should not have anything to do with whether you operate as a larger operator or a small operator?

**Mr HANSEN:** No.

**Mr LENNON:** I think if we went with a code of practice that would be a key consideration. You do not draft a code of practice in a way that it would mean that the cost to the small operator would make it impossible for them to operate. That would be a key measure in that respect that you would have to take into consideration.

**The Hon. KAYEE GRIFFIN:** Mr Lennon, you mentioned that you have not got anyone on the council for local government. Did you mean from the Department of Local Government of the Local Government and Shires Association representing council?

**Mr LENNON:** No, the Department of Local Government. We have written to the department a number of times over the years. I have written at least once, and I think they have been approached before, to send a representative, and it has not happened.

**The Hon. KAYEE GRIFFIN:** And you have not had a request for any sort of representation from the local government associations themselves?

**Mr LENNON:** No, we have not. We have had, in a de facto way through the Cemeteries and Crematoria Association, representatives who actually work for local government who have been able to express a view generally about the issues, but not formally from local government.

**The Hon. KAYEE GRIFFIN:** You said that the cemeteries and crematoria representatives resigned from the council?

**Mr LENNON:** Yes.

**The Hon. KAYEE GRIFFIN:** Was there any particular reason for that?

**Mr LENNON:** Lack of action. The council has not been able to move the Government on these issues, and therefore the lack of action.

**The Hon. KAYEE GRIFFIN:** You said that 1987 was when there was a number of industrial cases relating to the issue of what was happening with funeral directors and burials and so on and that there was legislation that came in at that stage and regulations, or was it just regulation?

**Mr LENNON:** It was licensing at the time.

**The Hon. KAYEE GRIFFIN:** Those regulations were there for a short period of time but then they were removed?

**Mr NYE:** Eventually they were watered down. They were quite tight in terms of it imposed like a code of practice. In fact, there was one operator who had his licence cancelled for, I would say, some misdemeanour, and as soon as the licensing was repealed he was the first one back out on the street, and he still exists today.

**The Hon. KAYEE GRIFFIN:** So the licensing was repealed and regulations are still in existence, but they are not at the same level they were in 1997, is that what you mean?

**Mr NYE:** That is correct. Perhaps we could say that they are not bad; the trouble is the enforcement of the regulations is the real issue.

**The Hon. KAYEE GRIFFIN:** Because of the lack of licensing?

**Mr NYE:** That is right, and other matters. If matters are referred on, I think the big thing in the funeral industry today is that nobody has any fear or any respect for any of the government agencies because it does not matter. That is the problem.

**Mr LENNON:** I see that—and this somewhat as an outsider—in a way there is a lot of regulation out there: health, WorkCover, local government, fair trading. Part of the frustration has been that whenever there has been an issue raised or some operator has breached any one or any of those particular regulations, that has sort of fallen through the cracks, because at a certain time in the case it has to then be moved on to another department and in the end no-one is responsible, in a sense.

**The Hon. IAN WEST:** No lead agency is—

**Mr LENNON:** That is exactly right. The point is that the key issue is that sort of lack of oversight. That is why our preferred position in a perfect world would be some sort of funeral industry registration board. But it does not seem that that is a path that the Government necessarily wants to go down, so we have been looking at some other proposals.

**The Hon. ROBYN PARKER:** I have not read yet, and I apologise, your recommendation (d), but I have read part of the combined pensioners and superannuants submission. When talking about a body to regulate and codes of practice and codes of conduct, they comment that the Funeral Industry Council has not shown leadership or protection of the public. Do you have a response to that criticism?

**Mr NYE:** It is not true. We refer many matters on to various government departments. In fact, it was only two weeks ago we referred not less than four matters to the Department of Health in one day. They related to a body that had not been buried, although it has been laying in a funeral home for a period of three months; a body that had been removed from a vault and taken to a funeral home without the appropriate paperwork in place; bodies that had been stored on premises without being entered into registers. Now we know nothing is going to happen. The trouble is that those operators also know that nothing is going to happen.

**Mr LENNON:** To be honest—and I do not want to disagree with my colleague, but in some ways that is not an unfair comment because one of our problems is, as I keep saying, we are this loose alliance, ad hoc; we are a bunch of part-timers. We do not have any full-time secretariat. There has been a proposal that we should. That needs funding from the various bodies who make up the council. That has not been forthcoming, so we have not had the ability to fund a full-time person. It is only at that stage, I think, when you have got someone who is concentrating on the issues, and solely on those particular issues, that you are going to get a more active role in the end.

So there has been this sort of chicken and egg argument: Will we be more actively involved in the Funeral Industry Council once we see more movement by government? On the other hand, there is an argument that says we are not going to see more movement by government until we are more active and therefore until we have got someone full-time who is pressing the issues and also looking after the public interest. So, in a sense, it is not an unfair comment and you have got to remember, as I say, and I make it very clear, that we are, indeed, just part-timers who have got other jobs to do and concentrate in the main on those other responsibilities.

**The Hon. ROBYN PARKER:** Is anyone remunerated for work on the Funeral Industry Council?

**Mr LENNON:** We have now, and have had for about three years, a contractor—for want of a better word—who does eight hours secretarial work for us a week, or equivalent thereof, and that is all. But that is administration work, in a sense, meeting notices, pulling bits of correspondence together, et cetera, but not a research role.

**The Hon. ROBYN PARKER:** The rest of you are volunteers?

**Mr LENNON:** That is right, very much so.

**The Hon. ROBYN PARKER:** Who funds the operation of the council?

**Mr LENNON:** Funding comes from industry bodies—the FDA, InvoCare and, until recently, the Cemeteries and Crematoria Association—on an as needs basis. We have looked at what our

outgoings are and basically we had to make a call on further resources or further finances to help us fund our outgoings. For instance, we had the assistance of consultants to put together the issues paper and, therefore—in the end it was about \$12,000-odd—we had to call on our industry bodies to help us fund that.

**The Hon. IAN WEST:** You are operating in a bit of a vacuum in the sense that you are trying to fill a void and in doing that on one side you are being accused of not doing enough and on the other side you are being accused of doing too much.

**Mr LENNON:** I suppose you could say that, yes.

**CHAIR:** I just wanted to clarify one thing. I was just looking at the partial history, at least, of regulation. I gather we are currently operating under a 2002 regulation under Health, the disposal of bodies regulation.

**Mr LENNON:** That is right, yes.

**CHAIR:** And from what Mr Nye said before, I gather you believe it is weaker than the earlier regulation. Also it applies mostly to mortuaries, crematoria and so on so it is limited in its extent. Is that the issue?

**Mr NYE:** That is right.

**CHAIR:** We should be clear on the fact that there is a regulation that was reviewed under the regulatory review process and put there in 2002, but from your point of view it is not adequate.

**Mr NYE:** No, it is not strong enough now.

**CHAIR:** In extent and in powers? Would you criticise it from both points of view?

**Mr NYE:** I think it would be fair to say that you could criticise the enforcement because there is no fear or respect for what is in there. I think people operate in the industry today certainly without any belief that anything is ever going to happen to them. A case in question, there was a fellow who was prosecuted. He failed to turn up to the Penrith Local Court for using unauthorised premises and he just does not care. It just goes about his business because he knows—

**CHAIR:** And yet the kind of premises to be used are covered by the regulation?

**Mr NYE:** That is right. They are covered by the regulation. That, in turn, not only protects our people but it also offers dignity and respect to those whose bodies are at the funeral home and it also protects the community at large because they can at least take some solace from the fact that they know they are dealing with people who are acting with propriety.

**CHAIR:** The other issue, just to get straight the issue of regulation, we have been told that the local government area of regulation was removed. The New South Wales Government did not have any choice, I guess, as a result of the national competition policy principles—it was seen as an infringement of trade or whatever the technical term is—and it was removed in accordance with the Federal Government's national competition policies. There is a problem for the New South Wales Government, from what I can gather, in going into some of these regulatory areas.

**Mr NYE:** I think we have to appreciate that the first step taken by anybody who is going to enter the business is to ensure that they have the appropriate premises from which to operate or the premises they are going to have access to is appropriately recognised by local government.

**CHAIR:** But I gather that regulation was removed because it was seen as infringing on the national competition policies?

**Mr HANSEN:** No, as far as I know they still have the position of site, the zoning. I think they still control zoning.



**CHAIR:** Zoning?

**Mr HANSEN:** Yes.

**CHAIR:** But with the same powers in relation to the operation of businesses and premises?

**Mr NYE:** That is right, then it becomes the Department of Health. Once that has gone through zoning it then becomes a matter for Health. This is a problem, of course, when most local governments do not quite know where these things are or how they function. I understand that some councils will give approval. You can walk in on a Wednesday afternoon and be operating on a Thursday morning without anything having happened to those premises at all.

**CHAIR:** What I am getting at is a bit more specific. The Hon. Kayee Griffin, with her local government expertise, may know. Section 68 part F items 8 and 9 of the Local Government Act were repealed in 2003 as a result of national competition policy.

**The Hon. KAYEE GRIFFIN:** I think what Mr Nye might be talking about is actually a development application [DA] as opposed to any of the other regulations. We are talking about zonings. You are talking about someone putting in an application to get a development consent to operate a mortuary or whatever from specific premises as opposed to the Health obligation that might have been attached to it. Is that the position?

**Mr NYE:** That is right. Once the DA has been approved it then becomes the jurisdiction of the Department of Health to monitor it thereafter.

**The Hon. KAYEE GRIFFIN:** Local government had more responsibility, but that has been removed.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Could I come back to this cardboard coffin? The cardboard coffin people came to the Funeral Industry Council. You urged them to get it tested. They did not want to get it tested, is that situation?

**Mr NYE:** No, not quite. The actually brought the product to a Funeral Industry Council meeting and they wanted to know what the views were of the Funeral Industry Council. The Funeral Industry Council, I might say, never took into consideration price or appearance of the product, but asked a question, "Would it be capable of being used as presented to the Funeral Industry Council"? The obvious answer to that was, at that stage, no. They were then invited to go to TestSafe, but they declined that. To the best of my recollection we have not heard from them since.

**CHAIR:** Were they selling many coffins before they came to you?

**Mr NYE:** Not as far as I am aware. To put it to you quite frankly they were being treated as a so-called novelty. There is nothing new about cardboard coffins. We have been dealing with those sorts of issues since the mid 1980s. I suppose my definition or the industry definition of a coffin, it really is a container that would take a body from A to B irrespective of what it is made of. That is where we are with the matter. If it is capable of maintaining the standards that would be required to perform what is meant to do then we would have no objection whatsoever to price or appearance.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Was there pressure from unions, funeral directors or crematoria owners to say, "We won't accept his coffin"?

