



Government of **Western Australia**
Department of **Commerce**

CONSULTATION

**REGULATORY IMPACT STATEMENT
AND DISCUSSION PAPER**

PROPOSALS FOR THE REGULATION OF PREPAID FUNERALS

DECEMBER 2011





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Prepared by the Department of Commerce
December 2011

The Government is interested in receiving feedback on the issues presented in this paper. This document has been prepared in compliance with the Western Australian Government's requirement for Regulatory Impact Assessment and/or to facilitate public consultation on the proposed development of regulation for prepaid funerals.

After the consultation period concludes, all responses received may be publicly available on the Department of Commerce website. Please note that because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available to the public.

Written comments, queries and submissions should be forwarded no later than close of business **6 March 2012**.

Please provide your comments on the issues to: The Director, Legislation and Policy, Consumer Protection Division, Department of Commerce, Locked Bag 14, Cloisters Square, Perth, WA 6850 or by email to responses@commerce.wa.gov.au noting "Prepaid Funerals Submission" in the subject line.

When responding to questions contained in this paper, please also include the question number alongside your response.

Additional copies of this paper may be downloaded from:

<http://www.commerce.wa.gov.au/ConsumerProtection/Content/Resources/Consultations.html#State>

or collected from reception at Consumer Protection, The Forrest Centre, Level 7, 219 St George's Terrace, Perth.

Telephone queries may be directed to 1300 30 40 54 or (08) 92820987.

Disclaimer:

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1 EXECUTIVE SUMMARY

Western Australia (WA) currently has no specific legislation for the regulation of prepaid funerals as exists in most other States of Australia. Some protections exist under the *Australian Consumer Law*, but these mainly relate to unfair contract terms, providing a service with due care and diligence and unsolicited contracts and do not directly protect the investments of people who have prepaid large amounts of money towards their funeral. Regulation of the funeral industry is provided by general legislation applying to public health, the management of cemeteries, and the licensing of funeral directors.

The WA funeral industry is well regarded with the majority of funeral directors being professional, customer service oriented businesses. There are some concerns however, that the lack of formal regulation of the prepaid funeral industry could potentially expose consumers to financial risk. These concerns relate primarily to the investment and management of monies received as payment for prepaid funerals, by funeral directors who are not members of industry associations.

In WA, the Australian Funeral Directors Association (AFDA) is the peak industry body. The WA Division of AFDA advised Consumer Protection that about 80% of funerals conducted in WA are conducted by AFDA members. All AFDA members must adhere to AFDA's Code of Conduct, Code of Ethics and Prepaid Funerals Standard.

Self-regulation via membership of industry associations does not apply to the entire industry and funeral directors who are not AFDA members are under no compulsion to adhere to the AFDA guidelines. AFDA requests members complete an annual statutory declaration to confirm that they are abiding by AFDA's Code and Standard and seeks to conduct tri-annual visits to all member premises to ensure compliance with required standards, which may include the Prepaid Funeral Standard.

Of the estimated \$81.440m expended annually on funerals in WA, it is likely that around \$4.765m annually or around 6% is associated with prepaid funerals. It is estimated that total funds held for prepaid funerals by funeral directors in the metropolitan area could be in the order of \$24.255m, with around \$4.851m of this total (or around \$1m per annum) being held by funeral directors who are not AFDA members.

A previous consultation process conducted in 2006 resulted in a 2007 Final Report, which forms the basis of this Consultation Regulatory Impact Statement (C-RIS).

The five options proposed in this C-RIS are:

- Option 1: Maintain status quo.
- Option 2: Introduce a Code of Practice under the *Fair Trading Act 2010* (FTA 2010) to implement the recommendations of the 2007 Final Report.
- Option 3: Introduce a Code of Practice under the FTA 2010 combining the recommendations and the AFDA requirements.
- Option 4: Amend the informal Funeral Directors Code of Conduct applied by the Metropolitan Cemeteries Board.
- Option 5: Introduce specific legislation for prepaid funerals.

At this stage, the preferred option is Option 3, as it is considered that this would achieve the Government's objectives of protecting consumers' interests without imposing new substantial costs on industry.

2 BACKGROUND TO PREVIOUS CONSULTATION

The review of the prepaid funeral industry in Western Australia (WA) began with the public release of an Issues Paper in July 2006 for a four month consultation period. The Issues Paper was widely distributed to stakeholders including WA funeral directors, industry groups, aged care providers, retirement villages, health care groups, various government agencies, social services organisations and seniors associations.

There were 17 submissions received in response to the Issues Paper and these were used to inform the policy recommendations contained in the 2007 Final Report, which was made available on the Consumer Protection website and released to key stakeholders, comprising industry, industry associations, consumer organisations and respondents to the Issues Paper, in early 2008. The Final Report recognised that the potential risks to consumers were sufficiently high as to warrant statutory intervention and recommended that a mandatory Code of Practice be established under the Fair Trading Act, to regulate the conduct of the prepaid funeral industry.

Background and submissions to the Issues Paper and the Recommendations made in the Final Report can be found at Appendix 1 and Appendix 2.

The full Final Report is available on the Department of Commerce website at http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Reports/prepaid_funerals.pdf

2.1 Consultation

2.1.1 The Regulatory Impact Assessment process

In WA, regulatory impact assessment requirements apply to certain policy proposals for new and amending legislation. The Regulatory Gatekeeping Unit requires the development of a regulatory impact statement for consultation purposes and to inform decision making. This Consultation Regulatory Impact Statement (C-RIS) is the first stage of the process, with a Decision RIS required to follow.

2.1.2 *Fair Trading Act 2010*

On 1 January 2011, the *Australian Consumer Law* (ACL) came into effect throughout Australia. The ACL is a nationally uniform consumer law, replacing a wide range of existing national and State and Territory consumer laws. In WA, the ACL has been implemented by way of the *Fair Trading Act 2010* (FTA 2010).

The options provided in this C-RIS for the future regulation of prepaid funerals, include the making of a Code of Practice under the FTA 2010. The FTA 2010 provides that for the purposes of preparing a draft Code of Practice, the Commissioner for Consumer Protection must arrange for consultation with, and invite submissions from, persons and organisations that the Commissioner considers would have an interest in the terms of the proposed draft code.

This C-RIS is therefore intended to facilitate the consultation required under the FTA 2010 for the purposes of preparation of a draft Code of Practice for submission to the Minister for Commerce, for consideration.

3 STATEMENT OF THE ISSUE

Prepaid funerals are not covered by specific legislation in WA. In this regard WA is out of step with the other jurisdictions, which have enacted specific legislation as a result of consumer complaints and market failures, to regulate various aspects of the prepaid funerals sector. However, such specific regulation of the sector may not be as warranted in WA, due to the greater proportion of AFDA members in this State in comparison to other jurisdictions. AFDA members would be required to comply with the AFDA Prepaid Funeral Standard, if they do offer prepaid funeral services.

3.1 Context of the issue

3.1.1 Funeral Services

Preplanning a funeral allows consumers to choose in advance the type of funeral service they wish to have. There are many different components to a funeral service and different funeral directors offer different prepaid funeral packages. Some funeral directors may offer a complete service including liaison with the Metropolitan Cemeteries Board (MCB), a statutory authority of the Government of WA, on matters such as the purchase of a plot and/or obtaining a cremation or an interment agreement, whereas others simply focus on the provision of the 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.

3.1.2 Prepaid Funeral Contracts

A prepaid funeral agreement is generally in the form of a written contract between the future recipient of the funeral and a funeral director. It usually provides for a standard funeral as a minimum service, however, consumers may choose to prepay a range of products and services.

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

- the investment, at the discretion of the funeral director, of the money prepaid 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 or trust, and provides the contracted funeral services at no further cost when the consumer dies. This tends to mean in practice, that the funeral director retains any interest payments earned by the prepaid funds, and bears any costs of inflation in future provision of the contracted services.

It is unclear if all prepaid funeral contracts specify all products and services to be included in the funeral package. It is also unclear if the funeral specified in the contract is, at the time of delivery, always provided at no extra cost to the family of the deceased. The Department of Commerce has received no complaints in this regard. A prepaid funeral is generally purchased in a single lump sum upfront payment but may occasionally be purchased by instalments over a year or two.

3.1.3 Structure of the Industry

In recent years, there has been a trend towards a high level of market concentration in the funeral industry. Market concentration describes the extent to which the larger operators in an industry take up a significant portion of the market share. In WA, it is now common for a parent company to operate a number of funeral businesses, which operate under different trading names.

For example, Invocare, a publicly listed Australian company, is the parent company which operates a number of subsidiary businesses which then trade under their own business name. In addition to a number of other funeral related services, Invocare markets a prepaid funeral plan via approximately 180 funeral businesses Australia-wide¹. Invocare has reported that it estimates its current Perth and surrounds market share in the funeral industry to be 48%², while also maintaining strong market share in NSW, Victoria, Queensland and South Australia.

AFDA estimates that around 80% of all funerals conducted in WA (throughout the metropolitan and regional areas combined) are conducted by AFDA members. These funeral directors agree to adhere to AFDA's Code of Conduct, Code of Ethics and Prepaid Funeral Standard (outlined at Option 1 below), which may address many of the risks faced by consumers due to the lack of formal legislation.

AFDA members are predominately located in the Perth metropolitan area with some representation in the larger regional centres like Bunbury and Geraldton. AFDA advises that the proportion of AFDA members is higher in the Perth region.

The MCB licences funeral directors who conduct funerals in the cemeteries within its jurisdiction. The MCB has advised that around 80% of funerals conducted in WA, are conducted in the Perth metropolitan area, and are therefore conducted by funeral directors licenced by the MCB and who adhere to the MCB's Code of Conduct (Appendix 5) as a condition of their funeral director's licence.

The number of funerals conducted, like the number of prepaid funerals sold throughout Perth and regional WA, is population and demographic driven and therefore the majority of funerals occur in Perth and its surrounding areas. There is no record however, of where in WA prepaid funerals are sold and in which region of the State.

3.1.4 Value of the current PPF market

There are no accurate figures available to determine the amount of money held by funeral directors for prepaid funerals in WA.

In 2010, there were 12,927³ deaths recorded in WA. From an estimated average funeral cost of \$6,300, this could mean that total funeral costs in WA would be in the vicinity of \$81,440,100 annually.

The MCB offers prepaid cremation and interment agreements which can be purchased by the public direct from the MCB or by a funeral director on behalf of their customers.

It cannot be determined however, if a funeral director who purchases a prepaid cremation or interment agreement from the MCB is simply assisting a customer by placing the order, or if a prepaid funeral contract exists between the funeral director and the customer.

