

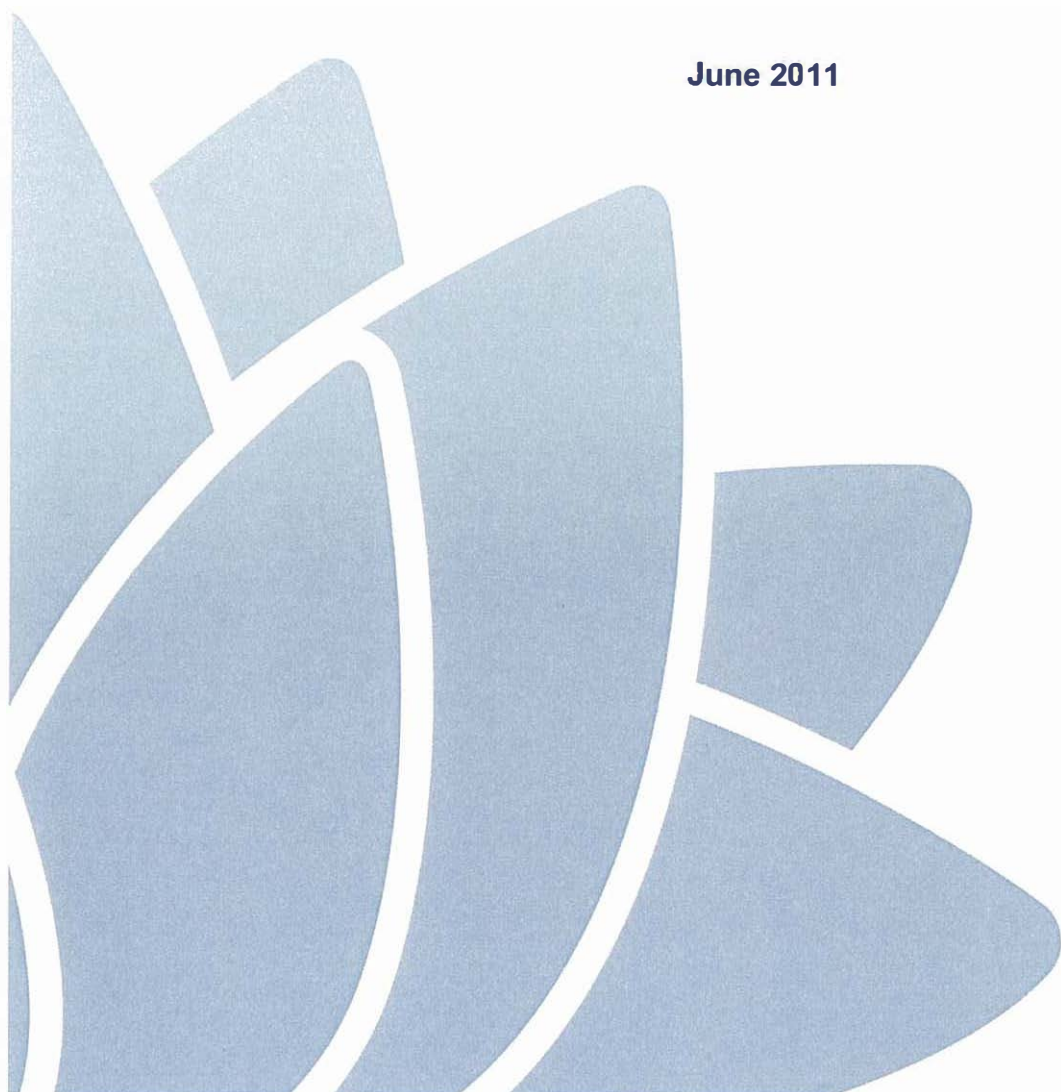


Fair  
Trading

## Report

# Statutory Review of the Funeral Information Standard

June 2011





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## EXECUTIVE SUMMARY

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The Review of the Funeral Information Standard has found that it is an effective way to provide important information to consumers at what is often a difficult and emotional time.

While key stakeholders have expressed support for the retention of the Funeral Information Standard, the Review contains recommendations that could work to enhance its operation and provide additional benefits to consumers. These recommendations are:

**Recommendation 1:** That the Funeral Information Standard be amended to require funeral directors to provide a consumer with written cost information (including a Basic Funeral Notice if the funeral director offers a basic funeral) within a reasonable time period (for example 48 hours) of the consumer requesting the information and advising which goods and services they would like included in the proposed funeral service. Alternatively, the written cost information may be provided to the consumer within a time period agreed to by both parties.