**Mr NYE:** No, not at all.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You reckon it failed on its merits?

**Mr NYE:** I know it failed on its merit, again, because one size does not fit all. How do you put a baby into a coffin that is five foot six?

**Mr LENNON:** We have to be very careful for that very reason. That is why we sent it off to TestSafe to be tested.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But if you said to someone who wanted a basic pauper's funeral, or the family of a poor person, "Do you want to pay \$1,000 for a coffin or a few hundred dollars for a coffin", there had to be some consumer enthusiasm for it, surely? You are saying it failed in the market without any influence from anybody else?

**Mr LENNON:** It failed certain standards. There would be lots of products out there, be it the funeral or any other industry, that are very cheap. But from the perspective of do they meet public health standards or do they meet safety standards, are they appropriate for the consumer generally, it has to meet all those tests and in the particular case you are referring to how would we do that? We sent it off to TestSafe and it did not meet the test. But now we have a coffin that does, a cardboard coffin.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But in a sense TestSafe was not a body. If I buy a stroller that is cheap it has to have passed Standards Australia certification, otherwise no-one is allowed to sell it. In a sense there is a legitimate statutory body to test the stroller. I buy the stroller at the price I can, knowing that someone is making sure the baby does not get squashed.

**Mr LENNON:** Sure.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Nothing in your system has a registered or regulatory body to say that you cannot use the cardboard coffin. It was your opinion and the opinion of the testing groups, but it was not in any regulatory sense prohibited. You are saying there is no regulation here. I am merely giving you back your own stuff.

**Mr NYE:** Sure, I understand all that. Again, it was not humanly possible in the way in which it was presented capable of being used to transport a body from A to B or capable of being stored under refrigeration. There was no guarantee that it would not leak body fluids, guarantee that bodies would not move around in it, guarantee that you could not take the lid off because as soon as you did the whole thing would collapse. Apart from that, you could not even pick it up. But nobody had worked it out. All that was presented was a cardboard box without any sort of consideration—

**CHAIR:** What is the cost of the cardboard coffin that is around now?

**Mr NYE:** I do not know. I understand—

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It is in one of the submissions.

**CHAIR:** Mr Lennon said there is a cardboard coffin now.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** There is a submission in the list about it.

**Mr LENNON:** Just to answer your question, the answer would be from the professional point of view as a union official in relation to the particular cardboard coffin that you are talking about, it would not meet employers' duty of care under the Occupational Health and Safety Act if they used that coffin.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Had a consumer wanted one they would have found resistance from the funeral directors and/or crematoria and/or the unions all independently saying they did not want it?

**Mr LENNON:** They would have found that there had been tests done by the FIC and there were some results. That is what we did from the FIC's point of view. What the unions would have done separately, that is their position. Clearly, what they would have done is what Mr Nye has outlined. Let me say this, the point is if you are saying we are a regulator in this industry, we are trying not to be. If someone else wants to take on the job, well and good. That is what we are here for. We do not want this role. We do not want to be a regulator. We have suggested in our submissions we may be delegated authority from the Government, but I said at the outset if this Committee believes

and the Government believes that someone else should take on that role, well and good. That is the whole point.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You are saying that you are not a regulatory body, but you say in your submission that you establish standards of coffin construction and the cardboard coffin went broke after it had come to you, so you are effectively having a de facto function in terms of this." Did you write to your members and say, "It is a lemon" and did you discourage its use?

**Mr NYE:** The thing was certainly touted around the industry before it came to the Funeral Industry Council, but it was not picked up by anyone. You cannot blame us to go to people and say, "You have to buy it." It certainly was touted around and it had pretty widespread coverage through the media well before it got to the Funeral Industry Council.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But the mark-up on it would have been a lot less than the mark-up on a wooden one, would it not?

**Mr LENNON:** Nothing we can do can stop the funeral director choosing to market any particular coffin. We do not have a formal regulatory role. We can make recommendations. We cannot say, "Don't use this one", of course we cannot.

**CHAIR:** We have had a bit on the cardboard coffin and we may have some more. Obviously, these issues will come up again because we will have the Funeral Directors Association, InvoCare and others back, and there are submissions to come as well. A couple of issues that we have not raised at all that are on our list involve complaints processes. You mentioned complaints come in. I am not sure how the Funeral Industry Council's complaints process operates and whether that is fairly ad hoc. But does the Funeral Directors Association also have complaints processes and does InvoCare get into those, or does it have its own? Obviously there are a lot of stories around about people making complaints. We are trying to get a sense of where they go and how the processes work?

**Mr HANSEN:** Certainly, as I mentioned, InvoCare is a member of the Australian Funeral Directors Association, therefore it is bound by its policies. Certainly, the Australian Funeral Directors Association has a complaints process that, once again, I cannot disclose to you at this time, but a representative from the AFDA when they do their submission, would be only too willing to do so.

**CHAIR:** If someone rings or writes to InvoCare in the complaint about a service what does InvoCare do?

**Mr HANSEN:** They would follow the complaints procedure as laid down by the AFDA. I am sorry, I am not trying to be evasive, but I think the representatives from InvoCare when they come to talk to you and do their presentation, they are bound by the policies of the Australian Funeral Directors Association. You have mentioned from the outset that you may be asking specific questions of particular people who appear from here. I would respectfully say that if you were to advise those particular organisations on those issues, they would come with their full policies to submit to you, if you felt you would like to see them.

**CHAIR:** Certainly. I think that seeing the complaints policy would be a very important part of what we want to look at.

**Mr HANSEN:** Certainly.

**Mr LENNON:** We do not have a formal process, given our ad hoc nature. We do not have a formal complaints process. Usually we get letters sent to us or occasionally from time to time we have had people come up and appear with particular complaints. We then make a decision as to how it should be handled, usually by writing to the relevant departments and/or Minister—in the main, I think it is the department—and sometimes we allocate particular members of the council to pursue it. Usually the letters are forwarded under my hand and we see where it goes from there and we report back at the next meeting.

**CHAIR:** Can you quantify that for us at all? How many complaints would you receive a year or a month?

**Mr LENNON:** Can I come back to you on that one?

**CHAIR:** Yes. Take that on notice, if you will. It might be possible for you to give us the number you got last year and the number you got this year with some indication of the kinds of complaints that are coming through to you. I guess the major fear—and this has been expressed by the Combined Pensioners and Superannuants Association [CPSA] and by others—is the kind of regulation or licensing that is being proposed, that is, your option D, and that it may serve in effect to limit competition. It may be something that will suit a relatively small number of big players in the industry but also it may be like using a sledgehammer to crack a nut and drive out some of the smaller ones. This has been raised particularly as an issue for rural areas where perhaps the smaller operators are struggling already. Can you comment on some of those concerns?

**Mr LENNON:** No doubt that is a legitimate concern and the Combined Pensioners and Superannuants Association have quite rightly made that clear at our meetings. As a council, we have to be very conscious of that. I have made it very clear as the chair that we do not want to see some system of regulation that leads to anticompetitive practices arising in the industry. It is a fine balance. The balance has to be between ensuring that we have appropriate operators in the industry that are meeting and abiding by the regulations, in particular appropriate standards and in particular from my perspective appropriate standards for their workers, and also that they are ensuring that there is cost effectiveness in the prices they are offering to the community at large.

One of the issues that seems to be continually debated among members of the council and the CPSA, and quite rightly, is that we would like to see more about the cost of a basic funeral. I do not want to put words in their mouths because they will tell you in their own submission. There seems to be some difficulty from other members of the council who say that it depends on what you define as a basic funeral. I think there has to be clearly—we have made this part of our recommendation or we have talked about this—if we cannot actually itemise or give the cost of a basic funeral, there has to be clear and transparent itemisation of funerals and what all the costs are and more education for the consumer at large about what the costs are so that they can make a decision. So that if someone says, "Yes, I want flowers", they need to understand what that means in terms of additional costs, or if someone says that they want a coffin with particular handles, et cetera, what that means in terms of additional cost.

At the very least, that is one way that we have to go forward to make sure that people understand the costs so that they can make a reasoned decision when it comes to looking at the price of a funeral. I think the Funeral Industry Council [FIC] is very conscious of the fact that we could be seen, or any further regulation could be seen, as leading towards anticompetitive practices and we have to be conscious of that. Coming back to the earlier question about smaller operators and would regulation drive them out of the industry, again I go back to what I said at the time, I suppose, and with regard to our proposal: how you would draft that code of practice and what would that mean to small operators.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You said you are an ad hoc committee and that you do not think that as a unionist you have a conflict of interest because you are not an industry body. Do I understand you correctly?

**Mr LENNON:** I do not know if I said that.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You are not a union, you are an industry body. You do not have a conflict of interest?

**Mr LENNON:** I am sorry?

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You are not a union or an industry body because you are saying it is not an employer body. It is an industry group.

**Mr LENNON:** Yes, that is right, but that does not mean to say that any of us from our various backgrounds, when it has come up, will not have potential conflicts of interest, clearly. You have to recognise that. If you have a cross-section of people from various walks of life and various aspects of a particular industry, whatever it is, there are times when a body might have potential conflicts.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** But you are quite short numerically of consumer bodies on that group, so you would not expect the FIC to be a regulatory body in its current form, or would you?

**Mr LENNON:** I am happy for the FIC, as I say, not to be a regulatory body, but if it is deemed appropriate that it should be a regulatory body but should expand its membership, we would be happy to accept that as well.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you accept that the industry is an essential service and that there is a case for regulating the basic funeral in the interests of people who do not have much money?

**Mr LENNON:** Absolutely I would, yes. I do not think the council has taken cognisance of that but if you asking me personally, the answer is yes.

**The Hon. IAN WEST:** Training of people from local councils who come out and inspect premises, one hears anecdotally that people from local councils have little or no knowledge of the industry and they come out and tick off a piece of paper and say, "Yes, that is okay."

**Mr HANSEN:** Comments such as "What do I look for?"

**The Hon. IAN WEST:** Yes. Is there any training in that area?

**Mr LENNON:** No.

**Mr HANSEN:** None.

**The Hon. IAN WEST:** Do you concur with the anecdotal evidence that when they come out to places representing the council to tick off that the place is okay, in many cases it is a bit below standard?

**Mr HANSEN:** Could well be the situation; I mean, if the inspector does not know what he is looking for—he or she as the case may be.

**Mr NYE:** Again, I think that would be more of a matter for the Department of Health rather than local government to perform that function.

**The Hon. IAN WEST:** So at the moment, although it is done or seems to be done by council, perhaps it would be more appropriately done by the Department of Health that you would see as the lead agency in this?

**Mr NYE:** Absolutely. I think council looks after the zoning and thereafter I think it becomes the domain of the Department of Health.

