

Independent Pricing and Regulatory Tribunal, New South Wales

REVIEW OF COMPETITION COSTS AND PRICING IN THE FUNERAL INDUSTRY



**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 Issues Paper released by IPART in October 2020.

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 make clear 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.

That being stated, the Association has concerns that the different costs and benefits that are inevitable between different business models adopted by different entities operating in the funeral space will not be properly recognised.

There is a view that very little benefit for consumers would flow from conclusions that don't recognise the different offerings available in the market. It would be less than desirable or even illogical to categorise totally different offerings under a single generic heading of "Funerals".

As the Issues Paper observes, the funeral profession has come under considerable scrutiny over recent times. Often, sensationalist reporting of isolated instances of perceived poor service outcomes is portrayed as "the norm". On any objective analysis though, the number of reported poor outcomes versus the number of properly carried out services would tend to suggest that the funeral service sector is providing consumers with a more than adequate product, even allowing for the assumed reluctance of consumers to pursue complaints at an emotional and stressful time.

Much is often made of "unconscionably high" markups on funeral goods and services without considering the direct costs and overheads that need to be recovered by the funeral enterprise. Any reasonable analysis often reveals that the components that go into making an entire funeral "package" and that are under the control of, and priced by, the funeral service provider form the lesser portion of the total package cost.

It would be remiss if some comment were not to be made of the presumption of consumer ignorance or even naivety implicit in the paragraph on page 3 of the Issues Paper under the heading of "Organising a funeral is unlike most consumer decisions". Many funeral service providers are reporting that the majority of their clients are far more likely to have done at least some research prior to approaching

an individual funeral enterprise. This research may be as detailed as seeking comparative quotes from a number of service providers, to as simple as seeking references or recommendations from their own social / family / community networks.

As funeral service providers, we believe that we are in the best position to observe and report on client reactions. We feel that, based on the Issues Paper, very little consideration is to be afforded to the emotional benefits that can be gained from participation in a “traditional” type funeral. Whilst it may be that some clients desire and require merely a “disposal” service, our experience has shown us that these clients are in the minority.

For many generations and among most cultures and religions the rites that are performed following a death play an essential part of the grieving, acceptance and recovery process. The “value” gained by individuals from participating in meaningful mourning rites is, for the most part, unquantifiable but we would contend undeniable.

1. Choice and Competition in the funeral industry

a) the range of providers and choices of services emerging in the funeral industry.

As mentioned in the Introduction to this Submission Document, the Association believes it is neither helpful or logical to try and group all service offerings under the one heading of ‘Funerals’.

To draw an analogy, a sub \$15k compact car could not be realistically compared to a \$50k plus luxury car. Whilst both vehicles perform essentially the same purpose, the features and equipment of the higher priced offering are what make it the vehicle of choice for some owners and are simply not available at the lower price-point.

We believe that a more sensible approach is to individually consider multiple types of funeral service offering:

- The “direct disposition” model of an unattended cremation without the option of including “add-on” goods and services;
- The “not for profit or community service” model where the after death processes and procedures are carried out fully or partially by “volunteer” labour and by an entity not responsible to owners to return an income on capital invested;
- The “briefcase” funeral director model where the “funeral director” has little or no material or physical infrastructure and sub-contracts each aspect of the funeral process to third party providers;
- The “full service or traditional” funeral enterprise model where the enterprise has its own vehicles, plant and equipment, premises and trained permanent professional staff.

The Issues Paper seeks comment on the range of providers and choice of services available in the market. We believe that the choices available are more than adequate to service the different needs and desires of different consumers in major city areas. The same cannot be said of most regional, rural and remote areas.

The usual situation in many rural and remote areas is that there is only one funeral service provider located within reasonable proximity. Typically, these providers are long established “full-service or traditional” enterprises. They will usually offer clients a range of different service types from unattended cremation (or in occasional cases, unattended burials) through to multiple part funeral services (for example church to cemetery or church to crematorium).

We have noticed recently that some of the entities who offer “direct disposition” cremation services are marketing their offerings as being available in all areas. Anecdotal evidence would suggest that some of these enterprises do not carry out the funeral themselves but seek to subcontract the cremation to local service providers when it is needed.

