

Mr Brendan Nugent, CEO of Harris McDonald Pty Ltd

Member of the NSW Funeral Directors Association, Australian Funeral Directors Association and Association of Independent Funeral Directors

Background:

Last year Minister Matt Kean released a public consultation paper (at the end of July 2018) titled 'Easy and Transparent Trading – Empowering Consumers and Small Businesses'. The consultation called for submissions by 27 August 2018.

The paper was allegedly developed in consultation with over 100 industry representatives and stakeholders. None of the Funeral Industry associations were contacted or consulted regarding the paper, its policy proposition or its development of proposals. We have confirmed this by contacting the NSW Funeral Directors Association, the Australian Funeral Directors Association, the National Funeral Directors Association and the Association of Independent Funeral Directors.

In July 2019 a further paper and regulatory impact statement was issued by Minister Anderson and the Department. This proposed regulation require funeral directors to list their prices of goods and services on websites, and to publicly display these in their premises.

The Department's position is that this proposed regulation is made after consultation (last year's process), although no contact has been made with any of the funeral industry associations or companies that made representations as a result of the 2018 process. At a meeting with the Minister's office and department representatives a proposal for a working party was put forward but never established.

The Department also notes that the changes from the last version is that the proposed regulation removes the requirement for all funeral directors to post pricing on a centralised website (like the fuel check website), and gives an alternative to having to have a website (posting in the public areas of their business).

Context:

This submission is from a family owned business called Harris McDonald Pty Ltd. The business trades in NSW and other States and has three crematoriums in NSW and ten funeral homes, across 15 locations. All these businesses are regionally based. We conduct over 1,200 funerals and 700 cremations a year. We are a growing business and expect to have more regional bases in NSW in the coming financial year.

Our business started in Wagga Wagga, NSW and has grown as we have seen that large publicly listed companies have come into the regional market and are buying family funeral businesses. We want to preserve the family owned and

locally run ethos that made our family get involved in the industry in the first place. We recognise that consolidation in the market is going to take place, and we have decided to be a part of that consolidation.

The author is the CEO of the company who has extensive experience in the government sector with 28 years' experience before moving into the private sector. This submission is far more comprehensive than it needs to be; however, we have seen that the Department has ignored the invitation to engage, and that this appears to be a policy looking for a problem to solve, rather than a response to genuine community driven issues. We now think addressing the following issues are essential.

Key issues this submission will address:

- The policy issue – what problem is the department trying to solve?
- The evidence base – that put forward by the Department is flawed
- Procedural issues – lack of consultation, engagement, context for broader government objectives, regulatory frameworks and criteria not followed
- The market – this regulation is not serving a market failure, it distorts the market and may have adverse impacts
- Regional impacts – there are broader socioeconomic impacts of this policy and regulation on remote and regional funeral directors
- Our experience – the association, broader end of life agenda and the lack of consultation
- Recommendations

Policy issue:

This is purported to resolve a policy issue to increase transparency in pricing across the sector.

Current requirements: There is existing regulation that required funeral directors to provide a family a basic funeral package quote, if they provide a basic funeral service or package. This is required within 48 hours of request and is required to be in writing. There is already a requirement to provide a written and itemised price, including estimates for disbursements, to families on the service fees and costs of a funeral. This is delivered as part of the funeral arrangement process and are explained to family members as part of the business end of the arrangement process. Any funeral provider not providing the quote in writing can be reported to Fair Trading.

There is a large assumption in the paper that people are not shopping around for funeral service providers. This is simply not the case, and not supported by any evidence. Our web traffic and post service feedback confirm that families are checking online or consulting other funeral homes before contacting us. Price checking with quotes does happen with families, with over the phone quotes being provided as well as written quotes.

There are also existing providers in the market that will perform price checks and service quotes. These are online and available to the public, they are provided by third party providers who are not funeral directors. Regulation of this industry is more needed than ours, as the quote information is not accurate, nor do they reference that they are paid a service fee by the quoting companies.

In regional areas many of our clients could be contacting just one provider through their relationship with the funeral home; like previous history, family recommendation or knowing someone in the business, rather than through market searches of the internet. This does not mean that they receive any less information on the services and costs associated with a funeral. When discussing the prices and itemising them we work with families to ensure that their budget is met – we do not want price shock from our families and do not engage in predatory practices.