**Mr LENNON:** Could I just conclude, Madam Chair, by saying thanks for the opportunity. I should mention that I do not think there is any lack of will of government generally about this issue. It is just that the question is: How is it done. Given there are a number of different departments, who is responsible has been the key issue. Could I say finally in closing that whatever the Committee's decision is or recommendations are, at the very minimum we hope that we come out with some code of practice for this industry. This is a focus for a way forward. Finally can I reiterate that—and I know I have said this several times—the Funeral Industry Council is happy to play a role in whatever way this Committee and others see fit, whether that means its present membership or an expanded membership, if it is thought appropriate. But ultimately our goal is to see better regulation

enforcement in the industry. If we do not have a role to play going forward, so be it, as long as that is in place. I thank you.

**CHAIR:** I think you have certainly made that clear. Thank you all for being here.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**MEGAN LEE**, General Manager, Combined Pensioners and Superannuants Association Inc., and

**MATHEW LESLIE ELKINS**, State Treasurer, Combined Pensioners and Superannuants Association Inc., sworn and examined:

**CHAIR:** Ms Lee, in what capacity do you appear before the Committee?

**Ms LEE:** As a member of the association.

**CHAIR:** Mr Elkins, in what capacity do you appear before the Committee?

**Mr ELKINS:** As State Treasurer of the association and as delegate to the Funeral Industry Council.

**CHAIR:** The Committee has received your submission. Do you wish to make an opening statement? In the absence of a quorum, anything you say can be added to your submission and the Hon. Kayee Griffin will move a motion to that effect.

**Ms LEE:** Basically, our submission is that because funerals are as essential to our survival as a species as is clean water—in the sense that we have to dispose of bodies for public health reasons—their cost should not be impossible for people to meet. Sometimes people have to mortgage their house or take out an extraordinary loan or give up a lot of other things in their lives, because they have to pay huge sums for a funeral. The core issue in our submission is that there should be a basic funeral price that is set and regulated. In addition there should be some means by which people who cannot afford to pay for a basic funeral up front—funeral providers say that people who are purchasing funerals at the lower end of the market tend not to be good payers—have access to an interest-free loan of some kind. In that way they could get a loan administered through Centrelink or some other authority, and then pay back the loan. In that way no person would need to go to a loan shark or mortgage their house to pay for a basic funeral.

**CHAIR:** That is one of your extra recommendations. To formalise that, the Hon. Kayee Griffin has moved that the extra page be added to the association's submission. The Committee has agreed to do that. Do you want to say any more before we go to questions?

**Ms LEE:** Yes, I have a few more issues. When it comes to more than a basic funeral, and I have talked about the need for an independent authority to define how much a basic funeral should cost, that authority should be similar to the Independent Pricing and Regulatory Authority. In addition, people need to be told how much they have to pay up front and they need to know that that cost is fair. At the moment, it would be rare to find a funeral director who would accept someone turning up with a coffin. People have to purchase a coffin at the set price. People are not given the option of seeing a catalogue and choosing one at, say, \$250 or another one that is mass-produced at \$180. That opportunity is not given. The funeral director does not tell a client the price at which he or she purchased the coffin, they just give the cost that the client has to pay. The Funeral Industry Council have certainly made it very clear to us that there is a mark-up on coffins. We have been told that that is standard.

**CHAIR:** Do you know what the mark-up is?

**Ms LEE:** According to articles in the *Sydney Morning Herald* in 2002 by Gerard Ryle, a person speaking about the industry said that the industry was able to buy coffins in bulk at \$200 each and would resell them at \$800 plus.

**The Hon. ROBYN PARKER:** That was the price in 2002?

**Ms LEE:** Yes.

**The Hon. ROBYN PARKER:** Have you asked the Funeral Industry Council about that?

**Mr ELKINS:** There are lots of questions that the providers do not answer, and that is one of them.

**CHAIR:** Do you have anything further to add?

**Ms LEE:** Yes, about the regulation of the industry. We agree, and this is one of the few points about which we agree with the Funeral Industry Council, that there needs to be some way of ensuring that the person who has breached certain regulations or practices is in some way punished or suspended or had their ability to continue working in the arena removed. However, it is obvious that if someone is doing poor things in the way of health regulations in particular, and they shut up shop and open another shop somewhere else, they can keep on doing that: and that is not good enough. Beyond that we are very concerned about the amount of regulation that the council wants included or put in place. It becomes more prohibitive for people to be able to set up their own business in competition. Also when it comes to the number of qualifications that people need to have, the industry itself will probably be the training provider.

Therefore the industry will push out competition—if you are Invocare how many trained people do you need if you have heaps of staff? If you are just a little operator, all your staff have to have those qualifications. It is Invocare or Invocare with AFDA, or whatever, that are the providers of training. In fact, they are making money out of the workers who are going into the industry.

**CHAIR:** Do you want to add anything, Mr Elkins?

**Mr ELKINS:** Every time I want to raise an issue at meetings—unless I have evidence on a sensitive issue—it is near impossible because I have no documentation, such as when talking about the cost of a funeral. About 75 per cent of calls I receive at our office are about the cost of a funeral. People are not prepared to give documentation that I can take and use as an argument, which they are reluctant to do because this is a sensitive issue. People do not want to become involved. I can give one example. We eliminated all the privacy material and have just got the escalating costs from 1995 to 2004, and one person has been prepared to come forward with that.

**CHAIR:** People will ring the Combined Pensioners and Superannuants Association and complain. When you ask for details do they feel bad about that because it is a family member who has died? Do they not have documentation? What is the problem?

**Mr ELKINS:** The calls that we receive are from people who are unhappy, of course. We get a few calls from people who say, "My uncle or my mother is gravely ill with cancer. Who can you suggest that we use?" We do not recommend or suggest anybody. We just tell them to go through the phone book, or we ask someone who has recently had a funeral whether or not they were happy with the service.

**Ms LEE:** People are extraordinarily reluctant to make some kind of a negative comment about the person who has provided the funeral for them. It is almost like they gave their trust to this person to do this job for them and they shared a whole lot of personal stuff with them. To be making a comment about them that is negative is almost like saying something really bad about the deceased. I do not know what is going on in people's minds. The association has talked about the cost of funerals for years. We have said to people, in particular, country members who have contacted us, "What was the cost of the funeral? Would you be willing to give us a copy? Write out all the stuff to do with the town and send us the information." They have replied, "I do not want to make a comment because, after all, I have to live in this town. I do not know what they would say if they found out. People would be really upset if I made a comment. Everybody else in the town likes that person." There is a culture around this issue that makes it very difficult for people to take on the funeral director. It is like making a complaint about the cost of something you were charged for by the clergy. It is as though it is forbidden territory.

**Mr ELKINS:** Part of our submission relates to the cost of floral arrangements. I went to speak to a branch outside Newcastle and the family was ropeable that the undertaker talked them into putting a floral arrangement on the deceased's coffin. He talked them into roses. They asked, "How much is that going to cost?" The undertaker said, "It will not be a great deal." After the funeral they



got a bill for \$900, which is staggering. I believe it is robbery. This is the culture we have to overcome within the industry—a culture that was there long before I was on the Funeral Industry Council. The advertising of prices is another area we have dealt with in our submission and that we will probably deal with later.

**The Hon. IAN WEST:** I apologise that I have not had an opportunity to go through your submission in detail. However, I will be doing that. I apologise if you have addressed this issue. Have you any documentation on various things to look for? What are your thoughts on agents or brokers in the industry?

**Ms LEE:** It is mentioned in our submission. We do not refer to brokers, which is an interesting point. We have not even talked about the idea of having a broker. This is the first time. What we mention is the fact that there has been an emergence of being able to ring a centralised number and they will organise a funeral for you. We do not know whether those groups are using their own premises for organising the funeral or whether they are contracting out. In the 2005 yellow pages you find that the first bundle of advertisements on the first few pages all look alike. I gather that they come from the same company. What they are doing is just giving you a number. When you ring up that number they say that they cover heaps of suburbs. So you are able to get access, in a sense, to a cheaper funeral. But your suggestion of a broker is a really good one. The difference with that is that you do not have to ring up place after place, which of course is not what happens. People tend to stop after one or two places if they get sucked into it.

**The Hon. IAN WEST:** Somebody acting on your behalf rather than yourself?

**Ms LEE:** Yes.

**The Hon. IAN WEST:** That has not been explored previously?

**Mr ELKINS:** When people ring up about funerals the only advice we give them is to take a prepaid funeral, so they can make their own arrangements. If they want to pay \$1,000 for a coffin they do that. If they want to go only for a basic coffin they do that.

**The Hon. IAN WEST:** Are you not able to give not so much advice but perhaps information on what to look for or what to watch out for?

**Mr ELKINS:** We have a fact sheet in our office. If you ring up our office you will find it is manned by volunteers. If any inquiry comes in there is a fact sheet there and volunteers read from the fact sheet.

**The Hon. IAN WEST:** That is in your submission?

**Ms LEE:** No, it is not, but we can make sure that we send it to you. It is important to remember that some people will ring us at the time they are organising the funeral, but most of them will ring us after the event. Some might know that they are going to be preparing for a funeral really soon because of a person's imminent death. So they will be contacting us because they are thinking about it. But most of them are contacting us after the event and telling us about this extraordinary cost that they have had to pay. The time when most people are doing the arranging is the time at which they contact somebody. They contact somebody because they think about the funeral of somebody else nearby, or they did the transport services.

**The Hon. IAN WEST:** Pardon my ignorance, but are you not able to get on the phone, ring up a funeral director and get the costs off him?

**Mr ELKINS:** I have done that. They do not readily give out costs. You have to create a situation, for example, your mother is dying of cancer, she has a fortnight to live and then you try to get them down to a cost. On the two occasions that I rang it was St Marys. There is a fair bit of competition out there. I could get a funeral for \$2,250 excluding the newspaper advertisement and the floral arrangement. None of them will include that. So there is that type of funeral, but if people take advantage of that they can save themselves a lot of money. If they wait until the event has happened they are vulnerable. That is when the undertaker comes in and sees how wealthy the suburb is that you

live in, what sort of house you live in, and accordingly that is when the funeral starts. We have evidence of that.

**Ms LEE:** If you live in a country area where there is only one funeral provider—and there are a number of places in New South Wales where that is the case—there is no competition. It is not about getting on the phone and ringing up; you just have to go with whatever price they charge. One of those examples is cited in our submission. Another thing that happens is that people end up with a funeral director for a whole number of reasons. The doctor might come when a person has died at home. You then say, "What do we do next?" The doctor says, "You need to get a funeral director to remove the body." So the person gets a funeral director. You might say to the doctor, "Who do we ring?" or they just look up the phone book and get somebody.

