

# Final Report

## Regulation of prepaid funerals

Final Report - November 2007



Department of Consumer  
and Employment Protection  
Government of Western Australia



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## EXECUTIVE SUMMARY

The funeral industry in Western Australia is highly regarded and the vast majority of funeral directors are professional and customer-service oriented. There are some concerns, however, that the lack of regulation of the prepaid funeral industry could potentially expose consumers to risk. These concerns relate primarily to the investment and management of monies received as payment for prepaid funerals.

In July 2006, the Department of Consumer and Employment Protection (Consumer Protection) released an Issues Paper to facilitate consultation with key stakeholder groups as well as consumers. Over 700 copies of this Issues Paper were distributed to a wide range of organisations including funeral directors, industry groups, aged care providers, retirement villages, health care groups, various government agencies, social service organisations and seniors' associations.

The Issues Paper outlined the range of prepaid funeral products available and examined the current regulatory framework in WA and other Australian jurisdictions. The key issues identified in the Issues Paper were:

- payments towards prepaid funerals being invested in the name of the funeral director as opposed to the consumer;
- contracts with insufficient detail regarding agreed services;
- contracts which do not include provisions for late payment or missed instalments;
- unfair provisions relating to cancellation of contracts;
- use of high-pressure sales tactics to persuade the bereaved to pay for services not requested in the original contract; and
- the absence of a cooling-off period for prepaid funeral contracts.

The Issues Paper proposed several options for the regulation of prepaid funerals and called for written responses from interested parties. Submissions to the Issues Paper closed on 30 November 2006. Consumer Protection received 17 submissions in total (refer Appendix One for a list of submissions).

This report recommends regulation of the prepaid funeral industry by way of a Code of Practice under the Fair Trading Act. A Fair Trading Code is considered to be sufficient for the purpose of regulation. The main purpose of such a Code would be to ensure that the service purchased by the client, is the service provided, and to provide for adequate security of monies held by funeral directors for prepaid funeral contracts. Increasing the level of protection for consumers by establishing legally binding standards across the industry will result in an increase in consumer confidence. It is likely that this heightened confidence will ultimately benefit the funeral industry.

The three major recommendations made in this report are outlined below.

## **RECOMMENDATIONS**

### **Recommendation One**

That a Code of Practice be established under the *Fair Trading Act 1987*.

### **Recommendation Two**

That a Code of Practice be prescribed under the *Fair Trading Act 1987* to regulate the following:

- the information that must be included in a prepaid funeral contract including provisions which outline what happens in the event of:
  - late or missed payments (for instalment contracts or those with annual fees; or
  - death of the consumer before final payment is made (for instalment contracts);
- a requirement for prepaid funeral monies to be invested in an approved funeral benefit fund or approved trust account;
- a requirement for funeral directors to give consumers who enter into a prepaid funeral contract, details in writing of the manner in which monies paid will be invested, including the type of investment, the terms and conditions applying to that investment and the timeframe in which the monies are to be invested;
- a cooling-off period of 30 days for prepaid funeral contracts;
- the obligations of the funeral director with respect to financial and other arrangements should the funeral director cease to carry on business before the contract is performed or be unable to perform the contract;
- the circumstances under which monies paid pursuant to a prepaid funeral contract should be refunded; and
- a requirement that funeral directors keep a register of all prepaid contracts entered into.

### **Recommendation Three**

That regulation of prepaid funerals only apply to future contracts.

## LIST OF ABBREVIATIONS

<b>ABS</b>	Australian Bureau of Statistics
<b>AFDA</b>	Australian Funeral Directors' Association
<b>AFSA</b>	Australian Friendly Societies Association
<b>APRA</b>	Australian Prudential Regulation Authority
<b>ASIC</b>	Australian Securities and Investments Commission
<b>CONSUMER PROTECTION</b>	Department of Consumer and Employment Protection – Consumer Protection Division
<b>FAIR TRADING ACT</b>	<i>Fair Trading Act 1987 (WA)</i>
<b>SAT</b>	State Administrative Tribunal
<b>THE BOARD</b>	Metropolitan Cemeteries Board
<b>WARCRA</b>	Western Australian Retirement Complexes Residents' Association, Inc.

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## 1 INTRODUCTION

Funerals are considered to be a socially valuable ritual which help bereaved individuals adjust to the death of a loved one. The funeral industry in Western Australia provides a necessary service during what can be a very difficult and emotional time. Most people will have limited experience of making funeral arrangements, generally needing to make them only once or twice in their lifetime. There are often a number of decisions to be made with regard to planning a funeral. Making decisions during a time of bereavement can be very difficult, as people may be particularly vulnerable and tend to make decisions that they might not ordinarily make. Funeral directors provide assistance during this time and can guide the person responsible for funeral arrangements through the necessary processes. Funeral directors are usually trained to assist the bereaved with counsel and to give guidance during a period of acute grief.

Some funeral directors, as well as arranging “at need” funeral services, also offer a range of prepaid funeral packages for people wishing to make their own funeral arrangements. A prepaid funeral is where an individual enters into an agreement with a funeral director to supply funeral services, for payment, at an unspecified point in the future. The reasons that people choose to plan and pre-pay their funeral are varied but include concerns about rising costs, sparing relatives the worry and expense of arranging a funeral, and ensuring that their funeral service is in keeping with their wishes.

## 2 OVERVIEW OF INDUSTRY

The Australian population is ageing, with the proportion of the population aged over 60 years steadily increasing each year. This trend is predicted to continue during the 21st century. The Australian Bureau of Statistics (ABS) data indicates that in 2006, WA had 338,963 seniors (people aged 60 years and over) who comprised 16 per cent of the State’s total population.<sup>1</sup>

The ABS forecasts that in 2031, 28 per cent of Western Australia’s population will be aged over 60<sup>2</sup>. This means that the proportion of the aged population in the State will effectively increase by more than 10 per cent in less than a quarter of a century. The ageing population will also result in an increase in demand for funeral services.

There has been a move in recent years towards formal retirement planning by today’s retirees, and this often incorporates some form of funeral planning.

Consumers may plan for their funeral by discussing their wishes with family and friends or providing a funeral director with instructions on their choice of funeral. Consumers may also choose to prepay all or part of their funeral costs.

Another option available to consumers is to plan for funeral expenses, without committing to a particular funeral director or funeral service. Planning for future funeral costs can be arranged by investing in the funeral benefit plans or funeral insurance products that are offered by a number of financial and insurance organisations.