The policy suggests that there isn't already an existing market transparency where families can't find information on funeral costs. Many families do conduct due diligence through calling for quotes, particularly in the urban areas. Any person wanting to shop around can certainly do so, and quotes are provided over the phone by all funeral homes, however when this happens funeral directors let families know that you are sometimes not comparing apples and apples, making any on line comparison difficult.

Some cultures and traditions have extravagant and lavish funerals and some pride themselves on spending as little on the funeral as possible, they tend to spend more on community wakes and other ways of memorialising a loved one. Unless all types of services are detailed, and this would require developing packages for all eventualities, then there is little value in describing price ranges as they will be too wide and meaningless.

The policy unfairly targets the funeral industry rather than all competitive service industries. It seems the government is willing to intervene where there is an emotional element in the purchase decisions; so, should price transparency be required for all service industries? The wedding industry is very similar to the funeral industry where you organise venues, catering, flowers, advertising/invitations, celebrants, vehicles etc. This extension might seem frivolous; however, all purchase decisions have emotional elements attached and our professional standards ensure that we are not taking advantage of families in their most difficult days – we strive for the opposite. We believe that this service being extended to all competitive service industries is the natural extension of the policy. I think that people are potentially being price gouged in weddings and car purchases.

There is also an assumption that because a person is experiencing grief then they are unable to make informed and considered decisions. Where a family is going through genuine trauma, associated with a sudden or traumatic loss, for example a workplace death, motor vehicle accident or a victim of crime then there are

means to finance the funeral that doesn't impact the family. We take the appropriate action to have the funeral paid for through the relevant insurance processes. The vast majority of deaths are at the end of a long life or after a known terminal illness. Our clients are far more prepared for the end of life than the regulation assumes, including prepaying, prearranging and specifying funeral requirements in wills.

Does the transparency extend to all our supplier services, including advertising, councils or cemetery trusts for plots, crematoriums for cremations, florist or venue hire? Wagga Wagga City Council just increased their price for cemetery plots by 183% from 1 July 2019. The variation in cemetery prices is quite incredible; driven by supply constraints that the State government and councils are responsible for, so too are other costs that we pass on to our clients. It is the funeral director who is managing and paying for these costs on behalf of our client families.

Evidence base

References and sources – in the document there are a dozen references. I know that NSW is priding itself on an evidence base for policy development. This report has failed to develop an evidence base and in fact insults the industry by the production of these source materials for the purposes of developing a policy solution.

Four are for international situations or reports. This is a key problem that we have with the report. This report is almost pre-empting issues in NSW based on experiences in other jurisdictions. But without any correlation to the issues faced in those reports with the situation here. In fact, all of the reports are at media, investigation, recommendation, draft, preliminary or suggestion stage rather than reports on the effect of any of those suggestions. Another indication that we have a regulation that is looking for a problem.

The UK market is completely different to the Australian market and has had significant disruption that has led to the establishment of parliamentary inquiries into the funeral industry. Key issues are consolidation into two large publicly listed companies that led to market distortion and allegations of price fixing and gouging. This led to the entry of disrupter like community based and not for profit providers that had the effect of a plunge in the market value of the listed companies and the subsequent government intervention reflected in the reports.

The suggestion of the UK report that funeral costs would lead a family to poverty in NSW completely disregards that the NSW Department of Health has a contract with funeral providers to facilitate funerals for persons without means. This funeral can be for cremation or burial, depending on the background of the deceased. Whether the UK has this sort of safety net is not explored, as it is a sensational and irrelevant report in the NSW context.

The New Zealand report is a media report that the Law Commission has made recommendations from May 2019, without any actual implementation, information or government response available.

Two other references are media stories that refer to specific issues or cases that are, on their own, superfluous to the policy evidence base. These media issues are not even NSW based complaints, with one a Victorian consumer where the transparency regulations are more onerous than NSW.

There are irrelevant documents including reports on green burials and difficulty with planning requirements for them, and one around the need to stop the rip off of funeral insurance – which the industry completely agree with. These reports do not support the regulation position at all.

Only three of the source materials relate to the funeral industry generally and none on the situation in NSW or around pricing. I was not able to find the Watt report.

