

## 1. Tell us what you think about choice and competition in the funeral industry:

### a) What are your views on the range of providers and choices of services emerging in the funeral industry?

- Research provided by IBISWorld shows that the funeral industry has 2 major players InvoCare Ltd which accounts for 25.8 % of the industry revenue and Propel Funeral Brothers 6.3%. Beyond the major players, the industry is highly fragmented. Most operators are small in scale and are usually family-run businesses operating in a narrow geographical region. It is expected the industry will become more concentrated as merger activity increases, and larger operators buy out smaller firms.
- CHOICE's research indicated that consumers want better transparency in relation to funeral business ownership. Most consumers are not aware of the extent of consolidation in the funeral industry in Australia. Larger funeral businesses use this to their advantage, creating the impression that businesses are small and family-owned when in reality, they are owned by ASX-listed companies.
- There has been a wider range of funeral options emerging and funerals are becoming personal. There are newer 'no frills' funeral providers such as:
  - Tender Funerals – a not for profit community venture
  - Bare Cremation – Online/phone only with no office. Cremation only
  - Picaluna – provide 10% to charity of choice and have no office. They personalise their service by attending to the families and individuals.
- Australian Seniors Cost of Death Report notes that has been a shift in preference from burial towards cremation and a shift away from traditional religious services to non-traditional, nonreligious services.
- CHOICE research found that while consumers were generally satisfied with the quality and level of service provided by funeral suppliers, in hindsight they wish they possessed a better understanding of the minimum legal requirements after a death and the optional ceremonial components. While it is recognised that funeral suppliers may only offer set packages (i.e. not bespoke funeral services), by highlighting the distinction between legal requirements and ceremonial components, consumers may be able to more easily choose funeral goods and services appropriate to their needs.

#### Active Directions considerations:

- Our work in the Crematoria and Cemeteries sector suggests that the cemeteries and crematoria industry does not provide an accessible low-cost burial option available for all the community.
- Our analysis has shown that there is an opportunity for a new vertically integrated service model to be offered by the Crown Cemetery operators in direct competition to funeral directors. This would offer consumers a new choice in provider as well as service.

**b) What are your views on the need for regulation and what regulation might look like?**

- In the past year NSW has implemented new regulations covering the industry. The recently updated NSW Fair Trading Regulation 2019 requires funeral providers to clearly display the price of each of their goods and services, as well as their cheapest package, at their operating locations and on their websites. The industry was given a deadline of 1 February 2020 to adopt the new requirements.
- According to the CHOICE 'How much do funerals cost' report 'Professional Fees' make up the biggest chunk of funeral homes earnings. Further to the changes to NSW Fair Trading Regulation 2019, AD recommends that the information standard should make it a requirement to display professional fees as well. It only requires that before entering into an agreement it is a requirement to disclose the price of all goods and services that will be supplied, including the professional service fee (if applicable).
- AD expects the department to monitor compliance with the updated NSW Fair Trading Regulation 2019, however AD recommends that a 'Name & Shame' Register be maintained and accessible to the public for funeral providers who do not comply with the new regulation. This would be similar to The NSW Food Authority that publishes a list of businesses that have breached or are alleged to have breached NSW food safety laws.
- The penalty for non-compliance is that a court can impose a penalty of up to \$5,500 for each offence. Fair Trading Investigators can also issue penalty infringement notices of \$550 for individuals and \$1100 for corporations for each offence.

**Active Directions considerations:**

- Our work in the Crematoria and Cemeteries sector indicates that the State enhances the existing infrastructure of the Crown Cemeteries Land Managers and enable them to offer a new service to the NSW community.
- A service like this is not currently offered and it is suggested that this offering be legislated to ensure that all organisations where deaths occur, like hospitals and aged care facilities, have a legal obligation to inform the next of kin, loved ones and family members that this new service exists and is readily available.
- With regards to the Fair Trading breaches and no compliance, how often will investigators actually investigate and fine corporations?