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<sup>1</sup> Department for Communities (2007) *Western Australia’s Seniors: population characteristics and trends* Topic Sheet #1 Edition 3

<sup>2</sup> *Ibid*

Anecdotal evidence from industry operators suggests that people who pre-pay for funeral and burial services in Australia are typically:

- older – aged 60 years or over;
- on incomes that are low by community standards; and
- interested in pre-purchasing a funeral at a time when they are most vulnerable (eg. when making the funeral arrangements for a loved one).

According to industry operators, the main sources of demand for prepaid funerals are repeat business from people who have made arrangements for other family members; referrals by “word of mouth”; and referrals by professionals such as clergy, accountants, solicitors, banks and financial advisors. Another source which is less common but still worth noting, is the Yellow Pages telephone directory.<sup>3</sup>

## **2.1 Prepaid funerals in Australia**

In recent years, there has been a trend towards a high level of market concentration in the funeral industry, particularly in the eastern states of Australia. Market concentration describes the extent to which the larger operators in an industry take up a significant portion of the market share. A number of international funeral businesses now operate within Australia and offer prepaid funeral packages through their network of funeral directors.

This trend involves major companies acquiring established funeral businesses and operating under the existing brand name of the business. Invocare, for example, is a publicly listed Australian company which, in addition to a number of other funeral related services, markets a prepaid funeral plan via approximately 124 funeral businesses Australia-wide.

## **2.2 Prepaid funerals in Western Australia**

### ***Funeral directors***

There are over 100 funeral businesses in Western Australia, many of whom offer prepaid funeral services. The industry is dominated by three long-established family businesses that account for over a quarter of business.

### ***Metropolitan Cemeteries Board***

The Metropolitan Cemeteries Board is a statutory authority of the State Government. The Board is responsible for managing five cemeteries throughout the metropolitan area and is currently developing a sixth. The Board offers a variety of services including cremation, burial, entombment, memorialisation and chapel services. The Board also offers a range of prepaid funeral packages.

Prepaid funeral contracts arranged through funeral directors may incorporate a component paid to the Metropolitan Cemeteries Board for burial or cremation rights.

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<sup>3</sup>[http://www.fairtrading.qld.gov.au/OFT/oftweb.nsf/AllDocs/0D433FE9EF67D0224A256D1900836346/\\$File/Funeral %20Benefits %20Business %20Act %20- %20PBT.pdf](http://www.fairtrading.qld.gov.au/OFT/oftweb.nsf/AllDocs/0D433FE9EF67D0224A256D1900836346/$File/Funeral%20Benefits%20Business%20Act%20-%20PBT.pdf)

## 2.3 Value of the current market

There are no accurate figures available to determine the amount of monies held for prepaid funerals in Western Australia. However, figures available from NSW, where funeral funds are required to be registered, can be used as a basis for estimating the level of funds held in WA.

In NSW, funeral funds are required by legislation to provide annual reports on the level of funds held. The annual returns provided by the funds in 2003 indicate that contracts are held for almost 60,000 consumers, with a value of over \$206 million.<sup>4</sup> Extrapolating this figure to allow for the difference in populations of seniors between the two states<sup>5</sup>, would indicate that the level of money held for prepaid funerals in Western Australia could now be over \$50 million.

## 2.4 Size of potential market

The ABS forecasts that by 2031, 28 per cent of Western Australia's population will be aged over 60<sup>6</sup>. This means that the proportion of the aged population in the State will effectively increase by more than 10 per cent in less than a quarter of a century.

In terms of the number of prepaid funeral contracts fulfilled in WA, there are approximately 1,100 such funerals conducted annually. This equates to approximately 10 per cent of all funerals conducted within the state over a twelve-month period. This correlates with statistics from Queensland which show that approximately 10 per cent of the funerals conducted each year in Queensland are prepaid. Anecdotal evidence suggests that there are between 1600 and 1800 prepaid funerals sold each year in WA.

The population is ageing and, as a result, it is likely that the market for prepaid funerals will increase. There also appears to be a trend towards formal retirement planning by today's retirees and this often includes funeral planning.

## 2.5 Funeral services

Preplanning a funeral allows consumers to choose in advance the type of funeral service they wish to have. Funeral directors provide a number of services associated with the arrangement of a funeral, including the following:

- the attendance of a person to assist with arrangements for a funeral, burial or cremation;
- the attendance of a person to assist with the preparation of associated documents and notices;
- transportation of the deceased's body;
- use of mortuary facilities or services;
- supply of a coffin or casket;
- arrangements for burial or cremation;
- provision of a mobile graveside chapel;
- provision of a lowering device for a coffin or casket;
- arrangements for mourners' cars;

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<sup>4</sup> NSW Office of Fair Trading: *Funeral Funds Regulation 2001: Potential Areas for Reform* Discussion Paper June 2005

<sup>5</sup> Australian Bureau of Statistics Catalogue No. 3101.0 Australian Demographic Statistics, Dec 2006

<sup>6</sup> *Ibid*

- arrangements for flowers; and
- preparation of the ashes of the deceased person awaiting inurnment.

There are many different components to a funeral service and different funeral directors offer vastly different prepaid funeral packages. Some directors may offer a complete service including liaison with the Metropolitan Cemeteries Board (on matters such as the purchase of a plot, obtaining a permit to cremate or an interment agreement), whereas others provide a discrete funeral service. Certain memorials such as headstones, cannot generally be purchased via the funeral director but are usually arranged with a monumental mason after the funeral service has taken place. Below are some examples of items which may not necessarily be included in a prepaid funeral contract:

- cremation agreement;
- interment agreement;
- obtaining certificates;
- minister or celebrant's fees;
- advertising of the funeral in newspapers;
- floral tributes;
- memorials (headstones, wall plaques, seats, stone); and
- after-hours services.

Prepaid funeral contracts usually provide for a standard funeral as a minimum service, however, consumers may choose to prepay a range of additional products and services. A prepaid funeral contract should specify the products and services to be included in the funeral package, and the funeral that is specified in the contract should be provided at no extra cost to the family of the deceased. If the family chooses to include additional services not specified in the contract, then an additional charge could be made to cover these services.

## **2.6 Prepaid funeral contracts**

Prepaid funeral contracts provide a mechanism for funeral directors to secure future business and market share. The agreement is generally in the form of a written contract between the future recipient of the funeral and a funeral director.

Prepaid funeral contracts generally involve the following separate but linked components:

- the investment by the funeral director of money paid by the consumer for the provision of a funeral service; and
- the provision of a specified funeral service some time in the future, including the supply of any goods connected with that service.

Consumers enter into a contract with a funeral director for the provision of specified goods and services and the consumer pays for those goods and services at today's prices. The funeral director generally invests the funds, either directly or via an independent funeral benefit fund, and provides the funeral services at no further cost when the client dies.