The MCB has indicated that it currently holds \$5.5m in prepaid cremation agreements, with a further \$1.5m in prepaid interment agreements (burials), and that this combined amount of around \$7m increases by about \$100,000 per month.

¹ Invocare – Investment in Australia www.invocare.com.au 16 May 2011

² InvoCare Limited, Macquarie Connections, Australia Conference 2011, Sydney

³ www.dotag.wa.gov.au - statistics

The average cost of a cremation service at the MCB is around \$968, while the average cost of a burial is around \$1,177. It stands that the MCB has sold around 5,682 prepaid cremations, and around 1,274 prepaid interments, or around 6,956 services in total. Around 18% of these prepaid services are interments, and around 82% are cremations, so an indicative MCB service cost is in the order of \$1,006.

Given that the fees charged by the MCB increase annually, it is considered unlikely that funeral directors would accept consumers' payments at today's prices, including for prepaid services from the MCB, and withhold the purchase of the MCB service until needed. It is likely that funeral directors purchase the MCB service at the time of selling the prepaid funeral to a customer rather than deferring the purchase until a later time.

From an estimated average funeral cost of \$6,300, the funeral director would therefore give an estimated average amount of \$1,006 to the MCB, retaining around \$5,294 in consumers' funds, per prepaid funeral.

The MCB sold around 700 prepaid interment and cremation agreements in the 2010-2011 financial year. Of these, 534 (76%) were paid through a funeral director on behalf of a customer, with the remaining 166 (24%) paid direct by a customer to the MCB. This indicates that funeral directors could accrue around \$2.827m in consumers' funds in a financial year, for prepaid services.

Available MCB records show that in total since 1996, 66% of prepaid cremation and interment agreements sold by the MCB were sold to funeral directors, with the remaining 34% sold directly to consumers. If 66% of the total funds held by the MCB for prepaid interment and cremation agreements are related to prepaid funerals sold by funeral directors, then it can be estimated that around \$4.62m held by the MCB is associated with such prepaid funerals.

If the cost of the MCB's services are around 16% of total funeral costs, then total funds received for prepaid funerals by funeral directors in the metropolitan area could be in the order of \$24.255m, increasing in the order of \$397,050 per month or \$4.765m annually.⁴ This appears reasonable, as it implies that, of the estimated \$81.440m expended annually on funerals in WA, around \$4.765m or around 6% is associated with prepaid funerals.

WA's seniors population, that is people aged 60 years and over, was estimated at 383,044 in 2009, making up around 17% of the State's population. With the ageing of the population, this is expected to rise to around 24% by 2031⁵.

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

3.2 Related products

Other than prepaid funerals purchased from a funeral director, other products are also available within the prepaid funerals sector.

In most cases, irrespective of the contracted product, delivery may be many years after it is paid for, and the consumer who signs the contract cannot monitor the standard of delivery.

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 any effect of inflation on funeral costs, so that there is sufficient money to meet their actual funeral costs at the time of death.

⁴ If the MCB's combined amount of around \$7m increases by about \$100,000 per month, the MCB would be selling around 114 services per month, of which around 66% or 75 services worth in the order of \$66,000 per month are associated with funeral directors. The amounts held by funeral directors for prepaid funerals, could therefore be increasing in the order of \$397,050 per month.

⁵ Department for Communities – Annual Report 2009-2010 P.25

In most cases, funeral directors themselves invest prepaid funeral monies into some form of financial product, such as a funeral bond or other investment product. Such products are also available for individual purchase by consumers.

There is some overlap between the terminology used, but generally the products detailed below are the main funeral products available in WA.

3.2.1 Funeral Insurance

Funeral insurance is regulated under the Commonwealth *Life Insurance Act 1995* and is usually purchased directly from an insurer without any involvement by a funeral director. The Australian Prudential Regulation Authority supervises life insurance companies authorised under the Life Insurance Act, to ensure that these companies are able to meet their obligations to policy holders. The Australian Securities and Investments Commission regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.

Funeral insurance involves small regular ongoing contributions, made by a consumer, for a specified cash payment on death. The insurance premiums may increase over the years to keep up with inflation or other factors, and premiums generally increase with the age of the contributor. Like most forms of insurance, the money paid over the years cannot be refunded if the insurance policy is cancelled, and no cash payment is due to the consumer if the premium payments are interrupted. Over time, the monies invested in funeral insurance may be significantly more than the cost of a funeral.

The WA division of AFDA has indicated that it appears that the funeral insurance industry is growing while the value of prepaid funeral plans made direct with a funeral director has remained about the same or slightly decreased. Marketing of funeral insurance through various forms of advertising has markedly increased in recent times with more insurance companies offering specific funeral insurance.

3.2.2 Funeral Bonds

A funeral bond is a form of investment that allows the consumer to set aside their own money for a funeral, which is held as a bond and paid when the funeral is required. The bond is payable at the time of death and is not refundable, although it is generally transportable (should the customer move interstate, for example). The interest is generally paid to the bond holder.

Funeral Bonds are often invested with a Friendly Society and are essentially savings accounts where consumers can keep their money toward funeral costs. The bond is usually kept in the name of the customer. Some funeral directors may also offer this on a customer's behalf.

Funeral 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, assets which Centrelink do not assess under the assets test include the value of a cemetery plot for an aged pensioner and their partner, and either:

- prepaid funeral expenses; or
- up to 2 funeral investments/bonds that cost no more than \$11,000 in total.

3.2.3 Pre-purchased funeral sites

Consumers may pre-purchase a grave, an interment, a cremation or a memorial placement direct through a cemetery or crematorium. The MCB for example, sells prepaid agreements for such services to the public direct, and to funeral directors acting for members of the public.

Some funeral directors may arrange prepaid cremation or interment agreements with the cemetery or crematorium as part of the agreement they have with the consumer. Other funeral directors may limit prepaid arrangements to only include aspects they have control over, such as personal services and the coffin and may not include the burial or cremation.

3.3 Potential problems arising out of the status quo

In the face of other States' specific legislation, WA's reliance on industry self-regulation and the lack of formal regulation governing prepaid funerals may be creating an unacceptable risk to consumers in this State.

Currently, the risks associated with misappropriation of funds, or non-delivery of services, are borne by (generally elderly) consumers of prepaid funeral services, and their families.

Consumer Protection records indicate that from 2006 to September 2011, 24 complaints about the funeral industry have been received. Of those complaints, 7 relate to prepaid funerals and include matters such as prepaid funeral contracts and insurance plans. The complaints against funeral directors and their prepaid funeral agreements were generally conciliated successfully except in the case of a business changing hands and the new owner would not honour a prepaid funeral agreement without a \$250 administration fee being paid by the customer.

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.

3.3.1 Problems identified via submissions to the 2006 Issues Paper

The analysis of submissions to the July 2006 Issues Paper revealed a number of concerns with regard to practices within the prepaid funeral industry, including:

- The lack of any composite register or record of prepaid funeral schemes makes it difficult for next of kin to determine whether a deceased person had entered into a prepaid funeral contract.
- Money paid for a prepaid funeral may sometimes be invested in the name of the funeral director, rather than the consumer. The consumer's money could be lost if the funeral director goes out of business as there is no register of prepaid funerals and no contractual nexus between the consumer and financial institution.
- The contract to purchase a prepaid funeral may not include sufficient detail to ensure the services agreed to are provided.
- The lack of a cooling-off period for contracts is of concern, particularly as elderly consumers may be talked into signing a contract for prepaying their own funeral, particularly at vulnerable times, such as when organising the funeral of a spouse.
- Contracts may not take into account events such as a consumer moving interstate or overseas. Contracts that require payment by instalments may not include provisions for late or missed payments and what will occur if the contributor dies before full payment has been received.

- Contracts may include provisions to cancel the contract under certain circumstances, however, this may only allow for a refund of the contributions paid. This may appear unsatisfactory considering that the funeral fund could have had access to the funds for investments for many years.

3.3.2 Financial risk

The absence of regulation of prepaid funeral funds in WA could mean that there is a significant degree of risk to monies paid by consumers towards prepaid funeral contracts.

The most significant risk relates to the potential for misappropriation of consumers funds by funeral directors. There have been no reported incidences of misappropriation, or evidence of any loss by consumers in WA. A number of the submissions to the Issues Paper raised concerns that funeral directors may be investing payments for prepaid funerals in the name of the funeral business, rather than in the name of the recipient, with no contractual connection between the consumer and the financial institution. This practice would place the consumer's money at risk if a business becomes insolvent.

Some funeral directors in WA invest consumers' prepaid funeral money into independent funeral bonds. Others place money received into established trust funds that are financially independent to business operating accounts. 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.

3.3.3 Non-provision of services

As the funeral service is often supplied many years after the contract is entered into, 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 take over the prearranged plans and 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 may arise when the level of detail specified on the contract is inadequate.

3.3.4 High pressure selling tactics

There is currently no cooling-off period for prepaid funeral contracts entered into in WA, unless they are sold door-to-door or through an unsolicited phone call.

Consumer Protection has not received formal complaints from consumers regarding high-pressure selling tactics by funeral businesses for prepaid funerals.

3.3.5 Misleading advertising

There are some concerns regarding the advertising of prepaid funerals. Promotional material may include brochures, websites, television and radio advertising and service directories. In one reported case in WA, a 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. This highlights the potential for mismanagement of clients' funds. Consumers should be confident that their money will be invested appropriately and in keeping with advertised claims.

3.4 Current legislative requirements on the Western Australian prepaid funerals sector

Limited consumer protection provisions apply via the ACL, such as provisions regulating false and misleading conduct, unfair contract terms and consumer guarantees about services being of the nature and quality reasonably expected to be achieved. A number of these remedies will have limited application in the event that prepayments have been misappropriated and companies/directors are insolvent.

Under Schedule 2 of the ACL, a term of a consumer contract is unfair if:

- a) it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
- b) it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
- c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

In determining whether a term of a consumer contract is unfair, a court may take into account such matters as it thinks relevant, but must take into account the extent to which the term is transparent and the contract as a whole.

Only contracts entered into after 1 January 2011 come under the ACL provisions. Contracts entered into prior to 1 January 2011 are provided for under the FTA 1987, which includes less stringent protections around contract terms.

3.5 Regulation of prepaid funerals in other jurisdictions

Legislation specific to prepaid funerals was enacted in other Australian States as a result of consumer complaints and market failures. Prepaid funeral plans are covered by specific legislation in New South Wales, Victoria, Queensland, South Australia and Tasmania.

