

Standing Committee on Social Issues

# **The funeral industry**

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## How to contact the committee

Members of the Standing Committee on Social Issues can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

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The Director

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Standing Committee on Social Issues

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Legislative Council

---

Parliament House, Macquarie Street

---

Sydney New South Wales 2000

---

Internet [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

---

Email [socialissues@parliament.nsw.gov.au](mailto:socialissues@parliament.nsw.gov.au)

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Telephone 02 9230 3078

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Facsimile 02 9230 2981

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## Terms of Reference

1. That the Standing Committee on Social Issues inquire into and report on the funeral industry and in particular:
  - (a) changes in the funeral industry over the past decade including the cost of funerals, the degree of competition, vertical integration and ownership,
  - (b) the availability and affordability of burial spaces and options for increasing the supply of spaces,
  - (c) the adequacy of existing regulation of the funeral industry to protect consumers, public health and employees,
  - (d) the role and structure of the Funeral Industry Council,
  - (e) the adequacy of legislation in meeting community needs, and
  - (f) any other relevant matter.
2. That the committee report by Thursday 17 November 2005<sup>1</sup>.

These terms of reference were referred to the Committee by resolution of the House, 23 March 2005, Minutes No. 96, Item 5, p.1292.

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<sup>1</sup> The Legislative Council extended the reporting date to 9 December 2005.

## Committee Membership

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<b>Ms Jan Burnswoods MLC</b>	Australian Labor Party	<i>Chair</i>
<b>The Hon Robyn Parker MLC</b>	Liberal Party	<i>Deputy Chair</i>
<b>The Hon Dr Arthur Chesterfield-Evans MLC</b>	Australian Democrats	
<b>The Hon Kayee Griffin MLC</b>	Australian Labor Party	
<b>The Hon Charlie Lynn MLC</b>	Liberal Party	
<b>The Hon Ian West MLC</b>	Australian Labor Party	

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## Chair's foreword

I am pleased to present the report of the Committee's Inquiry into the funeral industry. The Committee makes strong and positive recommendations aimed at addressing consumer and industry concerns about transparency of funeral costs, a clear complaints mechanism and enforcement of the public health regulations.

To better protect consumers the Committee recommends a comprehensive mandatory code of practice for the funeral industry. It is hoped this code of practice, developed with stakeholders and Government, will cover areas such as complaints handling, funeral bills and quotes, essential service funerals (basic funerals), professional and ethical practices, and be flexible enough to accommodate the funeral of people's choice. The Committee emphasises the relative cost benefit of cremations compared to burials and also explores cheaper options such as alternative coffins, do-it-yourself funerals and basic funerals.

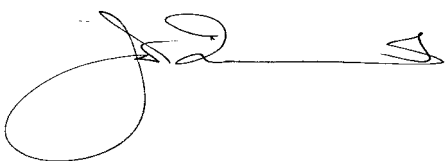
The industry concerns about some funeral directors breaching public health regulations have been acknowledged by the Committee and it is recommended that NSW Health and local government authorities increase enforcement of the regulations and NSW Health consider increasing penalties to act as more of a deterrent.

Some of the key themes that have become evident during the Inquiry are the need to raise awareness in the community of what is involved in organising a funeral, what to expect in terms of service and cost and where to go with a complaint. In response, the Committee has recommended that the Office of Fair Trading develop a Product Information Standard for the funeral industry, be the primary contact for complaints relating to the industry and undertake an education and information campaign about funeral arrangements.

This report also highlights the need for the Government to address the shortage of burial space in the Sydney Greater Metropolitan Area and strongly recommends that cemeteries be included in future planning strategies by the Government. The Committee supports renewable tenure of gravesites and the revocation of unused burial rights and supports the promotion of cremation as an alternative to burial.

We found that concern about the regulation of the funeral industry is not confined to New South Wales, and acknowledge the recent parliamentary inquiry in Victoria, an examination of the funeral industry in Queensland and a government review of the funeral industry in the United Kingdom in 2001. We included the results of these reviews in our deliberations and are confident that the recommendations in our report are appropriate for the issues raised by stakeholders in NSW.

On behalf of the Committee, I thank all the participants for their time and expertise. I am grateful to my Committee colleagues for the work they have undertaken on this Inquiry. On their behalf I would like to acknowledge the Secretariat for their assistance in the conduct of this Inquiry, and the production of this report. I commend this report to the Government.



**Jan Burnswoods MLC**  
**Chair**

## Executive summary

### Chapter 1 – Background to the inquiry

The Inquiry into the funeral industry was referred to the Committee by resolution of the House on 23 March 2005. The motion to conduct the Inquiry was moved by the Hon Dr Chesterfield-Evans, in response to community concerns that the Funeral Industry Council's proposed option for regulation of the industry might exclude smaller operators and impact on costs.

The Committee conducted six days of hearings and heard from over 100 participants, including NSW Health, the Office of Fair Trading, the Department of Lands, the Funeral Industry Council, representatives of the industry and community groups, representing consumer concerns. The Committee visited Port Macquarie and Broken Hill to gain an understanding of different aspects of the funeral industry in regional and rural areas of New South Wales.

### Chapter 2 – The funeral industry

This chapter provides an overall description of the funeral industry, including major stakeholder organisations, as well as relevant government departments involved in the oversight of legislative requirements. The number of deaths, funerals, burials and cremations per annum is also outlined to provide an indication of the size of the funeral industry in New South Wales and the degree to which demographic change may have affected the industry. In addition, a number of differences between rural, regional and metropolitan areas have important implications for this industry.

This chapter also examines the changes in the funeral industry over the past decade including the cost of funerals, the degree of competition, vertical integration and ownership.

Some of the issues raised in this Inquiry are currently being investigated by Government agencies. These include consumer protection issues and the shortage of burial space in the greater metropolitan area. In particular, interdepartmental committees have been established and are being coordinated by the Office of Fair Trading and the Department of Lands.

### Chapter 3 – Costs

The issue of costs was a key one for consumer groups who spoke to the Committee. This chapter examines the different cost elements of a funeral service, as well as the rise in the price of a funeral service above the consumer price index or the general rate of inflation.

Consumer groups expressed concern regarding the adequacy and transparency of pricing information available from funeral directors. The need to protect and educate vulnerable consumers about the products and choices available to them was highlighted to the Committee. In this regard the Committee recommends the Office of Fair Trading develop a Product Information Standard for the funeral industry. The Committee also recommends in Chapter 7 that a code of practice be developed which will include funeral bills and quotes and the cost of an essential service funeral (basic funeral).

Witnesses gave the Committee a number of reasons why they believe that the cost of funerals has increased above the rate of inflation. These include an increase in the professional service fee charged by funeral directors, an increase in the demand for and expectation of services included in the funeral

package requested by consumers and the increased cost of burial space. The Committee examines these issues and cheaper alternatives to reduce the cost of a funeral are discussed. This chapter also looks at the provision of pre-paid arrangements for a funeral.

#### **Chapter 4 – Burial space**

This chapter examines the current supply of, and future demand for, additional burial space, particularly in the Sydney Greater Metropolitan Area. This chapter considers and recommends ways in which burial space may be increased, or used more efficiently. In particular, the Committee recommends the inclusion in future planning strategies of cemeteries and crematoria, the renewable tenure of gravesites and the revocation of unused burial rights.

The Department of Lands informed the Committee that a Cemeteries Interdepartmental Committee had been established to address the issue of burial space. The Interdepartmental Committee includes the Department of Planning, NSW Health, local government, the Department of Environment and Conservation and Treasury, among others.

The Interdepartmental Committee has commenced a consultation process with the funeral industry and intends to extend this process to the broader community, to raise the awareness of the issue of burial space and gauge community opinion in relation to acceptable alternatives. The Committee strongly supports this consultation process and believes the Interdepartmental Committee has the potential to be an effective mechanism for the future planning of burial space.

#### **Chapter 5 – Community needs**

This chapter considers the burial, cremation and other practices related to a funeral service among different ethnic, cultural and religious groups in NSW. People from many religions are able to conduct their preferred funeral service and the Committee is committed to ensuring the options currently available to consumers continue to exist. The Committee also highlights the importance of informing consumers of these alternatives, so they can more effectively negotiate the kind of funeral service they would like.

The Committee heard that the level of complaints against the funeral industry is low. However the Committee also heard that there is a need for improved complaints handling within the industry and improved consumer awareness of the services and products available to them.

The Committee believes that distributing information relating to the funeral industry needs to be enhanced, so people may have some initial knowledge of and contact with the funeral industry, rather than waiting until they have a specific need for the service to discover their options. The Committee recommends that the Office of Fair Trading be the primary contact for consumer complaints against the funeral industry and run an education campaign to raise community awareness of the processes involved in arranging a funeral.

#### **Chapter 6 – Regulatory framework**

The funeral industry is regulated by a variety of legislation, including public health, fair trading and occupational health and safety legislation. In this chapter, the Committee examines the adequacy of the existing regulation of the funeral industry to protect consumers, public health and employees.

This chapter considers whether existing legislation protects public health and employees, as well as the role that the legislation plays in protecting consumers and addressing community needs. Overall, the Committee believes that the current legislative framework is adequate for the protection of public health and employees. We note that some concerns were raised in relation to current legislation and the Committee has proposed a number of specific areas for amendment to address these issues.

This chapter also addresses the need to enforce existing legislation, which was a key issue for industry members. The Committee notes that the NSW Health enforcement regime of public health regulations is based on complaints. The Committee believes that NSW Health and local authorities should increase enforcement efforts and NSW Health consider increasing the penalties for breaches under the *Public Health Act 1991* and regulation to act as more of a deterrent.

### **Chapter 7 – To license or not?**

This chapter addresses the proposal for a licensing system for the funeral industry. Currently, funeral directors do not have to be licensed to operate in New South Wales, although they must adhere to relevant legislation and regulation governing the industry. Some witnesses told the Committee that they believed the industry required a licensing system to ensure consumer protection, legislative compliance and a more structured complaints mechanism.

The Committee examined a number of options to increase regulation in the industry, including positive and negative licensing, an industry ombudsman scheme, accreditation and an industry wide code of practice. After examining the various options, and given the relatively low level and nature of the complaints against the funeral industry, the Committee recommends that a mandatory code of practice be developed. The Committee makes a number of recommendations regarding the development, content and enforcement of a code of practice including a clear complaints handling process.

If the level of complaints against the industry increases, the Committee believes that there will be a need to consider increasing the regulation of the industry through a licensing scheme.

In this chapter the Committee also considers the role and structure of the Funeral Industry Council (FIC), primarily in relation to the Council's potential to act as an industry regulator or licensee. While the Committee acknowledges that the FIC has played an important role in self-regulating the industry the Committee is concerned that the FIC, as currently constituted, is not representative of all stakeholders in the funeral industry, and in particular of small operators and consumers. Instead, the Committee supports a primary role for Government agencies, such as the Office of Fair Trading, in regulating the industry and developing a code of practice with the participation of industry and stakeholders.

## Summary of recommendations

- Recommendation 1** **30**  
 That the Office of Fair Trading develop a “Product Information Standard” for the funeral industry under section 38 of the *Fair Trading Act 1987* and require the funeral industry to display prices including itemisation of the components of the professional fee.
- Recommendation 2** **45**  
 That clear standards for the production and handling of coffins made of cardboard, chipboard or other alternative materials be developed in consultation with industry, manufacturers and Workcover and that the availability of these coffins be promoted to manufacturers, industry members and consumers.
- Recommendation 3** **48**  
 That the cost and make up of an essential service funeral (basic funeral) be part of the “Product Information Standard” for the funeral industry, developed by the Office of Fair Trading.
- Recommendation 4** **49**  
 That the outcomes of the Office of Fair Trading’s discussion paper, *Funeral Funds Regulation 2001: Potential Areas for Reform* be made public and that appropriate changes be made to the Funeral Funds Regulation 2001 that will improve the processes involved with pre-arranged funerals.
- Recommendation 5** **58**  
 That legislation be amended or new legislation be introduced to allow intensive reuse of family graves, and reuse of family graves be promoted as an option among the funeral industry and the public.
- Recommendation 6** **61**  
 That the existing legislation be amended to allow for renewable tenure, and that community education be undertaken to ensure there is a clear understanding that a gravesite is not held in perpetuity and that if permanent occupancy is required, tenure must be renewed at specified intervals.
- Recommendation 7** **63**  
 That the current legislation for the revocation of unused burial rights in Crown cemeteries, as set out in the *Crown Lands (General Reserves) By-law 2001*, be extended to other cemeteries in NSW and the legislation be amended to allow the advertising of unused burial rights to be done on a group basis as opposed to an individual basis. The community should be made more aware of unused burial rights by cemetery administrators ensuring older areas are well maintained and considering offering those graves at a cheaper cost.
- Recommendation 8** **65**  
 That space for new cemeteries and crematoria be included in future planning strategies, such as the Sydney Metropolitan Strategy.
- Recommendation 9** **67**  
 That cremations be encouraged as a way for the community to reduce the cost of a funeral and reduce the land needed for burials.

- Recommendation 10** 71  
That the funeral industry promote alternative interment practices to the community as a way of alleviating pressures on burial space in the greater metropolitan area of NSW.
- Recommendation 11** 73  
That legislation be developed and implemented to ensure cemeteries put aside sufficient funds to provide income to cover the costs of perpetual care of cemeteries.
- Recommendation 12** 87  
That the results of the Office of Fair Trading discussion paper titled *Review of Consumer Protection and the NSW Funeral Industry* be made public and an education campaign be run by the Office of Fair Trading to raise community awareness of the processes involved in arranging a funeral.
- Recommendation 13** 98  
That the Office of Fair Trading be the primary contact for consumer complaints regarding the funeral industry and that the complaints process be widely advertised to consumers.
- Recommendation 14** 100  
That NSW Health review the definition of an exhumation in the Public Health (Disposal of Bodies) Regulation 2002 taking into account whether an exhumation fee should apply to:
- cremated remains being removed from a grave or memorial garden and moved within a cemetery /crematorium
  - a coffin in a crypt or vault that is removed for repair that takes longer than a day
  - reuse of family graves.
- Recommendation 15** 101  
That NSW Health consider the definitions of a body collection vehicle and a hearse as part of the next review of the Public Health (Disposal of Bodies) Regulation 2002.
- Recommendation 16** 105  
That NSW Health and local authorities increase their efforts in enforcing the Public Health (Disposal of Bodies) Regulation 2002 and NSW Health consider increasing the penalties for breaches under the *Public Health Act 1991* and regulation to act as more of a deterrent.
- Recommendation 17** 105  
That NSW Health use the audit tool for the funeral industry to collect data on industry performance and non-compliance to help determine future enforcement needs for the funeral industry.
- Recommendation 18** 117  
That the funeral industry develop a mandatory, industry wide code of practice based on the Australian Consumer Complaints Commission guidelines, in conjunction with appropriate stakeholders and government agencies, ensuring that the code is consistent with current consumer and public health regulations.



- Recommendation 19** **118**
- That the code of practice developed for the funeral industry provide:
- that funeral directors provide a written quote prior to finalisation of the funeral arrangements that includes the total cost, itemisation of costs, such as specific costs that make up the professional fee and disbursements
  - that disbursements must not include commissions or mark up.
- Recommendation 20** **118**
- That the code of practice developed for the funeral industry include the cost of an essential service funeral (basic funeral), as well as the costs associated with any enhancements or additions.
- Recommendation 21** **119**
- That the funeral industry code of practice include:
- both mandatory criteria and voluntary best practice criteria
  - commercially significant sanctions for non-compliance
  - an education and information campaign to raise consumer awareness of the code.
- That the code of practice cover areas such as complaint handling, funeral bills and quotes, essential service funerals (basic funerals), professional and ethical practices and be flexible enough to accommodate cultural and religious practices.
- Recommendation 22** **120**
- That a Code of Practice Committee be established and composed of:
- trade associations, such as the Australian Funeral Directors Association, Funeral Directors Association of NSW, Cemeteries and Crematoria Association of NSW and small operators
  - representatives of consumers, local government and Unions NSW
  - regulatory authorities and consumer affairs agencies, such as NSW Health, Office of Fair Trading and possibly the Department of Lands.
- That the Code of Practice Committee include representatives from metropolitan and regional NSW.
- Recommendation 23** **120**
- That the Government review the scope of existing legislation to accommodate a mandatory code of practice and, if necessary, amend existing legislation to incorporate a mandatory code of practice for the funeral industry.

## Glossary

Cemetery Trust	Organisation governing a cemetery on Crown land, appointed by the Minister for Lands
Cremation	The burning of a body by fire
Crown land	Land is administered and managed by the Department of Lands under the <i>Crown Lands Act 1989</i> and associated legislation
Crypt	An above ground burial chamber
Exhumation	The digging up of a corpse from a grave
Interment	The burial of a corpse or cremated remains
Mausoleum	An above ground burial chamber or complex of chambers
Memorial	An object established in memory of a person or event
Monument	A stone or structure placed over a grave in memory of the dead
Right of Burial	A right purchased from a cemetery trust allowing the holder of that right to bury in a particular plot of a cemetery.
Vertical Integration	When a company owns or controls some or all of the various stages in the provision of a service or product, as when a cemetery acts as a funeral director or vice versa.
Vertical Interment	Where the coffin is placed vertically into the ground

## Acronyms

ACCC	Australian Competition and Consumer Commission
AFDA	Australian Funeral Directors Association
AIE	Australian Institute of Embalmers
CCA NSW	Cemeteries and Crematoria Association of NSW
CPI	Consumer Price Index
CPSA	Combined Pensioners and Superannuants Association
FDA NSW	Funeral Directors Association of NSW
FIC	Funeral Industry Council
GMA	Greater Metropolitan Area of Sydney
NCOSS	NSW Council of Social Services
OFT	Office of Fair Trading



# Chapter 1 Introduction

## Establishment and conduct of the Inquiry

- 1.1 The Inquiry into the funeral industry was referred to the Committee by resolution of the House on 23 March 2005.<sup>2</sup> The motion to conduct the Inquiry was moved by the Hon Dr Chesterfield-Evans, in response to community concerns that the Funeral Industry Council's proposed option for regulation of the industry might exclude smaller operators, among other issues.<sup>3</sup>
- 1.2 The Committee notes that concern about the regulation of the funeral industry is not confined to New South Wales. In 2003 the Victorian Joint Parliamentary Family and Community Development Committee was also referred an inquiry into the regulation of the funeral industry, and reported on 18 November 2005.<sup>4</sup> The Queensland University of Technology's Centre of Philanthropy and Nonprofit Studies recently conducted a report for the Queensland Funeral Industry Regulation Working Party, entitled *Best Practice in Funeral Industry Regulation July 2005*.<sup>5</sup>
- 1.3 The terms of reference for this Inquiry originally required the Committee to provide a final report to the Legislative Council by 17 November 2005. However, the Legislative Council extended the reporting date to 9 December 2005.<sup>6</sup>
- 1.4 The Committee widely advertised a call for submissions, including Sydney metropolitan, rural and regional newspapers. Specific stakeholders were also invited to make submissions, including the industry organisations, relevant government agencies, cultural and religious groups and non-government organisations, such as the Combined Pensioners and Superannuants Association of New South Wales and the NSW Council of Social Services (NCOSS).
- 1.5 In response to the call for submissions, the Committee received 61 submissions to the Inquiry. Submissions were provided by major stakeholders including NSW Health, the Office of Fair Trading, the Department of Lands, the Funeral Industry Council, the Australian Funeral Directors Association, the Funeral Directors Association of NSW and the Cemeteries and Crematoria Association of NSW. Submissions were also received from a number of individuals, funeral directors and religious groups. The full list of public submissions and authors appears at Appendix 1.

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<sup>2</sup> Legislative Council, New South Wales, *Minutes of Proceedings No 96*, 23 March 2005, Item 5, p1292

<sup>3</sup> NSW Legislative Council Hansard, 23 March 2005, Pages 14757

<sup>4</sup> [www.parliament.vic.gov.au/fcdc/current\\_inquiry.htm](http://www.parliament.vic.gov.au/fcdc/current_inquiry.htm) Accessed on 18 November 2005

<sup>5</sup> Ryan, N and Furneaux, C, 2005, *Best Practice in Funeral Industry Regulation*, prepared for the Funeral Industry Regulation Working Party (Queensland) by the Centre of Philanthropy and Nonprofit Studies, University of Queensland

<sup>6</sup> Legislative Council, New South Wales, *Minutes of Proceedings No 130*, 17 November 2005, Item 5, p1756

- 1.6** There have been six days of hearings with a total of 46 witnesses from 25 different organisations and groups. Appendix 2 contains a list of witnesses.
- 1.7** The Committee also conducted two site visits as part of this inquiry. The Committee visited Port Macquarie and Broken Hill to gain an understanding of the workings of the funeral industry in regional and rural areas of New South Wales. See Appendix 3 for details of the site visits.

## Report structure

- 1.8** Following the introduction, **Chapter 2** provides an overview of the funeral industry, to give the report a context in which to examine the key questions of the Inquiry. This chapter also responds to Term of Reference 1(a), which requires the Committee to inquire into changes in the funeral industry over the past decade including the cost of funerals, the degree of competition, vertical integration and ownership.
- 1.9** **Chapter 3** examines what costs are involved in a funeral including professional fees, disbursements, coffins and the cost of burial and cremation and what has impacted on increases in these costs. Alternatives to reduce the cost of funerals are also canvassed.
- 1.10** In **Chapter 4**, the Committee addresses the term of reference relating to the availability and affordability of burial spaces and considers options for increasing the supply of burial spaces, particularly in metropolitan New South Wales. The options considered include intensive use of family graves, renewable tenure of burial rights, revocation of unused burial rights, the inclusion of cemeteries in future planning strategies and alternative interment practices.
- 1.11** The focus of **Chapter 5** is community needs in terms of the funeral industry. This chapter considers whether the varying needs of different cultures and religions are being met. This chapter also looks at existing consumer protection mechanisms that apply to the industry.
- 1.12** In **Chapter 6** we look at the current regulatory framework governing the funeral industry. This chapter considers the complexity and adequacy of the current legislative framework and identifies issues that could be addressed.
- 1.13** **Chapter 7** gives consideration to whether the funeral industry requires further regulation. In particular it considers if funeral directors should be licensed or regulated in some other way, such as a code of practice or through an ombudsman scheme. This chapter also looks at the role of the Funeral Industry Council.

## Chapter 2 The funeral industry

This chapter provides an overview of the funeral industry, to give the report a context in which to examine the key questions of the Inquiry. This chapter also responds to the term of reference that requires the Committee to inquire into changes in the funeral industry over the past decade including the cost of funerals, the degree of competition, vertical integration and ownership.<sup>7</sup> Specifically, this chapter reports on:

- the number of deaths, funerals, burials and cremations each year and the relative popularity of burial and cremation
- the composition and size of the industry including the degree of competition and vertical integration within the industry and changes over time
- the funeral industry in regional areas
- demographic changes in NSW that affect the funeral industry
- legislation and regulation for the funeral industry.

### Number of deaths, funerals, burials and cremations

- 2.1** NSW Health advised the Committee that there are approximately 45,000 deaths in New South Wales per year.<sup>8</sup> The Funeral Industry Council advise that there are approximately 44,000 funerals in New South Wales every year.<sup>9</sup> Appendix 4 provides an outline of current procedures that must be followed when a person dies.
- 2.2** The Department of Lands discussion paper on burial space states that the proportion of cremations to the number of deaths is approximately two thirds.<sup>10</sup> This is similar to the Office of Fair Trading discussion paper on funeral funds that estimates the percentage of bodies cremated is 54%.<sup>11</sup>

### The popularity of burial and cremation

- 2.3** There has been an increase over the years in people choosing cremation over burial. The Australian Funeral Directors Association (AFDA) states on its website that in Australia today the numbers of people choosing to be cremated are steadily increasing:

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<sup>7</sup> Funeral costs are addressed in Chapter 3.

<sup>8</sup> Professor Peter Sainsbury, A/Deputy Director General, Population Health, NSW Health, Evidence, 8 August 2005, p6

<sup>9</sup> Submission 40, Funeral Industry Council, p12

<sup>10</sup> *Burial Space in the Sydney Greater Metropolitan Area*, Stakeholder Discussion Paper 2005, Department of Lands, p2

<sup>11</sup> *Funeral Funds Regulation 2001: Potential Areas for Reform*, Discussion Paper, Office of Fair Trading, June 2005, p3

Whilst there is some variance between states and territories, cremations now outnumber burials. Cremation funerals are much higher in city areas where crematory facilities are available. Rural and remote regions predominate in burials. People have a choice of either burial or cremation. In certain cultures cremation is not favoured (or may be prohibited within the relevant faith belief). In other cultures the opposite may occur with cremation being the custom e.g. as in the Hindu tradition. It is a matter of personal choice. Future trends may see higher instances of cremation due to increasing limits on cemetery space within or convenient to population centres.<sup>12</sup>

- 2.4 The Committee's visit to Broken Hill highlighted that some rural areas have more burials than cremations. Mr Ray Harvey, Broken Hill City Council, suggested that cremation was only recently available to the Broken Hill area and that was one reason why current numbers were lower than in metropolitan areas:

I think it has only been going on in Broken Hill for what I would say is a few years, but not a lot of years. I think as time goes on you will find that that will be the case.<sup>13</sup>

- 2.5 However, the Committee's visit to Port Macquarie provided a different story with 620 cremations a year and 95 burials a year at the Innes Gardens Memorial Park.<sup>14</sup>

## Composition and size of the funeral industry

- 2.6 The Committee considers the NSW funeral industry to consist of funeral directors businesses, crematoria, cemeteries, mortuaries (usually as part of funeral directors businesses), mortuary transfer services and embalmers. There are a number of other groups who support the industry including monumental masons, florists, manufacturers and distributors of coffins and caskets, coffin handle and incidental material manufacturers, plaque and urn manufacturers and grave diggers.<sup>15</sup>

- 2.7 In NSW there are approximately:

- 200 funeral directors businesses
- 37 crematoria
- 8 mortuary transfer services<sup>16</sup>
- approximately 3000 cemeteries (including burials on private ground and lone graves).<sup>17</sup>

- 2.8 The Committee recognises that the funeral industry is quite complex with varying degrees of business size and ownership from family owned and operated funeral directing businesses to

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<sup>12</sup> Australian Funeral Directors Association, [www.afda.org.au](http://www.afda.org.au), accessed 7 October 2005

<sup>13</sup> Mr Ray Harvey, Broken Hill City Council, Evidence, 30 August 2005, p4

<sup>14</sup> Mr Mark Pilgrim, Business Manager, Hastings Council, Evidence, 23 August 2005, p3

<sup>15</sup> Submission 40, p12

<sup>16</sup> *Review of Consumer Protection and the NSW Funeral Industry*, NSW Office of Fair Trading, September 2005, p4

<sup>17</sup> Submission 17a, National Trust of Australia (NSW), p1



multinational companies such as InvoCare, operating funeral directing business, crematoria and cemeteries.<sup>18</sup>

### **Industry associations**

**2.9** There are various industry associations which represent the funeral industry including the:

- Australian Funeral Directors Association (AFDA)
- Funeral Directors Association of NSW (FDA NSW)
- Cemeteries and Crematoria Association of NSW (CCA NSW)
- Australian Institute of Embalmers (AIE)
- Funeral Industry Council (FIC).

#### ***Australian Funeral Directors Association***

**2.10** The AFDA is a national, independent industry association and is the peak body of the funeral industry in Australia. It has members in every state and territory of Australia, who collectively conduct nearly 2 out of 3 funerals held in Australia each year. The members of the NSW and ACT Division of the AFDA conduct nearly 52% of the funerals held within NSW and ACT.<sup>19</sup>

#### ***Funeral Directors Association of NSW***

**2.11** The FDA NSW is a funeral employer organisation in NSW with a membership of 106 funeral directing companies and 30 companies that provide services to the industry. All member companies are Australian owned and family operated and represent small to medium companies in most parts of the State. FDA NSW members conduct over 15,000 of the 43,000 funerals each year in NSW.<sup>20</sup>

**2.12** The FDA NSW has no connection with AFDA. Mr Ken Chapman, Executive Secretary, FDA NSW, advised the Committee that there was a split between AFDA and FDA NSW 29 years ago:

I think the issue of all the funding from fees going to the Melbourne office [head office of AFDA] and then little bits and pieces being distributed back to New South Wales was the main cause of the break-up. So for 29 years we have had two different groups. ... Seven of our members belong to both organisations.<sup>21</sup>

<sup>18</sup> *Review of Consumer Protection and the NSW Funeral Industry*, NSW Office of Fair Trading, September 2005, p4

<sup>19</sup> Submission 43, Australian Funeral Directors Association, p3

<sup>20</sup> Submission 30, Funeral Directors Association of NSW, p1. It is assumed that the remainder of the funerals, approximately 6,000, are conducted by funeral directors who are not members of the industry associations.

<sup>21</sup> Mr Ken Chapman, Executive Secretary, Funeral Directors Association of NSW, Evidence, 8 August 2005, p54

***Cemeteries and Crematoria Association of NSW***

- 2.13** The CCA NSW is a trade association representing the interests of cemeteries and crematoria in NSW. The Association has over 70 member organisations and is recognised as the peak body for cemeteries and crematoria in NSW with ties to AFDA, FDA NSW and the Australasian Cemeteries and Crematoria Association.

***Australian Institute of Embalmers***

- 2.14** The AIE is the peak representative and authoritative national institute for qualified embalmers in the funeral industry. The AIE regulates and implements minimum education and post education standards, as well as performing a range of other funeral profession-specific functions.<sup>22</sup>

***Funeral Industry Council***

- 2.15** The FIC was formed in 1992 and is an ad hoc group of the key stakeholders in the funeral industry.<sup>23</sup> The FIC advised in their submission that:

The FIC is considered to be the peak industry group in NSW and was created to bring together the major stakeholders in the industry to consider issues that affect the industry as a whole, and to consider complaints from members of the public some of which can be dealt with by the FIC and others that are referred to various authorities.<sup>24</sup>

- 2.16** The voting members of the FIC include AFDA (NSW/ACT Division), the FDA NSW, InvoCare, the AIE, the Funeral and Allied Industries Union and the Labor Council. Consumer interest is represented by the Combined Pensioners and Superannuants Association (CPSA) and another consumer representative.<sup>25</sup>
- 2.17** Non-voting observers on the FIC include representatives of WorkCover NSW, NSW Health, NSW Office of Fair Trading, Department of Local Government and the Department of Lands. The CCA NSW recently resigned from the FIC because of the lack of progress and acknowledgement of Government in response to the FIC's options paper for regulating the funeral industry.<sup>26</sup>
- 2.18** The administration of the Council is fully funded by the major stakeholder groups.<sup>27</sup>
- 2.19** Chapter 7 will examine the future role for the FIC in the context of regulation for the industry.

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<sup>22</sup> <http://www.aieptyltd.org/history.htm> - accessed 7 November 2005

<sup>23</sup> Submission 40, p12

<sup>24</sup> Submission 40, p12

<sup>25</sup> Submission 40, p12

<sup>26</sup> Submission 40, p12

<sup>27</sup> Submission 40, p12

## Government agencies

**2.20** Government agencies involved in the funeral industry include:

- NSW Health for protecting public health through regulating the disposal of bodies
- Office of Fair Trading to protect consumers and administer pre-paid funeral funds
- Department of Lands in dealing with cemeteries on Crown Land
- WorkCover NSW in terms of workers compensation and occupational health and safety of workers in the industry
- Local councils are also involved in the industry in a number of ways, such as running cemeteries and crematoria and inspecting mortuary premises.

**2.21** Government agencies have initiated their own investigations into the funeral industry and these are discussed in paragraph 2.53.

## Degree of competition and vertical integration and changes over time

**2.22** As part of the terms of reference for this Inquiry, the Committee will consider whether the degree of competition and vertical integration has changed over time. The issue of whether competition and vertical integration in the industry has impacted on costs is examined in Chapter 3.

**2.23** In their submission to the Inquiry, AFDA comment that there is significant competitive pressure in the funeral industry. AFDA advise:

There are approximately 200 funeral firms competing in NSW and, like AFDA's membership, they vary in size from large to small. The AFDA believes the funeral industry in NSW is highly competitive with consumers having a wide choice between firms – especially in metropolitan and major regional areas.

... AFDA members report that consumers do gather offers from competing firms and funeral directors are often asked for quotes over the phone. Data from the AFDA member survey suggests that the average funeral director may have experienced a decrease of around 5% in the number of funerals conducted over the past five financial years. It is argued that this may be due to new entrants entering the market, while the number of deaths per year remains relatively static. In other words, funeral directors are under significant competitive pressure.<sup>28</sup>

**2.24** The Cemeteries and Crematoria Association of NSW state in their submission that across New South Wales there appears to be a fair degree of competition with regard to cemeteries and crematoria. Further to this, the Association advised the Committee at the hearing that competition between crematoria has been a recently new phenomenon:

In my opinion, prior to Macquarie Park crematorium being built, the other crematoriums were spread out around the metropolitan area and your business tended to come from your own catchment area.

<sup>28</sup> Submission 43, p14

But if you go to Macquarie Park and Northern Suburbs Crematoriums, the Northern Suburbs Crematorium is owned by InvoCare and the new crematorium at Macquarie Park is a public trust cemetery. They are probably not even a kilometre apart. It is the first time there has been direct competition between crematoriums in Sydney. Traditionally, they have gathered their business from their own catchment areas, so to speak.<sup>29</sup>

- 2.25** InvoCare advise that the ‘funeral industry is extremely competitive’ and ‘new operators are constantly entering the market and further increasing the level of competition.’<sup>30</sup>

### **Vertical integration**

- 2.26** Vertical integration is when a company owns or controls some or all of the various stages in the provision of a service or product, for example, when a funeral director may also own/operate a crematorium and cemetery. An example of such a company is InvoCare. InvoCare owns and runs funeral directing businesses, crematoria and cemeteries and mortuaries in NSW and nationally.

- 2.27** The NSW Council of Social Services (NCOSS) suggest in their submission that since the 1970s there has been increasing concentration of ownership in the funeral industry in Australia as larger companies such as InvoCare have replaced family owned firms. NCOSS suggest that this has contributed to increases in funeral prices and further advise:

As a consequence of this increased concentration of ownership, the industry has become vertically integrated with single firms now controlling cemeteries, crematoria, funeral directors, mortuaries and transport.

For example, the firm InvoCare now dominates the industry. By 2001 InvoCare had 21% of the funeral market and 35% of the cremations market (Macquarie Bank 2004 cited in Cottle & Keys 2004). InvoCare owns one hundred and twenty three funeral homes and twelve cemeteries and crematoria (InvoCare 2005a). InvoCare is now Australia’s largest private provider of funerals, burials and cremations (InvoCare 2005b).<sup>31</sup>

- 2.28** InvoCare advised in its submission to the Inquiry that their market share of funeral industry services has stabilised at 26%.<sup>32</sup> Mr Richard Davis, CEO, InvoCare, provided the Committee with further detail on the 26% market share. He stated:

When we talk about market share on the funeral side we are looking at the number of funeral services, which may result in either cremation or burial, and we estimate the number based on the deaths recorded last year in New South Wales is around 26 per cent. We believe we do a third of cremations and burials.<sup>33</sup>

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<sup>29</sup> Mr Ivan Webber, Member, Cemeteries and Crematoria Association of NSW, Evidence, 8 August 2005, p40

<sup>30</sup> Submission 42, InvoCare, p3

<sup>31</sup> Submission 33, NCOSS, p2

<sup>32</sup> Submission 42, p10

<sup>33</sup> Mr Richard Davis, CEO, InvoCare, Evidence, 5 September 2005, p80

- 2.29** The Committee notes that there is competition in the funeral industry and that vertical integration has increased. The issue of the impact of competition and increased vertical integration in the funeral industry on funeral costs is further considered in Chapter 3.

## Regional areas

- 2.30** The main variations between regional areas and the greater metropolitan area (GMA) of New South Wales (which includes the Sydney, Newcastle/Lower Hunter, Central Coast and Wollongong regions<sup>34</sup>) in terms of the funeral industry are that:

- regional areas have less of an issue with burial space in comparison to the greater metropolitan area of New South Wales
- regional areas tend to have lower costs for burials
- regional areas may have less competition between funeral directors which may impact on costs
- funeral directors based in regional towns may have a larger area to service than their city counterparts and may need to travel further to access a crematorium.

## Burial space

- 2.31** During the Committee's regional visits it was highlighted that regional and especially remote areas, such as Broken Hill, do not face the same issues with burial space as areas in the greater metropolitan area of NSW. Mr Ray Harvey, Broken Hill City Council, commented that there is no shortage of burial space in Broken Hill (which was evident to the Committee when it toured the Broken Hill Cemetery). Mr Harvey suggested that 'once we start getting close to Adelaide we will start looking at those sorts of issues but we have plenty of land at the moment.'<sup>35</sup>

- 2.32** Mr John Kaus, a funeral director at Mudgee and member of the Funeral Directors Association of NSW, agreed that burial space is not a critical issue in rural areas:

The burial space issue is not quite as critical in the rural areas, certainly in our area. I guess it is the nature of being a practitioner in a country area.<sup>36</sup>

- 2.33** In evidence provided by Mr Mark Pilgrim, Business Manager of Hastings Council, Mr Pilgrim advised that while burial space may not be as critical an issue as in greater metropolitan areas there is still the need to plan for the future. The Committee notes that this is important due to the increased growth in coastal areas. Mr Pilgrim advised the Committee:

We have possibly 60 to 70 years left at Innes Gardens. We probably have 100 years or more left at our outlying cemeteries. At one of our cemeteries we have only 30 to 40

<sup>34</sup> *Burial Space in the Sydney Greater Metropolitan Area*, Stakeholder Discussion Paper 2005, Department of Lands, p1

<sup>35</sup> Mr Harvey, Evidence, 30 August 2005, p7

<sup>36</sup> Mr John Kaus, Funeral Directors Association of NSW, Evidence, 8 August 2005, p56

years, so we are looking at purchasing State Forest land to try to expand that cemetery.<sup>37</sup>

### **Costs and competition**

**2.34** The Committee's regional visits demonstrated that in some regional areas the cost of funerals are cheaper than in the GMA. In terms of competition the Committee found that there were a number of funeral directors operating in Broken Hill and Port Macquarie. Further to this, the regional members of both AFDA and FDA NSW explained that there is competition in their towns of operation.

**2.35** Mr Harvey indicated to the Committee that costs may be cheaper in Broken Hill for burials as there is not an issue of lack of land. Mr Harvey advised that prices have not gone up much more than the consumer price index, 3-5% a year.<sup>38</sup>

**2.36** Similarly, Mr Kaus advised that in Mudgee costs have been relatively stable:

They are certainly substantially different to these, and there are probably more smaller, regular rises in the costs, probably annual rises. Most of the cemeteries are local government cemeteries and the fees tend to rise by around 5 per cent per year, or not much more than that. Having said that, some years ago there was a realisation that the cemetery fees that were charged by one particular local government body were vastly inadequate to cover the needs of that cemetery, and there was a marked spike in one year, a fairly large increase. That has not been repeated over time. I guess it brought the costs more into line, and the councils have not felt the need to raise the fees any more than by a reasonable increase every year.<sup>39</sup>

**2.37** The Cemeteries and Crematorium Association of NSW also provides evidence that burials cost less in areas outside the greater metropolitan areas (refer to table in Appendix 5). This information also suggests that the cost of cremation is not necessarily less in regional areas.<sup>40</sup>

**2.38** One example of where rural operators may need to charge more than non-rural operators was demonstrated by Mr John Curtis, the owner and operator of Fred J Potter & Son Funeral Directors in Broken Hill. Mr Curtis advised that they may charge slighter more for services, such as cremations, as they need to spread their costs out over a lower number clients:

Obviously our costs are considerably higher than say, Gawler SA. We do 100 cremations per year and they do about 1000 cremations per year. We have to spread our costs, which include maintenance, repairs, rent, gas, electricity, insurance, etc and a 15 year replacement cycle, over 100 cremations whereas Gawler can spread their cost over 1000 cremations. Obviously, the unit cost for us is considerably high than a cremator like Gawler.<sup>41</sup>

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<sup>37</sup> Mr Pilgrim, Evidence, 23 August 2005, p8

<sup>38</sup> Mr Harvey, Evidence, 30 August 2005, p7

<sup>39</sup> Mr Kaus, Evidence, 8 August 2005, p56

<sup>40</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW

<sup>41</sup> Correspondence from Mr John Curtis, Fred J Potter & Son, to Director, 6 October 2005

**2.39** Witnesses opposing the view funeral costs in regional areas were lower stated that a lack of competition in regional towns led to higher prices. Ms Megan Lee, General Manager of the Combined Pensioners and Superannuants Association, advised the Committee that in her view country areas were often forced to rely on the services of one funeral director, who had a monopoly because the population could not support competition.<sup>42</sup>

**2.40** However, the regional funeral directors that the Committee heard evidence from all stated that there is competition in their areas of operation. For example, Mr Kaus advised that he competes with another funeral director in his town of Mudgee and that there is healthy competition in his area:

I believe that there is a very healthy competition in our market. There are other practitioners within a radius of about 130 kilometres, so if for any reason the market perceived that there was not real and open competition in our area it would not be a big issue for the market to choose an operator outside.<sup>43</sup>

**2.41** Mr Darren Eddy, funeral director in Albury and Senior Vice President, Australian Funeral Directors Association, NSW/ACT advised the Committee:

My personal thought is, certainly within my area, that there is ample competition and we find we have a lot of people who ring, looking for funeral estimates. We encourage that. If we give an estimate to a family, we encourage them to seek an additional estimate from other funeral directors.<sup>44</sup>

**2.42** Mr Phillip Brooks, member of the Funeral Directors Association of NSW, also commented that he competes with another two funeral businesses in his area of Tamworth and that there are other businesses close by in Gunnedah and Barraba.<sup>45</sup> It would seem that competition is different between regional areas and obviously dependent on the region's population and the number of funeral businesses in and around each area.