One of those is a statistical snapshot from 2014 presented by a consultant at a funeral director's conference. Hardly a credible source, as they note they are referencing ABS statistical data.

The IBISWorld report which has a valid basis to be used as a reference is simply used to provide some statistics. Interestingly, there is no reference to the reduced death rate, against the ABS projections or the small increase in revenue year on year (1.3% last financial year) compared to other industries. As this would indicate prices might have risen within the CPI.

The other report : *Van Der Laan, S and Moerman, L 2017, 'It's Your Funeral: An Investigation of Death Care and the Funeral Industry In Australia', The University of Sydney*. The Van Der Laan report is the most relevant material used. However, the data that they have used in the report (pricing and comparisons of direct or online price quotes) is completely misapplied and misleading.

The report states clearly that the pricing information is only based on cremation only disposals and where cremation occurs with a service provided. This is such a small fragment of our service offerings that it is meaningless as an indicator of general price information.

The report itself notes that only 63 respondents across the country are the basis for these figures, and that the online information comes from budget operators, as that is how they attract their clients, predominantly in Victoria. We have put that the race to the bottom that comes from mandatory price listing, as seen in Victoria, leads you to a conclusion that prices for funerals have come down significantly – but we recognise this is not a valid assumption based on the data.

The Van Der Laan report also notes that NSW has the most stringent regulation in the country and is used as the basis of commentary on regulation, legislation and requirements.

Procedural issues: The report says it is part of a suite or program of work the Department is doing around end of life services. Again, no consultation with us or our associations has been entered into. If there is some sort of review of end of life services in this State then with our wealth of experience and practical application, one would consider we are a relevant and key stakeholder in most aspects of end of life care.

The regulatory impact statement is taken to be for the whole of the Fair Trading Regulation and is based on their being a removal of red tape and continuity of existing regulations. However, the omnibus has hidden the fact that there is new regulation or amendment. Accordingly, the criteria is taken and assessed without appropriate reference to this.

The paper states: *The provisions in the proposed Regulation are directly related to the overall objectives of the Act. For example, the proposed information standards will help to encourage fair trading practices and a competitive and fair market in those particular industries.* However, it doesn't rate the effectiveness of the existing information standard, compliance or whether those outcomes were achieved. We believe that the funeral industry is competitive and fair and that we provide information and transparency to our clients.

The following criteria, which relates to the regulatory objectives, has been used in the evaluation of the options:

- the extent to which the option reduces red tape;
- the extent to which the option supports the objectives of the Act;
- the extent to which the option improves transparency for consumers; and
- the cost effectiveness of each option, in terms of costs and benefits to business, consumers and government.

We suggest that the assessment in the paper doesn't relate to this remake of the regulation, but to the remake of all the regulations generally. It increases red tape, will take some monitoring and compliance role which increases costs to government, increases costs to business and therefore consumers, impacts on competition and the market and doesn't provide any more meaningful information to clients than they can already access under the existing regulation.

Complaints - Satisfaction surveys conducted by association members and our business show improved customer satisfaction, including with whether the price of the funeral matched their expectations. Disputes that arise about pricing

usually do not involve those that made the actual arrangement for the funeral, as the pricing and quote are discussed in details and written confirmation provided to the family prior to the services being delivered.

The evidence base of the complaints is lacking and no information has been provided on geographical issues, investigations and the results and our association has indicated no complaints have been referred to them for their members. There is no baseline evidence of whether the existing regulations reduced complaints or trend to show where complaints are going, or differentiation of the statistics or segmenting the types of complaints.

If there are 168 complaints over a six-year period then this rate, at 0.05% of the over 50,000 funerals done in NSW a year, is excellent. Any government department would love this performance result. Of the complaints there are four categories and only one relates to price. So, it seems that the issue of price transparency is even less than the overall complaint rate.

There is no recommendation or reference to how the policy issues is resolved by these regulations. It won't reduce complaints and even the Department doesn't consider the quantum of complaints an issue; as I am sure they would engage with the industry if there was a trend in complaints rising. If anything, I think the complaint rate reflects that if people want to check prices and get quotes the existing regulation makes that possible.