Appendix 4 provides a comparison of the provisions in the other States. There are common elements throughout the various legislations, with the general requirements being:

- 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, at arms length from the individual funeral director;
- certain records must be kept;
- the funeral director must keep a register of prepaid contracts; and
- annual reports must be prepared.

National Competition Policy Reviews of legislation regulating prepaid funerals in NSW and QLD found that the original objectives of the legislation still apply. As a result of the reviews, both States amended their legislation to further protect the interests of consumers.

3.5.1 New South Wales

In NSW, funeral funds are regulated by the *Funeral Funds Act 1979* (NSW). The 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 Act aims to protect pre-payments made by consumers and to ensure that funeral services agreed to under a prepaid contract are supplied as agreed.

A Funeral Information Standard to address concerns about the lack of transparency in relation to funeral costs and the lack of available information on lower cost funeral options was introduced in February 2009.

3.5.2 Queensland

In Queensland, funeral funds are regulated by the *Funeral Benefit Business Act 1982* (Qld). The objective of the Act was to protect the funds of persons who have prepaid their funeral expenses. The Act requires prepaid funeral funds to be lodged with a funeral benefit business trust fund account. The Act does not regulate funeral directors or the industry as a whole.

Changes have been made to the Act to increase competition and consumer protection within the industry. These changes include a 30 day cooling-off period and the compulsory provision of a Client Care Statement.

3.5.3 Victoria

Victoria introduced the *Funerals (Prepaid Money) Act 1993* (Vic) to protect consumers entering into prepaid funeral contracts. Following the establishment of a Parliamentary Committee to review the entire funeral industry in 2006, the *Funerals Act 2006* was introduced and the *Funerals (Prepaid Money) Act 1993* was repealed.

The current Act aims to ensure that consumers are provided with clear, accurate information on funeral prices and have access to appropriate complaints handling mechanisms. The Act establishes a register of funeral providers operating in Victoria, which is accessible to the public via the Consumer Affairs Victoria website, and empowers the Director of Consumer Affairs Victoria to establish a public register of prepaid funeral contracts if this should be considered necessary in the future.

3.5.4 South Australia

Prepaid funerals in South Australia are regulated by the *Fair Trading (Prepaid Funerals Code of Practice) Regulations 2011* (SA). Funds are not required to be registered, however, there are restrictions on where monies may be invested. The Code explicitly outlines the details to be contained in any prepaid funeral contract.

3.5.5 Tasmania

The Tasmanian *Prepaid Funerals Act 2004* (Tas) 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. The Act requires that where a person conducting a funeral business receives prepaid funeral funds, they must establish a funeral trust into which all funds are deposited.

Issues for Consultation

1. Is there currently an unacceptable risk for WA consumers and their prepaid funeral funds?

When considering this issue, the following questions could be taken into account:

2. Is WA's lack of specific regulation causing problems for consumers or for providers of prepaid funerals in WA?
3. Is legislation (or some other option for addressing the issues) warranted in WA?
4. If legislation is warranted, what form should it take?
5. How important is it that WA's regulation aligns with other States?
6. What are the consequences of government not taking any action on this issue?
7. Is the status quo, of voluntary industry self-regulation, working in WA?
8. How large or small is the problem? Is it significant?

4 OBJECTIVES

This C-RIS aims to determine whether the unacceptable risk identified in the 2006-07 review remains, and to assess the continued relevance of the 2007 Final Report recommendations and/or determine whether an alternative form of regulation may be preferable in addressing any unacceptable risk.

Any regulatory intervention in the sector, or any retention of the unregulated status quo, would be aimed at achieving the following objectives. These objectives arise out of the issues identified as requiring address in the 2006-07 review and out of the legislation of other jurisdictions:

- protect prepaid consumer funds in the event of funeral director insolvency or business closure;
- provide certainty as to the treatment and investment of prepaid consumer funds;
- provide certainty around the goods and services agreed to and paid for by the consumer;
- enable next of kin to ascertain whether a prepaid funeral has been purchased; and
- provide certainty as to the treatment of late or missed payments (where instalments apply), and as to the refund or otherwise of money paid, in certain circumstances such as moving interstate, cancellation, or death prior to the full agreed purchase price being paid.

5 OPTIONS TO ADDRESS THE ISSUE

The options presented below are not exhaustive. There may be additional options which warrant consideration, but which have not been identified. If you consider an alternative option not listed here to be preferable, please include it in your submission.

5.1 Option 1: Maintain status quo

The current self-regulation of a large portion of the WA funeral industry may be considered sufficient to achieve the objectives outlined above. Under a self-regulatory model, the primary responsibility for the conduct of industry members would continue to lie with industry members and industry associations.

Current protections include:

- industry self-regulation through the Code of Ethics and associated Prepaid Funeral Standard administered by AFDA;
- limited protections within the ACL, such as provisions related to false and misleading conduct, and unfair contract terms; and
- self-regulation through other industry bodies, such as the National Funeral Directors Association, which requires member firms to be 100% Australian owned and be family owned and operated

5.1.1 AFDA self-regulation

AFDA is the major voluntary funeral director's association in WA. AFDA members in each State and Territory agree to honour the spirit and provisions of AFDA's voluntary Code of Ethics, in addition to complying with AFDA's Prepaid Funeral Standard. A copy of the AFDA Code of Ethics is provided at Appendix 3.

The AFDA Prepaid Funeral Standard states that:

- a written contract must be provided by the funeral director to the client clearly detailing the funeral requisites and services contracted and paid for;
- the price of each prepaid funeral should be fixed;
- 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;
- the prepaid funeral plans and associated procedures must comply with the relevant Commonwealth and State Legislation in each State in which it operates; and
- in the event that an AFDA member is convicted in a court of law in relation to a charge of improper practice involving a prepaid funeral contract, National Council shall take action to revoke the membership of the particular member in accordance with the association's constitution.

These standards are guidelines for AFDA members and AFDA requires that its members complete an annual statutory declaration where they confirm that they are abiding by the Code of Ethics and Prepaid Funeral Standard.

AFDA conduct tri-annual visits to all member funeral director premises and this may include ensuring compliance with the AFDA Code and Standard. If any non-compliance with the AFDA Code or Standard is found, generally AFDA will issue a warning, with a timeframe provided for rectification. If the non-compliance remains, AFDA membership could be revoked. The WA division of AFDA have reported that there have been no compliance issues in the past related to their Prepaid Funeral Standard.

Around 20% of funerals conducted in WA are conducted by funeral directors who are not members of AFDA and as such are not bound by these particular industry standards. Non AFDA members have an approximate 20% market share across all funerals conducted which, in dollar terms, could be as much as \$16.288m of the estimated \$81.440m in annual total funeral costs in WA.

If 6% of funds expended annually on funerals, are associated with prepaid funerals, then around \$1m annually in prepaid funeral funds are held by funeral directors who are not members of AFDA. However, industry members indicated that these smaller businesses may not in some cases, offer prepaid funeral services.

5.2 Option 2: Introduce a Code of Practice under the FTA 2010 to implement the recommendations of the 2007 Final Report

Option 2 is that a mandatory Code of Practice, as recommended in the 2007 Final Report, be established. The Final Report recommended that a legally binding Code of Practice apply to future contracts for prepaid funerals, to regulate:

1. the information that must be included in a prepaid funeral contract including provisions which outline what happens in the event of:
 - a) late or missed payments (when paying by instalments or for contracts with annual fees); or
 - b) death of the consumer before final payment is made (when paying by instalments);
2. a requirement for prepaid funeral monies to be invested in an approved funeral benefit fund or approved trust account;
3. 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;
4. a cooling-off period of 30 days for prepaid funeral contracts;
5. 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;
6. the circumstances under which monies paid pursuant to a prepaid funeral contract should be refunded; and
7. a requirement that funeral directors keep a register of all prepaid contracts entered into.

(See Appendix 2 for a full reproduction of the recommendations of the 2007 Final Report).

A Code would be made under the FTA 2010. The Department of Commerce's Consumer Protection Division, which administers the FTA 2010, would enforce the standards stipulated in any such Code.

5.2.1 Consultation required for the development of a Code of Practice under the FTA 2010

The consultation requirements for developing a Code of Practice are detailed in section 44 of the FTA 2010. These requirements include that the Commissioner for Consumer Protection must consult with, and invite submissions from, the following:

- principal organisations that represent those suppliers that are likely to be affected by the terms of the draft code of practice; and
- principal organisations representing consumers.

A Code of Practice made pursuant to the FTA 2010 will expire after 3 years of it being made, if the Code of Practice is not reviewed within that time.

The FTA 2010 sets out the process that takes place if a person appears to have breached the Code of Practice. Where it appears to the Commissioner that a person has carried on business in contravention of a prescribed Code of Practice, the Commissioner may apply to the State Administrative Tribunal (SAT). The SAT may make either or both of the following orders:

- a) an order that the person cease contravening the code; and/or
- b) an order that the person rectify any consequence of that contravention.

The SAT can also make orders where the contravention is by a body corporate. Breaches of such orders carry a penalty of a fine of \$50,000.

Establishing a mandatory Code of Practice under the FTA 2010 to implement the recommendations of the 2007 Final Report, would be a regulatory option.

5.3 Option 3: Introduce a Code of Practice under the FTA 2010 combining the recommendations of the 2007 Final Report and the AFDA requirements

There are similarities between AFDA's Code of Ethics and Prepaid Funeral Standard (at Option 1) and the proposed mandatory Code of Practice recommended in 2007 (at Option 2). AFDA's Code and Standard largely accord with the 2007 Final Report recommendations, except with regard to the Final Report's recommendations around the keeping of a register of prepaid funeral contracts and for cooling-off periods.

Appendix 4 provides a comparison table of the AFDA requirements and how they compare with the 2007 Final Report recommendations.

It is considered that the requirement for formal cooling-off periods may now not be necessary as most people approach funeral directors with some forethought of the service they require. Additionally, in the event of an unsolicited agreement, a 10 day cooling-off period, during which time a consumer may reconsider the purchase, applies under the ACL.

Option 3 is to formalise the current requirements of AFDA's Code and Standard into a mandatory Code of Practice under the FTA 2010, so that all funeral directors are bound by the same Code and Standard and not just AFDA members.

The formal Code would also incorporate the following 2007 recommendations:

- that contracts be required to make provision for late or missed payments in the case of instalment arrangements, and include arrangements for refunds if people move out of the service area, or for other personal reasons. It is not proposed to mandate the terms of contracts in these regards, just that contracts will be required to be clear around these issues; and
- that a register be kept of prepaid funeral contracts. The register itself may be kept by an individual funeral director as recommended in the 2007 Final Report, or may be kept centrally at an industry level, either by the Department of Commerce or for example, by the AFDA or the MCB.