**Recommendation 2:** That consumers be given the option of having the funeral director obtain a Death Certificate as part of a basic funeral package, and that the Death Certificate be treated as a disbursement.

The Review recommends that key industry stakeholders be consulted on these proposals.

## **1. BACKGROUND**

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### **1.1 The purpose of the Review**

The Funeral Information Standard was developed in response to concerns about the lack of available information and transparency relating to funeral costs. The Information Standard commenced on 1 February 2009, and requires funeral directors to provide consumers with cost information before entering into a funeral contract and before making final payment.

The Funeral Information Standard was made under Part 4, Division 5 of the *Fair Trading Act 1987* and is contained in the Fair Trading Regulation 2007 (Part 4, Division 2).

Part 4, Division 5 of the Act requires the Minister for Fair Trading to conduct a Review of the effectiveness of that Division and any Information Standard prescribed under it, after three years. Part 4, Division 5 took effect in June 2007 and a report on the outcome of the Review is to be tabled in Parliament.

As well as examining the effectiveness of the Funeral Information Standard in meeting its objectives, the Review is an opportunity to examine any concerns which may have emerged about its operation.

### **1.2 The Review process**

An Issues Paper explaining the purpose of the Funeral Information Standard, outlining the Review process, and inviting submissions was released on 19 November 2010. A notice announcing the Review with a link to the Issues Paper was published on the NSW Fair Trading website.

While the formal consultation period ended on 17 December 2010, NSW Fair Trading continued to accept submissions in January 2011.

A list of the submissions to the Review is attached at Appendix A.

### **1.3 Background to the Funeral Information Standard**

#### *Legislative Council Inquiry*

In 2005, the NSW Legislative Council Standing Committee on Social Issues conducted an Inquiry into the funeral industry. The Inquiry examined, among other matters, the issue of consumer access to information about funeral costs.

In evidence to the Inquiry, several submissions noted the need for clear explanations of the costs involved in a funeral and a more detailed cost breakdown in the final bill.

The Committee recommended that NSW Fair Trading develop a product information standard which requires funeral directors to provide cost information to consumers.

#### *NSW Fair Trading hotline and survey*

In 2005, NSW Fair Trading established a consumer telephone hotline and on-line survey to gather more information about consumer experiences with the funeral industry.

Most consumers who responded were generally satisfied with their funeral directors and the funeral services they had purchased. However a significant number expressed concern about cost issues, in particular, about unauthorised or unexpected charges in their bill, or being refused a breakdown of various charges. A proportion of consumers also raised concerns about the difficulty they experienced in obtaining information from funeral directors about lower cost funeral options.

The Funeral Information Standard was introduced in order to address concerns about the lack of clear upfront information regarding funeral costs and lack of available information on lower cost funeral options.



#### **1.4 Funeral Information Standard objectives and requirements**

The objectives of the Funeral Information Standard are to:

- provide consumers with sufficient information to enable them to compare prices offered by different funeral directors;
- provide consumers with information about lower cost funeral options;
- reduce disputes about unexpected or unauthorised charges by funeral directors;
- ensure consumers are provided with a breakdown of charges in their bill; and
- ensure that the Standard does not impose an onerous or unnecessary compliance burden on the funeral industry.

The Standard requires consumers to be provided with cost information before entering into a funeral contract and before making final payment. Prior to entering into a funeral contract, a funeral director:

- offering what is termed a 'basic funeral' (see definition below) is required to provide a 'basic funeral notice' to a prospective consumer and any other person who asks for it. This notice is a written statement that includes the price of all goods and services and the estimated cost of the necessary disbursements included in the basic funeral;
- offering any type of funeral other than a 'basic funeral' must provide a consumer with a written statement containing details and the price of goods and services as well as the estimated costs of both the necessary and likely disbursements proposed to be included in that particular funeral contract.

Before accepting final payment under a contract for funeral services, a funeral director must provide all consumers with a statement itemising all goods and services provided and the cost of each, all disbursements made and the amount of each, and the total amount payable under a contract for funeral services.

Failure to comply with the Funeral Information Standard may lead to a fine of \$550. In serious cases, prosecution under the *Fair Trading Act* could lead to a maximum penalty of \$22,000 for an individual or \$110,000 for a corporation.