### **Larger area to service and travel to a crematorium**

**2.43** Regional funeral directors may face other issues such as servicing a larger area in comparison to funeral directors in the greater metropolitan area and having to travel further to access a crematorium. Mr Kaus advised the Committee that businesses such as his in Mudgee do service large areas. Mr Kaus said:

My business is in Mudgee, with a population of around 8,500 people in the town, but we service an area of 120 kilometres radius in each direction from where we are headquartered. We have agents in outlying towns, and they assist families with what needs to be done there on the ground at the time. The total population base with whom we work is probably around 20,000 or perhaps 25,000 people. Servicing that

<sup>42</sup> Ms Megan Lee, General Manager, Combined Pensioners and Superannuants Association, Evidence, 14 June 2005, p24

<sup>43</sup> Mr Kaus, Evidence, 8 August 2005, p55

<sup>44</sup> Mr Darren Eddy, Senior Vice President, Australian Funeral Directors Association, NSW/ACT Division Evidence, 8 August 2005, p75

<sup>45</sup> Mr Phillip Brooks, Funeral Directors Association of NSW, Evidence, 8 August 2005, p56

population base, predominantly, are two funeral directors, ourselves and another firm also headquartered in Mudgee.<sup>46</sup>

- 2.44** Mr Eddy advised the Committee that the crematorium in Albury services a number of surrounding areas:

Our major cemetery is in Albury. There are smaller ones in outlying areas, but the only crematorium within approximately 150 kilometres that is council-owned is in Albury. We find that people who are seeking a cremation, they are coming into Albury, and we are having a lot of funeral directors who are coming to Albury and ringing up, getting prices and quotes from funeral directors, to provide that service in Albury.<sup>47</sup>

- 2.45** The Committee notes that some regional funeral directors may need to service larger areas than metropolitan funeral directors as well as having potentially higher travelling costs in terms of accessing other services such as crematoria. However, burial costs in regional NSW may be lower than in the GMA due to more available space for cemeteries.

## **Demographic changes in NSW that affect the funeral industry**

- 2.46** Demographic changes in Australia and New South Wales over the past few decades may have impacted on the funeral industry, in particular, immigration numbers and the cultural or religious background of those immigrants and consequent requirements for different funeral practices.
- 2.47** The Australian Bureau of Statistics (ABS) states that the growth of Australia's population has two components: natural increase and net overseas migration, with the natural increase component contributing to two thirds of the total growth since the beginning of the 20th century. The ABS states that New South Wales remains the most populous state. Further to this, the ABS highlights that overseas migration while a significant source of growth, fluctuates under the influence of government policy and conditions in Australia and other countries.<sup>48</sup>
- 2.48** The ABS advises that between 1971 and 2001, the proportion of all Australians affiliating with Christianity fell from 86% to 68%, while those affiliating with a non-Christian religion increased from 1% to 5%. Some non-Christian religions grew more rapidly than others over this period. Whereas the number of Australians of all ages affiliating with Judaism increased modestly between 1971 and 2001, affiliation with Buddhism, Islam and Hinduism increased more markedly.<sup>49</sup>
- 2.49** Growth in the numbers and proportions of Australians of all ages affiliating with Buddhism, Islam and Hinduism is largely due to changes in the countries of origin of recent immigrants. For example, of all people affiliating with Hinduism in 2001, 82% were born overseas.

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<sup>46</sup> Mr Kaus, Evidence, 8 August 2005, pp54-55

<sup>47</sup> Mr Eddy, Evidence, 8 August 2005, p75

<sup>48</sup> *Year Book Australia: Population size and growth*, Australian Bureau of Statistics, [www.abs.gov.au](http://www.abs.gov.au) (accessed 10 October 2005)

<sup>49</sup> *Australian Social Trends 2001: Other Areas of Concern: Religious affiliation and activity*, Australian Bureau of Statistics, [www.abs.gov.au](http://www.abs.gov.au) (accessed 6 October 2005)



Similarly, nearly three-quarters of all those affiliating with Buddhism were born overseas and of Australians of all ages affiliating with Islam in 2001, 62% were overseas born.<sup>50</sup>

**2.50** This change in religious affiliation of Australians may increase the different practices of funerals due to the differing cultural/religious requirements. This issue is expanded on in Chapter 5. The effect on burial space is examined in Chapter 4.

**2.51** A further demographic change that needs consideration in the funeral industry is the ageing population of “baby boomers” and the tendency to retire to coastal areas. Mr Derek Williams, General Manager, Anglican and General Cemetery Trusts, Rookwood Necropolis, advised the Committee that such demographic changes should be considered in future planning by the funeral industry. Mr Williams advised:

The demands placed on Rookwood, say, by the baby boomers in about nine years time and going forward are yet to be quantified.

.... If a group is migrating out of the city and retiring elsewhere, they are being replaced by new immigrants that tend to use Sydney as their main city of residence, hence the growth in Sydney compared with the other capital cities. Given that the mix at the moment tends to suggest a predominance to burial, I expect that the burial demand will be sustained and will not drop off over time. The cremation demand might drop, given that at the moment the current mix of baby boomers tend to predominantly cremate rather than bury. Just as the crematoriums in Sydney at the moment are only utilised to about 50 per cent of their capacity, I expect that that figure will not change very much for some time.<sup>51</sup>

**2.52** The Committee notes that demographic changes in NSW, such as immigration, ageing population and internal migration such as retirement to coastal areas, have an impact on the funeral industry and agrees that these changes need to be considered in planning for and by the funeral industry.

## Legislation and regulation

**2.53** The legislation for the funeral industry in NSW is complex as there are a number of pieces of legislation that apply. This section will cover the development of the legislation and outline the requirements to set up a funeral directing business, cemetery and crematorium. Discussion on the complexity and adequacy of this legislation can be found in Chapter 6.

### Development of the current legislation

**2.54** In its submission to the Inquiry NSW Health provided a background on how the legislation for the funeral industry has developed over the years.

<sup>50</sup> *Australian Social Trends 2001: Other Areas of Concern: Religious affiliation and activity*, Australian Bureau of Statistics, [www.abs.gov.au](http://www.abs.gov.au) (accessed 6 October 2005)

<sup>51</sup> Mr Derek Williams, General Manager, Anglican and General Cemetery Trusts, Rookwood Necropolis, Evidence, 5 September 2005, p19

- 2.55** From 1944 to 1987 the *Public Health Act 1902* required all undertakers to be licensed by the local authority (council) with the concurrence of the NSW Department of Public Health and then the NSW Health Commission (after 1974). Similarly, mortuaries had to be registered with the local council and be equipped in accordance with the Public Health Regulation. Crematoria and cremations were also controlled under the Act.<sup>52</sup>
- 2.56** Many of the regulatory functions were carried out by the local council. Burials and cemeteries were controlled by Ordinance 68, *Local Government Act 1919* and administered by local councils until 1993.
- 2.57** Commissioner Cross of the Industrial Relations Commission conducted an inquiry into the funeral industry in 1987 and the recommendations led to the promulgation of the Public Health (Funeral Industries) Regulation 1987.<sup>53</sup>
- 2.58** This regulation included issues not regulated prior to 1987, including the inspection of mortuaries, equipment standards of mortuaries, undertakers' vehicles, exhumations, embalming, prohibiting burials in certain areas and other general matters relating to the disposal of the dead.<sup>54</sup>
- 2.59** The *Public Health Act 1991* streamlined the regulation of the funeral industry so that those issues administered by local government were transferred to the *Local Government Act 1919*. This included the licensing of undertakers and the registration of mortuaries. Local government retained control of burial and cemetery issues. The Department of Health retained the issues of mortuary facilities, handling of bodies, vehicles and transport of bodies, exhumations, cremations and crematories which were incorporated into the public health regulations under the 1991 Act.<sup>55</sup>
- 2.60** The *Local Government Act 1993* and regulations were promulgated in 1993, requiring undertakers and mortuary operations to be approved by the relevant local council. Mortuaries had to comply with a premises standard schedule and improvements were enforceable under the "Orders" provisions of that Act and Local Government (Orders) Regulation 1993 and 1999.<sup>56</sup>
- 2.61** The Public Health (Disposal of Bodies) Regulation 2002 made in September 2002 continued the funeral industry matters covered by the 1991 regulation, while local government remained the approval authority for undertakers and mortuaries.<sup>57</sup>
- 2.62** After a National Competition Policy Review of the *Local Government Act 1993* the provisions requiring prior council approval of an undertaker's business and operation of a mortuary were repealed with effect from 1 November 2003. Schedule 4 of the Local Government (Orders) Regulation 1999 continues to provide the construction standards for mortuaries and approval

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<sup>52</sup> Submission 53, NSW Health, Annexure 1, p9

<sup>53</sup> Submission 53, Annexure 1, p9

<sup>54</sup> Submission 53, Annexure 1, p9

<sup>55</sup> Submission 53, Annexure 1, p9

<sup>56</sup> Submission 53, Annexure 1, p10

<sup>57</sup> Submission 53, Annexure 1, p10

to establish a mortuary is now solely under the *Environmental Planning and Assessment Act 1979* through normal planning and development application processes.<sup>58</sup>

### **Approvals and procedures for a new funeral director's business**

- 2.63** For a new business, approval is needed from the local council through a development application. The council may place conditions on the development consent. The council's environmental health officer may also consult with NSW Health, the Department of Environment and Conservation and other statutory authorities.
- 2.64** Council will form their decision having due regard to:
- *Environmental Planning and Assessment Act 1979*
  - *Local Government Act 1993*
  - Local Government (Approvals) Regulation 1999 Division 6 Clause 79 – it is a condition of approval to operate an undertaker's business that the operator must have access to and use an approved mortuary.
  - Local Government (Orders) Regulation 1999 – Schedule 4 – standards for mortuaries including construction and layout.
- 2.65** The *Public Health Act 1991* and Public Health (Disposal of Bodies) Regulation 2002 administered by NSW Health regulate the daily business including:
- Facilities – premises and vehicles for the handling of bodies
  - Handling of bodies – retention, embalming, preparation, coffins, body bags and viewing
  - Burials and register of burials
  - Exhumations – applications and approvals
  - Inspections of facilities
- 2.66** The business needs to be registered with the Office of Fair Trading to obtain a business name. A funeral director must comply with the *Fair Trading Act 1987* and the Fair Trading General Regulation 2002 in terms of dealing with consumers. A funeral director must register a funeral contributions fund or pre-paid funds under the *Funeral Funds Act 1979* and under this Act the funeral director must ensure that the funeral is delivered as ordered. The Funeral Funds Regulation 2002 regulates a funeral director's actions in terms of pre-paid funerals. This legislation is administered by the Office of Fair Trading.
- 2.67** The business must also comply with the *Occupational Health and Safety Act 2000* and the Occupational Health and Safety Regulation 2001 in terms of workplace and work practices standards for employees and others at the workplace. This legislation is administered by WorkCover NSW.

<sup>58</sup> Submission 53, Annexure 1, p10

- 2.68** The *Funeral Industries (State) Award 2005* applies regarding hours of work, pay, holidays and other employment related matters.
- 2.69** Under the *Coroners Act 1980* a funeral director cannot remove the body of the deceased until a medical practitioner has examined the body and assessed the cause of death and completed and signed a Medical Certificate of Cause of Death.
- 2.70** Various tax, superannuation, workers compensation and other state and federal legislation also applies to the funeral directing business.

### **Cemeteries and crematoria**

- 2.71** Setting up a new cemetery or crematorium can be an involved process in terms of development applications and approval processes and is also dependent on the type of cemetery to be created, whether public, private or trust run (see Chapter 4). The process is set out in the Cemeteries and Crematoria Association of NSW answers to questions taken on notice (available on the Committee's website [www.parliament.nsw.gov.au/socialissues](http://www.parliament.nsw.gov.au/socialissues)). It should be noted that the situation is much more complex in NSW than for example in Victoria, where all cemeteries and crematoria are publicly owned.
- 2.72** In terms of a crematorium, depending on the location and size, the application for development consent may be handled by either the local council or through the Department of Planning. A development such as a crematorium may also be subject to licensing input from the Department of Environment and Conservation under the *Protection of the Environment Operations Act 1997*. NSW Health must approve any new cremators before a cremation authority can install them (as set out in Section 52 of the *Public Health Act 1991*).
- 2.73** If the development application is granted, there are likely to be conditions attached that include hours of operation and the number of cremations per year.
- 2.74** The daily business of a crematorium and cemetery is regulated under the *Public Health Act 1991* and Public Health (Disposal of Bodies) Regulation 2002 including:
- Handling of bodies
  - Burials and register of burials
  - Exhumations – applications and approvals
  - Crematoria – cleanliness and closing of crematoria
  - Cremation – documentation, applications, timing, medical referees, register of cremations
  - Register of mortuaries and crematoria
  - Inspection of facilities
- 2.75** The businesses must also comply with the *Occupational Health and Safety Act 2000* and the Occupational Health and Safety Regulation 2001 in terms of workplace and work practices standards for employees and others at the workplace.

- 2.76** The *Funeral Industries (State) Award 2005* applies regarding hours of work, pay, holidays and other employment related matters.
- 2.77** The business needs to be registered with the Office of Fair Trading to obtain a business name. Various tax, superannuation, workers compensation and other state and federal legislation apply.
- 2.78** In terms of cemeteries, depending on whether they are public, private or trust run, there may be specific legislation to follow. There are at least 20 Acts relating to individual cemeteries including trusts within New South Wales, which address issues such as:
- Lease of site
  - Functions of reserve trust
  - Committee of trustees
  - Removal of human remains
  - Headstones and monuments
  - Management of the cemetery
- 2.79** Other relevant legislation for cemeteries includes:
- *Local Government Act 1993*:
    - Councils provide cemeteries and associated facilities to the community under sections 21-24 of this legislation (these are the broad enabling provisions of the Act)
    - Cemetery and crematoria services provided by local government are subject to fees (as per section 608 of the Local Government Act) and the determination of fees is set out in section 610.
  - *Crown Lands Act 1989* Section 128 By-laws (1)(p1)(p2) (p3)
    - The Governor may make by-laws for or with respect to amongst other things the closing of a reserve or any part of a reserve and the conditions to be observed with regard to that closure:
      - ◆ the granting, transfer and revocation of exclusive rights of burial in relation to a reserve that is dedicated or used for the purposes of a public cemetery
      - ◆ the measures to be taken by way of compensation to former holders of exclusive rights of burial in the event that those rights are revoked
      - ◆ the accounts to be kept by reserve trusts.
  - *Crown Lands (General Reserves) By-law 2001*:
    - Various sections of this legislation apply to general reserves on Crown Land
    - The general sections of this legislation apply to the conduct of the public in these reserves and the potential for fees and charges to be payable for services provided in the reserve, including cemeteries and the role and administrations of a reserve trust.
    - Additional provisions relate to:
      - ◆ planning, conduct and maintenance

- ◆ exclusive rights of burial including granting and transferring these rights
  - ◆ register of burial places
  - ◆ order and hours of burial
  - ◆ exhumations
- *Conversion of Cemeteries Act 1974:*
    - Permits the conversion of old cemeteries to parkland. Council cannot disturb the remains.

## Recent developments and reviews in the funeral industry

**2.80** Some of the issues raised in this Inquiry are currently being investigated by Government agencies, which have commenced initiatives to address issues such as consumer protection in the funeral industry and burial space in the greater metropolitan area. In particular, interdepartmental committees have been established and are being coordinated by the Office of Fair Trading and the Department of Lands.

### Office of Fair Trading

**2.81** Mr David O'Connor, Commissioner of Fair Trading, advised the Committee that in March 2005 the former Minister of Fair Trading convened an interdepartmental committee to review the adequacy of consumer protection for the funeral industry:

The committee's brief is to examine the funeral industry in New South Wales to determine the adequacy of current legislative and regulatory frameworks in regard to consumer protection and any other relevant matter. The agencies involved are the Office of Fair Trading as chair, the Department of Health, the Department of Lands, WorkCover, the Public Trustee and the Department of Ageing, Disability and Homecare.<sup>59</sup>

**2.82** The Office of Fair Trading has carried out a number of other initiatives to help better inform the interdepartmental committee about consumer issues with the funeral industry, including:

- a consumer hotline to allow consumers to share their experiences from arranging a funeral
- an on-line survey also to allow consumers to share their experiences
- shadow shopping research, involving phone interviews with funeral businesses across the State seeking information on prices.

**2.83** Mr O'Connor advised the Committee that the interdepartmental committee released a discussion paper in September 2005, titled *Review of Consumer Protection & the NSW Funeral Industry* (hereafter referred to as the Fair Trading discussion paper). This discussion paper notes that a number of consumer issues have been raised with the Office of Fair Trading with regard to the operation of the funeral industry in NSW including:

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<sup>59</sup> Mr David O'Connor, Commissioner of Fair Trading, Office of Fair Trading, Evidence, 19 September 2005, p4

- the perceived rising costs of funerals, especially the cost of a basic funeral
- the adequacy of mechanisms to protect consumers against unethical practices or unsatisfactory service by funeral directors
- pressure selling by some funeral directors and
- the lack of transparency regarding the prices of the goods and services in invoices for funerals or cremations.<sup>60</sup>

**2.84** The Fair Trading discussion paper canvasses a number of consumer protection options that could be considered if the review determines that there are problems with consumer protection in the industry. These options include:

- information and education campaign
- voluntary code of practice
- development of funeral brokering industry
- mandatory product information standards
- a mandatory basic funeral service
- licensing of funeral directors.<sup>61</sup>

**2.85** Submissions to the discussion paper closed in October and Mr O'Connor advised that:

Following the assessment of the submissions and consultation with relevant interest groups, a final report will be prepared for the consideration of the Hon. Diane Beamer MP, Minister for Fair Trading.<sup>62</sup>

**2.86** The Office of Fair Trading is also consulting on the issue of pre-paid funerals with the release in June 2005 of the discussion paper *Funeral Funds Regulation 2001: Potential Areas for Reform*. Mr O'Connor commented to the Committee that:

Issues being considered in the discussion paper include: cooling off periods for prepaid contracts; mandatory disclosure of items to be included in the contract; and the transfer of contracts between funeral funds. Submissions closed on 29 July and our office has received a number of submissions and is currently reviewing these documents. It is hoped that a final report will be prepared fairly soon.<sup>63</sup>

<sup>60</sup> *Review of Consumer Protection & the NSW Funeral Industry*, Office of Fair Trading, p3

<sup>61</sup> *Review of Consumer Protection & the NSW Funeral Industry*, Office of Fair Trading,, pp12-13

<sup>62</sup> Mr O'Connor, Evidence, 19 September 2005, p5

<sup>63</sup> Mr O'Connor, Evidence, 19 September 2005, p2

### **The Department of Lands**

**2.87** The Department of Lands advised the Committee that an interdepartmental committee on cemeteries was established to look at the potential shortage of burial space in the GMA. Ms Laing, Manager Land Policy, Department of Lands, stated that:

The Cemeteries Interdepartmental Committee has the following representation. The chair is the Director-General of the Department of Lands, Warwick Watkins; John Schmidt from the Cabinet Office; John Scott from Premier's Department; Lachlan Macdonald from Treasury; Robert Humphreys from the Department of Environment and Conservation; Peter Hamilton from the former Department of Infrastructure, Planning and Natural Resources; Neil Shaw from the Health Department; and Henry Musidlak from Local Government.<sup>64</sup>

**2.88** The Cemeteries Interdepartmental Committee through the Department of Lands distributed a discussion paper, titled *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005* (hereafter referred to as the Lands discussion paper), to the funeral industry for targeted consultation on the options for increasing burial space. The Committee is aware that some options for increasing burial space, such as the reuse of graves, may be a sensitive issue for some stakeholders. The reuse of graves is discussed in detail in Chapter 4.

**2.89** The Department of Lands advised that the comments of the funeral industry are currently being collated. It is expected that a further report will be released for wider consultation.<sup>65</sup>

**2.90** The Committee notes that the results of the Department of Lands discussion paper and the Office of Fair Trading discussion paper will be helpful in identifying and addressing issues raised in this Inquiry.

**2.91** The initiatives by the Office of Fair Trading and the Department of Lands are further discussed in relation to this Inquiry in the following chapters. In particular, the next chapter will be considering the issue of funeral costs and the Office of Fair Trading's discussion paper has helped inform the Committee of options available to address some of the relevant issues, such as price display and funeral funds.

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<sup>64</sup> Ms Laing, Manager Lands Policy, Department of Lands, Evidence, 8 August 2005, p26

<sup>65</sup> Ms Laing, Evidence, 8 August 2005, p26



## Chapter 3 Costs

The cost of a funeral was the subject of concern for many of the consumer groups the Committee heard from. Costs of funerals have increased steadily over the last 20 years. Witnesses told the Committee that the price increase of funerals has exceeded the consumer price index (CPI), hence the cost of a funeral has risen at a rate above that of the normal rate of inflation. A number of reasons were given by industry members to account for the increase in prices, including an increase in services provided to consumers, with a consequent increase in the professional service fee of the funeral director, an increase in the cost of burial and cremation and an increase in the price of a coffin or casket.

Consumer groups expressed concern regarding the adequacy and transparency of the pricing information available to consumers. The need to protect and educate consumers about the products and choices available to them was highlighted to the Committee. This chapter outlines the general services and products a consumer can expect to be charged for when purchasing a funeral service. The Committee articulates the evidence received in relation to the reason for the price increase of a funeral above the CPI and examines alternatives for consumers who wish to minimise the cost of a funeral.<sup>66</sup>

### Funeral service components and increases

**3.1** A funeral is an essential service that the majority of people will some day purchase. Many types of funerals are available to the consumer and there are normally a variety of decisions that need to be made, from selection of the funeral director that the bereaved may wish to assist them to organise the funeral, to the type of coffin a consumer may wish to use. Many of these choices may impact substantially on the cost of the overall funeral service.

**3.2** A funeral must include:

- medical certificate
- death certificate
- preparation of the body
- transport to the crematorium or cemetery
- cremation or burial.

**3.3** A range of additional services may be required (for example, transport of the body from hospital to a mortuary) or may be requested as part of a funeral service (for example, flower arrangements or attendance of a member of the clergy).

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<sup>66</sup> Many of the issues relating to the cost of funerals raised with the Committee were highlighted in the 1991 report of the Price Surveillance Authority's *Investigation into Funeral Prices*. This suggests to the Committee that the price of a funeral service has been a concern to consumers for some time, without a clear response from government or the industry.

- 3.4 Funeral directors are required by law to itemise the costs of the funeral on the consumer's bill.<sup>67</sup> These costs are grouped into charges for the professional services of the funeral director themselves, and charges for each of the 'disbursements' included in the funeral service. The cost of a coffin is itemised separately.
- 3.5 The Committee is sensitive to the unique situation a consumer faces when purchasing a funeral service. At a time when most people, particularly those for whom the death was unexpected, are in a state of emotional distress they must consider the practicalities of funeral service arrangements and costs. In a state of emotional distress it may not be possible for the bereaved to consider the financial implications of their choices as they normally would.
- 3.6 It is for this reason witnesses raised the need for consumer protection in relation to the funeral industry. The Australian Association of Social Workers advised that making funeral arrangements 'relies on the capacity and willingness of relatives to negotiate with funeral directors' in addition to the effective negotiation of fees, charges and services. The Association elaborated:
- Whilst these activities in themselves may be considered reasonable tasks of independent, fully functioning adults, bereavement brings two factors into juxtaposition. These are vulnerability, as a result of grief and inexperience in the tasks to be undertaken.<sup>68</sup>
- 3.7 Buying an appropriate funeral service is vastly different to making the usual purchases with which most people are familiar, different even from those commodities that might generally be regarded as a 'significant' purchase, such as a car or house. The Committee believes the provision of clear information regarding the costs a consumer can expect in relation to the purchase of a funeral is extremely important.

### **Examples of funeral service accounts**

- 3.8 The Committee received a number of examples of accounts for a funeral service. These accounts demonstrated a lack of uniformity in pricing and account itemisation making it difficult to compare the funerals. For example, in Funeral A the term 'Doctor's certificates' is used whereas in Funeral D there is a 'Death certificate' and 'Medical certificate'. The Committee noted that due to the sensitive nature of the information it was difficult to obtain information such as funeral bills. The information is useful to illustrate some issues raised during the Inquiry. The variations between accounts are illustrated below:

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<sup>67</sup> *Fair Trading Act 1987*, ss38-39

<sup>68</sup> Submission 32, Australian Association of Social Workers, p3

3.9 Funeral A<sup>69</sup> was conducted this year, 2005, in northern New South Wales:

#### Funeral A Table

Funeral component	Service	Price
<i>Disbursements</i>	Cremation fee	\$630.00
	Clergy/Celebrant fee	\$200.00
	Floral Tributes	\$120.00
	Press Notices	\$100.00
	Certified copy of death certificate	\$33.00
	Doctor's certificates	\$75.00
<i>Subtotal</i>		\$1,158.00
	Coffin	\$795.00
<i>Professional Fee</i>	Funeral Director's Professional Fee	\$1,795.00
	Administration surcharge (deductible if paid by due date)	\$250.00
<i>Total</i>		\$3,998.00

3.10 Funeral B<sup>70</sup> was conducted in 1997 in the Blue Mountains region:

#### Funeral B Table

Funeral component	Service	Price
<i>Disbursements</i>	Transfer of patient per mortuary ambulance with two assistants from nursing home to funeral home	\$185.00
	Mortuary attention and preparation	\$145.00
	Cremation papers and mandatory referee <sup>71</sup>	\$120.00
	Crematorium fees	\$525.00
	Clergy fees	\$85.00
	Floral tribute	\$80.00
	Press notices	\$105.00
	Death certificate	\$26.00

<sup>69</sup> Confidential information received by the Committee.

<sup>70</sup> Submission 5, Name suppressed at request of author

<sup>71</sup> A mandatory referee refers to Part 6 of the Public Health (Disposal of Bodies) Regulation 2002, where there are a number of procedures in relation to cremation which can only be carried out by a medical referee. The medical referee is appointed by the Director General of NSW Health or the Public Health Unit (as delegated) to consider cremation applications and issue cremation permits. A body can not be cremated without a cremation permit.

Funeral component	Service	Price
<i>Subtotal</i>		\$1271.00
	Coffin	\$695.00
<i>Professional Fee</i>	Funeral Director's professional service fee	\$1,300.00
	Estate fee (may be deducted if paid within 21 days)	\$100.00
<i>Total</i>		\$3,366.00

3.11 Funeral C<sup>72</sup> was conducted in 2005 in Wollongong:

#### Funeral C Table

Funeral component	Service	Price
<i>Disbursements</i>	Transfer of patient per mortuary ambulance with two assistants from nursing home to funeral home	\$230.00
	Refreshments	\$600.00
	Cremation papers and mandatory referee <sup>73</sup>	\$154.00
	Crematorium fees	\$520.00
	Clergy fees	\$209.00
	Floral tribute	\$130.00
	Death certificate	\$34.10
<i>Subtotal</i>		\$1877.10
	Coffin	\$925.00
<i>Professional Fee</i>	Funeral Director's professional service fee	\$1,915.00
	Estate fee (may be deducted if paid within 21 days)	\$220.00
<i>Total</i>		\$4,937.10

3.12 Funeral D<sup>74</sup> was conducted in 2005 in North Ryde:

#### Funeral D Table

Funeral component	Service	Price
<i>Disbursements</i>	Transfer and mortuary charges	\$1150.00
	Press notices	\$337.00
	Cremation permit	\$70.00
	Crematorium fees	\$840.00
	Celebrant	\$250.00

<sup>72</sup> Confidential information received by the Committee

<sup>73</sup> See footnote 71

<sup>74</sup> Confidential information received by the Committee

Funeral component	Service	Price
	Floral tribute	\$180.00
	Medical certificate	\$70.00
	Death certificate	\$36.00
<i>Subtotal</i>		\$2,933.00
	Casket	\$780.00
<i>Professional Fee</i>	Funeral Director's professional service fee	\$2,080.00
	GST	\$579.30
<i>Total</i>		\$6,372.30

**3.13** The items in the above bills are discussed in the following sections in relation to professional and disbursement fees, transparency and costs of cremations and burials.

#### **Increases in costs**

**3.14** The overall cost of a funeral was one of the biggest concerns raised during the Inquiry. The Committee was told that the cost of a funeral has increased at a rate much higher than that of the consumer price index (CPI). This means that the rate of inflation attributed to the category of goods that includes funeral services is lower than the price increase of funerals.

**3.15** Mr Gary Moore, Director of the Council of Social Services, New South Wales (NCOSS) told the Committee:

We [NCOSS] believe the average cost of funerals is rising and, some may say, excessive. Changes in the industry have led to increased concentration of ownership, vertical integration, and a reduction in effective competition between providers ... We need to ensure that the price of funerals is within the reach of low-income earners. Better protection for consumers from unscrupulous operators and an effective system to address complaints made against funeral industry operators is also required.<sup>75</sup>

**3.16** The Australian Bureau of Statistics' (ABS) website defines the consumer price index as 'representative of consumption expenditure by resident households in Australian metropolitan areas.' The website explains:

The simplest way of thinking about the CPI is to imagine a basket of goods and services comprising items typically acquired by Australian households. As prices vary, the total price of this basket will also vary. The CPI is simply a measure of the changes in the price of this basket as the prices of items in it change.<sup>76</sup>

**3.17** The CPI is a measure of 'pure price change' (i.e. price change excluding the effects of any change in quality or quantity of the goods or services concerned); the cost of each 'basket' or

<sup>75</sup> Mr Gary Moore, Director, Council of Social Services, New South Wales, Evidence, 14 June 2005, p36

<sup>76</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/lookupMF/1E564CACF4CBEC32CA256ED8007EF06E> (accessed on 12 October 2005)

category of goods is measured quarterly, against the cost of those goods in the previous quarter. The ABS warns that the measurement of price change has its limitations:

In the real world the qualities and quantities of goods and services available for consumers to purchase are continually changing, a substantial proportion of the effort of compiling the CPI goes to assessing the effect on prices of these changes and making appropriate adjustments before compiling the CPI.<sup>77</sup>

- 3.18** There are a number of broad categories that make up the CPI, including food, clothing, household furnishings, transportation, health and education. The funeral service is included under the miscellaneous category. Indexes are compiled for each of these baskets and for each state and territory.
- 3.19** The ABS explains that overall, the CPI provides a measure of the effects of inflation on Australian households and is used by the Reserve Bank of Australia ‘as the official measure of inflation for evaluating monetary policy.’<sup>78</sup>
- 3.20** As mentioned above, witnesses told the Committee that the cost of a funeral had increased at a rate substantially higher than that of the CPI. The Committee notes the difficulty of comparing the cost of a funeral with the CPI in that it is being measured against goods and services which may not have a great deal of relevance to the funeral industry. Unlike the ‘food’ category, which would include comparison of an easily definable group of goods and services, the price of funeral services is related to a much broader range of (sometimes unrelated) goods and services.
- 3.21** According to the Australian Funeral Directors Association (AFDA) submission, the overall costs, or money spent on funerals provided by the Association’s members, has increased by around 3.75% per annum over the four years from 2000-01 to 2004-05.<sup>79</sup> This is compared to the consumer price index increase of an average 2.6% per annum, over the same time period in Sydney.<sup>80</sup> The AFDA survey provided further detail of the increase of costs of different aspects of the funeral service. It concluded that the average increase in the cost of cemetery and burial fees over the four year period was 6.25% per annum, the average increase in the cost of cremation was 4% per annum and the average increase in the professional service fees charged by members of AFDA over this period was 3.3% per annum.<sup>81</sup>
- 3.22** The AFDA survey of its members also measured the different components of the funeral prices against one another, to determine the percentage of the total cost of the funeral each component made up. The survey concluded that the disbursement component of the price of a funeral made up 40% of the total cost.<sup>82</sup>

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<sup>77</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/lookupMF/1E564CACF4CBEC32CA256ED8007EF06E> (accessed on 12 October 2005)

<sup>78</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/lookupMF/1E564CACF4CBEC32CA256ED8007EF06E> (accessed on 12 October 2005)

<sup>79</sup> Submission 43, Australian Funeral Directors Association, p3

<sup>80</sup> The national CPI increase over the same period of time was recorded at 2.7%, however Sydney was used as being more indicative of the price rise in New South Wales.

<sup>81</sup> Submission 43, p3

<sup>82</sup> Submission 43, Addendum A, p21

**3.23** Witnesses gave the Committee a number of reasons why they believe that the cost of funerals has increased above the rate of inflation indicated by the consumer price index. These include:

- an increase in the professional service fee charged by funeral directors
- an increase in the demand and expectation of services included in the funeral package requested by consumers
- an increase in the services generally provided by the Funeral Director, including grief counselling, refreshments, etc
- the increased cost of burial space, directly related to the decreasing amount of burial space (including an increase in costs associated with burials in perpetuity)
- an increase in the cost of coffins
- the addition of Goods and Services Tax (GST) to funeral costs
- the impact of vertical integration on the industry.

#### **Professional fees**

**3.24** Professional fees are the charges for the service of the funeral director. The Funeral Directors Association of New South Wales (FDA NSW) advised that this fee covers a number of standard costs of running a funeral business, including:

- twenty-four hour availability of the funeral director
- provision of trained personnel (labour costs)
- liaising with and engaging the services of cemeteries, crematoria, clergy, media and other additional service providers
- the use of a hearse and other vehicles
- rent or mortgage on the premises
- salaries, rates, taxes and utilities, insurance and workers compensation
- administrative arrangements and equipment.<sup>83</sup>

**3.25** The AFDA told the Committee that service fees charged by members of their organisation had increased at an average rate of 3.3% per annum since 2000-01.<sup>84</sup> The AFDA explained that this increase ‘over and above inflationary pressures’ is the result of ‘the increased range of services demanded by consumers ... clients are typically seeking more viewings and more personalised services, there is also a greater need for funeral directors to care for ageing mourners and provide appropriate facilities.’<sup>85</sup> The AFDA elaborated:

<sup>83</sup> Submission 30, Funeral Directors Association of NSW, p5

<sup>84</sup> Submission 43, p12

<sup>85</sup> Submission 43, p12

In a context where service fees have increased only marginally over CPI, we have funeral directors offering a greater range of services and experiencing greater uptake across that range.<sup>86</sup>

- 3.26** The AFDA described the range of services that they believe funeral directors might now be required to provide ‘in addition to traditional funeral services’ including grief counselling, catering, audio-visual presentations, balloons and doves.<sup>87</sup> Witnesses were surprised by the cost of purchasing the funeral directors’ professional services. In the context of bills in which the disbursements are normally itemised, the professional services fee is unexplained. An Office of Fair Trading ‘shadow shopping’ survey estimates the average professional service fee of a ‘dignified low-cost funeral’ is \$1,871,<sup>88</sup> however this figure is dependent on the range of services requested, a factor which is highly variable.

### *Transparency of costs*

- 3.27** Inquiry participants noted the need for clear explanation of the costs involved and a more thorough breakdown on the bill for services. Participants also noted the difficulty in obtaining quotes in this industry.<sup>89</sup> The COTA National Seniors Partnership also told the Committee that ‘the difficulty experienced by clients in obtaining a clear indication of the services ... both itemised and in total’ was an issue of concern to its members.<sup>90</sup>
- 3.28** While the costs to the consumer incurred by the funeral director (disbursements) are generally itemised on the bill along with the price of the coffin, the professional service fee – often the largest single sum – is not itemised. The Committee heard that consumers were largely unaware of what this fee was for and were surprised by the large amount.<sup>91</sup> Some witnesses were unaware that services such as transfer arrangements and crematorium or burial were not provided by the funeral director themselves (and were charged and itemised on the bill as separate disbursements). Witnesses could not understand why they were being charged for those services in addition to a professional services fee.<sup>92</sup> In its submission, InvoCare noted that the role of the funeral director is largely ‘behind the scenes’ and that ‘few people realise the extent of a funeral director’s role or the time involved in properly managing a funeral process.’<sup>93</sup>
- 3.29** The Committee was advised of an example in which the funeral director quoted one price over the phone and on collection of the deceased advised that an additional \$275 would be

<sup>86</sup> Submission 43, p12

<sup>87</sup> Submission 43, p12

<sup>88</sup> Tabled document, Office of Fair Trading, *Funeral Industry Research Findings*, Figure 10, 19 September 2005

<sup>89</sup> Mr Mathew Elkins, State Treasurer, Combined Pensioners and Superannuants Association, Evidence, 14 June 2005, p24

<sup>90</sup> Submission 20, COTA National Seniors Partnership, p1

<sup>91</sup> For example, Submission 1, Submission 5, Submission 14 and Submission 19

<sup>92</sup> For example, Submission 5, Name suppressed at request of author, Attachment 1 and Submission 19, Ms Lisa Casey, pp3-4

<sup>93</sup> Submission 42, InvoCare, p13



charged, as collection was ‘out-of-hours’.<sup>94</sup> As outlined above, the AFDA describes an element of the professional services fee as ‘twenty four hour availability of the funeral director’. Wray Owen funerals also note that their professional service fee ‘includes the transfer of the deceased into our care, day or night.’<sup>95</sup>

**3.30** Witnesses told the Committee that the professional service fee should be broken down, to reflect the different elements of the service provided by the funeral director. The Council on the Ageing (NSW) told the Committee that it believed that ‘clear pricing for the various packages available’ was a key need for the industry.<sup>96</sup> Mr Moore of NCOSS told the Committee that full itemisation of the bill including the professional service fee would assist consumers to make an informed choice, particularly in NSW, as there is no pricing regime to indicate costs of the various elements of a funeral service.<sup>97</sup>

**3.31** The Committee is concerned that without the itemisation of the professional service fee, the consumer is left vulnerable to additional costs and charges for services that would normally come under basic service provision.

**3.32** Submissions to the Inquiry suggested that funeral directors should be obliged to clearly display prices in their place of business and provide price lists to customers at home visits. NCOSS advised that:

One of the biggest issues for consumers is lack of clarity about the price of funeral services and the total price of the funeral. In the United States, the US Federal Trade Commission Funeral Rule requires funeral services to provide a written price list to consumers. This list must itemise the price of sixteen items.<sup>98</sup>

**3.33** NCOSS suggests that funeral services should provide consumers accurate and itemised price information in writing and suggests this list should include the prices of coffins, transport, burials, cremations, directors’ fees and charges for relevant permits.<sup>99</sup>

**3.34** The Victorian parliamentary inquiry into the regulation of the funeral industry in Victoria also found that consumer comparisons of products and services were difficult as pricing information is not readily available. The Victorian inquiry recommended that funeral directors disclose upon request products, services and prices in a clear and consistent manner across the industry.<sup>100</sup>

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<sup>94</sup> Submission 2a, Ms P Warren, p4

<sup>95</sup> Submission 29, Wray Owen Funeral Directors, p5

<sup>96</sup> Submission 51, Council on the Ageing (NSW), p3

<sup>97</sup> Mr Moore, Evidence, 14 June 2005, p41

<sup>98</sup> Submission 33, NCOSS, p9

<sup>99</sup> Submission 33, p9

<sup>100</sup> *Inquiry into Regulation of the Funeral Industry*, Family and Community Development Committee, Parliament of Victoria, November 2005, p140

- 3.35** The Office of Fair Trading discussion paper points out that under section 38 of the *Fair Trading Act 1987* regulations may prescribe a “Product Information Standard” to be used for a specific kind of good:

A person must not supply goods unless the person has complied with a mandatory product information standard. A product information standard consists of requirements for disclosure of information such as price, performance, compositions, contents, place and date of manufacture and care and storage of goods. Funeral directors could be required to display itemised prices of goods provided in a funeral “package” as well as any refunds, discounts, rebates and/or payment plans available.

<sup>101</sup>

- 3.36** Clearly displaying prices for regular items and services used in funerals would be beneficial to consumers, especially vulnerable consumers. The Committee believes that the Office of Fair Trading should require the funeral industry to display prices under section 38 of the *Fair Trading Act 1987*.
- 3.37** In Chapter 7, the Committee examines the need for a code of practice, outlining the standards of service provision expected of a funeral director. The Committee recommends in Chapter 7 that the code of practice developed by the industry, based on the Australian Consumer Complaints Commission guidelines, include a recommendation that the charges associated with the professional service fee include the specific items that make up this cost.