As this question relates to the availability of different providers and choices, we make no comment at this point as to the acceptability of the direct disposition model in these rural and remote markets.

1. Choice and Competition in the funeral industry

b) the need for regulation and what regulation may look like.

We preface our response to this question by stating that most of these observations need to be seen in the light of our contention that the types of funeral service offerings in the marketplace be examined individually not as a whole. (See Page 7)

This is a subject that has been at the forefront of discussions between many funeral service professionals for many years. By way of background, some progress toward the goal of meaningful standard setting and enforcement was made by the creation and gazetting of the Public Health (Funeral Industries) Regulation 1987. Sadly, even this very basic regulation was swiftly watered down by subsequent amendments, to the stage that the profession became virtually unregulated in any meaningful way.

The situation today, in terms of any regulation, could best be described as “fragmented” to say the least. Rules regarding the construction of mortuaries are contained in Regulations made under the Local Government Act. Processes for the physical handling of human remains are covered under the Public Health (Disposal of Bodies) Regulations under the Public Health Act. Aspects related to consumer protection and pricing are covered under the Funeral Information Standard provided for in the Fair Trading Legislation. The operation of Funeral Funds are covered under other legislation. As a profession, we believe there is a clear need for a single department or agency of government to be responsible for all aspects of the funeral profession. We also note that Cemeteries and Crematoria NSW (CCNSW) may already have some legislative ability to regulate the funeral profession.

Over many years governments of both political sides have, from time to time, considered that some benefit may flow from regulation of the funeral profession. Again, sadly, these considerations have largely been influenced by a perception that regulation may introduce a barrier for others to enter the profession. The premise seems to have been that an adverse impact to competition in the profession could be the result.

In December 2005, the NSW Legislative Council Standing Committee on Social Issues tabled its report into the operation of the funeral industry in New South Wales. The government of the day responded to the report’s 23 recommendations by mainly focusing on the aspects of consumer protection highlighted in the report. Scant attention was given to what the Standing Committee and the profession saw as an

urgent need for a mandatory “Code of Conduct” to be implemented for the profession.

Most in the profession have always been in favour of growth in the number of practitioners available to provide service to the public. That being said, the essential caveat being that all practitioners be governed by the same set of rules and regulations and be subject to the same enforcement processes. Any framework of regulation must consider not only the aspects of consumer protection, but also the principals of “best practice” in the provision of funeral goods and services.

It would serve no useful purpose to relate the graphic “horror stories” related to the funeral industry that have surfaced over many years. Indeed, one aspect that is often ignored when these incidents are reported in the popular press is the countless number of properly conducted funerals that take place in the state every year and the very low number of complaints that are made. It must be acknowledged, however, that the emotional nature of the circumstances where the services of a funeral director are required are not always seen to be an appropriate time for complaint if something goes wrong. That said, practices that give rise to any legitimate complaint from a member of the public are to be avoided.

Whilst the FDA and its members agree that any complaint is disappointing, this Association does not believe there to be a failure within the Funeral Industry and this is reinforced by the NSW Fair Trading’s own figures from their ***Regulatory Impact Statement - Proposed Fair Trading Regulation 2019*** in which ***section 6.3 Funeral goods and services information standard*** quotes a total of only 168 complaints received in NSW regarding the funeral industry over a six year period (2013-2018). It is unclear as to the nature of these complaints and their particular relevance to the scope of this IPART review (as opposed to other facets of the funeral industry including cemeteries and crematoriums), but this Association believes 168 complaints out of a total 314,950 deaths in the period, equating to only ***0.05%*** or just ***one in every 2,000*** funerals is statistically insignificant

There are many methods by which standards are safeguarded across different professions and trades. Licencing of individuals and minimum standards of premises, plant and equipment are examples.

An area of concern to the funeral profession are the instances of “phoenix-ing””. By that is meant the operators who carry on business under a corporate structure which can easily be abandoned, stripped of assets and then “reborn” as a new business, often with a strikingly similar name. Many of these businesses possess little or no assets and often do not own or even lease any facilities (operating on a “mobile” basis and utilising “shared” facilities, including mortuaries, which may present identification and security issues surrounding the deceased), allowing for an easy transition to a new business name, despite whatever issues may have occurred

under the previous trading name – despite the true operators of the new entity being the same natural persons.

