

Family and Community Development Committee

Inquiry into the Regulation of the Funeral Industry

Victorian Government Response

May 2006

Introduction

The Victorian Government welcomes the Family and Community Development Committee (the Committee) Report on the Inquiry into the Regulation of the Funeral Industry. The Committee tabled the Report on 17 November 2005.

On 20 January 2004, the Inquiry into the Regulation of the Funeral Industry (the Inquiry) was referred to the Family and Community Development Committee (the Committee). The Committee was asked to consider the adequacy of the current regulatory framework, taking into account:

- the quantity and severity of complaints;
- community perceptions of ethical standards;
- public and environmental health concerns;
- occupational and employee health and safety issues; and
- consumer protection and fair trading issues.

The Committee was asked to assess the nature and extent of problems in the funeral industry, consider options to address these issues, in particular, non-legislative options, and identify the form intervention should take and whether government agencies, industry bodies, or a combination of the two would best undertake it.

In considering these issues, the Committee was asked to take into account:

- the level of consumer complaints;
- employee complaints and compensation claims within the industry;
- pricing practices;
- the costs and benefits to the community of different approaches to regulation; and
- regulation and other activities being undertaken in other jurisdictions.

The funeral industry provides a valuable service to the Victorian community, and the Victorian Government recognises the professionalism with which Victorian funeral directors conduct their important role.

The Victorian Government has adopted a predominantly non-regulatory approach to address the issues raised in the Report. The reforms proposed by the Victorian Government will support a more transparent funeral industry and allay any negative perceptions that the community has of the funeral industry and funeral directors.

The Victorian Government response to the Inquiry has aimed to ensure an appropriate balance between meeting the two key Victorian Government objectives of consumer protection and minimising administrative and compliance burdens for business.

The following sections outline the Victorian Government response to the Committee's key findings and recommendations.

Chapter 3.

Issues within the funeral industry

Committee Findings

- 3.1. Any standards or regulations developed for the manufacture and use of coffins made or imported into Australia should not be used as an anti-competitive mechanism to exclude manufacturers and should not limit consumer choice or inhibit innovation in the manufacture and supply of coffins.*
- 3.2. The Committee has been informed that the Government is developing protocols regarding “specific risks from exposures when handling bodies of persons who have died”. The Committee supports the development of procedures that will ensure the health and safety of those in the funeral industry.*
- 3.3. The Committee understands that some funeral companies may operate from two or more locations. However, the Committee supports effective disclosure of the location of business premises so that consumers are aware of additional costs that may arise from the storage and transportation of the body if the funeral premises are some distance from the family home or the site of burial.*
- 3.4. The Committee welcomes developments such as the introduction of low cost funerals. However, the Committee finds that differences in the description of services offered by different funeral directors can make real price comparison difficult for consumers.*

Committee Recommendations

Recommendation 3.1

That the introduction of any mandatory standards for the funeral industry now or in the future be considered ideally on a national basis and be mindful of the effect on large and small businesses, those located in metropolitan and rural and regional areas, non-commercial funeral directors, and families who choose not to use the services of a funeral director. While national standards are desirable, that goal should not stop immediate reform at the State level, where appropriate.

Support

The Victorian Government supports improved disclosure to consumers through a national voluntary industry code.

The Victorian Government supports harmonisation of regulation and where mandatory standards are proposed agrees that these should be considered on a national basis. The Victorian Government is committed to reducing the administrative and compliance burden for Victorian businesses and an important feature of this is to enhance regulatory consistency

across jurisdictions, and reduce the costs to business from inter-state duplication and overlap in regulation. In the context of this inquiry, the Victorian Government considers making important improvements to the funeral industry in Victoria is a priority.

Due to the localised nature of regulation of the funeral industry, and differences in regulation between States and Territories, adopting national standards in the funeral industry would be complex, and require the co-operation of a large number of stakeholders across Australia.

A voluntary industry code of practice allows a more flexible means of addressing issues while improving the performance of the industry.

Recommendation 3.2

That the funeral industry in co-operation with the Victorian Health Department revise and, where necessary, update the four parts of the existing publication, Infection Control Guidelines for the Funeral Industry.