**c) Can people complete some or all of the funeral arrangements easily without using a funeral director?**

- Yes, they can however a lot of consumers do not know this. More information needs to be provided to consumers detailing their options and advising that funeral directors are not required.
- CHOICE published a report on 'How much do Funerals Cost'.<sup>1</sup> They surveyed 548 people who'd recently organised a funeral and found that most people have no idea about funeral options outside of what's suggested by a funeral parlour.
- Out of the 548 people surveyed by CHOICE, personal recommendations, including from nursing home and hospital staff, were one of the most common ways (37%) that survey participants chose a funeral home. But these institutions typically advise people to use a funeral director and do not give information about alternatives to using a funeral director.

**Active Directions considerations:**

- Our analysis proposes that a new vertically integrated service model be offered by the Crown Cemetery, which would offer consumers a new choice in provider as well as service and be in direct competition with funeral directors.

**d) What are your views on the impact of COVID restrictions on choice of services in the funeral industry?**

- The number of services has definitely been reduced and there has been an increase in No Service No Attendance (NSNA) burials and cremations.
- Families have opted to hold funeral services with family and friends when the threat has passed and it safe to meet in person again.
- Majority of services are being held online services which makes it more available for people to 'attend' services virtually, no matter if they live locally, interstate, or international. This may continue which means that services and prices will be reduced as consumers can save by having funerals 'virtually'.
- Obviously, some religions and faiths will not want this and will revert to the pre COVID-19 larger services and burials when they become available.
- In a Choice article on 'Coronavirus restrictions are changing funeral rituals', Nigel Davies, the president of the National Funeral Directors Association, noted that more people are choosing to get the ashes now for a ceremony later on, when larger gatherings are allowed. His funeral home has seen a rise in the number of people asking for cremation without a funeral. He has seen a big increase in no-service deliveries, where people are just saying: collect the person, cremate them, return the ashes to us. Normally, a quarter of his customers opt for cremation without a funeral. In the past two weeks, the figure has doubled.
- Members of the Australian Funeral Directors Association also report that their usual rates of no-service cremation have doubled, depending on the region, from 10–20% of their business to 20–35%, according to Dale Gilson, the association's CEO. Davies does not believe the rate of no-service cremations will fall back to levels before COVID-19. "There will be some long-term change to the way people are going to interact with funerals," he says. "We're going to probably head towards more no-service deliveries."
- Amy Sagar, a funeral director with the not for profit organisation Tender Funerals, has been exploring ways of supporting people through the pandemic restrictions. In order to allow more mourners to physically attend a funeral, the organisation is giving people the option of having two ceremonies for one person, having a celebrant call in and conduct the ceremony from afar, or having families act as the celebrant themselves.

**Active Directions considerations:**

- Our new service model proposed provides only 4 basic options including a NSNA Cremation and a Basic graveside burial. Both of these options do not require a service or attendance and thus are COVID-19 safe and cost effective to consumers with no need for a funeral director.

**2. Is funeral price information easily available on providers' websites and does the information meet consumer's needs?**

- AD reviewed several websites, and it appears that funeral prices are now available following the changes to NSW Fair Trading Regulation 2019.
- It does however not meet all consumer's needs; AD recommend that the information standard should make it a requirement to display professional fees as well.

**Active Directions considerations:**

- It will take more time to fully grasp if the information available on providers' websites meets consumer's needs.
- Due to COVID-19 there has been a lot less single service cremations and burials, so consumers have not had to look for funeral prices.
- As the changes to NSW Fair Trading Regulation 2019 only became a requirement in February 2020 and COVID-19 restrictions were implemented in early April, there has not been enough time to understand if consumers' needs are being met.