The situations outlined in this submission merely represent just how simple it is for those less desirable individuals to operate in New South Wales within a profession that we believe the public has a right to expect will be properly regulated and policed. We believe that any system of regulation should embrace two different streams: the first being the individual practitioner; and the second being the funeral enterprise.

Some overseas jurisdictions have the requirement that a funeral business must employ at least one “licenced” funeral director to take responsibility for the operations of the business. There are different schools of thought as to the requirements for the grant of a licence. Common to all is the requirement that the potential licence holder be able to demonstrate an understanding of and experience in the supervision and management of a funeral enterprise. There is usually a further requirement that the potential licence holder be a “fit and proper person” to take responsibility for the ethical and professional operation of the enterprise. In some jurisdictions, a system of recognition of prior learning can lead to the grant of a licence. Another common feature is the inclusion of a requirement for continuing professional education to be undertaken by the licence holder to retain their licence. This is an area in which the various professional associations of funeral directors in Australia have been active in mandating such systems for their members. There is no such requirement for operators who are not members of a recognised Association.

The physical infrastructure that we believe is desirable if the funeral profession is to have any degree of proper oversight would include: an approved mortuary facility for the sole use of the individual funeral business (and any related business); suitable motor vehicles relevant to the geographic area in which the business operates; and suitable office facilities to meet with clients. Viewing facilities, chapels and function rooms should also be provided where appropriate. Of course, appropriate facilities for staff would be a further requirement.

The items discussed in this submission are designed to provide an overview of the situation as it currently stands in New South Wales and how it could be improved by better regulation thus providing an improved outcome and greater protection to consumers of funeral goods and services.

We would also make the observation, based on client comments and feedback to our members, that many consumers hold the false belief that the funeral profession is already heavily regulated and that funeral directors are “licenced”. When the actual situation is explained (ie. no licensing) - in particular related to ethical conduct - the response is typically “disbelief”!

1. Choice and Competition in the funeral industry

c) can people complete arrangements easily without using a funeral director.

In response to this question, we have concentrated on the components of a “traditional or full service” type funeral, but many of the comments are true for all types of funeral.

The broad answer to the question is probably no. People generally can’t complete arrangements without using a funeral director and we would question whether many clients have the desire to do so.

The principal reasons for the challenges that are presented to what we believe to be the very small number of people who wish to “do it themselves” are generally not within the control of a funeral director.

Many of the “arrangements” that are required for a funeral to proceed are not provided directly by funeral directors. Third party suppliers of goods and services are involved at each stage of the process and one of the main roles undertaken by the funeral director is coordination. In many cases, these third parties will not or are not set up to deal directly with the public.

The following table illustrates some of the challenges:

Task	Challenge
Transfer from the place of death (including private residence, aged care facility, hospital or any other place).	Regulatory requirements determine the circumstances under which deceased persons may be transferred from the place of death to an appropriate holding facility. These requirements include: <ul style="list-style-type: none">• whether the death comes under the jurisdiction of the Coroner;• whether a qualified medical practitioner has prepared a Medical Certificate of cause of Death / Certificate of Life Extinct;• Whether a Paramedic has made appropriate enquiries to ascertain if a Medical Certificate will be issued.

	<p>Regulatory requirements determine the type of vehicle to be used to transfer deceased persons. They also include requirements around the need for vehicles to be properly cleaned after being used for this purpose.</p> <p>Regulatory requirements determine where the bodies of deceased persons may be held following death and prior to disposition.</p>
<p>Procurement of the required documentation to allow for burial or cremation</p>	<p>In the case of earth burial, a Medical Certificate of Cause of Death or an order issued by a Coroner is required. In the case of cremation, additional documentation (for which medical practitioners charge a fee) is required under the Public Health (Disposal of Bodies) Regulations.</p> <p>In many cases, the medical practitioners who prepare the documentation will require the body of the deceased person to be transported to their (the doctor's) premises for examination and certification.</p>
<p>Holding of, and preparation of, the body prior to burial or cremation</p>	<p>The regulations stipulate the premises and conditions under which the bodies of deceased persons may be held (stored) or prepared for burial or cremation.</p> <p>Provision does exist under the regulations for "persons who are not funeral directors" to hold bodies under different conditions. (To allow for different cultural and religious procedures to be followed).</p>
<p>Procurement of a suitable coffin or casket</p>	<p>Many coffin and casket manufacturers do not sell their products directly to the public.</p> <p>Some families choose to fabricate a coffin or casket themselves.</p> <p>Many cemetery and crematorium operators impose their own requirements for the construction of these coffins or caskets to ensure that they, (the cemetery / crematorium operators), comply with their duty of care to their staff who will handle the coffin or casket under Workplace Health and Safety responsibilities.</p>

