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Dear Madam/Sir

Review of Competition Costs and Pricing in the Funeral Industry – Issues Paper

Thank you for the opportunity to make a submission to the Independent Pricing and Regulatory Tribunal (**IPART**) in response to the issues outlined in the Review of Competition Costs and Pricing in the Funeral Industry Issues Paper (**Issues Paper**) delivered in October 2020.

1 Professional Background

I head up the Sydney Charity and Not-for-profit team at Mills Oakley. My practice has a focus on not-for-profit organisations.

I act for numerous charities, religious, community groups, professional associations and not-for-profit organisations. I have over 25 years' experience in the legal profession.

I have extensive experience in the cemeteries and crematoria industry. This includes:

- (a) being a member of the Cemeteries and Crematoria NSW Consultative Group;
- (b) nine years' service on the board governing the Catholic Metropolitan Cemeteries Trust;
- (c) drafting the 'Guide to the Cemeteries & Crematoria Act (NSW) 2013';
- (d) drafting the 'Cemeteries & Crematoria Legislative Guide 2016';
- (e) presenting on several occasions at the Australasian Cemeteries & Crematoria Association National Conference; and
- (f) advising various cemetery operators on legislation governing the industry across Australia.

2 Comments on Issues Paper

2.1 Competition in the funeral industry

2.1.1 *What are your views on the range of providers and choices of services emerging in the funeral industry?*

We agree that there needs to be an assessment of the role of competition in the funeral industry. Currently, there is not enough competition in the market. InvoCare and Property Funeral Partners are the largest providers in Australia and account for a third of the market. This market power is burdensome on smaller providers who cannot compete with the reputation and accessibility of these larger companies.

The Australian Competition and Consumer Commission (**ACCC**) has also indicated that the funeral industry is an area of key competition and consumer concern. Mr Rod Sims, Chair, stated that the funeral industry:

“is a concentrated sector with some players having significant market power. As some funeral service providers also have a large share of different services across the funeral home, cemetery and crematoria markets, there is an opportunity for these providers to bundle services and block new entrants to the market.”¹

Another issue that arises when there is dominance in the market is larger funeral providers, such as InvoCare, owning national chains, for example, White Lady Funerals and Simplicity Funerals. This dominance in the market allows these larger providers to offer more standardised funerals and lessen the degree of competition in the market.

In our view, there are very few options available to consumers for affordable funerals. Accordingly, we agree with the suggestion from key stakeholders that Crown cemetery operators be encouraged to provide an integrated funeral and interment offering, specifically for the affordable funeral segment market. This will provide competition within the market and will assist in reducing prices.

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

In our view, the funeral industry must be regulated, as with any industry, to ensure that consumers are being provided with options that account for diverse financial situations, cultural and religious requirements, and other circumstances particular to the individual.

Currently, there are several Acts governing the cemetery and crematoria sector, such as *Crown Land Management Act 2016* (NSW), *Cemeteries and Crematoria Act 2013* (NSW) and the *Public Health Act 2010* (NSW). There is currently no legislation which regulates the activities of funeral directors except the *Funeral Funds Act 1979* (NSW), which regulates the pre-payment of funerals by customers. We submit that these sectors are very closely aligned and would benefit from consolidated legislation and governance by one regulator, such as Cemeteries and Crematoria NSW. Streamlining the regulation of the funeral and cemetery industry by complying with one Act, which is administered by one regulator, will ensure conformity and make processes, such as reporting, easier for operators to comply with.

¹ Australian Competition & Consumer Commission, ‘ACCC Compliance and Enforcement Priorities’ (Conference Paper, Committee for Economic Developed Australia, 25 February 2020).

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

Organising a funeral is an infrequent task for most people and, therefore, most people are unfamiliar with the options available for a funeral and the costs involved. This leads to most people engaging a funeral director to carry out the funeral arrangements. This is evidenced by a study completed by Cemeteries & Crematoria NSW. This study found that two in three people in NSW would consult a funeral director when planning for after-death. In other instances, some families opt for a mix of “do it yourself” arrangements and engaging a funeral director. The reason families opted for a mixed service was to help reduce the overall costs of a funeral, as well as to provide a more personalised funeral and closer sense of involvement.² In our view, another key reason for engaging a funeral director is to relieve the burden of any stress or concern in organising a funeral.

There is no requirement for a licence to operate as a funeral director in New South Wales. However, a member of the public wishing to organise the funeral arrangements for a deceased person would require a funeral director to handle the body and transport the deceased person after the funeral is completed.³ This means that a member of the public must engage a funeral director at some point to facilitate the funeral and burial of the deceased person. We submit that this is an appropriate service to be carried out by a funeral director.

Despite the above, we do support a family being able to store a deceased person at their home prior to the interment, provided that the death has been certified, and an autopsy is not required and there is no other issue which could cause harm to the public (such as an infectious disease). We understand that it is important for some cultural and religious groups to have the deceased person at their home and the legislation should support this concept.

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

COVID-19 has brought about a lot of change, including having to adapt to COVID restrictions. It is important, during times like this, to offer alternatives to traditional funerals. It has been difficult for entities to implement changes that comply with the varying restrictions and still provide meaningful services to their consumers.