Support

The Victorian Government supports the revision of the Infection Control Guidelines for the Funeral Industry.

The Department of Human Services is currently finalising the redrafting of Infection Control Guidelines for the Funeral Industry. The draft guidelines will be sent out to the various industry groups for comment in the coming months.

Recommendation 3.3

That the Australasian Cemeteries and Crematoria Association, in consultation with interested stakeholders, produce minimum standards for the manufacture and use of coffins made in or imported into Australia.

Support

The Victorian Government supports the Australasian Cemeteries and Crematoria Association developing voluntary minimum standards with interested stakeholders for the manufacture and use of coffins made and imported into Australia.

The standards should be consistent with the minimum requirements for coffins, containers or receptacles used for interment or cremation prescribed in the *Cemeteries and Crematoria Regulations 2005*.

Recent innovation in the production of coffins has given consumers greater choice and has provided alternatives to traditional products. Accordingly, it is important that the introduction of minimum standards does not prohibit innovation and competition in the manufacture and supply of coffins.

Recommendation 3.4

That information on the full range of coffins available and their price be provided by funeral directors to consumers prior to purchase.

Support

The Victorian Government supports the disclosure of coffin prices to consumers prior to purchase.

The Victorian Government will introduce legislation to require that funeral directors make available a coffin price list to consumers. The list will include descriptive information and prices of the coffins available for purchase.

Coffins are a financially significant purchase, and it is important that consumers have access to information that will enable them to consider their options thoroughly. Improved price disclosure will assist consumers to make better informed decisions regarding the type of coffin they wish to purchase and at a price with which they are comfortable.

The supply of transparent coffin price and descriptive information prior to purchase may also lead to a reduction in disputes regarding price, as consumers are more likely to be satisfied that they got what they paid for if they are clear on exactly what they are purchasing in the first place.

The Australian Funeral Directors Association and the Victorian Independent Funeral Directors Association have price disclosure requirements in their code of ethics, and the Victorian Government is aware that some funeral directors publish price lists on their website. As some members of the funeral industry already adopt the practice of coffin price disclosure, the Victorian Government expects that complying with mandatory price disclosure requirements will not be costly for business, and that consumers will benefit from easier access to more transparent price information.

Recommendation 3.5

That a clear method of identifying and labelling a deceased body which carries an infectious disease be developed in order to alert funeral industry workers that they must use the highest level of infection control procedures when transporting, preparing and storing the body.

Support in Principle

The Victorian Government supports the labelling and identifying a deceased person that dies of a quarantinable disease as defined by the Commonwealth Government.

Funeral industry employers have duties under the *Occupational Health and Safety Act 2004* to ensure the health and safety of their employees. This requires that funeral directors have appropriate procedures in place to ensure high level infection control at all times. This is a general principle of infection control, which should be applied to the handling of all deceased bodies.

The Department of Human Services also produces guidelines for infection control in the funeral industry, which should be followed when handling bodies, regardless of the cause of death.

Recommendation 3.6

That professional training and qualifications are desirable for the different and demanding occupations within the funeral industry, and the industry itself has successfully developed core curriculum for most skills required. The industry should, in an organised way, approach post-secondary education providers to establish over the longer term both entry-level and career path training for funeral industry employees.

Support

The Victorian Government supports the development of appropriate training and qualifications for funeral directors and funeral staff. Access to appropriate and flexible training options will support the funeral industry to continue to provide a high quality and professional service to Victorian community.

Service Skills Australia, the national industry skills council for the funeral industry, is currently reviewing the Funeral Services Industry Training Package to ensure that it is meeting the needs of emerging industry sectors, jobs and career pathways. The training package is being updated to ensure that new technology legislation and industry trends are fully covered.

Industry training and participation can initially be encouraged through the involvement of Service Skills Australia.

Recommendation 3.7

That the Coroner's Office more closely scrutinise the behaviour of funeral directors awarded contracts to ensure that the practice of soliciting for business does not occur.