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### Recommendation 1

That the Office of Fair Trading develop a “Product Information Standard” for the funeral industry under section 38 of the *Fair Trading Act 1987* and require the funeral industry to display prices including itemisation of the components of the professional fee.

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### Disbursements

- 3.38** A disbursement is a service procured by the funeral director, a cost that is directly transferred to the client. With the exception of the cost of a coffin, which attracts a mark-up, payment of the funeral director is entirely through the professional services charge. Mr Warwick Hansen, funeral director and member of the Funeral Industry Council, explained the distinction between a disbursement fee and the professional service fee:

There is the funeral director's costs, his or her professional fees that are made up to run their particular businesses, to cover all overheads ... On top of that would be the cost of coffins, which is an issue that should be shown separately on the accounts ... You then move to areas of disbursements, which are items of cost that are paid by funeral directors on behalf of families, and fees could cover such issues as cemetery fees or cremation fees; if it is a cremation there will be medical certificates to be completed by respective doctors; there could be donations made on behalf of funeral

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<sup>101</sup> *Review of Consumer Protection & the NSW Funeral Industry*, Office of Fair Trading, p12

directors to clergy or celebrants; if families wish funeral directors to organise flowers there would be the cost of flowers.<sup>102</sup>

**3.39** Disbursements include, among other things:

- the cremation or burial of the deceased
- the death certificate
- celebrant or clergy fees
- flowers
- press notices
- memorial cards.<sup>103</sup>

**3.40** As noted above, the AFDA survey indicated that disbursements constituted a significant part of funeral costs. The FDA NSW also told the Committee that in its view, the elements that had most affected the increase of funeral costs above the CPI 'have been largely attributable to increases in payments made by funeral directors on behalf of their clients ... for example cemetery fees, cremation fees and GST'.<sup>104</sup>

**3.41** Witnesses from the funeral industry emphasised the difficulty of comparing the increasing costs of disbursements because, they argued, consumers were requesting more services under this category and price comparison did not take into account this factor. Mr Ian Strathie, Divisional President, AFDA, told the Committee:

When we look at people who compare costs of funerals they say "This funeral account was \$2,500 and this one is \$5,000. Where is the difference?" What we really have to do is compare apples with apples and oranges with oranges ... Every funeral is different, every person is different, the cost structure for every funeral, although the services fees are the same, the coffin is the same, but when everything is added, [the total cost may vary] because there is no continuity between that Holden and that Holden.<sup>105</sup>

**3.42** There are a number of disbursement costs that are usually included in a funeral service. However, the majority of evidence to this Inquiry suggests that the disbursement cost of burial or cremation has increased substantially over the last decade, impacting on the overall cost of a funeral.

#### ***Burial or cremation costs***

**3.43** Every funeral requires disposal of the body. This can occur through either burial or cremation. The cost of a burial normally includes the purchase of a burial plot, interment, landscaping

<sup>102</sup> Mr Warwick Hansen, Member, Funeral Industry Council, Evidence, 14 June 2005, pp11-12

<sup>103</sup> Submission 5, Name suppressed at request of author, Attachment 1 and Ms Jan Phillips, Funeral Directors Association of NSW, Evidence, 8 August 2005, p60

<sup>104</sup> Submission 30, p3

<sup>105</sup> Mr Ian Strathie, President NSW/ACT Division, Australian Funeral Directors Association, Evidence, 8 August 2005, p78

and perpetual maintenance and a headstone or grave marker, however there are many variations and alternatives to this arrangement. It is possible to purchase an above ground crypt, for example, or a family plot for the interment of more than one person. The different alternatives would all have an effect on the price of the funeral. Further, different cemeteries have differing price ranges, dependent on factors such as location (metropolitan and regional areas differ markedly in price), soil quality or ownership.<sup>106</sup>

**3.44** A standard cremation is substantially cheaper than the cost of burial, as it simply includes the cremation of the body at a crematorium. The Committee notes that the examples of Funeral A, Funeral B, Funeral C and Funeral D were cremations. Additional expenses may include the burial of the ashes in a cemetery or an urn or container to inter the ashes. The different types of burial are examined in more detail in Chapter 4.

**3.45** In its submission, the AFDA told the Committee that the most expensive components of the disbursement fee are the cemetery and burial fees and cremation fees.<sup>107</sup> Mr Warwick Hansen, funeral director and member of the Funeral Industry Council told the Committee that the cost of the actual burial plot may range from 'around \$3,000 to \$11,000'.<sup>108</sup> He explained further:

The funeral director generally would make the arrangement with the family and would book the cemetery plot on behalf of the family and generally pay for that on behalf of the family ... we are not talking small amounts of money here, we are talking thousands of dollars, and certainly there is quite a cross-section of costs that are covered. [It] would cover the actual plot itself and generally the digging of the first burial in that cost. An average digging fee, like an opening fee for a grave in Sydney, is somewhere in the vicinity of anywhere between \$1,000 to \$1,200.<sup>109</sup>

**3.46** InvoCare, the largest funeral services provider in Australia, outlined in its submission that the standard cost of a cremation in 2004 was approximately \$671. The standard charge for an InvoCare burial without memorialisation is approximately \$2,700 (the Committee notes that this is only one component of the bill).<sup>110</sup> In answers to questions on notice, the Cemeteries and Crematoria Association of NSW (CCA NSW) compared the costs of different types of burial, as well as cremation fees for cemeteries across New South Wales for the last ten years.<sup>111</sup> These figures are attached at Appendix 5.

**3.47** The Office of Fair Trading provided information from the Public Trustee's Office that pays for between 1,600 and 2,000 funerals a year. The information clearly shows an increase of 14% in the average funeral claim over five years taking into account CPI, from \$3,857 in 2000 to \$5,081 in 2005.<sup>112</sup>

<sup>106</sup> Answers to questions on notice taken during evidence 8 August 2005, Cemeteries and Crematoria Association of NSW, p1

<sup>107</sup> Submission 43, p3

<sup>108</sup> Mr Hansen, , Evidence, 14 June 2005, p12

<sup>109</sup> Mr Hansen, Evidence, 14 June 2005, p11-12

<sup>110</sup> Submission 42, InvoCare, pp4-5

<sup>111</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW.

<sup>112</sup> Answers to questions on notice taken during evidence on 19 September 2005, Office of Fair Trading, Question 3, p3

- 3.48** In the information provided by the CCA NSW it is clear that costs of burials are significantly higher than cremations, especially in the greater metropolitan area of NSW, and that there has been a significant increase in the cost of burials over the past decade. The price differences are clearly illustrated in the following tables:

**Table of comparison of prices for burials between 1995 and 2005<sup>113</sup>**

Cemetery	1995	2005 (including GST)
Woronora Cemetery	\$1430	\$3465
Lismore Memorial Gardens	\$1075	\$1950

**Table of comparison of prices for cremations between 1996 and 2005<sup>114</sup>**

Crematoria	1996	2005 (excluding GST)
Woronora Crematorium	\$475	\$776
Lismore Memorial Gardens	\$450	\$704

- 3.49** The significant increase in the price of burials was also demonstrated by Mr Harold O’Keefe, Catholic Cemeteries Board. Mr O’Keefe advised the Committee that in 1994 the right of burial at the Rookwood Catholic Cemetery was \$1,107 and in 2005 it is \$2,915.<sup>115</sup>
- 3.50** The FDA NSW told the Committee that, in their opinion, the costs of cremations and burials were the significant factors in the rise of the overall price of a funeral:

The main issues identified as being responsible for the increase above the CPI were increases in the costs of cremations and burials and the interment fees and other costs such as disbursements over which a funeral director has no control. I draw your attention to a survey set out in our paper conducted through our membership that disclosed that the average price of a burial has risen in the past decade by 67%, while cremation costs have increased by 36%. The CPI during that period has increased only 28.6%.<sup>116</sup>

- 3.51** In the examples of Funeral A and Funeral B the cremation fee is over 40% of the total for disbursements and 16% of the overall cost of the funerals. In the examples of Funeral C and Funeral D the cremation fee is approximately 30% of the total of disbursements and 13% of

<sup>113</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW, Attachment A. See Appendix 5 for full table of costs of burial and cremations.

<sup>114</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW, Attachment A. See Appendix 5 for full table of costs of burial and cremations.

<sup>115</sup> Tabled document, Mr Harold O’Keefe, Catholic Cemeteries Board, 5 September 2005.

<sup>116</sup> Mr Ken Chapman, Executive Secretary, Funeral Directors Association of NSW, Evidence, 8 August 2005, p52

the overall cost of funerals. The Committee notes that cremation fees are a significant part of the funeral cost. However, it is acknowledged that if a funeral included a burial the cost of the funeral has the potential to increase by over \$2000 as in the example for Woronora Cemetery and Crematorium.

**3.52** The AFDA agreed that increased burial and cremation fees are largely responsible for the overall price rise, noting that the costs of cemetery and burial fees over the period from 2000-01 to 2004-05 had increased at a rate of 6.25% per annum which is greater than the 3.75% per annum increase in the overall cost of funerals and the 3.3% per annum increase in professional fees.<sup>117</sup> Factors contributing to the substantial price increases are:

- planning for perpetual care of cemeteries
- the changing needs of the population
- the costs of labour and supplies.<sup>118</sup>

**3.53** The costs of maintaining cemeteries over the long term also affect the purchase cost of a burial right, particularly in the case where the right has been purchased 'in perpetuity'. Across New South Wales, cemeteries are administered by a number of different bodies, including local government, cemetery trusts and churches. The different operation of these organisations is discussed in Chapter 4. Appendix 5 provides detail from the CCA NSW of the different costs associated with different cemeteries and crematoria which are members of the CCA NSW.

**3.54** The CCA NSW stressed that both public and private cemeteries need to secure adequate funding for 'future maintenance'.<sup>119</sup> Planning for perpetual maintenance, particularly in cemeteries in the Greater Metropolitan Area (GMA) where burial space is decreasing, will impact on the costs associated with purchase of a burial right or interment of ashes in a cemetery. Mr Williams, General Manager, Anglican and General Trusts, Rookwood Necropolis, advised the Committee that funding for perpetual care is a relatively new provision, which he has 'been working at continually for the last decade' so as to increase funding reserves for the cemeteries at Rookwood, and that almost half of what people now pay for a burial site is being set aside for future maintenance.<sup>120</sup>

**3.55** Mr Mark Pilgrim, Facilities Manager at Hastings Council in Port Macquarie, told the Committee that burial costs at a cemetery run by the Council have almost doubled over the last ten years.<sup>121</sup> He explained that this was primarily a result of increased funding to provide for ongoing maintenance.<sup>122</sup> The Committee notes that the need for cemeteries to cover

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<sup>117</sup> Submission 43, p13

<sup>118</sup> Submission 28, Cemeteries and Crematoria Association of NSW, p3

<sup>119</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW, Attachment J, Question 6

<sup>120</sup> Mr Derek Williams, General Manager, Anglican and General Trusts, Rookwood Necropolis, Evidence, 5 September 2005, p22

<sup>121</sup> Mr Mark Pilgrim, Business Manager, Hastings Council, Evidence, 23 August 2005, p4

<sup>122</sup> Mr Pilgrim, Evidence, 23 August 2005, pp4-5

perpetual care has an impact on the cost of burials. Further detail on this issue can be found in Chapter 4.

- 3.56** The Committee has heard that a recent move by cemetery trusts, including the Anglican and General Trusts at Rookwood, to offer packages that include burial and monuments, has had an impact on groups such as the monumental masons. Mr Barry Jago, Monumental Masons Association of NSW said:

A few trust cemeteries, in order to raise additional revenue, have decided to direct sell land/burial monument packages to the public at the time of the funeral when families are at their most vulnerable... The few cemeteries who, in recent years, have decided to direct sell monuments to the public have numerous advantages over our industry and we cannot fairly compete against them.<sup>123</sup>

- 3.57** The Committee notes that the packages offered by cemetery trusts is a way to increase the income of the cemetery and contribute to long term care of the cemetery. However, the Committee notes that these packages have an impact on groups such as the monumental masons.

- 3.58** Cultural, religious and ethnic groups requiring different types of funeral services may impact on the average cost of funerals. Witnesses gave examples, such as the Chinese community, who may request more elaborate burial or cremation services,<sup>124</sup> and the Italian community, who are traditionally buried above ground, purchasing family crypts and sepulchres.<sup>125</sup> Witnesses suggested that higher numbers of requests for funerals other than the 'traditional' Anglo-Saxon style of burial or cremation may contribute to an increase in the overall amount of money spent on the service.<sup>126</sup>

- 3.59** As is the case for most industries, the costs of labour and supplies are generally transferred to the consumer. Evidence to this Inquiry did not allow the Committee to determine if the costs of labour relating to the function of a cemetery or crematoria had impacted on the costs of a burial or cremation, or a funeral service generally.

- 3.60** The Committee notes that the cost of burials, and to a lesser extent cremations, has significantly increased over the last decade. The Committee believes that the rise in cemetery and crematoria fees has played a more significant role in increasing the overall cost of funerals than the increase in the professional fees charged by funeral directors.

<sup>123</sup> Correspondence from Mr Barry Jago, Monumental Masons Association of NSW, to Chair, 28 September 2005

<sup>124</sup> Mr Mark Kelly, Kellys Far West Funerals, Evidence, 30 August, p15

<sup>125</sup> Mr Harold O'Keefe, Catholic Cemeteries Board, Evidence, 5 September 2005, p34

<sup>126</sup> Submission 30, p4

### Coffins and caskets

- 3.61** Regardless of cremation or burial, a coffin or casket is an essential part of the funeral service for the majority of people.<sup>127</sup> The coffin can either be constructed (to specific standards) by the consumer or can be purchased, normally through the funeral director. The funeral director adds a 'mark-up' or additional charge for their profit on the price of the coffin. The funeral director may also trim the coffin or casket, adding lining, handles and other fittings that attract additional costs.<sup>128</sup> The AFDA notes in its submission, that coffins and caskets are purchased by funeral directors 'wholesale, at a price that is determined by the market and, therefore, outside the control of a funeral director'.<sup>129</sup>
- 3.62** A wide range of coffins and caskets is available to consumers. According to the Office of Fair Trading funeral industry survey, in which the scenario given was a 'dignified but low-cost funeral', the average cost of a coffin is \$848.<sup>130</sup> The Committee notes that in Funeral A, Funeral B and Funeral D examples the cost of coffins is similar to the average price and Funeral C is slightly higher. Mr Kelly of Kelly's Far West Funeral Services in Broken Hill explained that his coffins ranged in price from \$250 to approximately \$6,600 but he believed it was possible to purchase coffins and caskets that cost tens of thousands of dollars.<sup>131</sup>
- 3.63** Cheaper alternatives such as chipboard, cardboard and reusable coffins as well as coffin covers are discussed later in this chapter starting at paragraph 3.79.
- 3.64** Witnesses such as the Combined Pensioners and Superannuants Association (CPSA) and the New South Wales Council of Social Services (NCOSS) expressed some concern that clients of the funeral industry are particularly susceptible to persuasive 'hard sell' sales techniques as they are making purchases at an emotionally vulnerable time.<sup>132</sup> As CPSA notes, few customers select service providers in advance of arranging a funeral and they may not be making decisions with the same regard for cost as they normally would.<sup>133</sup> CPSA is aware of instances in which funerals had cost a customer far more than they could easily afford,<sup>134</sup> although the Committee heard no further evidence on this issue.
- 3.65** The Committee also heard that consumers who wished to construct their own coffin were being discouraged from doing so by funeral directors.<sup>135</sup> While a coffin must meet certain public health and occupational health and safety standards, it is not illegal for consumers to

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<sup>127</sup> A coffin is an eight sided box that tapers at the foot, while a casket is four sided and perfectly rectangular. A casket is generally more ornate than a coffin.

<sup>128</sup> Ms Phillips, 8 August 2005, p61

<sup>129</sup> Submission 43, p10

<sup>130</sup> Tabled document, Office of Fair Trading, *Funeral Industry Research Findings*, Figure 1, 19 September 2005

<sup>131</sup> Mr Kelly, Evidence, 30 August 2005, pp14-15

<sup>132</sup> Submission 33, p3

<sup>133</sup> Submission 39, Combined Pensioner and Superannuants Association, p18

<sup>134</sup> Ms Megan Lee, General Manager, Combined Pensioner and Superannuants Association, Evidence, 15 June 2005, p25

<sup>135</sup> Ms Zenith Virago, The Natural Death Centre, Evidence, 5 September 2005, p45



construct their own coffin. Alternatives to purchasing a coffin through a funeral director are discussed later in this chapter.

### **Goods and Services Tax**

- 3.66** The Goods and Services Tax (GST) is a relatively new component of funeral service costs. As outlined in the FDA NSW submission, GST now applies to all aspects of the funeral industry and is a contributor to the increase in costs.<sup>136</sup> The Committee notes, however, that the introduction of GST would not account for the increase in the price of a funeral service above the CPI.

### **Impact of vertical integration of industry on costs**

- 3.67** Vertical integration in the funeral industry was discussed briefly in Chapter 2. When people discuss vertical integration they are generally referring to the amount of funeral industry services owned by InvoCare, a majority Australian owned company that operates funeral homes, cemeteries and crematoria. As outlined in Chapter 2, InvoCare owns 26% of the funeral industry and is the largest single funeral operator in New South Wales.<sup>137</sup> InvoCare estimates that it cremates or inters approximately one third of bodies in NSW.<sup>138</sup>
- 3.68** Some witnesses told the Committee that one company controlling such a large share of the market may make it difficult for smaller, privately owned business to retain a share of the market. NCOSS was concerned that InvoCare's acquisition of a substantial part of the industry could lead to a situation in which the company could dictate prices and impede competitive practice.<sup>139</sup> NCOSS told the Committee that the 'excessive price of funerals...are a consequence of increased concentration of ownership, vertical integration and the hard sell tactics of unscrupulous funeral industry operators.'<sup>140</sup>
- 3.69** NCOSS' view was not shared by members of the funeral industry. Not surprisingly, InvoCare disagreed with NCOSS regarding the degree of competition in the industry, advising that the degree of competition within the funeral industry is high because there is a low barrier to entry when setting up business as a funeral director.<sup>141</sup> InvoCare also outlined that, while it operates cemetery and crematoria businesses, they are separate from InvoCare's 'funeral directorships' and no preferential treatment is granted to InvoCare's own directors, under company policy, thereby lessening the potential impact of vertical integration.<sup>142</sup>

<sup>136</sup> Submission 30, p6

<sup>137</sup> Submission 42, pp8-9

<sup>138</sup> Submission 42, p4

<sup>139</sup> Submission 33, pp2-3

<sup>140</sup> Submission 33, p2

<sup>141</sup> Submission 42, p3

<sup>142</sup> Submission 42, p12

**3.70** Mr Richard Davis, CEO of InvoCare, advised that InvoCare trade in New South Wales under three groups: White Lady, Simplicity and under the individual heritage or family names of businesses that have been acquired by InvoCare. Mr Davis advised that:

We do not hide the fact that they are owned by InvoCare Ltd. If you go in to one of our locations you should see that this is a business owned and operated by InvoCare. If you look at our invoices or our letterhead it certainly has that it is owned by InvoCare and it is an InvoCare firm.<sup>143</sup>

**3.71** Industry members also told the Committee that they believe there is a high degree of competition within the industry and that a wide range of products and services are available to the consumer. As Mr Strathie noted in his capacity as Managing Director of Wray Owen Funeral Directors, 'market forces and competition will always determine market price'.<sup>144</sup> Mr Kaus of the NSW FDA also told the Committee that 'there is a very healthy competition in our market'.<sup>145</sup>

**3.72** Likewise, Mr Webber advised that he did not think vertical integration had had a great impact on the price of funerals and burial and cremation prices more specifically.<sup>146</sup> The AFDA told the Committee that while there was some concern about the initial acquisition of the market by SCIA, one of the American owned companies that merged to form InvoCare, those concerns had not been substantiated:

Certainly when SCIA first commenced in Australia in the mid-1990s there were some concerns in the funeral industry, and some funeral directors used it as a way of marketing as proudly Australian owned ... We have lost some of our soups and biscuits to larger corporate entities, but ... it is a reputable company; they are still run by the Australian staff. I would have thought that it was in their interests to maintain that family tradition ... it does have the credibility in the town that that company will continue to offer you quality service.<sup>147</sup>

**3.73** The Committee notes the evidence of Ms Lee of CPSA that fundamentally, InvoCare operates differently to small, family run businesses, in the sense that it has higher demands and output:

It is dealing in bulk. It is just like the big supermarket chains. They buy in bulk and they deal in bulk. That is very different from a lone operator in a country town, that has no competition in the sense that they have it sewn up.<sup>148</sup>

**3.74** It is not clear to the Committee if InvoCare's majority stakeholder position in the industry has had a damaging effect on competitive practices. Smaller business views such as those of Mr

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<sup>143</sup> Mr Richard Davis, CEO, InvoCare, Evidence, 5 September 2005, p91

<sup>144</sup> Submission 29, Wray Owen Funerals, p2

<sup>145</sup> Mr John Kaus, Funeral Directors Association of NSW, Evidence, 8 August 2005, p55

<sup>146</sup> Mr Ivan Webber, Member, Cemeteries and Crematoria Association of NSW, Evidence, 8 August 2005, pp41-42

<sup>147</sup> Ms Liz Young, National Director, Australian Funeral Directors Association, Evidence 8 August 2005, p81

<sup>148</sup> Ms Lee, 14 June 2005, p23

Strathie and Mr Webber indicate that there is not a high level of concern regarding InvoCare and vertical integration resulting in increased funeral costs.

### Variation in regional areas

- 3.75** As outlined in Chapter 2, regional, rural and remote areas of NSW face different challenges from metropolitan areas. Burial space is more freely available in rural and remote areas and does not attract the price rise in terms of demand and availability that it does in metropolitan Sydney.<sup>149</sup> The CCA NSW, in answers to a question on notice, provided the breakdown of costs for burial and cremation at a number of different cemeteries and crematoria.
- 3.76** The figures below highlight the contrast in burial fees at metropolitan and regional areas, although cremation fees are very similar.

**Table of comparison of prices for burials between metropolitan and regional areas<sup>150</sup>**

Cemetery	1995	2005 (GST)
Macquarie Park Cemetery	\$2,895	\$5,810
Dubbo City Council	\$610	\$1,815

**Table of comparison of prices for cremations and for metropolitan and regional areas<sup>151</sup>**

Crematorium	1996	2005 (excluding GST)
Rookwood Crematorium	\$550	\$748
Hastings Council	\$450	\$715

- 3.77** While burial is substantially cheaper in non-metropolitan areas, there are other factors which may make a funeral service more expensive in a non-metropolitan region. As noted in Chapter 2, Mr John Curtis, of Fred J Potter & Son Funeral Directors in Broken Hill, advised the Committee that for his business, the operation of a crematorium attracted higher costs to the consumer as there was less demand for the service than in high density metropolitan areas.<sup>152</sup> Some concern was also expressed that a lack of competition in rural and remote areas means

<sup>149</sup> Mr Ray Harvey, Broken Hill City Council, Evidence, 30 August 2005, p7

<sup>150</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW, Attachment A. See Appendix 5 for full table of costs of burial and cremations.

<sup>151</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW, Attachment A. See Appendix 5 for full table of costs of burial and cremations.

<sup>152</sup> Correspondence from Mr John Curtis, Fred J Potter & Son, to Director, 6 October 2005

that some funeral directors were able to charge high prices, as consumers did not have much alternative but to use their services.<sup>153</sup>

- 3.78** The Committee notes the significant difference between the price of burial in a metropolitan area and burial in rural or regional areas. While there appears to have been a similar price increase overall, the Committee notes that the increase in burial fees experienced in metropolitan areas is not responsible to the same extent for the increase in funeral prices in rural and regional areas. The Committee examines the issues relating to additional burial space in the GMA in Chapter 4.

### **Cheaper alternatives**

- 3.79** Witnesses told the Committee that there are a number of options that are either currently available to the consumer, or should be made available, which may reduce the cost of a funeral service, including:

- ‘do-it-yourself’ funerals
- cremations
- more efficient use of burial space
- alternative coffins
- ‘basic’ or essential services funeral.

### **Do-It-Yourself Funeral**

- 3.80** The Committee was informed that there is no legal instrument which prevents people from conducting their own funerals. Rather, the FDA NSW advised that the main impediment to people conducting their own funerals is a lack of knowledge of the various processes and laws:

There is nothing to prevent anybody doing their own funeral. The law provides for them to be able to do it. But it is a very complex situation. I am not aware of too many people who could go through the whole process of conducting their own funeral. A lot of procedure is involved.<sup>154</sup>

- 3.81** The complexity of the regulations governing the funeral industry is discussed in Chapter 6.
- 3.82** Compared to the average price of a funeral managed by a professional funeral director the Committee was informed that a ‘do-it-yourself’ funeral could cost as little as \$900. Ms Zenith Virago, Coordinator of the Natural Death Centre in Byron Bay told the Committee that one of her roles was to advise people who wish to conduct the funeral themselves:

...people will ring me and say, "We want to bury our own person", whoever it is. I give them that information and tell them about the legal paperwork and what is possible. Sometimes it is a financial thing, sometimes it is an attitudinal approach. I tell them that they can build their own coffin for \$100 and they can pay the fee at the

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<sup>153</sup> Ms Lee, Evidence, 14 June 2005, p32

<sup>154</sup> Mr Chapman, Evidence, 8 August 2005, p63

crematorium, which is something like \$650. They need to get two fees for the medical referee and the attending doctor, and they can come in at under \$900 if they want to do it themselves and they follow all the requirements.<sup>155</sup>

**3.83** Ms Leah Munro of the Bellingen Shire Bereavement Service provided the Committee with a booklet published by the Service outlining how a funeral, or aspects of a funeral, might be conducted by the bereaved themselves. The *Do-It-Yourself Funeral Book* advises of the legal requirements associated with arranging a funeral, as well as offering a variety of options, including home burial, making a coffin, arranging the funeral service itself and a number of examples of people who had conducted funeral services for loved ones themselves.<sup>156</sup> In the introduction to the booklet, Ms Munro states that the booklet came about as a result of reports that people had not been able to have the funeral they wanted for their loved one.<sup>157</sup>

**3.84** The Committee notes that, as stated in the Office of Fair Trading's *Consumer Guide to Funerals*, 'in most cases cemeteries and crematoriums will not deal directly with anyone other than a funeral director'.<sup>158</sup> This demonstrates that even though legally consumers can access cemeteries and crematoria the reality is that they may be confronted with cemeteries or crematoria that are reluctant to deal directly with consumers.

**3.85** Ms Virago highlighted the confusion many consumers feel in relation to the options available to them. She explained that the lack of available information about the conduct and arrangements associated with a death and the funeral service mean that people are often unaware of the many alternatives available to them, an issue compounded by emotional vulnerability at the time. She explained that a big part of her role was to provide 'guidance and advice to people'.<sup>159</sup> Ms Virago advised the Committee:

I am a resource centre for lots of people because people do not tend to question very much, especially at that time. They are not doing it beforehand. When someone says you cannot do this, you have to do that, they assume that that person is telling them the truth, and they do not question it. Later on they might find out that they could have done it because there was provision for it. The whole thing about best practice is if people are given the truth and the industry perpetuates that, people can make informed decisions.<sup>160</sup>

**3.86** The Committee believes that people who wish to conduct a funeral service or part of a funeral service themselves should be able to do so. The Committee does however note that for many grieving people a do-it-yourself funeral would not be an option due to their emotional state or physical situation. The Committee is concerned that sufficient information concerning the necessary legal and health requirements of a funeral service be made available to assist consumers dealing with the industry, as well as those who wish to do-it-themselves. The issue of ensuring information is available to the consumer is dealt with in a later part of this chapter.

<sup>155</sup> Ms Virago, Evidence, 5 September 2005, p42

<sup>156</sup> Submission 11, Do It Yourself Funeral Book , Revised Edition

<sup>157</sup> Submission 11, Do It Yourself Funeral Book , Revised Edition, p1

<sup>158</sup> *Consumer Guide to Funerals*, Office of Fair Trading, p11

<sup>159</sup> Ms Virago, Evidence, 5 September 2005, p44

<sup>160</sup> Ms Virago, Evidence, 5 September 2005, p47

### **Cremation**

- 3.87** Cremations are cheaper than burials by a significant amount as illustrated by the information provided by the CCA NSW and the examples of Funeral A, Funeral B, Funeral C and Funeral D. The popularity of cremations is increasing as more people choose cremation over burial.
- 3.88** The availability of burial space is decreasing in metropolitan areas. While the alternative of cremating a body is not acceptable to some religious groups, cremation is a comparatively cost-effective option for an increasing number of consumers. The Committee recognises that a further uptake in cremations would most significantly reduce the overall cost of funerals. The Committee further examines cremations in Chapter 4 and recommends that cremations be promoted as a cheaper alternative, where appropriate.

### **Burial alternatives**

- 3.89** The Committee heard of a number of ways of reducing the cost of a burial right. Discussion of the effective use of burial space is included in Chapter 4, however a brief outline of cost saving options is provided here. These include:
- renewable tenure
  - second interment
  - revocation of unused burial rights.

#### ***Renewable tenure***

- 3.90** For those for whom cremation is not an option, one way of reducing the cost of a burial right is to purchase the right under a renewable tenure agreement. As noted in Chapter 4, the cost of burial space is increased with the purchase of a right 'in perpetuity', or forever. One way of reducing these costs is to purchase the plot for a finite period of time, 20 years for example, after which the agreement is renegotiated. Because the consumer is paying for an agreed period, costs of perpetual maintenance are not included in the total price, making this a less costly option. This arrangement is discussed in detail in Chapter 4.

#### ***Second Interment***

- 3.91** Interring more than one family member in the same grave is a cheaper alternative to purchasing individual burial plots. Mr Webber advised the Committee that while there was an additional cost associated with re-opening a grave for a second interment, this would be cheaper than preparing a new burial plot:

Once the grave is prepared for new burials, there would be a reopening cost, and when the grave was used, there would be an opening fee ... but the cost for preparing the grave would be less than preparing a new grave. If the people are buying a new grave, they would pay more ... There would be two costs. There is a right of burial you have to purchase to start with, which has all those infrastructure costs in them. The second is that, to use the grave again, there would just be that initial preparation

to lift and deepen the remains and that grave would be ready to be used again. It would be, I would think, somewhat cheaper.<sup>161</sup>

### ***Revocation of unused burial rights***

**3.92** Purchase of unclaimed burial sites, after a period of lapse, is an alternative available in some cemeteries. Mr Derek Williams, General Manager of the Anglican and General Cemetery Trust at Rookwood Cemetery told the Committee:

...there is legislation in place for revocation of sold graves that have not been used over 60 years. That revocation of burial legislation would allow those people, if they choose to, to purchase those graves and we have a stock of probably well over 3,000 of those graves at the moment under that legislation.<sup>162</sup>

**3.93** Mr Williams went on to explain that consumers generally preferred new, highly maintained parts of the cemetery to burial in an older section and that since the introduction of the legislation in 2001 allowing for the revocation of burial rights, the cemetery trust had not sold any revoked burial rights.<sup>163</sup>

**3.94** The Committee notes that the price of a revoked burial right is the same as that of a new burial right:

The older monumental area would still reflect the potential income we need to hold a reserve to maintain the area, so we do not sell them any cheaper than a new monumental area.<sup>164</sup>

**3.95** The Committee believes that the use of unclaimed burial rights after a period of lapse is sensible, given the need for increased burial space in metropolitan areas. The use of revoked burial sites should be promoted to consumers through a reduction in the cost of the burial right. The issue of the revocation of burial rights is discussed further in Chapter 4.

### **Coffins**

**3.96** A cheaper coffin may reduce the cost of the funeral service by hundreds of dollars. The Committee was informed about some alternatives to a standard wooden coffin, including:

- cardboard or chipboard coffins
- using a coffin cover
- reusable metal coffin.

<sup>161</sup> Mr Webber, Evidence, 8 August 2005, pp48-49

<sup>162</sup> Mr Williams, Evidence, 5 September 2005, p16

<sup>163</sup> Mr Williams, Evidence, 5 September 2005, p16

<sup>164</sup> Mr Williams, Evidence, 5 September 2005, p16

***Cardboard and chipboard coffins***

- 3.97** Cardboard and chipboard coffins are generally much cheaper than a wooden coffin and are more environmentally friendly.<sup>165</sup> Ms Virago told the Committee that cardboard coffins are used widely in England ‘as a matter of course’ and that wicker and cardboard coffins are also available there.<sup>166</sup> Ms Virago also noted that in her capacity as a consultant and celebrant at funerals, the question she was most often asked was where a consumer could purchase a cardboard coffin.<sup>167</sup>
- 3.98** Cardboard coffins are available in Australia, however there has been resistance to their use on the basis that they do not meet occupational health and safety standards. The Funeral Industry Council advised the Committee that they had informed members of the industry that a cardboard coffin submitted to them for endorsement had not, after testing by TestSafe, WorkCover’s testing body, met standards for handling or refrigeration.<sup>168</sup> Mr Lennon, of the Funeral Industry Council advised that, in the Council’s view the cardboard coffin would not ‘meet an employers’ duty of care under the *Occupational Health and Safety Act*.<sup>169</sup>
- 3.99** Subsequently, a different cardboard coffin was provided to TestSafe and based on the results of testing, the Funeral Industry Council stated it had no objection to the use of this coffin.<sup>170</sup>
- 3.100** In its submission, the Funeral Industry Council advised that it has conducted tests on various cardboard coffins provided to it by manufacturers and proposes it will have some involvement in developing standards for those coffins.<sup>171</sup> LifeArt provided results of a test conducted at a crematorium to the Committee. This coffin was tested for cremation and was ‘found suitable.’<sup>172</sup>
- 3.101** As long as the cardboard coffin satisfies OH&S concerns, there are no further formal impediments to its use by the funeral industry. Dr Michael Staff, Director, Environmental Health, at the NSW Department of Health advised the Committee that the Department did not prescribe standards for coffins; standards are prescribed for the body bag. He explained the rationale:

I think the most important thing as far as public health is concerned is more the body bag that is used rather than the coffin, in that the body bag is prescribed under the Act and it is prescribed to a certain standard, and that is to prevent any spread of exudates or any other bodily fluids from the body in a way that it may cause some human health concerns ... We do not prescribe any standards for the coffin as such, but obviously there will be some implications in terms of occupational health and safety,

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<sup>165</sup> Submission 23, LifeArt, p1

<sup>166</sup> Ms Virago, Evidence, 5 September 2005, p43

<sup>167</sup> Ms Virago, Evidence, 5 September 2005, p41

<sup>168</sup> Mr Aiden Nye, Member, Funeral Industry Council, Evidence, 14 June 2005, p9

<sup>169</sup> Mr Mark Lennon, Chair, Funeral Industry Council, Evidence, 14 June 2005, p17

<sup>170</sup> Mr Lennon, Evidence, 14 June 2005, p10

<sup>171</sup> Submission 40, Funeral Industry Council, p15

<sup>172</sup> Correspondence from Ms Natalie Verdon, Managing Director, LifeArt, to Secretariat, 6 September 2005



which are covered under other Acts with regard to moving coffins around. There are some issues about the actual disposal or burning of the coffin in terms of producing air pollution, or whatever, from crematoriums. At this point in time that is regulated under the Local Government Act.<sup>173</sup>

- 3.102** Cardboard or chipboard coffins offer consumers a low-cost, environmentally friendly alternative to a wooden coffin. Providing the coffin meets OH&S standards, the Committee believes a funeral director should not refuse to handle a cardboard or chipboard coffin.
- 3.103** In terms of coffin covers Mr Mark Kelly, Director, Kelly's Far West Funerals described to the Committee a cheap alternative to a standard coffin. He told the Committee that he had a coffin available made from cheap materials that could be purchased for approximately \$250. A cover like a traditional more elaborate coffin could be used to go over the top of the chipboard or cardboard coffin, which improved the appearance of the coffin until burial or cremation. The cover is reusable and, Mr Kelly suggested, provides a cheap alternative without compromising on the appearance of the coffin.<sup>174</sup>
- 3.104** The Committee believes that the development of clear standards in relation to the production and use of coffins made of cardboard, chipboard or other alternative materials would have many benefits for the industry and for the consumer. Clear standards would allow manufacturers to produce coffins that could be handled with confidence, in the same way a wooden coffin would be. The option of coffins made of cardboard, chipboard or other alternative materials should be freely available to those who wish to purchase them and the Committee recommends that clear standards for the production and handling of these coffins be developed in consultation with the industry, manufacturers and Workcover and the availability of these coffins be promoted to manufacturers, industry members and consumers.

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## Recommendation 2

That clear standards for the production and handling of coffins made of cardboard, chipboard or other alternative materials be developed in consultation with industry, manufacturers and Workcover and that the availability of these coffins be promoted to manufacturers, industry members and consumers.

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### *Reusable coffins*

- 3.105** The Committee heard that, according to religious practice, Muslims bury the body in a simple shroud in a concrete vault, without a coffin. A reusable metal coffin made from stainless steel is used to transport the body to the burial ground.<sup>175</sup> The metal coffin is then returned to the undertakers for sterilisation and steam cleaning, after which it is available for reuse.<sup>176</sup> While this practice has developed in accordance with Islamic law, the Committee notes the potential cost savings (other than the cost of the cement vault) which this option may offer non-Muslim

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<sup>173</sup> Dr Michael Staff, Director, Environmental Health, NSW Department of Health, Evidence, 8 August 2005, p5

<sup>174</sup> Mr Kelly, Evidence, 30 August 2005, p15

<sup>175</sup> Mr Ali Roude, Acting Chairman, Islamic Council of NSW, Evidence, 5 September 2005, p50

<sup>176</sup> Submission 18, Omar Mosque Committee, p3

consumers, should it be available to them. The Committee did not receive any evidence that reusable coffins are available outside of the Muslim community. With the permission of NSW Health a coffin may not be necessary for the burial depending on varying factors, including soil type. The different funeral practices of religious and community groups are addressed in Chapter 5.

### **Basic funeral**

- 3.106** One way of addressing consumer concerns about the high cost of funerals is for funeral directors to provide a ‘basic’ funeral, which includes the cheapest products and an ‘essential’ service to dispose properly of the deceased at the lowest possible cost. The idea of a basic funeral service is not new. The Committee notes the 1992 Prices Surveillance Authority’s report into the funeral industry, which recommended the establishment of a low-cost basic funeral. The report stated:

The market would be well served if the industry recognised a defined ‘essential care funeral’... a standardised funeral service within the industry would enable consumers to better compare the prices of different funeral directors, thus facilitating price competition.<sup>177</sup>

- 3.107** Ms Lee, of the CPSA, advised the Committee of what CPSA believed a basic funeral should include:

We would like to see that called a basic funeral because we think most people in our culture and society expect there to be some kind of service attached. There should be room not just for people to be able to have direct cremation or direct burial but for the coffin to go somewhere, for there to be a very brief service or whatever—very unelaborate—and for there to be a cremation or burial.<sup>178</sup>

- 3.108** Mr Moore of NCOSS went further, suggesting that providing a basic funeral should be compulsory for all industry members:

We support the notion that there should be a basic funeral set at an affordable cost, and that all operators should have to participate in that system. That is the kind of intervention in the market at the basic level for lower income people that we would like.<sup>179</sup>

- 3.109** In response to the call for a basic funeral, the AFDA pointed out that all its members offer “low-cost essential care funerals.”<sup>180</sup> Furthermore, the AFDA survey indicated demand for the essential care funeral remained static, while demand for ‘personalised services’ is growing.<sup>181</sup> InvoCare also advised it provides a range of options, including ‘lower priced’ funerals, although it did not detail what such a funeral includes or how much it costs.<sup>182</sup>

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<sup>177</sup> *Investigation into Funeral Prices*, Prices Surveillance Authority 1992, p81

<sup>178</sup> Ms Lee, Evidence, 14 June 2005, p31

<sup>179</sup> Mr Moore, Evidence, 14 June 2005, p40

<sup>180</sup> Submission 43, p4

<sup>181</sup> Submission 43, p14

<sup>182</sup> Submission 42, p14

- 3.110** The issue of a low-cost funeral is similar to those issues discussed in relation to the professional fee. Mr Kelly from Kelly's Funerals homes in Broken Hill described the difficulties which are, in his view, associated with giving an estimate of the basic cost of a funeral, given the different demands a consumer may make:

I have had people say I just want a basic funeral, a burial at the cemetery, and they have rung up \$9,500 worth after they have added all the trimmings they want. On other occasions a basic funeral, just a graveside service, you might end up just over a couple of thousand dollars. It is just like ringing up and asking a car yard can you give me the price of a basic car. It is pretty hard.<sup>183</sup>

- 3.111** In a shadow shopping survey, the Office of Fair Trading assessed the costs of 'a low-cost, dignified funeral.' These ranged between \$230 - \$2,950 for the price of a coffin and \$615 - \$3,170 for professional costs.<sup>184</sup> These figures demonstrate the lack of standardisation across the industry. Given this wide variation, the Committee believes that consumers need to be well informed of the options available to them to make an appropriate choice. Basic funerals appear to be available to the consumer, but consumers need to be made aware of them and of the choices that affect the costs of a funeral service.
- 3.112** The regulation of the industry is discussed in Chapter 7. In Chapter 5, the Committee examines the suggestion that a complaints facility be established to monitor industry conduct and pricing.