<p>Securing permission to carry out the burial or cremation from the facility operator / owner</p>	<p>All cemeteries and crematoriums require that anyone carrying out “work” in their facilities comply with specific requirements. Typically, a cemetery operator will require proof that Public Liability and Workers Compensation Insurance is held by the person / entity carrying out the work. Most cemeteries also require a “Safe Work Statement / Plan” and may require site inductions and additional “site specific” training in order to work on site.</p> <p>It is not uncommon in rural / remote areas for the person who is arranging the burial to have to arrange for the excavation of the gravesite. This can require specialised knowledge and experience in W.H. & S requirements around excavations and shoring of the same.</p>
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This table illustrates just a small sample of the “arrangements” that need to be considered when planning a funeral.

The funeral director’s staff are trained and experienced in dealing with the various challenges and coordination tasks. They are also able to advise clients on different alternatives (including lower cost alternatives) that the client may not have considered.

Most funeral directors encourage their clients to participate in the “arrangements” to the extent of the client’s comfort level.

1. Choice and Competition in the funeral industry

d) the impact of COVID restrictions on the choice of services in the funeral industry.

We find it interesting that the Issues Paper would appear to suggest that the current COVID-19 pandemic may have only impacted the choice of services available.

We would contend that the pandemic has had impacts on every facet of funeral service and materially impacted the costs of labour due to mandatory processes being imposed on funeral service providers.

Funeral service is continually evolving.

Advances in technology, changes in client expectations, availability of different alternative goods and services and changes in business “best practices” combine to make the provision of funerals no different to the provision of many other “events”.

The COVID-19 pandemic and the restrictions placed on funerals by the various Public Health (Movement and Gathering) Orders has seen a rapid expansion and acceptance of some services that had previously been seen as “niche” offerings. One of the most notable of these is the availability of “live streaming” of funeral services over the internet.

There was an expectation voiced by some in the funeral service sector that the COVID-19 pandemic would vastly reduce the number of “traditional” funerals being conducted. It was believed by some that the option of “unattended cremation” would become the norm with clients opting to hold Memorial Gatherings at a later date. At this stage most evidence is anecdotal, but it would appear from feedback from this Association’s members that the shift has not been as significant as some expected.

2. Is funeral price information easily available on providers websites and does the information meet consumers needs?

The Issues Paper quotes widely from various academic papers, internet comparison sites, media “investigative” reports and consumer advocacy group reports. At least some of these sources would appear to have a preconceived bias against the “traditional” funeral service offering.

Prior to the current Funeral Information Standard under the NSW Fair Trading legislation coming into force in February 2020, an attempt was made to simplify price comparison for consumers through the creation of what was termed a “Basic Funeral”. The intention was sound, but the methodology flawed.

The current Funeral Information Standard makes some price disclosure mandatory on not only websites, but there is also a requirement for pricing information to be displayed prominently at the funeral directors place of business. There is also a requirement that the information be made available to consumers within 48 hours of request, for example via a telephone enquiry.

Further to the matter of websites, it would appear that there is no clear definition of what constitutes a “website”. We believe that some providers have dispensed with traditional websites and now rely on social media platforms and on-line directories and information listings to maintain their on-line / internet presence.

Given the relatively recent introduction of the Funeral Information Standard requirements, this Association believes that the mechanism, if properly policed, will prove useful to those consumers who include price comparison as a part of their buying decision but can certainly not provide an accurate total cost comparison between different providers.

What cannot be factored into a system such as the Funeral Information Standard is the individuality inherent in a great number of “traditional” funeral services. The “bespoke” nature of a service that has been requested by a client can, and often does, include many items not envisaged by the regulators or included in the definition of “funeral information”.