#### *What is a basic funeral?*

The Funeral Information Standard does not require funeral directors to offer a basic funeral. The type and range of services that a funeral director offers is a matter for each business to decide. The Information Standard states that, if a funeral director *does* offer a basic funeral, they must provide consumers with a basic funeral notice prior to entering into a funeral contract.

A basic funeral is defined in the Funeral Information Standard as a funeral comprising only the following funeral goods and services:

- the arrangement and conduct of a funeral service, at either the premises of the funeral director or at the place of burial or cremation, between the hours of 8am and 5pm on a weekday;
- transport of the deceased to any of the following places where no individual journey is more than 30 kilometres:
  - the premises of the funeral director,
  - a mortuary, or
  - the place at which the deceased is to be buried or cremated;
- storage of the deceased in a mortuary or holding room;
- the preparation of the deceased for burial or cremation (not including preparation for viewing or embalming);
- the least expensive coffin that the funeral director has available;
- collection of compulsory medical certificates or permits in relation to the deceased; and
- burial or cremation.



## **2. SUBMISSIONS**

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### **2.1 Overview of submissions received**

A total of six submissions were received, from the following organisations:

- Combined Pensioners' and Superannuants' Association of NSW Inc;
- Australian Funeral Directors' Association NSW/ACT;
- Funeral Industry Association (Australia) Inc;
- Funeral and Allied Industries Union of NSW;
- Catholic Cemeteries and Crematoria; and
- Illawarra Legal Centre Inc.

All submissions supported the need to retain measures that provide for the provision of cost information to consumers, although some submissions recommended additional requirements and/or amendments be made to the current requirements.

### **2.2 Issues raised in submissions**

#### **2.2.1 The method and timing of the provision of funeral cost information**

The Combined Pensioners' and Superannuants' Association (CPSA) submission referred to the results of its own research on the impact of the Funeral Information Standard, outlined in the October 2009 report *The High Price of Dying: A report on the cost of funerals in NSW*. The CPSA research involved 'cold calling' funeral directors across NSW, and seeking funeral cost information over the phone. In some instances written cost information was sent via e-mail.

The CPSA research found that many funeral directors were unwilling to provide cost information over the phone, and wanted the consumer to come to their office for a discussion before providing cost information.

The CPSA argues that the unwillingness of these funeral directors to provide cost information over the phone makes it difficult for consumers to shop around for the best value and most appropriate services for their needs. A trip to the funeral director's office is time consuming and increases the possibility of the consumer being persuaded to purchase a more expensive funeral package.

### *Response*

Funerals are often arranged in a very limited time period, when people may be highly emotional or in shock, and receiving numerous visits from family and friends. In this situation it is likely that few people have the time or energy to visit several funeral directors and shop around for the best quote.

The Information Standard currently requires a Basic Funeral Notice or an itemised quote to be provided before a funeral contract is entered into. This means that there is no obligation on the funeral director to provide the quote as soon as possible after the consumer asks for it, potentially making it difficult for consumers to shop around in the limited time available to arrange a funeral. In order for consumers to access cost information in sufficient time to enable them to compare different funeral directors and prices, written cost information could be provided earlier in the funeral planning process than is currently required.

The Review considers that there is merit in considering whether funeral directors should be required to provide a written quote to a consumer within a reasonable time period (for example 48 hours). The written quote would be provided to the consumer within this period once they have advised the funeral director of the particular goods and services they would like included in the proposed funeral. Alternatively, the written cost information would be provided to the consumer within a time period agreed to by both parties.

It is recommended that, given the potential impact of changes to quoting practices, consultation with the funeral industry occur regarding this proposal.

**Recommendation 1: That the Funeral Information Standard be amended to require funeral directors to provide a consumer with written cost information (including a Basic Funeral Notice if the funeral director offers a basic funeral) within a reasonable time period (for example 48 hours) of the consumer requesting the information and advising (either by phone, e-mail, letter or in person) which goods and services they would like included in the proposed funeral service.** Alternatively, the written cost information is to be provided to the consumer within a time period agreed to by both parties.

### **2.2.2 The cost of funerals and the availability of basic funerals**

The CPSA reported that while only a minority of funeral directors it contacted provided a basic funeral service as defined in the Funeral Information Standard, a significant number provided a similar type of service. The average price of these funerals was less than the average price of the basic funerals.