***Providing comparative costs***

- 3.113** NCOSS suggests that funeral directors should be required to provide an outline of their cheapest or essential services funeral to all clients, as a way of informing consumers of the basic costs of a funeral service. NCOSS suggest that possible 'enhancements', along with their costs, be provided in addition to this basic cost, should the consumer request them. The Committee heard that funeral directors generally do not provide information concerning the comparative cost options of a funeral service unless specifically asked to do so.<sup>185</sup> The Committee notes that the FDA NSW Code of Ethics, while outlining the need for members to provide prices of a range of services, does not provide for pricing standards or components, which are left to the individual funeral director.<sup>186</sup> The AFDA notes similar practices for its members.<sup>187</sup>
- 3.114** The Committee notes the Office of Fair Trading (OFT) booklet entitled *A Consumer Guide to Funerals*, which provides information on the choices a consumer will be asked to make on the conduct of a funeral. However the Committee also notes that without any price standardisation within the industry (and given the extreme variation in price currently demonstrated in the market by the OFT survey) this information may be most valuably provided by the funeral director, at the time of purchase.

<sup>183</sup> Mr Kelly, Evidence, 30 August 2005, p14

<sup>184</sup> Tabled document, Office of Fair Trading, *Funeral Industry Research Findings*, Figure 9 and 10, 19 September 2005

<sup>185</sup> Ms Lee, Evidence, 14 June 2005, p22

<sup>186</sup> Submission 30, Annexure 1

<sup>187</sup> Submission 43, p15

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### Recommendation 3

That the cost and make up of an essential service funeral (basic funeral) be part of the “Product Information Standard” for the funeral industry, developed by the Office of Fair Trading.

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## Funeral Funds

**3.115** Funeral Funds are a means by which consumers can reduce the amount of money that needs to be paid at the time of a funeral. There are two main types of funeral funds. These are the:

- pre-arranged contract
- contribution fund.<sup>188</sup>

**3.116** A pre-arranged contract allows the consumer to arrange the details of their funeral with a funeral director and be charged for that funeral right away. When the customer dies, the funeral service is provided as arranged. A contribution fund allows the consumer to make regular contributions to a fund that provides a benefit at the time of death.<sup>189</sup>

**3.117** In the past, the operation of funeral funds has been the subject of some controversy. In 1977, in response to complaints concerning the mismanagement of funeral funds, the NSW Price Commission conducted an inquiry into the funeral industry, recommending that legislation be established to ensure the proper management of funeral funds.<sup>190</sup> The *Funeral Funds Act 1979* (the Act) was introduced in 1979 ‘to control and regulate contributory and pre-paid funeral funds.’<sup>191</sup> The objects of the Act are:

- (a) to protect pre-payments made by consumers for funeral services through the registration of funeral funds
- (b) to ensure that funeral services agreed to be supplied under pre-paid contract are supplied as agreed
- (c) to achieve accountability for money paid by a purchaser of funeral services that have an indefinite delivery date
- (d) to properly manage money paid and other valuable consideration given for funeral services in the long term to provide agreed benefits to the purchaser and the anticipated payment to the supplier of funeral services.<sup>192</sup>

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<sup>188</sup> *Investigation into Funeral Prices*, Prices Surveillance Authority 1992, p72

<sup>189</sup> *Investigation into Funeral Prices*, Prices Surveillance Authority 1992, p72

<sup>190</sup> *Investigation into Funeral Prices*, Prices Surveillance Authority 1992, p75

<sup>191</sup> *Funeral Funds Act 1979*

<sup>192</sup> *Funeral Funds Act 1979*, s3(a) – (d)

- 3.118** In evidence, the OFT advised the Committee that while it has received a very small number of complaints in relation to the funeral industry, half of those complaints relate to the operation of funeral funds.<sup>193</sup> This suggests that while the Act has had a positive effect on the operation and management of funeral funds, it has not provided a complete solution.
- 3.119** The Committee notes the OFT's recent discussion paper, produced in June this year, titled *Funeral Funds Regulation 2001: Potential Areas for Reform*. The discussion paper outlines a number of options for industry reform, covering a broad variety of amendments and prescriptions applicable to funeral funds. These include the provision of a cooling off period, which would allow the consumer to consider their contract within a specified period (usually within 2 – 4 weeks) before agreeing to the terms of the contract, a requirement for the provision of more detailed information within the contract and specific procedures related to the transfer of monies between companies.<sup>194</sup>
- 3.120** The Committee believes this discussion paper is timely and has the potential to lead to legislative reform in relation to the funeral fund service. The Committee recommends that the results of the discussion paper be made public and would welcome changes to the Act and Regulation that will improve the processes involved with pre-arranged funerals.

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#### **Recommendation 4**

That the outcomes of the Office of Fair Trading's discussion paper, *Funeral Funds Regulation 2001: Potential Areas for Reform* be made public and that appropriate changes be made to the Funeral Funds Regulation 2001 that will improve the processes involved with pre-arranged funerals.

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<sup>193</sup> Tabled document, Office of Fair Trading, *Funeral Industry Research Findings*, Figure 1, 19 September 2005

<sup>194</sup> *Funeral Funds Regulation 2001: Potential Areas for Reform Discussion Paper*, Office of Fair Trading, June 2005, p20



## Chapter 4 Burial space

The Committee has based the discussion in this chapter on the fact that burial space is finite in the Greater Metropolitan Area (GMA) of New South Wales. The Committee acknowledges that burial space is not such a pressing issue in regional and rural areas. Burial space was a key concern raised by witnesses during the Inquiry with the main issues being availability and affordability. The discussion and recommendations in this chapter focus on options to address shortages of burial space in the GMA including:

- intensive use of family graves
- renewable tenure of burial rights
- revocation of unused burial rights
- cemeteries as part of future planning strategies
- alternative interment practices.

### Cemeteries

4.1 There are over 3,000 cemeteries in NSW, including large Crown cemeteries such as Rookwood Necropolis, general cemeteries operated by local councils, churchyard cemeteries, Aboriginal cemeteries, family cemeteries on private ground and lone graves.<sup>195</sup> The National Trust of Australia (NSW) is currently conducting a survey of these cemeteries to locate, identify, document and assess their significance.<sup>196</sup>

4.2 Cemeteries can be divided into three major categories: public cemeteries, private cemeteries and church and family cemeteries.<sup>197</sup>

#### Public cemeteries

4.3 Public cemeteries are either Crown cemeteries managed by Crown reserve trusts (the majority of available public burial space) or local government cemeteries on Crown land or land owned by local government councils. There are nine Crown cemeteries within the GMA and around 100 local government cemeteries. There are approximately 300,000 public burial spaces available in the GMA.<sup>198</sup>

<sup>195</sup> Submission 17a, National Trust of Australia (NSW), p1

<sup>196</sup> Submission 17a,p1

<sup>197</sup> *Burial Space in the Sydney Greater Metropolitan Area: Stakeholder Discussion Paper 2005*, Department of Lands, p1

<sup>198</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p2

- 4.4 Crown cemeteries are incorporated under the *Crown Lands Act 1989* and are governed by reserve trusts appointed by the Minister of Lands. These trusts carry out their duties in an honorary capacity. Sandgate Cemetery in the Hunter Region is also a Crown cemetery.<sup>199</sup>
- 4.5 The Department of Lands provided the Committee with further information in relation to cemeteries on Crown land:

Crown land may be allocated for a wide range of purposes, including use for cremation and interment purposes. In the context of providing burial space, the department has historically provided land during the planning process by reserving areas for cemetery and crematoria purposes. These cemetery reserves are, in turn, managed by community trusts, local council or administrators appointed by the Minister for Lands. Those reserve managers assume the role as day-to-day managers of the cemetery space. It is at this level that cemetery managers interact directly with the funeral industry.<sup>200</sup>

- 4.6 Local government operates public cemeteries within the GMA and most non-metropolitan councils also operate cemeteries with the larger councils usually having several cemeteries under their control.<sup>201</sup>

#### **Private sector cemeteries**

- 4.7 Unlike Victoria, NSW has privately owned cemeteries. Private cemeteries are primarily located on freehold land. There are eight private cemeteries in the GMA providing approximately 380,000 burial spaces.<sup>202</sup>
- 4.8 The private sector operates cemeteries in the Sydney metropolitan area, Wollongong and Newcastle as well as in country areas. Nearly all privately owned cemeteries have a direct connection with funeral directing establishments.<sup>203</sup> For example, InvoCare operates six cemeteries across New South Wales.<sup>204</sup>

#### **Church and family cemeteries**

- 4.9 Church and family cemeteries are associated with places of worship or family owned private land. Church cemeteries are normally the responsibility of the relevant diocese, parish councils or equivalent authorities. The number of burial sites of this type remaining is not known but is not believed to be significant.<sup>205</sup>

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<sup>199</sup> Submission 28, Cemeteries and Crematoria Association of NSW, p1

<sup>200</sup> Ms Pieta Laing, Manager, Lands Policy, Department of Lands, Evidence, 8 August 2005, p26

<sup>201</sup> Submission 28, p2

<sup>202</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p2

<sup>203</sup> Submission 28, p2

<sup>204</sup> Submission 42, InvoCare, p4

<sup>205</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p2



- 4.10** The Cemeteries and Crematoria Association of NSW advise that very few churches still operate cemeteries.<sup>206</sup> However, the Catholic Cemeteries Board does manage and operate the four Catholic cemeteries at Rookwood, Field of Mars, Liverpool and North Rocks.<sup>207</sup>

### **History of cemeteries in New South Wales**

- 4.11** The Department of Lands provided the following information on the past and current status of cemeteries in NSW:

The establishment of public cemeteries on both Crown and local government land within the Sydney Greater Metropolitan Area (GMA) in the 19<sup>th</sup> and early 20<sup>th</sup> centuries has ensured that most sections of the community have had access to affordable, conveniently located land for burial for more than a century. The GMA includes the Sydney, Newcastle/Lower Hunter, Central Coast and Wollongong regions.

As the GMA has expanded, priority has been placed on utilising available land for other purposes such as housing, industrial infrastructure, open space for recreation and essential public facilities such as schools and hospitals. In addition, rising land values have increased the cost of acquiring large sites for cemeteries.

No large Crown cemeteries have been established in the GMA since French's Forest Bushland Cemetery in 1937. Private cemeteries and crematoria have, however, been established.<sup>208</sup>

### **What is a burial right?**

- 4.12** A burial right is not the purchase of the land where the body is to be buried but a right to be buried in that plot. Mr Derek Williams, General Manager, Anglican and General Cemetery Trusts, Rookwood Necropolis, advised the Committee that the issue of burial rights can be the basis of misunderstandings for some clients:

They have managed already to get one or two generations from the original purchase of the right of burial certificate. First they believe they have bought the land. They then go through a learning curve to understand that they do not own the land.<sup>209</sup>

- 4.13** The notion of a burial right is outlined on the Cemeteries and Crematoria Association of NSW website:

When you apply for a burial in a cemetery, you will be granted access to a particular gravesite. The grant is referred to as "The Right of Burial" or "Burial Licence". A certificate defining the entitlement is issued to the nominated person. You do not

<sup>206</sup> Submission 28, p2

<sup>207</sup> Submission 41, Catholic Cemeteries Board, p1

<sup>208</sup> *Burial Space in the Sydney Greater Metropolitan Area*, Stakeholder Discussion Paper 2005, Department of Lands, p1

<sup>209</sup> Mr Derek Williams, Anglican and General Cemetery Trusts, Rookwood Necropolis, Evidence, 5 September 2005, p24

own the gravesite a certificate is issued for. The actual land is owned by the cemetery authority. You have the right to use the land for interment subject to your cemetery's rules and conditions.

In most cemeteries, the person who holds the Grant/Licence to the burial site (or if that person is the deceased, their Executor, Administrator or Authorised person) holds the right of burial and are known as the Legal Grantee.

Generally, this Grantee is the only person who can provide instructions as to who should be buried in a grave. The Grantee is the only person who has the authority to place a memorial on a gravesite or cremation memorial site.<sup>210</sup>

- 4.14** Generally in NSW, once a burial has occurred, the remains of the deceased are interred forever (in perpetuity) unless alternative arrangements have been made with the cemetery. Right of Burial Certificates or the Burial Licence may have tenure periods applicable to them. The Grantee can request multiple interments in the gravesite in consultation with the cemetery trust.<sup>211</sup>

## Burial space

- 4.15** As previously noted burial space is limited, especially in the GMA. The Committee heard evidence that the lack of burial space is becoming a pressing issue for the cemeteries in the GMA. This issue was highlighted by a number of the cemetery trusts that provided evidence to the Committee including Mr Harold O'Keefe, Catholic Cemeteries Board, who estimated to the Committee that, of the cemeteries managed by the Board (the Catholic Cemeteries at Rookwood, Liverpool, Field of Mars and North Rocks) 'the space available varies from 10 years at North Rocks up to about 50 years at Rookwood.'<sup>212</sup>
- 4.16** Of particular concern is the limited burial space for the Jewish and Muslim religions in New South Wales. Mr Lee Squires, Executive Manager, Joint Committee of Necropolis Trustees, estimated that in Rookwood Necropolis the Muslim cemetery will be filled about 2007-08; the Jewish cemetery about 2019-20; the independent cemetery sometime after 2070; the Catholic cemetery sometime after 2040; the Anglican and General cemeteries sometime after 2100.<sup>213</sup>
- 4.17** Mr Wasim Raza of the Muslim Cemetery Trust confirmed that space in Rookwood Cemetery will last until about 2007-08 and that across NSW there is finite burial space for Muslims:

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<sup>210</sup> The Cemeteries and Crematoria Association of NSW, Frequently Asked Questions, [www.ccansw.org.au](http://www.ccansw.org.au) (accessed 17 October 2005)

<sup>211</sup> The Cemeteries and Crematoria Association of NSW, Frequently Asked Questions, [www.ccansw.org.au](http://www.ccansw.org.au) (accessed 17 October 2005)

<sup>212</sup> Mr Harold O'Keefe, General Manager, Catholic Cemeteries Board, Evidence, 5 September 2005, p29

<sup>213</sup> Mr Lee Squires, Executive Manager, Joint Committee of Necropolis Trustees, Evidence, 5 September 2005, p3

We have only about 400 [grave sites] in Rookwood, about 150 in Liverpool and 800 in Riverstone [which currently only has 20 used grave sites].<sup>214</sup>

**4.18** Mr David Knoll, President, New South Wales Jewish Board of Deputies, agreed with Mr Squires' estimation of burial space for Jewish people and commented 'if there were no additional space allocated, it will be critical from approximately 2018.'<sup>215</sup>

**4.19** The Cemeteries and Crematoria Association of NSW suggests that there is approximately 50 years of new burial space left across the greater metropolitan area.<sup>216</sup> Ms Pieta Laing, Manager Lands Policy, Department of Lands, clarifies the figure of 50 years to relate directly to cemeteries and burial space on Crown land. Ms Laing advised:

However, with respect to the availability of land for cemeteries, cemeteries are both Crown and private land. We can only talk about Crown land available for cemeteries and, in general, there is sufficient land until at least the next 50 years. The problem is in the distribution of that land in specific locations and for specific groups there are shortages.<sup>217</sup>

### **Cemeteries Interdepartmental Committee**

**4.20** The Department of Lands advised the Committee that an interdepartmental committee on cemeteries was established to look at the potential shortage of burial space in the GMA, as outlined in Chapter 2.<sup>218</sup>

**4.21** The Cemeteries Interdepartmental Committee through the Department of Lands distributed a discussion paper, titled *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005* (hereafter referred to as the Lands discussion paper), to the funeral industry for targeted consultation on the options for increasing burial space. The Department of Lands advised that the comments of the funeral industry are currently being collated. It is expected that a further report will be released for wider consultation.<sup>219</sup>

**4.22** Ms Laing highlighted that the Department of Lands preferred option to increase the supply of spaces is to use the land currently available more sustainably. She elaborated for the Committee on how to do this:

Obviously there are a number of options but the best option from our point of view would be to use the land that we have more sustainably. There are a number of ways that that could be done and those ways are outlined in the Green Burial Space in the

<sup>214</sup> Mr Wasim Raza, Secretary, Muslim Cemetery Trust, Rookwood Cemetery, Evidence, 5 September 2005, p54

<sup>215</sup> Mr David Knoll, President, New South Wales Jewish Board of Deputies, Evidence, 5 September 2005, p57

<sup>216</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW, p15

<sup>217</sup> Ms Laing, Evidence, 8 August 2005, p26

<sup>218</sup> Ms Laing, Evidence, 8 August 2005, p26

<sup>219</sup> Ms Laing, Evidence, 8 August 2005, p26

Sydney Greater Metropolitan Area Stakeholder discussion paper. They include things like, renewable tenure of grave sites, use of family plots but, in general, it is making the land that we have more sustainable. If it were also the Government's and the community's view that more land should be made available for cemeteries then that would also be something that we would be ready to undertake. Realistically when we look at the competing uses for land we would be looking to make burial spaces more sustainable.<sup>220</sup>

## Options to increase burial space

**4.23** The Committee sought the input of witnesses from the cemetery trusts on the options to address the shortage of burial space that were provided in the Department of Lands discussion paper. These options include:

- more intensive use of family graves
- renewable tenure for new gravesites
- revocation of unused burial rights
- consideration of cemeteries in land use planning
- provision of additional public cemeteries
- adoption of alternative interment practices.<sup>221</sup>

### More intensive use of family graves

**4.24** Most gravesites in NSW are dug to accommodate one or two burials (second interment). However, the Department of Lands advises that there is effectively no limit to the number of burials which can take place in any one grave provided the coffin's upper surface is no less than 900 millimetres below the level of the soil surface. Once this limit is reached the site is full.<sup>222</sup> This suggests it is possible to go beyond a second interment and have multiple interments (burials) in the one gravesite.

**4.25** The discussion paper advises that the intensive use of family graves has several potential advantages such as allowing members of a family to be buried together; decreasing the demand for new gravesites; and supporting enhanced maintenance of gravesites by families.<sup>223</sup>

**4.26** The Cemeteries and Crematoria Association of NSW submission supports the intensive reuse of family graves.<sup>224</sup> However, some witnesses whilst supporting the reuse of family graves, raised some issues that would need to be considered.

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<sup>220</sup> Ms Laing, Evidence, 8 August 2005, pp27-28

<sup>221</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p4

<sup>222</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p4

<sup>223</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p4

**4.27** The Muslim Cemetery Trust at Rookwood highlighted a problem with the reuse of graves in Sydney where the soil is clay. Mr Ali Roude, A/Chairman, Islamic Council of NSW advised:

It is a concern which was expressed by many of the relatives. In one case they tried to bury a relative of the deceased and when they dug the grave they found that the body remained the same in the water; it was still there in the clay. There is no objection Islamically to rebury another relative of the deceased and often many people prefer it that way, but practically it is a problem—at this stage anyway.<sup>225</sup>

**4.28** Mr Williams suggested that currently family graves are not being used efficiently due to relocation of families to other areas and the lack of the industry promoting the reuse of graves:

Even though a grave might be sold for two burials, statistically I think we would be lucky to see 1.5 burials or perhaps 1.2 burials being utilised. That is also probably the fault of our industry. We do not promote what is available, and do not provide that information on an ongoing basis. I think that if we do that more efficiently, the public will be better informed of the choices they can make.<sup>226</sup>

**4.29** In South Australia, Western Australia and more recently Victoria, additional space is provided in family graves by using the “lift and deepen” method. An existing grave is excavated to its greatest depth with all remains boxed and reburied at a lower depth, thereby allowing additional burials to take place in the upper levels of the grave. Handling remains within a grave during the lift and deepen process is only allowed after a minimum time has passed since the last burial, for example 10 to 15 years, to ensure sufficient decomposition of remains within the grave.<sup>227</sup>

**4.30** The discussion paper suggested that legislation could be introduced to allow for multiple interments in family graves:

Legislation could be introduced, applying to all gravesites from a specified date, which permits as an option for:

- successive generations of a family to be buried in a family grave by using the lift and deepen method and /or
- graves currently considered full to be reopened for other family members who wish to be buried in the grave by using the lift and deepen method.<sup>228</sup>

<sup>224</sup> Submission 28, p4

<sup>225</sup> Mr Ali Roude, A/Chairman, Islamic Council of NSW, Evidence, 5 September 2005, p51

<sup>226</sup> Mr Williams, Evidence, 5 September 2005, p20

<sup>227</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p4. The basic principles and conditions that could apply to family graves are outlined in detail in the Department of Lands discussion paper.

<sup>228</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p4

- 4.31** The Public Health (Disposal of Bodies) Regulation 2002 does not prevent multiple burials. The Department of Lands suggestion of introducing new legislation for this practice may therefore not be necessary. However, it may be necessary to amend existing legislation.
- 4.32** Mr Williams advises that under the existing legislation exhumations are required for multiple burials. Some modification would allow the practice of multiple interments to be more readily practised. He advised the Committee:
- There are provisions within the Health Act that allow us, if the family requests it, to lift and deepen a body. The problem with it is that at the moment it is classified as exhumation, so it attracts all the additional costs of an exhumation, whereas it probably would not need to. So you have some of the provisions already in place; it just needs modification.<sup>229</sup>
- 4.33** The Public Health (Disposal of Bodies) Regulation 2002 defines an exhumation as:
- The removal of the remains of a dead person from a grave or vault but does not include the removal of remains from a vault in a cemetery for immediate transfer to another vault in the same cemetery.<sup>230</sup>
- 4.34** Part 4 of the regulation outlines the process for application and approval for exhumation and states that an application fee of \$255 is payable. There would also be costs payable to the cemetery manager or trust (or as part of the whole funeral cost) for the opening, deepening and refilling of the grave. Costs for the lift and deepen process vary according to cemetery and can range from \$650 to \$1,650.<sup>231</sup>
- 4.35** The Committee acknowledges that the intensive use of family graves is an option for increasing burial space and notes that consideration of this option will need to include the difference in cemeteries, for example soil types that may or may not allow this practice and the different religious or cultural groups whose beliefs may not allow this practice.
- 4.36** The Committee also recognises that while specific legislation for the intensive use of family graves may not be required, some consideration should be given to whether the exhumation fee should apply to this process each time the family grave is reused. This is further discussed in Chapter 6.

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### Recommendation 5

That legislation be amended or new legislation be introduced to allow intensive reuse of family graves, and reuse of family graves be promoted as an option among the funeral industry and the public.

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<sup>229</sup> Mr Williams, Evidence, 5 September 2005, p18

<sup>230</sup> *Public Health (Disposal of Bodies) Regulations 2002*, Part 1 (3) Definitions

<sup>231</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW. Refer to Appendix 5.

### Renewable tenure of gravesites

- 4.37** In NSW there is a perception that burial rights are held indefinitely but numerous cemeteries have been closed and re-used for other purposes.<sup>232</sup> At present in NSW most graves, other than family graves, are not subject to reuse.
- 4.38** Renewable tenure allows the reuse of burial sites after a period of time has elapsed, for example 25, 50 or 99 years depending on the legislation or circumstances, unless the tenure is renewed. Graves are usually reused by using the “lift and deepen” method outlined in paragraph 4.30.<sup>233</sup>
- 4.39** The Department of Lands advises that a possible way that renewable tenure could work is the introduction of renewable tenure for new burials for 25-50 years (sometimes referred to as limited tenure). At the end of the tenure period the holder, usually a family member, would be contacted and have the option to renew. If the tenure was not renewed the “right of burial” would revert to the cemetery authority for resale and reuse.<sup>234</sup>
- 4.40** In South Australia the maximum term for a gravesite is 99 years and 50 years in the main metropolitan cemeteries due to shortage of existing space and high ongoing maintenance costs. Western Australia limits initial burial rights to 25 years. Victoria does not have renewable tenure for gravesites. Renewable tenure is common in Europe with tenure periods usually being 50 years or less.<sup>235</sup> The Lands discussion paper suggests that legislation could be introduced that permits renewable tenure for all new gravesites at the discretion of individual cemetery trusts and cemetery managers.<sup>236</sup>
- 4.41** Mr Squires agreed that renewable tenure is the only feasible option to address the ongoing issue of burial space in the GMA. He told the Committee:

The needs for public cemeteries in the greater metropolitan area are so great now that whatever the cogency of objections, renewable tenure is the only feasible policy that will help address the shortage of burial space. Over the years government departments have looked for land and not found it or other departments have claimed it for themselves. There certainly does not seem to be any substantial land left in the Sydney Basin.<sup>237</sup>

<sup>232</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p5

<sup>233</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p5

<sup>234</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p5

<sup>235</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p5

<sup>236</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p6. Basic principles and conditions are set out in further detail in the Department of Lands discussion paper.

<sup>237</sup> Mr Squires, Evidence, 5 September 2005, p4

*Issues with renewable tenure*

**4.42** Witnesses presented the Committee with a number of issues that need to be taken into account when considering renewable tenure, including the impact of embalming on decomposition, existing monuments and different religious and cultural beliefs.

**4.43** Mr Williams advised the Committee that embalming and monuments are issues that are relevant to both renewable tenure and the intensive use of family gravesites:

The bodies would need to be able to break down efficiently over time without any chemical treatment that would delay that process. The monumental system, built over graves, would also need to be collectively agreed to by the community that it would be limited, say, to a headstone as the marker. You would not have full monuments covering all parts of the grave because then you have the problem of access to that grave in the future. So there would need to be a fair amount of public consultation for a gradual change over time.<sup>238</sup>

**4.44** Renewable tenure is also inconsistent with the beliefs of certain religions or cultures. Ms Laing told the Committee that therefore it could not be forced upon some groups:

Whilst Rookwood is all Crown land it is divided into various trusts reflecting various denominations. It may be the case that not all denominational religions or cultures, even though it is enabled, would take up the option. That is certainly something that we could not enforce, although we would encourage the more economic use of the space available.<sup>239</sup>

**4.45** The Jewish tradition is an example of a religion that is inconsistent with renewable tenure, as explained by Mr Knoll:

Renewable tenure, in particular, is completely unacceptable to the Jewish tradition. If these proposals were being pursued, we would invite the inquiry or Parliament to undertake further consultation with us so we can address the specificity of a proposal of that nature.<sup>240</sup>

**4.46** A further issue raised by Mr Williams for consideration in relation to renewable tenure is ownership of burial rights. Mr Williams advised that if renewable tenure was to be considered the issue of how burial rights are handed on must also be addressed:

Under current legislation there is no provision for an explanation of how a right of burial should be handed on and how it could be used by successive generations. That is something that needs to be addressed.<sup>241</sup>

**4.47** For example, the burial right would need to be bequeathed in a will. Mr Williams further commented:

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<sup>238</sup> Mr Williams, Evidence, 5 September 2005, p18

<sup>239</sup> Ms Laing, Evidence, 8 August 2005, pp27-28

<sup>240</sup> Mr Knoll, Evidence, 5 September 2005, p56

<sup>241</sup> Mr Williams, Evidence, 5 September 2005, p24



... at least in a will or stated in writing by the original owner or grantee, as we term that person. Our problem is that usually it is up to the cemetery administration to try to interpret who has survived that ancestor, whether it should have been passed on to the spouse in which case it has left the bloodline in the family and if that spouse has remarried, has it gone into a different family. There are a number of issues and scenarios that would help our industry. If we go into reuse of graves the use of a right of burial would need to be clarified, otherwise there could be a lot of potential disputes.<sup>242</sup>

- 4.48** The Committee acknowledges the benefits of renewable tenure in addressing the shortage of space in the GMA. For renewable tenure to be a feasible option it will be necessary to clarify how a right of burial should be handed on and how it could be used by successive generations, in order to reduce potential conflict.
- 4.49** The Committee is also aware that renewable tenure is not an immediate solution. If renewable tenure for new graves was introduced it would require community support and education about the process generally. There would have to be a clear understanding at the time of burial that the gravesite is not held in perpetuity, and if permanent occupancy is required, tenure must be renewed at specified intervals. Mr Williams estimated that this process may take up to two or three generations before renewable tenure is readily accepted.<sup>243</sup>

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## Recommendation 6

That the existing legislation be amended to allow for renewable tenure, and that community education be undertaken to ensure there is a clear understanding that a gravesite is not held in perpetuity and that if permanent occupancy is required, tenure must be renewed at specified intervals.

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## Revocation of unused burial rights

- 4.50** Burial rights bought ahead of death may remain unused. For example, many burial sites remain unused as the holder may have been cremated or buried elsewhere; or where the burial rights have devolved, the current holder may be unaware that they hold the burial right.<sup>244</sup>
- 4.51** Existing legislation permits revocation of unused burial sites on Crown land after 60 years. The Department of Lands discussion paper estimates that if unused sites are revoked in accordance with the legislation the life of certain Crown cemeteries in Sydney and Newcastle may be extended by 5-10 years.<sup>245</sup>

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<sup>242</sup> Mr Williams, Evidence, 5 September 2005, p24

<sup>243</sup> Mr Williams, Evidence, 5 September 2005, p18

<sup>244</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p6

<sup>245</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p6

**4.52** To illustrate the potential benefit of revocation of unused graves, Mr Williams informed the Committee that the Anglican and General Cemeteries at Rookwood have ‘a stock of probably well over 3,000 of those graves.’<sup>246</sup>

**4.53** The Department of Lands advised there may be similarly unused sites in privately run or local government managed cemeteries in the GMA that will never be used unless revocation action is undertaken and that the legislation could be extended to all cemeteries in the GMA:

Legislation could be introduced that extends the right to revoke unused burial sites, according to specific criteria, to all cemetery managers in the GMA. The conditions for revoking the burial sites could reflect the existing legislation, for example, the site was granted more than 60 years ago and a requirement to contact the last known holder.<sup>247</sup>

**4.54** Witnesses generally supported exploring revocation of unused burial rights as an option, but raised some issues that would need to be considered. For example, Mr Squires highlighted practical problems within old cemeteries:

The legislation permitting the revocation of unused burial sites that are 60 years old is generally helpful, but it is limited by a lot of practical problems within old cemeteries. The typical ones are having a monument that surrounds two graves, one of which is used and one is not. The trust has to contemplate what to do with the monument and that sort of thing.<sup>248</sup>

**4.55** Mr O’Keefe also supported the option, but noted some issues with older gravesites:

We are quite happy about that and we have got quite a number of them. As you are aware, the legislation now allows us to resell those sites once they have gone 60 years and we have been through a process of trying to find the owners. We have already found a number of owners and we have been able to resell some of the sites—not a great deal; not as many as we would like—and what we are finding is that, I think as an earlier speaker said, we need to improve those older areas to make them more acceptable to people by landscaping and tidying them up because in some of the really older areas of the cemetery monuments have fallen over and it has become not as nice as it should be or could be. So we are moving towards improving those areas to make the resale more acceptable.<sup>249</sup>

**4.56** Mr O’Keefe further advised the Committee that the revocation process can be quite costly due to the need to advertise each grave separately. He suggested changes to the legislation would improve the process:

There is a very significant cost. For instance, at Rockwood when we did the exercise, just to advertise the graves that we could recycle in the *Sydney Morning Herald* in accord with the legislation it was going to cost us \$100,000. So I think the legislation needs to be looked at carefully to somehow streamline it.

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<sup>246</sup> Mr Williams, Evidence, 5 September 2005, p16

<sup>247</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p6

<sup>248</sup> Mr Squires, Evidence, 5 September 2005, p4

<sup>249</sup> Mr Harold O’Keefe, Catholic Cemeteries Board, Evidence, 5 September 2005, p32

... [Currently] they have to be advertised individually and they have to be advertised a number of times.<sup>250</sup>

- 4.57** Mr Williams also noted that most of the graves under the legislation are in old areas of the cemetery and some people would not wish to be buried there:

The issue we have with those is that they are singular graves in most cases and they are dotted right over the acreage or hectares of the cemetery. We have found that unless someone really likes the idea of being buried in an old heritage area of the cemetery, they generally will not show an interest, so to date, since that legislation has been in, we have not sold one grave.<sup>251</sup>

- 4.58** It is the Committee's view that these issues could be addressed by amendments to legislation to allow the advertising of unused burial rights to be done on a group basis as opposed to an individual basis. The community needs to be made more aware of unused burial rights and be encouraged to consider being buried in an older part of a cemetery. Cemetery trusts should ensure older heritage areas are well maintained and offer those graves at a cheaper cost.
- 4.59** The Committee believes that the current legislation for the revocation of unused burial rights in Crown cemeteries should be extended to other cemeteries as this has the potential to address the shortage of burial space and also provide further income for cemeteries.

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### Recommendation 7

That the current legislation for the revocation of unused burial rights in Crown cemeteries, as set out in the *Crown Lands (General Reserves) By-law 2001*, be extended to other cemeteries in NSW and the legislation be amended to allow the advertising of unused burial rights to be done on a group basis as opposed to an individual basis. The community should be made more aware of unused burial rights by cemetery administrators ensuring older areas are well maintained and considering offering those graves at a cheaper cost.

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### Cemeteries in land use planning

- 4.60** Land suitable for urban development in the GMA is in relatively short supply. The Department of Lands notes that allocating land to a cemetery may be difficult to justify in some locations, and developing land for new cemeteries and crematoria may in some circumstance not be able to compete with higher value activities.<sup>252</sup>
- 4.61** As noted in Chapter 2, there is an increase in the popularity of cremations and crematoria need to be considered in future planning strategies. Cremations should be further encouraged in order to reduce the land use for burials.

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<sup>250</sup> Mr O'Keefe, Evidence, 5 September 2005, p32

<sup>251</sup> Mr Williams, Evidence, 5 September 2005, p16

<sup>252</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p6

**4.62** The Lands discussion paper suggests that focusing on provision for future cemetery needs in all strategic urban planning, including major new land release strategies, may assist in providing land for cemeteries and crematoria. Councils should also consider the need to plan for cemeteries and crematoria when preparing local environmental plans. The paper further advises:

For this approach to be effective, the funeral industry would need to identify the criteria for selection of a site such as the minimum area required, desirable and acceptable physical characteristics, topography, soil type characteristics, extent of vegetation coverage, need for buffering for noise, visual screening, compatibility with other land uses, accessibility and proximity.<sup>253</sup>

**4.63** The discussion paper also suggests that the land use planning process could be used to secure land for future development of public cemeteries through reservation in the same way provision is made in the planning of new urban areas for schools and other community infrastructure. However, the Department of Lands points out that this may be at the expense of other key government services such as health and education.<sup>254</sup>

**4.64** Mr Squires confirmed the view that cemeteries are often forgotten in the planning process but should be included in future planning:

Cemeteries are not included in planning exercises, future planning exercises. For instance, when the plan for Sydney 2001 came out there was no mention of cemeteries. Cemeteries tend to be forgotten but they provide a finite source of assistance for the whole public.<sup>255</sup>

**4.65** Mr Knoll also supported the idea of including cemeteries in future planning:

Ultimately there is a need for the resourcing of the efforts that the Department of Lands is making in relation to additional space. From a planning perspective, there may be some value in creating a category for future cemetery space. Obviously that crosses a boundary into the Department of Planning, and we are very conscious not to overdevelop that boundary. But the benefits of bringing together the resources in Lands and Planning to achieve the future space allocation would, I anticipate, benefit our communities, and certainly the Islamic communities and others.<sup>256</sup>

**4.66** Mr Roude, Islamic Council of NSW, commented that Government needs to give priority to the issue of burial space:

So there was no planning at all and it is time that the Government gave priority in relation to making space available, not only to the Muslim community but other religious groups also facing the same problem in relation to space.<sup>257</sup>

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<sup>253</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p7

<sup>254</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p7

<sup>255</sup> Mr Squires, Evidence, 5 September 2005, p4

<sup>256</sup> Mr Knoll, Evidence, 5 September 2005, p59

<sup>257</sup> Mr Roude, Evidence, 5 September 2005, p50

- 4.67** The Sydney Metropolitan Strategy is a NSW State Government initiative to guide growth and change in the Sydney Metropolitan Area over the next 30 years and is being developed by the Department of Planning. The Metropolitan Strategy considers a range of issues for Sydney including:
- urban growth
  - housing, communities and urban renewal
  - economic growth and employment
  - conserving our natural resources
  - protecting the environment
  - open space
  - transport within the Sydney region
  - airports, ports and freight
  - providing infrastructure<sup>258</sup>
- 4.68** The Committee is concerned that currently the Sydney Metropolitan Strategy does not include planning for cemeteries. The Committee believes that, as the shortage of burial space in the GMA of Sydney is becoming a serious issue with approximately 50 years remaining in Crown cemeteries, it is necessary for the Government to include new cemeteries and crematoria in future planning strategies, such as the Sydney Metropolitan Strategy.

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### **Recommendation 8**

That space for new cemeteries and crematoria be included in future planning strategies, such as the Sydney Metropolitan Strategy.

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- 4.69** Mr Williams told the Committee that in his view the Government does not know exactly how many cemeteries there are in NSW and how much space is available. He advised:

I am also a member of the Cemeteries Committee of the National Trust, which has been conducting a survey of all the cemeteries in New South Wales for the past 24 years. It is less than one-third of the way through. Technology now would allow a survey of this type to more accurately determine exactly what cemeteries exist in New South Wales. I put it to you that at this point the Government does not know how many cemeteries there are out there.

If the Department of Planning and the Department of Lands or government generally want to seriously address future burial space it needs to also understand exactly how much it has in reserve. A cemetery survey of this type, particularly if it included

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<sup>258</sup> The Sydney Metropolitan Area includes from the lower Hunter in the north to the Illawarra region in the South and west to the Blue Mountains: [www.metrostrategy.nsw.gov.au](http://www.metrostrategy.nsw.gov.au) (accessed 17 October 2005).

identifying existing graves and available space in each of these sites, would be invaluable to the future planning of this State.

- 4.70** Mr Williams identified the benefits of the National Trust survey to be that ‘we would have a far more efficient understanding, particularly in the Sydney basin, of the reserves and how the various strategies can be used to apply to the management of those reserves, as well as reuse of existing reserves.’<sup>259</sup>
- 4.71** The National Trust provided details of the survey and commented that ‘we are also currently investigating ways of developing innovative models for sustainability and possible reuse of old cemeteries to assist with future planning.’<sup>260</sup>
- 4.72** The Committee agrees that the cemetery survey of NSW being undertaken by the National Trust is important from a heritage perspective and could also help inform the Government on potential under-used areas that could be identified as available burial space in New South Wales and especially in the Sydney GMA.

#### **Additional public cemeteries**

- 4.73** The Government also has the option of purchasing additional land or allocating existing State-owned land for burial purposes. The Department of Lands advises that this option is hampered by the high cost of land, and the lack of large areas in the GMA of appropriate and undeveloped land.<sup>261</sup>
- 4.74** The Lands discussion paper questions whether it is still appropriate for the Government to provide land, given the introduction of private cemeteries:

While the government has provided land for cemeteries in the past, with the introduction of private cemeteries, it is not clear that the government should provide additional land or how such purchases would be funded by government.

It may be that those public cemetery trusts with substantial financial reserves built up over time from cemetery operations should be encouraged to undertake long term planning and acquire additional land for future use. This is of course not an option available to all trusts.<sup>262</sup>

- 4.75** The Committee recognises that, in order to address the shortage of burial space in the GMA there are a number of options to consider, and while the addition of public cemeteries provided by the Government may not be a viable option in the GMA due to competing land uses, the Committee reiterates that new cemeteries should be considered in future planning by the Government.

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<sup>259</sup> Mr Williams, Evidence, 5 September 2005, p26

<sup>260</sup> Submission 17a, National Trust, p1

<sup>261</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p7

<sup>262</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p7

### **Alternative interment practices**

- 4.76** Alternative interment practices may alleviate the problem in the GMA as they do not usually involve burial in a cemetery. Alternative interment practices include cremation (interment of ashes), sea burials, burial on private property, green burials and vertical interment.

### ***Cremations***

- 4.77** The number of cremations is increasing as mentioned in Chapter 2. Mr Squires commented that in Sydney cremations are ‘in the order of 65 per cent’ and ‘there is a slight trend upwards across Sydney’.<sup>263</sup>
- 4.78** The Committee recognises that the increased popularity of cremations has the potential to reduce the amount of land for burials. Further to this, the cost of a funeral with a cremation as opposed to a burial in the GMA is significantly cheaper. For example, at Macquarie Park Cemetery and Crematorium the cost of a lawn burial is \$5,810 whereas the cost of a cremation is \$770.<sup>264</sup>
- 4.79** The Committee is mindful that some religious groups do not accept cremation, but supports further education about and encouragement of cremation, as a cheaper alternative with the potential to reduce the land required for burials.