Support

The Victorian Government supports the need for the Coroner's Office to scrutinise more closely the contracts awarded to funeral directors.

The existing contracts contain prohibitions on soliciting for business. The State Coroner's Office will examine the tender process and will look at including criteria on the previous behaviour of companies soliciting for business, including penalties in the contracts for companies found to be in breach of clauses on soliciting for business.

Recommendation 3.8

That in order to facilitate consumer comparison of products, services and prices, that funeral directors disclose upon request those products, services and prices in a clear and consistent manner across the industry.

Support

The Victorian Government supports the recommendation for funeral directors to disclose the price of goods and services to consumers prior to the arrangement of a funeral, and will introduce price disclosure requirements for funeral directors.

The Inquiry found that criticism of the high cost of funerals might be due to a realisation, in retrospect, that more than intended had been paid for a funeral, or a lack of understanding of how the price of a total funeral package is structured. As a result, much of the criticism of the high cost of funerals could be avoided if detailed and itemised price information was provided to clients at the arrangement meeting and as part of the final account.

The NSW Standing Committee of Social Issues Inquiry into Funerals (2005) also found that consumers were concerned with the cost of funerals, suggesting that the cost of funerals is an ongoing concern for consumers.

To address this, the Victorian Government will introduce legislation to require that funeral directors provide consumers with a price list of the goods and services that they offer prior to the arrangement of the funeral. This will include the price for a basic funeral service. Funeral directors will also be required to provide an itemised statement of goods and services purchased.

Recommendation 3.9

That Consumer Affairs Victoria, in cooperation with interested stakeholders, develop, publish and make freely available a consumer information booklet on funerals. Such a booklet should include information on the procedures surrounding a death, funeral and burial; the professional services which may be rendered by a funeral director; an indication of options for consumers and information regarding a complaints mechanism.

Support

The Victorian Government supports the recommendation for Consumer Affairs Victoria to publish and make available a booklet that will provide relevant information to consumers about arranging a funeral.

The Victorian Government considers it is important that information to assist consumers arrange a funeral is easily and readily accessible. It is important that people making funeral arrangements have an understanding of the role and responsibilities of funeral directors, their rights under relevant laws, and where they can seek advice or make a complaint.

Consumer Affairs Victoria will produce a booklet for consumers in consultation with relevant government agencies, and other stakeholders where appropriate.

Recommendation 3.10

That funeral directors supply such a booklet and their price list prior to signing of a contract for goods and services.

Support

The Victorian Government supports the recommendation for funeral directors to provide a price list and booklet to consumers prior to signing a contract for goods and services.

The Victorian Government will introduce a requirement for funeral directors to provide consumers with a price list of goods and services prior to signing a contract for funeral goods and services.

The Victorian Government will also make booklets available to consumers through funeral directors and other distribution channels; however, at this stage, the distribution of booklets by funeral directors will be voluntary.

It is important that consumers have access to information on making funeral arrangements as early as possible, and ideally prior to commencing any funeral arrangements. Therefore, it is important that all relevant service providers, including nursing homes and hospitals, be engaged in the distribution of information to assist in the arrangement of a funeral.

The Victorian Government will review the success of the voluntary distribution of the consumer booklet, and will consider introducing mandatory requirements for the supply and distribution of the booklet to consumers by funeral directors if it is considered necessary.

Recommendation 3.11

For the purposes of consistency, the Committee recommends that a central registry of pre-paid funeral contracts be established to enable consumers and funeral directors to expeditiously verify the details of existing contracts. Such a registry should be administered by Consumer Affairs Victoria and, ideally, should be linked to all the States and Territories.

Partially support

The Victorian Government supports the development of a registry for pre-paid funeral contracts. To ensure simplicity, consideration will be given to adopting an industry-based system that complements an existing government registry system.

The Victorian Government will introduce legislative changes to enhance powers for monitoring and enforcing compliance with the *Funerals (Pre-paid Money) Act 1993*. These changes will include the registration of funeral directors and enhanced inspection powers.