By entering into a contract, the funeral director effectively guarantees the provision of a funeral service. Any risks associated with the investment of funds are borne by the funeral director. Essentially, the funeral service should be provided, regardless of how the fund performs between the time the contract is signed and the death of the recipient.

A prepaid funeral can be purchased by either a lump sum payment or by instalments. An annual subscription fee may also be payable in some cases. Some contributory funeral benefit funds require regular contributions over a number of years.

Any money paid toward a prepaid funeral contract is currently exempt from the Commonwealth Government Income and Assets Test and can therefore serve to reduce assets for the purpose of determining an individual's Aged Pension allowance.

## **2.7 Investment of prepaid funeral funds**

In most cases, funeral directors invest the monies paid for a prepaid funeral contract into a funeral bond, funeral benefit fund or some other form of financial product. There is some overlap between the definition of a funeral bond and a funeral benefit fund, particularly where offered by a friendly society.

### ***Funeral Bonds***

Funeral bonds are a capital guaranteed form of investment, usually offered by friendly societies or life insurance companies, that allow consumers to set aside monies to cover funeral expenses. Funeral bonds can be paid for as a lump sum or by instalments. The bonds, exempt from taxation under Section 50-20 of the *Income Tax Assessment Act 1997*, operate under the strict requirement that the proceeds (and capital) are used for the sole purpose of meeting funeral expenses.

Under current legislation, up to \$5,000 is exempt from the Income and Assets Test for Centrelink purposes, unless the bond is linked to a prepaid funeral contract. There is no limit for Centrelink purposes, on funds paid for prepaid funeral contracts.

Funeral bonds may be linked to a specific funeral director as part of a prepaid funeral contract.

### ***Funeral Benefit Funds***

There are a number of funeral benefit funds available, many associated with friendly societies, life insurance companies or seniors organisations. Funds may allow members to contribute either by way of a single contribution or by periodic contributions over a number of years. The fund may allow for the benefit to be paid to the recipient's estate, or it may be linked to a funeral director as part of a prepaid funeral contract. Benefits are only payable upon the death of the member.

### ***Other investment products***

Financial institutions such as banks, building societies, life offices and superannuation funds also offer a range of investment products that may be associated with prepaid funeral contracts.

## **2.8 Special features of the industry**

The funeral benefit industry is unique in that the service contracted is generally delivered many years after it is paid for, and the consumer who signs the contract cannot monitor the standard of delivery. Furthermore, according to industry, most contributors (particularly the elderly) are not seeking to earn a commercial return on the monies paid for a prepaid funeral contract. Their primary concern in this regard is that the value of their contributions keeps pace with inflation and funeral costs, so that there is sufficient money to meet their funeral costs at the time of death. Some funeral directors reported that they have placed contribution monies on term deposit with a bank, and that their clients were satisfied with this arrangement.

# **3 CURRENT REGULATORY FRAMEWORK**

## **3.1 Legislation**

The framework for regulation of the funeral industry in Western Australia is currently provided by legislation applying to consumer protection, public health, occupational health and safety and births, deaths and marriages. There is no specific legislation for prepaid funerals.

Prepaid funerals are considered to be the purchase of a service, and, as such, come under the umbrella of the *Fair Trading Act 1987* and *Trade Practices Act 1974* (Cth). The Fair Trading Act is the cornerstone of consumer protection legislation in Western Australia. The main objective of the Act is to provide for a fair marketplace in which consumers are informed and protected from unscrupulous business practices. The Act contains provisions relating to misleading and deceptive conduct, unconscionable conduct and false representation. Similarly, the Trade Practices Act prohibits a variety of undesirable trade practices.

Funeral bonds and funeral insurance products are considered to be life insurance and are therefore regulated by the *Life Insurance Act 1995* (Cth). The Australian Prudential Regulation Authority (APRA) supervises life insurance companies authorised under the Life Insurance Act to ensure that these companies are able to meet their obligations to policyholders.

## **3.2 Self-regulation**

In WA, approximately 60 per cent of funeral directors are members of the peak industry body, the Australian Funeral Directors Association (AFDA). All AFDA members must adhere to the Association's Code of Ethics, which outlines the manner in which a funeral director should conduct their business.

The AFDA also issues a prepaid funerals policy statement to its members, which specifies certain minimum standards for prepaid funeral contracts. Clearly self-regulation via membership of industry associations doesn't apply to the entire industry. Those funeral directors who are not members of AFDA, along with independent funeral benefit funds, are under no compulsion to adhere to the AFDA policy guidelines.

## 4 CONSUMER RISK

### 4.1 Complaints data

Consumer Protection provides advisory, conciliation and investigation services for consumers in relation to a broad range of industries, including the funeral industry.

Records indicate that over the past ten years, Consumer Protection has received 14 complaints in relation to the funeral industry, of which six relate to prepaid funerals.

Although Consumer Protection receives few complaints about the funeral industry, this may not be a true indicator of the extent of any problems. Due to the nature of the service provided, relatives of the deceased may not, in a time of considerable stress, be inclined to complain.

It has been reported that some funeral directors may be investing payments for prepaid funerals in the name of the funeral business, rather than in the name of the recipient. This practice places the consumer's monies at risk if a business becomes insolvent.

### 4.2 Financial risk

Legislation specific to prepaid funerals was enacted in other states as a result of consumer complaints and market failures. Recent National Competition Policy Reviews of legislation regulating prepaid funerals in NSW and Queensland, indicated that the original objectives of the legislation still apply. As a result of the review process, both States have recently amended the relevant legislation to further protect the interests of consumers.

Consumers entering into prepaid funeral contracts in Western Australia are not protected by specific industry legislation or a mandatory Code of Practice, as applies in all other Australian States. Without any form of regulation there is the potential for businesses to engage in unsound or unscrupulous business practices.

Whilst the majority of funeral businesses in Western Australia provide a highly ethical and professional service, funeral directors are not compelled to invest the monies paid towards prepaid funeral services, and there is a risk that these monies may be used for other purposes. Funeral directors control substantial amounts of money prepaid by consumers for funeral services, and there is the potential for substantial losses to be incurred by consumers if a business were to fail. The most significant risk relates to the potential for misappropriation of consumers monies by funeral directors. Although there haven't been any reported incidences of misappropriation, or evidence of any loss by consumers, in some cases, funds have been invested in the name of the funeral business, with no contractual connection between the consumer and the financial institution.

Some funeral directors in Western Australia invest consumers' prepaid funeral monies into funeral bonds, which are regulated by the provisions of the *Life Insurance Act 1995* (Commonwealth). Others place monies received into their own established trust funds. The amount of money that is placed with fund managers (including insurance companies) and the amount that is held in individual trust funds cannot be ascertained. The latter is potentially more risky as the controls imposed on a private trust are far less stringent than the controls imposed on fund managers and life insurers.