This option would be a formal regulatory option.

5.3.1 Register of Prepaid Funeral Plans

The 2007 Final Report recommended that a Code of Practice require a funeral director to keep an individual register of all prepaid funeral contracts entered into. The register could instead be kept centrally. Issues around the register are open for consideration under this Option 3, and under Option 2 and Option 5.

The current lack of any central register or mandatory record of prepaid contracts makes it difficult for next of kin to determine whether a deceased person had entered into a prepaid

funeral contract. It appears that currently, some funeral directors may keep their own register, but this means that someone trying to find out if a prepaid contract is in place would need to contact a number of funeral directors to find out that information.

Submissions to the Issues Paper suggested that some form of register for prepaid funeral contracts should be available. The Consumers' Association of Australia suggested a national register that can be accessed by funeral directors and others is needed. It is possible that families may be unaware that a family member had a prepaid contract in place or had made arrangements in another State.

AFDA have indicated that they are unaware of any issues with people needing to find out if a prepaid funeral has been formed with a funeral director in WA. Consumer Protection has not received any formal complaints from customers about this issue.

Prepaid funeral registers in other Australian jurisdictions

Various registers are maintained in other States of Australia. These may include registers of prepaid funeral arrangements or registers of approved funeral trusts or approved funeral funds. There do not appear to be any central registers of people who have entered into a prepaid funeral plan with a funeral director maintained in other States, although in most jurisdictions, funeral directors are required to keep a register of prepaid funeral contracts entered into between themselves and their customers.

Appendix 4 provides details about the various registers maintained in other Australian jurisdictions.

5.4 Option 4: Amend the informal Funeral Directors Code of Conduct applied by the Metropolitan Cemeteries Board

Funeral directors' licences are issued under the *Cemeteries Act 1986* (Cemeteries Act). The Cemeteries Act is administered by the Department of Local Government.

The Cemeteries Act provides for the establishment of cemetery Boards to perform various functions with respect to a certain cemetery or cemeteries, and for funeral directors' licences to be issued by those Boards for use in their respective cemeteries.

The Cemeteries Act does not deal with prepaid funerals, nor does it generally cover money held in trust by funeral directors. The Cemeteries Act does not prescribe funeral directors' licence requirements and there is no generic licence issued for funeral directors in WA.

A funeral director's licence is issued by the relevant Board and is valid for the conduct of funerals at the cemetery or cemeteries specified in the licence. The licence may be issued to an applicant who satisfies the relevant Board that he is of good repute and fit to hold a funeral director's licence, amongst other things. The MCB currently issues funeral directors' licences for the conduct of funerals at cemeteries at Fremantle, Guildford, Karrakatta and Midland and the Pinnaroo Valley and Rockingham Regional (Baldivis) memorial parks.

An informal Code of Conduct (Appendix 5) is annexed to licences the MCB issues. The Code of Conduct is not referred to in the Cemeteries Act, and is not subsidiary legislation, but was introduced by the MCB in the 2007-08 financial year. It is largely consistent with AFDA's Code of Ethics, but does not include items covered by AFDA's Prepaid Funeral Standard. Compliance with the MCB's Code of Conduct is a condition of the issue and retention of a funeral director's license issued by the MCB.

In adhering to the MCB's Code of Conduct, funeral directors agree to a number of conditions including:

- not to engage in any unprofessional conduct of a character likely to deceive, defraud or harm the families they serve in the course of providing professional services; and
- to provide information concerning the range and price of services available and the functions and responsibilities accepted.

Any breach of the MCB's Code of Conduct constitutes a breach of the licence and may be investigated further. This could lead to the licence being cancelled or suspended. There may, however be some enforcement limitations in practice, as the MCB licences only parent companies but not subsidiaries. There appears to be a lack of suitable penalties under the Cemeteries Act and By-laws, with infringement notices restricted to a maximum of \$50.00. As such, the most suitable remedy for breaches of the MCB's Code of Conduct appears to be cancellation of a licence, which is also problematic as it would punish all subsidiaries including those that had not breached the Code.

In addition to the MCB, there are a number of regional Cemetery Boards throughout WA, including at Albany, Bunbury, Geraldton and Kalgoorlie/Boulder. Conduct of funerals at these cemeteries, by funeral directors licensed by the relevant regional Cemetery Boards, need not proceed in accordance with the MCB's Code of Conduct.

Other WA country cemeteries are generally administered by the relevant local Shire. Funeral directors' licences are in these cases generally issued by the relevant local shire, and licensees need not accord with the MCB's Code of Conduct.

As the Cemeteries Act does not prescribe the content or form of funeral directors' licences, all Boards and local shires are free to use their discretion in the licences and the applicable conditions of the licences they issue. Furthermore, as funeral directors' licences are issued by various Boards and local shire authorities throughout WA, various by-laws and/or local laws may be applicable. Varying conditions may therefore be imposed upon funeral directors, depending on which board or local shire issues their licence. A large funeral director operator may be subject to a number of different licensing regimes and their applicable fees, conditions and/or codes of conduct.

The MCB currently licences 23 funeral directors and it considers that approximately 80% of funerals conducted in WA would be at cemeteries within their jurisdiction. Therefore, the majority of the population of WA would be covered if the MCB's Code of Conduct is expanded to include prepaid funerals.

The MCB's Code of Conduct could be expanded to include provisions similar to those proposed in Options 2 and 3. This option would be a quasi regulatory option. While the Cemeteries Act requires a funeral director's licence be issued, the MCB's Code of Conduct is an annexure to the licences issued by the MCB and not a formal requirement under the Act.

5.5 Option 5: Introduce specific legislation for prepaid funerals

Specific legislation may provide for greater penalties than provided by any Code of Practice established under the FTA 2010 or any informal quasi-regulation.

Legislation would likely be in the form of an Act similar to those in place in other States of Australia. An Act could be modelled on the provisions of other jurisdictions, or some combination of the current requirements of AFDA's Code and Standard and the 2007 Final Report recommendations detailed above.

There is some similarity between this Option 5 and the mandatory Code of Practice at Option 3, as both options would be subject to Parliamentary scrutiny prior to becoming law. The main difference between the options is that the implementation and any future amendments to an Act, under Option 5, would be a longer process.

The Comparison Table at Appendix 4 compares the provisions of other jurisdictions with the provisions recommended in the 2007 Final Report and the provisions of AFDA's Code of Ethics and its Prepaid Funeral Standard.

6 IMPACT ANALYSIS

6.1 Option 1: Maintain status quo

Advantages

- In WA, 80% of funerals are conducted by members of AFDA and they already agree to abide by AFDA's Code of Ethics and Prepaid Funeral Standard.
- Self-regulation offers considerable flexibility. Changes to an industry's self-regulation can be made quickly, in line with changes occurring within the industry and at a broader level.
- If industry members commit to the requirements of self-regulation, they may be more likely to have an interest in complying with their own rules.
- Self-regulation may sufficiently address the community's need for information about the quality of service in the industry and enhance consumer confidence in dealing with the members of the association.
- Self-regulation keeps administration and compliance costs to a minimum.
- New costs to government and industry would be nil.
- A number of submissions to the Issues Paper stated that the low incidence of complaints received endorsed the effectiveness of the status quo.

Disadvantages

- Self-regulation is difficult to enforce effectively. Self-regulation may not require industry members to maintain the agreed standards of service delivery, or enable the enforcement of sanctions against any member who fails to comply with these standards. The manner in which industry self-audits are conducted is not clear.
- There may be 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. Industry may prefer to have government regulation to provide a level of confidence.
- The concerns raised in the Issues Paper would remain. For example, the risk to consumers of losing their prepaid funeral funds should a funeral director go out of business.
- In WA 20% of funerals are conducted by non-members of AFDA and they are under no obligation to adhere to AFDA's Code and Standard. To the degree that non-member funeral directors operate outside AFDA's requirements, the security of funds paid in advance by consumers may not be guaranteed.
- There is a power imbalance between consumers of prepaid funerals and prepaid funeral operators. Consumers tend to be older people on relatively fixed incomes, and may 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 as has occurred in other States.

6.1.1 National differences in proportionate AFDA membership

Compliance with the AFDA Codes and Standard are agreed to by all funeral directors nationally who are AFDA members. However, other jurisdictions have enacted formal regulation for prepaid funerals, in addition to the AFDA Code and Standard and the Code of Ethics of other associations such as the National Funeral Directors Association.

Formal regulation may not be warranted in WA due to the greater proportion of association members in the State. For example, the Department understands that around 80% of funerals in WA are conducted by AFDA members, whereas in NSW/ACT, around 44% of funerals are conducted by AFDA members.

Issues for Consultation

9. What are the impacts of Option 1?
10. Is the existing industry self-regulation via AFDA's Code of Ethics and Prepaid Funeral Standard sufficient to provide certainty to consumers as to the provision of services, the treatment and investment of prepaid money, and the other matters detailed at "Section 4 – Objectives" above?
11. Does the greater proportionate AFDA membership in WA mean that self-regulation is sufficient and that formal Government intervention is not warranted?
12. Does AFDA self-regulation provide sufficient assurance that the industry standard is being applied?

6.2 Option 2: Introduce a Code of Practice under the FTA 2010 to implement the recommendations of the 2007 Final Report

A legally binding Code of Practice under the FTA 2010 to implement the recommendations of the 2007 Final Report could 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

- A mandatory Code of Practice may serve to reduce the exposure to loss or risk by establishing legally binding standards across the industry.
- A mandatory Code would go part way to bringing WA into line with other jurisdictions that already have formal regulation in place.
- There is scope for a high level of input by industry, consumers and other interested parties in the development, review and operation of a mandatory Code of Practice.
- Costs to Government would be relatively low once a Code has been established.
- Protections would be put in place to protect money paid for prepaid funerals by consumers, the delivery of contracted services, and the other issues spelled out in "Section 4 – Objectives" above.
- Consumer advocates strongly supported regulation by way of a Code of Practice in submissions to the Issues Paper.
- Subsidiary legislation is subject to the scrutiny of Parliament through the Joint Standing Committee on Delegated Legislation.

- As approximately 80% of all funerals conducted in WA are conducted by members of AFDA, the cost impost on industry would be moderate if the Code, as recommended by the Final Report is established. There would be some changes to the way AFDA industry members conduct their prepaid funeral services, given there is some overlap between the 2007 recommended Code and the AFDA Standard.
- A Code is relatively easy to amend in comparison to an Act.