They do not understand that if a funeral director does the transportation of the body it does not mean they are now stuck with that funeral director, but they end up with the one who is doing it. If a person is in an accident and that body is transported from the coroner's court or whatever, wherever they it has ended up, they do not understand that they do not have to stick with whoever does the transportation. I understand that you have received a submission from one of our members. Two years ago she had the sudden death of her husband. She did not know what to do.

She rang the funeral company that was in her mind. It had been the funeral company that had previously looked after the funeral of the local mayor. She said, "Do you do really cheap funerals?" and they said, "Yes." She said, "I want one of those. Just take the deceased from my home and I then want you to arrange for him to be cremated because I imagine that would be cheaper than if there were a service." They said, "Yes, it certainly would." She said, "I will have a service when we have all come to terms with this, but I have not got any money, so please do it that way." They said, "Of course, we can. We can do it nice and cheap for you." It was \$3,200. She never had a service and she never even saw the coffin. She just presumed that when they meant cheap it would be cheap, and not \$3,200 worth.

**The Hon. ROBYN PARKER:** When there is a prepaid funeral I assume there must be itemised costing. Do you have figures to show what it costs for prepaid funerals and other funerals?

**Mr ELKINS:** I will tell you what happens when you have a prepaid funeral. The pensioners branch that I belong to had about a dozen. The undertaker came out and gave us a discount, would you believe, of \$250.

**The Hon. ROBYN PARKER:** Because you were a bulk buyer?

**Mr ELKINS:** Because we were a bulk buyer. So that was not so bad. When it came to the choice of coffin, they came with a little book. It was just like buying a carpet. They started off with the basic funeral coffin. Then as you go over the pages they get dearer, of course. In my case he started about halfway through the book. I said, "What about the others?" So we came back and I think we got a \$500 coffin. That was what we selected. The only thing that is excluded from my prepaid funeral is transportation. If I die in Sydney and I want to be buried in Newcastle there is that cost. I understand that. There is also the cost for floral arrangements and the advertisement in the paper.

**The Hon. ROBYN PARKER:** Do they then hold it in trust? Is there a trust fund or something like that?

**Mr ELKINS:** Yes.

**The Hon. ROBYN PARKER:** What if a funeral director goes bust?

**Mr ELKINS:** The only time the funeral director loses money is if you die the next day. If you die in 20 years time, which is what we are all hoping, the money is held in trust. Inflation eats at the interest, according to the funeral fund. If my \$2,500 funeral costs \$5,000 when I die my family does not have to pay a cent. Of course, you do not get the money back either if they have a good rate of interest.

**The Hon. ROBYN PARKER:** So where does the trust fund come from? Who administers that fund?

**Mr ELKINS:** I am actually with InvoCare. They went and bought out the company that I chose.

**The Hon. CHARLIE LYNN:** Who owns InvoCare?

**Mr ELKINS:** That is a good question. I wish I was a shareholder because they—

**CHAIR:** Page 9 of the submission has quite a bit of detail about the restructuring by the Macquarie Bank and so on.

**Mr ELKINS:** Megan Lee is the computer expert. She gets all the information in the submission off the Web. She might be able to answer your question.

**Ms LEE:** Going back to the funeral funds, there is a Funeral Funds Act administered by the Office of Fair Trading. It was reviewed two years ago. It is very well controlled in the sense that people can no longer lose their funds. They are not just given to a funeral director. It is like with the Rental Bond Board. It has to go to a friendly society. There are many financial stipulations about how the money is looked after. Service Corporation International Australia moved into Australia about 10 years ago or a little more and started gobbling up funeral companies. It then was bought out by Macquarie Bank, which resold it 18 months later and floated it on the stock exchange. It became a public company called InvoCare. But when Service Corporation International started buying up funeral homes it also started buying up funeral funds. They are really big money earners. One that you can have a look at is called Over Fifties Mutual (OFM) Group. This group is making an enormous amount of money. It is a big investment company. OFM investment group has a company that Guardian funeral plan puts its money into. Guardian is the funeral plan that is used by InvoCare. They get investors into that friendly society or whatever it is called. The same group runs insurance. It offers reverse mortgages. It is a big one-stop shop to make sure that they can clean out people, especially older people, of all the money they have.

**The Hon. CHARLIE LYNN:** I believe there is a lot of overseas ownership of the funeral industry. I understand these people would be very highly trained in sales and very subtle in their message and able to assess their victims very quickly, as you mentioned, by the type of suburbs they drive into and so forth, upgrading the services. Would a code of ethics in the industry address that satisfactorily? Secondly, is there a need for a government information campaign to encourage people to make arrangements for prepaid funerals?

**Mr ELKINS:** The answer to the first question is probably no. All the problems with pricing would be solved if the funeral provider advertised his prices. You might want to shop at David Jones or go to a cheap \$2 shop. If people decide to have a David Jones funeral that is fine: I do not have a problem with that. If people want to go to the bottom end of the scale I also have no problem with that. But the problem arises when they get the hard sell immediately. They are nodding and at the end of the day they have probably nodded about \$8,000 worth of nods. The problem would be eliminated if they were forced to advertise a basic funeral.

**The Hon. CHARLIE LYNN:** Do you see this as one of the major issues: people being vulnerable to that type of very subtle sales pressure at that time?

**Mr ELKINS:** Most definitely. At our meeting yesterday I heard that the best man at my wedding, his wife's sister, just buried her husband—very emotional. The funeral was \$8,000. You can get them cheaper than that. She was distraught because he died at home suddenly. The high-pressure sell was successful.

**The Hon. ROBYN PARKER:** I assume that there are different levels of regulation and codes of conduct in other States. I am hoping that they are better than what we have found out in a short time about New South Wales. Are you aware of anywhere that does it better than we do it here?

**Mr ELKINS:** Victoria completed its inquiry last year. I asked about vertical burials. We heard this morning about the cost of a plot in a cemetery. Vertical burials could be an answer rather than having one person in one large plot, provided people want that. If they want to be buried out at Maroubra overlooking the ocean that is fine but if they want a vertical burial they should have that choice. When I asked the question at the last FIC meeting they said that it was undignified to be buried vertically. I could not fathom that rationale.

**The Hon. CHARLIE LYNN:** You cannot really say that they are going to be resting in peace if they are left standing up, can you?

**Mr ELKINS:** Provided it is in accordance with the health regulations it would not matter whether you were buried standing up, sideways or face down. Unless you view the body at a burial or cremation you do not know whether the body is on its side, on its back or lying face down. I do not believe it is an issue.

**Ms LEE:** There does not appear to be in any State any kind of regulation like you are talking about. There are the usual fair trading requirements and Australia-wide trade practices ones as well as health ones. They seem to be what is in place in various States, some more advanced or less advanced than New South Wales. But there is nothing that is a whole picture about what should be happening. It is almost part of the Australian way of being that everybody understands that it is just going to cost you a fortune for a funeral. That is why our association quite a few years ago explored seriously setting up a funeral fund, because our members were saying that they could not afford to pay for funerals. It seems that that is how it has always been. They were making a fortune before and it seems that they are just wanting to make more and more. It is reaching the level where people have to pay an obscene amount. This morning we had a phone call following an article in the *Sydney Morning Herald* about the New South Wales Council of Social Service and our submission. The caller was a woman who wanted to say something to this inquiry. She had bought a cemetery plot—I did not find out where it was—in the 1960s for \$1,000. Then in 1997 when the plot was used for a burial there was a debate about whether they could use the plot and whether they even owned the plot. Then it was expanded into an extraordinary sell and she had to put in more money. They were changing it with extra bits around the edge and they said she had to pay for marble and I do not know what. It seems that this has been part of the scene for a very long time.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** We had some discussion about cardboard coffins. I gather there were cardboard coffins and the Funeral Industry Council was approached and it referred them to a testing group and then the cardboard coffin people went broke. It seemed to me extraordinarily coincidental that all that happened. Can you tell me what happened to these cardboard coffins? Did the public not want them or did the funeral directors not accept them? What was the story with the cardboard coffins?

**Mr ELKINS:** That was before my time on the FIC. I became the CPSA representative in December 2002. That happened earlier on. There has been a cardboard coffins while I have been there, a very elaborate piece of—

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** That is the one made by Life Art?

**Mr ELKINS:** Yes.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** That is the second-generation one. There was one quite a while before. Do we know what happened to them?

**Ms LEE:** My understanding is that there are three generations of them. They actually have a cardboard coffin review committee.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Yes, the Funeral Industry Council told us that this morning.

**Ms LEE:** Yes. That went on for a couple of years, because we used to get reports back at Combined Pensioners that there were a number of views. We were told that there were major problems: they were having to line them with plastic and the environmental agency had to make sure

that the plastic would not contaminate the atmosphere when burned. But with the leaking of bodily fluids the disposal of bodies regulation requires that everybody, whether in a cardboard or wooden coffin, has to be in a body bag. They do not leak bodily fluids. They are all in a body bag. They are all going to be burnt in that body bag. So we are still going to deal with the same burning of the plastic. So that is not a reason to stop the use of cardboard coffins.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you know the reason the cardboard coffins died?

**Ms LEE:** There was one subsequent to the one that you were asking Les about before, the Apogee ones, which was a circular one. They were selling it for \$35. There were advertisements in the newspaper. These people were able to sell this thing for \$35 and it was a circular one. The body would go into the end. I do not know how they sealed up the end.

**The Hon. ROBYN PARKER:** It was like a cylinder?

**Ms LEE:** Yes, it was cylindrical. We do not know what happened to that. We just heard that the company tried to set up in New South Wales and there was absolute resistance from the cemeteries and crematoria to taking them. Also, the funeral directors only take the ones that they want to take. They say you have to use theirs, not your own. We understand they went bust.

**CHAIR:** Are cardboard coffins used in any other States?

**Ms LEE:** I think so.

**Mr ELKINS:** I am led to believe that South Australia and Queensland use them. They can provide a basic funeral for \$1,000. We just cannot.

**CHAIR:** Is that in Brisbane or in some—

**Mr ELKINS:** I do not know, just Queensland as far as I know. I have no evidence of that other than a report in the *Australian Seniors Newspaper*. I would imagine there would be a bit of truth in it.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The other issue that was given a lot of airing by the Funeral Industry Council was about shonky operators. You have talked about prices. I suppose from the consumers' point of view there are two problems: corporations charging a fortune at one end and shonky operators at the other, although we have not had much evidence in the submissions on shonky operators. Have you had a lot of problems with shonky operators? Do you think that shonky operators at the bottom end are a big problem?

**Mr ELKINS:** I do not believe so, but if there are shonky operators—this is one of the rare occasions that we have agreed with the FIC—there is no room in any industry for shonky operators. "Shonky" means that they breach the regulations, be they health or any other regulations, in place governing the funeral industry.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** You said that you have had many complaints about cost.

