

Independent Pricing and Regulatory Tribunal, New South Wales

REVIEW OF COMPETITION COSTS AND PRICING IN THE FUNERAL INDUSTRY DRAFT REPORT



**SUBMISSION FROM:
THE FUNERAL DIRECTORS' ASSOCIATION
OF NEW SOUTH WALES LIMITED**

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Association Information

The Funeral Directors' Association of NSW Limited has existed in its present form for some forty-four years. Prior to this, the subscribing members of the Association had been members of the Australian Funeral Directors Association (NSW Branch).

The Association has in excess of seventy Funeral Directing enterprises as members (Active & Associate Members), along with many enterprises that offer funeral-specific goods and services to the funeral service sector (Industry Members).

The objects of the Association include:

- Working for higher standards, clearer ideals, spirit of service and improved methods of equipment and organisation among members;
- Develop and improve the general principles governing the business and profession of Funeral Directors, Embalmers, Cemeteries and Crematoria Proprietors and others directly concerned in related services;
- Promoting unanimity of purpose and cooperation among members;

The Association is governed by an elected board (styled the Committee) who are led by a President and two Vice-Presidents. Each member of the Committee is the “nominated representative” of an Active Member (funeral directing) enterprise and involved in the day-to-day running of their enterprise. This composition ensures that all deliberations and decisions are being undertaken by “hands-on” funeral service practitioners.

The broader membership of the Association ranges from small “sole trader” type enterprises, often located in regional, rural or remote areas through to larger enterprises with multiple brands and multiple locations. The annual caseload of our smaller members can be as little as thirty to our largest members whose annual caseloads number in the thousands. A number of our members specialise in serving particular ethnic and religious communities.

Historically, the membership of the Association has comprised what could best be termed as “traditional” or “bricks & mortar” funeral enterprises. Typically the enterprise would operate from dedicated premises that usually included office space for administration, suitable areas for meeting with clients to arrange funeral services and facilities for clients to attend and “view” their loved one prior to the funeral. Many of these “funeral homes” would also include Chapels in which funeral services were conducted as well as mortuary holding and preparation facilities and garaging for vehicles. In more recent times, and in response to consumer demand, many funeral homes now provide facilities for clients to hold catered “after funeral gatherings”.

The Association represents the interests of members and undertakes lobbying of government and other statutory authorities on matters of concern to the profession and the wider community related to funeral service. It participates in a number of steering committees and Industry advisory groups and maintains dialogue with other professional associations working in the funeral services space.

Continuing professional education for owners, managers and staff of member entities is seen as a priority of the Association to ensure that members adopt and employ “best practice” policies and procedures within their individual enterprises.

Introduction

This Submission has been formulated by the Committee of The Funeral Directors' Association of New South Wales Limited (FDA) in response to the invitation received from The Independent Pricing and Regulatory Tribunal of NSW (IPART), and contained in the Draft Report released by IPART in April 2021.

IPART's stated objective *"is for consumers to be able to make informed choices about the kind of funeral they want at a price they can afford."*

At the outset, this Association wishes to repeat that it supports this objective and welcomes the opportunity to participate in the process of examining where any improvements could be made in furtherance of the objective.

The Association is in broad agreement with the Draft Findings, as stated in the Interim Report:

1. That NSW funeral markets are workably competitive.
2. That NSW crematoria market is workably competitive.

Following these introductory notes, this submission will attempt to address the ten Draft Recommendations detailed in the Interim Report and, where appropriate, seek to provide alternatives for consideration by the Tribunal.

The single most important factor we feel has been, at best "glossed over" and at worst ignored, is that each and every funeral is different and each and every client (consumer) is different. The direction that regulators, in particular NSW Fair Trading, appear to be taking is to assume that the majority of consumers are seeking merely the "least cost" opinion when purchasing funeral goods and services. **We strongly refute this contention.**

While it is true to say that the "no service, no attendance cremation" model is increasing in popularity, our experience as **providers working day-to-day in the profession** would lead us to believe that some form of ceremony is still favoured by the vast majority of consumers.

As we indicated in our initial submission to the Review, in response to the Issues Paper, we believe it is critical for consumers to be made aware that all providers who operate in the market are not providing a "homogenous" offering. The different types of market participants vary greatly in their offerings. We believe that, for consumers to be able to make an informed choice, they must be able to access information about each different provider and each provider's business model.

One methodology that could be considered would be to categorise the providers offering services to the consumer as either:

1. A Funeral Director; or
2. A Funeral Coordinator; or
3. A Funeral Broker.

The classification would be based on the provider's business model and would allow consumers to compare like providers with like. The categorisation could also be aligned to a system of licencing of individuals as a "Licenced Funeral Practitioner" and registration of the enterprises. Further details of this categorisation can be found at Appendix 1 to this submission.