Sixty per cent of funeral directors in WA are members of AFDA and these members provide 80 per cent of all funerals in the State. In addition to a national Code of Ethics, AFDA also has an Industry Standard for prepaid and pre-arranged funerals. In regards to clients' funds, the AFDA prepaid funeral standard states that:

- The financial institution holding the funds should be at “arms length” from the funeral director.
- A numbered certificate in the name of the client should be provided by the financial institution.
- The financial institution should guarantee that no funds can be withdrawn by the funeral director until the death and the funeral take place.
- The financial institution must safeguard the funds of the client even if the funeral firm has gone out of business.

These standards are guidelines for the industry members and while there is no mechanism for compliance or enforcement, it is expected that all members adhere to these guidelines.

As already mentioned, 40 per cent of funeral directors in the state are not members of the AFDA and as such are not bound by the industry standard outlined above. This portion of the industry has an approximate 20 per cent market share which, in dollar terms, could be as much as \$12 million. As noted, it is difficult to ascertain what proportion of these monies are invested either with fund managers, in trust funds, or held elsewhere.

The absence of regulation of prepaid funeral funds means that there is a significant degree of risk to monies paid towards prepaid funeral contracts.

### **4.3 Problems identified within the industry**

#### ***High pressure selling tactics***

Although Consumer Protection has not received any formal complaints from consumers with regard to high-pressure selling tactics by funeral businesses, this practice has occurred elsewhere in Australia. For example, the Queensland Office of Fair Trading recently received over 20 enquiries from a North Queensland Indigenous community regarding a funeral benefits company reportedly selling prepaid funeral plans door-to-door. There is evidence to suggest that the business concerned may now be operating in regional areas in Western Australia.

Funeral directors may engage in selling prepaid funeral plans to the deceased's spouse or other family member whilst arranging a funeral. This is often a highly stressful and emotional time, and being vulnerable, consumers may sign a contract without fully understanding the implications. Consumers may not be aware that they cannot withdraw the money later, and it can only be used to pay for their funeral. There is currently no cooling-off period for prepaid funeral contracts in WA, unless they are sold door-to-door and, in such a case, would be captured by the provisions of the *Door to Door Trading Act 1987*.

### ***Misleading advertising***

There are some concerns regarding the advertising of prepaid funerals. Promotional material includes telephone directories, service directories, brochures, websites, and television and radio advertising. In one reported case, a particular funeral fund claimed in its promotional material that consumers' monies would be held in term deposits in a banking institution when, in fact, these monies were invested in other securities. Whilst this is a matter that can be dealt with under the Fair Trading Act, it highlights the potential for mismanagement of clients' funds within the industry. Consumers should be confident that their money will be invested appropriately and in keeping with any advertised claims.

### ***Provision of services***

As the funeral service is often supplied many years after the contract is signed, it is possible that, in some cases, the nominated funeral director may no longer be in business, or may be unable to provide the specified service. In this situation, another funeral director may conduct the funeral at no additional cost. However, this is generally done as an act of goodwill and not as a condition of the contract.

A prepaid funeral contract should include specific information on the type of funeral service that the consumer has purchased. Problems can arise when the level of detail specified on the contract is inadequate. Use of subjective terms such as a "simple" or "deluxe" funeral can lead to later confusion as to what services were contracted, particularly as the service may be provided decades after it was purchased.

Relatives arranging the funeral may be asked to pay additional costs for services that were included in the contract, or for services the recipient did not request. Although there is no evidence in Western Australia of funeral businesses putting pressure on relatives to pay additional costs for extra services, this practice (referred to as "up servicing") has occurred in other jurisdictions.

Another potential risk faced by consumers is where a funeral business is taken over by another operator. In one specific case which was brought to Consumer Protection's attention, the incoming operator was not willing to honour the existing prepaid funeral plan unless the consumer paid a further \$250 administration fee.

## **5 REGULATION IN OTHER JURISDICTIONS**

Prepaid funeral plans are covered by legislation in New South Wales, Victoria, Queensland, South Australia and Tasmania.

### **5.1 New South Wales**

In NSW, funeral funds are regulated by the *Funeral Funds Act 1979* (NSW). This Act was introduced in response to major industry failings and requires funeral funds to be registered and to meet certain prudential and fair trading standards. The *Funeral Funds Act 1979* aims to protect pre-payments made by consumers and endeavours to ensure that funeral services agreed to under a prepaid contract are supplied as agreed. In October 2003, the NSW Parliament passed new laws to strengthen the prudential management of funeral funds and to enhance consumer protection. These reforms arose from the recommendations of the National Competition Policy Review of the Act released in April 2002.

## 5.2 Queensland

In Queensland, funeral funds are regulated by the *Funeral Benefit Business Act 1982* (Qld). A number of changes have been made to the Act to increase competition and consumer protection within the industry. These changes took effect from 1 December 2003 and include a 30-day cooling-off period and the compulsory provision of a *Client Care Statement*. The changes follow on from the recommendations of the National Competition Policy Review of the Act completed in 2002.

## 5.3 Victoria

Victoria introduced the *Funerals (Prepaid Money) Act 1993* (Vic) to protect consumers entering into contracts for prepaid funerals. This Act was repealed in 2006 following the establishment of a Parliamentary Committee to review the entire funeral industry. The result of this Committee was the introduction of the *Funeral Act 2006*. This Act contains a part specific to prepaid funerals. This part of the Act prescribes the procedure for the investment of prepaid funeral monies; where such monies may be invested; the information that must be disclosed in a prepaid funeral contract; procedures for the receipting of monies received; and the keeping of records, amongst other matters.

## 5.4 South Australia

Prepaid funerals in South Australia are regulated by the *Fair Trading (Pre-paid Funerals Code of Practice) Regulations 1996* (SA). Funds are not required to be registered, however there are restrictions on where monies may be invested. The Code also explicitly outlines the details that must be contained in any prepaid funeral contract.

## 5.5 Tasmania

The *Prepaid Funerals Act 2004* commenced on 1 March 2005. The Act requires funeral businesses to disclose specific information to consumers before they enter into a prepaid funeral agreement and also requires any money paid to a funeral business to be paid into a registered funeral trust.

## 5.6 Summary

As outlined above, other states have developed their own specific legislation to regulate the prepaid funeral industry. There are, however, some common elements throughout the various legislation. The general requirements of prepaid funeral legislation throughout Australia are:

- certain information must be disclosed before a contract is entered into;
- contracts must be in writing;
- the money that is paid by the client must be invested in a certain way;
- certain records must be kept;
- the funeral director must keep a register of the pre-paid contracts entered into; and
- annual reports must be prepared.