The Market

No market failure - There is no evidence of any market failure or call for increased transparency in relation to funeral pricing in any of the documentation provided generally, or as part of the paper.

Anecdotally the Department indicated that on their facebook and social media sites they are getting lots of people agreeing that they would like more information and transparency; should they need to arrange a funeral. However, is someone hasn't actually arranged a funeral then their assumption, like that of the department, is that there isn't sufficient transparency already provided, which we believe there is. I am happy to get thousands of testimonials from families that have arranged a funeral in NSW that the price, costs, fees or disbursements were clear and transparent.

The market is also changing for the funeral industry with larger numbers of families opting for no service delivery only cremations. Further reducing the margins and services being provided by funeral homes. While this is a natural disrupter to the market and the industry is focusing on service provision, event management and increasing efficiencies - the evidence would show that average funeral costs are reducing, rather than increasing.

Where there is a market for this information, then third party providers have stepped in to fill the gap. There are existing market providers that do cross check and quote checking for any consumer that wishes to use the service. Funeral directors can subscribe to those services to provide quotes with a view to winning businesses. Examples include: www.gatheredhere.com.au ; www.funeral-arrangements.com.au ; www.comparefunerals.com.au

Distorting the market - This sort of regulation would benefit the large publicly listed companies (Invocare and Propel Funeral Partners) that have multiple funeral homes with differentiated brands. Take Invocare which has White Ladies or W N Bull (premium brands), Guardian (medium brand) and Simplicity (basic brand) – price variations between these services are significant, however the back end processes are being run out of mortuary factories and shopfronts, which minimises their capital outlay and maximises their profits. This is supported by the Van Der Laan report, but not referenced in the paper.

Family businesses cannot compete with these businesses, particularly where price transparency is mandatory. This is not because family businesses charge more, as evidenced by rural to urban price information in the Van Der Laan report, it is because a regional business offers all those types of services in the one place under the one brand. We can provide an affordable or an expensive funeral depending on what the family wants, our services are targeted to the family needs and not to the brand.

Vertical integration within the funeral industry also creates an environment where competition and the market is already distorted, but to a manageable level. This regulation could shift the existing balance. Vertical integration exists where a funeral business owns the cemetery or crematorium facilities (it could be other services like florists, catering, chapels, halls etc.). In the Minister's electorate this currently exists, where a funeral business owns the cemetery and a cremator.

Invocare and Propel have extensive vertical integration, as does our business in some locations, and can price out other competitors by providing differentiated pricing for their funeral business clients, over their competitors clients.

I am not sure whether the market and competition effects of the regulation have been referred to the ACCC, who has a particular interest in the funeral market at this time.

The distortion results also where price transparency leads to a race to the bottom, where public listed company's large capital reserves could be used to run at a loss at the low end just to remove competitors. Invocare or Propel can also cross market with their cheapest brand winning a bidding process on the internet and still enable them to shift the client to another brand or upselling where additional services are provided. Again, the ACCC has a role in ensuring

that non-competitive or predatory pricing and price fixing are not occurring but has the potential adverse impacts been considered or explored.

Consolidation in the funeral industry is currently the trend, with large publicly listed companies, and family businesses with the resources, buying funeral homes across Australia and New Zealand. These acquisitions are used to create economies of scale and to grow the bottom line of publicly listed companies as margins in funerals are being reduced.

There are other market disrupters that will also impact on the ability of our industry in the future. This is a challenge we will have to face, but it is another indication that prices in the funeral business will become more competitive. We see this from other countries where not for profit and community funeral companies are increasing, death doulas and religious based funeral directors run by the Catholic Church, the Salvation Army and the Assemblies of God, already existing in Australia.

This also significantly affects businesses operating on our borders.

Regional impacts

Cross border issues - This policy would unfairly impact on businesses that operate on the border of other jurisdictions. For example the ACT and Queensland. Any business that is in NSW and bound by pricing transparency would have to deal with competitors who are not obliged to have that transparency. Further distorting the market and the competitiveness of NSW businesses.

Regional and Small business - This disproportionately affects mum and dad family businesses that run many funeral homes in New South Wales. The disconnect between the country and the city was evidenced across the State at the election. We will be motivating NSW funeral directors to contact their local members about the impact, the process followed and the sidelining of our associations.