Disadvantages

- There may be some costs to industry to ensure compliance with all aspects of a Code of Practice which is based on the Final Report. This may result in some funeral directors deciding not to offer a prepaid funeral service, which may reduce the availability of the service in the market place.
- May be some costs to Government in establishing a Code, but the majority of these are incurred in consultation processes, which this paper and the required future release of a Decision RIS comprises. Additional costs of establishment of a formal Code would be minimal.
- May be some ongoing costs to Government in administering a Code, for example:
 - costs to the Department of Commerce in investigating and enforcing compliance, and some costs related to proactive compliance could be expected; and
 - costs to the SAT in the hearing of future applications for Orders, in instances of contravention of a Code.
- The Department of Commerce already conciliates complaints made by consumers against funeral directors and investigates possible breaches of legislation it administers. While the costs to Government of providing such services are currently low, if regulation is introduced and more people become aware of their rights, these costs of investigation and enforcement may increase. Given the small number of complaints and investigations to date, these additional costs could be expected to be minimal.
- There will be some ongoing costs to industry and Government if auditors are required to attest that trust accounts are in order. In particular, accountability mechanisms to ensure money prepaid for funerals is protected in accordance with Code requirements, could include annual returns or auditors' assessments being provided to the Department of Commerce, by funeral directors who offer prepaid services. This could impose new costs on industry and Government.
- Further costs to industry and Government would be incurred in establishing and maintaining an accessible register.
- Stakeholders may have to wait up to 3 years to provide input into any formally required review of a Code.

6.2.1 Time elapsed since 2007 Final Report

The time elapsed since the 2007 Final Report may mean that some, or all, of the Final Report's recommendations are no longer relevant in the current marketplace.

Issues for Consultation

13. What are the impacts of Option 2?
14. Do all of the recommendations of the Final Report remain relevant, or should some of them be discarded? If so, which ones?
15. Which, if any, aspects of the Final Report recommendations may have cost impacts on industry?
16. Would any additional costs imposed by the Final Report recommendations:
 - a) affect the ability or incentives of businesses to compete?
 - b) influence the price of a prepaid funeral service?
17. Would the Final Report recommendations sufficiently protect the interests of consumers, or do they not go far enough?
18. What are the expected cost impacts on Government of implementing and maintaining this Option?
19. Are there any potential flow on costs to consumers?
20. Are there any other costs or benefits which will result from Option 2?
21. What are the estimated costs to funeral directors (paperwork, financial and other costs) of complying with this option?
22. If a register is to be maintained, should such a register be held by individual funeral directors, or centrally?

See the remaining questions regarding the Register raised below at 6.3.1

6.3 Option 3: Introduce a Code of Practice under the FTA 2010 combining the recommendations of the 2007 Final Report and the AFDA requirements

A legally binding Code of Practice under the FTA 2010 to implement a combination of the AFDA Prepaid Funeral Standard, and the recommendations of the 2007 Final Report, could 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

- A mandatory Code of Practice may serve to reduce the exposure to loss or risk by establishing legally binding standards across the industry.
- There would be minimal costs to industry in complying with a formal code based on AFDA's Code and Standard.
- As approximately 80% of all funerals conducted in WA are conducted by members of AFDA, the cost impost on industry would be minor if a proposed mandatory Code of Practice was based on the AFDA Code and Standard. There would be few or no changes to the way industry conducts its prepaid funeral services.
- In their submission to the Issues Paper, AFDA stated that they are not opposed to the implementation of a formal Code of Practice based on industry self-regulation that could be modelled on AFDA's Prepaid Funeral Standard.
- Consumers would receive protections reinforced by government regulation of the industry. Arrangements would apply to protect money paid for prepaid funerals by consumers, the delivery of contracted services, and the other issues spelled out in "Section 4 – Objectives" above.

- If industry members formally commit to the requirements of self-regulation there may be even greater attention to complying with the industry rules (This is not to suggest there is evidence of non compliance).
- A mandatory Code would go part way to bringing WA into line with other jurisdictions that already have formal regulation in place.
- There is scope for a high level of input by industry, consumers and other interested parties in the development, review and operation of a mandatory Code of Practice.
- Costs to Government could be relatively low once a Code is established, although some level of audit return to confirm compliance and/or visits would be required to meet community and regulatory obligations that the new standard is being applied.
- AFDA already provides access to a client advisory service with conciliation and arbitration arrangements available, to help resolve any disputes which may arise between AFDA members and their customers. AFDA would likely continue to offer this service, which could mean that formal complaints to Government may not increase substantially.
- Subsidiary legislation is subject to the scrutiny of Parliament through the Joint Standing Committee on Delegated Legislation.
- A Code of Practice is relatively easy to amend in comparison to an Act.

Disadvantages

- There may be some costs to industry to ensure compliance with all aspects of a Code of Practice based on the AFDA requirements and the Final Report. This may result in some funeral directors deciding not to offer a prepaid funeral service, which may reduce the availability of the service in the market place, although this could be minimised if the new mandatory standard is similar to the industry Code.
- May be some ongoing costs to Government in administering a Code. These costs would be associated with:
 - investigating and enforcing compliance and in the hearing of future applications for Orders by the SAT in instances of contravention of the Code. The Department of Commerce already conciliates complaints made by consumers against funeral directors, and investigates possible breaches of the FTA 2010. Given the small number of complaints and investigations to date, these additional costs could be expected to be minimal.
 - proactive compliance – such as would be associated with ensuring that trust accounts are in order; and
 - potentially, also the cost of establishing an accessible register.
- Stakeholders may have to wait up to 3 years to provide input into any formally required review of a Code.
- There will be some ongoing costs to industry and Government if auditors are required to attest that trust accounts are in order. In particular, accountability mechanisms to ensure money prepaid for funerals is protected in accordance with Code requirements, could include annual returns or auditors' assessments being provided to the Department of Commerce, by funeral directors who offer prepaid services. This could impose new costs on industry and Government.
- Further costs to industry and Government would be incurred in establishing and maintaining an accessible register.

Issues for Consultation

23. What would be the cost impost on industry of this option?
24. If you are a funeral director, are you currently an AFDA member that abides by the existing Standard?
25. Would this option adequately safeguard the needs of consumers?
26. Are there any other costs or benefits which will result from Option 3?
27. Should a cooling-off period apply? If so, what period of time would be appropriate?
28. What are the estimated costs to funeral directors (paperwork, financial and other costs) of complying with this option?
29. If a register is to be maintained, should such a register be held by individual funeral directors, or centrally?

See the remaining questions regarding the register raised below at 6.3.1

6.3.1 Register of prepaid funeral funds

The issue of a central register (or any other type of register) is open for comment under this Option 3, and under Option 2 and Option 5. A register could be implemented, either centrally or to be held by individual funeral directors.

The 2007 Final Report recommended that funeral directors keep a register of all prepaid contracts entered into. It is proposed that either a central register; possibly maintained by the Department of Commerce, MCB or by the funeral industry, or a register maintained by funeral directors and only for contracts entered into between themselves and their customers, is considered.

It should be noted that there are no apparent problems with the current arrangements whereby funeral directors may maintain their own register. Industry has noted that families often have favoured operators and that customers are encouraged to let family members know of arrangements for a prepaid funeral and ensure documents are easily located.

The MCB currently records information about services that have been pre-purchased from the MCB. This information is generally available to funeral directors and the public. The information is only available for the cemeteries under the control of the MCB and can be provided verbally, on request, as is the current practice.

It may be possible to adapt the register of prepaid agreements maintained by the MCB, to record more detailed information on prepaid funerals generally, either throughout the State, or restricted to those cemeteries which are the responsibility of the MCB. As around 80% of funerals in the State are conducted at MCB cemeteries, a restricted approach may still capture a sizable portion of prepaid funeral contracts.

However, there may be costs to the MCB in the establishment and maintenance of a central register and it should be noted that the responsibilities of maintaining a central register of prepaid funerals throughout the State, or prepaid funerals at MCB cemeteries, is not within the MCB's core business.

Similarly, if a central register of prepaid funerals was established and maintained by AFDA, information could be collected generally on all prepaid funerals throughout the State, or restricted to those prepaid funerals conducted by AFDA members. As AFDA members conduct around 80% of funerals in the State, such a register may still capture a sizable portion of prepaid funeral contracts. However, the keeping of a central register may be a substantial financial and operational impost on AFDA.

The costs of a central register could be funded by a small surcharge on each prepaid funeral purchased. However, this would place the cost of maintaining the register directly onto the consumer.

Advantages

- A register would provide for next of kin (and possibly others) to find out if a prepaid funeral contract had been formed between a person and a funeral director, without having to contact a number of funeral directors (in the case of a central register).
- It is likely that if the Department of Commerce were to establish and maintain a central register, the establishment costs would be minimal, as the Department may be able to adapt existing systems to accommodate any proposed register.

Disadvantages

- There may be some costs to industry to ensure that a register (a central register or otherwise) is maintained.
- There may be issues related to privacy of consumers and access to information on the register.
- Some funeral directors believe a central register could be anti-competitive, as funeral directors may be able to obtain market information and find out how many prepaid funeral contracts other funeral directors have, including the names and possibly contact details of their customers.
- It is likely that if the Department of Commerce were to establish and maintain a central register, it would require 0.5 of 1 fulltime employee annually to maintain. Costs could vary depending on whether a register is available publically or in some other form.
- The level of detriment/problem may not justify the cost of a register.
- There may be some ongoing compliance costs to Government to ensure that funeral directors are complying with the requirement of providing data for entry into a register.

Issues for Consultation - REGISTER

30. If a register of prepaid funeral contracts is formally required, should it be maintained individually by each funeral director or should a state-wide, central register be available?
31. Who should maintain any central register? (e.g. should it be maintained by Government, or by an industry association such as AFDA or by the MCB?). What would be the costs to AFDA or the MCB, of establishing, implementing and maintaining a central register, either for all prepaid funerals within the State, or for those prepaid funerals conducted by AFDA members or at MCB cemeteries respectively?
32. When and how often should funeral directors be required to provide information to any central register? Should the register be updated when a contract is signed or within a specified timeframe of the contract being signed, and again when the funeral services are delivered?
33. Would a register impose any compliance costs on funeral directors? If so, would costs be lower if separate registers or a central register was maintained?
34. Should such a register be publically available or in some other form? If a register is publically available, how would privacy issues be accommodated?

35. What would be the benefit to consumers, of being able to access a central register? Would the benefits to consumers make up for the costs of maintaining a central register?
36. Would there be any other detriments to industry or consumers in having a register available?

6.4 Option 4: Amend the informal Funeral Directors Code of Conduct applied by the Metropolitan Cemeteries Board

To conduct a funeral in WA, a funeral director's licence or a single use permit must be issued by the cemetery Board or local council that has jurisdiction over that cemetery.