## 6 REGULATORY OPTIONS

The key objectives for any form of regulation of the prepaid funeral industry would involve:

- ensuring that the funeral services agreed upon are provided when required; and
- providing for adequate security of monies held by funeral directors for prepaid funeral contracts.

The Issues Paper proposed three possible options. These options are outlined below.

### 6.1 Education

A community education strategy would involve the distribution of hardcopy publications, seminars, consumer expositions and provision of information via relevant websites. The purpose of such a strategy would be to raise awareness and educate consumers about prepaid funeral plans and other issues relating to the funeral industry. Informed consumers can make appropriate enquiries and seek advice on how to protect their interests, before entering into prepaid funeral contracts.

Education and training of industry members, in collaboration with industry associations, may also provide a mechanism for improving business practices and increasing the focus on consumer protection mechanisms.

Consumer education can exist as an adjunct, or alternative, to regulation.

### 6.2 Code of Practice under the Fair Trading Act

A legally binding Code of Practice can be established under the *Fair Trading Act 1987*. A Fair Trading Code would serve to increase consumer confidence in an industry by establishing legally binding standards across the industry. Consumer Protection would enforce these standards.

The consultation requirements required for developing a Code of Practice are detailed in section 42 of the *Fair Trading Act 1987*.

These requirements include:

- inviting submissions from relevant industry and consumer representatives;
- making a draft code publicly available and advertising for submissions on a state-wide basis; and
- obtaining some level of agreement from industry to abide by the Code of Practice.

A Fair Trading Code lapses unless a review is undertaken within three years from the date it first takes effect. Before a Code can be re-established, consultation must take place with industry members and the general public.

The *Fair Trading Act 1987* sets out the process that takes place if a trader appears to have breached the Code of Practice. Following an investigation of a matter in which a trader is found to contravene the Code, the Commissioner may require an undertaking from that trader to discontinue the conduct or to take action to rectify the consequences of the contravention. In the event that the trader does not comply, the Commissioner may apply to the State Administrative Tribunal to make an order for a trader to act, or not to act, in a particular way. Breaches of such orders carry a maximum penalty of \$10,000.

### **6.3 Legislation**

Specific legislation can provide for greater penalties than provided by a Code of Practice established under the *Fair Trading Act 1987*. Specific industry legislation is generally a high-cost regulatory option and only appropriate when it is considered that other forms of intervention are unlikely to effectively address problems in an industry.

## 7 KEY QUESTIONS

The following three key questions were posed in the Issues Paper. For the purposes of these questions, prepaid funerals were defined as an agreement to supply funeral services, for payment or other valuable consideration, which is made before the death of the recipient.

### **Key Question 1**

***Is there sufficient evidence of consumer risk or detriment in WA to warrant a regulatory regime for this section of the funeral industry?***

Records of complaints received by Consumer Protection do not indicate high levels of risk or large numbers of problems being experienced by consumers purchasing prepaid funerals. However, the number of complaints received are not necessarily a reliable indicator of the risks involved.

Without any form of regulation, funeral directors are not compelled to place consumers' monies in a secure investment, nor is there any requirement to hold such monies at "arms length" from the funeral business. Funeral directors are not held accountable for the monies paid to them for future funerals and there is no formal requirement to keep accurate and comprehensive records of any prepaid contracts entered into.

Although there is no evidence that seniors are being coerced into signing contracts for prepaid funerals, the projected increase in the seniors' population, together with an increase in wealth among this group, may make seniors a potential target for financial abuse and inappropriate consumer practices.

### **SUBMISSIONS**

The majority of submissions to the review supported Consumer Protection's experience of a low incidence of complaints. The Australian Funeral Directors Association (AFDA) claimed that there is insufficient evidence of customers suffering losses arising from the purchase of prepaid funerals to justify the introduction of Government Regulation. Funeral directors reported having received few or no complaints from clients or their families in relation to prepaid funerals.

The Health Consumers Council suggested that there is a prima facie need for regulation in other states and therefore WA should introduce some form of regulation. The Council said that, in view of the considerable time lapse between payment for service and receipt of service, the potential for exploitation is considerable and would justify the introduction of regulation.

A submission by a funeral director questioned the prudence of waiting until there was a problem within the industry before introducing legislation to regulate prepaid funerals. It was asserted that negative experiences in other states had resulted in the adoption of various legislation to regulate the industry. It was further suggested that the funeral industry as a whole would benefit from industry specific legislation. There were some concerns that lack of regulation in the funeral industry potentially allows "cowboy" operators to provide funeral services. Any negative media coverage arising from the activities of such operators could adversely impact upon the reputation of other operators within the industry.

Australian Friendly Societies Association (AFSA) members have reported incidences of misunderstanding of contract terms, monies failing to be invested correctly or going missing. Another funeral director agreed that there may be some risks associated with the security of monies paid by consumers; funeral directors using monies for operational purposes; and, in the event of the failure of a funeral operator's business, whether funds may be available to another funeral operator to perform the contracted service.

AFSA believes that a consumer who pays for a funeral in advance deserves protection for the monies paid and that will be held for an indefinite time. Consumers should be confident that their investment will be protected and that when the funeral is needed, the money is still there to carry out the contracted funeral service.

The Consumers' Association of WA suggests that the potential risks associated with the changing nature of the funeral industry, in particular, the likelihood of newer and smaller operators looking to establish themselves in WA, makes the introduction of some form of regulation imperative. The security of monies paid to prepaid funeral operators was of considerable concern to nearly all individuals who made a submission.

WARCRA submitted that a number of members reported that they had either postponed a decision about, or decided against, prepaying for a funeral because they felt uncertainty about the security of such a scheme.

## **DISCUSSION**

The need for some form of regulation does not detract from the high level of professionalism and customer service existing within the industry. The reason regulation is being considered is that, given the expanding nature of the industry, there is an increasing need to provide adequate consumer protection to the community. Given that the current value is estimated to be in excess of \$50 million and likely to continue to increase, it is considered incumbent upon Government to ensure the safety of consumers' investments.

NSW's Office of Fair Trading 2005 discussion paper, *Funeral Funds Regulation 2001: Potential Areas for Reform* states that "the funeral funds industry has achieved a higher level of stability and consumer confidence since the Act was introduced". The large fund losses that prompted the regulation of the industry have not been repeated and the Office of Fair Trading receives a very low level of complaints about funeral funds each year.

Since the inception of the Prepaid Funerals Code of Practice in South Australia there have been relatively few complaints, less than one per year with regard to pre-paid funerals. (It is difficult to compare the level of complaints pre-Code and post-Code as South Australia does not have a record of prepaid funeral complaints prior to 1994). South Australia considers the Code to be an effective regulatory mechanism.