The other significant omission from the definition of Funeral Information is a “Professional Fee”. This is stated as not being required to be disclosed but can be if the funeral enterprise chooses to do so. Historically, the funeral director’s “Professional Service Fee” has formed a significant portion of the overall cost of the

funeral “package”. Several of the individual items included in the Funeral Information definition have typically not been charged as discrete items but supplied as a part of the funeral director’s professional service.

For consumers to be able to make an informed decision, based on price, we would recommend that consumers approach several funeral service providers and obtain a written estimate of the total cost of the goods and services required by the consumer. A consumer who depends solely on the information available on websites of service providers will find it very difficult to make meaningful comparisons.

3. Funeral pricing and affordability.

The Issues Paper makes a number of assumptions and claims regarding the affordability of funerals and the conduct of service providers when dealing with clients.

The assertion that consumers may be “upsold” into higher priced goods and services than would have “met their needs” is in our view, totally misleading. Whilst an Association can only make submissions on behalf of its members, it cannot speak for an entire profession. That being said, we believe that most ethical and professional funeral service providers would categorically refute such an allegation.

Funeral enterprises are like all other business ventures. The business operator invests capital in property, plant and equipment and employs trained staff to provide a service to paying clients. In return, the business operator rightly expects to make a reasonable return on the capital invested in the business and realise a reasonable level of profit from the operations of the enterprise. Some of the tasks that funeral service providers can be called on to perform can be categorised as distressing and distasteful, in extreme cases confronting and even harrowing. Very few people outside funeral service would be willing or able to perform some of these tasks and this should certainly be taken into account in assessing what is a reasonable level of return or profit.

Yes, funerals can be very expensive. In the case of burials (in metropolitan areas) the major cost component is not usually the funeral directors fees but the cost of the cemetery fees (the subject of previous IPART studies). In table 1 of the Issues Paper which purports to illustrate the costs of a typical Cremation - and which we do not believe to be entirely accurate - many of the individual cost items are not within the control of the funeral service provider.

Funeral service professionals are acutely aware of the often vulnerable nature of the clients who seek assistance, often at a time of extreme emotional distress. The many testimonials and reviews that can be read on individual provider websites often contain the clients gratitude for the care, empathy and professional skill shown by the funeral service provider. Nearly every funeral service professional will assert that although advertising may influence a client’s choice of service provider when basing the choice on price alone, the key factors influencing choice of provider for a “traditional” service are satisfaction with prior dealings with the provider and personal recommendations from family / friends / community contacts.

The Issues Paper also asserts that “consumers are not always aware of the various alternatives to a “traditional” funeral.....”. This may well be true at the time that the consumer first approaches a service provider. A similar assertion could be made

that a consumer may not be aware of the different offerings available when they first approach any supplier of goods and services. It is normal business practice to make potential clients aware of the range of goods and services on offer, explain the relative merits of each but then allow the potential client to select the goods and services that best suit their individual desires and budget. Choice of funeral goods and services is no different in this respect.

It is not the role of the funeral service provider to influence consumers to select any particular item from the goods and services on offer. The role is to honestly explain the differences, answer questions asked and then ensure that the consumer understands and is satisfied with the choices that they have made.

The Issues Paper makes mention that “many funeral directors did not previously publish prices”. For the reasons previously noted, it is simply not possible to include the cost of every item that could conceivably be included in a funeral service. Mention is also made of the “short time available to arrange a funeral”. We would contend that there is sufficient time between a death occurring and when burial or cremation is required. Under the Public Health (Disposal of Bodies) Regulation 2012 there is no stated time in which the burial or cremation needs to take place. It is not unusual in circumstances where close family need to travel great distances in order to attend a funeral, that the funeral may not take place for several weeks.

It is our belief that the increase in “direct disposition” service providers in the market is an indication of several factors:

- Greater consumer knowledge of the variety of options available;
- Changing consumer perception of the value of a “traditional” funeral service;

Regardless of the reasons for the growth in this sector of the market, it clearly demonstrates the availability of offerings at the lower price point.

The following conversation was recently shared with us by one of our members. The member concerned is a “traditional, bricks and mortar” funeral enterprise with purpose built funeral home with attached cremation facility, on-site refreshment facilities and located outside the Sydney metropolitan area.