The regulation also allows multinationals and interstate competitors to compete in a market where an online presence is all that is needed, they could conduct a funeral for a remote or regional area; but at the expense of those jobs, community engagement and further risk to service provision in regional areas. Particularly where the competitor has a cremator. They could go to a place like Griffith in NSW, where there is no cremator, and transport the deceased to their own cremator for cheaper than the service offered by all the local funeral directors (who have to travel to Wagga to conduct the cremation).

If increased competition and consolidation of the market has a negative effect, it could be on centralising funeral services in large urban hubs, reducing services, jobs and connectivity in local communities.

Workforce - People are not clambering to become funeral directors, and while there is currently no formal qualifications requirements there are significant barriers to entry, if you wish to establish your own mortuary, transfer vehicles etc. Further regulation that disincentives the funeral industry will only serve to further dissuade entrants and increase the costs of doing business, in an already change and competitive market. If there are reduced margins, profits, and regional services then local jobs will be lost.

Other government services - Regional funeral directors work with NSW Health and the Department of Justice in providing contract services for funeral for people without means, and for the removal of deceased for the Coroner. These services are integral to the efficient running of government services, but they are part of the public service that funeral directors do for their communities. These are provided by family businesses across the State, where the effects of this policy would be felt more significantly than in urban areas. Adding regulatory pressure that increase costs to these businesses have already affected their willingness to provide these services (NSW Coroner's office can confirm this).

Our experience

NSW Funeral Directors Association – We are very concerned that the association, which represents approximately 40% of funeral homes in NSW performing thousands of funerals a year. Membership requires funeral directors to adhere to standards set by the association and compliance checks are done in relation to health regulation compliance for mortuary conditions and other aspects, like transfer vehicles.

The success of the self-regulating approach shows through the lack of complaints through the association with only a handful of complaints being made during the course of a year.

The association has an agenda to try to increase the professional development and engagement of its members in the industry. There may be further need to regulate as the industry changes and we are not against regulation as we know we work in a sensitive area. However, the association has relied on the benefits of membership and self-regulation as key tenets of the profession, and agree with the association who see this particular regulation as needless.

Broader end of life agenda – the paper says: *The proposed funeral goods and services information station is part of a package of NSW Government initiatives to improve the 'End of Life journey'. This includes measures aimed at providing more transparent information on cemetery providers' fees for consumers. Work is also being carried out on reducing touch points with NSW Government agencies for persons dealing with the death of a loved one.* If the associations and key players are not part of this discussion, then we are going to find ourselves in the same

situation when other end of life recommendations come through the Department.

The Department genuinely seems to lack an insight into the industry and issues affecting it. We have more genuine and meaningful engagement with the Department of Health around our mortuary care and compliance, advice regarding funeral services and managing funerals for people without means under contracts than we have had in any engagement with fair trading. We also have excellent relationships and comprehension of the complexity of our business from the Department of Justice with coronial services, removal of deceased contracts and working with them and health on issues management.

Consultation – this is the most disappointing aspect of the process. We recommended in our meeting with the Minister’s office and the Association in 2018 the establishment of a working party and this hasn’t been taken up. The consultation with other associations hasn’t occurred. The department also doesn’t seem to understand that there are two publicly listed companies (invocare was sent the paper, but Propel Funeral Partners is a listed company) as well as two family companies (us and David Walker of the Walker Group) that represent a large slice of the NSW market.

This ignorance of the players and our industry generally makes me conclude that there is either a personal agenda to get this regulation in, or a political one. We operate in other States and Territories and also have an insight into how those jurisdictions operate. NSW has some of the best regulation in place, and government agencies that work with the industry very constructively – on this occasion we have been let down.

Recommendations:

That the Minister and Department provide an evidence base for the policy recommendations, provide complaint levels with more granularity of the complaint issues, together with details of who has been consulted in coming to the recommendations in the community consultation process.

That the responsibility for regulation around end of life journey and the funeral industry be led by departments who have established and constructive relationships with the industry like the Department of Health or Department of Justice. Alternatively, that the Department engage with the associations in discussions around end of life services.

The Minister take Option 2: Maintain the status quo. Do not make the proposed Regulation, and instead remake the Regulation ‘as is’, identical to the existing Regulation.