

Submission to the Independent Regulatory and Pricing Tribunal's
***Review of Competition, Costs and Pricing
in the Funeral Industry***

December 2020

© Combined Pensioners & Superannuants Association of NSW Inc 2020

CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA's aim is to improve the standard of living and well-being of its members and constituents. CPSA receives funding support from the NSW Government Departments of Communities & Justice and the Australian Government Department of Health.

CPSA appreciates the opportunity to make a submission to the Independent Regulatory and Pricing Tribunal's *Review of Competition, Costs and Pricing in the Funeral Industry*.

CPSA's interest in funeral policy is prompted principally by the high prices consumers are charged by funeral providers for what is an essential service. The regulatory imbalance is in favour of providers. For example, the mandatory requirement for a cremation or a burial using a coffin imposed on consumers does not come with a balancing protection against over-pricing of coffins. The only consumer protection against over-pricing of funerals in NSW is pricing transparency, which is assumed to generate competition between funeral providers, but which ignores the fact that funerals are generally procured locally, so that even in metropolitan areas markets can be thin. If you live in, say, Manly, you don't get a cheaper funeral director from, say, Cronulla, in order to get a better price on a funeral. Providers in a local market, without collusion, can keep fees and charges high by simply keeping tabs on their two or three competitors.

An effective policy response to funeral over-pricing in NSW is hampered by the fact that the industry has no less than three main regulators: (1) the Better Regulation Division of the Department of Customer Service, which administers the provisions of Australian Consumer Law as they relate to the funeral industry, including cemeteries and crematoria; (2) Cemeteries & Crematoria NSW (CCNSW), essentially an urban planning agency to ensure continuing availability of cemetery space; and (3) NSW Health, which administers public health provisions as they relate to funerals. Neither the Department of Customer Service nor NSW Health have a very active involvement in regulating the funeral industry, so that regulatory inattention compounds regulatory disparity.

Recommendation 1

The NSW Government should form a single funeral industry regulator, merging the functions currently performed by the Better Regulation Division of the Department of Customer Service and Cemeteries & Crematoria NSW.

Given the relatively low number of complaints, it is perhaps understandable that the Department of Customer Service has been reluctant to introduce regulatory measures. On the upside, the Department of Customer Service has resisted industry pressure to impose mandatory registration and accreditation of operators and a mandatory set of industry standards and code of conduct.

The industry says that its main motivation in pressing for mandatory registration is consumer protection from "fly-by-night operators", as industry representatives call funeral directors who "operate out of a briefcase".

It is obvious that the industry in making these claims is less interested in consumer protection than in putting up barriers to new entrants and minimising competition. It should also be

noted that the consumer complaint rate has been low for many years despite the industry being reportedly swamped by these fly-by-night operators.

CPSA has on a few occasions asked industry representatives for an example list of these operators but has never been presented with such a list.

Recommendation 2

The funeral industry should not be made subject to a formal registration and/or accreditation scheme.

The principal regulator has also been reluctant to impose price regulation on the funeral industry, something advocated by CPSA based on the very apparent divergent pricing, which was also noted recently by CHOICE in its four-part investigation of the funeral industry. However, within that divergence, even lower-priced funerals seem expensive.

Apart from market forces and competition, the regulator has relied on two further methods of influencing funeral pricing, both of which have, in CPSA's view, been unsuccessful. Recently, the regulator introduced a new funeral information standard, which requires funeral directors to publish and display extensive pricing information as well as the price of the cheapest funeral provided.