The other aspect that we feel needs to be further emphasised is the perception that a significant proportion of consumers would wish to "do it themselves" when arranging a funeral. Speaking from the position of providers who are dealing with funeral consumers on a day-to-day basis, very few ever express a desire to pursue that course. That is not to say that it doesn't occur - it does - but not nearly as often as seems to be the impression given by some who advocate it.

1. That NSW Government Agencies publishing information about organising funerals optimise their websites for search engines, to enable information to be readily found by consumers doing internet searches.

2. That the NSW Government's Life Events webpage be made the primary site for comprehensive information about the process after a death occurs, with other websites linking the relevant sections of the process

The Association agrees with the basic premise of these two recommendations. It makes sense for there to be a single source of reference for all Government provided information.

We would recommend that the subject of funerals could also be included in the section "Planning for the end of life" rather than just being included in the section "What to do when someone dies". Like the making of a Will, an Enduring Power of Attorney or an Enduring Guardian arrangement, some consumers choose to prepay or prearrange their own funeral services. This is a growing sector of the funeral service market, partly due to quite aggressive marketing campaigns initiated by funeral brokers focusing on the "No Service, No Attendance" sector of the market.

For these two recommendations to be implemented properly, we feel that a single agency of Government such as CCNSW be charged with responsibility of being the "lead agency" to further develop the content of the website and liaise with other agencies and key industry stakeholders to ensure consistency and accuracy of information. The issue of SEO would also need to be addressed by the lead agency.

3. That NSW Fair Trading develop a consumer guide that.....

We believe that the existing Funeral Information Standard created by NSW Fair Trading, whilst laudable in its intention, falls far short of achieving the goal of being a tool for consumers to employ in making an informed choice when purchasing funeral goods and services. The Standard, in its existing form, allows providers to "interpret" the requirements and provide information in forms that make direct comparisons difficult if not impossible.

We feel that, had NSW Fair Trading entered into **meaningful** discussions with key industry stakeholders **before** formulating the Standard, a far better outcome for consumers could have been achieved.

The concept of a "Consumer Guide" is an excellent one. This is a resource that could be made available on-line through the Life Events channel (both in the "planning for end of life" section and in the "what to do when someone dies" section). It should also be produced in hardcopy form to be made available through hospitals, aged

care facilities, community legal centres, consumer advocacy groups and funeral service providers.

As to the question of what agency should create any Consumer Guide, we feel that whilst NSW Fair Trading would appear to hold the remit, perhaps another agency with more experience and technical expertise in the funeral industry may be more appropriate, in particular, a lead agency identified such as in our response to Recommendations 1 & 2.

In supporting the concept of a Consumer Guide, we emphasise that the creation of such a guide would require the input of all key industry stakeholders, and include such parties as consumer advocacy groups and industry professional associations. We feel that a fair and balanced approach could produce a publication that proved useful to consumers as well as accurately reflecting market realities.

The checklist content linked in the Recommendation text would be a useful starting point and information brochures already available in the marketplace and produced by the various professional associations could also provide useful content. We feel that, rather than including documents such as Death Registration Forms, links to downloadable or fillable Pdfs would be preferable.

4. Make Transfer Forms and Registration Forms more accessible to consumers who wish to attend to transfer or registration themselves.

We repeat the assertion that the number of consumers who wish to pursue the “do it yourself” course is not significant. This recommendation seems somewhat strange. The availability of forms would seem to us an insignificant issue. If a consumer, for whatever reason, wished to transfer a deceased person from a hospital themselves, the availability of the appropriate form would be their last consideration!

Death Registration forms are available from the registry of Births deaths and Marriages for families who wish to prepare and lodge themselves. Discussions with the Registry indicate that the number of requests for forms received each year is miniscule (averaging around 30 per year). Whilst not wishing to make assumptions about other stakeholder’s businesses, we presume that the processing of registrations not lodged by funeral providers could involve significant additional work for the Registry.

5. Fair Trading to amend their website around the Funeral Information Standard

6. Fair Trading start the process for amending the Funeral Information Standard

The specific aspects mentioned in the Recommendations certainly require addressing. Our response to Recommendation 3 holds true for these two Recommendations. We believe that NSW Fair Trading needs to revisit the entire Funeral Information Standard to remove ambiguities that currently exist.

Meaningful engagement with key stakeholders who understand the funeral service sector and what occurs in the “real world” is essential from the start of the process.

Most funeral providers, certainly those who are members of the various professional associations, are totally supportive of empowering consumers when they are considering alternative options **before** purchasing funeral goods and services.

We would recommend that NSW Fair Trading withdraw the current Funeral Information Standard and, as an interim measure until a new Standard is promulgated, substitute a requirement that all funeral providers provide an itemised estimate of total costs prior to entering into a contract with a consumer. This requirement would need to be backed up by severe penalties for non-compliance.