There are no other industries within Western Australia that can legitimately receive monies from consumers and hold these monies for lengthy periods of time without being required to place them in trust.

The potential risks to consumers are sufficient to warrant greater consumer protection measures in the form of statutory regulation.

## **Key Question 2**

***If it is necessary to regulate the prepaid funeral industry, then is the implementation of a Code of Practice under the Fair Trading Act 1987 an appropriate regulatory mechanism?***

Any form of regulation of the prepaid funeral industry would seek to establish best professional practices and incorporate key consumer protection measures to ensure that payments are held securely and that the funeral that is paid for is delivered.

The regulatory options considered in the Issues Paper were:

- self-regulatory option;
- mandatory Code of Practice; or
- industry specific legislation.

Each of these options (as well as a consumer education option) are explored in more detail below.

### **1. Consumer education initiatives**

Consumer education generally involves the development, production and distribution of information in appropriate formats to prospective consumers. This information can be in the form of brochures, articles in seniors and community newspapers, web-based material or information seminars at community centres and senior citizens associations.

The purpose of any consumer education initiative would be to encourage consumers to 'shop around' for the most suitable product or service; encourage consumers to read contracts fully before entering into them; and inform consumers of the redress options available if they feel that the terms contained within a contract are unfair.

#### *Advantages*

- Consumers would enter into prepaid funeral contracts with a greater degree of knowledge.
- In general, industry becomes more competitive when dealing with an informed consumer base. Consumers benefit from such competition.
- Costs to Government would be relatively low.

#### *Disadvantages*

- It is unlikely that consumers would be inclined to access any form of education pertaining to prepaid funerals until such time as it was relevant.
- The effectiveness of this option is questionable in that a significant proportion of consumers enter into prepaid funeral contracts in periods of bereavement. In such circumstances, it is unlikely that consumers will spend time 'shopping around'.
- Government would be responsible for the production of and costs associated with developing, producing, and distributing educational material.

## **2. Self-regulatory regime**

Under a self-regulatory model, the primary responsibility for the conduct of industry members would lie with industry associations. The members of the associations would need to agree to operate within certain standards and develop a code of conduct. Associations would market themselves and their members as providing a high quality service. One way in which this could be achieved is through an accreditation program. The primary industry association in Australia is the Australian Funeral Directors Association. Membership of this association is voluntary.

### *Advantages*

- Self-regulation offers a considerable amount of flexibility. Changes to an industry code of conduct could be made in line with changes occurring within the industry and at a broader level.
- Costs to government would be relatively low.
- If industry commits to a code of conduct then they are more likely to have an interest in fulfilling this commitment.
- An accreditation scheme would address the community need for information about the quality of service in the industry and enhance consumer confidence in dealing with the members of any association. An association would need to have the power under its constitution to require its members to maintain the agreed standards of service delivery and to enforce sanctions against any member who fails to comply with these standards.
- Self-regulation keeps administration and compliance costs to a minimum.

### *Disadvantages*

- In WA, over 60 per cent of funeral directors are members of the Australian Funeral Directors Association and agree to abide by the Association's Code of Ethics. Inadequate industry coverage means that there remains a large section of the industry under no obligation to adhere to the industry code.
- Self-regulation is difficult to enforce effectively.
- There are consumer perceptions that self-regulation means no regulation and that industry associations are unable to consider complaints against members in an objective and unbiased manner or enforce sanctions for breaches of agreed standards.
- There is a power imbalance between consumers of prepaid funerals and prepaid funeral operators. Consumers tend to be older people, on relatively low incomes and, as can be expected, have little experience of arranging prepaid funerals. Whilst it is recognised that most funeral operators would not take advantage of this power imbalance, the absence of statutory regulation may lead to instances of exploitation.
- Does not ensure security of funds paid in advance.

### **3. Mandatory Code of Practice**

A Code of Practice mandated under the *Fair Trading Act 1987* can be an effective option where self-regulation may be ineffective and some form of Government intervention is considered appropriate to protect the interests of consumers.

#### *Advantages*

- There is a high level of input by industry and residents in the development of a Code.
- A Code is flexible and can be easily amended without having to be passed by Parliament, which can be a time-consuming and complicated process.
- Costs to Government would be relatively low once a Code has been established.

#### *Disadvantages*

- Possible perception that compliance with the Code is voluntary due to the absence of direct penalties for breaches (even though orders can be made which carry a maximum penalty of \$10,000 for non-compliance).

### **4. Industry specific legislation**

Specific industry legislation is generally a high-cost regulatory option and only appropriate when it is considered that other forms of intervention are unlikely to effectively address problems in an industry.

#### *Advantages*

- Penalties for breaches of the Act would be a considerable deterrent to non-compliance.

#### *Disadvantages*

- This form of regulation is largely inflexible as the process to amend an Act can be time consuming and complicated, and may delay responses to changing dynamics and issues that may arise in the future;
- There would still be a need for regulations to deal with issues that need to be flexible. This would mean having both an Act and subsidiary legislation in the form of regulations.

## **SUBMISSIONS**

The establishment of a mandatory Code of Practice received considerable support in submissions to the Issues Paper. Consumer advocates strongly supported regulation by way of a Code of Practice under the *Fair Trading Act 1987*. Some funeral directors opposed a mandatory Code of Practice suggesting that a voluntary industry code would be preferable.

## **DISCUSSION**

Neither self-regulation nor consumer education initiatives would be capable of addressing the potential problems which can be considered to be the catalyst for the current review of the industry. Given that the prepaid funeral industry already conducts itself in an ethical and professional manner, a mandatory Code of Practice is considered to be an adequate and appropriate form of regulation. A mandatory Code of Practice will be able to prescribe:

- where monies can be invested;
- standard clauses in contracts;
- cooling-off periods;
- refund/cancellation provisions; and
- the level of detail in a contract.

Under the Fair Trading Act, a Code is required to be reviewed within five years from the date that it first takes effect. A review requires consultation with industry and other stakeholders to ascertain the effectiveness of the Code. Whilst a review is still a significant imposition on Government resources, it is administratively simpler than industry specific legislation. It is submitted that, in view of the fact that all of recommendations contained in this report can be regulated by a Code of Practice, this would be the most appropriate regulatory response.

### **RECOMMENDATION ONE**

**That a Code of Practice be established under the *Fair Trading Act 1987*.**

### **Key Question 3**

***If a Code of Practice or specific legislation were to be implemented, what provisions should be included?***

**Options considered:**

#### **1. Provisions for pre-existing funeral agreements**

If a Code of Practice or specific legislation were to be implemented, should any provisions be included for pre-existing funeral agreements? This should be considered in the context that some pre-existing contracts might not be fulfilled for decades.