Compliance with this requirement appears to be patchy, with funeral chains being fully compliant but stand-alone funeral directors in regional areas, for example, not complying. CPSA checked the pricing information of seventeen funeral directors in six regional NSW towns (Broken Hill, Tamworth, Griffith, Wagga Wagga, Dubbo and Bathurst). Only four out of seventeen funeral directors were compliant with the *Fair Trading Regulation 2019 - Reg 8 - Display and provision of funeral information to prospective consumers*. Another three funeral directors displayed limited information about the cost of a direct cremation or the lowest funeral package available. More than half were completely non-compliant, with Godfrey Smith Funerals Bathurst defiantly so, explicitly stating it is not publishing pricing information at all. All seven funeral directors who published pricing information (limited or complete) nominated direct cremation as their lowest-priced package, which CPSA argues circumvents the intent of the *Fair Trading Regulation 2019*.¹

Apart from significant non-compliance, the publication of pricing information on individual websites does not make for easy comparison, something that can be fixed by using comparison websites such as www.gatheredhere.com.au and by making participation by funeral directors mandatory. Making participation mandatory would also facilitate compliance monitoring.

¹ See Appendix.

Recommendation 3

The NSW Government should develop and operate a comparison website for the funeral industry containing information NSW funeral providers are currently required to publish by *Fair Trading Regulation 2019 - Reg 8 - Display and provision of funeral information to prospective consumers*. Participation by funeral providers should be mandatory.

The second method of influencing funeral pricing used by the principal regulator has been the now defunct requirement for funeral directors who offered a basic funeral (defined in an information standard) to inform all prospective customers of its availability.

While it was odd that a funeral director could opt in or out of providing an essential service like a basic funeral, those that opted in (such as Invocare) reported that there was no significant demand for basic funerals.

Had the provision of a basic funeral been made mandatory, funeral directors would have had a conflict of interest in offering a cheaper funeral than they would have wished to sell. For basic funerals to work, their availability needs to be (1) mandatory, (2) published and (3) price regulated. The basic funeral as an affordable option can only be successful if these three conditions are met.

Recommendation 4

The NSW Government should make it mandatory for a funeral director to offer to prospective consumers a basic funeral consisting of the arrangement and conduct of a funeral service, transport of the deceased to a mortuary and from that mortuary to a crematorium or cemetery, a coffin, provision of compulsory medical and death certificates and a burial or cremation.

Recommendation 5

The NSW Government should task the funeral industry regulator (see Recommendation 1) with setting a maximum price for each of the components of the basic funeral.

Generally, older people have a desire to make provision for their funeral. Unfortunately, the relentless advertising of funeral insurance is persuading many that it is a way of providing for their funeral when in most cases funeral insurance ranges from being inadequate to useless. While funeral insurance is regulated federally, the NSW Government could at the very least

ban funeral insurance from being advertised in the e-newsletter distributed by its NSW Seniors Card.

Recommendation 6

The NSW Government should ban funeral insurance from being advertised in the e-newsletter and other collateral distributed by its NSW Seniors Card.

Some funeral directors offer funeral financing, which is essentially an unsecured (personal) loan of the type offered by car dealerships. Current comparison rates run at approximately 13 per cent per annum.

It is a tragedy that funeral directors market these loans because only being short of money prompts people to pay for a very likely overpriced funeral through over-priced funeral finance, underlining the urgent need for a price-regulated basic funeral.

Appendix – Pricing information compliance in six regional NSW towns

The following information was accessed online on 23 November 2020.

Town	Funeral Director	Service fee	Cheapest coffin	NSNA cremation	Available pricing info
Broken Hill	Fred J Potter Curtis Family				None
Broken Hill	Funerals			2000	Limited
Broken Hill	Shaun Hamilton			3550	Limited
Broken Hill	J P Walsh				None
Broken Hill	Burke & Douglas	4045	1295	4575	Complete
Griffith	Griffith Regional Funeral Services		1980	5500	Limited
Griffith	Griffith and District Funerals				None
Griffith	Collier Trenerry				None
Wagga					
Wagga	Daniel Woods				None
Wagga	Alan Harris				
Wagga	McDonald				None
Wagga	John Bance and Son	3590	1150	3850	Complete
Dubbo	Abbey Funeral Home				None
Dubbo	Larcombe and Bean	3250	950	3860	Complete
Dubbo	Shakespeare Funerals	3100	950	3310	Complete
Bathurst	Renshaw's Runeral Service				None
Bathurst	Godfrey Smith				None
Bathurst	Digital Encryption Memorial Services				None