Under the *Funerals (Pre-paid Money) Act 1993*, funeral directors are currently required to keep records of pre-paid funerals. The Victorian Government will work with the funeral directors to assist them manage their pre-paid funeral records to ensure they are current and up-to-date.

Consumer Affairs Victoria will also produce a fact sheet for funeral directors, which will provide guidelines for complying with the *Funerals (Pre-paid Money) Act 1993* and managing pre-paid funeral contracts.

Chapter 4.

Issues affecting the community

Committee Findings

- 4.1. The Committee finds that the number of complaints received by individual funeral directors, industry associations and government agencies does not provide a valid indication of problems existing within the industry.*
- 4.2. The Committee finds that the planning schemes of municipal councils are operating well in relation to the establishment and operation of funeral businesses in their local areas.*

Committee Recommendations

Recommendation 4.1

That individual funeral directors, industry associations and government agencies undertake to promote their existing complaints procedures regarding the funeral industry in an effective and meaningful way to the community. This includes the clear advertising of a complaints phone number and the provisions of consumer information literature about the complaints mechanism.

Support

The Victorian Government supports the promotion of existing complaints procedures by funeral directors, industry associations and government agencies. Further to this, the Victorian Government considers that funeral directors should have established complaints handling procedures and should ensure that customers are aware of these procedures.

The Victorian Government has complaints procedures in place to address consumer and employee concerns with the funeral industry.

Consumer Affairs Victoria provides an enquiries service to consumers and traders to provide information fair trading issues, and help consumers and traders avoid disputes. Consumer Affairs Victoria also provides general conciliation services for consumer complaints that operate when trader and industry complaint handling mechanisms are unable to resolve a dispute.

The Victorian Government will use the consumer booklet to promote existing government complaints services available to consumers dealing with the funeral industry.

The Victorian Government considers that all funeral directors should have established complaints handling procedures, and should ensure that customers are aware of these procedures.

Effective complaints handling procedures will help ensure that cost efficient solutions to customer complaints can be achieved without the need for intervention by a third party. It will

also help ensure that vulnerable consumers are not deterred from seeking redress if they are dissatisfied with the service they receive.

The Victorian Government will introduce requirements for funeral directors to establish and maintain a complaint handling procedures, and will also introduce complaint handling guidelines for the funeral industry to assist funeral directors establish such procedures.

Chapter 5.

Issues affecting the community

Committee Findings

- 5.1.** *That the current system of self-regulation of the funeral industry in Victoria is unsatisfactory given the diversity of businesses within the industry, the level of coverage of the industry associations, the lack of agreed industry-wide standards, and ineffective measures available to enforce compliance with existing voluntary standards.*
- 5.2.** *That the establishment of a Voluntary Code of Practice for the Funeral Industry would not be beneficial without the support of legislation requiring adherence to the code by all practitioners within the industry.*
- 5.3.** *The Committee is aware of current training and recognition of qualification of embalmers and supports the recognition of prior learning for current practitioners. The implementation of an accreditation and registration system for embalmers should be monitored so that training requirements are not used to limit entry into the profession.*

Committee Recommendations

Recommendation 5.1

That local authorities, in association with the State Government, establish a mechanism for at least a biennial inspection procedure for fully-equipped mortuaries within their jurisdiction to ensure that they comply with minimum standards.

Do not Support

The Victorian Government does not support biennial inspection of mortuary facilities by local authorities, but rather that local authorities maintain the flexibility to assign resources according to the most pertinent risk priorities in their municipality.

Local councils are the responsible authority under planning legislation for issues related to the establishment of funeral businesses. The Report highlights that local councils have Environmental Health Officers to ensure that businesses have the facilities operate in a manner that does not endanger public health.

Local councils and Environmental Health Officers are responsible for monitoring and addressing a wide range of health issues within their jurisdiction. Accordingly, it is important that local councils continue to have the discretion to allocate resources to address the most pertinent public health issues in their municipality.

Recommendation 5.2

That embalmers be accredited and registered and that it is an offence to embalm (use invasive body preparation techniques on) a body without being an accredited and registered embalmer. The Committee further recommends that a transition period of 2 years apply.