“We were contacted several weeks ago by a lady seeking a quote for an at-need funeral service. She began the conversation by stating that she had received a quote from another provider and expected us to match or better that quote. She gave us the dollar value of the quote and gave us the name of the provider. She indicated that the other provider had stated that their price quoted was for a direct-disposition funeral. From our personal knowledge, the provider operates from an industrial unit and utilises a cremation facility in a similar area. The figure quoted was around half of what we would charge for a “traditional” funeral with cremation at our facility including a flat-lid gloss finish coffin (mid to lower price). The lady then indicated that she was approaching us because she had been to

funerals at our premises and was impressed by our staff, vehicles and location and we had “such a nice funeral home chapel and our refreshment rooms would be a good venue to have the wake”.

I gave her an estimate of the cost for us to provide the funeral at our facility and she was surprised that we wouldn't match the other quote!

I explained that our facilities had been built at significant cost in a desirable location. Our staff are on-call 24hours a day, 7 days a week and trained in all aspects of funeral service. Our vehicles, plant and equipment are properly maintained and kept up-to-date.

In the end we were retained to carry out the funeral and at our regular (ie. not discounted) price. After the funeral, the lady complimented us on our service and made the observation that “You get what you pay for”.

In the circumstances related above, the client had a clear choice between the two offerings and made their decision realising that the service she and her family actually wanted came at a cost. The benefits in terms of satisfaction, in their opinion, outweighed the monetary advantage of the lower cost option.

As to the question of “affordability”, this is surely a subjective question. What may be considered affordable to one person may not be the same to another person. It is difficult to see the advantage to a funeral service provider for a client to make choices and select goods and services that they may not be able to afford.

In some cases, particularly in rural and remote areas, funeral service providers will not require total payment before the service is carried out. It is common practice for the client to be asked to pay a deposit equal to the amount to be outlaid by the funeral service provider to third party suppliers (often termed “disbursements”), and for the balance to be paid after the service. It is clearly not to the providers advantage for a client to contract for goods and services that they may not be able to ultimately pay for.

It is very difficult to prepare a “typical” breakdown of the costs versus revenue for funeral businesses. The cost / revenue bases and caseload for a city or larger regional funeral service provider will be vastly different to those of a small to medium size entity operating in a rural or remote area. The following table illustrates some of the differences:

City / Larger Regional Entity	Small to Medium Rural / Remote Enterprise
Typically, higher caseload over which to amortise fixed overheads	Typically lower caseload over which to amortise fixed overheads
Usually staffed by trained experienced personnel, either salaried or award	Often staffed by owner / operators with little or no full time staff and utilising

based pay	casual labour
Vehicles, plant and equipment are often purchased new. (The indicative cost for a new hearse is in excess of \$200k)	Vehicles often purchased second-hand from city funeral service providers
Wide availability of third party service providers (eg. Mortuary Transfer Services).	Usually no options to utilise
Ready availability of funeral goods (eg. coffins) negating the need to hold high stock levels	Limited supply due to delivery times for suppliers leading to the need to maintain higher levels of stock
Generally, services carried out in closer proximity to base thus allowing for higher utilisation of vehicles and staff	Significant distances between base and service locations make utilisation of vehicles less efficient and lead to higher labour costs due to transit times
Cost of purchasing / leasing suitable premises typically higher in cities	Difficulty in securing suitable premises is common if not held freehold

4. The different ways of paying for a Funeral.

The Issues Paper at page 9 seems to suggest that Prepaid Funeral Contracts are, similar to Funeral Bonds, regulated by ASIC. In NSW Prepaid Contracts purchased by clients from funeral services providers and without the use of an Insurance Bond as the investment medium are regulated by NSW Fair Trading under the Funeral Funds Legislation and Regulations.

In the case of at-need funerals where there has been no prior funds set aside to meet the costs of the funeral, the costs are often paid at the time of the service by close family or the executor to the deceased's estate. The costs paid are then recovered and repaid out of the estate. In some cases, financial institutions will allow funds from accounts held in the name of the deceased to be accessed to pay for immediate funeral expenses (documentary conditions apply).