7. Fair Trading improve compliance through audit and enforcement

It is understood that NSW Fair Trading has a three phase enforcement program in place and that the program has commenced.

If and when the Funeral Information Standard is revised, this Association is fully supportive of appropriate enforcement action being taken against providers found in breach of the Standard.

8. NSW Health remove unnecessary provisions of the Public Health Regulations

We broadly support this Recommendation but with the caveat that due consideration be given to Workplace Health and Safety implications of any proposed changes.

9. Government websites contain links to relevant federal financial regulations

We support this Recommendation.

10. Fair Trading prioritise consumer education around funeral insurance and funeral products

We support this Recommendation

Conclusion

In conclusion, we would like to reiterate some of the points made in our response to the Issues Paper.

This Association, along with others in the funeral sector, has campaigned for many years for meaningful regulation and consistent enforcement of such regulation to be implemented by the responsible authorities.

Some progress has been made to address perceived failings in consumer protection, although we would contend that much of the “evidence” cited as justification does not always stand-up to objective scrutiny. Sensationalist reporting of the miniscule number of poor outcomes experienced by consumers would appear to hold more credence than objective analysis, for some regulators.

In metropolitan and some larger regional markets, we believe that consumers have ample choice available to them to select a service level and provider to suit their desires and budget. We recognise, however, that this is not always the case in smaller rural and remote markets where the number of providers able to offer the full range of services may be limited.

The cost drivers that impact the total costs of an overall “funeral package” are often not within the control of the funeral director. For example, if a client chooses, for whatever reason, an earth burial over a cremation, then the cost of the “funeral package” is very likely to be higher (in metro markets especially). But, at the end of the day, it is a client choice.

In relation to “affordability” of funeral services, consumers are the only ones able to make the value judgement of what is “affordable” to their circumstances.

Funeral service providers, other than those who provide their services on a genuine “not-for-profit” basis, have the right to charge for their goods and services based on their individual cost structure and what they deem to be a reasonable return on their capital invested. The market will soon decide if the prices charged represent “value for money” and either accept the goods and services as offered or seek another provider.

The FDA of NSW believes that one of the key areas to empower consumers to make an informed choice is ensuring the consumer is fully aware of the differences between providers based on the provider’s business model.

APPENDIX 1

FUNERAL PROVIDER CLASSIFICATIONS

1. Funeral Director

An enterprise that operates from established, purpose-fitted premises - either owned by the enterprise or leased - that provides the following (as a minimum):

- Arrangement Room(s) to meet with consumers to explain the enterprises offerings and arrange any services selected by the consumer;
- A Mortuary (including body holding facility) approved by the relevant authority, suitable for the storage of bodies and preparation of bodies for burial or cremation. The Mortuary would need to be controlled by the enterprise and be available for use only to the enterprise and any related enterprise. Such facility to be situated within the premises so as to provide screening from the public of the admission of uncoffined bodies;
- Suitable room(s) for consumers to “view” their loved one prior to burial or cremation;
- Suitable garaging for the storage and preparation of vehicles;
- Suitable office space to allow for the completion of administrative functions;
- Suitable facilities for staff in accordance with usual workplace standards;

Additional facilities such as Chapels and Function Rooms (for after funeral gatherings) may also be provided.

The enterprise would also need to own / lease suitable vehicles such as a hearse(s) and vehicle suitable for the transfer of bodies from the place of death to the funeral enterprises premises. If the enterprise could demonstrate that all transfers were undertaken by a recognised Mortuary Transfer Service, they would not require their own transfer vehicle.

2. Funeral Coordinator

An enterprise that may meet some, but does not meet all, of the requirements for “Funeral Director” classification. The enterprise arranges and conducts funeral services or provides funeral goods and services in their own right and under a registered name.

This type of enterprise may utilise the services of a shared Mortuary Facility, may hire vehicles for each individual service as required and use casual / contracted staff (other than the principal(s)) to conduct any services.

3. Funeral Broker

An enterprise that offers consumers funeral goods and services to be provided by third parties, as contracted by the enterprise, and not provided by the enterprise itself. This category of enterprise would need to demonstrate that all goods and services would be provided by a registered Funeral Director or Funeral Coordinator.

Licensed Funeral Practitioner

Funeral Directors and Funeral Coordinators would need to be operated by, or employ, at least one Licensed Funeral Practitioner. The Licensed Funeral Practitioner would be a natural person with sufficient experience and training to be able to take responsibility for the conduct of the enterprises business. As a condition of grant of a licence, the individual would need to demonstrate they were a “fit and proper person” to hold the licence.

The full requirements for the grant of a licence are beyond the scope of this document and would need to be subject to a separate process undertaken by the appropriate government regulator.