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### **Recommendation 9**

That cremations be encouraged as a way for the community to reduce the cost of a funeral and reduce the land needed for burials.

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### ***Sea burial***

- 4.80** In his submission to the inquiry, Mr Guye Richards from Sea Burials Australia suggests sea burials are a way of dealing with the lack of burial space on land:

The available space beyond the continental shelf is a virtually untapped zone as far as use for burials (at sea) is concerned. The viability of utilising some the accessible deepwater (at least 2000 metres depth) in selected areas of beyond the continental shelf, where the certainty that the remains of the deceased would be undisturbed is an option to Australians. This gives many people a third option other than land interment or cremation.<sup>265</sup>

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<sup>263</sup> Mr Squires, Evidence, 5 September 2005, p2

<sup>264</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW. See Appendix 5 for full table of costs of burial and cremations.

<sup>265</sup> Submission 16, Sea Burials Australia

**4.81** Disposing of an un-cremated body at sea is regulated under the federal Environment Protection (Sea Dumping) Regulations 1983. An application must be made to Environment Australia. Although the Act states that a fee of \$1000 must be lodged with the application, the Minister has the power to waive the fee. The number of sea burials in Australia is three or four per year.<sup>266</sup>

**4.82** Bodies for burial at sea must be prepared in accordance with the Ship Captain's Medical Guide. This involves weighting the body and sewing it into a strong shroud with several openings to allow putrefaction gases and trapped air to escape. The site of the burial must be arranged with Environment Australia, who will confirm the location with other State and Commonwealth agencies.<sup>267</sup>

**4.83** Mr Richards suggests that sea burials are a cheaper option to land burials:

As far as affordability is concerned, the general cost is often less expensive than land interment due to the facts that:

- There is no expense in purchasing a coffin or casket as the sea-going casket is re-usable.
- There is no costs involving grave digging and refilling, headstone placement or other appropriate site marking
- No ongoing costs as far as burial plot maintenance is concerned.
- Less expense in body preparation as burial at sea requires that embalming using hazardous (for the environment) chemicals is not done.<sup>268</sup>

#### ***Burial on private ground/property***

**4.84** A further option for burials is private ground. NSW Health advises that it is permissible to bury a body on private land provided the landholding is five hectares or more and the local authority has approved the location.<sup>269</sup>

**4.85** Ms Zenith Virago of the Natural Death Centre advises that some people prefer to be buried on their own land and that this is possible as long as certain policies and regulations are followed:

I am also dealing with people who are burying on private ground. They fulfil the requirements of local council policy as they bury on their own farms or any property that is over five hectares. As part of your guidelines looking at running out of space in cemeteries, it would be great to encourage more burials on private ground or more communities to open up their own cemetery area on their land. I am involved with probably two or three of those a year where there is a community or it is private ground and they are burying there. They are fulfilling the requirements and doing that.

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<sup>266</sup> Death – the Last Taboo, Sea Burials, [www.deathonline.net](http://www.deathonline.net) (accessed 13 October 2005)

<sup>267</sup> Death – the Last Taboo, Sea Burials, [www.deathonline.net](http://www.deathonline.net) (accessed 13 October 2005)

<sup>268</sup> Submission 16, Sea Burials Australia, p2

<sup>269</sup> *NSW Health Guidelines for the Funeral Industry*, NSW Health, p13



You can do all that procedure within three days of the death. You get somebody out from the Health Department to do it.<sup>270</sup>

- 4.86** Ms Virago further stated that if you want to bury on private ground normally the procedure is that you lodge an application with the council and then council sends someone out from their health department to inspect. Ms Virago commented that four local councils in her area have a policy on burial in private grounds:

Yes, at least four local councils within that area. All of them have a policy. If people abide by that policy and go through that procedure, which includes undertaking to register a right-of-way on the title deed, they fulfil their part.

... you cannot do that in three days but if you bury on private ground you have to undertake that you will register a right of way to that grave. That is shown on the title deed and people can walk to that grave site. If the property is sold on, people have a legal right of way to access that, but only by foot, not by carriageway.<sup>271</sup>

- 4.87** Mr Frank Vincent, Chief Executive Officer, Daruk Aboriginal Medical Service, advised the Committee that the Daruk Aboriginal Land Council and other land councils are seriously considering the option of establishing their own cemeteries. Mr Vincent commented:

Could I just say on that, a while ago I made a statement about being the chair of the Daruk Land Council. That has actually been an issue we have discussed at our council meetings. Our land council is establishing its own cemetery. We are actually currently the largest landholder in Sydney. So it is one of the issues we are looking at in our council.

... Our land council boundary starts in the east at Silverwater Road, goes out to Mount Victoria in the west, out to Wiseman's Ferry, Colo Heights in the north and basically along Queen Elizabeth Drive in the south. So it is a fairly large area and we own large lots of lands in just about all of those regions except for the Blacktown local government area.<sup>272</sup>

- 4.88** Mr Vincent commented that the cemetery would be run by the land council and most likely available for Aboriginal people and their families.<sup>273</sup>

### ***Green burial***

- 4.89** The Department of Lands advise that green burial, also know as natural or woodland burial, is increasingly being practised in England and parts of Europe and uses land in a less formal and obtrusive manner than conventional burial practice.
- 4.90** Green burial involves the use of natural open space, limits the use of chemicals and encourages bio-degradable burial materials instead of concrete and metals. Graves within

<sup>270</sup> Ms Zenith Virago, The Natural Death Centre, Evidence, 5 September 2005, p41

<sup>271</sup> Ms Virago, Evidence, 5 September 2005, p46

<sup>272</sup> Mr Frank Vincent, Chief Executive Officer, Daruk Aboriginal Medical Service, Evidence, 19 September 2005, p24

<sup>273</sup> Mr Vincent, Evidence, 19 September 2005, pp24-25

green burial sites area usually marked by a newly planted tree or small boulders. Small plaques may be located near to the grave marker to commemorate the deceased.<sup>274</sup>

- 4.91** Ms Virago advised in her submission to the Inquiry that the Natural Death Centre is trying to develop green burial in north coast NSW as a response to many community requests. Ms Virago further advises that vertical interment, where the body is buried in a vertical position, can be part of green/woodland burials.<sup>275</sup>

***Vertical interment***

- 4.92** Vertical interment means that instead of being buried horizontally in the ground as is the current practice, the coffin or casket is placed vertically into the ground in the cemetery. A local government area in Victoria is currently trialling vertical interment.<sup>276</sup>

- 4.93** Vertical interment was not a popular option among the witnesses representing the various cemetery trusts. Mr Squires advised the Committee that he was 'not sure that anyone seriously is suggesting vertical interment, it is rather awkward for exhumations. There are other drawbacks too.'<sup>277</sup>

- 4.94** The drawbacks suggested by Mr Squires were elucidated by Mr Williams:

At the moment, though, the way that practice is described, we could apply a similar system to horizontal burial and you still would not get any more burials per square metre in that area of space. The only way that would become more viable is if the geological structure allowed much deeper drilling of the site, and then you would have multiple burials in each of those holes drilled...

That would be the only way [multiple vertical burials] would start to become more efficient than the current system. So it is an alternative, but at this point, under the depth that they are prepared to drill, it is not any more efficient than what we currently practise. What it does do is that it allows more difficult reuse of the site. From a risk management point of view, if sites were going to be reused long term, rather than new sites being purchased, under this system it would become difficult to remove any human remains that are left and re-inter if that site were to be reused. Whereas the current burial system at least allows a feasible way of reusing the sites because it provides better access to the site.<sup>278</sup>

- 4.95** Mr O'Keefe commented that vertical interment may not in fact increase burial space:

I think the issue of vertical interment is an aberration. There is no evidence at all that it would increase burial density. I also believe that it is almost an obnoxious practice.

<sup>274</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p7

<sup>275</sup> Submission 46, The Natural Death Centre, p3

<sup>276</sup> Mr Williams, Evidence, 5 September 2005, p17

<sup>277</sup> Mr Squires, Evidence, 5 September 2005, pp3-4

<sup>278</sup> Mr Williams, Evidence, 5 September 2005, p17

There is no real evidence that it has been implemented anywhere, that I am aware of—not successfully... It is not quite the image one has of resting in peace.<sup>279</sup>

- 4.96** The Committee suggests that the industry and the Department of Lands review the outcomes of the Victorian local government trial and give further consideration to vertical interment at that time.
- 4.97** It is the Committee's view that, with consideration given to religious and cultural beliefs, alternative interment practices such as sea burials, burial on private property and green burials should be encouraged and these alternatives advertised to the community so they are aware that a choice exists. The Committee notes that the alternatives covered here may not be suitable for all social and religious groups, however the Committee believes the funeral industry should ensure clients are aware that these choices are available.

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### Recommendation 10

That the funeral industry promote alternative interment practices to the community as a way of alleviating pressures on burial space in the greater metropolitan area of NSW.

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### Maintenance of cemeteries and heritage issues

- 4.98** The Cemeteries Conservation Committee of the National Trust notes that cemeteries are an important part of Australia's past and that:

All cemeteries have social and historic value and potential cultural significance ... Conservation of cemeteries means retaining this significance.<sup>280</sup>

- 4.99** Closed, inactive cemeteries whether church, private or public, require maintenance for their upkeep, which is usually funded from a local government source.<sup>281</sup> Open cemeteries also require funds for maintenance. Cemetery trusts have realised this and some have been setting aside part of their income to cover perpetual care of the cemeteries.
- 4.100** The Department of Lands discussion paper on burial space also raises the issue of maintenance of cemeteries. The discussion paper advises:

It is important to ensure that cemeteries are maintained both while they are operational and after they are full when there is no longer an income stream from new burials. There is currently no requirement relating to perpetual maintenance of cemeteries although there may be a public perception that cemetery grounds will be maintained forever.

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<sup>279</sup> Mr O'Keefe, Evidence, 5 September 2005, p31

<sup>280</sup> *National Trust Guidelines for Cemetery Conservation*, Cemeteries Conservation Committee, National Trust, pp2-3

<sup>281</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW, Attachment J

Legislation could be enacted that requires public and private cemetery administrators to set funds aside for the future maintenance of cemeteries.<sup>282</sup>

- 4.101** The National Trust advised that the cemetery survey it has been conducting over the last 24 years has highlighted that the sustainability and viability of cemeteries is increasingly becoming an issue. The Trust points out that:

The price of a burial falls short of the cost of the perpetual care of the grave and as such, many cemeteries, particularly in regional areas, are falling into disrepair. In addition, many are running out of space.<sup>283</sup>

- 4.102** In their submission to the Inquiry, Dubbo City Council commented on the need for funding to maintain and upgrade operational cemeteries in their local government area:

Whilst the cemeteries are reasonably attractive, more could be done to landscape them and provide conservation, operational and capital upgrades/maintenance. This objective is difficult given limited revenue generated from the cemeteries and limitations from other sources of funding.<sup>284</sup>

- 4.103** The financial implications for local councils of maintaining cemeteries was explained by Mr Mark Pilgrim, Business Manager, Hastings Council, who stated that even though people purchase a memorial in perpetuity the long term care of site reverts to the council:

There is another cost too. We charge \$781 for our memorials. The memorials are in perpetuity. Basically, after 10 years the maintenance obligations refer back to council. We have to maintain that site after 10 years at our cost. ...

But our fee structure goes for about 10 years. After that we take over the maintenance obligations.<sup>285</sup>

- 4.104** In response to the ongoing cost of maintaining cemeteries, Mr O'Keefe commented that the Catholic Cemeteries Board aims to allocate 40% of the right of burial charge to perpetual care for all their cemeteries:

That is our aim and we generally achieve it. Any surplus funds at the end of each year are allocated to our perpetual care fund.<sup>286</sup>

- 4.105** Mr O'Keefe also advised the Committee that the Board employs a consultant actuary to calculate what perpetual care funds would be needed, noting that at Rookwood 'we need something in the order of \$60 million.'<sup>287</sup>

<sup>282</sup> *Burial Space in the Sydney Greater Metropolitan Area, Stakeholder Discussion Paper 2005*, Department of Lands, p8

<sup>283</sup> Correspondence from Ms Catherine Brew, National Trust, to Chair, 28 September 2005, p2

<sup>284</sup> Submission 9, Dubbo City Council, p1

<sup>285</sup> Mr Mark Pilgrim, Business Manager, Hastings Council, Evidence, 23 August 2005, p5

<sup>286</sup> Mr O'Keefe, Evidence, 5 September 2005, p34

<sup>287</sup> Mr O'Keefe, Evidence, 5 September 2005, p38

**4.106** Mr Williams advised that the Anglican and General Cemetery Trust also recognise the importance of allocating funds for perpetual care of the cemeteries. He stated that of the Trust's income about 45% to 48% is allocated to perpetual care funds.<sup>288</sup>

**4.107** Mr Williams further commented that:

Our trust would require in excess of \$39 million by the time the last new right of burials have been sold in order to, on today's prices, successfully maintain the cemetery with a reasonable level of infrastructure. So we are talking about a lot of money that needs to be invested. It is not a level playing field. The private sector and, for that matter, the churches—including the Anglican Church—are not required by law to invest surplus funds. If any of the cemeteries become full and closed and they decide for some reason to divest themselves of those cemeteries, there are no invested reserves that are held in perpetuity that go along with that sale. It is sold for whatever the asset is worth. Whoever takes over that asset takes it over with all its future liabilities.<sup>289</sup>

**4.108** In its submission to the Inquiry the National Trust suggest that to meet ongoing maintenance and conservation costs, cemeteries need a regular income and keeping a cemetery active is one way of ensuring an income stream. Revocation of unused burial sites and renewable tenure are both means of addressing the shortage of burial space as well as the ongoing care of cemeteries. The Trust says:

An active, well maintained historic cemetery will have a greater chance of engaging public interest in its heritage and recreational values, which in turn will help minimise the chance of vandalism.<sup>290</sup>

**4.109** The Committee recognises the need for cemeteries to be foresighted in terms of long term upkeep, including funds for maintenance once the cemetery has become inactive or full. The Committee recognises that there may be a need for legislation to force cemeteries to put aside money for perpetual care and suggests that the Government give consideration to this issue. The Committee also notes that increased costs to consumers from any such legislation should also be a consideration for Government.

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### **Recommendation 11**

That legislation be developed and implemented to ensure cemeteries put aside sufficient funds to provide income to cover the costs of perpetual care of cemeteries.

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<sup>288</sup> Mr Williams, Evidence, 5 September 2005, p22

<sup>289</sup> Mr Williams, Evidence, 5 September 2005, p22

<sup>290</sup> Submission 31, National Trust, p3

## Conclusion

- 4.110** The Committee acknowledges that the Cemeteries Interdepartmental Committee has been a necessary and timely commitment made by government agencies. The Committee does not wish to pre-empt the outcomes of that process but would like to help inform the process with this report.
- 4.111** The Lands discussion paper is a good starting point to highlight the importance of the issue of burial space with the funeral industry and the Committee supports the Department of Lands consulting further with the broader community on these issues. It is noted that Lands have advised that this will be the next step in the Cemeteries Interdepartmental Committee process.
- 4.112** Burials are more expensive than cremations. This can be attributed to a number of reasons, but primarily due to the lack of burial space, which in turn can drive up the price of burial plots (land). A significant way to reduce the cost of a funeral and reduce the land required for burial space is to encourage cremations.
- 4.113** The Committee recognises that it is necessary to raise public awareness of the issue of burial space and community views and gain support for options to address burial space shortages. A number of the options highlighted in this chapter, such as reuse of graves and revocation of unused burial rights have the potential to reduce the cost of a funeral. These options and other ways to reduce the cost of funerals are examined in more detail in Chapter 3.
- 4.114** Due to the shortage of burial space in the GMA, it is important that the Government continue to make the issue of burial space a priority. Without pre-empting the Cemeteries Interdepartmental Committee process, the Committee has recommended that the Government give consideration to the following:
- the intensive use of family graves should be encouraged and promoted
  - the introduction of renewable tenure would mean a need to educate and inform the community about the process to ensure there is a clear understanding at the time of burial that the gravesite is not held in perpetuity
  - legislation for revocation of unused burial rights on Crown cemeteries should be extended to other cemeteries
  - the provision of new cemeteries and crematoria should be part of future Government planning strategies
  - cremations should be encouraged due to the lower costs involved and potential to reduce the need for burial space
  - alternative interment practices, such as sea burials, burial on private property and green burials should be encouraged and promoted
  - there may be a need for legislation to enforce the need for cemeteries to put aside funds for perpetual care.

## Chapter 5 Community needs

This chapter considers the burial, cremation and other practices following death amongst different ethnic, cultural and religious groups in NSW. It should be noted that the practices and customs observed by a particular religious group may vary considerably based on ethnicity and the length of time members have lived in Australia.

Throughout this inquiry it has become obvious that a funeral is an intensely personal ceremony about which many people have strong views. In NSW many religions are able to conduct their preferred funeral service and the Committee is committed to ensuring the many options currently available to consumers continue to exist. The Committee notes the options also available to consumers who wish to have an environmentally sustainable funeral service. The Committee also highlights the importance of informing consumers of these alternatives, in order to help them negotiate the kind of funeral service they desire.

### Different religious and cultural practices

- 5.1** In 1983, the High Court of Australia defined religion as a ‘complex of beliefs and practices which point to a set of values and an understanding of the meaning of existence’.<sup>291</sup> Using this as a broad starting point, the Australian Bureau of Statistics (ABS) identify stated religious affiliations as: Catholic 27%, Anglican 21%, other Christian denominations 21% and non-Christian religions, 5%. Just over a quarter of all persons either stated they had no religion or did not adequately respond to the question to enable classification of their religion. Affiliates of religions other than Christianity have shown the largest proportional increases since the 1996 census. Buddhist affiliates increased by 79%, Hindu by 42%, Islam by 40% and Judaism affiliates by 5%.<sup>292</sup>
- 5.2** Growth in the number and proportion of people affiliated with Buddhism, Islam and Hinduism is largely due to changes in the country of origin of recent immigrants. Between 1996 and 2001 there were just over half a million new arrivals to Australia and, although the most common religious affiliation of immigrants is Christianity, affiliates of other religions are more highly represented among recent immigrants than in the total population.
- 5.3** The Committee received information on the funeral practices and requirements of a number of different religions and cultures, outlined below. These are:
- Christianity
  - Buddhism
  - Hinduism
  - Islam

<sup>291</sup> *Church of the New Faith v Commissioner of Pay-Roll Tax* (1983) 154 CLR 120

<sup>292</sup> <http://www.abs.gov.au/Ausstats/abs@.nsf/0/E4F6E98AA14943F3CA256F7200832F71?Open> (accessed 22 August 2005)

- Judaism
- Aboriginal and Torres Strait Islander
- Pacific Islander
- Bahá'í.

### **Christianity**

- 5.4** Christian denominations include Anglican, Baptist, Catholic, Church of Christ, Jehovah's Witness, Lutheran, Orthodox (including Greek, Russian, Albanian, Antiochian, Macedonian, Romanian, Ukrainian and Serbian), Pentecostal, Presbyterian and Reformed, Salvation Army, Uniting Church and other Christian denominations.
- 5.5** Broadly, Christian beliefs allow for the disposition of the remains of the deceased by burial, cremation or immurement. Some of the Christian denominations, particularly within the Orthodox Churches, strongly prefer burial to cremation. The Committee heard that less than 5% of the Orthodox community chose cremation over burial.<sup>293</sup>
- 5.6** It is estimated that the Catholic Cemetery at Rookwood has sufficient space until 2050; the Field of Mars Cemetery will run out in 2020; Liverpool Catholic Cemetery in 2025 and North Rocks in 2015.<sup>294</sup> Mr O'Keefe, General Manager, Catholic Cemeteries Board, advised the Committee that the Board did not do cremations 'as yet' but that a proposal was being developed to build a Catholic crematorium at Rookwood, in response to evidence that 30% of Catholics were choosing cremation over burial.<sup>295</sup> Mr O'Keefe told the Committee that cremation was an alternative that had only recently become acceptable for Catholics and their religious beliefs required a specific cremation service, which would not be available at a non-denominational crematorium.<sup>296</sup> Mr O'Keefe also advised that some Catholics, particularly those of Italian heritage, preferred to be buried above ground, in mausolea or family vaults.<sup>297</sup>
- 5.7** Mr Derek Williams, General Manager of the Anglican and General Trust at Rookwood cemetery, told the Committee that the Christian part of the cemetery had approximately 18 years remaining before it would reach capacity. He advised the Committee that burial space was not as great a concern for the Anglican community however, as 67% of Anglicans are choosing cremation over burial.<sup>298</sup>

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<sup>293</sup> Mr Derek Williams, General Manager, Anglican and General Cemetery Trust, Rookwood Necropolis, Evidence, 5 September 2005, p15

<sup>294</sup> Submission 41, Catholic Cemeteries Board, p7

<sup>295</sup> Mr Harold O'Keefe, General Manager, Catholic Cemeteries Board, Evidence, 5 September 2005, pp29-30

<sup>296</sup> Mr O'Keefe, Evidence, 5 September 2005, p30

<sup>297</sup> Mr O'Keefe, Evidence, 5 September 2005, p33

<sup>298</sup> Mr Williams, Evidence, 5 September 2005, p15



## Buddhism

- 5.8** Buddhists in NSW come from a wide range of nationalities and ethnic backgrounds. These include Thai, Vietnamese, Lao, Khmer, Burmese, Sri Lankan, Malaysian, Chinese, Mongolian and Tibetan as well as Australian born Buddhists. Based on the 2001 census, Buddhism is the fastest growing religion in Australia.<sup>299</sup> Buddhists can be either cremated or buried. There is generally no restriction as to who performs this task.
- 5.9** Within the Buddhist community there are many different ethnic groups and practices will vary according to the community and their country of origin. For example, in Theravaden, the body can be handled in a respectful way immediately. In the Mahayana tradition, it is preferable to leave the body undisturbed for up to eight hours. In both cases, a Buddhist monk is likely to be called to perform the necessary death prayers.<sup>300</sup>

## Hinduism

- 5.10** Throughout the 1990's, the number of people affiliated with Hinduism in Australia increased significantly. Of all people identified as Hindu in 2001, 82% had been born overseas, with 34% born in India and 11% in Sri Lanka.<sup>301</sup>
- 5.11** All Hindus have certain practices in common, however some variation in practice is largely based on where Hindus have come from. For example, Hindus of North Indian origin would have certain practices that are not followed by Hindus from Sri Lanka. Some variations are also due to the different interpretation of philosophies and scriptures by different Gurus (religious leaders). Thus, the ISKON (Hare Krishna) movement has certain practices that are not followed by the majority of Hindus.<sup>302</sup>
- 5.12** It is preferable for a Hindu to die at home, in the presence of his/her family for comfort and to recite the Hindu Scriptures. Patients may call for a Hindu priest to assist with their acts of worship. Following death the body is bathed, anointed and wrapped in cloth.
- 5.13** Hindus are usually cremated, except for young children under the age of three. It is preferable for cremation to take place within 24 hours of death. Cremation is important to Hindus for three reasons: it controls the pollution created by death, it allows the family to be brought back into society because death causes separation and it releases the soul of the deceased properly so that it can continue to the next life.<sup>303</sup> After cremation, the ashes are collected and usually scattered in water. Traditionally, it was considered important that family were involved

<sup>299</sup> <http://www.abs.gov.au/Ausstats/abs@.nsf/0/E4F6E98AA14943F3CA256F7200832F71?Open> (accessed 22 August 2005)

<sup>300</sup> Australasian Police Multicultural Advisory Bureau, *A Practical Reference to Religious Diversity for Operational Police and Emergency Services*, 2<sup>nd</sup> edition Canberra 2005

<sup>301</sup> <http://www.abs.gov.au/Ausstats/abs@.nsf/0/E4F6E98AA14943F3CA256F7200832F71?Open> (accessed 22 August 2005)

<sup>302</sup> Australasian Police Multicultural Advisory Bureau, *A Practical Reference to Religious Diversity for Operational Police and Emergency Services*, 2<sup>nd</sup> edition Canberra 2005

<sup>303</sup> <http://www.bbc.co.uk/religion/religions/hinduism/features/death/> (accessed on 23 August 2005)

in lighting the funeral pyre. At modern crematoria, this may be achieved through permitting family involvement with the cremation process.

## Islam

- 5.14** When a Muslim dies, relatives must bury the deceased as soon as practicable. The body of a deceased Muslim is washed and wrapped in a shroud of clean, white sheets. Knowledgeable individuals or Imams can undertake the ritual washing. Mr Wasim Raza, Secretary Muslim Cemetery Trust, explained:

The burial is almost the same with all the sects in Islam: the bodies are buried in the ground; they have to be lying flat on their back and head turned to the right shoulder and facing Mecca. That is how the cemetery has to be aligned like that. In Rookwood for this reason you lose some space because the graves cannot be head to head, there has to be a parting in between each row of graves ... At the moment where the bodies are buried in Rookwood the grave is dug about 1.8 to 1.9 metres and at the bottom of the grave we make a vault with the concrete blocks facing the earth and then the body comes from the funeral in a reusable coffin, which is a metal coffin—stainless steel—and the body there is shrouded in a cotton shroud and it is lifted out of that reusable coffin, placed inside the vault and then the vault is closed again with the timber on top and then the soil is poured over it. That is the current practice. Most of the religious faiths, Sunnis, Shiites and all the others, they agree with this method of burial.<sup>304</sup>

- 5.15** Muslims believe that the body of the deceased should be carried in a coffin to the graveside, although the deceased is not buried in the coffin. The body, shrouded in layers of white sheets, is laid on the earth floor. A hardwood frame, assembled to fit inside the grave, is placed at the bottom of the grave around the body. Hardwood timber slats are then arranged on the frame, creating a chamber. Backfilling then commences above the chamber.<sup>305</sup> As noted in Chapter 3, the use of lightweight cement slabs and reusable metal coffins can reduce the cost of funerals.<sup>306</sup>
- 5.16** Mr Ali Roude Acting Chairman, Islamic Council of NSW, advised that Muslims generally prefer to use a funeral director from the same sect of Islam as there are different practices in relation to the preparation of the body for burial. Mr Roude explained to the Committee that the funeral service for many Muslims is relatively cheap because the funeral parlour conducting the funeral is attached to, or funded by, the mosques they serve. This situation means that services are normally conducted on a not-for-profit basis.<sup>307</sup>
- 5.17** The increase in New South Wales of people affiliated with Islam has meant that in metropolitan Sydney there is a limited allocation of burial space remaining for Muslim burials. Mr Lee Squires, Executive Manager of the Joint Committee of Necropolis Trustees of

<sup>304</sup> Mr Wasim Raza, Secretary Muslim Cemetery Trust, Rookwood Cemetery, Evidence, 5 September 2005, p50

<sup>305</sup> Submission 18, Omar Mosque Committee, p4

<sup>306</sup> Submission 18, p4

<sup>307</sup> Mr Ali Roude, Acting Chairman, Islamic Council of NSW, Evidence, 5 September 2005, p52

Rookwood, advised that the Muslim cemetery at Rookwood will be filled by about 2007-08.<sup>308</sup> Cremation and vertical interment are not acceptable alternatives for Muslims, so the need for additional burial space is significant for the Muslim community.

## Judaism

- 5.18** After death, the Jewish Burial Society or Chevrah Kaddisha carefully prepares the body of the deceased for burial, according to specific religious requirements. The body is washed and immersed in a body of water called a mikvah and then dried. The body is wrapped in a shroud and placed in a plain pine coffin and burial should take place promptly, generally before nightfall.<sup>309</sup> Mr David Knoll, President of the NSW Jewish Board of Deputies, expanded on the requirements of the burial process:

The simplicity of a Jewish funeral is of enormous import. There are specific rituals for the washing of a body; for the attendance upon a dead body. There are a host of issues in relation to the practice of cleansing, anointing and so on ... every Jewish person is buried in an identical manner—a white shroud, the simplest of box. It is the most democratic of traditions in that rich and poor are buried alike—an equal size of plot, an equal size of burial space.<sup>310</sup>

- 5.19** Jewish tradition requires that the body be ‘watched’ at all times as the soul, it is believed, does not leave until the burial. Once the Chevrah Kaddisha becomes involved, arrangements will be made to have the body accompanied at all times.
- 5.20** Mr Knoll explained to the Committee that the Jewish Cemetery Trust at Rookwood incorporates maintenance charges into the price of the funeral, to ensure that the Jewish section of the cemetery will be maintained, and also to ensure that ‘a small degree of funds are created to subsidise those members of our community who cannot afford a burial.’<sup>311</sup> Mr Knoll advised that the Jewish section of Rookwood Cemetery had approximately 13 years of burial space left.<sup>312</sup>
- 5.21** Mr Knoll emphasised the importance of planning in relation to ensuring sufficient burial space in the future and that, as for the Muslim community, ensuring sufficient burial space was a key issue for the Jewish community in New South Wales.<sup>313</sup>

<sup>308</sup> Mr Lee Squires, Executive Manager, Joint Committee of Necropolis Trustees, Rookwood, Evidence, 5 September 2005, p3

<sup>309</sup> Australasian Police Multicultural Advisory Bureau, *A Practical Reference to Religious Diversity for Operational Police and Emergency Services*, 2<sup>nd</sup> edition Canberra 2005

<sup>310</sup> Mr David Knoll, President NSW Jewish Board of Deputies, Evidence, 5 September 2005, p57

<sup>311</sup> Mr Knoll, Evidence, 5 September 2005, p58

<sup>312</sup> Mr Knoll, Evidence, 5 September 2005, p57

<sup>313</sup> Mr Knoll, Evidence, 5 September 2005, p59

### **Aboriginal and Torres Strait Islanders**

- 5.22** There is not a single Aboriginal and Torres Strait Islander ‘religion’ as there are many beliefs. There are, however, shared cultural traits, economic and ceremonial dealings and a customary system of land-tenure law. If a member of the mainstream churches dies, Aboriginal and Torres Strait Islanders follow the customs of that doctrine with perhaps some local custom’s influence.
- 5.23** In traditional Indigenous societies, death often involves an elaborate series of ritual and ceremony. After a death, a household may change location, and/or there may be rituals to clean the house and belongings – smoking for example. The Committee heard that the smoking ceremony was the main custom still observed by Indigenous people, in conjunction with the various laws, usually public health related, of non-Indigenous Australia.<sup>314</sup>
- 5.24** However, there may also be ceremonies and procedures involving the whole body, and then, after varying periods, there may be additional procedures, leading to the final disposal of the body. Through the kinship system, many Aboriginal Peoples and Torres Strait Islander peoples are obliged to attend ceremonies such as funerals. Within their kinship structure, distant and remote relations may be members of the nuclear family unit.
- 5.25** According to Indigenous beliefs the body must be reunited with the land from which it originated, therefore the place of burial is of particular importance. The Committee heard that while Indigenous-owned cemeteries were able to accommodate decoration of the gravesite, in general cemeteries, decorating the grave area in certain styles may be prohibited by the administrators of the cemetery.<sup>315</sup>
- 5.26** Many funerals of Aboriginal and Torres Strait Islanders involve the transfer of the body over long distances to return to the deceased’s birthplace for interment and this can result in considerable costs incurred by the family. The Committee heard that the Aboriginal Medical Service provides a transport service, partially funded by the Department of Health, to convey the deceased. Mr Frank Vincent, Chief Executive Officer of the Daruk Aboriginal Medical Service, told the Committee:
- Usually we will pick [the body] up from the hospital or from the State morgue and transport it back to the funeral parlour and wherever the family has made the arrangements for the funeral. It is a free service on our part to basically transport the body back to the funeral director for preparation for the funeral.<sup>316</sup>
- 5.27** Mr Vincent advised the Committee that this service averaged approximately 50 transports a year, but there was demand for the service to be extended, given the importance the Indigenous community placed on returning the deceased to their birthplace for burial.<sup>317</sup>

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<sup>314</sup> Mr Peter Fernando, Deputy Chief Executive Office, Aboriginal Medical Service, Evidence, 19 September 2005, p16

<sup>315</sup> Mr Fernando, Evidence, 19 September 2005, p17

<sup>316</sup> Mr Frank Vincent, Chief Executive Officer, Aboriginal Medical Service, Evidence, 19 September 2005, p18

<sup>317</sup> Mr Vincent, Evidence, 19 September 2005, p19

### **Pacific Islanders**

- 5.28** In Pacific Island culture, those who attend a funeral are required to fill in the grave once the casket has been lowered into it. The Committee was advised that some Pacific Island communities had encountered difficulties with observing this practice at funerals held in certain cemeteries in New South Wales.<sup>318</sup>

### **Bahá'í**

- 5.29** Bahá'í are motivated by a belief in the essential spiritual nature of human existence. This has significance in their approach to death, funerals and the time, place and conditions of burial.
- 5.30** The Bahá'í in NSW come from a variety of ethnic backgrounds but a significant percentage are Iranian immigrants, some of whom are refugees. There are now Bahá'í living in more than half the local government areas in NSW, although this is estimated to be a relatively small number of people.<sup>319</sup>
- 5.31** The Bahá'í believe in respect for the dead without elaborate ceremony. Specifically, a Bahá'í is to be buried within one hour's journey of the place of death; a Bahá'í is not to be cremated and a Bahá'í is not to be embalmed. Mr Paul Stevenson, Chairman of the Bahá'í Council explained to the Committee:

To a certain extent the following of the Baha'i law with funeral directors is dependent upon an adequate briefing of the funeral director as to the requirements: similarly to our Jewish and Muslim colleagues, as soon as possible after death; no embalming and no cremating. The funeral service is relatively simple and can be elaborated as required by the family or if there is no family then by the local Baha'i community that would make those arrangements. We might use a funeral chapel; we may use a community hall of some sort for the service, but again minimal ceremony. The only actual requirement is the saying of a specific prayer at the graveside. So even a graveside ceremony is also relatively simple.<sup>320</sup>

- 5.32** In order to achieve this, the Bahá'í community require a continuous supply of affordable burial spots within a reasonable distance of each local government area.<sup>321</sup>

### **Religious and cultural issues under existing legislation**

- 5.33** The Committee believes that different religious and cultural practices are usually accommodated by the funeral industry in New South Wales and are not, generally, in conflict with public health legislation. Representatives of the Islamic Council of New South Wales noted that the requirements of autopsy or other health issues may hinder the burial of the

<sup>318</sup> Submission 45, Community Relations Commission, p1

<sup>319</sup> Mr Paul Stevenson, Chairman, Bahá'í Council, Evidence, 5 September 2005, pp75-76

<sup>320</sup> Mr Stevenson, Evidence, 5 September 2005 p76

<sup>321</sup> Submission 47, Bahá'í Council, p4-5

deceased in accordance with Islamic practice (that is, as quickly as possible), but accepted that in those cases, burial would be delayed for health or investigative purposes.<sup>322</sup>

- 5.34** The major concern for a number of religious groups was the need for additional burial space to accommodate the future needs of their communities. As discussed in Chapter 4, planning for additional burial space is an issue for most parts of the Greater Metropolitan Area (GMA) and future planning requirements should be incorporated in the GMA strategy.
- 5.35** The Committee strongly encourages the industry to continue to accommodate the various needs of the different religious and cultural groups. As discussed in Chapters 6 and 7, the Committee proposes the development of a mandatory code of practice for the industry, to define standards of professional practices. The Committee recommends in Chapter 7 that the code of practice take into account different religious and cultural practices and beliefs.

### Environmental and sustainability options

- 5.36** There is increasing community interest in and demand for burials and/or cremations that have a minimal impact on the environment. These are often driven by personal beliefs relating to sustainability and environmental considerations.<sup>323</sup> Examples of low environmental impact disposal of human remains include the use of cardboard coffins, re-use of burial plots including the headstones after an agreed period, sea burials, homemade coffins, vertical interment, burial on own property and woodland burials. These options are outlined in Chapter 4.
- 5.37** As noted above, the wide variety of consumer demand is generally accommodated by the funeral industry. This is however, dependent upon the consumer being aware that options exist. Ms Zenith Virago advised the Committee that much of her work as Coordinator of the Natural Death Centre in Byron Bay involved advising people on their options, particularly in relation to the purchase of a cardboard coffin.<sup>324</sup> Ms Virago believed that while options such as vertical interment and coffins made of non-traditional materials were widely available overseas, they were not as conventional in Australia:

In countries that have high population and small resource of trees cardboard is the way to go, whereas we have a small population and a high percentage of trees and there has been some obstruction by some privately owned crematoria and cemeteries that say that cardboard coffins are not usable and not appropriate. But elsewhere they are using them in incredible volumes. Last year I buried my mother in England in a bamboo coffin, which is standard procedure by funeral directors there.<sup>325</sup>

- 5.38** As with many aspects of the funeral industry, the different options available to people who wish to have an ‘environmentally friendly’ funeral service do not appear to be well-known outside the industry. The Committee notes that some of the above options - vertical interment for example - are not acceptable to some religious and cultural groups and that this aspect also

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<sup>322</sup> Mr Roude, Evidence, 5 September 2005, p55

<sup>323</sup> Submission 1, Mrs D Bremmer, p2

<sup>324</sup> Ms Zenith Virago, The Natural Death Centre, Evidence, 5 September 2005, p41

<sup>325</sup> Ms Virago, Evidence, 5 September 2005, p3

needs to be taken into account when considering the promotion of these options to the public. Also addressed in Chapter 4 is the need to provide the community with adequate burial space, to ensure the sustainability of cemeteries in the future.

- 5.39** As noted in Chapter 4, the Department of Lands is currently conducting community consultations concerning the different alternatives available to maximise the use of cemetery space and consider the need for burial space in future planning. The Committee believes the consultation process will assist the promotion of environmentally sound alternatives and that the results of this process should be made publicly available.

## Consumer protection

- 5.40** There is consensus that consumers are particularly vulnerable to sales pressure when purchasing a funeral service. Emotional distress has an impact on the capacity of the consumer to make decisions about the purchase, and it may not be possible for the bereaved to consider the financial implications of their choices as they normally would. The Committee believes the provision of clear information regarding the costs a consumer can expect in relation to the purchase of a funeral is extremely important.
- 5.41** The Committee heard that there is a need both for improved complaints handling within the industry, and improved consumer awareness of the services and products available to them. Suggestions relating to these two issues are addressed below.