**Ms LEE:** Yes.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** We have had submissions about cost but I cannot see any about shonky operators. Are these shonky operators straw men set up to further the interests of people who want more regulation or do they really exist out there in significant numbers?

**Mr ELKINS:** There is one example of what I believe is a shonky operation. The undertaker was a member of one of the organisations. They took the funeral service for a baby and there were no crematoria in the town in which they lived—I think it was 175 kilometres to the nearest crematorium. The undertaker did not do the cremation that particular day—he did not want to take one coffin for the

175 kilometre return trip. So he waited until he had a few coffins and then took them. The people complained. They went to get the ashes and the baby had not been cremated. I would class that as a shonky operator.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** So the coffin went through the curtain but it never got burnt.

**Mr ELKINS:** It never made a crematorium on the particular day. The people were livid because the ashes were not delivered when the undertaker said they would. That case came before the Funeral Industry Council and I think it finished up in the hands of the solicitors, where it is now.

**Ms LEE:** Members of the Funeral Industry Council often say that there are shonky operators and they give examples. When we have said in response, "Well, why are they not being referred to the Department of Health", for example—because they are talking mostly about health matters—they reply, "Because Health does nothing about it". When we speak to Department of Health officials, they say, "They keep on telling us that we do nothing about it but they never tell us about these incidents so how can we do something about something we don't hear about?" There is this kind of dual thing, which goes to one of our recommendations. I guess it fits with the code of ethics that Mr Lynn mentioned. We refer to the notion that if, as a worker or a funeral provider, cemetery provider or whatever, you become aware of a shonky operation—it is like mandatory reporting—you have not just an ethical but a legal obligation to report it.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It is like doctors and child abuse.

**Ms LEE:** Yes.

**Mr ELKINS:** Exactly.

**Ms LEE:** If the Department of Health does not follow through on reports that are made, or if you believe they do not, then the Funeral Industry Council, the particular funeral association or whatever should go to the Ombudsman and say, "They're not doing their job".

**CHAIR:** We will run quickly through the recommendations. Recommendation No. 1 is a statement of principle. You have already mentioned some of the recommendations but I want to run through them because we may have questions. You suggest the establishment of an independent pricing authority for a basic funeral, cremation or burial. Recommendation No. 3 is about a mandatory certification scheme for businesses and the Ombudsman, as you have just mentioned. Who do you think should run the pricing authority? Should it be given to an existing body?

**Ms LEE:** I do not know whether IPART, as established by its existing regulations, only looks after the pricing of government stuff. But if IPART is not the right body—

**CHAIR:** That is the kind of body you would like.

**Ms LEE:** Yes; an independent body.

**CHAIR:** It would be an independent body under the umbrella of government; not an industry or arm's-length type of body.

**Ms LEE:** Definitely not.

**CHAIR:** You have picked up from NCOSS—representatives of which will appear before us next—the idea of a funeral industry ombudsman. Do you see that as being part of the New South Wales Ombudsman's office? There is a banking ombudsman, for instance. I guess that some of these issues are national and some are confined to New South Wales.

**Ms LEE:** The energy ombudsman, which is what NCOSS spells out more thoroughly in their submission, is a very good example we think.

**CHAIR:** Recommendation No. 5 is about the hearse. The current 2002 regulation deals with all major health issues. Are you suggesting that the definition encompass private vehicles—people could use their own vehicle—or are you arguing that hearses are getting bigger, fancier and more expensive?

**Ms LEE:** The regulation does not give a definition of what a hearse is; it just says that you must have your own hearse as a funeral provider. That is actually in the health regulations. So they have defined that you have to own one of these things but it does not tell you what one of these things is. It may be that a person could be prosecuted for not owning a hearse because the hearse is that very expensive vehicle and we think the definition could include a functional vehicle that does not contain mahogany and so on.

**CHAIR:** Nevertheless, it would still be a vehicle owned by the funeral director or a particular company.

**Ms LEE:** Yes, because it would obviously have a quarantined area in it for the transportation of bodies that would be separate from the people driving the vehicle and so on.

**Mr ELKINS:** There is already a vehicle in existence that transports bodies from murder scenes, for example. You often see them on TV: They are like ordinary panel vans. I would imagine there would be regulations regarding the structure of that vehicle inside. But we do not believe it is a requirement.

**Ms LEE:** We reckon that sort of vehicle could be defined as a hearse.

**CHAIR:** That is clear. Recommendation No. 6 is about local councils. I notice that your submission mentions an incident with Kempsey council, which does not advertise the cost of plots but only the costs of urns, vases and all the rest of it. People who want to know what a plot costs have to pay a fee.

**Ms LEE:** Yes, a \$65 inquiry fee. If you want an on-site inspection—if you want to go there with someone—it is about \$110. One understands a little that that is using up someone's time and they must be paid for that, but it is \$65 just to inquire about the cost.

**CHAIR:** Do you know whether the Kempsey example that you quote is typical? Is it common or just a one-off?

**Ms LEE:** I do not know. It is really difficult to find this stuff on web sites. We have asked our members to give us information and I think we have quoted Bathurst and Cooma. I forgot to include information from one of our members at Dubbo as well.

**CHAIR:** What you mean by "cost neutral burial spaces"?

**Ms LEE:** I cannot imagine why—

**CHAIR:** Do you mean without a profit?

**Ms LEE:** Yes. It appears from the Kempsey council web site that the council is making money from burials. Perhaps they are not, but people are talking in terms of enormous sums of money being spent to buy a plot and have the land maintained. No profit should be made. I imagine that a council cannot be put in the position of having to bury everybody who wants to be buried in a particular cemetery. But councils are making profits out of it. Maybe they are not, but if they are it should be cost neutral. It should not be a profit-making exercise; it is a service to the community.

**CHAIR:** We can take up that issue with the Local Government Association and the department and try to find out what the pattern is. You say that funerals are the only health service covered by the GST. I did not realise that. So you would seek to have the Federal Government remove the GST from funerals.

**Ms LEE:** Yes, from the basic funeral. If you want to have really fancy stuff, you should pay the GST on it.

**Mr ELKINS:** That will be our next campaign once we get through this exercise: We will take on the Federal Government to have the GST removed. GST is not on the prepaid funeral that I took out because I did so before 2000.

**CHAIR:** Does that mean the GST will be added in due course for people who have pre-paid services?

**Mr ELKINS:** That is on the bottom of my contract. You take out a contract and it does not say what the GST component is; it just says that the GST will be added.

**CHAIR:** So you would work out the cost of the basic funeral, which would be a funeral without flowers and various ancillary things, and say that that particular service would be GST free.

**Mr ELKINS:** Yes.

**Ms LEE:** That is what we were talking about earlier: the IPART kind of body saying this is what a basic funeral will cost.

**The Hon. KAYEE GRIFFIN:** I am sorry if this is somewhere in your submission, but I think it is important to put in the transcript how the association defines a "basic" funeral.

**Mr ELKINS:** A basic funeral has a less expensive coffin—I do not like to say "cheap" coffin. The biggest cost of a funeral is the professional fee. That starts at about \$1,700, and there is no breakdown of that. We realise that funeral directors are in business and they have ongoing costs. Not so long ago the fee was only \$1,000. Now we do not hear of a funeral with a professional fee of less than about \$1,775. Undertakers spend five minutes, 10 minutes or half an hour at a house telling people what a funeral consists of but to charge that sort of money I think is a little exorbitant.

**The Hon. KAYEE GRIFFIN:** So when you refer to a basic funeral that includes the professional fees that the funeral director charges and the cost of the coffin. The funeral director who gave evidence this morning on behalf of the Funeral Industry Council said the cost of the plot, cremation or whatever is not part of the professional fees of the funeral director. When you talk about a basic funeral, are you talking about the costs of a burial plot, crematoria or anything like that?

**Mr ELKINS:** Yes. As an example, I rang someone a fortnight ago. They had advertised in the yellow pages a basic funeral for \$1,900. But there are two inclusions. One is the death certificate and there is another, and they come to about \$85. So you are looking at paying about \$2,100 for a basic funeral.

**CHAIR:** Does that include a plot or is it a cremation?

**Mr ELKINS:** No, this is a cremation only.

**Ms LEE:** There is another component. There are two different kinds of basic funerals that people talk about. One is called a direct cremation or a direct burial. There is no service at all. The other one is where there is a coffin and a service of some kind. We would like to see that called a basic funeral because we think most people in our culture and society expect there to be some kind of service attached. There should be room not just for people to be able to have not direct cremation or direct burial but for the coffin to go somewhere, for there to be a very brief service or whatever—very unelaborate—and for there to be a cremation or burial. When we are talking about an independent pricing authority, that authority would obviously have to look at the difference in costs for available land in different parts of New South Wales when setting the price of a basic funeral.

**The Hon. ROBYN PARKER:** You referred to the costs between cremation and burial, did you not?

**Ms LEE:** Yes.



**CHAIR:** Should there be more education, compulsion or whatever, towards cheaper alternatives, towards cremation rather than burial or vertical rather than horizontal burial, not including the cost of a burial plot except, say, the cheapest in Sydney? If you are defining "basic", to what extent do you support an educational or compulsory component to try to make cheaper the overall cost?

**Mr ELKINS:** That would be extremely difficult. If people want to have a \$5,000 funeral you are not going to prevent that from happening.

**CHAIR:** No, but I mean trying to keep down the costs of a really basic funeral by, for instance, mandating cremation rather than burial?

**Mr ELKINS:** In some cultures, not so long back, more people were buried than were cremated. Now that trend has been reversed. The Committee will have heard about the cost of a burial plot. I think people are going to take the cheaper option of cremation.

**CHAIR:** Do you believe we should be doing something to push along that tendency?

**Mr ELKINS:** I spoke to one lady who rang me. She said, "How do I get a cheap funeral?" I said, "Cremation is far cheaper than a burial." That is the only advice I gave her. And, of course, we do not promote any funeral director.

**CHAIR:** Do you think that people should be left free to choose?

**Mr ELKINS:** Yes.

**Ms LEE:** Yes, but they need to be given the choice. At the moment they do not know that there is a choice. That is the difficulty. I guess the answer to your question may be that education is really important in that process. Perhaps when the doctor comes to the home he may be able to hand them a piece of paper. I do not know. Perhaps the hospital the hospital could give people a piece of paper and say, "Look before you leap."

**The Hon. CHARLIE LYNN:** In relation to country towns, you mentioned earlier that there was no competition. But the undertaker has to live in the town and, generally speaking, knows the town and the townspeople very well. Do you know of any instances where the local undertaker has been bought out by these companies and perhaps their sales techniques have been improved, whereby they can increase their income from their job?