In its submission, the CPSA argued that funerals are an essential service and therefore:

- (i) all funeral directors should be required to offer a basic funeral; and
- (ii) the price of a basic funeral should be regulated.

The submissions of the Funeral and Allied Industries Union and the Catholic Cemeteries Board included the suggestion that all funeral directors be required to offer a basic funeral service. The Australian Funeral Directors' Association in its submission argued against such a requirement.

### *Response*

The Government does not generally intervene to set the price of goods and services offered by the private sector. The encouragement of competition in the market is a more effective means of lowering prices and ensuring that there are a variety of services available in the market.

Increasing the availability of information on costs to consumers, by means such as the Funeral Information Standard, can encourage competition, as it provides consumers with information that allows them to make more informed decisions. Encouraging a variety of providers in the market is also essential and this aim is assisted by trade practices legislation, administered by the Australian Competition and Consumer Commission (ACCC).

A requirement for funeral directors to offer particular services together with the introduction of a set price for funerals (basic or other) would be a significant regulatory intervention. Such an intervention in the market would need to be justified by clear evidence that it is the most effective way to remedy significant and demonstrable consumer detriment.

### **2.2.3 The cost of coffins**

The CPSA submission states that many funeral directors are currently placing a significant mark-up on coffins provided to the consumer, while not allowing the purchase of coffins from other sources. The CPSA contends that the cost of delivering goods and services is already covered by the funeral director's professional fee and should not be added to the cost of a coffin.

#### *Response*

The pricing structures adopted by funeral directors are a matter for each business to decide. Disbursements are usually payments made to third parties rather than payment for goods purchased from the funeral director.

Intervening in the prices which can be set by a funeral director for purchase of a coffin would need to be justified by evidence that this is the most effective way to remedy a real and significant consumer detriment.

If consumers believe that they have been subject to misleading or deceptive conduct by a funeral director, they are able to take action under the Australian Consumer Law, administered in this state by NSW Fair Trading.

#### **2.2.4 Itemisation of the professional fee**

The CPSA submission includes a recommendation that there should be a breakdown of the funeral director's professional fee, which can make up a large portion of the overall funeral costs. The CPSA assert that there is significant divergence in overall professional service fees charged by funeral directors.

##### *Response*

A range of fees is to be expected in a competitive market where different types and levels of service are available.

The method of calculating the professional fee varies between funeral directors. Some funeral directors consider the payment a 'global' fee for organising and providing funeral goods and services, while others calculate the fee according to the number of hours of their time spent on arranging the funeral.

#### **2.2.5 Enforcement of the Funeral Information Standard**

The Funeral and Allied Industries Union and the Funeral Industry Association submissions argued the need for appropriate enforcement action by NSW Fair Trading.

CPSA's submission states that there is a need for more rigorous enforcement of the Funeral Information Standard by NSW Fair Trading through regular cold calling, unannounced visits and shadow shopping. The CPSA believes that the small number of complaints about the funeral industry is a result of consumers being too distressed and preoccupied at the time of a funeral to enforce their rights.

##### *Response*

The NSW Fair Trading education and compliance program conducted in May 2009, found that of 61 funeral directors visited, 44 (72%) were aware of and claimed to fully comply with the Information Standard requirements, ten (16%)



had some knowledge of the requirements, and seven (12%) had little or no knowledge. Of the 28% of funeral directors with limited or no knowledge of the Information Standard, most said they were nevertheless providing consumers with estimates prior to entering into funeral contracts, and with itemised bills.

Follow-up inspections of a sample of ten funeral directors in northern and southern Sydney in August 2010 showed full compliance with Information Standard requirements.

This result suggests that there is a high degree of compliance with the Information Standard. NSW Fair Trading will continue to conduct regular compliance checks on funeral directors as well as promoting its advisory and complaint services to consumers.

#### **2.2.6 Inclusion of a Death Certificate in a basic funeral**

During NSW Fair Trading's education and compliance program in May 2009, a number of funeral directors suggested that the services included in a basic funeral be amended to include obtaining a NSW Death Certificate from the Registry of Births, Deaths and Marriages. Funeral directors indicated that most consumers request a Death Certificate as part of a basic funeral package, as it is required to finalise the deceased's estate. While funeral directors can obtain a Death Certificate online, this option is not available directly to consumers.