### Current complaints mechanisms

- 5.42** If a consumer wishes to make a complaint about an aspect of a funeral service there are a number of bodies that may be approached:
- the Office of Fair Trading (OFT) deals with complaints relating to poor service provision
  - the Department of Lands deals with issues relating to burial space and cemeteries
  - the Department of Health deals with matters relating to public health standards and compliance.
- 5.43** Many industry bodies also offer complaints resolution including:
- the Australian Funeral Directors' Association (AFDA)
  - the Funeral Directors' Association of NSW (FDA NSW)
  - the Cemeteries and Crematoria Association (CCA)
  - many of the individual cemetery trusts (including local government), for example, the Anglican and General Cemetery Trust, Rookwood Necropolis.<sup>326</sup>
- 5.44** Currently, the Funeral Industry Council (FIC) does not have a formal complaints handling process, however it may direct complaints to the appropriate organisation.<sup>327</sup>

<sup>326</sup> Mr Williams, Evidence, 5 September 2005, p26

- 5.45** Representatives from the FDA NSW explained to the Committee some of the various complaints handling processes, both from their perspective and those they pass on:

Some people are surprised by the bill they got or do not believe they got value for what they were charged for. Those complaints go to Fair Trading. Matters relating to bodies kept in the wrong places—not in a mortuary—go to Health. We receive some complaints that we cannot do anything about at all. We had one only the other day about the manner in which a body was being treated by the funeral director ... They were laughing, joking and that sort of thing. They tried to chat up the nurses in the nursing home. They were not a member of any association. We were able to arrange to have the funeral taken off that funeral director and given to one of our members. That is a complaint that you cannot pass on to anybody.<sup>328</sup>

- 5.46** The Committee heard that this broad range of administrative bodies made the complaints process confusing. Ms Megan Lee, Combined Pensioners and Superannuants Association, told the Committee that consumers were often passed from one body to the next without any satisfactory resolution of their complaint.<sup>329</sup> Mr Chapman suggested that some complaints are not the responsibility of one particular body, and suggested that an ‘industry body’ may provide an appropriate mechanism through which complaints could be investigated and dealt with.<sup>330</sup>

### Complaints facility

- 5.47** As noted in Chapter 3, some witnesses suggested there is a need for an independent regulatory mechanism to oversee funeral industry practice and ensure compliance with basic standards of service provision. Witnesses told the Committee that it was important for an independent body to be able to investigate issues of pricing as well as investigate complaints made against service providers. The Committee notes that the current proposal by the FIC is both industry based and focuses predominantly on the need for compliance with certain standards of practice.
- 5.48** In its submission NCOSS outlined the need for an industry Ombudsman ‘to provide an independent way of resolving customer complaints.’<sup>331</sup> NCOSS suggested that an Ombudsman similar to the Ombudsman for Energy and Water would be an appropriate oversight mechanism. Mr Dev Mukherjee, Senior Project Officer, NCOSS, advised the Committee of the benefits of such a system:

It is independent, it has representatives from the industry and consumers and, in case of the Energy and Water Ombudsman, it is an independent chair. It provides a cheap and effective mechanism for people to make complaints. It does not involve government in any way, so it is not like the New South Wales Ombudsman, who

<sup>327</sup> Mr Mark Lennon, Chair, Funeral Industry Council, Evidence, 14 June 2005, p18

<sup>328</sup> Mr Ken Chapman, Executive Secretary, Funeral Directors Association of NSW, Evidence, 8 August 2005, p71-72

<sup>329</sup> Ms Megan Lee, General Manager, Combined Pensioner and Superannuants Association, Evidence, 14 June 2005, p29

<sup>330</sup> Mr Chapman, Evidence, 8 August 2005, p72

<sup>331</sup> Submission 33, NCOSS, p7



probably has more important things to consider, such as child protection issues and the like ... The experience we have had with the Energy and Water Ombudsman is that it changes practice in the industry in a way that benefits both the industry and the consumer, so a better service can be provided. The feedback that the industry players are given actually changes their practice. For example, in the energy and water industries more electricity companies are offering payment through Centrepay and things like that. So it has changed the way they operate, rather than just having a complaint upheld or not.<sup>332</sup>

**5.49** The Combined Pensioners and Superannuants Association (CPSA) agreed with this proposal.<sup>333</sup>

**5.50** The Committee notes the low number of complaints reported by the OFT. The OFT advised the Committee that, of approximately 30,000 complaints received by the OFT in 2004-2005, only 22 related to the funeral industry.<sup>334</sup> However, it was suggested to the Committee that people may feel uncomfortable about making a complaint because of the nature of this service:

People are extraordinarily reluctant to make some kind of a negative comment about the person who has provided the funeral for them. It is almost like they gave their trust to this person to do this job for them and they shared a whole lot of personal stuff with them. To be making a comment about them that is negative is almost like saying something really bad about the deceased ... There is a culture around this issue that makes it very difficult for people to take on the funeral director. It is like making a complaint about the cost of something you were charged for by the clergy. It is as though it is forbidden territory.<sup>335</sup>

**5.51** Nonetheless, the Committee is not convinced that such a complaints handling mechanism as outlined above is necessary at this time. The number of complaints, even having regard to sensitivity surrounding the funeral process and the sometimes confusing responsibilities for investigating complaints, do not, in the Committee's opinion, warrant the establishment of a body solely dedicated to handling complaints associated with the funeral industry. The Committee notes, however, the benefits of streamlining the complaints handling processes through one government department and, as examined in detail in Chapter 6, recommends the Office of Fair Trading assume responsibility for funeral industry complaints handling.

**5.52** Related to this proposal is the suggestion that an industry body should develop standards of compliance and oversee the regulation of funeral industry operators. The issue of industry regulation and the ombudsman scheme is further examined in Chapter 7.

<sup>332</sup> Mr Dev Mukherjee, Senior Project Officer, NCOSS, Evidence, 14 June 2005, pp36-37

<sup>333</sup> Submission 39, Combined Pensioner and Superannuants Association, p5 and Ms Lee, Evidence, 14 June 2005, p29

<sup>334</sup> Tabled document, Office of Fair Trading, *Funeral Industry Research Findings*, Figure 11, 19 September 2005

<sup>335</sup> Ms Lee, Evidence, 14 June 2005, p23

**Consumer awareness**

- 5.53** The Committee heard that there is a general lack of awareness about the funeral industry. The CPSA advised the Committee that people often engaged the services of a funeral director without having a clear understanding of their function or their own needs and requirements in relation to the conduct of the funeral service.<sup>336</sup> The CPSA outlined a variety of circumstances in which they believed consumers had purchased inappropriate funeral services, primarily as a result of confusion in relation to the nature of the service they were purchasing and a lack of understanding of their options.<sup>337</sup>
- 5.54** As discussed in Chapter 3, the provision of a basic, low cost funeral with itemised costs is a necessary option and one that witnesses believe should be more prominently available. However, given the small numbers of these actually purchased,<sup>338</sup> the Committee believes that the education of the consumer to interpret costs and choose accordingly is essential. In June this year, the OFT developed a booklet and brochure providing consumer information relating to the conduct and purchase of a funeral service,<sup>339</sup> however it is too early to tell if this information has improved consumer awareness of the conduct and arrangements of a funeral service.
- 5.55** While the AFDA told the Committee that it was apparent that consumers ‘shop around’, the AFDA did not advise why they believed this to be the case.<sup>340</sup> The Committee also heard, in relation to the advertising of a funeral director’s service, that InvoCare believed that its business predominantly relies on referrals from other consumers.<sup>341</sup> This suggests that consumers generally do not have readily available criteria on which to judge the services of a funeral director (either through lack of informative advertising and/or a lack of preparedness and knowledge on the part of the consumer) and rely on good references in order to decide.
- 5.56** As noted in Chapter 3, the Committee has learnt that despite the legal right of consumers to access cemeteries and crematoria the reality is that they may be confronted with cemeteries or crematoria that are reluctant to deal directly with consumers.<sup>342</sup> The Committee believes that this issue can be addressed by the OFT raising community awareness and ensuring cemeteries and crematoria do not turn away consumers.
- 5.57** The Committee notes the diminished capacity of people to research an appropriate funeral service after a death has occurred. Given the essential nature of this service and the likelihood that everyone will at some point need to deal with the funeral industry, the Committee believes it is important to promote information relating to the funeral industry to consumers generally. The Committee believes that distribution of this information needs to occur as

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<sup>336</sup> Ms Lee, Evidence, 14 June 2005, p24

<sup>337</sup> Ms Lee, Evidence, 14 June 2005, p25

<sup>338</sup> Submission 43, Australian Funeral Directors Association, Addendum A, p21

<sup>339</sup> For example, the Office Fair Trading’s *Consumer Guide to Funerals and Funeral Arrangements*, June 2005

<sup>340</sup> Submission 43, p15

<sup>341</sup> Submission 42, InvoCare, pp11-12

<sup>342</sup> *Consumer Guide to Funerals*, Office of Fair Trading, p11

widely as possible, so people may gain some initial orientation to the funeral industry, rather than waiting until they have a specific need for the service to discover their options.

- 5.58** The Committee acknowledges the OFT's community consultation process and believes this is an important step toward improving consumer awareness. The Committee recommends that the results of the OFT discussion paper titled, *Review of Consumer Protection and the NSW Funeral Industry*, be made public and an education campaign be run by the Office of Fair Trading to raise community awareness of the funeral industry.

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**Recommendation 12**

That the results of the Office of Fair Trading discussion paper titled *Review of Consumer Protection and the NSW Funeral Industry* be made public and an education campaign be run by the Office of Fair Trading to raise community awareness of the processes involved in arranging a funeral.

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## Chapter 6 Regulatory framework

This chapter considers the current regulatory framework for the funeral industry in New South Wales. The current framework has a public health focus. There are also a number of other pieces of legislation that are administered by a variety of government agencies. This chapter also looks at the adequacy of the current framework and identifies areas for possible change or consideration.

### Current legislative framework

- 6.1** Funeral directors do not have to be licensed to operate in New South Wales,<sup>343</sup> but they must adhere to relevant legislation and regulation governing the industry.<sup>344</sup> The current range of legislation in New South Wales that relates to the funeral industry has a strong public health focus with some consumer protection measures.
- 6.2** The major pieces of legislation affecting the funeral industry are listed below and are administered by various government agencies. Further detail on this legislation including its development can be found in more detail in Chapter 2:
- *Public Health Act 1991* and Public Health (Disposal of Bodies) Regulation 2002
  - *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001
  - *Workers Compensation Act 1987* and *Workplace Injury Management and Workers Compensation Act 1998*
  - *Fair Trading Act 1987* and Fair Trading General Regulations 2002
  - *Funeral Funds Act 1979* and Funeral Funds Regulation 2001
  - *Local Government Act 1993*, Local Government (Orders) Regulation 1999 and Local Government (Approvals) Regulation 1999
  - *Environmental Planning and Assessment Act 1979* and Environmental Planning and Assessment Regulation 2000
  - *Conversion of Cemeteries Act 1974*
  - *Crown Lands Act 1989* and Crown Lands (General Reserves) By-law 2001
  - *Rookwood Necropolis Act 1901* and other Acts relating to individual cemeteries and or crematoria in NSW
  - *Coroners Act 1980*
  - *Births, Deaths and Marriages Registration Act 1995*

<sup>343</sup> Crematoria are required to be licensed in terms of their outputs in the environment. Refer to Chapter 2 for more detail.

<sup>344</sup> *Review of Consumer Protections and the NSW Funeral Industry*, NSW Office of Fair Trading, September 2005p5

6.3 There are also guidelines relevant to the industry that have recently been published. These include:

- NSW Health *Guidelines for the Funeral Industry* published in September 2004, that provides advice to the industry on following the Public Health (Disposal of Bodies) Regulation 2002
- Office of Fair Trading booklet *A Consumers Guide to Funerals* published in November 2004 to provide advice to consumers on organising a funeral.

6.4 The *Do-It-Yourself Funeral Book*, was first compiled in 1997 and the latest 2005 edition is distributed by the Bellingen Shire Bereavement Service for local residents. This booklet outlines how to conduct a funeral without the use of a funeral director.<sup>345</sup>

### **One piece of legislation and one lead agency?**

6.5 Some submissions have suggested that the existing legislative framework is too complex and that there should be one piece of legislation to cover the funeral industry. The Cemeteries and Crematoria Association of NSW comment that:

The Funeral Industry would be better served by being covered by one piece of legislation, similar to the Cemeteries & Crematoria Act 2003 (Victoria). Currently, there is no one Act that governs the administration of cemeteries and crematoria in NSW. Particularly, ownership of Rights of Burial. The Local Government Act 1993 gives no mention of cemeteries and crematoria. All participants should be licensed under the Act. Following this “pro-active” rather than “reactive” checking should take place.<sup>346</sup>

6.6 Mr Ian Strathie, Wray Owen Funeral Directors, also supports the idea that the legislation be drawn together as a single definitive piece of legislation, relating specifically to the funeral industry. Mr Strathie suggests that:

There are currently over 13 different statutes, regulations, bylaws and guidelines that affect the funeral industry ... and yet there is no single Government Department that is responsible for the overall effective control of the industry. There is no benchmark for industry conduct. Rules and regulations are flouted in the knowledge that no one at any Government level proactively monitors the industry.<sup>347</sup>

6.7 Ms Julie King, Senior Policy Officer, Department of Lands advised the Committee that a single Act governing the industry is more appropriate in Victoria than NSW because the industry in NSW is more complex than in Victoria:

It is not an easy situation in the current environment to nominate one agency as the lead agency. Because we are more complicated, in comparison with Victoria where all

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<sup>345</sup> The Committee notes that there may be other local guidelines produced by industry members and local councils that deal with the funeral industry that have not been listed here.

<sup>346</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW, p16

<sup>347</sup> Submission 29, Wray Owen Funeral, p6

cemeteries are public, it is more difficult for us to nominate one agency and say that is the prime agency for leadership.<sup>348</sup>

- 6.8** Professor Peter Sainsbury, Acting Deputy Director General, Population Health, NSW Health, advised the Committee that even though there are a number of pieces of legislation this does not impede the health regulations from meeting their objectives. Professor Sainsbury commented:

In common with other industries there exists many pieces of legislation administered by several government bodies with which the funeral industry must comply ...

The current health regulations, we believe, are meeting their objectives in terms of public health protection and their ability to do so is not being hindered by there being a number of pieces of legislation. Indeed, many other industries—for example, the building industry—have a similar situation where there are a number of different pieces of legislation affecting them.<sup>349</sup>

- 6.9** Professor Sainsbury also highlighted that some pieces of legislation affect a number of industries:

Some of the provisions of the Act that affect the funeral industry also affect other industries, for instance, occupational health and safety, universal infection control requirements, and hence it would be inappropriate to transfer and duplicate the specific funeral industry regulations. Under the current arrangement each government agency is able to bring a specialised and focus interest to the funeral industry consistent with its resources and expertise. In summary, we do not see the funeral industry as being peculiar in this regard from most other industries in New South Wales nor the legislation as being any different in its general concept of people and organisations being legislated by pieces of Acts. As I said, we believe that the variety of legislation is meeting public health requirements.<sup>350</sup>

- 6.10** WorkCover NSW hold the same view that most industries must follow a number of pieces of legislation governed by different agencies. Mr John Watson, General Manager, Occupational Health and Safety Division, WorkCover NSW, advised the Committee:

I think generally most industries have a multigovernment agency aspect to their operation. From our aspect as a regulator, we work hard to understand clearly where our jurisdiction starts and finishes, hence the discussion with the honourable member in respect of issues to do with members of the family. We have a pretty good understanding of where our jurisdiction starts and finishes, and we have relationships with other agencies who are regulators, like the Environment Protection Authority and so on, so we get a clear understanding of where things are at. Where matters are referred to us inappropriately, we transfer them across to those agencies. There is quite a deal of co-operation between government agencies about our operations, so that is quite successful. Whether a lead agency would improve that or indeed would

<sup>348</sup> Ms Julie King, Senior Policy Officer, Department of Lands, Evidence, 8 August 2005, p29

<sup>349</sup> Professor Peter Sainsbury, Acting Deputy Director General, Population Health, NSW Health, Evidence, 8 August 2005, pp1-2

<sup>350</sup> Professor Sainsbury, Evidence, 8 August 2005, pp1-2

add to the regulation or just add to the confusion, I am not sure, but I think at the moment things seem to be running fairly smoothly.<sup>351</sup>

- 6.11** The Department of Lands also held this view and highlighted that agencies work together to address issues as they arise. Ms Pieta Laing, Manager, Lands Policy, Department of Lands, advised the Committee:

We exist in a multi-agency environment in many areas. I guess I echo the words of the representative from WorkCover, in that where the need exists certainly there is co-operation between the agencies. We have networks that allow us to communicate issues. As we have found, when issues arise where we seek the input of sister agencies such as the interdepartmental committee on burial space, certainly those agencies draw together and participate in that discussion.<sup>352</sup>

- 6.12** The Committee recognises that the funeral industry, like many others, is governed by a number of pieces of legislation. However, from the evidence it is clear that this is not a significant issue for the functioning of the industry or the enforcement of the regulations.

## Other jurisdictions

- 6.13** The NSW Office of Fair Trading (OFT) states in its discussion paper, titled *Review of Consumer Protection and the NSW Funeral Industry*, that the situation in other states of Australia is similar to that in New South Wales, in that fair trading legislation regulates trading practices in all states. There is also legislation governing occupational health and safety issues that relates to the funeral industry in other states.

No jurisdiction in Australia currently licenses funeral directors or funeral companies. However, like New South Wales, most Australian states and territories do regulate pre-paid funerals.<sup>353</sup>

- 6.14** The Victorian parliamentary inquiry into the regulation of the funeral industry in Victoria recommended that mandatory standards for the funeral industry should be considered on a national basis.<sup>354</sup>

- 6.15** A paper published by the Queensland University of Technology for the Funeral Industry Regulation Working Party (Queensland) titled *Best Practice in Funeral Industry Regulation* advises that during the working party's review of the legislative framework in various jurisdictions it

<sup>351</sup> Mr John Watson, General Manager, Occupational Health and Safety Division, WorkCover, Evidence, 8 August 2005, p24

<sup>352</sup> Ms Pieta Laing, Manager, Lands Policy, Department of Lands, Evidence, 8 August 2005, p29

<sup>353</sup> *Review of Consumer Protections and the NSW Funeral Industry*, , NSW Office of Fair Trading, September 2005, p7

<sup>354</sup> *Inquiry into Regulation of the Funeral Industry*, Family and Community Development Committee, Parliament of Victoria, November 2005, p75



found that no two states have enacted identical legislation but have promulgated acts and regulations in response to their unique environments.<sup>355</sup>

- 6.16** The Committee recognises that there is not a need for nationwide legislation for the funeral industry as individual states and territories develop regulations that respond to issues that arise and affect the local environment of the funeral industry. Further to this, there has been limited support at a national level. It seems clear that other States' Fair Trading Ministers, at their national meetings, have not supported a common approach. However, it is possible that the work of this Committee and the Victorian parliamentary committee may lead to some changes.

### Adequacy of legislative framework

- 6.17** As part of this Inquiry the Committee was asked to examine the adequacy of existing regulation of the funeral industry to protect consumers, public health and employees. This section considers whether the existing legislation protects public health and employees as well as considering the role that the legislation plays in protecting consumers and addressing community needs.

#### Public health and employees

- 6.18** NSW Health advised the Committee that in the Department's view, the existing public health legislative framework, the Public Health (Disposal of Bodies) Regulation 2002, is meeting its objective to protect public health. Professor Sainsbury commented:

Based on information made available to the department, provided by industry, government and non-government organisations and the public there is no evidence that the current regulatory mechanisms do not adequately protect public health, that is, the risk to human health to which members of the general public may be exposed as a result of the disposal of human bodies.<sup>356</sup>

- 6.19** NSW Health further advised the Committee that there have been only a small number of serious complaints over the last 5½ years. Dr Michael Staff, Director Environmental Health, NSW Health, described the complaints:

There have been some serious complaints under the legislation and there have been some prosecutions as a result. The common offence has been the preparation of a body outside the registered mortuary. There have also been nine incidences of funeral directors not operating from registered mortuaries. There have been five complaints of poor embalming, coffin repair and removal from a vault. There have been five complaints of bodies not being placed in a body bag by hospitals. There have been four complaints of operating from an unregistered hospital morgue. They are the most prevalent offences under legislative non-compliance, with a total of 35 complaints.

<sup>355</sup> *Best Practice in Funeral Industry Regulation*, Prepared for the Funeral Industry Regulation Working Party (Queensland) by Professor Neal Ryan and Craig Furneaux, Queensland University of Technology, July 2005, p29

<sup>356</sup> Professor Sainsbury, Evidence, 8 August 2005, p1

When we look at the other complaints which we feel do not fit under the regulations and are perhaps less serious, there are things like the cremation certificate not being correctly completed, of which there were 15 complaints; family members objecting to cremation; and medical referees not completing forms correctly, which do not impinge directly upon any public health provision or concern that we might have.<sup>357</sup>

**6.20** Professor Sainsbury brought the number of complaints into perspective for the Committee:

There are approximately 45,000 deaths in New South Wales every year, so over 5 years that is approximately 250,000 deaths. It is a matter of putting the 100 or so complaints in the context of approximately a quarter of a million [deaths].<sup>358</sup>

**6.21** As demonstrated in the report of the Victorian parliamentary inquiry, the public health regulations in NSW are more than adequate to protect public health in comparison to the current legislation in Victoria. The Victorian report makes reference to the NSW public health regulations as examples for further developing their own public health regulation.<sup>359</sup>

**6.22** Mr Watson, advised the Committee that the legislative framework that involves occupational health and safety issues is adequate, evidenced by a drop of workplace injuries for the funeral industry.<sup>360</sup> Mr Watson commented that this is also the trend across other industries in NSW and is due to increased awareness:

I think it is a reflection of the increased awareness of occupational health and safety as an issue that needs to be addressed generally within workplaces. The new framework of legislation which was introduced initially in 1983, with the introduction of the Occupational Health and Safety Act in those years, and following that the revamped legislation—the 2000 Act and the 2001 regulation—has provided a framework where generally employees in New South Wales now understand that they need to address occupational health and safety matters within their workplaces. The general information in the community is greater than it would have been some years beforehand...So we believe the general understanding and capacity of industry to implement safe places of work has somewhat grown since the implementation of the 2000 Act.<sup>361</sup>

**6.23** The relatively low level of complaints and occupational injuries does demonstrate to the Committee that the public health and occupational health and safety regulations are adequate to protect public health and employees. However, enforcement of the public health regulations was an issue raised by a number of witnesses to the Inquiry and is considered later in this chapter.<sup>362</sup>

<sup>357</sup> Dr Michael Staff, Director, Environmental Health, NSW Health, Evidence, 8 August 2005, pp5-6

<sup>358</sup> Professor Sainsbury, Evidence, 8 August 2005, p6

<sup>359</sup> *Inquiry into Regulation of the Funeral Industry*, Family and Community Development Committee, Parliament of Victoria, November 2005, p75 and p81

<sup>360</sup> Mr Watson, Evidence, 8 August 2005, p18

<sup>361</sup> Mr Watson, Evidence, 8 August 2005, p19

<sup>362</sup> For example, Submission 33, NCOSS, p5

### Consumer protection

- 6.24** Consumer protection for the funeral industry exists under the *Fair Trading Act 1987*. Pre-paid funerals are regulated by the Funeral Funds Regulation 2001. The OFT informed the Committee that it receives very few complaints concerning the funeral industry. Out of approximately 30,000 complaints received in 2004/2005 only 22 related to the funeral industry, with half relating to funeral funds.<sup>363</sup>
- 6.25** However, the OFT suggests that the circumstances surrounding the funeral experience may result in the under reporting of complaints.<sup>364</sup> Mr David O'Connor, Commissioner of Fair Trading, commented:
- Despite these low levels of complaints, the previous Minister for Fair Trading was concerned about the funeral industry because people organising funerals are often in a vulnerable state and may not be in a position to uphold their rights. He was also concerned that the circumstances surrounding the funeral experience may result in under reporting of complaints.<sup>365</sup>
- 6.26** As a result, the OFT, as part of an interdepartmental committee, has released a discussion paper on consumer protection and the NSW funeral industry, *Review of Consumer Protection & the NSW Funeral Industry*, as outlined in Chapter 2. The discussion paper was based on recent surveys undertaken by the OFT that established areas of concern with consumer protection and the funeral industry, including the cost of funerals and complaint handling.
- 6.27** The discussion paper canvasses a number of consumer protection options that could be considered if the review determines that there are problems with consumer protection in the industry. These options include:
- information and education campaign
  - voluntary code of practice
  - development of funeral brokering industry
  - mandatory product information standards
  - provide for a mandatory basic funeral service
  - licensing of funeral directors.<sup>366</sup>
- 6.28** The Committee acknowledges that the complaint level for the funeral industry is significantly low. However, the actions and initiatives undertaken by the OFT, including recent surveys and the discussion paper on consumer protection and the funeral industry, indicate that there may be a need to further consider whether the existing legislative framework adequately protects consumers.

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<sup>363</sup> Tabled document *Funeral Industry Research Findings*, Office of Fair Trading, 19 September 2005, p1

<sup>364</sup> *Review of Consumer Protection & the NSW Funeral Industry*, Office of Fair Trading, p3

<sup>365</sup> Mr David O'Connor, Commissioner of Fair Trading, Office of Fair Trading, Evidence, 19 September 2005, p3

<sup>366</sup> *Review of Consumer Protection & the NSW Funeral Industry*, Office of Fair Trading, pp12-13

- 6.29 The Committee is interested in seeing the outcomes of the Office of Fair Trading discussion paper.

### **Community needs**

- 6.30 Chapter 5 outlines various specific practices among selected religious and cultural communities in NSW. In terms of whether the existing legislation is meeting community needs, Ms Zenith Virago, of the Natural Death Centre, advised the Committee that the alternative practices requested by her clients, such as keeping the body at home for some time, personalised or cardboard coffins, transporting the deceased in a family vehicle and burying on private ground are allowed under the current legislation. Ms Virago advises:

As the law stands, it is possible to go from the deathbed at home to the crematorium or the grave or to bury your own loved one, including attending to the legal paperwork.<sup>367</sup>

- 6.31 The *NSW Health Guidelines for the Funeral Industry* indicate that the public health regulation does have the capacity to be responsive to emerging need in the community, whether it is, for example, around a new religious practice or an innovation in embalming technology.<sup>368</sup> These guidelines recommend that relatives should consult with the local public health unit to examine if particular practices are allowed and if necessary request approval for certain practices.
- 6.32 An example of the community consulting with a Public Health Unit is the Omar Mosque Committee based in Wollongong. The submission advises that the Omar Mosque Committee has been consulting with the local public health unit to establish the use of re-usable metal coffins with the burial of the deceased in a shroud, as practised by the Islamic faith.<sup>369</sup> Ms Virago in her work as a funeral celebrant undertook consultations with public health units and local councils in relation to burials on private ground and suggests this can be done by others wishing to bury on private ground.<sup>370</sup>
- 6.33 The Committee recognises that it is important that public health regulations govern the appropriate disposal of bodies. The Committee believe it is also important that the community have a choice as to types of funeral, whether based on religious or non-religious beliefs. There may be a need for increased community awareness of what options and choices are legal and available. This issue is discussed later in this chapter.

### **Issues with existing framework**

- 6.34 The Committee heard from a number of witnesses that there are some concerns with the existing legislative framework, including:
- the need for a clear complaint mechanism

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<sup>367</sup> Ms Zenith Virago, The Natural Death Centre, Evidence, 5 September 2005, p40

<sup>368</sup> *NSW Health Guidelines for the Funeral Industry*, NSW Health, p2

<sup>369</sup> Submission 18, Omar Mosque Committee, p3

<sup>370</sup> Ms Virago, Evidence, 5 September 2005, p41

- the need for promotion of alternative practices
- clarification on activities considered to be an exhumation
- the need for a clear definition of vehicle or hearse.

### *Clear complaint mechanism*

**6.35** Witnesses raised the issue that there was no clear complaint process for the funeral industry. For example, NCOSS state in its submission to the Inquiry that:

As this media coverage has highlighted consumer protection was clearly inadequate in 2002. NCOSS is aware of similar cases happening more recently. Unfortunately, it appears that the NSW Government has done little to improve the situation for consumers. This is clearly an area for enhancement of regulation of the funeral industry by the NSW Government.<sup>371</sup>

- 6.36** The Fair Trading discussion paper notes that industry associations, such as the Australian Funeral Directors Association and the Funeral Directors Association of NSW, advertise dispute resolution services between members and clients. Government agencies involved in the industry including the Office of Fair Trading and NSW Health also deal with complaints from consumers and the industry.<sup>372</sup>
- 6.37** Dr Staff advised that NSW Health has a facility to register complaints on the funeral industry and the Department will 'look into the complaint, substantiate it and take appropriate action.'<sup>373</sup>
- 6.38** The number of complaints received by the Office of Fair Trading is relatively low. However, people organising funerals are often in a vulnerable state and may not be in a position to report their complaint. Mr Dev Mukherjee, Senior Policy Officer, NCOSS, suggested that once a clear mechanism is in place, people are encouraged to complain.<sup>374</sup>
- 6.39** As noted earlier in this chapter, the OFT is currently consulting with the community on whether changes are required to enhance consumer protection. Included in this consultation, the OFT is seeking comment on existing complaint handling and whether or not it is sufficient.
- 6.40** The Committee recognises that the community requires a clear complaint mechanism and not a number of different avenues that could potentially confuse consumers, especially those suffering from grief. The Committee believes the OFT should be the primary contact for consumer complaints regarding the funeral industry, as the OFT is in a better position to handle and refer the complaints to other agencies such as NSW Health, where necessary. This offers a clear and streamlined approach that vulnerable consumers can more easily understand. Complaints mechanisms should be advertised to consumers.

<sup>371</sup> Submission 33, NCOSS, p4

<sup>372</sup> *Review of Consumer Protection & the NSW Funeral Industry*, Office of Fair Trading, p11

<sup>373</sup> Dr Staff, Evidence, 8 August 2005, p6

<sup>374</sup> Mr Dev Mukherjee, Senior Policy Officer, NCOSS, Evidence, 14 June 2005, p37

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**Recommendation 13**

That the Office of Fair Trading be the primary contact for consumer complaints regarding the funeral industry and that the complaints process be widely advertised to consumers.

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***Alternative practices***

- 6.41** Some witnesses commented that while alternative practices, such as the use of cardboard coffin and do-it-yourself funerals, are allowed under the legislation they are not promoted by funeral directors and the industry, or in some cases funeral directors are suggesting they are unable to carry out the client's wishes.
- 6.42** A submission to the Inquiry highlighted the difficulties some people face in carrying out the deceased's last wishes if they are different to the "usual". In this case the deceased requested a funeral that was organised by the relatives and not a funeral director - "a do-it-yourself funeral". The relatives conducted a "dry run" and encountered a number of difficulties fulfilling the deceased's wishes, including issues with the type of coffin, transport of the deceased to the crematorium and acceptance of the body only from the back door of the crematorium. The outcome was that the relatives ended up using a funeral director for a "no service" and "no attendance" funeral, which cost three times the cost of the proposed do-it-yourself funeral.<sup>375</sup>
- 6.43** The Catholic Cemeteries Board advised the Committee in its submission to the Inquiry that consumers remain poorly informed of all the options available to them in procuring services from the funeral industry.<sup>376</sup> The submission states:
- Consumers need to be aware that they do not need to utilise all of these services and that by eliminating them or reducing them, costs of a funeral can be contained and reduced.<sup>377</sup>
- 6.44** The funeral directors who gave evidence to the Inquiry, either as part of an industry association or individually, all stated that they are willing to accommodate client wishes, including hand made coffins if meeting standards, such as occupational health and safety, and practices relating to religious or cultural beliefs. As Mr Ian Strathie, Divisional President, Australian Funeral Directors Association, NSW/ACT Division, advised the Committee:

... as funeral directors I believe we are here to perform a service that allows people to perform their rite of passage for their loved one, and whatever it takes we are there to try and accommodate it.<sup>378</sup>

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<sup>375</sup> Submission 2a, Ms P Warren

<sup>376</sup> Submission 41, Catholic Cemeteries Board, pp7-8

<sup>377</sup> Submission 41, pp7-8

<sup>378</sup> Mr Ian Strathie, Divisional President, Australian Funeral Directors Association, NSW/ACT Division, Evidence, 8 August 2005, p86

- 6.45** The Committee notes that some consumers may face issues with some members of the industry in relation to the request for alternative practices. While this may only apply to a small number in the industry, the Committee recognises the need for promotion of available choices to the consumer to increase public awareness.

### *Exhumations*

- 6.46** The Public Health (Disposal of Bodies) Regulation 2002 defines an exhumation as:

The removal of the remains of a dead person from a grave or vault but does not include the removal of remains from a vault in a cemetery for immediate transfer to another vault in the same cemetery.<sup>379</sup>

- 6.47** Part 4 of the regulation outlines the process for application and approval for exhumation and states that an application fee of \$255 is payable.

- 6.48** The Cemeteries and Crematoria Association of NSW noted that there is an issue with exhumations as described under the public health regulation. The Association advised:

When a coffin in a crypt or vault is damaged and needs repair and is taken back to a funeral parlour for that repair and returned on the same day, it does not constitute an exhumation. If it takes longer than a day it is classed as an exhumation. This adds unnecessary cost to the exercise.

Cremated remains being removed from a grave or memorial garden and moved within a cemetery /crematorium is being defined as an exhumation causing extra cost etc for a task that is simple to perform and neither onerous or unsafe.<sup>380</sup>

- 6.49** The issue of whether an activity should be considered an exhumation was also raised by Mr Williams in relation to the intensive use of family graves. Mr Williams advised the Committee that when a grave is opened and the “lift and deepen” method is used an exhumation fee is payable.<sup>381</sup> The Committee notes that this may impact on people taking up the idea of reusing family graves.

- 6.50** These issues may impact on the sustainable use of existing burial space. The Committee recommends that NSW Health consider a clear definition of what constitutes an exhumation, taking into account the above examples.

<sup>379</sup> Public Health (Disposal of Bodies) Regulations 2002, Part 1 (3) Definitions

<sup>380</sup> Answers to questions on notice taken during evidence on 8 August 2005, Cemeteries and Crematoria Association of NSW, p16

<sup>381</sup> Refer to Chapter 4 for further information.

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**Recommendation 14**

That NSW Health review the definition of an exhumation in the Public Health (Disposal of Bodies) Regulation 2002 taking into account whether an exhumation fee should apply to:

- cremated remains being removed from a grave or memorial garden and moved within a cemetery / crematorium
  - a coffin in a crypt or vault that is removed for repair that takes longer than a day
  - reuse of family graves.
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***Definition of vehicles***

**6.51** Clause 8 of the Public Health Regulation (Disposal of Bodies) Regulation 2002 provides a definition of vehicles required by funeral directors for transporting bodies as:

(1) A funeral director must, for use in connection with the funeral director's business, provide:

- (a) at least 1 hearse, and
- (b) at least 1 body-collection vehicle.

(2) Subclause (1) (b) is satisfied if a funeral director causes the bodies that the funeral director conveys to be transported by a mortuary transport service or public vehicle operated by a carrier of freight.<sup>382</sup>

**6.52** However, the definition of a hearse or body-collection vehicle is not included in the regulation. This issue was raised by the Shoalhaven City Council who commented:

Shoalhaven City Council has had recent cause to closely review clause 8 of the Public Health (Disposal of Bodies) Regulation 2002. The vehicle requirements for a Funeral Director are not clear, as it is not defined in the legislation what a hearse or a body collection vehicle is. It is unclear as to whether a Funeral Director with 2 hearses meets the requirements of this clause.<sup>383</sup>

**6.53** The Combined Pensioners and Superannuants Association is concerned about smaller operators and suggest that the definition of a hearse should be broadened:

CPSA is concerned that a small funeral service business is obliged to own a hearse (which we understand are extremely expensive). CPSA recommends in the Public Health (Disposal of Bodies) Regulation 2002 that the definition of a hearse be broadened enough to encompass a vehicle which is not as expensive as a vehicle which we currently know as being a hearse.<sup>384</sup>

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<sup>382</sup> Public Health (Disposal of Bodies) Regulation 2002, Cl 8

<sup>383</sup> Submission 36, Shoalhaven City Council, p2

<sup>384</sup> Submission 39, Combined Pensioners and Superannuants Association, p17



- 6.54 The Committee acknowledges that the definition of a hearse has raised issues from different parties and suggests that NSW Health consider this issue as part of the next review of the regulation, which is due for a staged review by September 2007.<sup>385</sup>

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### Recommendation 15

That NSW Health consider the definitions of a body collection vehicle and a hearse as part of the next review of the Public Health (Disposal of Bodies) Regulation 2002.

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### Police contracts

- 6.55 The Committee heard some evidence about the police contracts to collect deceased bodies from accidents and crime scenes.<sup>386</sup> To better inform itself the Committee sought advice from the Department of Commerce that indicated the contract is generally known by its title: *Contract No. 622 - Removal of Deceased Persons and Burial/Cremation of Deceased Persons without Means*.

- 6.56 The Department advised that the contractual arrangement consists of Standing Offer agreements with over 50 service providers from the funeral industry across New South Wales. Mr Robert Frost, Senior Contracts Officer informed the Committee that:

Standing Offer agreements are written contracts between each service provider and the State Contracts Control Board under which the service provider agrees to provide services on the order of a government agency user. The service types, pricing, delivery obligations and other commercial terms and conditions are established under the agreements.<sup>387</sup>

- 6.57 The Department of Commerce stated that the ordering and management of the services is undertaken by the respective government agency users of the agreements, which in this case usually involves NSW Police on behalf of the local Coroner, with payments made by the Attorney General's Department. The types of services obtained by the government agency users of the agreements include:

- local area removal and conveyance of deceased persons (eg from the place of death)
- long haul conveyance of deceased persons (eg from a local area to Glebe or Westmead Coroner's morgue)
- burial and cremation of persons without means (these services are ordered and paid by NSW Health).<sup>388</sup>

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<sup>385</sup> Submission 53, NSW Health, p8

<sup>386</sup> Mr Mark Kelly, Kellys Far West Funerals, Evidence, 30 August 2005, p12

<sup>387</sup> Correspondence from Mr Robert Frost, Department of Commerce, to Director, 30 November 2005

<sup>388</sup> Correspondence from Mr Robert Frost, Department of Commerce, to Director, 30 November 2005

- 6.58** The Committee understands that users of the agreements are generally required to engage a contracted service provider where one exists for the area and that it is the primarily the responsibility of the NSW Police or the Coroners Office to manage compliance with this requirement.
- 6.59** For many areas, more than one service provider has been contracted. This aims to ensure the availability of services for users across an increased geographical area. For these areas, the method for determining which alternative service provider is to be engaged for each service required is a matter for each user, or their agency generally. The agreements do not pre-determine the service provider selection method (such as a roster system).<sup>389</sup>
- 6.60** The Department of Commerce advised that the current agreements were arranged in January 2004 through an open public tender process:
- Tenders received from service providers were evaluated on a value-for-money basis applying both cost and non-cost criteria. The cost criteria included the consideration of the prices offered to perform the service, with non-price criteria considering such things as the services and response times offered and the capacity for the tenderer to perform the services required.
- The tender documentation and subsequent contract documentation contain specific contact details for the purposes of directing enquiries or complaints relating to administration of the tender process and the general administration of the agreements. Enquiries or complaints relating to individual order can be directed to the contact person/s nominated by the ordering agency.<sup>390</sup>
- 6.61** The Committee recognises that NSW Police is responsible for compliance with this agreement and for deciding who will carry out the service, if there is more than one contracted service provider in the area. The Committee has not had advice from NSW Police on the issue but suggests that service providers that do have a concern approach the contact person nominated by NSW Police to deal with these contracts.

### **Conclusion**

- 6.62** The Committee supports the widely held view that legislation should ensure that choices are available to the community. For example, Ms Virago commented:
- Somewhere the legislation should provide that individuals or consumers have a right that if they meet all the requirements that they do not necessarily need to proceed through an undertaker or get all the parts from an undertaker, but they can still drive in their own car, that they can build their own coffin: As long as it meets all the requirements, which is exactly what is happening now.<sup>391</sup>

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<sup>389</sup> Correspondence from Mr Robert Frost, Department of Commerce, to Director, 30 November 2005

<sup>390</sup> Correspondence from Mr Robert Frost, Department of Commerce, to Director, 30 November 2005

<sup>391</sup> Ms Virago, Evidence, 5 September 2005, p47

- 6.63** A common theme the Committee has identified throughout the Inquiry is the need for increased community awareness of the various issues involved in the funeral process. Submissions comment that there is a need to increase awareness of the funeral industry and in particular educate the community on costs involved in funerals, what to expect from funeral directors and alternative options. For example one submission stated:

Without community dialogue about the financial costs of death, including the funeral and the void that remains when the family wage earner is the one who dies, people in the community remain at risk of financial and psychological stress that could be alleviated by government education campaigns.<sup>392</sup>

- 6.64** Overall, the Committee believes that the current legislative framework is adequate for the protection of public health and employees. It is noted that there may be some need to further consider the framework for its role in consumer protection including a clear compliant mechanism, as currently being undertaken by the Office of Fair Trading, and community needs in terms of raising community awareness of choices and options available. Options to address these concerns are canvassed in Chapter 7.

### **Enforcement of legislative framework**

- 6.65** The main concern raised by industry members in relation to the legislative framework is not a lack of regulation but a need for more enforcement. Mr Mark Lennon, Chair, Funeral Industry Council commented:

The major concern that we have seen in this industry has not been, in a sense, the lack of regulation, for want of a better word, because there is regulation through the Department of Health, WorkCover and the Department of Fair Trading—also through [Department of] Lands, to some degree. The issue has been that it is spread across four or five different departments and/or industry responsibilities but there has been no effective enforcement of the regulation.