**Ms LEE:** If you are talking about individual ones, lone operators being bought out by InvoCare, no. InvoCare has not been buying up the lone operators country towns, because one of the ways in which InvoCare makes its money is because it has a conglomerate. It has crematoria and heap of funeral homes and different brand names. It is able to take the "White Lady Funerals" sign off the side of the hearse and insert the "Simplicity Funerals" sign. It is dealing in bulk. It is just like the big supermarket chains. They buy in bulk and they deal in bulk. That is very different from a lone operator in a country town, that has no competition in the sense that they have it sewn up. They have it sewn up in their way, but big companies like InvoCare, I imagine would never enter into that arena, because there is not enough turnover. They have a massive mortuary and a lot of different companies using the same one. That kind of thing.

**The Hon. CHARLIE LYNN:** I imagine that in a town people would be aware, just by word of mouth, given what country towns are, of the costs of a funeral.

**Ms LEE:** But they also think that there is no other cost. That is what they know, that a funeral is expensive. Here is an example that we cite of a funeral at cost \$4,800 that was pretty basic. It was a very basic funeral, that one. As far as they were concerned that is how it is. They did not want to make a fuss.

**Mr ELKINS:** I went to a little country town west of Lithgow and found there are two issues that people are concerned about: one is health and the other is the cost of funerals. The first thing the

undertaker in the town says when he comes through the door is, "What is your capacity to pay?" That is very distasteful. He knows that he has got the business of commerce and I have to pay before the funeral takes place.

**The Hon. ROBYN PARKER:** What happens if a do not pay? What happens if they do not have any money?

**Ms LEE:** The Department of Health administers that.

**Mr ELKINS:** Yes, and there is a strict criteria in respect of a pauper funeral.

**CHAIR:** Is that what you are referring to in recommendation 13, the New South Wales Government tendering out funerals?

**Ms LEE:** No, that was a different issue that was raised at the Funeral Industry Council. I have attended a few meetings of that council with Les and at a particular meeting there was a comment. Les raised the issue about this particular direct funeral that he had seen advertised for \$1900, which he mentioned earlier. He raised that issue and a comment was made by the Department of Health representative that that was cheaper than the Department of Health is paying for the pauper funerals. It struck us that the department perhaps needed to renegotiate how much it was paying out. He did not say how much it was; he just made that offhand comment.

**CHAIR:** That is what you were referring to?

**Ms LEE:** Yes.

**CHAIR:** In recommendation 14 you referring to the contracts for transportation for autopsies and things of that nature, where the funeral homes will generally have a contract with a hospital so that someone has to take the body perhaps to a more central hospital?

**Ms LEE:** That is right. What has been mentioned on the Funeral Industry Council is that the companies that contract out the do it for a very low price. It appears that they would in fact make a loss. What we understand happens is that that particular family is strongly encouraged to use the same company to conduct the funeral. It is kind of like their entree.

**The Hon. ROBYN PARKER:** With regard to the FIC and its role, if there were to be a role with a regulatory function, the FIC said this morning that it saw the need for more regulation, that it was not necessarily touting for that role. You say, I think in recommendation nine, that if they were to take on that role there needs to be broader representation of consumer and non-aligned small funeral businesses. The FIC commented to date that it was happy, that it had not refuse anyone joining the council, but that it was ad hoc. This seemed to be a strong union presence, but they did not say that they had refused anyone membership. What sort of groups do you think should be have representation on that re-formed group, if there was to be one?

**Mr ELKINS:** I have often asked for more representation from groups like the Australian Consumers Association and they say they have no time. I have been told that the independents are not bothered, and there are not enough of them. How many independents are there, I would ask? They do not do not that type of information. I believe there should be more consumer representation.

**The Hon. ROBYN PARKER:** There are two people on the council currently.

**Mr ELKINS:** The Combined Pensioners and Superannuants Association [CPSA] is the only consumer representative who has voted for the consumer. I will leave it that way.

**The Hon. ROBYN PARKER:** Do you see a role for the Funeral Industry Council at all? Do we need to have one?

**Mr ELKINS:** Not really. However, to revert back to the days that Aiden Nye was talking about, we should not go anywhere near that. Perhaps some organisation other than the Funeral Industry Council could fulfil that role.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Your general opinion is that it is hopelessly compromised in favour of the industry? Is that the essence of what you are saying?

**Mr ELKINS:** That is well put.

**Ms LEE:** Absolutely.

**Mr ELKINS:** I do not believe the current structure of it is a true representation of the industry.

**CHAIR:** seem to be arguing that if there is a regulatory body you would not object to the industry having representation or having an advisory role. In other words, they need to be involved in the process, is that right?

**Mr ELKINS:** I think we make that point somewhere.

**CHAIR:** I am suggesting that you do not want to shove them out, but you do not want them running the show.

**Mr ELKINS:** Exactly right.

**Ms LEE:** We are not keen on them having a very big say either, I have to say. We have witnessed so often consumer groups, including our own, get very easily co-opted. We also see very often industry having a very strong push or sway with various bodies. The more independent the better is our view—consult, definitely consult, but keep it away from groups that have a vested interest all that may be co-opted into getting a big say.

**CHAIR:** Will put on the record, in a brief way, the reasons for your opposition to the proposals in the issues paper put forward by the majority of members of the FIC?

**Mr ELKINS:** There was a fifth option that the CPSA wanted included in the issues paper. It was there for about one publication and then it was taken out.

**CHAIR:** That was option E, was it?

**Mr ELKINS:** Yes, E. They opted for option D, but we cannot see any benefit in that and we voted against it.

**CHAIR:** What was option E?

**Mr ELKINS:** That is 12 months ago.

**CHAIR:** Pretty much what you put in your submission.

**Mr ELKINS:** Basically it was to take the authorisation—maybe that is not the correct word—the responsibility away from the FIC to be the regulator. We did not want them to say who was in the industry; we do not want them to say who was not in industry. It was endless.

**Ms LEE:** Option E was about saying: Look, if you want to see that people have the option of going to a funeral director that has some kind of accreditation—because that is how it started, was that they be the accreditation body. This thing has evolved. Each time they come up with an idea and we counteract it, then we have a new idea. This has been going on for 2½ years. What we put forward then is a counteractive statement to what they had put forward; then they put forward a new idea; you come up with a new option. But, at the time, what we were putting forward was: Well, you are talking about the need for accreditation so that the public can say, "That is an accredited funeral director." We said, "Why not the funeral bodies that already exist, AFDA and FDA New South Wales? They are the ones. You can belong to one of those and you can get an accreditation certificate from them. If you do not want to have accreditation certificate in your office, you do not need to have one." That was our alternative option.

Our major concern with those issues papers is that every single one of those options was working towards very strong regulation within the industry and the code of practice. The code of practice they have already pre-empted with us would include things such as people requiring a much higher degree of qualifications and the need have to one's own mortuary. Owners will not even be able to share mortuaries. The big operators can share mortuaries because they all belong to the one company, but the small operator must have a separate mortuary and the family would not be able to constitute the pallbearers. Quite a few things that they have been pushing as part of this code of practice we would strongly object to. It follows the path that is going on in the United States. When you start examining what is going on there, the cost of funerals is just exorbitant.

**CHAIR:** Do we have even an estimate of the value of the funeral industry annually?

**Ms LEE:** \$1 billion is what we have heard.

**CHAIR:** I think one document says there are 44,000 funerals a year in New South Wales.

**Ms LEE:** I am talking about \$1 billion in Australia.

**Mr ELKINS:** The most critical part of this is that they want to set this as a benchmark for the rest of Australia. We now have the opportunity to set the standard whereby the less fortunate people financially in this country have the opportunity to have access to a basic funeral.

**CHAIR:** Is that what you want to see come out of this inquiry?

**Mr ELKINS:** My word.

**Ms LEE:** It sure is.

**(The witnesses withdrew)**

**GARY MOORE**, Director, Council of Social Service of New South Wales, and

**DEV MUKHERJEE**, Senior Policy Officer, Council of Social Service of New South Wales, affirmed and examined:

**CHAIR:** Do you wish to make an opening statement? You were here for part of the evidence given on behalf of the Combined Pensioners and Superannuants Association, so some of what you heard them say in answer to our questions would probably be relevant to what you have to say as well.

**Mr MOORE:** Yes. For the Council of Social Service of New South Wales [NCOSS] funerals are an essential service, and with the growing ageing population many more of us proportionately will be dealing with funerals in the years to come. Families and friends of the deceased are generally in quite a vulnerable position at the time of making decisions about funerals.

We believe the average cost of funerals is rising and, some may say, excessive. Changes in the industry have led to increased concentration of ownership, vertical integration, and a reduction in effective competition between providers. For these reasons we are recommending that the New South Wales Government should take a more active part in regulating the funeral industry. We need to ensure that the price of funerals is within the reach of low-income earners. Better protection for consumers from unscrupulous operators and an effective system to address complaints made against funeral industry operators are also required.

In our submission we recommend a package of reforms. The key elements are a licensing system for all funeral operators, a code of conduct for the industry based on Australian Competition and Consumer Commission [ACCC] guidelines, an industry ombudsman to address complaints and ensure compliance with the code, clear pricing for specific items and concession prices for pensioners and other low-income earners, and a basic, affordable funeral to be offered by all funeral operators.

We think that the existing public health and occupational health and safety legislation is adequate to cover those aspects of the industry's operation, although there is a case, we believe, for improved enforcement of public health legislation. However, given that, and to achieve the package, the New South Wales Government would have to prepare legislation to establish a licensing system. We also believe that the Government could make a referral to a body like the Independent Pricing and Regulatory Tribunal [IPART] to determine the price of a basic funeral in the package we are proposing.

**CHAIR:** This morning we said to the Funeral Industry Council representatives that since we did not receive their submission until last Friday we have not done our usual homework of preparing detailed questions and so on. Would you outline the licensing system you propose and how the code of conduct would be enforced?

**Mr MUKHERJEE:** There are two ways in which the code of conduct we propose could be enforced. The first is through an enhanced complaints mechanism through an industry ombudsman. What we propose is something along the lines of the Energy and Water Ombudsman in New South Wales. The two could be implemented either separately or in conjunction with each other. It could be done through a licensing system, whereby a person who consistently breaches regulations or breaches the code, or both, could be excluded from the industry in some way.

**The Hon. KAYEE GRIFFIN:** May I ask why you have chosen the Energy and Water Ombudsman?

**Mr MUKHERJEE:** Because it is a very effective complaints mechanism. It is independent, it has representatives from the industry and consumers and, in case of the Energy and Water Ombudsman, it is an independent chair. It provides a cheap and effective mechanism for people to make complaints. It does not involve government in any way, so it is not like the New South Wales Ombudsman, who probably has more important things to consider, such as child protection issues and the like.