This option 4 would involve amending the informal Code of Conduct applied to funeral directors licensed by the MCB to conduct funerals at cemeteries in the metropolitan area, to include the aspects of the 2007 Final Report and the AFDA requirements outlined in Option 3.

This Option 4 would only apply to those funeral directors licensed by the MCB, and would not apply to funeral directors who conduct funerals outside the MCB's current jurisdiction.

Advantages

- Imposing conditions on funeral directors licensed by the MCB may assist in applying standards across the industry.
- The MCB considers that approximately 80% of funerals conducted in WA are at cemeteries within the jurisdiction of the MCB, so its Code of Conduct would be applicable to the majority of funeral directors in WA.
- Amending the MCB Code would be more easily done than developing a mandatory Code under the FTA 2010, given the formal consultation requirements of the FTA 2010.
- Costs to Government would be relatively low once the MCB's Code is amended.

Disadvantages

- At least 20% of funerals conducted in WA are conducted by funeral directors who are not licensed by the MCB and therefore the Code of Conduct would not apply.
- The Code of Conduct does not currently deal with funds prepaid for funeral services and to include a number of additional requirements may make the Code unwieldy and cumbersome.
- As this option is a quasi regulatory option, there may be some issues with enforcement should a breach of the Code be established. It would be up to the MCB to investigate and take appropriate action against a funeral director.
- There may be some enforcement limitations as the MCB licences only parent companies, not subsidiaries and the only remedy appears to be cancellation of a licence rather than immediate options such as fines.
- There could be a lack of clarity around which body is responsible for enforcing and administering this option.
- It is difficult for the MCB to suspend the licence of the parent company in response to the non compliance of a subsidiary business. Such action would affect all the other businesses under the parent company's control and not simply the one the action is aimed at.
- The costs to the MCB of establishing and enforcing such an amendment to their Code may be high.

Issues for Consultation

37. What would be the cost impost on industry of this option?
38. Would this option adequately safeguard the needs of consumers, considering not all funeral directors in WA are licensed by the MCB?
39. What are the potential costs and benefits to the MCB as a result of Option 4?
40. What are the estimated costs (paperwork, financial and other costs) of complying with this option?

6.5 Option 5: Introduce specific legislation for prepaid funerals

Legislation would likely be in the form of an Act or Regulation, similar to those in place in other States of Australia. Appendix 4 provides a comparison of the provisions in the other States, and gives an indication of the types of provisions which could be considered for inclusion in any future WA legislation.

Advantages

- Specific legislation may serve to reduce the exposure to loss of risk by establishing legally binding standards across the industry.
- Specific legislation may provide for greater penalties than provided by a Code of Practice under the FTA 2010.
- WA would be in line with most of the other States which have specific legislation in place.
- Monies paid by consumers to prepaid funeral funds may be more secure.
- Allows for Parliamentary scrutiny of the merits of the policy before becoming law.
- Costs to Government would be relatively low once specific legislation has been established.

Disadvantages

- Legislation may seem 'heavy handed' considering the good reputation of WA funeral directors.
- 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.
- An Act is more difficult to change in response to market changes.
- Higher costs to Government due to costs of implementation and amendment.
- There will be ongoing costs to Government in administering the regulatory regime.
- There may be some costs to industry to ensure compliance with all aspects of an industry specific legislation. This may result in some funeral directors deciding not to offer a prepaid funeral service, which may reduce the availability of the service in the market place.
- There will be some ongoing costs to industry and Government if auditors are required to attest that trust accounts are in order. In particular, accountability mechanisms to ensure money prepaid for funerals is protected in accordance with Code requirements, could include annual returns or auditors' assessments being provided to the Department of Commerce, by funeral directors who offer prepaid services. This could impose new costs on industry and Government.

Issues for Consultation

A Table comparing the provisions of other jurisdictions with the provisions recommended in the 2007 Final Report and the provisions of AFDA's Code of Ethics and Prepaid Funeral Standard is provided at Appendix 4. You may wish to refer to this Table, in considering the questions below:

41. What would be the cost impact on operators of complying with legislation in WA?
42. Would there be cost reductions to industry and consumers in having formal requirements imposed in all jurisdictions?
43. Which, if any, aspects of other jurisdictions' legislation are most relevant for application in WA? Would any of these impose significant additional costs on industry? If so, which ones?
44. Do other jurisdictions' legislation sufficiently protect the interests of consumers, or do they not go far enough?
45. Are there any other potential costs or benefits which will result from Option 5?
46. What are the estimated costs (paperwork, financial and other costs) of complying with this option?

7 PROPOSED OPTION

7.1 Option 3: Introduce a Code of Practice under the FTA 2010 combining the recommendations of the 2007 Final Report and the AFDA requirements

At this stage, Option 3 is the Government's preferred option, but this early conclusion is open to adjustment in response to submissions.

A mandatory Code of Practice modelled on AFDA's Code of Ethics and Prepaid Funeral Standard, and incorporating aspects of the 2007 Final Report as relevant, would be a 'light touch' regulatory approach and impose only minimal additional costs and administrative burdens on industry and Government, although some assurance that trust accounts (or similar) are being utilised would be necessary (on a periodic basis).

The chief differences between the AFDA Code and Standard and the Final Report recommendations, are that the Final Report recommended cooling-off periods and the creation of a register.

As discussed above, it is considered that the requirement for formal cooling-off periods may not be necessary as most people directly approach funeral directors with some forethought of the service they want. Additionally, in the event of an unsolicited agreement, a 10 day cooling-off period, during which time a consumer may reconsider the purchase, applies under the ACL. This matter however, is open for consultation.

The register aspect of the Final Report also remains open to consultation, as outlined in Section 6.3.1 above.

Issues for Consultation

47. Which option would be the most suitable to operate in WA?
48. Are there any other options that should be considered, or are more suitable?
49. Is there sufficient evidence of unacceptable risk to consumers to warrant any form of regulation in the prepaid funeral industry?

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| <p>50. Would a Code of Practice modelled on AFDA's Code of Ethics and Prepaid Funeral Standard, and possibly including the two aspects of the 2007 report (Option 3) be suitable to safeguard the needs of consumers?</p> <p>51. Would such a Code (Option 3) create any flow on costs to industry, consumers or government?</p> <p>52. What are the estimated costs to funeral directors (paperwork, financial and other costs) of complying with this option?</p> <p>53. Should a cooling-off period apply? If so, what period of time would be appropriate?</p> |
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8 EDUCATION

Whichever option is recommended, community education will be an important component in informing the public and stakeholders about their rights and responsibilities with regard to prepaid funerals.

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

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 a prepaid funeral contract.

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

9 IMPLEMENTATION AND EVALUATION STRATEGY

9.1 Implementation

Implementation of Options 2 and 3 (legally binding Codes of Practice) requires the drafting of a formal Code and approval of the Governor in Executive Council, and then be subject to the formal scrutiny of Parliament through the Joint Standing Committee on Delegated Legislation. Penalties would apply for breaches of a formal Code.

Option 5 (legislation) would require the drafting of formal legislation, and its enactment by Parliament.

Option 4 (non-binding MCB Code of Conduct) will require considerable liaison with the MCB in the development of a suitable Code of Conduct for use by funeral directors licenced by the MCB.

A register of prepaid funerals will require the examination of existing systems and possibly the development of new systems, able to accommodate the requirements of either a central register or registers held by individual funeral directors.

All options (including maintaining the status quo at Option 1) will include an education campaign, as stated at section 7 above.

9.2 Evaluation

For Options 2 and 3, the FTA 2010 requires that the Commissioner for Consumer Protection undertake a review of any Code of Practice made under the FTA 2010, within 3 years of its being made, otherwise the Code will expire.

In undertaking such a review, the Commissioner must follow the consultation procedures detailed at section 5.2.1 under the heading 'Consultation required for the development of a Code of Practice under the FTA 2010'. Any consultation conducted for the purposes of a review will be prepared to meet the Regulatory Impact Assessment guidelines.

The Department of Commerce would administer and monitor the Code of Conduct as it already provides advisory, conciliation and compliance services with respect to the funerals sector, under the auspices of the FTA 2010 (and the FTA 1987).

For Option 5, legislation is generally drafted to include a review clause about 5 years after commencement. For Options 1 and 4, no formal evaluation is required although an MCB Code of Conduct could be reviewed after 3 to 5 years.

10 APPENDIX 1 - ISSUES PAPER JULY 2006

The 2006 Issues Paper outlined the range of prepaid funeral products available and examined the current regulatory framework in WA and other Australian jurisdictions. The key potential problems requiring address were identified in the Issues Paper as follows:

- 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 to address these matters, and called for written responses from interested parties. Submissions to the Issues Paper closed on 30 November 2006.

There is a low level of complaints about prepaid funerals in Western Australia and the funeral industry generally operates with a focus on long term intergenerational customer relationship management. The Western Australian community appears to be well served by professional funeral operators, however, other states in Australia have enacted specific legislation as a result of consumer complaints and market failures.

10.1 Submissions to the 2006 Issues Paper

The 2006 Issues paper posed the question *“Is there sufficient evidence of consumer risk or detriment in WA to warrant a regulatory regime for this section of the funeral industry?”*

The majority of submissions to the paper supported Consumer Protection’s experience of a low incidence of complaints. AFDA considered that there was 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 security of monies paid to prepaid funeral operators was of considerable concern to nearly all individuals who made a submission.

The Health Consumers Council suggested that there was a prima facie need for regulation in other states and therefore Western Australia should introduce some form of regulation. The Council said that, in view of the considerable time lapse between payment for the service and receipt of the 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 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, and that 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 money paid by consumers; funeral directors using money for operational purposes; and, in the event of the failure of a funeral director's business, whether funds may be available to another funeral operator to perform the contracted service.

AFSA noted that a consumer who pays for a funeral in advance deserves protection for the money paid, which 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 Western Australia suggested 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 the State, makes the introduction of some form of regulation imperative.

The Western Australian Retirement Complexes Residents' Association Inc (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.

11 APPENDIX 2 - FINAL REPORT NOVEMBER 2007

The Final Report was prepared in November 2007 and publicly released in early 2008. The Final Report recommended regulation of the prepaid funeral industry by way of a Code of Practice under the then *Fair Trading Act 1987*. A Code of Practice was 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 consumer, is the service provided, and to provide for adequate security of money held by funeral directors for prepaid funeral contracts. The Final Report noted that increasing the level of protection for consumers by establishing legally binding standards across the industry would result in an increase in consumer confidence, and that it is likely that such heightened confidence would ultimately benefit the funeral industry.