### 3. Tell us what you think about funeral pricing and affordability.

- Research undertaken by CHIOICE, Australian Seniors and Gathered Here shows that funeral service prices range from being reasonable to big very expensive, with the average price in NSW being \$10,000 for a burial and \$4,000 for a cremation.
- CHOICE published a report on 'How much do Funerals Cost'. They surveyed 548 people who'd recently organised a funeral and found the following:
  - A major area of uncertainty is pricing:
  - almost half the survey participants had no idea how much a funeral should cost when they had to organise one.
  - one in five didn't believe they had options to reduce costs.
- To identify the current cost for a funeral using a funeral director/home, CHOICE contacted 36 funeral homes in metropolitan areas across Australia: 10 White Lady Funerals (InvoCare), 10 Simplicity Funerals (InvoCare), 4 Propel Funeral Partners and 12 independent funeral homes. For transporting and storing the body, filling out paperwork, liaising with the crematorium, and providing a coffin, the results were as follows:
  - The cheapest quote, \$2,400, was from an independent business.
  - Quotes from independent businesses ranged from \$2,400 to \$4,000.
  - Simplicity funeral homes ranged from \$3,000 to \$3,900.
  - One White Lady branch provided a written quote for direct cremation, and it was the priciest, at \$5,600.
- In 2019 Australian Seniors conducted an online survey of 1,225 Australians aged 50+ who had paid for a funeral or had been made aware of the cost of a funeral in the past 12 months and close to one in three (32.0%) of respondents who paid for a funeral experienced financial hardship in doing so with the financial impact taking some time to recover from. Among these respondents, the majority (68.4%) say it took them about six months or longer to recover from the financial hardship that they experienced, including close to three in 10 (28.6%) who say it took them more than a year to recover.

#### Active Directions considerations:

- Our analysis suggests that a new low-cost funeral service is required within the sector.
- Our model proposes a cremation at an average price of \$3,000 and for a burial \$6,000, depending if a service is held. This is a saving of 40% for burials and 33% on a cremation. No hidden charges, add-ons or 'administration' fees charged.

**4. Tell us what you think about the different ways of paying for a funeral.**

- CHOICE identified that in 2014, there were about 440,000 funeral insurance policies with an average sum insured of \$8,859. The issue with funeral insurance is that you can end up paying more in premiums than the value of the funeral cover. The premiums can rise sharply as you get older so it may be hard to afford if on a fixed income and if you stop paying your premium, you'll no longer be covered and in most cases won't receive a refund. In 2014, 16.5% of policies were cancelled, one in three of those by the insurer because of non-payment of premiums.
- Bare Cremations also investigated Funeral Insurance and found the same results as CHOICE, that is it is not worth taking out funeral insurance.
- According to CHOICE the pre-paid option is a better choice, and covers all or part of a funeral, usually at today's prices. The services paid for are covered when the customer dies, regardless of how much they cost at the time.
- Social Ventures Australia (SVA) researched consumer experience with funeral financial products and found that the reliance some families placed on funeral insurance was due to the high costs of funerals. The average funeral cost represents around one tenth of the average Australian annual earnings. For those in lower income brackets, the cost of a funeral could take up as much as 40-45% of annual earnings.
- SVA have begun to develop a two-part solution however it is still in the research stage:
  - Reduce the cost of funerals through replication of a non-profit community funeral service model; and
  - Help people prepare financially for funerals by designing a fair and inclusive savings product 'Funeral Saver Plan'.

**Active Directions consideration:**

- Our analysis shows that if there was a more affordable service model then the need for financing funerals would not be required.
- This model would also provide full transparency and ensure that organising a funeral, whether it be a cremation, or a burial would be easy for all consumers and not cause additional anxiety and pain at a time when people are already grieving.





we have had a look at the relevant Acts to see what impediments or hurdles there might be in Crown Cemetery operators expanding their service model to offer an affordable funeral offering. It occurred to me that if we could ensure that NSW destitute contracts (under the jurisdiction of NSW) that Crown Cemetery operators were obligated to provide a minimum base funeral offering to the public – this could open the door for Crown Cemetery operators to compete **immediately** in the funeral space without fear of retribution such as boycotting etc from existing Funeral Directors. We would need to carefully frame the reasons why this is necessary, which would not be hard.