The experience we have had with the Energy and Water Ombudsman is that it changes practice in the industry in a way that benefits both the industry and the consumer, so a better service can be provided. The feedback that the industry players are given actually changes their practice. For example, in the energy and water industries more electricity companies are offering payment through Centrepay and things like that. So it has changed the way they operate, rather than just having a complaint upheld or not.

**The Hon. KAYEE GRIFFIN:** You see that as a good model to work from?

**Mr MUKHERJEE:** Yes.

**CHAIR:** How would it be financed for the funeral industry?

**Mr MUKHERJEE:** We propose that a small proportion of the cost of a funeral be directed towards the consumer. I am aware that that might have an inflationary impact on the cost of funerals, but we think it is fairly minimal. With our other packages, it will actually have a deflationary effect on the price of funerals. We propose a small charge, for example, half of 1 per cent, of the price of a funeral. In addition to that, each time a complaint is received by the Ombudsman the company that the complaint is about would have to pay the ombudsman a certain amount of money, to cover the cost of the investigation of the complaint.

**CHAIR:** And if the complaint is not upheld?

**Mr MUKHERJEE:** If the complaint is not upheld, there would still be no cost to the consumer; it would be a cost to the company. The principle is that that encourages the company to set up more effective complaints mechanisms internally. It is to prevent complaints going to the ombudsman. The way the Energy and Water Ombudsman works is that the ombudsman will not accept your complaint until you have approached the firm involved. We propose that kind of approach as well. You have to have gone through the complaints system with the firm first before it goes to the ombudsman. So if the firm does not deal with it, they incur a cost.

**CHAIR:** Could that run foul of the kind of emotional pressures and the vulnerabilities? Les and Megan spoke about that before you arrived, in terms of the people who have complained to them but then are often loathe to go that extra step because of the fact that they had just gone through a grieving process and so on. Would the requirement to have taken those steps be more difficult in this industry than, say, in the energy and water industry?

**Mr MUKHERJEE:** I think it is much more difficult in this industry, for the very reasons you give. However, that does not mean you should not have an effective complaints system, just because people are reluctant to complain. I believe that if it is done sensibly, the vulnerability aspects can be minimised. I think in this particular industry it is something about which people would be reluctant to complain. I would not advocate, for example, a very strict time limit on the complaint. You would not say that people have to complain within a month of the funeral, because people are still in the grieving process at that time. Things like that could overcome people's initial reluctance to complain. One thing the Energy and Water Ombudsman found was that after a year of its operation the number of complaints escalated dramatically. Once a clear mechanism is in place, people are encouraged to complain.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** The Department of Fair Trading has control of funerals now. Interestingly, it put an advertisement in the press, in a very quick turnaround between when we advertised for public submissions and presumably when they are going to present to us. Do you have any comment about that?

**Mr MOORE:** It seems to us that the timing was curious. All I can say is that we would hope it was a genuine attempt to try to elicit public response; that it was not an attempt, given the conversation we have just had, and knowing that a very poorly publicised open telephone hotline and web site would lead to no complaints, by Fair Trading to put itself in a position to be able to say, "See, there are no complaints about this industry." We would hope that would not have been part of its motivation and that it was a genuine attempt at eliciting public response. But it was for a very short period of time, and none of the stakeholders were consulted about it. I think the first the Combined

Pensioners and Superannuants Association and we knew about it was when we heard it on ABC radio news that Friday morning. So, as I said, its timing does seem a little curious.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Perhaps a belated attempt to get some feedback?

**Mr MOORE:** It is not as though these have not been in the public arena, in one way or another, for some period of time.

**CHAIR:** If I could interpose there. Without entering into any discussion on motivation, John Hatzistergos mentioned to me, in relation to this, that Fair Trading, through the ministerial council, had been seeking national action and that Reba Meagher, as Minister for Fair Trading, had raised things at the ministerial council, I think on more than one occasion, that there seemed to be a lack of national interest. I know no more detail than that. I just wondered whether you had any idea or any knowledge of attempts to have investigations of any sort, or to have a look at some of these consumer issues on a national scale.

**Mr MOORE:** There has certainly been an inquiry in Victoria, which you would be aware of.

**CHAIR:** It has finished, but it has not yet reported.

**Mr MOORE:** I am not aware, outside of historic looks at the industry in New South Wales going back nearly 30 years, that there has been anything else in other jurisdictions. Though it does operate at a State and Territory level, there has not been a national move.

**CHAIR:** We have not yet received the Fair Trading submissions. We hope we will get more detail in that. But the national scene is something we have to bear in mind as well.

**Mr MOORE:** That is particularly true, given that certainly one of the major companies operates on a national scale, and it has significant international ownership as well.

**CHAIR:** Also, we have been told that national competition policy is a problem with some kinds of regulation.

**Mr MOORE:** Having spoken with Louise Silver, deputy chair of the ACCC, this morning about this issue, and having raised issues about the regulatory package that is set out in our submission to you, from her position as deputy chair of the ACCC, she could see no problem with anything proposed in our submission.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** In the building industry, in theory, the Department of Fair Trading can take away building licences, but seems quite reluctant to do so. Do you think there has to be some sort of tribunal and appeal mechanism for something as draconian as taking away somebody's livelihood, and do you think the lack of that is the reason that these things do not happen? In effect, is there such a large sanction that you end up with no sanction because you do not use the large sanction?

**Mr MUKHERJEE:** It is almost one of those things where you hope the threat of it is enough.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** It does not seem to be in the building industry.

**Mr MUKHERJEE:** I take your word for that. I imagine there should be a range of sanctions, the ultimate being withdrawal of permission to operate. Obviously, taking away someone's livelihood is a very serious matter, and that should not be done lightly. I understand there are already sanctions in the public health regulations for breaches of those conditions, but they do not seem to be enforced. I would imagine that any licensing body would seek to enforce those sanctions. In terms of consumer complaints, I would hope that the normal remedies of Fair Trading and the tribunal would be available to the funeral industry. I understand they are at present. If those sanctions are transferred

to a licensing body, there would be a range of sanctions available, with the ultimate one being exclusion from the industry.

**CHAIR:** How would that go with the number of different companies with different names that make up InvoCare, for instance? Would that make it very difficult to administer licensing and codes of conduct with sanctions?

**Mr MUKHERJEE:** Yes, obviously. But I believe that is the case in other industries. InvoCare has not invented the mode of operation. There are a number of companies that own various brand names and operate under different brand names. I assume that the same approach would be taken as is taken in other industries, such as the building industry. I do not know about those in any great detail.

**CHAIR:** The frequent complaint in the building industry is that some of their licences are taken from them, and the operator pops up the next day with a different name and continues business as usual. That is probably a slightly different industry.

**Mr MUKHERJEE:** No system is perfect, but I would imagine it would not necessarily be solely the company to which the sanctions apply but also the individual as well. For example, the director of the firm could be excluded from running or operating a funeral firm for some period of time.

**The Hon. KAYEE GRIFFIN:** In their evidence the Combined Pensioners and Superannuants Association spoke about a basic funeral. We asked the witnesses to define a basic funeral. Could you also give us your definition of what is entailed in a basic funeral?

**Mr MUKHERJEE:** In our submission we say that a basic funeral would include a simple container, which may include a cardboard coffin, transport, storage of the body at a minimal price for burial or cremation, as well as compulsory disbursements, such as a medical certificate for cremation, et cetera. It would not include, for example, the cost of the celebrant, flowers or memorial items.

**The Hon. KAYEE GRIFFIN:** What about the cost of the plot or a place at the crematorium?

**Mr MUKHERJEE:** It would include that. I would include that by saying the cost of the burial includes the cost of the plot. Obviously, that would have to vary from location to location, depending on where you wanted the burial, because it would be more expensive in Sydney than in regional New South Wales.

**The Hon. ROBYN PARKER:** What do you mean by transportation?

**Mr MUKHERJEE:** Moving the body from where it is stored to where it is to be cremated or buried, and from where the person died.

**The Hon. ROBYN PARKER:** You do not specify what sort of vehicle is to be used for the transportation. Could it be in the back of someone's ute, or should it be in a hearse?

**Mr MUKHERJEE:** The current public health regulations specify a hearse, I understand. As the Combined Pensioners and Superannuants Association pointed out, the type of vehicle is not defined anywhere, but so long as meets public health requirements it is permitted. There needs to be a definition of a hearse, but we have not gone into that level of detail in our submission.

**Mr MOORE:** As I indicated at the beginning, we think that a body like IPART might sensibly have a look at the differences in locations and the combination of the elements that we have talked about, in order to produce an idea about a range of costs associated with a basic funeral.

**CHAIR:** Earlier, I asked the Combined Pensioners and Superannuants Association people whether they thought there should be more education or pressure, whichever you wish to choose, towards the cheaper option, both for the individual and for the community, of cremation rather than



burial, vertical burial, re-use of graves and so on. Do you think there is a rationale for more pressure or more compulsion or whatever in those respects?

**Mr MOORE:** We support the notion that there should be a basic funeral set at an affordable cost, and that all operators should have to participate in that system. That is the kind of intervention in the market at the basic level for lower income people that we would like.

**CHAIR:** Would that be, for instance, a cremation but not a burial in setting the cost of a basic funeral?

**Mr MOORE:** That is part of what we would want IPART to look at in terms of the actual cost. But, obviously, the sense about cremation, as opposed to burial, might well take you in that direction in terms of cost. We certainly are supportive of things such as vertical burials, which Victoria is talking about; and certainly cardboard coffins, which the United Kingdom has been using extensively. Those sorts of things I imagine would reduce costs, or at least minimise any increases in costs. Those are things that should be looked at seriously, so long as they are within the public health regulations and existing WorkCover regulations.

**CHAIR:** Do you have any knowledge of any major cultural hurdles to some of the options?

**Mr MUKHERJEE:** Muslims, for example, bury their dead and are opposed to cremation. On the other hand, Hindus cremate and do not bury. There are certainly religious aspects to the nature of the funeral. There are also personal preferences, and people should be able to make those choices. People will always be limited by their budgets. While we are indicating intervention in the market, it is not to require people to have a certain type of funeral, but to offer them the basic elements of either a cremation or a burial, at a price that is reasonable and hopefully affordable.

**Mr MOORE:** There are certainly issues for indigenous families about, particularly, transport issues and other things that are relevant to the cost of funerals in rural New South Wales, and those are matters that need to be looked at by this Committee as part of those questions.

