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## Submission on the Proposed Fair Trading Regulation 2019

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and

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Thank you for the opportunity to provide a submission for consideration in response to the proposed *Fair Trading Regulation 2019* and prescribed information standards relating to **Division 2: Funeral Costs Goods and Services**. The following recommendations and changes in relation to the proposed *Fair Trading Regulation 2019* take into consideration the following industry and consumer context.

1. Public information, and therefore information standards, are only useful if consumers understand the goods and services required and available.
2. The funeral industry is at a mature stage with the number of deaths relatively predictable. Therefore, any regulatory changes need to consider the profile of the industry. For example,
  - a. the opportunities for revenue growth for funeral industry participants are limited to increased market share (mergers and acquisitions), the introduction of new goods and services (innovation) or price increases;
  - b. changes to the traditional business model of the 'funeral director' by the emergence of disruptive players providing 'unbundled' funeral goods and services;
  - c. growth in demand for a direct committal; and
  - d. transparency of information for mandatory or regulatory requirements (committal) as opposed to other funeral goods and services (e.g. funeral service and memorialisation).
3. Transparency is compromised with the bundling of several aspects of the traditional funeral service. For example, the direct and indirect costs associated with committal and other goods and services are classified under one category of 'professional service fee'.
4. Currently, the delivery of at least 30% of funeral goods and services are provided by ASX-listed national operators. Therefore, there is a need for relevant consumer information that accommodates the significant differences in State and territory regulation.

Given these industry conditions and the fact that NSW accounts for a significant proportion of the funeral market (nearly 37%) (see Allday, 2019, p. 17), NSW regulators should provide leadership to enable better information is available to consumers in order to prevent exploitation.

Below are direct responses to the questions posed in the consultation paper.

**Question 4:** Are any further changes needed to the Funeral Goods and Services Information Standard and the proposed Regulation?

### **1. Definition of a direct committal (cremation) and price disclosure (information standard) of a direct committal.**

*Rationale: the cost of cremation is relatively stable in a given region. This information will provide transparency and a basis for comparison for the mandatory or regulatory aspects of funeral goods and services. Consumers can ascertain and choose 'extra' funeral goods and services deemed appropriate for their needs, such as a service or memorialisation, thus increasing consumer choice.*

**2. Definition of a basic funeral as per the 2012 Regulation and price disclosure (information standard) that also indicates the cost with cremation and a range for burial.**

*Rationale: this information will provide transparency and a basis for comparison for those choosing to have a bundle of traditional (committal and service), but basic, funeral goods and services. The discrimination between cremation and burial will accommodate the relative stability of cremation and the wide variation for burial costs in a given location.*

*The definition of a basic funeral (in the 2012 Regulation) provided as basis for comparison across providers. However, evidence (see van der Laan and Moerman, 2017) has shown that many operators determined that they did not offer a basic funeral. Therefore, their bundles of funeral goods and services are bespoke and compliance with the information standard to supply a 'basic funeral notice' required under the 2012 Regulation was not required.*

*Retaining the definition and requirements for information disclosure will promote choice and increase the agency of consumers to both compare operators while retaining the opportunity of personalising*

*Consumers purchasing funeral goods and services at the time of death generally experience time constraints in terms of decision-making. On the other hand, consumers purchasing pre-paid (or pre-need) funeral packages have access to the cost and a 30-day cooling off period. Therefore, pre-paid consumers exhibit superior information availability and removing the information for a basic funeral compromises the other group of consumers.*

**3. Mandate a requirement that all funeral directors offering funeral packages operating in NSW offer a basic funeral, unless exempt.**

*Rationale: The 2012 Regulation did not achieve its regulatory objectives due to the ability for operators to opt out and offer funerals on a bespoke basis only. However, the basic components of a funeral 'package' are the same. Given that competition has been eroded by the concentration in the industry (30% by Invocare and Propel) an opportunity to 'shop around' on price prior to making initial enquiries with the provider of funeral goods and services.*

**4. Section 8 (3) - include "and variations to an agreement" in addition to "before entering into an agreement".**

*A mandate for suppliers of funeral goods and services to provide a written notice of any changes to the initial agreement.*

**5. Section 8 (3) & (4) – "additional fee" relates to fees and certificates that are mandatory under NSW legislation. Change the term to "disbursement" and provide an appropriate definition for the term "Additional fee"**

*The definition of "Additional fee" Section 8 (4) refers to funeral goods and services more appropriately recognised as disbursements, i.e. paid to a third party on behalf of the consumer.. An "additional fee" would more likely be an extra fee charged by the supplier of funeral goods and services in addition to their professional service fees. The terms "fee" and "disbursement" are not interchangeable. In addition provide definitions of terms prior to their use (see 8 (3) and 8(4)).*

**6. Section 8 (4) (c) – “least expensive” can be altered to “basic funeral”.**

*The adoption of recommendations 2 & 3 above would render the need for “Least expensive” redundant. A basic funeral, by definition, would be the least expensive package offered by the supplier of funeral goods and services.*

**7. Specifically include the price range for a coffin or casket or other appropriate receptacles in Section 8.**

*The coffin or other appropriate receptacle (e.g. for a direct committal should be a cheaper option available) is an essential and large component of the total cost of a ‘funeral’ (18%). Considering the increasing changes in consumer preferences, e.g. sustainable materials, this range should include alternatives to the traditional form of coffin or casket. The mark-up on coffins can be greater than 100% and used to cross-subsidise other aspects of the operations by the providers of funeral goods and services (Allday, 2019).*

**Question 5:** Should a later commencement date for the Funeral Goods and Services information standard be prescribed to give the industry time to transition to the new requirements? If so, when should it commence?

- 1. As the information that would be required under the standard is readily available to operators, transitioning to the new requirements (including website updates) should be reasonably straightforward and should be in place by 1 January 2020.**
- 2. Develop a regime to allow exemptions from the information standards by 1 December 2019.**

*Rationale: There may be cases, such as remote operators, or operators specialising in culturally specific funerals where offering a basic funeral is not appropriate. These dates will allow operators to apply for an exemption. Exempt operators should clearly identify on their website or advertising that they are exempt from offering a basic funeral, and as a consequence, the information standard.*

**References:**

Allday, A. (2019) Funeral Directors, Crematoria and Cemeteries In Australia, *IBISWorld Industry Report S9520*, March.

van der Laan, S. and Moerman, L. (2017) *It's your funeral: An Investigation of Death Care and the Funeral Industry in Australia*, January, University of Sydney.