I think that has been the key focus of the FIC and its major frustration in our deliberations. Innumerable cases have been brought before us, individuals have come to speak to us about concerns that they have in regard to particular directors and practices in the industry. Clearly there have been cases where intervention is necessary by government and some correction to the practices involved, yet we have failed in most cases to see that happen.<sup>393</sup>

- 6.66** The Cemeteries and Crematoria Association of NSW was also concerned with enforcement of the regulations. Mr Ivan Webber commented:

What happens with us is that when the coffin arrives at the cemetery that is the end of trail—without being flippant. All things have been done before then. We need to know that that body has been prepared properly and poses no danger to any of our

<sup>392</sup> Submission 19, Ms Lisa Casey, p6

<sup>393</sup> Mr Mark Lennon, Chair, Funeral Industry Council NSW, Evidence, 14 June 2005, p2

staff when it arrives at the cemetery or the crematoria. The legislation says that but we also believe that it is not policed adequately.<sup>394</sup>

**6.67** Mr Williams highlighted enforcement by NSW Health as a particular issue. He stated:

The other side of deregulation is the lack of what I would describe as the inspectorate of government departments, particularly, in our case, of the Department of Health, in enforcing regulations that it already has the power to do.<sup>395</sup>

**6.68** When asked what health regulations were not being enforced Mr Williams replied:

It is more to do with the funeral directing side of the business. We [cemetaries] are obliged to comply and we have a system that is audited, in our case with a trust, by the Department of Lands on a systematically regular basis. As probably mentioned by funeral directors, any auditing that occurs of funeral parlours is almost nonexistent. Compliance, for that matter even embalming procedures, is only now being addressed. So as to the policing of health regulations, in defence of the health department, it does not have the resources to adopt a reasonable policing program without additional government funding.<sup>396</sup>

**6.69** NSW Health, in its submission to the Inquiry, advised the Committee that responsibility for enforcing compliance with current public health regulatory regimes rests with environmental health officers (EHOs). NSW Health further advised:

EHOs work out of NSW Health Public Health Units which are situated throughout NSW, and form part of the NSW Public Health System. EHOs can also be employed by local government authorities. The Regulation empowers an EHO to enter and inspect:

- A mortuary or a premises that the officer has reason to believe is a mortuary
- A crematory and any part of the equipment or apparatus at the crematory
- A cemetery and any part of the cemetery
- Any premises used by a mortuary transport service and any records, equipment and apparatus used by the mortuary transport service.<sup>397</sup>

**6.70** Dr Staff described the EHO's role in the funeral industry as "complaints based". This contrasts to other areas, such as monitoring possible Legionella sites, where EHOs adopt a more proactive role.<sup>398</sup>

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<sup>394</sup> Mr Ivan Webber, Member, Cemeteries and Crematoria Association of NSW, Evidence, 8 August 2005, p43

<sup>395</sup> Mr Derek Williams, General Manager, Anglican and General Cemetery Trusts, Rookwood Necropolis, Evidence, 5 September 2005, p13

<sup>396</sup> Mr Williams, Evidence, 5 September 2005, pp22-23

<sup>397</sup> Submission 53, NSW Health, p4

<sup>398</sup> Dr Staff, Evidence, 8 August 2005, p14

- 6.71** NSW Health issued audit tools in the form of checklists to enable inspecting officers and funeral directors to determine compliance with the provisions of the regulation and Schedule 4 (Mortuary Standards) of the Local Government (Orders) Regulation 1999.<sup>399</sup> Dr Staff provided comment on the NSW Health audit tool used by the funeral industry and EHOs:

In relation to what they [EHOs] do and how they can help with the funeral industry, we have produced some funeral industry guidelines. They have been produced to help the industry understand and implement our regulations. In the back of the guidelines is an audit form that can be used both as a self-assessment tool and as an inspection tool as such. It has been in existence for only a fairly short period. It is not designed to produce a centralised database of inspections; it is something that has been produced for industry to support it with some self-monitoring. As I said, it can be used if we needed to do an inspection; whether that is done by the council EHO, or by an area health service EHO. There is no centralised database of the contents or the outcomes of that inspection form.<sup>400</sup>

- 6.72** The Committee notes that the NSW Health enforcement regime of the public health regulations is based on complaints. The Committee also acknowledges that NSW Health has produced an audit tool for the funeral industry that can aid in self-compliance. However, the Committee believes that NSW Health and local authorities should increase their enforcement efforts, and NSW Health should consider increasing the penalties for breaches under the Public Health Act and Regulation to act as more of a deterrent.
- 6.73** The Committee also recommends the use of the existing NSW Health audit tool for the funeral industry to collect data on industry performance and non-compliance to help determine future enforcement needs for the funeral industry.

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### **Recommendation 16**

That NSW Health and local authorities increase their efforts in enforcing the Public Health (Disposal of Bodies) Regulation 2002 and NSW Health consider increasing the penalties for breaches under the *Public Health Act 1991* and regulation to act as more of a deterrent.

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### **Recommendation 17**

That NSW Health use the audit tool for the funeral industry to collect data on industry performance and non-compliance to help determine future enforcement needs for the funeral industry.

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<sup>399</sup> Submission 53, p4

<sup>400</sup> Dr Staff, Evidence, 8 August 2005, p14



## Chapter 7 To license or not?

This chapter examines whether the funeral industry requires further regulation, and in particular, whether funeral directors should be licensed. Currently, funeral directors do not have to be licensed to operate in New South Wales, although they must adhere to relevant legislation and regulation governing the industry.<sup>401</sup> The current range of legislation and regulation in New South Wales that relates to the funeral industry is outlined in Chapters 2 and 6.

### Introduction

- 7.1** Previously, the *Local Government Act 1993* and regulations that were promulgated in 1993 required undertakers and mortuary operations to be approved by the relevant local council. However, after a National Competition Policy Review of the *Local Government Act 1993* the provisions requiring prior council approval of an undertaker's business and operation of a mortuary were repealed with effect on 1 November 2003.<sup>402</sup>
- 7.2** In October 2002, then Minister for Health, the Hon Craig Knowles MP, announced the Public Health (Disposal of Bodies) 2002 Regulation. As part of that announcement the Minister also stated that funeral directors who repeatedly breached the public health regulations would be barred from practising in the industry in NSW and an accreditation scheme would be set up in conjunction with the Funeral Industry Council (FIC).<sup>403</sup> However, this has not happened: breaches by a funeral director, or others, may result in payment of penalties<sup>404</sup> but there is no legislation in place to bar a funeral director from the industry. An accreditation scheme did not go ahead.

### Arguments supporting a licensing scheme

- 7.3** The Combined Pensioner and Superannuants Association (CPSA) advised the Committee that there needs to be a way of punishing funeral directors who breach regulations. Ms Megan Lee, General Manager, CPSA, advised:

We agree, and this is one of the few points about which we agree with the Funeral Industry Council, that there needs to be some way of ensuring that the person who has breached certain regulations or practices is in some way punished or suspended or had their ability to continue working in the arena removed.<sup>405</sup>

<sup>401</sup> *Review of Consumer Protections and the NSW Funeral Industry*, September 2005, NSW Office of Fair Trading, p5

<sup>402</sup> Submission 53, NSW Health, Annexure 1, p9

<sup>403</sup> Media Release, *New Regulations for the Funeral Industry*, NSW Minister for Health, Craig Knowles MP, 4 October 2002

<sup>404</sup> The current prescribed penalties for breach of the regulation range from 5 to 20 penalty units, with 1 penalty unit being \$110. NSW Health is currently reviewing the penalties imposed under the Act and Regulation.

<sup>405</sup> Ms Megan Lee, General Manager, Combined Pensioner and Superannuants Association, Evidence, 14 June 2005, p23

**7.4** The FIC supports the introduction of a licensing scheme for the funeral industry, and put forward a number of reasons for considering change to the current regulatory scheme including:

- funerals are more significant than other consumer goods and services
- the existing prosecution based regulatory scheme for funeral directors is not working
- difficulties are faced by NSW Health in catching offenders in the act and the penalties are inadequate
- the number of operators is increasing and the baby boomer generation are near to requiring services
- consumers are unaware of standards to expect and vulnerable/emotional at the time so do not complain till after the fact
- there appears to be a lack of competition in rural areas which leads to a lack of choice which renders consumers vulnerable to exploitation
- there is no point of focus for the current range of regulations which has led to weakened accountability.<sup>406</sup>

**7.5** Mr Mark Lennon, Chair of the FIC, advised the Committee that the Council's recommendations for regulation are not about restricting entry to the industry or cutting out genuine competitors. Instead, the FIC hopes to ensure 'that there is a transparent, open cost-effective industry that is providing good service to consumers at a good price.'<sup>407</sup>

**7.6** In response to calls for increased regulation, the Office of Fair Trading (OFT) highlighted for the Committee that when considering regulation thought should be given to complaint levels and if there has been any market failure in the industry. Mr David O'Connor, Commissioner, Office of Fair Trading, noted that in NSW there is a very low number of complaints. Mr O'Connor also stated that other States have had similar experiences to NSW with the funeral industry:

When you are looking at regulation there are two things: Has there been or is there market failure and the interests of the consumer, and that can only be judged to some extent by the number of complaints. ... I guess the experience of the other States somewhat reflected ours in that there was not a great number of complaints in relation to the funeral industry. I think the major thing was that what we should really do in the first instance is provide information and create consumer awareness. As a result of that we prepared the documents, the brochures that were released earlier in the year, and that tended to satisfy the other States.

Since then, apart from some nibbles, could I say, from Victoria, none of the others have indicated at all any interest in regulation of the funeral industry... So I just think that maybe they were all regulated out, but other than that, if there were not sufficient complaints, nor any real indication of market failure, I guess they were not going to go down the way of regulation but awareness and information to the consumer.<sup>408</sup>

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<sup>406</sup> Submission 41, Funeral Industry Council, p5

<sup>407</sup> Mr Mark Lennon, Chair, Funeral Industry Council, Evidence, 14 June 2005, p3

<sup>408</sup> Mr David O'Connor, Commissioner, Office of Fair Trading, Evidence, 19 September 2005, p6



7.7 As stated in earlier chapters the level of complaints in the industry is quite low, at approximately 0.1% of funerals per year.<sup>409</sup>

## Options to address community and industry concerns

7.8 The main issues raised by the community in submissions to the Inquiry relate to the cost of funerals and the lack of a clear complaints process for the funeral industry. The industry's main concerns were funeral directors breaching the public health regulations and lack of enforcement by NSW Health.

7.9 In December 2004, the FIC forwarded to NSW Health an issues paper outlining various options for regulating and licensing the funeral industry. NSW Health advised they are awaiting the outcome of the Committee's Inquiry before responding to the FIC issues paper.<sup>410</sup>

7.10 Options to address community and industry concerns covered in the FIC issues paper or options raised by witnesses and in submissions are discussed below and include:

- licensing
- negative licensing
- ombudsman scheme
- funeral brokerage
- accreditation
- regulating through accredited training
- denial of key facilities
- code of practice/conduct.

### Licensing

7.11 A licensing system may require a funeral director to pay licence fees and to meet entry criteria before being issued with a licence. It may be operated by NSW Health or another government agency. It is likely that this type of scheme would attract high set up costs and require a great deal of resources for implementation of the scheme as well as potentially limiting entry to the industry.

7.12 The Victorian parliamentary inquiry into the regulation of the funeral industry in Victoria has recommended a positive licensing scheme with a mandatory code of conduct regulated by a

<sup>409</sup> Out of 45,000 deaths a year in NSW, complaints are received for between 40-60 funerals, although the Office of Fair Trading suggests there may be an under reporting of complaints due to the nature of the industry.

<sup>410</sup> Professor Peter Sainsbury, Acting Deputy Director General, Population Health and Chief Health Office, NSW Health, Evidence, 8 August 2005, p1

representative funeral industry council.<sup>411</sup> However, that Committee also notes the low level of complaints about the funeral industry in Victoria.

- 7.13** There has been limited support from industry and government for a full licensing scheme. Such a resource intensive scheme may be seen as a disproportionate solution to the level of complaints for the industry and for this reason the Committee does not support it.

### **Negative licensing**

- 7.14** Negative licensing involves the preclusion of incompetent or irresponsible organisations (as demonstrated by their prior action and performance) from operating in a particular industry. Negative licensing usually involves no formal requirement to be licensed and no obligations on the licensee except to act in accordance with any legislation that is in place or to suffer the consequence that they may be prevented from continuing in that business.<sup>412</sup>
- 7.15** This type of scheme is complaints based, which depends on repeated consumer complaints to trigger any regulatory action. However, consumers of the funeral industry's services are generally unaware of their rights or unlikely to complain.<sup>413</sup> The obligation is on the government agency, such as NSW Health or the Office of Fair Trading, to investigate complaints about funeral industry behaviour and, where appropriate, to take administrative or legal action. There may be a need for an independent appeals process/authority such as the Administrative Decisions Tribunal.<sup>414</sup>
- 7.16** Negative licensing may be the regulatory option of choice in situations where there are few complaints about industry behaviour and the participants are easily identified and contacted.<sup>415</sup> However, this system would not offer clear identification for consumers of whether or not a funeral director is licensed. Further to this, negative licensing cannot prevent the entry of the undesirable element.<sup>416</sup>
- 7.17** Constituting a licensing function within NSW Health could prove more resource intensive than anticipated, given the need to have effective investigative powers. This has been an issue highlighted throughout the Inquiry with the need for greater enforcement of the public health regulations.<sup>417</sup> The Committee has recommended in the previous chapter that NSW Health increase enforcement of the public health regulations and give consideration to increasing the penalties to act as more of a deterrent for offenders.

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<sup>411</sup> *Inquiry into Regulation of the Funeral Industry*, Family and Community Development Committee, Parliament of Victoria, November 2005, p274

<sup>412</sup> West Australian Government consultation paper on regulating finance brokers, 2003, p66

<sup>413</sup> *Funeral Industry Council Issues Paper*, December 2004, p23

<sup>414</sup> *Funeral Industry Council Issues Paper*, December 2004, p15

<sup>415</sup> West Australian Government consultation paper on regulating finance brokers, 2003, p66

<sup>416</sup> West Australian Government consultation paper on regulating finance brokers, 2003, p66

<sup>417</sup> This issue was raised by the Funeral Industry Council, Cemeteries and Crematoria Association of NSW and others, see Chapter 6.

- 7.18** The FIC advises that a negative licensing scheme is the council's second preference for regulating the funeral industry after the denial of key facilities (discussed later in this chapter).<sup>418</sup> NCOSS also supports a negative licensing scheme but with the addition of an ombudsman to handle complaints.<sup>419</sup>
- 7.19** The Office of Fair Trading is currently obtaining comment on options to address consumer protection in the funeral industry, including negative licensing.<sup>420</sup>
- 7.20** At this stage, the Committee believes that a negative licensing system is a way to deter breaches of the regulations by imposing the ultimate penalty of barring offenders from the industry. However, the Committee is concerned about the resources required to implement this sort of scheme. It is also unclear how consumers would identify licensed and unlicensed operators. For these reasons the Committee does not support a negative licensing scheme for the funeral industry.

### **Ombudsman scheme**

- 7.21** The ombudsman scheme suggested by NCOSS would provide an independent way of resolving customer complaints. Industries that currently have an ombudsman include energy and water, telecommunications, and banking and financial services.<sup>421</sup>
- 7.22** It would appear that the level of complaints relating to the funeral industry is low. However, this may be because people are not reporting their complaint. NCOSS suggests that many people do not make a complaint because they are unaware of the industry complaints procedure. NCOSS advised that before the establishment of the energy and water ombudsman complaints were as low as 50. In its first year the energy and water ombudsman received 2,000 complaints.<sup>422</sup>
- 7.23** NCOSS suggests that funding for the scheme should come from a funeral services membership fee to the scheme and fees for service based on complaints processed.<sup>423</sup>
- 7.24** The CPSA supported the idea of an ombudsman. However, it was noted that where an ombudsman scheme has been implemented in other jurisdictions, such as the United Kingdom the industry was wary of whether there would be a level of complaints to justify the

<sup>418</sup> Submission 40, Funeral Industry Council, Attachment 3, p29. FIC's first preference is the 'denial of key facilities' discussed later.

<sup>419</sup> Submission 33, NCOSS, p7

<sup>420</sup> *Review of Consumer Protections and the NSW Funeral Industry*, September 2005, NSW Office of Fair Trading, p13

<sup>421</sup> Submission 30, p8

<sup>422</sup> Submission 30, p8

<sup>423</sup> Submission 30, p8

scheme and concerned about industry monetary contributions to keep the scheme afloat. As a result there are reports that the scheme has since been abolished.<sup>424</sup>

- 7.25** The Committee is mindful of the challenges faced by the ombudsman scheme in the United Kingdom funeral industry. At this stage, given the number of complaints in NSW is very low, the Committee does not believe the establishment of a body solely dedicated to handling complaints associated with the funeral industry is warranted.

### **Accreditation**

- 7.26** Under an accreditation scheme, certain criteria would be set by an accreditation board and the board would have the power to suspend or revoke accreditation. An accreditation scheme has the potential to limit entry to the industry and impede existing small operators from gaining accreditation depending on the criteria set by the accrediting body. The Committee has heard evidence in relation to competition in the funeral industry that suggests any restriction on entry to the industry could lead to increased funeral costs.<sup>425</sup>
- 7.27** The Committee does not support an accreditation scheme as it may have the potential for limiting competition in the industry, which may impact negatively on costs of funerals.

### **Funeral broker**

- 7.28** Under this scheme a funeral broker, like a mortgage broker in the financial services industry or buyer's agent in the property services industry, would help a consumer find a funeral service or funeral director that could best meet their needs and/or budget. It should be noted that such a scheme does not currently exist in NSW or anywhere else in Australia.<sup>426</sup>
- 7.29** There was only limited support and discussion of this idea during the Inquiry and the Committee does not support this scheme.

### **Regulation through accredited training**

- 7.30** Funeral services offer a broad range of careers, such as co-ordinating and managing funerals, landscaping and horticultural roles in cemeteries and memorial gardens, embalming and mortuary work, as well as accounting, business management and communications roles.<sup>427</sup>
- 7.31** There is no formal pathway into the funeral industry; training has traditionally been "on the job," except for specialised roles such as embalming or horticulture. Some companies offer in-

<sup>424</sup> *Best Practice in Funeral Industry Regulation*, Prepared for the Funeral Industry Regulation Working Party (QLD) by Professor Neal Ryan and Craig Furneaux, Queensland University of Technology, July 2005, p9

<sup>425</sup> For example, Submission 39, CPSA, p11 and Submission 33, NCOSS, p2

<sup>426</sup> *Review of Consumer Protections and the NSW Funeral Industry*, September 2005, NSW Office of Fair Trading, p12

<sup>427</sup> Mr Derek Williams, General Manager of Anglican and General Trusts at Rookwood Cemetery cited in "Handle with Care", Radar Magazine, Sydney Morning Herald, 24 November 2004

house training in areas such as arranging funerals, dealing with grieving people, administration skills and machinery operation.<sup>428</sup>

**7.32** Service Skills Australia, the industry skills council for service industries, advises that there is a Funeral Services Training Package, endorsed by the Federal and State Governments, which has been developed by the industry and will be continuously improved and reviewed by it.<sup>429</sup>

**7.33** Service Skills suggests that if a licensing system is put in place, or some other form of increased regulation, then this could be achieved via an accredited training framework. The Funeral Services Training Package could represent an approved set of standards upon which an accredited training framework could be based.<sup>430</sup>

**7.34** Service Skills highlights a number of options including regulating the skills and knowledge of:

- workers at crematoria and cemetery sites
- workers in mortuaries
- funeral directors.<sup>431</sup>

**7.35** Mr Derek Williams, General Manager, Anglican and General Cemetery Trusts, Rookwood Cemetery, advised the Committee that any regulation or licensing system should include the requirement for accredited training of workers:

Part of it would be registration or a licensing system. But I think for that to be effective it would have to be underpinned by nationally accredited training. At the moment, our side of the industry has embarked on developing courses that are nationally accredited. The funeral directing side of the industry is doing the same but I think our side is probably taking it up more aggressively. Because the industry tends to suffer from a learning process of what you learn you learn from the guy next to you it needs to go through a system of recognised prior learning for existing skills and then composite material is developed to fill the training gaps that are needed to drive the level of professionalism in the industry and adopt the procedures.<sup>432</sup>

**7.36** Mr Williams suggested that training needs to be mandatory:

I think it needs to be. That is certainly the way our side of the industry is going. We are now working on confined space training, and we have applied to WorkCover for a grant. The industry is planning to roll out progressively a series of courses to have eventually a certificate three in cemetery and crematoria operations. That is what our

<sup>428</sup> "Handle with Care", Radar Magazine, Sydney Morning Herald, 24 November 2004

<sup>429</sup> Submission 60, Service Skills Australia, p11

<sup>430</sup> Submission 60, p11

<sup>431</sup> It should be noted that under the public health regulations those performing full embalming must have a certificate of proficiency from an institute approved by the Director General of NSW Health, equivalent to a Certificate IV (see Guidelines for the Funeral Industry, p9)

<sup>432</sup> Mr Derek Williams, General Manager, Anglican and General Cemetery Trusts, Rookwood Cemetery, Evidence, 5 September 2005, p23

side is doing.... Right the way through to management. That is the way we are now addressing future industry standards.<sup>433</sup>

- 7.37** Some concerns have been raised in relation to the requirement for qualifications including the potential to limit entry to the funeral industry. This was highlighted by the CPSA. The CPSA submission to the Inquiry suggests that the demand for more regulation and qualifications in the funeral industry increases the price of funerals by making it difficult for new entrants to the industry to achieve the prescribed standards:

This then allows the existing providers to form a virtual closed shop as those without qualifications would probably be allowed to operate under the inclusion of a grandfather clause... One effect of making high level qualifications a must before an undertaker can enter the industry is illustrated on the Texas Funeral Service Commission's website, where we find that to become a funeral director it is necessary to study for three years, pass exams set at both the Federal and State level and subsequently complete an additional two years on the job training.<sup>434</sup>

- 7.38** NCOSS believes that it is more important that a funeral attendant be tactful, sympathetic and have good communication skills rather than require any specific training:

Possessing particular qualifications should not be a requirement of employment within the industry except in areas relating to securing public health. These include embalmers and morticians responsible for the control for infectious diseases. This is already a requirement under the *Public Health (Disposal of Bodies) Regulation 2002*. Other than these areas, employers and industry bodies are best positioned to understand training needs and to provide appropriate training.<sup>435</sup>

- 7.39** The Committee acknowledges that the funeral industry has developed training packages for industry workers and supports the accreditation of such training. However, the Committee believes that making training a compulsory part of regulating the industry may limit access to the industry for funeral directors and other workers, with a potential to impact on costs of funerals.

### **Denial of key facilities**

- 7.40** The FIC's preferred option for the industry is the "denial of key facilities." This involves licensing crematoria and cemeteries and only permitting endorsed funeral directors to access these facilities and government contracts. A funeral director would be endorsed by the Minister or delegate, such as the FIC. A code of practice is a necessary part of the scheme. If the funeral director breaches a code of practice or is not endorsed, access is denied.<sup>436</sup>
- 7.41** The FIC advises that this scheme may reduce the administrative burden for regulation to NSW Health as it would be shared with the FIC. However, the Committee notes that if the FIC takes the role of regulator in this scheme, it would need to demonstrate the highest

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<sup>433</sup> Mr Williams, Evidence, 5 September 2005, p23

<sup>434</sup> Submission 39, p11

<sup>435</sup> Submission 33, p5

<sup>436</sup> Funeral Industry Council Issues Paper, December 2004, p18

standards in terms of impartiality, transparency and accountability when processing funeral director applications for endorsement and hearing consumer complaints. Currently, the FIC does not have a constitution and there are concerns that it is not truly representative of the industry, particularly small operators or consumers.<sup>437</sup>

- 7.42** A further issue relates to vertically integrated companies. Vertically integrated companies consisting of funeral director/crematorium/cemetery would need to be subject to greater scrutiny, as such an operator is unlikely to debar its own funeral director if there is a breach. Considering 26% of the industry is owned by one company, this scheme seems unlikely to be able to function with sufficient accountability and transparency.
- 7.43** The Committee also notes that, if this scheme is considered, there is need to change the legislation to remove “not allowed to refuse a body” from the public health regulations for cemeteries and crematoria.<sup>438</sup> The Committee is concerned that this could result in non-compliant operators turning up without a booking, which could result in a highly emotional situation for relatives and the illegal disposal of bodies, which could in turn threaten public health.
- 7.44** Such a scheme may be better suited to a less complicated legislative system for cemeteries and crematoria, such as that in Victoria where all cemeteries and crematoria are public owned. However, application and enforceability of this scheme in NSW may be difficult due to the different types of cemeteries and crematoria, that is private, public or trust run.
- 7.45** The industry associations (AFDA and FDA NSW) support the FIC preferred option for denial of key facilities (crematoria and cemeteries).
- 7.46** However, the Cemeteries and Crematoria Association of NSW suggest that this scheme may have problems in implementation as it may be too late to turn away a body when the cemetery or crematorium becomes aware that the funeral director is non-compliant.<sup>439</sup> There would need to be a continually updated list of non-compliant operators available to cemeteries and crematoria, which would seem impractical. Furthermore, if there is a breach, an investigation would be needed, and it is unclear if in the interim the funeral director could still have access to cemeteries and crematoria.
- 7.47** Activities carried out by cemeteries and crematoria are already regulated under the Public Health (Disposal of Bodies) Regulation 2002. There has been limited concern raised in relation to the actions of cemeteries and crematoria and the Committee does not believe that cemeteries and crematoria should be included in a licensing scheme. However, consideration should be given to including cemeteries and crematoria in a code of practice.
- 7.48** The Committee does not support the denial of key facilities options, as it is unclear:
- how it could be effectively implemented in terms of cemeteries and crematoria identifying non-compliant funeral directors

<sup>437</sup> Submission 39, p14

<sup>438</sup> Public Health (Disposal of Bodies) Regulation 2002, Cl 31

<sup>439</sup> Ms Mary Thorne, President, Cemeteries and Crematoria Association on NSW, Evidence, 8 August 2005, p39

- how cemeteries and crematoria would deal with non-compliant funeral directors turning up without a booking
- how such a scheme could work transparently in a vertically integrated company.

**7.49** The Committee is also concerned that under this scheme the cemeteries and crematoria would become the regulator/enforcer for non-compliant funeral directors and that could lead to illegal dumping of bodies and the associated public health risks.

### **Code of practice/conduct**

**7.50** NCOSS suggests the development of a code of practice for the industry based on Australian Competition and Consumer Commission (ACCC) guidelines, released in February 2005, titled *Guidelines for developing effective voluntary industry codes of conduct*.<sup>440</sup> The FIC highlights the need for a code of practice that could be used as part of a licensing regime.<sup>441</sup> The FIC also suggests that a code of practice is a necessary part of any system of regulation for the funeral industry by offering a benchmark and definitive guidance on what constitutes acceptable or unacceptable conduct.<sup>442</sup> The FDA NSW suggests that, in the absence of a licensing regime, a compulsory code of practice is needed.<sup>443</sup>

**7.51** The industry associations each have their own code of conduct or code of ethics, which members must adhere to or face possible disciplinary action from the associations. The codes are relatively similar.<sup>444</sup>

**7.52** It is noted in the ACCC guidelines that a code of practice should be developed with stakeholders, including industry and consumer representative, as well as in conjunction with government agencies. These would be the Office of Fair Trading and NSW Health to ensure the code of practice was consistent with consumer and public health regulations. It is noted that the NSW Office of Fair Trading administers voluntary codes of practices for industries in NSW including the fitness and entertainment industries.<sup>445</sup>

**7.53** The FIC also suggests that the code of practice should outline core mandatory requirements and advisory best practice elements considered desirable in a funeral director:

A purely voluntary code of practice might inform some consumers. However, most would probably be unaware of its existence and unscrupulous funeral directors are hardly likely to rectify this lack of knowledge. Consumers are generally unaware, for

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<sup>440</sup> Submission 33, p7

<sup>441</sup> Submission 40, p12

<sup>442</sup> Submission 40, Attachment 3, p9

<sup>443</sup> Submission 30, Funeral Directors Association of NSW, p1

<sup>444</sup> The respective codes of practice were supplied with the associations' submissions, Submission 43 and 30

<sup>445</sup> <http://www.fairtrading.nsw.gov.au/corporate/legislation/codesofpractice.html> (accessed 4 November 2005)



example, that an operator's membership of one of the associations represented on the Council is a guarantee of quality.<sup>446</sup>

- 7.54** It is worth noting that in response to calls for regulating the funeral industry in Victoria, the Victorian inquiry recommended a voluntary code of practice that would become mandatory within two years and then form the basis of a positive licensing scheme.<sup>447</sup>
- 7.55** The Committee believes that it would be beneficial to the funeral industry and consumers if a code of practice was developed as it would provide a benchmark for the industry including the level of service required, and provide an indication to consumers of what to expect from their funeral director.
- 7.56** The Committee strongly supports the idea of a code of practice for the funeral industry and acknowledges that the industry associations have existing codes of practice. The Committee believes there is great benefit in a code of practice similar to that suggested by the FIC, with the addition of other factors to the code to cover issues such as transparency of costs and complaints handling as mentioned in earlier chapters.
- 7.57** A code of practice for the funeral industry forms a necessary part of the majority of the options canvassed in this chapter. The Committee believes that an industry wide code of practice is necessary for the funeral industry, regardless of whether or not a more formal licensing or regulatory scheme is developed.

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### Recommendation 18

That the funeral industry develop a mandatory, industry wide code of practice based on the Australian Consumer Complaints Commission guidelines, in conjunction with appropriate stakeholders and government agencies, ensuring that the code is consistent with current consumer and public health regulations.

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- 7.58** Ms Norah McGuire, the consumer representative on the FIC, stated in her submission:

A Code of Practice requiring, amongst other things, that operators provide a clear list of their process would enable customers to make an informed choice of services when arranging a funeral. Such a code would also set standards so that consumers would know what to expect in the services provided.<sup>448</sup>

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<sup>446</sup> Submission 40, Attachment 3, p10

<sup>447</sup> *Inquiry into Regulation of the Funeral Industry*, Family and Community Development Committee, Parliament of Victoria, November 2005, p247

<sup>448</sup> Submission 24, Ms Norah McGuire, p2

**7.59** In relation to costs, as discussed in Chapter 3, the code of practice should include:

- that funeral directors provide a written quote prior to finalisation of the funeral arrangements that includes the total cost, itemisation of costs, such as specific costs that make up the professional fee, and disbursements
- that disbursements must not include commission or mark up
- that funeral directors be required to advise consumers on the costs of an essential service funeral (basic funeral), as well as the costs associated with any enhancements or additions.

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### **Recommendation 19**

That the code of practice developed for the funeral industry provide:

- that funeral directors provide a written quote prior to finalisation of the funeral arrangements that includes the total cost, itemisation of costs, such as specific costs that make up the professional fee and disbursements
- that disbursements must not include commissions or mark up.

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### **Recommendation 20**

That the code of practice developed for the funeral industry include the cost of an essential service funeral (basic funeral), as well as the costs associated with any enhancements or additions.

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**7.60** The Committee also believes that the code of practice must include a complaints handling process, including the opportunity for an independent review of complaints handling decisions. There should also be commercially significant sanctions for non-compliance to achieve credibility and compliance by participants and engender consumer confidence in the code. This would involve the need for community education to raise awareness about the code.

**7.61** The Committee recognises that the code of practice should not contain potential anti-competitive provisions, and as such should not limit entry to the industry by giving unfair advantages to larger operators. For example, the code should not require the need for a mortuary for a funeral director but rather only the need for access to an approved mortuary as set out under the existing legislation.

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**Recommendation 21**

That the funeral industry code of practice include:

- both mandatory criteria and voluntary best practice criteria
- commercially significant sanctions for non-compliance
- an education and information campaign to raise consumer awareness of the code.

That the code of practice cover areas such as complaint handling, funeral bills and quotes, essential service funerals (basic funerals), professional and ethical practices and be flexible enough to accommodate cultural and religious practices.

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**7.62** The Committee supports the ideas in the ACCC guidelines for the administration and enforcement of the code of practice. The guidelines recommend an administration committee to develop, administer and enforce the code of practice with its establishment and operations written into the code document. Membership of this Code of Practice Committee should consist of the following:

- trade associations, such as the AFDA, FDA NSW, CCA NSW and small operators
- representatives of consumers, local government and Unions NSW
- regulatory authorities and consumer affairs agencies, such as NSW Health, Office of Fair Trading and possibly the Department of Lands.<sup>449</sup>

**7.63** The Committee also believes that the Code of Practice Committee must include representatives of rural and regional NSW as well as metropolitan members.

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<sup>449</sup> *Guidelines for developing effective voluntary industry codes of conduct*, Australian Competition and Consumer Commission, February 2005, pp8-9

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**Recommendation 22**

That a Code of Practice Committee be established and composed of:

- trade associations, such as the Australian Funeral Directors Association, Funeral Directors Association of NSW, Cemeteries and Crematoria Association of NSW and small operators
- representatives of consumers, local government and Unions NSW
- regulatory authorities and consumer affairs agencies, such as NSW Health, Office of Fair Trading and possibly the Department of Lands.

That the Code of Practice Committee include representatives from metropolitan and regional NSW.

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**7.64** In comparison to the current representation on the FIC this membership would provide greater representation of small operators and consumers and a role for government agencies as more than just observers.

**7.65** The Committee notes that the ACCC guidelines are for voluntary codes of practice, however the Committee supports a mandatory code of practice with some voluntary, best practice measures. In order for the code to be mandatory it may be necessary to amend existing legislation to incorporate a mandatory code of practice for the funeral industry.

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**Recommendation 23**

That the Government review the scope of existing legislation to accommodate a mandatory code of practice and, if necessary, amend existing legislation to incorporate a mandatory code of practice for the funeral industry.

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**7.66** As recommended in the previous chapter the Committee believes that the Office of Fair Trading is best equipped to deal with consumer complaints and should be the primary point of contact. For that purpose it is suggested that legislation administered by the Office of Fair Trading, such as the *Fair Trading Act 1987*, is the appropriate legislation to include provision for a mandatory code of practice for the funeral industry.

**7.67** The Committee acknowledges that industry members and associations may make complaints to NSW Health and the Committee does not propose to limit this mechanism, only to provide a clear approach for consumer complaints.

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## Role and structure of Funeral Industry Council

**7.68** As part of its terms of reference, the Committee has been asked to consider the role and structure of the FIC, primarily for the Council's potential to act as an industry regulator or licensee.

**7.69** At this stage, as noted earlier, the FIC does not have a constitution in place. There have been issues raised as to whether this council is truly representative of the industry in terms of consumers and small operators.<sup>450</sup> Consideration would need to be given to whether the Council, as currently constituted, is in a position to play such an important role as licensor/endorser or regulator for the funeral industry.

**7.70** NCOSS advised the Committee that while the FIC does have representation from consumers such as the CPSA, and employees such as the Funeral and Allied Industries Union, these are in a minority. NCOSS believes it is not appropriate for the FIC to be delegated any regulatory functions:

Given its membership, NCOSS considers that the Funeral Industry Council is primarily a body representing the interests of the large funeral industry operators. Its proposals for self regulation of the industry, while having laudable aims of protecting consumers, could also further concentrate ownership of the industry in the hands of large operators. ... it is the responsibility of the NSW Government to license the funeral industry in NSW. Given the nature of the Funeral Industry Council, it is not appropriate for it to be delegated these licensing functions. Rather, given the nature and importance of this industry, it is appropriate for the NSW Government to enhance its regulatory functions.<sup>451</sup>

**7.71** The CPSA also very strongly states in its submission that the structure and representation of the FIC militates against it becoming involved in any regulatory function:

CPSA does not believe that the FIC has shown any leadership in, or has demonstrated that it has any role to play in the protection of the public in NSW. However, if the Social Issues Committee sees that the FIC has a role to play then the structure of the FIC should be expanded to include a much broader representation of consumers and non-aligned small funeral business.<sup>452</sup>

**7.72** The Committee recognises that there has been a need for bodies such as the FIC and industry associations to be self regulating in the funeral industry due to a lack of enforcement from government agencies. The Committee also recognises the views of stakeholders such as NCOSS who state that 'the fundamental issue is it is government's responsibility to regulate, not the industry self-regulating'.<sup>453</sup>

**7.73** The Committee acknowledges that the FIC has played an important role in self-regulating the industry and providing a forum for improved regulation to be discussed and pursued.

<sup>450</sup> Submission 39, p14

<sup>451</sup> Submission 33, p11

<sup>452</sup> Submission 39, p6

<sup>453</sup> Mr Gary Moore, Director, NCOSS, Evidence, 14 June 2005, p41

However, the Committee believes that the FIC, as currently constituted, is not representative of all stakeholders in the funeral industry, in particular small operators and consumers.

**7.74** The Committee supports a primary role for Government agencies in regulating the industry, including increased enforcement of existing legislation, playing a key role in developing a code of practice with industry and stakeholders as well as educating the community about the funeral industry to raise community awareness. The Committee is of the view that the OFT is best placed to take this lead role. The Committee recognises that alongside the Government role there is a participatory role for the FIC and other stakeholders in developing the code of practice for the industry.

## Conclusion

**7.75** At this stage, the Committee believes that a mandatory code of practice is justifiable due to the nature and level of complaints against the funeral industry. However, a licensing scheme such as that suggested by the Victorian Inquiry is not justifiable in NSW. The Committee believes that if the level of complaints increases significantly then there may be a need for the Office of Fair Trading to review the situation and potentially increase the regulation of the industry with a licensing type scheme.

**7.76** Increased transparency of costs and a clear complaints handling mechanism will address many of the community concerns raised during the Inquiry. A code of practice that sets out, among other criteria, itemisation of costs will also address these issues.

**7.77** The industry concerns about some funeral directors breaching public health regulations have been addressed by the Committee recommending increased enforcement of the regulations by NSW Health and/or local government authorities.

**7.78** One of the key themes that has become evident during the Inquiry has been the need to raise awareness in the community of what is involved in organising a funeral, with or without a funeral director, what to expect in terms of service and cost and where to go with a complaint. In response the Committee has recommended an education and information campaign and a clear complaints mechanism. This way consumers will be aware that funeral directors may be required to adhere to certain standards and know how and where to report breaches and complaints.

**7.79** In summary the Committee has recommended an industry wide code of practice, developed by a representative Code Of Practice Committee, give consideration to:

- both mandatory criteria and voluntary best practice criteria
- cover areas such as complaint handling, itemisation of costs, need to provide essential service funerals (basic funeral), professional and ethical practices and consideration of cultural and religious practices
- commercially significant sanctions for non-compliance
- an education and information campaign to raise consumer awareness of the code.

**7.80** In conjunction with the results of the discussion paper, titled *Review of Consumer Protection and the NSW Funeral Industry*, the Office of Fair Trading should give further consideration to the

display of prices for the funeral industry under section 38 of the *Fair Trading Act 1987*. Funeral directors could be required to display itemised prices of goods provided in a funeral “package” as well as any refunds, discounts, rebates and/or payment plans available.

- 7.81** The results of the Office of Fair Trading discussion paper should be made public and an education campaign run by the Office of Fair Trading to raise community awareness of consumer protection and complaint mechanisms in the funeral industry.
- 7.82** The Office of Fair Trading should be a primary contact for consumer complaints about the funeral industry, as the OFT is in a better position to handle and refer the complaints on to a Code of Practice Committee or NSW Health, as necessary. This offers a clear and streamlined approach that vulnerable consumers can more easily understand.
- 7.83** The Committee has recommended that NSW Health and local authorities increase their enforcement efforts of the public health regulations and NSW Health should consider increasing the penalties for breaches under the *Public Health Act 1991* and regulation to act as more of a deterrent. The Committee suggests the use of the existing NSW Health audit tool for the funeral industry to collect data on industry performance and non-compliance to help determine future enforcement needs for the funeral industry.