**CHAIR:** You have dealt with some of that in your submission.

**Mr MOORE:** Yes.

**The Hon. ROBYN PARKER:** Is transport something that could be attached to health insurance policies?

**Mr MOORE:** I had not thought of that.

**The Hon. ROBYN PARKER:** Much like ambulance cover.

**Mr MOORE:** Of course, there is a review of ambulance service fees going on at the moment, and that may have its own impacts on certain income groups in New South Wales.

**CHAIR:** You are in favour of licensing. How, then, would you explain the difference between your approach to licensing, code of conduct, ombudsman, et cetera, and option D for instance, put forward by the Funeral Industry Council? How does your proposal differ, and how does it avoid the kind of favouring of the large operators, which, it has been argued, is one of the disadvantages in what the Funeral Industry Council is calling for?

**Mr MOORE:** In our view, the Funeral Industry Council is an industry body. It represents industry interests. Our argument is that government has to take responsibility here as the independent regulator. Although the ombudsman scheme, based on the energy and water one, has industry involvement, it is government that does the licensing and in our view it should be government that sets the codes of conduct and the penalties and punishments, and that it is not the industry self-regulating, which is the problem with what we see the Funeral Industry Council is arguing.

This is an essential service industry. In our view, all essential service industries should have 21st century regulation and the FIC's proposal creates a conflict of interest situation and I think as the

CPS say, as I heard in their evidence, the thought that you to operate have to own your own mortuary, for example, in terms of what that does to lift the bar, is just not acceptable. That is the kind of, in our view, notion that leads to uncompetitive practice and a further concentration of ownership and cartel arrangements that should not be, for example, a requirement in this industry. But the fundamental issue is it is government's responsibility to regulate, not the industry self-regulating.

**CHAIR:** But could you not argue that even a government licensing system may raise the costs and therefore favour the larger player?

**Mr MOORE:** I guess the other theory we have not talked at all here about is itemising costs for consumers. At the moment there is a significant issue that if you are a consumer you do not actually get to know what all the items are in what you get billed for. In the United States in a number of states there are up to 16 items that are compulsory in pricing. We are not sure whether we agree with 16 but it may well be. So we do not have the basis of, I guess, well-informed consumers to make an informed choice because we do not have a pricing regime requirement to price the elements of a funeral that should be in place. That is one of the simple things that we think should be a feature.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** In this licensing system you envisage which is simply license anybody who turned up with their money at the desk of a licensee or would they have to have, as in the American legislation, a series of degrees or diploma for training courses or whatever, in addition to the licence? How big do you want the licensing barrier to be?

**Mr MUKHERJEE:** I would have thought low in terms of barrier. The overriding principle has to be that competition is the key to this industry. Any further limiting of competition is going to drive up price. In a sense I suppose we would go for the negative licensing approach, that the Funeral Industry Council did not want this warning and I heard them discussing that in their evidence to you.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** How do you keep track of people when there is negative licensing?

**Mr MUKHERJEE:** You would still need some form of registration in a sense. So, yes, if you did front up and say, "I am operating in a funeral". At the same time it would be a negative loss and a plus, I suppose, because you would still require people to sign up to an Ombudsman's scheme to adhere to a code of conduct at the very minimum. What you would not be setting your standards at like the requirements of a mortuary, particular levels of qualifications for people within the industry except where they affect public health and the public health regulation already articulates those qualifications. The principle is there has to be a low-level of—

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** They would front up and pay their money and then they would say, " You can practice provided you stick to these regulations", and they may or may not be given a handbook or they may be given a web site address and told, "These are the regulations you have got to meet".

**Mr MUKHERJEE:** You have to join the Ombudsman's scheme. That is a requirement that we are arguing. There would have to be some mechanism for joining that scheme.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** They would register them and that would entitle them to do something provided they stayed within a set of rules in occupational health and safety and public health or whatever?

**Mr MUKHERJEE:** Yes.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** That is the way the model is?

**Mr MUKHERJEE:** Which is a fairly minimalist approach.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think that the industry overall has more trouble from shonky operators at the bottom or price fixing at the top, if you want to say it that way? In other words, do you think there is more danger from cartels pushing the price up? The Funeral Industry Council seems more concerned about shonky operators and the CPS is more

concerned about upward price pressures. Which would you say? Obviously, from the point of view of regulating it makes a difference to what approach one takes. What would your position be on that?

**Mr MOORE:** Firstly, I do not think all the shonky operators are necessarily all the small so-called backyard operators.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** That is the myth, is it?

**Mr MOORE:** I mean there is some evidence around to suggest that some of the firms within the conglomerates have their own bits of guilt about their behavioural practices in this industry as far as shonky operations go. I think that it would be important to the Committee to try and ascertain that so we do not think it is all one end of the industry. It is the balance question, in our view, but the price issue is really significant. We have got to do something about keeping prices affordable, or trying to keep prices affordable. We have got to do something about operating a quality product because this is not a choice; everyone has got to use it at the end of the day. So we have tried to strike a bargain at getting the best source of minimalist regulatory regime with the smallest amount of cost that is sustainable, nevertheless, it lifts the bar and allows competition to still operate effectively. That is what we have tried to do.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Ian Strathie, from memory, from the Funeral Directors Association, and Ms Reid, I think, from the Cemeteries and Crematoria Association, have argued that the rise in prices is mainly due to the price of land and have argued that the costs—I may be misquoting exactly whose argument it was about the price rises—but that the costs relate to the price of land, that it should be more properly compared with the price of medical services than the CPI and that there is an extraordinary increase in demand for quality in a sense that it is an events management fee now rather than a disposal of the body exercise. What would your comments on that in terms of the rise in prices?

**Mr MUKHERJEE:** I think the cost of burials certainly has had an impact on the overall price of a funeral. But that would not explain completely the rise in price of cremations. If they are talking about land then it is the burial plot I assume they are talking about, or is it the land on which the crematorium is situated that has gone up. The rate of price change of land across New South Wales is not even; it has been higher in metropolitan Sydney than in Dubbo, although Dubbo has gone up. What we have seen is a rise in price of funerals across-the-board so it cannot just be land; that cannot be the only aspect of the price rise.

**Mr MOORE:** Also now Combined Pensioners would have made this point in terms of the emergence of the rather large service fee undisclosed that tends to emerge in a number of bills from funeral directors these days—service fees of \$2,000 and \$3,000 are not itemised above and beyond some of the other essential costs of the basic funeral that we were talking about before. That is, to our understanding, something that is relatively new in the industry. So that would be one of the price drivers as well.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Would you have any comments about the polluting effects of crematoria or bodies in the earth? Or is that beyond your level of expertise?

**Mr MOORE:** It is beyond our level of expertise.

**The Hon. KAYEE GRIFFIN:** Just about the service fees, I think you mentioned before in the United States how bills were itemised. What would you like to see as part of that itemised Station in terms of the service they and anything else that may be included in the bill?

**CHAIR:** You may need to get back to us on that. I do not know if you can answer that off the top of your head.

**Mr MUKHERJEE:** We have not specified in our submission exactly what should be in the price list but your initial reaction would be that the service charge of the funeral director is the cost of the coffin or a container, storage fees for the storage of the body, transport costs from the place of death to the mortuary and the mortuary to the funeral, the cost of the cremation or the burial, and in terms of burial, the cost of the plot. It begins to blow out.

**The Hon. KAYEE GRIFFIN:** You would like to see some itemising in that service fee particularly?

**Mr MOORE:** Yes. I think it is important that there is some breakdown of that, yes.

**The Hon. KAYEE GRIFFIN:** In any discussions that you have had in relation to that service fee have you got any idea of some specifics that you are aware of in a service fee that should be individually itemised? Have you any examples of what you think should be in there?

**Mr MOORE:** We have certainly been aware, or made aware should I say, and my own experience of this in burying my stepfather five years ago, from a set of things around, if you like, ancillary floral costs totalling \$800 or \$900 that were bunged into the service fee, for example; they were not itemised out. There are some expenses with that crematorium on site refreshments afterwards and sometimes the cost of organising that. Even if the family have booked the thing the funeral director takes something out of that. There are certainly things about additional stationery costs in terms of some of the card, et cetera, that can go into that.

**CHAIR:** The things people sign and those sorts of things, too.

**Mr MOORE:** It is pretty clear that just when it gets lumped together and it comes to \$200 \$300 it really does need some break down, but they are the sorts of things I am aware of.

**CHAIR:** Can I just follow on from that with two specifics. Combined Pensioners strongly urge the abolition of GST on basic funeral services. Would you support that, given the range of different things that GST applies to?

**Mr MOORE:** Yes.

**CHAIR:** The other question I had, which relates to Hon. Kayee Griffin's, is that it seems to be common for funeral directors to find a way of either adding to the bill or providing a discount if the bill is paid by a certain date. I gather the justification for this relates to the fact that if probate takes months to be granted, et cetera, it can be months before they are paid. I never heard, this can be quite a sizeable amount of money and people may be either unaware that it is going to happen or may not have much choice about whether they are billed. I do not know what you are aware of that. If so, do you have any views on it?

**Mr MOORE:** It is not something that has been raised, but, once again, if you are going to itemise all the costs and how the money moves that certainly should be transparent to consumers.

**CHAIR:** I gather it is done in a variety of different ways, but it is quite a sizeable amount or percentage. Sometimes it is a discount if you pay quickly and other times it is added on if you do not pay quickly.

**Mr MOORE:** One of the things we have not raised in our submission, but may be raised by others with you, which we think is worth a look at, is the operation of the two different types of prepayment funeral fund operations. We are particularly interested—we have no expertise in this—not in those funds that are supposed to block the payments by the other type that are paid off over a period of time, what happens to the interest earned on the payments, he keeps that interest and for what purpose. How is it applied? There probably are some things in the financials of that side that we do not have the capacity to comment on, but we suggest the Committee at least needs to look at how those things operate at the moment.

**CHAIR:** Someone mentioned earlier that, at least for one organisation, it was like the Rental Bond Board, but I am not quite sure who got the money back.

**Mr MOORE:** That is what we are not sure, that the consumer gets any of that benefit back, that it does not go elsewhere and it operates in that way.

**The Hon. ROBYN PARKER:** It is held against inflation, I think.

**The Hon. CHARLIE LYNN:** Yes, inflation was eating it up. That is their story.

**The Hon. ROBYN PARKER:** That was the excuse.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** Do you think that disbursements should put in cost or do you think that, like in the building industry, 12.5 per cent gets added to each subcontractor's price or do you think there should be standard on that? How do you think they should be handled? Obviously, that is a major element if you had a basic price.

**Mr MUKHERJEE:** I would leave that up to the IPART or whatever the term is the basic price to determine that and specify here. In terms of non-basic funerals, from our perspective if it were clearly stated up front and people could compare prices and would be able to make informed choices about which is the better option for them.

**(The witnesses withdrew)**

**(The Committee concluded that 4.35 p.m.)**