Where a deceased person has no financial resources in their estate, or does not leave any estate at all, and there are no family or friends willing or able to pay for a funeral the State will arrange and pay for “a burial or cremation of a person without means”. This was previously known as a “destitute funeral”. The service is provided, under a contract issued by Services NSW, by a funeral director and comprises goods and services specified in the contract. Contracts are awarded periodically following an open tender process and are usually based on NSW Police Local Area Commands.

The Issues Paper makes mention of bereavement payments that may be made by Services Australia and / or the Department of Veterans Affairs to a spouse or carer following a death. It has long been held that these payments are made, not with the intention of paying for the funeral, but to help the beneficiary adjust to changed financial circumstances. There is no mechanism for these payments to be made to the funeral service provider. In contrast, the NSW Aboriginal Land Council assistance (\$5000 where the deceased was a financial member of the NSWALC Funeral Fund which operated between 1992 and 1994 or \$1000 where the deceased was not a member) is paid directly to the funeral service provider and can accurately be classified a funeral benefit.

There has been a relatively recent trend to offer consumer financing to pay for funerals. These facilities are usually provided by short term finance providers rather than through funeral directors.

Many consumers choose to provide for the monetary cost of their own eventual funeral through either a Prepaid Funeral Contract which may or may not be linked to a Funeral (Insurance) Bond, or simply by a “stand alone” Funeral Bond.

The benefits / advantages that the consumer can gain through use of these methods vary depending on the exact vehicle chosen. One of the benefits most often cited is the non-inclusion of the value or earnings of Prepaid Funeral Contracts and some Funeral Bonds in the “income and assets tests” applied when determining benefit entitlements from Services Australia.

The Issues Paper describes the general nature of Prepaid funerals.. We would expand on this by likening the arrangement to any other contract between a consumer and an enterprise to provide specified goods and services at a future date in return for a payment of money when the contract is entered into. The special and unique conditions that characterises Prepaid Funeral Contracts are:

- that the enterprise is not able to access the monies paid by the client together with any investment earnings on those monies, until the goods and services have been supplied; and
- The date that the goods and services are to be supplied cannot be stipulated in the contract.

The NSW Funeral Funds legislation and regulations require that the monies paid for a Prepaid Funeral Contract be lodged in an approved Trust Fund (Funeral Fund). The Issues Paper also notes that if the value of the monies invested grows to a greater value than the actual cost of providing the goods and services when they are supplied, the funeral enterprise can retain the surplus. We would contend that for at least the last 15 years, the growth of the prepaid funeral funds invested has never kept pace with the increase in costs over time and the funeral provider rarely, if ever, would enjoy a surplus situation. Rather the margin achieved on most prepaid funerals, when they are provided, is substantially less than if the funeral was paid for at current prices. For this reason, a growing number of funeral providers are declining to offer new Prepaid Funeral Contracts in the market.

Funeral Bonds are a special type of Insurance Bond. They may or may not be linked to a Prepaid Funeral Contract and this may influence the treatment of the Bond for benefit entitlement assessment by Services Australia. In the past, Funeral Bonds have sometimes been seen as a more flexible investment vehicle than a Prepaid Funeral Contract. For example a consumer may choose to purchase a Funeral Bond for a stated value that they believe will be sufficient to cover the costs of their eventual funeral. They choose not to assign the Bond to a particular funeral service provider (as payment for a prepaid Contract), rather they merely hold the Bond and allow it to grow in value over time. At the time the funeral takes place, the Bond is used to pay for either the entire funeral cost, with any excess being returned to the estate or used towards the cost of the actual funeral as arranged at the time of need.

As the Issues Paper makes reference to “Funeral Insurance” as a method of paying for a funeral we will make several observations:

- Funeral Insurance is merely a marketing term. There is no reason to suppose that any payout of a benefit will be applied to paying the funeral provider. The benefit is paid to the beneficiary of the policy to use as they see fit;
- Many families have learned, to their cost, that if premiums are not paid for the lifetime of the insured, cover is generally not provided. (in fairness, there are some products in the market that attempt to address this circumstance);
- Funeral Insurance may be the only available option for some consumers of very limited financial means, but it is essential that consumers understand the nature of the “cover” they are receiving.

Conclusion

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. As previously stated in this Submission, 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 recognize, 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.