### **SUBMISSIONS**

There were few comments received on the applicability of legislation to pre-existing funeral contracts. One submission favoured retrospectivity and one submission favoured any legislation enacted being solely prospective in operation.

### **DISCUSSION**

Retrospective legislation:

*“...is contrary to the general principle that legislation by which the conduct of mankind is to be regulated, ought not to change the character of past transactions carried upon the faith of the existing law.”*

Bennion, FAR 1997, Statutory Interpretation 3<sup>rd</sup> ed, Butterworths, p235

As a matter of principle, governments do not ordinarily favour making laws that have a retrospective effect unless there are compelling reasons to do so. This ensures that those who have entered into agreements based on their understanding of the law at a particular time, are not adversely affected. Furthermore, there would be considerable administrative difficulties associated with making legislation retrospective. For example, existing contracts would need to be reviewed and revised to incorporate any new provisions. Parties to contracts would need to be contacted to effect such changes - an undertaking that could cause unnecessary confusion. Monies that are already invested may need to be reinvested in different investment vehicles, which may also disadvantage consumers from a financial perspective.

#### **2. Cooling-off period**

When a cooling-off period is written into a contract, a consumer has the option of cancelling the contract within a set period of time. After the cooling-off period expires, the consumer can no longer cancel the contract on a “change of mind” basis.

Cooling-off periods often serve to reduce the number of contractual disputes in a particular industry. Currently in Western Australia, there are mandatory cooling-off periods for door-to-door trading (10 days, section 3 *Door to Door Trading Act 1987*) and retirement village contracts (five or 10 working days, section 14 *Retirement Villages Act 1992*). In these cases mandatory cooling-off periods have been introduced to address specific consumer protection needs.

Many people enter into a prepaid funeral contract when they are most vulnerable, an example of this being when organising the funeral of a spouse or other family member. During a time of grief, people may make decisions they would not necessarily normally make.

Although there is no evidence that seniors are being coerced into signing contracts for prepaid funerals, the projected increase in the seniors' population, together with an increase in wealth among this group, may make seniors a target for financial abuse and inappropriate consumer practices.

On 1 December 2003, the Queensland Government introduced a 30-day cooling-off period for all prepaid funeral contracts, through changes made to the *Funeral Benefits Business Act 1982*.

The NSW Parliament passed new laws in October 2003 to strengthen the prudential management of funeral funds in NSW. Included in the new laws is a provision for a cooling-off period for prepaid funeral contracts.

A cooling-off period can give consumers time to carefully consider the conditions of the contract so they are able to fully understand what they have committed to under a prepaid funeral contract.

## **SUBMISSIONS**

All respondents that remarked on this issue supported a cooling-off period for prepaid funeral contracts. The suggested cooling-off periods were between 10 and 30 days.

## **DISCUSSION**

A cooling-off period would give consumers time to carefully consider the conditions of the contract so that they are able to fully understand what they have committed to under such a contract. The fact that many people enter into a prepaid funeral contract when they are emotionally vulnerable (ie. while arranging a funeral for a spouse or other family member) gives rise to the need for a cooling-off period. To prevent the potential exploitation of bereaved clients, a cooling-off period of 30 days is considered reasonable.

### **3. Prudential supervision**

#### *Investment security*

Ensuring the financial security of money paid by consumers for prepaid funerals is a key concern for Government. Although it appears that funeral directors in Western Australia generally invest funds in secure financial products such as funeral bonds, there is no legal obligation for them to do so.

Different approaches to regulation have been taken in other Australian jurisdictions, to ensure prudential control of funeral funds. In NSW and Queensland, all funeral funds must be registered and money can only be invested in certain secure investments. All registered funds must lodge an annual report.

In Victoria and South Australia, the way in which money paid into a funeral fund can be invested is regulated, however, registration of funds is not required.

In Tasmania, the Act requires any money paid to a funeral business to be paid into a registered funeral trust, however, certain deposit schemes are exempt from the application of the Act.

### *Separation of funeral director and financial institution*

It is imperative that money provided for prepaid funerals is invested “at arms length” from the funeral director’s business. There is evidence that this does not always occur in WA, and in some cases money has been invested in the name of the funeral director with no contractual connection existing between the consumer and the financial institution.

### **SUBMISSIONS**

With regard to monies paid for prepaid funerals, there were a number of suggestions as to how these would be best dealt with. The majority of respondents agreed that funds should be held “at arms length” from the funeral director’s business. One respondent submitted that monies should not be invested in benevolent organisations. Other suggestions with regard to prudential supervision of prepaid funeral monies included:

- a standard process for the receipting of monies by funeral directors;
- ensuring that existing and future monies are held in a separate trust account or funeral benefit fund;
- monies to be lodged under the name of the recipient not the business;
- management of funds to be undertaken by a professional funds manager;
- stipulating the approved investment vehicles for monies paid eg. those that are prudentially regulated by other State or Commonwealth legislative regimes; and
- auditing of funds by an independent auditor to ensure that funds received have been dealt with in a proper manner and that there are sufficient funds to provide the funeral service when required.

### **DISCUSSION**

Funeral directors control substantial amounts of money prepaid by consumers for funeral services, and there is the potential for substantial losses to be incurred by consumers if a business were to fail. One of the more significant risks is the potential for misappropriation of consumers’ monies by funeral directors. Although, to date, there haven’t been any reported incidences of misappropriation, or evidence of any loss by consumers, it would be prudent to implement measures to ensure that monies paid by consumers towards a prepaid funeral are adequately protected. The most expedient way of doing this would be to prescribe that monies be invested into vehicles already regulated by APRA or into approved trust funds.

#### **4. Contractual detail**

An issue of some concern is where prepaid funeral contracts do not include the level of detail necessary to ensure that the funeral agreed to, and paid for, is provided. A consumer may have specified matters such as the type of coffin and the number of mourner's cars to be provided, however, the contract may describe the funeral service in subjective terms such as a "simple" or "deluxe" service. This lack of detail can create problems, as the recipient cannot monitor the service provided, and relatives organising the funeral may not be aware of the specific details.

The legislation in other Australian jurisdictions clearly defines the information that must be included in any prepaid funeral contract to ensure that there is no confusion over what has been agreed upon and paid for.

#### **SUBMISSIONS**

Greater detail in contracts was a provision that received strong support. Several respondents submitted that there was a need for all contracts to be in plain English. Standardisation of contracts, or standard clauses within contracts, received support from over half of the respondents.