Some of the services the funeral industry has implemented in response to COVID-19 are:

- (a) funeral homes offering families the ability to plan and view the funeral remotely;
- (b) families opting to retain a body for an extended amount of time;
- (c) funerals being held outdoors to accommodate more people attending; and
- (d) increasing cremation services.⁴

We submit that the funeral industry has adapted well in implementing alternatives to traditional funerals, and consumers currently have more options available for services.

² Cemeteries & Crematoria NSW, ‘Way to go – People’s views on burials, cremation, funerals and ways to commemorate life’ (Research Paper, NSW Government, August 2020) 7.

³ *Public Health Regulation 2012 (NSW)* part 8.

⁴ National Funeral Directors Association, ‘Rates of Cremation and Burial’, *Statistics* (Fact Sheet, 2020) < <https://nfda.org/news/statistics> >.

2.2 Transparency of funeral prices

2.2.1 *Is funeral price information easily available on providers' websites and does the information meet consumers' needs?*

We have reviewed the website of providers, such as White Lady Funerals, Simplicity Funerals, Guardian Funerals and Liberty Funerals, which all provide their funeral prices on their websites. The funeral prices also provide a detailed breakdown of the varying prices for services and products, however, this is not the case for smaller providers. Accordingly, we submit that this issue does require further investigation by IPART and possibly a recommendation for greater regulation on transparency of prices.

2.3 Ensuring funerals are affordable

2.3.1 *Tell us what you think about funeral pricing and affordability.*

We submit that there is currently too much discrepancy in pricing in the funeral services industry. The lack of competition in the funeral industry creates some difficulty for consumers to make an informed decision of what services and products are appropriate for the funeral. A survey conducted by Choice depicted how unclear funeral pricing is in the sector, with prices for a funeral and cremation ranging from \$2,400 to \$5,600.⁵ Similarly, a study completed by Australian Seniors found the average total cost of a funeral and burial was \$8,048, and for a premium burial, the cost rose to \$11,279.⁶

The issue of competition in the market needs to be addressed in order to ensure funeral pricing and affordability. There also need to be regulations implemented in the sector to promote transparency of prices of different packages and what can be included or discounted from a funeral plan. By providing a breakdown of the services and prices, the consumer will be able to make an informed decision based on their financial position.

Nevertheless, a simple breakdown of services and prices does not provide a consumer with a complete understanding of the nature of the services being offered as there can be a great disparity between the quality of services provided by different funeral directors. Further, there are many intangible aspects to these types of services which cannot be described in a price breakdown. Some more consideration needs to be put into how to adequately convey these non-quantifiable, intangible aspects of a funeral to a consumer to allow that consumer to make an informed choice.

2.4 Ways to pay for a funeral

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

Prior to 2016, pre-paid funeral instalments were paid to a funeral director who was given the responsibility to manage the funds. It was the responsibility of the funeral director to make sure the money was being invested for that individual's funeral. The issue that arose from this system was that many funeral directors were dissolving their businesses, and did not account for the money paid under a pre-paid contract as part of the dissolution process. Recognising the risk that comes with funeral directors managing the pre-paid funeral payments, the NSW

⁵ CHOICE, 'How much do funeral cost?', *Ageing and retirement* (Article, 20 September 2019) <<https://www.choice.com.au/health-and-body/healthy-ageing/ageing-and-retirement/articles/funerals-investigation-how-much-do-funerals-cost>>.

⁶ Australian Seniors, 'Cost of Death Report' (Research Paper, NSW Government, 2019) 6-8.

Government determined that funeral directors should give this money to a reliable third party.⁷

The *Funeral Funds Regulation 2016* (NSW) was introduced under the *Funeral Funds Act 1979* (NSW) to amend the payment of money under pre-paid contracts for funerals. The new legislation requires funeral directors to pay the pre-paid funeral payments into a fund regulated by a registered trustee. The trustee must keep accounts and records of the monies paid under the contract and ensure details of each transaction are logged into a register.⁸ Because the money is not held by the funeral director, but instead by an independent third party, the money can be forwarded to another funeral director, if the current funeral director were to cease operating. We submit that the regulation adequately provides protection to consumers who seek security and protection when arranging after-death arrangements.

In addition to pre-paid funerals, we note there are other options, such as funeral insurance and funeral bonds, which provide the public with a good selection of payment methods.

3 Conclusion

I respectfully urge IPART to consider the issues and recommendations raised in this submission when producing its draft report.

If you have any questions or require further information regarding our submissions, please do not hesitate to contact Vera Visevic on [REDACTED]

Yours sincerely

[REDACTED]
VERA VISEVIC
PARTNER

(CO-AUTHORED WITH BRITTANY FLOWER, LAW GRADUATE AND ALISON SADLER, LAWYER)

⁷ CHOICE, 'Should you get a prepaid funeral?', *Ageing and retirement* (Article, 3 October 2019) <<https://www.choice.com.au/health-and-body/healthy-ageing/ageing-and-retirement/articles/funerals-investigation-should-you-get-a-prepaid-funeral>>.

⁸ *Funeral Funds Regulation 2016* (NSW) reg 11-18.