The Funeral and Allied Industries Union and the Funeral Industry Association suggested in their submissions that the Death Certificate be included as part of a basic funeral while the CPSA recommends that consumers should have the option of requesting a NSW Death Certificate as part of a basic funeral. The CPSA also recommends that the Death Certificate should not be a compulsory component and be treated as a disbursement, as it has found that some funeral directors add a mark-up to the price charged by the Registry of Births, Deaths and Marriages.

### *Response*

The inclusion of the Death Certificate as part of a basic funeral service is supported by key stakeholders. The Review has found that the addition of the Death Certificate for a basic funeral would enhance the operation of the Information Standard and is an appropriate inclusion.

**Recommendation 2: That consumers be given the option of having the funeral director obtain a Death Certificate as part of a basic funeral package, and that the Death Certificate be required to be treated as a disbursement.**

### **2.2.7 Competition in the funeral industry**

The Catholic Cemeteries Board submission focuses on the issue of competition in the funeral industry. The Board expressed concern about the levels of market power within the funeral industry and the use of incentives by some operators to refer consumers to related entity cemeteries and crematoria.

The Board recommends that all funeral directors be required to disclose the prices of their full range of products and services, through a Product Disclosure Guide similar to that which is required in the financial services industry.

### *Response*

The Funeral Information Standard already requires the disclosure of prices to consumers, and assists consumers to shop around and compare the services of different funeral directors. The disclosure of a funeral director's interests in a cemetery or crematorium may have little influence on consumer choices. Consumer choice is influenced by a number of factors which can include issues of convenience and religious affiliation.

The issue of competition in the funeral industry falls within the jurisdiction of the Australian Competition and Consumer Commission. The Review notes that the

particular matter that the Catholic Cemeteries Board refers to in its submission has been dealt with by the ACCC.

### **2.2.8 Pre-paid funeral plans**

The Illawarra Legal Centre submission raised the issue of funeral plans, expressed concerns about the marketing of these plans to vulnerable consumers and the potential unfairness of the contract terms.

#### *Response*

Pre-paid and contributory funeral plans are regulated under the *Funeral Funds Act 1979*, while other funeral plan products such as funeral insurance and funeral bonds are covered by the Commonwealth *Life Insurance Act 1995*. Funeral plans are not part of the Information Standard and consequently are outside the scope of in this Review.

### 3. CONCLUSIONS AND RECOMMENDATIONS

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The Review has found that the Funeral Information Standard has been an effective mechanism by which consumers have accessed greater information about the cost of funeral services. Prior to the introduction of the Information Standard, consumers had little access to information about the nature and type of costs associated with funeral services. The requirement for funeral directors offering a basic funeral service to provide up front information in writing to consumers prior to entering into a contract, has meant that consumers have meaningful information relating to cheaper funeral alternatives.

Further, the requirement that all funeral directors provide a written statement specifying the costs of all goods, services and disbursements before accepting final payment, has significantly enhanced the level of transparency in the industry.

The Review also notes the importance of the compliance and education work conducted by NSW Fair Trading in ensuring that both industry and consumers are aware of the requirements of the Funeral Information Standard, and that appropriate action is taken where funeral directors do not comply with their obligations.

While the Information Standard appears to have improved consumers' access to funeral pricing information, the Review has found that the Standard's objectives may be better met if changes are made to some existing provisions.

For this reason the following recommendations are made:

**Recommendation 1: That the Funeral Information Standard be amended to require funeral directors to provide a consumer with written cost information (including a Basic Funeral Notice if the funeral director offers a basic funeral) within a reasonable time period (for example 48 hours) of**

**the consumer requesting the information and advising (either by phone, e-mail, letter or in person) which goods and services they would like included in the proposed funeral service. Alternatively, the written cost information is to be provided to the consumer within a time period agreed to by both parties.**

**Recommendation 2: That consumers be given the option of having the funeral director obtain a Death Certificate as part of a basic funeral package, and that the Death Certificate be required to be treated as a disbursement.**

The acceptance of these recommendations and any action to be taken is a matter for Government to decide. Key stakeholders will be consulted on these recommendations should the Government decide that they should be implemented.



## **LIST OF SUBMISSIONS**

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The Review received six submissions, from the following organisations:

- Combined Pensioners' and Superannuants' Association of NSW Inc;
- Australian Funeral Directors' Association NSW/ACT;
- Funeral Industry Association (Australia) Inc;
- Funeral and Allied Industries Union of NSW;
- Catholic Cemeteries and Crematoria; and
- Illawarra Legal Centre Inc.



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