As I mentioned we are pressing ahead with our research project on a proposed funeral model (including costing) and hope to have a first draft to review around the end of March which we are happy to share.

In the meantime we have reviewed the provisions in the Cemeteries and Crematoria Act 2013 (NSW) (C&C Act), Cemeteries and Crematoria Regulation 2014 (NSW), Crown Land Management Act 2016 (NSW) (CLM Act) and the Crown Land Management Regulation 2018 (NSW) regarding any issues arising from CMCT (or CMCLM) or any other Crown Cemetery operator and Land Manager potentially being a **Crown cemetery operator and a Funeral Director**. We set out our findings below:

### **C&C Act**

- Section 85 of the C&C Act requires a Crown cemetery operator to notify CCNSW if it acquires (or disposes of) a significant business activity. This means CMCT (or CMCLM) would need to notify CCNSW if it was to start operating as a funeral director (and cease operating as a funeral director). This only implies an obligation on CMCT (or CMCLM) to notify CCNSW, CCNSW does not need to approve the business activity.
- Section 96(2) of the C&C Act provides that the CCNSW must not adopt a plan of management that has been submitted for approval by a Crown cemetery operator that provides for a Crown cemetery to be used for any purpose other than a cemetery. Arguably, the provision of funeral services to the public is different to the management of a cemetery business. So, this section may need to be removed from the C&C Act or amended to cover a broader scope of purposes. Similarly if a Crown Cemetery operator was to acquire and operate a Funeral Business not located on Crown Land this would need to be explicitly permitted under the C&C Act.

### **CLM Act**

- Section 1.15 of the CLM Act provides that Crown land must not be occupied, used, sold, leased, licensed, dedicated, reserved or dealt with in any other way unless it is authorised by this Act. Section 2.12 of the CLM Act states that Crown land may be used for:
  - o the purposes for which it is dedicated or reserved;
  - o any purpose incidental or ancillary to a purpose for which it is dedicated or reserved; or
  - o any other purposes authorised by or under the CLM Act or another Act.

CMCT's (or CMCLM's) land is dedicated or reserved for the purpose of a cemetery. It may be possible to argue that a funeral director business is ancillary to the purpose of a cemetery, which would be permitted by sections 1.15 and 2.12 of the CLM Act. However, it may be best to amend these sections of the C&C Act for clarity. The provision of mortuary and holding facilities on Crown Cemetery Land would be implicit.

## ACTIVE DIRECTIONS RESPONSES

- Section 3.5 of the CLM Act provides that an appointment instrument may make provision for or with respect to any matter concerning the exercise of the management functions of the Crown land manager. This section of the Act will not require amendment, however, CMCT (or CMCLM) under the reorganizational structure should consider whether any amendments should be made to CMCLM's proposed Instrument of Appointment to give it the ability to operate as a funeral director.
- Section 3.16 of the CLM Act states the proceeds of dedicated or reserved Crown land managed by a Crown land manager must be applied by the manager for a permitted purpose for the land. Please note that section 3.16 of the CLM Act references section 2.12 of the CLM Act (see discussion above). If the funeral director business falls within the scope of section 2.12 of the CLM Act, then no amendment would be required to section 3.16 of the CLM Act.
- It is a separate analysis of whether the profits of the funeral director business would be caught by the definition of proceeds in the CLM Act. This may turn on the fact of whether the funeral director business can operate on Crown land as well as freehold land . By way of example , If a Crown Cemetery operator were to acquire a Funeral Home Business on non-crown land , (either leasehold or freehold ) we think this would need to be explicitly permitted under the C& C Act and potentially mentioned in the CLM Act under the definition of proceeds.
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