InvoCare said that funeral directors sometimes leave the arrangement of certain matters, for example, flowers, until the death occurs. The reason for this is so that the family have a sense of participating in the funeral process. This is something that is disclosed in brochures so that consumers are aware that some items may not be included. This may result in claims of 'up-servicing' in some cases whereas this is not necessarily the intention of the funeral director.

This practice was supported by another funeral director who emphasised the importance of ensuring that the bereaved have some role to play in the arrangement of a funeral, because funerals are such an integral part of the grieving process.

Further, families may have an expectation that a prepaid funeral contract will cover all components of the funeral, including items that are not normally included, for example the purchase of a plot. This is a matter that should be able to be determined through reference to the prepaid funeral contract as the contract should detail the funeral requisites and any services contracted and paid for.

#### **5. Refund /cancellation provisions**

Another potential risk associated with prepaid funeral contracts, arises from the lack of provisions in some contracts to deal with unexpected situations, examples of which are given below:

- recipient moves interstate or overseas;
- transfer arrangements for funds if the funeral business becomes insolvent;
- late or missed payments (for instalment contracts or those with annual fees);
- death before final payment made (for instalment contracts); or
- next-of-kin unaware of contract and funeral arranged outside of contract.

## **SUBMISSIONS**

The AFSA's submission outlined one of the more important considerations in relation to the cancellation of contracts that are attached to funeral funds or funeral bonds. Investments with friendly society funeral funds or funeral bonds are life insurance policies designed for the sole purpose of meeting a person's funeral expenses and, as such, cannot be accessed or surrendered prior to death. This condition is necessary to meet the sole purpose test and also supports classification as an exempt funeral investment under the *Social Security Act 1991* and as an exempt financial product (ie. funeral expense policy) under the *Corporations Act 2001*.

This is important to understand with respect to cancellation provisions. A prepaid funeral contract may allow for cancellation of the contract for a funeral service, or transfer to another funeral director in certain circumstances, however, the money invested in a funeral fund cannot be withdrawn. The friendly society or (other such institution) can be notified of a cancellation or transfer of the contract, and appropriate arrangements and notations can be made in the customer record. However, a refund cannot be paid to the customer during their life. If a prepaid funeral contract were cancelled, the result would be that on the death of the client, the friendly society would pay the proceeds of the funeral bond to the estate of the client to be used toward the deceased client's funeral expenses.

## **DISCUSSION**

Prepaid funeral plans are often linked to funeral benefit plans or funeral bonds. For the most part, the consumer enters into two different contractual arrangements; a prepaid funeral plan with the funeral director and a contract with the financial institution with whom the benefit or bond is held. Any cancellation or refund provisions must take this into account.

Provisions should be made for refunds in the event that next-of-kin are unaware of existing funeral arrangements. The potential for next-of-kin not being aware of the existence of a prepaid funeral contract could be minimised by ensuring that next-of-kin or nominated executors of an estate are notified of the prepaid funeral contract at the time it is entered into. It would also be reasonable to recompense the funeral director with whom the prepaid funeral contract was made, to cover any administration costs associated with such a contract.

A Code of Practice should provide for this contingency and also ensure that contracts contain clauses which set out what happens in the event that; a recipient moves interstate or overseas; the recipient is late with, or misses, payments (for instalment contracts); or dies before the final payment is made.

## **SUMMARY**

In their submissions, most funeral directors suggested that there was room for improvement within the industry, particularly in regard to matters such as cooling-off periods, plain English contracts, greater detail in contracts, contract cancellation provisions, management of funds, safekeeping of records and auditing of funds. Some of the suggestions contained in these submissions would not be able to be implemented without introducing statutory regulation. It is not possible to rely on educational campaigns or voluntary membership of industry associations to prescribe matters such as where funds should be invested, cooling-off periods or standard contract clauses.

Many of the provisions suggested above can be considered to be good business practice and indeed many funeral directors already engage in such practices, including adequate disclosure to clients, appropriate management of funds and safekeeping of records. While the establishment of a Code of Practice under the Fair Trading Act may require considerable modifications and adjustment on the part of funeral directors, such changes are unlikely to be onerous.

## **RECOMMENDATION TWO**

**That a Code of Practice be prescribed under the *Fair Trading Act 1987* to regulate the following:**

- **the information that must be included in a prepaid funeral contract including provisions which outline what happens in the event of:**
  - **late or missed payments (for instalment contracts or those with annual fees; or**
  - **death of the consumer before final payment is made (for instalment contracts);**
- **a requirement for prepaid funeral monies to be invested in an approved funeral benefit fund or approved trust account;**
- **a requirement for funeral directors to give consumers who enter into a prepaid funeral contract, details in writing of the manner in which monies paid will be invested, including the type of investment, the terms and conditions applying to that investment and the timeframe in which the monies are to be invested;**
- **a cooling-off period of 30 days for prepaid funeral contracts;**
- **the obligations of the funeral director with respect to financial and other arrangements should the funeral director cease to carry on business before the contract is performed or be unable to perform the contract;**
- **the circumstances under which monies paid pursuant to a prepaid funeral contract should be refunded; and**
- **a requirement that funeral directors keep a register of all prepaid contracts entered into.**

## **RECOMMENDATION THREE**

**That regulation of prepaid funerals only apply to future contracts.**

## 8 CONCLUSION

The funeral industry provides an important service to the community. The ageing of the population, combined with the trend towards formal funeral planning by retirees, means an associated increase in the number of prepaid funerals entered into. Whilst such growth may be desirable for industry, it may also result in an increasing incidence of problems of the nature outlined in this report.

It also follows that, with an increase in the volume of prepaid funerals sold, a greater number of consumers will entrust their money to funeral directors. It is important that there are measures in place to ensure that these monies are managed appropriately and are still available for the original purpose for which they were intended.

It is incumbent upon Government to institute measures to protect consumers' investments and to reassure consumers that the service contracted and paid for, is the service that will be delivered. Increased protection will most likely result in increased consumer confidence which will, in turn, benefit the funeral industry.

## 9 APPENDIX

### 9.1 Appendix One - Submissions to the Issues Paper

Allan Mottram  
Association of Independent Retirees Limited  
Australian Friendly Societies Association  
Australian Funeral Directors Association  
Bowra & O'Dea Funeral Directors  
Bunbury Funeral Services  
Consumers' Association of WA (Inc)  
Council on the Ageing (WA)  
Dennis Craig  
Fred W. Jacobi  
Health Consumers' Council WA (Inc)  
Janet Grace Pine  
Ken Mealey (Invocare)  
Purslowe Tinetti Funerals  
The National Council of Women of WA Inc  
William Barrett & Sons Funeral Directors



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