The three recommendations of the Final Report are outlined below:

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:

1. the information that must be included in a prepaid funeral contract including provisions which outline what happens in the event of:
 - a) late or missed payments (for instalment contracts or those with annual fees; or
 - b) death of the consumer before final payment is made (for instalment contracts);
2. a requirement for prepaid funeral monies to be invested in an approved funeral benefit fund or approved trust account;
3. 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;
4. a cooling-off period of 30 days for prepaid funeral contracts;
5. 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;
6. the circumstances under which monies paid pursuant to a prepaid funeral contract should be refunded; and
7. a requirement that funeral directors keep a register of all prepaid contracts entered into.

Recommendation Three

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

Following the release of the Final Report, the recommendation to draft a Code of Practice was endorsed by the Government and a first draft of the Fair Trading (Prepaid Funerals Code of Practice) Regulations 2008 was completed in July 2008. Continuation of drafting was deferred in early 2009 given competing priorities of Government.

The 2006 Issues Paper and 2007 Final Report recommendations form the basis of this Consultation RIS. The Government's commitment to the RIS process is intended to encourage ongoing, targeted and informal consultation with stakeholders, interested parties and the community. Given the time elapsed since initial consultation on the 2006 Issues Paper, the new requirements for consultation on a code of practice prepared under the *Fair Trading Act 2010*, and to comply with the Government's new Regulatory Impact Assessment requirements, it is considered that further consultation should be undertaken, on whether and how prepaid funerals should be regulated in Western Australia.

12 APPENDIX 3 - AFDA CODE OF ETHICS

Members of the Australian Funeral Directors Association agree to honour the spirit and provisions of the Code and as subscribers to the Code to hereby affirm and accept willingly the responsibilities and privileges that are implied by membership of the Association.

1. To maintain in all matters the highest standards of business, professional and personal conduct.
2. To respect in all circumstances the confidentiality and trust placed in us by our clients and members of the public.
3. To ensure that staff is qualified and competent.
4. To ensure that facilities are adequate for all services rendered to the community.
5. To provide information concerning the range of services available, the prices of these services, and the functions and responsibilities accepted on behalf of our clients.
6. To give a written estimate of all funeral charges and disbursements to be made on a client's behalf at the time of taking instructions, or as soon as is practicable.
7. To respect the personal choice of clients and have regard for their diversity of beliefs in religious and cultural practices.
8. To ensure that all advertising is in good taste and directed to informing the public.
9. To be thoroughly conversant with the laws of the land as they apply to funeral service and allied industries and professions.
10. To provide access to a client advisory service with conciliation and arbitration arrangements available to help resolve any disputes which arise between members and their clients.

13 APPENDIX 4 - COMPARISON TABLE

Recommendations of the 2007 Final Report

Recommendation One

That a Code of Practice be established under the *Fair Trading Act 1987* (Now *Fair Trading Act 2010*)

Recommendation Two

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

1. the information that must be included in a prepaid funeral contract including provisions which outline what happens in the event of:
 - a) late or missed payments (for instalment contracts or those with annual fees); or
 - b) death of the consumer before final payment is made (for instalment contracts);
2. a requirement for prepaid funeral monies to be invested in an approved funeral benefit fund or approved trust account;
3. 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;
4. a cooling-off period of 30 days for prepaid funeral contracts;
5. the obligations of the funeral director with respect to financial and other arrangements should the funeral director cease to carry on the business before the contract is performed or be unable to perform the contract;
6. the circumstances under which monies paid pursuant to a prepaid funeral contract should be refunded; and
7. a requirement that funeral directors keep a register of all prepaid contracts entered into.

Recommendation Three

The regulation of prepaid funerals only apply to future contracts.

<p>WA Code of Practice as recommended by the 2007 Final Report</p> <p>Rec 2.1 That the Code of Practice regulates information that must be included in a Prepaid Funeral (PPF) contract and what happens in the event of (a) late or missed payments or (b) death before making final payment.</p> <p>The 2008 Draft Code sets out the particulars a contract must include: e.g. specifics about type of funeral, costs & services.</p>	<p>AFDA Code of Ethics (C of E) and Prepaid Funeral Standard (PPF standard)</p> <p>To give a written estimate of all funeral charges & disbursements at the time of taking instruction, or as soon as practicable: C of E.</p> <p>A written contract must be provided by the Funeral Director (FD) clearly detailing funeral requisites & services contracted and paid for: PPF standard.</p> <p>The price for each PPF should be fixed: PPF standard.</p>	<p>Victoria Funerals Act 2006</p> <p>This Act provides that a funeral provider must produce a clear & legible price list for all goods & services and a description of what is included in the service.</p> <p>The contract must be in writing & specify terms & conditions including: a) the funeral services to be supplied; b) funeral goods to be supplied in connection with the service; c) consideration to be paid for the supply of funeral services; and d) detail of investment in accordance with the Act or paid to the trustees of the cemetery.</p>	<p>Tasmania Prepaid Funerals Act 2004</p> <p>Pre-contractual disclosure is to contain full details of service and costs inc: goods, services & facilities, payment due dates, details of instalments made, terms & conditions applying to conduct of funeral, fee details, brokerage or commissions payable to the FD, GST or other amounts payable, FD business name, details of recipient & contributor, name of PPF trust.</p> <p>Where the recipient dies before making the final instalment provider must supply service as if the final instalment was made.</p>	<p>South Australia Fair Trading (Pre-paid Funerals Code of Practice) Regulations 2011</p> <p>The Code sets out details a PPF contract must include including: details of the FD and approved investment manager, client details, who to contact upon recipient's death, the service to be provided, total cost of the funeral including costs to be retained by the FD for expenses etc.</p> <p>NOTE: The WA 2008 Draft Code was modelled on the SA Code of Practice 1996.</p>	<p>New South Wales Funeral Funds Act 1979 and Funeral Funds Regulations 2011</p> <p>The Regulations regulate the information that must be provided to a customer before entering into a PPF contract including: name & contact details of the FD, what happens if the FD sells the business, full details of each component of the service, name and contact details of the funeral fund into which payments are made, details of payment instalments, what happens if the customer moves interstate or to another area, statement of fees, commissions etc.</p> <p>Regulations establish a 30 day cooling-off period in which customer may end the contract and have</p>	<p>Queensland Funeral Benefits Business Act 1982</p> <p>A clear and legible client care statement in the approved form must be given to the consumer before entering a funeral benefit agreement.</p> <p>The client care statement confirms the consumer has received details about fees & charges, cancellation (during the cooling-off period), what happens if an instalment is overdue or if beneficiary dies before all instalments paid & what services are to be provided under the agreement. Acknowledgement of receipt on money is to be made in writing and a copy of the agreement must be given to the client before signing a contract with the FD.</p>
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<p>WA Code of Practice as recommended by the 2007 Final Report</p>	<p>AFDA Code of Ethics (C of E) and Prepaid Funeral Standard (PPF standard)</p>	<p>Victoria Funerals Act 2006</p>	<p>Tasmania Prepaid Funerals Act 2004</p>	<p>South Australia Fair Trading (Pre-paid Funerals Code of Practice) Regulations 2011</p>	<p>New South Wales Funeral Funds Act 1979 and Funeral Funds Regulations 2011</p>	<p>Queensland Funeral Benefits Business Act 1982</p>
<p>Rec 2.2 Monies to be invested in an approved funeral benefits fund or approved trust account.</p>	<p>The financial institution should be at 'arms length': PPF standard. A numbered certificate in the clients name should be provided by the financial institution: PPF standard.</p>	<p>The FD must give details in writing of the manner in which money paid to FD will be invested. The FD can only invest money in funeral benefit funds or policies approved in the Act or by the Minister.</p>	<p>Personal representative of the recipient remains liable for amount due. A contributor may terminate a prepaid funeral agreement that, if in the opinion of the Director of Consumer Affairs & Fair Trading, the continued payment of instalments would cause serious hardship to the contributor.</p>	<p>An approved investment manager must invest the money in an approved investment. An approved investment means a bond, endowment policy or other similar form of investment which provides that</p>	<p>money paid refunded. The Act provides that a prepaid contract may provide for the supply of funeral services on death of person, notwithstanding all instalments have not been paid. The Regulations state that the contract must detail arrangements if a customer dies before all instalments are paid.</p>	<p>The Act requires PPF funds to be lodged with a funeral benefit business trust fund account.</p>

<p>WA Code of Practice as recommended by the 2007 Final Report</p>	<p>AFDA Code of Ethics (C of E) and Prepaid Funeral Standard (PPF standard)</p> <p>The financial institution should guarantee that no funds can be withdrawn by the FD until the death and funeral take place: PPF standard.</p> <p>The financial institution must safeguard the funds of the client even if funeral firm has gone out of business.</p>	<p>Victoria Funerals Act 2006</p>	<p>Tasmania Prepaid Funerals Act 2004</p> <p>The terms of the funeral trust are to be approved by the Director.</p> <p>A custodian must invest monies in accordance with the <i>Trustee Act 1898</i> any money paid, or any other valuable consideration received, in respect of the funeral trust.</p>	<p>South Australia Fair Trading (Pre-paid Funerals Code of Practice) Regulations 2011</p> <p>the investment cannot be realised except on production of a death certificate relating to the recipient of the funeral or a signed notice of cancellation of the prepaid funeral contract.</p> <p>An approved investment manager must give the client & FD written notice detailing amount of money received; commission payable to the investment manager; amount of money invested; and particulars of the approved investment</p>	<p>New South Wales Funeral Funds Act 1979 and Funeral Funds Regulations 2011</p>	<p>Queensland Funeral Benefits Business Act 1982</p>
<p>Rec 2.3 The contract details are to be in writing and to include the manner in which monies are to be invested, the type of investment, the terms and conditions of the</p>	<p>A numbered certificate in the clients name should be provided by the financial institution: PPF standard.</p>	<p>The Act provides that before entering into a PPF contract, the funeral provider must provide, in writing, details of the manner in which the money is to be invested</p>	<p>Precontractual information is to include the name of the PPF trust to which payments are to be made.</p>	<p>FD's are required to provide clients with a prepaid funeral contract.</p> <p>The contract sets out the details of the approved investment</p>	<p>The Regulations provide that before a PPF contract is entered into, the FD must ensure the customer is provided with the name and contact details of the</p>	<p>The client care statement (required under the Act) must detail information about what happens to the money paid to the provider, where the money is to be</p>