Partially Support

The Victorian Government considers that it is in the interest of funeral providers to use appropriately trained staff to undertake embalming. However, licensing systems are costly processes, appropriate where significant risks to consumers are associated with professional conduct. It is not evident that the act of embalming presents a significant risk to consumers.

Previous Infection Control Guidelines for the Funeral Industry, Part D, developed by the Department of Human Services, recommended that only properly trained and accredited staff should carry out embalming. This was defined as a person who has a current certificate of proficiency issued by the Australian Institute of Embalming (or New Zealand or British Institutes).

The matter will be further considered in consultation with the industry.

Recommendation 5.3

That the State Government support the establishment and activity of a representative Funeral Industry Council (FIC), bringing together stakeholders including funeral firms, employees, consumers, religious organisations and other interested parties. Such a body would work in support of the industry and have as its initial focus the development of a code of conduct. The FIC would have recommendatory and supervisory roles, as developed further below.

Partially Support

The Victorian Government recognises the need for stakeholder consultation, but does not support the establishment of a Funeral Industry Council.

A Funeral Industry Council has been operating in NSW since 1992. The NSW Inquiry into the Funeral Industry (2005) acknowledged that the Funeral Industry Council provided a forum for improved regulation to be discussed and pursued, but also identified concerns with the success of the Council in establishing itself as an industry leader, and progressing industry issues.

As an alternative to the Funeral Industry Council, the Victorian Government will establish an advisory body made up of industry and community representatives to provide advice to the relevant Ministers on funeral industry issues.

Recommendation 5.4

That the FIC coordinate funeral industry associations, representatives of non-affiliated funeral businesses, the Department of Health, the coroner, interested consumer associations, and other stakeholders to develop an initially Voluntary Code of Practice for the Funeral Industry, with a view to this Code be authorised within two years.

Support

The Victorian Government supports the development of a harmonised voluntary code of practice by the funeral industry, in conjunction with the relevant government, consumer, and industry stakeholders.

Recommendation 5.5

That the FIC establishes a system of positive licensing of premises and on-site managers within the funeral industry supported by appropriate legislation in the form of an Authorised Code of Practice, covering consumer, commercial and workplace experience with the funeral industry.

Partially Support

The Victorian Government does not support the establishment of a licensing system for premises and onsite managers in Victoria, but proposes the registration of funeral directors.

The Inquiry did not identify sufficient evidence of significant market failures in the funeral industry to justify implementing a positive licensing system in Victoria. A licensing system would impose start-up and on-going administrative costs, which would be borne by business and passed onto consumers.

The cost of a licensing system would be a greater burden on small, rural and regional business, which might conduct only a small number of funerals each year, compared to large funeral firms. As a result, regional and rural customers would bear a disproportionate amount of the cost of licensing as compared to metropolitan customers.

There may be a risk that a licensing system would undermine competition and innovation in the funeral industry. Competition, particularly price competition, in the funeral market is important to help prevent price rigidity by firms in the industry. It is also important that the regulatory structure of the funeral industry support innovation in the development of products and services, so that the funeral industry can meet the changing needs of the community in relation to funeral rites.

As a result of this inquiry, the Victorian Government will introduce reforms to the regulation of the funeral industry including the promotion of complaints mechanisms, the registration of funeral directors, improved price disclosure and enhanced compliance and enforcement measures. It is expected that these reforms will improve existing regulation of the funeral industry, diminishing the need for a positive licensing system.

Recommendation 5.6

That the FIC must be satisfied that all funeral businesses operating in Victoria have needs-based access to properly maintained mortuary facilities and qualified embalming staff. Denial of such access to one firm by another firm would be grounds for the FIC to apply such penalties as it may devise.

Do Not Support

The Victorian Government does not consider that there is a need to regulate industry access to mortuary facilities and embalming staff.

The Victorian Government acknowledges that it is important for all funeral directors to have needs-based access to mortuary facilities and embalming staff for the storage and preparation of the deceased in their care. However, ensuring access to mortuary facilities and embalming staff should be managed as part of the business operations of funeral directors.