## Appendix 1 Submissions

No	Author
1	Mrs Dorothy Bremmer
2	Confidential
3	Mr J Hogan
4	Ms Elizabeth Francis
5	Name suppressed
6	Mr Tom Gough
7	Mrs V Duffie
8	Mr and Mrs P C & P M Milton
9	Ms Alyson Lane, Dubbo City Council
10	Mr Tad Slufinski
11	Ms Leah Munro
12	Mr Bob Jay, Morisset Senior Citizens & Pensioners Association
13	Mr Garth Juster, Association of Independent Retirees (AIR) Ltd
14	Mrs Maria Fatarella
15	Mr Ron Clarke
16	Mr Guye Richards (Sea Burials Australia)
17	Ms Therese Mallik
18	Dr Munir Hussain, Omar Mosque Committee
19	Ms Lisa Casey
20	Ms Lucy Cheetham, COTA National Seniors Partnership
21	Mr Ray Rauscher
22	Confidential
23	Ms Natalie Verdon, LifeArt Australia
24	Ms Norah McGuire
25	Confidential
26	Mr Wayne Howell
27	Mr James Prior
28	Ms M Reid, The Cemeteries & Crematoria Association of NSW
29	Mr Ian Strathie, Wray Owen Funeral Directors
30	Mr K J Chapman, The Funeral Directors' Association of NSW Ltd
31	Ms Jacqui Goddard, National Trust of Australia (NSW)
32	Ms Catherine Doggett, Australian Association of Social Workers

No	Author
33	Mr Gary Moore, Council of Social Service of NSW
34	Ms Peg Hewett, Older Women's Network
35	Law Consumers Incorporated
36	Ms Sandra Jones, Shoalhaven City Council
37	Mr Murray Erbs, Moree Plains Shire Council
38	Correspondence to the Committee <sup>454</sup>
39	Combined Pensioners and Superannuants Association NSW Inc
40	Mr Mark Lennon, Funeral Industry Council of NSW
41	Mr Harold O'Keefe, Catholic Cemeteries Board
42	Mr Richard Davis, InvoCare
43	Ms Liz Young, Australian Funeral Directors Association
44	Mr Laurie Malone
45	Mr Stepan Kerkyasharian, Community Relations Commission
46	Ms Zenith Virago, The Natural Death Centre
47	Mr Farid Hatami, Baha'I Council
48	Mr George Scott
49	Ms Joanna Van Kool
50	Mr Jon Blackwell, WorkCover NSW
51	Ms Gayle Richards, Council on the Ageing NSW Inc
52	The Hon David Campbell MP, Minister for Local Government
53	Ms Robyn Kruk, Director General, NSW Health Department
54	The Hon John Hatzistergos MLC, Minister for Fair Trading
55	The Hon Tony Kelly MLC, Minister for Lands
56	Mr Alex Nelson
57	Ms Pamela Rey
58	Name suppressed
59	Correspondence to the Committee <sup>455</sup>
60	Ms Kit McMahon, Service Skills Australia
61	Mr Max Burgess, Law Consumers Inc

<sup>454</sup> Submission 38 was registered as a submission, however the Committee determined it to be correspondence to the Committee

<sup>455</sup> Submission 59 was registered as a submission, however the Committee determined it to be correspondence to the Committee

## Appendix 2 Witnesses

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
Tuesday 14 June 2005	Mr Mark Lennon	Chair and Secretary, Funeral Industry Council
Jubilee Room, Parliament House	Mr Aiden Nye	Member, Funeral Industry Council
	Mr Warwick Hansen	Member, Funeral Industry Council
	Ms Megan Lee	General Manager, Combined Pensioners & Superannuants Association Inc
	Mr Les Elkins	State Treasurer and Member, Combined Pensioners & Superannuants Association Inc
	Mr Gary Moore	Director, NCOSS
	Mr Dev Mukherjee	Senior Policy Officer, NCOSS
Monday 8 August 2005	Professor Peter Sainsbury	Acting Deputy Director General, Population Health and Acting Chief Health Officer, Dept of Health
Jubilee Room, Parliament House	Mr Michael Staff	Director, Environmental Health, Dept of Health
	Dr Anthony Brown	Acting Director, Centre for Health Protection and Deputy Chief Health Officer, Dept of Health
	Mr Neil Shaw	General Environmental Health, Dept of Health
	Mr John Watson	General Manager, Occupational Health and Safety Division, WorkCover NSW
	Ms Julie King	Senior Policy Officer, Dept of Lands
	Ms Pieta Laing	Manager, Lands Policy, Crown Lands, Dept of Lands
	Ms Mary Thorne	President, Cemeteries and Crematoria Association of NSW
	Mr Ivan Webber	Member, Cemeteries and Crematoria Association of NSW
	Ms Jan Phillips	President, Funeral Directors Association of NSW
	Mr Ken Chapman	Executive Secretary, Funeral Directors Association of NSW
	Mr John Kaus	Funeral Director, Mudgee, member of Funeral Directors Association of NSW
	Mr Phillip Brooks	Funeral Director and Crematorium owner, Tamworth member of Funeral Directors Association of NSW
Ms Liz Young	National Director, Australian Funeral Directors Association	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Ian Strathie	President NSW/ACT Division, Australian Funeral Directors Association
	Mr Darren Eddy	Senior Vice President, NSW/ACT Division, Australian Funeral Directors Association
23 August 2005 Port Macquaire	Mr Bernard Smith	General Manager, Hastings Council
	Mr Mark Pilgrim	Business Manager, Hastings Council
	Ms Sue Harris	Manager Dental Services, Durri Aboriginal Medical Service
30 August 2005 Broken Hill	Cr Thomas Kennedy	Broken Hill City Council
	Mr Visko Sulicich	Manager, Infrastructure, Broken Hill City Council
	Mr Ray Harvey	Operational Services Officer, Broken Hill City Council
	Mr Mark Kelly	Funeral Director, Kelly's Far West Funerals
5 September 2005 Jubilee Room, Parliament House	Mr Lee Squires	Executive Manager, Joint Committee of Necropolis Trustees (Rookwood Cemetery Trust)
	Mr Derek Williams	General Manager, Anglican and General Cemetery Trusts, Rookwood
	Mr Harold O'Keefe	General Manager, Catholic Cemeteries Board
	Ms Zenith Virago	The Natural Death Centre
	Mr Ali Roude	Chairman, Islamic Council of NSW
	Mr Wasim Raza	Islamic Council of NSW and Secretary, Muslim Cemetery Trust, Rookwood
	Mr David Knoll	Board President, NSW Jewish Board of Deputies
	Mr Geejay Schneeweiss	NSW Jewish Board of Deputies
	Mr Aiden Nye	Secretary, Funeral and Allied Industry Union NSW
	Mr Paul Stevenson	Chairman, Baha'i Council
	Mr Richard Davis	CEO, InvoCare
19 September 2005 Jubilee Room, Parliament House	Mr David O'Connor	Commissioner, Office of Fair Trading
	Mr Rod Stowe	Assistant Commissioner, Policy & Strategy, Office of Fair Trading
	Mr David Brett	Senior Policy Officer, Office of Fair Trading

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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Frank Vincent	CEO, Daruk Aboriginal Medical Service
	Mr Peter Fernando	Deputy CEO, Redfern Aboriginal Medical Service

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## Appendix 3 Site Visits

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Date	Location
23 August 2005	<p data-bbox="469 488 647 515">Port Macquarie</p> <p data-bbox="469 537 1302 658">The Committee travelled to Port Macquarie and conducted a public hearing at the Port Panthers Leagues Club (see Appendix 2). During the hearing the Committee heard from representatives of the Hastings Council.</p> <p data-bbox="469 680 1302 748">This hearing was also held to take evidence from local groups relating to the Committee's inquiry into dental services.</p>
30-31 August 2005	<p data-bbox="469 770 606 797">Broken Hill</p> <p data-bbox="469 819 1302 940">The Committee travelled to Broken Hill and conducted a public hearing at the Broken Hill City Council Chambers (see Appendix 2). During the hearing the Committee heard from representatives of the Broken Hill City Council.</p> <p data-bbox="469 963 1302 1128">The Committee also heard from Mr Mark Kelly, Funeral Director. Mr Kelly also took the Committee on a tour of his funeral home, Kellys Far West Funerals. Mr Ray Harvey, Operational Services Officer with Broken Hill City Council, took the Committee on a tour of the Broken Hill Cemetery.</p>

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## Appendix 4 Procedures when a person dies

**Below is a summary of advice in the NSW Health Guidelines for the Funeral Industry on procedures when a person dies.**

When a person dies at home a doctor should be called to formally pronounce the person dead and to issue the Medical Certificate of Cause of Death (PR315). If it is known (or likely) that the deceased will be cremated, it is a good idea to request a cremation certificate at the same time. Once the doctor has visited, and the death is not considered a coroner's case, then a funeral director can be contacted and can remove the body to the funeral home.\*

When a person dies in hospital and the Medical Certificate of Cause of Death has been issued, until the family engages a funeral director, the body will be held in the hospital morgue. Nursing homes may not have their own morgue or holding room so they may request families to engage a funeral director fairly promptly so that the body can be transferred to the funeral director's facilities.\*

Usually it is the doctor or the funeral director who forwards the Medical Certificate of Cause of Death to the Registrar of Births, Deaths and Marriages. (In coroners cases the coroner forwards the appropriate form.) The next of kin can then apply (and pay a fee) to the Registrar to issue a Death Certificate. The Death Certificate is often necessary as proof of death when dealing with the estate of the deceased, eg banks, Centrelink, real estate agents, insurance companies may need to sight the death certificate.

\*May not need funeral director if relatives choose to organise own funeral.

**Below is a summary from the Office of Fair Trading's Consumer guide to Funerals on what funeral directors do:**

The main services offered by funeral directors are:

- Registering the death after the issue of the Medical Certificate of Cause of Death (including a Cremation Certificate if required).
- Transferring the body from the place of death to the funeral director's premises – doing so in accordance with strict health rules concerning handling, transport and storage.
- Meeting you at your home or in their office to discuss your preferences and options. Depending on what you decide, a meeting like this may be less than 30 minutes or up to two or three hours.
- Coordinating between your clergy (or a funeral celebrant if you wish) and the cemetery or crematorium to decide when, where, and what type of service will be needed. In most cases cemeteries and crematoriums will not deal directly with anyone other than a funeral director.
- Preparing and placing death, funeral and obituary notices in newspapers of your choice and organising flowers.
- Preparing the body for burial or cremation.

- Supplying a coffin or a casket.
- Providing a place for a viewing of the body by friends and relatives if required.
- Transporting the body by hearse to the ceremony and then to the cemetery or crematorium.
- Providing special cars for mourners.
- Paying fees for such things as the cemetery, crematorium and flowers – on your behalf.
- Advising and helping you with the paperwork involved in accessing any financial benefits associated with the funeral that might be available.



## Appendix 5 Costs of burials and cremations

The following table was provided by the Cemeteries and Crematoria Association of NSW, in response to questions on notice. It highlights costs of both burials and cremations in various cemetery trusts and local government areas across NSW. The second column in the table below refers to burials in the listed cemeteries up until the cremation figures on the following page.

LOCAL GOVT		1995	2000 (GST)	2005 (GST)
Lismore Memorial Gardens	Lawn	\$1075	\$1520	\$1950
	2 <sup>nd</sup> Interment	\$775	\$1050	\$1650
Waverley	Lawn	\$4500	\$6050	\$9900
	2 <sup>nd</sup> Interment	\$725 - \$1025	\$970-\$1155	\$1375 - \$1485
Manning Great Lakes	Lawn (includes plaque)		\$1050	\$1350 (double depth \$1550)
	Reopen (double depth)			\$650
Cessnock City Council	Lawn (includes plaque)	\$1280	\$1760	\$2255
	2 <sup>nd</sup> Interment		\$880	\$1155
Oberon Council	Lawn (includes plaque)		\$1320	\$1570
Greater Argyle (Goulburn)	Lawn	\$1300	\$1650	\$1650
Baulkham Hills Shire Council	Lawn (G'dig not included responsibility of funeral director)	\$700	\$880	\$1540
	2 <sup>nd</sup> Interment (admin fee only)	\$200	\$275	\$400
Penrith City Council	Lawn site only	\$450	\$550	\$990
	Interment (contractor gravedigger)	\$625	\$755	\$1175
Dubbo City Council	Lawn	\$610	\$1111	\$1815
Wollongong City Council	Lawn	\$920	\$1,340	\$1,614
Hawkesbury City Council	Lawn	\$960 (includes interment & plaque)	\$550 (plot only)	\$1,590 (includes interment, plaque & perpetual maintenance)
Hastings Council	Lawn	\$750 (includes interment)	\$520 (site -only)	\$1202 (includes interment)

		1995	2000 (GST)	2005 (GST)
<b>TRUST</b>				
Liverpool Presbyterian Trust	Lawn		\$3080 (includes plaque)	\$3,795
Macquarie Park	Lawn	\$2,895.00	\$4,120	\$5,810
Rookwood Independent	Lawn	\$1605 (includes headstone or plaque)	\$2300 (includes headstone or plaque)	\$3585 (includes headstone or plaque)
Rookwood Anglican	Lawn	\$1534	\$3619	\$4264
Woronora	Lawn	\$1430 (includes plaque & interment fee)		\$3465 (includes plaque & interment fee)
<b>Local Government</b>				
<b>CREMATION FEES</b>		<b>1995</b>	<b>2000 (GST)</b>	<b>2005 (GST)</b>
Hastings Council		\$450	\$583	\$715.00
Wollongong Council		\$400	\$475	\$520
Lismore Memorial Gdns		\$450	\$510	\$704

Trust	March 1996 (ex GST)	May 2005 (ex GST)
Woronora	\$475	\$776
Eastern Suburbs	\$495	\$726
Macquarie Park		\$770
<b>Private</b>		
Castlebrook	\$485	\$781
Forestlawn	\$530	\$781
Northern Suburbs	\$498	\$698
Pinegrove	\$530	\$781
Rookwood	\$550	\$748

## Appendix 6 Minutes

**Meeting 58, 14 June 2005**  
**9:30am, Jubilee room**

**1. Members present**

Ms Jan Burnswoods (Chair)  
 Hon Robyn Parker (Deputy Chair)  
 Hon Dr Chesterfield-Evans  
 Hon Kayee Griffin  
 Hon Charlie Lynn  
 Hon Ian West

**2. ...**

**3. Minutes of meetings nos 56 and 57**

Resolved on the motion of Ms Griffin: That the draft minutes of meetings nos 56 and 57 be adopted.

**4. Correspondence**

The Chair tabled the following items of correspondence:

...

**Item 4** – Letter from Hon Morris Iemma MP, Minister for Health, advising that NSW Health will be providing a submission to the Funeral Industry inquiry.

...

Resolved on the motion of Ms Parker: That the committee note the correspondence.

**5. Inquiry into the Funeral Industry**

The Chair tabled submission nos 1 to 40.

Resolved on the motion of Mr West: That:

- (a) the Committee accept submission nos 1 to 40, and
- (b) under Standing Order 223(1), submission nos 1 to 40 with the exception of no. 2 and individual's contact details in submission nos 5 and 22, be made public.

**6. ...**

**7. Public Hearing – Inquiry into the Funeral Industry**

The public and the media were admitted.

Mark Lennon, Assistant Secretary of Unions New South Wales and Chair of the Funeral Industry of New South Wales,

Warwick Hansen, Funeral Director and member of the Funeral Industry Council, both sworn and examined:

Aiden Nye, State Secretary of the Funeral and Allied Industries Union of New South Wales and member of the Funeral Industry Council of New South Wales, affirmed and examined:

Resolved on the motion of Dr Chesterfield-Evans: That the questions taken on notice during the hearing be forwarded to the witnesses for response.

Questioning concluded, the witnesses withdrew.

Megan Lee, General Manager, Combined Pensioners and Superannuants Association Inc., and

Mathew Leslie Elkins, State Treasurer, Combined Pensioners and Superannuants Association Inc., sworn and examined.

Resolved on the motion of Ms Griffin: That an additional page provided by Ms Lee be added to the Combined Pensioners and Superannuants Association's submission.

Questioning concluded, the witnesses withdrew.

Gary Moore, Director, Council of Social Service of New South Wales, and

Dev Mukherjee, Senior Policy Officer, Council of Social Service of New South Wales, affirmed and examined.

Questioning concluded, the witnesses withdrew.

## **8. Adjournment**

The committee adjourned at 4.35 pm.

Susan Want  
Acting Director

### **Meeting 59, 29 June 2005**

#### **1:30 pm, Jubilee Room**

##### **1. Members present**

Ms Burnswoods, Chair  
Ms Parker, Deputy-Chair  
Dr Chesterfield-Evans  
Ms Griffin  
Mr Lynn  
Mr West

2. ...

3. ...

4. ...

5. ...

**6. Minutes of Meeting no. 58**

Resolved on the motion of Mr Lynn: That the draft minutes of meeting no. 58 be adopted.

**7. Sub-Committee**

Resolved on the motion of Ms Griffin: That

- (a) a sub committee be appointed to investigate and report into certain matters relating to the inquiry into the funeral industry and the inquiry into dental services in New South Wales, and
- (b) Ms Burnswoods be the Chair of the sub-committee.

**8. Future hearings and witnesses**

The committee discussed future hearings and witnesses

**9. ...****10. Adjournment**

The committee adjourned at 5.10pm until Tuesday 5 July 2005 at 9.30 am.

Susan Want  
Acting Director

**Meeting 61, 3 August 2005**  
**2.00pm, Room 814-815**

**1. Members present**

Ms Burnswoods (Chair)  
Dr Chesterfield-Evans  
Ms Griffin  
Mr Lynn

**2. Apologies**

Ms Parker  
Mr West

**3. Minutes**

Resolved on motion of Mr Lynn: That the draft minutes of meeting no. 60 be adopted.

**4. ...****5. Inquiry into the Funeral Industry in New South Wales**

Resolved on the motion of Dr Chesterfield-Evans: That

- (a) the committee accept submission nos 41 to 54, and
- (b) the submissions be made public.

6. ...

7. **Correspondence**

(a) *Received*

...

(b) *Sent*

(i) Letter to Mr Peter Black MP, Member for Murray-Darling, dated 26 July 2005 informing him of the committee visit to Broken Hill on 30 and 31 August 2005.

(ii) Letter to Mr Robert Oakeshott MP, Member for Port Macquarie, dated 26 July 2005, informing him of the committee visit to Port Macquarie on 23 August 2005.

(iii) ...

8. ...

9. **Adjournment**

The committee adjourned until 8 August 2005 at 9.30 am.

Susan Want

Acting Director

**Minutes No 62, 8 August 2005**

**9.30am, Jubilee Room**

1. **Members present**

Ms Burnswoods (Chair)

Ms Parker (Deputy-Chair)

Dr Chesterfield-Evans

Ms Griffin

Mr West

2. **Apologies**

Mr Lynn

3. **Public hearing – Inquiry into the Funeral Industry**

The public and the media were admitted.

Professor Peter Sainsbury, Acting Deputy Director General, Population Health and Chief Health Officer, NSW Health,

Anthony Brown, Acting Director, Centre for Health Protection and Deputy Chief Health Officer, NSW Health, and

Michael Staff, Director Environmental Health, NSW Health, affirmed and examined, and

Neil Shaw, Manager, General Environmental Health Unit, NSW Health, sworn and examined.

Questioning concluded, the witnesses withdrew.

At the request of the Chair, the public and media withdrew.

#### 4. Deliberative meeting

##### *Confirmation of Minutes*

Resolved on the motion of Dr Chesterfield-Evans: That the draft minutes of meeting no. 61 be adopted.

...

##### *Inquiry into the Funeral Industry*

Submission received:

Resolved on the motion of Ms Parker: That

- (i) the committee accept the submission from the Minister for Lands, and
- (ii) the submission be made public.

Correspondence received:

Resolved on the motion of Mr West, that the correspondence from Mr Wayne Howell be accepted by the committee as correspondence and not as submission no. 38 as previously resolved.

...

#### 5. Public hearing - Inquiry into the Funeral Industry

The public and the media were admitted.

John Watson, General Manager, Occupational Health and Safety Division, WorkCover NSW, sworn and examined.

Questioning concluded, the witness withdrew.

Pamela (Pieta) Laing, Manager, Lands Policy, Department of Lands, and Julie King, Senior Policy Officer, Department of Lands, were sworn and examined.

Questioning concluded, the witnesses withdrew.

Mary Thorne, President, Cemeteries and Crematoria Association of NSW, and Ivan Webber, Member, Cemeteries and Crematoria Association of NSW, were sworn and examined.

Questioning concluded, the witnesses withdrew.

The following witnesses were sworn and examined:

- Ken Chapman, Executive Secretary, Funeral Directors Association of NSW
- Jan Phillips, President, Funeral Directors Association of NSW
- John Kaus, funeral director, Mudgee and member of the committee of the Funeral Directors Association of NSW
- Phillip Brooks, funeral director and crematorium owner, Tamworth, and member of the committee of the Funeral Directors Association of NSW.

Questioning concluded, the witnesses withdrew.

The following witnesses were sworn and examined:

- Ian Strathie, Divisional President, Australian Funeral Directors Association, NSW/ACT Division
- Darren Eddy, Senior Vice President, Australian Funeral Directors Association, NSW/ACT Division, sworn and examined,
- Liz Young, National Director, Australian Funeral Directors Association, affirmed and examined.

Questioning concluded, the witnesses withdrew.

The funeral industry

**6. Adjournment**

The committee adjourned at 4.36 pm until 10.00am Tuesday 23 August 2005 (public hearing, Port Macquarie)

Susan Want  
Acting Director

**Minutes No 63, 23 August 2005**

**10am, Renaissance Room, Port Panthers, Port Macquarie**

**1. Members present**

Ms Burnswoods (Chair)  
Ms Parker (Deputy Chair)  
Dr Chesterfield-Evans  
Ms Griffin  
Mr West

**2. Apologies**

Mr Lynn

**3. ...**

**4. ...**

**5. Public hearing – inquiry into dental services in NSW and inquiry into the funeral industry**  
***Public hearing***

...

Mr Bernard Smith, General Manager and Mr Mark Pilgrim, Business Manager, Hastings Council, were sworn and examined.

Questions concluded, the witnesses withdrew.

Ms Sue Harris, Manager Dental Services, Durri Aboriginal Medical Service, was sworn and examined.

Questions concluded, the witness withdrew.

...

**6. Adjournment**

The Committee adjourned at 4.02pm until 2.00pm on Tuesday 31 August 2005 (Broken Hill public hearing and site visit)

Rachel Simpson  
Director

**Minutes No 64, 30 August 2005**

**2.00pm, Broken Hill Council Chambers**

**1. Members present**

Ms Burnswoods (Chair)  
Dr Chesterfield-Evans  
Ms Griffin



Mr West

**2. Apologies**

Mr Lynn  
Ms Parker

**3. Public hearing – Inquiry into the Funeral Industry**

The public and the media were admitted.

Mr Visko Sulicich, Manager Infrastructure and Mr Ray Harvey, Operational Services Officer, Broken Hill City Council, were sworn and examined.

Questioning concluded, the witnesses withdrew.

Mr Thomas Kennedy, private citizen, was sworn and examined.

Questioning concluded, the witness withdrew.

Mr Mark Kelly, Funeral Director, Kelly's Far West Funerals, was sworn and examined.

Questioning concluded, the witness withdrew.

**4. Adjournment and visit to Kelly's Far West Funerals**

The Committee adjourned at 3.30pm to travel to Kelly's Far West Funerals, and reconvened at 3.40pm for a site visit, accompanied by Mr Mark Kelly.

**5. Adjournment and visit to Broken Hill Cemetery**

The Committee adjourned at 4.15pm to travel to Broken Hill Cemetery, and reconvened at 4.25pm for a site visit, accompanied by Mr Ray Harvey.

**6. Adjournment**

The committee adjourned at 5.00pm until 9.30am Wednesday 31 August 2005 (public hearing, Broken Hill).

Rachel Simpson  
Director

**Minutes No 65, 31 August 2005**

**9.30am, Broken Hill Council Chambers**

**1. Members present**

Ms Burnswoods (Chair)  
Dr Chesterfield-Evans  
Ms Griffin  
Mr West

**2. Apologies**

Mr Lynn  
Ms Parker

**3. Public hearing – Inquiry into the Funeral Industry**

The public and the media were admitted.

Dr Lyn Mayne, Dentist, Royal Flying Doctors Service, was sworn and examined.

Questioning concluded, the witness withdrew.

Ms Linda Cutler, Director, Clinical Operations, Ms Jenny Floyd, Manager, Western Rural Oral Health Network and Mr Mason Come, Oral Health Manager, Greater Western Areas Health Service, were sworn and examined.

Resolved, on the motion of Ms Griffin, that the document tendered by Ms Cutler be accepted.

Questioning concluded, the witnesses withdrew.

Mr Jason Gowin, Co-ordinator, Health Checks, Maari Ma Aboriginal Health Corporation, was sworn and examined.

Resolved, on the motion of Mr West, that the document tendered by Mr Gowin be accepted.

Questioning concluded, the witness withdrew.

Mr Ross Nettle, Manager, Barrier Dental Clinic, Broken Hill, was sworn and examined.

Resolved, on the motion of Dr Chesterfield-Evans, that the document tendered by Mr Nettle be accepted.

Questioning concluded, the witness withdrew.

Dr Greg Cocks, Dentist, The Dental Centre, Broken Hill, was sworn and examined.

Resolved, on the motion of Mr West, that the document tendered by Dr Cocks be accepted.

Questioning concluded, the witness withdrew.

Dr Brian Devlin, Dentist, Go Dental, Broken Hill, was sworn and examined.

Questioning concluded, the witness withdrew.

#### **4. Deliberative meeting**

##### ***Confirmation of minutes***

Resolved, on the motion of Ms Griffin, that Minutes No 62 and 63 be confirmed.

...

##### ***Transcripts of evidence – Broken Hill***

Resolved, on the motion of Mr West, that consideration of publication of the transcripts of hearings in Broken Hill on 30 and 31 August 2005, be deferred until the Committee's deliberative meeting on Monday 5 September 2005.

##### ***Inquiry into the funeral industry***

Resolved, on the motion of Ms Griffin, that the Committee conduct a further hearing for the inquiry into the funeral industry, on a date to be determined at the Committee's deliberative meeting on Monday 5 September 2005.

#### **5. Adjournment**

The committee adjourned at 3.15pm until 9.30am Monday 5 September 2005 (public hearing, Parliament House).

Rachel Simpson  
Director

**Minutes No 66, 5 September 2005**  
**9.30am Jubilee room**

**1. Members present**

Ms Burnswoods (Chair)  
Ms Parker (Deputy Chair)  
Dr Chesterfield-Evans  
Mr Lynn  
Ms Griffin  
Mr West

**2. Public hearing – Inquiry into the Funeral Industry**

The public and the media were admitted.

Mr Lee Squires, Executive Manager, Joint Committee of Necropolis Trustees (Rookwood Cemetery Trust), was affirmed and examined.

Resolved, on the motion of Ms Griffin, that the document tendered by Mr Squires be accepted.

Questioning concluded, the witness withdrew.

Mr Derek Williams, General Manager, Anglican Cemetery Trust, Rookwood was affirmed and examined.

Resolved, on the motion of Ms Griffin, that the document tendered by Mr Williams be accepted.

Questioning concluded, the witnesses withdrew.

Mr Harold O’Keefe, General Manager, Catholic Cemeteries Board was sworn and examined.

Resolved, on the motion of Mr West, that the documents tendered by Mr O’Keefe be accepted.

Questioning concluded, the witness withdrew.

Ms Zenith Virago, The Natural Death Centre, was affirmed and examined.

Resolved, on the motion of Ms Parker, that the documents tendered by Ms Virago be accepted.

Questioning concluded, the witness withdrew.

Mr Ali Roude, Chairman, Islamic Council of NSW and Mr Wasim Raza, Secretary, Muslim Cemetery Trust were sworn and examined.

Questioning concluded, the witnesses withdrew.

Mr David Knoll, Board President and Mr Geejay Schneeweiss, Public Affairs Officer, NSW Jewish Board of Deputies were sworn and examined.

Resolved, on the motion of Dr Chesterfield-Evans, that the documents tendered by Mr Knoll be accepted.

Questioning concluded, the witnesses withdrew.

Mr Aiden Nye, Secretary, Funeral and Allied Industry Union NSW, appeared before the Committee on a former affirmation.

Resolved, on the motion of Mr West, that the documents tendered by Mr Nye be accepted.

Questioning concluded, the witness withdrew.

Mr Paul Stevenson, Chairman, Baha'i Council was sworn and examined.

Questioning concluded, the witness withdrew.

Mr Richard Davis, Chief Executive Officer, InvoCare was sworn and examined.

Questioning concluded, the witness withdrew.

### **3. Deliberative meeting**

#### ***Confirmation of minutes***

Resolved on the motion of Ms Parker that an addition be made to Minutes no 63, item 6, *Tabled Documents*: 'Resolved, on the motion of Ms Griffin, that the documents tendered by witnesses at the hearing and forum be accepted'.

Resolved, on the motion of Dr Chesterfield-Evans, that Minutes No 64 and 65 be confirmed.

#### ***Correspondence***

Resolved, on the motion of Ms Griffin, that the following correspondence be noted.

##### *Received*

Mr Wayne Howell, undated, letter to Committee concerning his appearance before the Committee in relation to the inquiry into the funeral industry.

Mr John Williams, 2 May 2005, letter to the Director requesting assistance concerning a complaint relating to the pre purchase of a grave site at a cemetery in NSW.

Mr K Finnie, Director Shire Services, Kempsey Shire Council, 1 July 2005, letter to the Committee addressing claims made in Submission 39 by the Combined Pensioner and Superannuants Association of NSW concerning Kempsey Shire Council's cemetery services.

Ms Peta Rourke, 26 August 2005, email concerning the reporting of the Port Macquarie site visit by the Port News.

Hon Diane Beamer MP, 31 August 2005, letter to the Chair advising of the Commissioner's possible attendance at a Committee hearing for the funeral industry inquiry.

##### *Sent*

Letter dated 26 July 2005 from Chair to Mr Robert Oakeshott MP, Member for Port Macquarie, advising Mr Oakeshott that the Committee is travelling to Port Macquarie in August for the dental services and funeral industry inquiries.

Letter dated 26 July 2005 from Chair to Mr Peter Black MP, Member for Murray-Darling, advising Mr Black that the Committee is travelling to Broken Hill in August for the dental services and funeral industry inquiries.

Letter dated 27 June 2005 from Director to Mr Williams advising him of the nature of a parliamentary committee inquiry, and that the Committee is unable to intervene in this matter.

Letter dated 2 August 2005 from Chair noting Mr Finnie's comments and advising Mr Finnie his letter concerning Kempsey Shire Council's cemetery services will be distributed to the members of the Committee.

***Inquiry into the funeral industry***

Resolved, on the motion of Ms Griffin, that submission no 23 be made partially confidential, and that the Committee accept and make public submission 56 and 57.

Resolved, on the motion of Ms Parker, that the transcript of evidence taken in Broken Hill on 31 August 2005, be published and that the transcript of evidence from Mr Kelly be provided to Fred J Potter and Sons for comment.

Resolved, on the motion of Ms Griffin, that the Committee Director write to the appropriate person within the Department of Commerce regarding the process for tendering and awarding contracts for transportation of the deceased to the Coroner's Court for investigation.

Resolved, on the motion of Ms Griffin, that the Committee conduct a further hearing on Monday, 19 September 2005.

Resolved, on the motion of Ms Parker, that documents tendered by witnesses at the hearing on 5 September be made public with the exception of:

- Submission to Department of Lands Review tendered by Mr O'Keefe and
- Case study tendered by Mr Nye, which should remain confidential

...

**4. Adjournment**

The committee adjourned at 5.30pm until 9.00am Monday 19 September 2005 (public hearing, Parliament House).

Rachel Simpson  
Director

**Minutes No 67, 19 September 2005**

**9.30am Jubilee room**

**1. Members present**

Ms Burnswoods (Chair)  
Ms Parker (Deputy Chair)  
Mr Lynn  
Ms Griffin  
Mr West

**2. Apologies**

Dr Chesterfield-Evans

**3. Public hearing – Inquiry into the Funeral Industry**

The public and the media were admitted.

Mr David O'Connor, Commissioner of Fair Trading was sworn and examined, along with Mr Rod Stowe, Assistant Commissioner, Policy and Strategy and Mr David Brett, Senior Policy Officer, Office of Fair Trading.

Resolved, on the motion of Ms Griffin, that the documents tendered by Mr O'Connor be accepted.

Questioning concluded, the witnesses withdrew.

Mr Frank Vincent, Chief Executive Officer, Daruk Aboriginal Medical Service was affirmed and examined.

Mr Peter Fernando, Deputy Chief Executive Officer, Redfern Aboriginal Medical Service was affirmed and examined.

Resolved, on the motion of Mr West, that the document tendered by Mr Vincent be accepted.

Questioning concluded, the witnesses withdrew.

#### **4. Deliberative meeting**

##### ***Tabled documents***

Resolved on the motion of Mr West, that the documents tabled by Mr O'Connor and Mr Vincent be published.

##### ***Confirmation of minutes***

Resolved on the motion of Mr West that Minutes No 66 be confirmed.

##### ***Correspondence***

Resolved, on the motion of Ms Parker, that the following correspondence be noted:

##### *Received*

- Ms Julie King, Department of Lands, 2 September 2005, letter to Director regarding the provision of information relating to monumental masons for the inquiry into the funeral industry.
- Ms Natalie Verdon, LifeArt, 6 September 2005, letter to Chair providing test results for cardboard coffins.
- Ms Mary Thorne, Cemeteries and Crematoria Association of NSW, 5 September 2005, letter to Director providing a response to questions taken on notice at the hearing on 8 August 2005 for the inquiry into the funeral industry
- Mr John Watson, WorkCover, 9 September 2005, letter to Director providing a response to questions taken on notice at the hearing on 8 August 2005 for the inquiry into the funeral industry.

##### *Sent*

- Letter dated 8 September 2005, from Chair to Mr Andrew Larcombe, Monumental Masons, inviting him to make a submission to the inquiry into the funeral industry.
- Letter dated 8 September 2005, from Chair to Ms Catherine Brew, National Trust, requesting information on the survey of cemeteries in NSW and comment on the terms of reference for the inquiry into the funeral industry.
- Letter dated 8 September 2005, from Director to Mr Ken Chapman, Funeral Directors Association of NSW, in response to his request to meet informally with the committee to discuss issues raised at public hearings for the inquiry into the funeral industry.
- Letter dated 8 September 2005, from Director to Mr John Curtis, Fred J Potter and Son, advising of comments made at the public hearing on 30 August 2005 relating to the funeral industry in Broken Hill and welcoming Mr Curtis to comment.

- Letter dated 8 September 2005, from Director to Mr Robert Frost, Department of Commerce, requesting information on police contracts for transport of the deceased to the Coroner's Court.

Resolved, on the motion of Mr Lynn, to publish responses to questions taken on notice from:

- a) Cemeteries and Crematoria Association of NSW
- b) WorkCover

5. ...

6. **Inquiry into the funeral industry**

Resolved, on the motion of Ms Griffin, to accept and make public supplementary submission 46a and submission 58 (with name and addressed withheld at request of author) and 59.

7. ...

8. **Adjournment**

The committee adjourned at 11.45am, *sine die*.

Rachel Simpson  
Director

**Draft Minutes No 71, 5 December 2005**

**9.30am, Jubilee room**

1. **Members present**

Ms Burnswoods (Chair)  
Ms Parker (Deputy Chair)  
Dr Chesterfield-Evans  
Mr Lynn  
Ms Griffin  
Mr West

2. ...

3. ...

4. **Confirmation of minutes**

Resolved on the motion of Mr West that Minutes No 69 and 70 be confirmed.

5. **Correspondence**

The Committee noted the following correspondence:

**Funeral industry inquiry**

**Received:**

- Tony Kelly MLC, Minister for Lands, 25 November 2005, letter to Chair providing response as requested to the inquiry.
- Graham Humphreys, Fair Trading Liaison Officer, Office of Minister for Fair Trading, 22 November 2005, letter to Chair concerning response as requested to the inquiry.
- State Executive of Combined Pensioners and Superannuants Association of New South Wales, 21 November 2005, letter to Chair raising concerns about certain aspects of the NSW Funeral Industry Council.

- Mr Robert Frost, Department of Commerce, 30 November 2005, letter to Director regarding police contracts and the funeral industry.

6. ...

7. ...

8. **Inquiry into the funeral industry**

Resolved on the motion of Mr Lynn to accept and make public submission 61.

*Chair's draft report*

The Committee considered the Chair's draft report, which had previously been circulated.

Chapter 1 read.

Resolved on the motion of Mr West that chapter 1 be adopted.

Chapter 2 read.

Resolved on the motion of Ms Griffin that chapter 2 be adopted.

Chapter 3 read.

Resolved on the motion of Dr Chesterfield-Evans that the second sentence in paragraph 3.8 be amended to read:

"These accounts demonstrated a lack of uniformity in pricing and account itemisation making it difficult to compare the funerals."

Resolved on the motion of Ms Griffin that in the Funeral B Table a footnote to the entry "Cremation papers and mandatory referee" be added to read the following:

"A mandatory referee refers to Part 6 of the Public Health (Disposal of Bodies) Regulation 2002, where there are a number of procedures in relation to cremation which can only be carried out by a medical referee. The medical referee is appointed by the Director General of NSW Health or the Public Health Unit (as delegated) to consider cremation applications and issue cremation permits. A body can not be cremated without a cremation permit."

Resolved on the motion of Dr Chesterfield-Evans that Funeral D Table based on information received by the Committee be added after Funeral C Table and that further references for Funerals A, B and C also include reference to Funeral D.

Resolved on the motion of Ms Parker that Recommendation 1 be amended to read:

"That the Office of Fair Trading develop a "Product Information Standard" for the funeral industry under section 38 of the *Fair Trading Act 1987* and require the funeral industry to display prices including itemisation of the components of the professional fee."

Resolved on the motion of Dr Chesterfield-Evans that paragraph 3.62 be amended by omitting "at paragraph" and inserting "starting at paragraph".

Resolved on the motion of Ms Parker that the following paragraph be inserted after paragraph 3.82:



“The Committee notes that, as stated in the Office of Fair Trading’s *Consumer Guide to Funerals*, ‘in most cases cemeteries and crematoriums will not deal directly with anyone other than a funeral director’. This demonstrates that even though legally consumers can access cemeteries and crematoria the reality is that they may be confronted with cemeteries or crematoria that are reluctant to deal directly with consumers.”

Resolved on the motion of Ms Parker that paragraph 3.102 be amended by omitting “cardboard and chipboard coffins” and inserting “coffins made of cardboard, chipboard or other alternative materials”.

Resolved on the motion of Ms Parker that Recommendation 2 be amended to read:

“That clear standards for the production and handling of coffins made of cardboard, chipboard or other alternative materials be developed in consultation with industry, manufacturers and Workcover and that the availability of these coffins be promoted to manufacturers, industry members and consumers.”

Resolved on the motion of Ms Parker that chapter 3 as amended be adopted.

Chapter 4 read.

Resolved on the motion of Dr Chesterfield-Evans that chapter 4 be adopted.

Chapter 5 read.

Resolved on the motion of Mr Lynn that chapter 5 be adopted.

Chapter 6 read.

Resolved on the motion of Mr West that chapter 6 be adopted.

Chapter 7 read.

Resolved on the motion of Ms Parker that Recommendation 18 be amended to read:

“That the funeral industry develop a mandatory, industry wide code of practice based on the Australian Consumer Complaints Commission guidelines, in conjunction with appropriate stakeholders and government agencies, ensuring that the code is consistent with current consumer and public health regulations.”

Resolved on the motion of Dr Chesterfield-Evans that paragraph 7.59 be amended to read:

“In relation to costs, as discussed in Chapter 3, the code of practice should provide:

- that funeral directors provide a written quote prior to finalisation of the funeral arrangements that includes the total cost, itemisation of costs, such as specific costs that make up the professional fee, and disbursements
- that disbursements must not include commission or mark up
- that funeral directors be required to advise consumers on the costs of an essential service funeral (basic funeral), as well as the costs associated with any enhancements or additions.”

Resolved on the motion of Dr Chesterfield-Evans that Recommendation 19 be amended to read:

“That the code of practice developed for the funeral industry provide:

- that funeral directors provide a written quote prior to finalisation of the funeral arrangements that includes the total cost, itemisation of costs, such as specific costs that make up the professional fee, and disbursements
- that disbursements must not include commissions or mark up”

Resolved on the motion of Dr Chesterfield-Evans that Recommendation 20 be amended to read:

“That the code of practice developed for the funeral industry include the cost of an essential service funeral (basic funeral), as well as the costs associated with any enhancements or additions.”

Resolved on the motion of Dr Chesterfield-Evans that the second paragraph of Recommendation 21 be amended to read:

“That the code of practice cover areas such as complaint handling, funeral bills and quotes, essential service funerals (basic funerals), professional and ethical practices and be flexible enough to accommodate cultural and religious practices.”

Resolved on the motion of Dr Chesterfield-Evans that the following paragraph be inserted in the draft report where the secretariat identifies as appropriate:

“As noted in Chapter 3, the Committee has learnt that despite the legal right of consumers to access cemeteries and crematoria the reality is that they may be confronted with cemeteries or crematoria that are reluctant to deal directly with consumers. The Committee believes that this issue can be addressed by the OFT raising community awareness and ensuring cemeteries and crematoria do not turn away consumers.”

Resolved on the motion of Ms Griffin that the second point of paragraph 7.62 be amended to read:

- “representatives of consumers, local government and Unions NSW”

Resolved on the motion of Ms Griffin that the second point of Recommendation 22 be amended to read:

- “representatives of consumers, local government and Unions NSW”

Resolved on the motion of Ms Parker that the following paragraph be added before Recommendation 22:

“The Committee also believes that the Code of Practice Committee must include representatives of rural and regional NSW as well as metropolitan representatives.”

Resolved on the motion of Ms Parker that the following sentence be added to Recommendation 22:

“That the Code of Practice Committee include representatives from metropolitan and regional NSW.”

Resolved on the motion of Ms Parker that chapter 7 as amended be adopted.

Resolved on the motion of Dr Chesterfield-Evans that in Appendix 1 the reference to submissions 38 and 59 “No submission recorded” be amended to read “Correspondence to the Committee” plus the addition of footnotes:

“Submission 38 was registered as a submission, however the Committee determined it to be correspondence to the Committee”.

“Submission 59 was registered as a submission, however the Committee determined it to be correspondence to the Committee”.

Resolved, on the motion of Ms Parker, that the report, with amendments be adopted by the Committee, signed by the Chair and presented to the House.

Resolved, on the motion of Ms Parker, that the Committee Secretariat be authorised to make any typographical or grammatical changes to the report prior to tabling of the report.

Resolved, on the motion of Ms Parker, that, pursuant to section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 223, the Committee publish all non-confidential tabled documents, correspondence, answers to questions taken on notice, minutes, submissions and transcripts.

Resolved, on the motion of Ms Parker, that the Chair's foreword and Executive Summary be circulated to the Committee prior to the tabling of the report.

Resolved on the motion of Dr Chesterfield-Evans that a media conference be held on Friday 9 December 2005 at 1.30pm.

## **9. Adjournment**

The committee adjourned at 4.00pm until 9.30am Monday 12 December 2005, Jubilee Room, Parliament House.

**Rebecca Main**  
**Senior Council Officer**