<p>WA Code of Practice as recommended by the 2007 Final Report</p> <p>investment and its timeframe.</p>	<p>AFDA Code of Ethics (C of E) and Prepaid Funeral Standard (PPF standard)</p>	<p>Victoria Funerals Act 2006</p> <p>including: the type of investment; the terms and conditions applying to the investment, any other prescribed information and any fees payable in respect of the contract.</p> <p>A prepaid funeral contract is to be in writing and specify that any money paid to a FD is required to be invested in a specified investment in accordance with the Act or paid to trustees of a cemetery in accordance with the Act.</p>	<p>Tasmania Prepaid Funerals Act 2004</p> <p>There are specific requirements for funeral trusts in the Act, but no provision for further disclosure to customers.</p> <p>A Prepaid funeral agreement is to be in writing.</p>	<p>South Australia Fair Trading (Pre-paid Funerals Code of Practice) Regulations 2011</p> <p>manager who will be in charge of investing the prepaid money.</p> <p>An approved investment manager must invest the money in an approved investment within 28 days of receiving the money and provide the FD and client with a written notice inc the name of the FD, name of the client/recipient, name of the investment manager, amount of money received, amount of money invested, any expenses or commissions and particulars of the investment in which the money has been invested is to be given to the client and FD.</p>	<p>New South Wales Funeral Funds Act 1979 and Funeral Funds Regulations 2011</p> <p>funeral fund to which payments are made.</p> <p>The Act provides that an annual report is to be provided to contributors by the funeral contribution fund (FCF) containing opening balance of the contributor's account at start of the year; contributions made during the year; fees & charges paid from contributor's balance; information and any bonuses paid to the contributor's balance; closing balance of contributor's account at years end; whether contribution is in arrears or has made advance payments; & contact details of FCF.</p>	<p>Queensland Funeral Benefits Business Act 1982</p> <p>invested, how secure it is and what happens if the provider goes out of business.</p>
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<p>WA Code of Practice as recommended by the 2007 Final Report</p>	<p>AFDA Code of Ethics (C of E) and Prepaid Funeral Standard (PPF standard)</p>	<p>Victoria Funerals Act 2006</p>	<p>Tasmania Prepaid Funerals Act 2004</p>	<p>South Australia Fair Trading (Pre-paid Funerals Code of Practice) Regulations 2011</p>	<p>New South Wales Funeral Funds Act 1979 and Funeral Funds Regulations 2011</p>	<p>Queensland Funeral Benefits Business Act 1982</p>
<p>Rec 2.4 Cooling-off period of 30 days</p>	<p>No cooling-off period in the PPF standard. However, AFDA's submission to the 2006 Issues Paper noted a 10 day cooling-off period would be appropriate.</p>	<p>No cooling-off period. Subject to the terms and conditions of the contract.</p>	<p>None specified in the Act. However, various rights of termination are open to the contributor.</p>	<p>None specified. Subject to terms and conditions of the contract.</p>	<p>The Regulations provide for a 30 day cooling-off period.</p>	<p>The Act provides for a 30 day cooling-off period</p>
<p>Rec 2.5 That the Code of Practice regulate the obligations of the FD if they cease carrying on the business before the contract is performed, or if they are unable to perform the contract.</p>	<p>The financial institution must safeguard the funds even if the FD firm has gone out of business: PPF standard.</p>	<p>The funeral provider must transfer or assign to the other party to the contract...any interest the provider ...has in the consideration paid or given...in respect of the contract. If money is paid to the funeral provider and that money hasn't been invested yet, then the funeral provider must pay back the money to the client or their legal representative.</p>	<p>If a prepaid funeral agreement is terminated, the funeral trust must make any payments to a contributor as are required under the Act, within 14 days. If a funeral business becomes insolvent or ceases to carry on a business, the funeral trust custodian must transfer all property and investments to contributors.</p>	<p>The contract must set out the financial and other arrangements that will apply if the FD ceases to carry on a business before the contract is performed or if the FD is unable, for any other reason, to perform the contract.</p>	<p>The Regulations provide that the contract must set out the arrangements that will apply if the business of the funeral service supplier is sold to another person before the service is supplied.</p>	<p>What happens if a provider goes out of business must be detailed in the client care statement.</p>

<p>WA Code of Practice as recommended by the 2007 Final Report</p> <p>Rec 2.6 That the Code of Practice regulate the circumstances under which monies paid to a FD pursuant to a contract should be refunded.</p>	<p>AFDA Code of Ethics (C of E) and Prepaid Funeral Standard (PPF standard)</p> <p>The financial institution should guarantee no funds are withdrawn by the FD until the death & funeral take place: PPF standard.</p> <p>Nothing further specifically on refunds to a customer.</p>	<p>Victoria Funerals Act 2006</p> <p>Refunds of money paid by a purchaser will be made if a contract has been terminated in accordance with the Act.</p>	<p>Tasmania Prepaid Funerals Act 2004</p> <p>Within 14 days of receiving notification of termination, the custodian of the funeral trust must refund payments to the contributor.</p>	<p>South Australia Fair Trading (Prepaid Funerals Code of Practice) Regulations 2011</p> <p>The contract may set out the right of cancellation and the circumstances where the right of cancellation may be exercised.</p> <p>If there is a right of cancellation in the contract, the contract must set out the manner in which the right to cancel is to be exercised, the person who may exercise the right to cancel and the financial arrangements that will apply, including the period of notice for the withdrawal of funds deposited with the approved investment manager.</p>	<p>New South Wales Funeral Funds Act 1979 and Funeral Funds Regulations 2011</p> <p>The Regulations provide that the contract must state the circumstances in which the customer has the right to cancel the contract after the cooling-off period has ended (either due to a right under the Act or a right under the contract) and obtain a full or partial refund of money paid under the contract.</p> <p>The Act provides for the refund of monies paid to a person if an agreement is ended within the cooling-off period.</p>	<p>Queensland Funeral Benefits Business Act 1982</p> <p>The Act provides that if a person ends a funeral benefit agreement during the cooling-off period, the entity must refund the amount within 7 days.</p> <p>The Client Care Statement to contain terms and conditions and clauses about termination and any circumstances in which agreement can be surrendered and what costs and penalties will apply.</p>
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<p>WA Code of Practice as recommended by the 2007 Final Report</p> <p>Rec 2.7 That the Code of Practice include a requirement that funeral directors keep a register of all prepaid contracts entered into.</p>	<p>AFDA Code of Ethics (C of E) and Prepaid Funeral Standard (PPF standard)</p> <p>No register requirement.</p>	<p>Victoria Funerals Act 2006</p> <p>FD's must keep a register of PPF contracts including: names of parties to the contract, costs, details about the investment of money and of the funeral service to be provided.</p> <p>The Director may establish a register of PPF contracts so information about contracts is available.</p> <p>A FD may apply to the Director to record the information. A fee applies. A person may apply to inspect the register & make a copy/extract.</p>	<p>Tasmania Prepaid Funerals Act 2004</p> <p>The custodian of a funeral trust must maintain a register of PPFs containing payment details.</p> <p>A FD must keep copies of all PPF agreements and records related to payments for 5 years after the agreement is terminated or performed.</p>	<p>South Australia Fair Trading (Prepaid Funerals Code of Practice) Regulations 2011</p> <p>Not specifically set out. However, the Regulations provide that a FD who enters into a PPF contract must ensure that, on the signing of the contract, a signed copy of it is given to all the parties.</p>	<p>New South Wales Funeral Funds Act 1979 and Funeral Funds Regulations 2011</p> <p>The Act provides that a funeral contribution fund shall keep a register of contributors to the fund. The contribution fund is to enter details of the contributor, including name and address, date the contributions commenced, particulars of the fund and rate of contributions within 7 days of the person becoming a contributor.</p> <p>All prepaid and contributory funeral funds in NSW carrying on a contributory funeral benefit business must be registered with the NSW Fair Trading's Registry of Cooperatives & Associations.</p>	<p>Queensland Funeral Benefits Business Act 1982</p> <p>For existing agreements with corporations registered after the commencement of the Act, the Act provides for a register of contributors to be maintained by the corporation registered to carry on the business.</p> <p>The contributor's details are to be entered within 7 days after the date on which the person became a contributor.</p>
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14 APPENDIX 5 - MCB FUNERAL DIRECTOR'S LICENCE CONDITIONS



ANNEXURE FD001

FUNERAL DIRECTOR'S LICENCE

CONDITION OF ISSUE

POLICY

It is the policy of the Metropolitan Cemeteries Board (the Board) to ensure that all Funeral Directors, licensed to operate within those cemeteries under its control, comply with the following Code of Conduct, which is consistent with the Australian Funeral Directors Association (AFDA) and the National Funeral Directors Association (NFDA).

CONDITIONS ATTACHED TO LICENCE

As a condition of a licence issued by the Board, all funeral directors are to adhere to the following code of conduct (the code). Any breach of the code shall constitute a breach of a licence, which may following investigation result in a Funeral Director's Licence being cancelled or suspended, where provided pursuant to section 18 of the Act, or where due for renewal, in the renewal not being granted.¹

These conditions are to read in conjunction with the provisions of by-law 24 of the *Metropolitan Cemeteries Board By-law 1996*.

CODE OF CONDUCT

As a condition of your licence as a Funeral Director licensed by the Metropolitan Cemeteries Board, you agree to:

1. Ensure the prompt release and disclosure of the whereabouts of a deceased person to the person or entity that has the legal right to seek the release or information without requiring payment prior to the release.
2. Not engage in any unprofessional conduct of a character likely to deceive, defraud or harm² the families they serve in the course of providing professional services.
3. Maintain in all matters the highest standards of business, professional and personal conduct.
4. Respect in all circumstances the confidentiality and trust placed in us by our clients, their families and members of the public.
5. Ensure that all employees are suitably qualified and competent.

¹ Right of appeal as provided under section 19 *Cemeteries Act 1986*.

² Harm in this context means, physical, mental or emotional harm.

6. Ensure that facilities are adequate for all services rendered to the community as required by the relevant authorities.
7. Provide information concerning the range of services available, the prices of these services, and the functions and responsibilities accepted on behalf of your clients.
8. Provide a written estimate of all funeral charges and disbursements to be made on a client's behalf at the time of taking instructions, or as soon as is practicable thereafter.

Consumer Protection

Forrest Centre

219 St Georges Terrace

Perth Western Australia 6000

Advice line: 1300 30 40 54

Facsimile: 9282 0850

Email: consumer@commerce.wa.gov.au

This department also has regional offices in Albany, Bunbury, Geraldton, Kalgoorlie, Karratha and Kununurra.

National Relay Service for the hearing impaired : 13 36 77

If you require the service of an interpreter contact the Translating and Interpreting Service (TIS) on 131 450

Website: www.commerce.wa.gov.au