

CHAPTER FIVE – OPTIONS FOR REGULATION OF THE FUNERAL INDUSTRY IN VICTORIA

5.1 Chapter 5 discusses options for regulation of the funeral industry in Victoria. The options are described with reference to whether they have been applied to the funeral industry in Victoria, interstate or internationally and, where appropriate, how they operate in other industries. The relative benefits and disadvantages of each approach is discussed and how it would address current problems within the industry is evaluated.

5.2 The options to be discussed are:

- self-regulation within a broader legislative and regulatory framework;
- a Voluntary Code of Practice;
- an Authorised Code of Practice;
- negative licensing of all employees;
- registration of all funeral directors and employees including embalmers;
- licensing the mortuary;

- licensing embalmers;
- licensing the principal of the business;
- strengthening current legislation;
- appointing a Funeral Industry Ombudsman; and
- establishing a Funeral Industry Council to oversee all aspects of the funeral industry.

5.3 The Victorian Government regulates the funeral industry through legislation targeted at specific operational areas under the administration of various government departments which have expertise in and responsibility for these areas. The government endorses a minimalist approach to regulation by encouraging industries and businesses to regulate themselves rather than rely on the government to regulate them through prescriptive legislation and enforcement. The presumption underlying this is that competitive market forces provide greater choice and benefits for consumers. However, the government will consider intervention when there has been a 'market failure' or a demonstrated need to achieve a particular social objective.

5.4 Self-regulation is the existing method of regulation for businesses which are members of industry associations; non-affiliated businesses are not subject to this form of regulation. A voluntary industry code of practice can be established without intervention by government, as can the appointment of an industry-supported ombudsman. The other options discussed all require

varying degrees of government intervention through legislation, regulation or the establishment of statutory authorities.

5.5 Under the terms of this inquiry, one of the main objectives for the Committee is to identify options for industry and government to improve industry practices with a particular focus on ways of achieving this through non-legislative options. The recommendations of the Committee for the direction which regulation of the funeral industry in Victoria should take are included in this chapter.

SELF-REGULATION

5.6 Currently, the funeral industry throughout Australia is largely self-regulated, as it has been for much of its development. Under this form of regulation, the industry is responsible for setting its own standards and monitoring compliance with these standards without the intervention of government through legislation or other forms of co-regulation. Self-regulation is able to succeed through the high degree of ownership of the agreed standards by individuals within the industry and their desire to uphold the reputation of the profession and avoid condemnation by colleagues and the community.

Industry Views on Self-Regulation

5.7 In order to operate effectively, self-regulation must be supported by the industry associations and the unions covering employees in the industry.

Generally speaking, self-regulation has worked well over the past century. The employer associations today, the AFDA and the VIFD, can take a fair degree of credit together with the AWU and its predecessor unions for developing industry standards and encouraging individual funeral directors to achieve and maintain them.¹

However, the AWU identified changes in the industry in the past 20 years and, given the level of rapid change and the present structure of the industry, the need for a more stringent form of regulation.

5.8 The AFDA realises the ineffectiveness of the current regulatory framework and supports tighter regulation of the industry. The AFDA submission presented at a public hearing summarised the unsatisfactory aspects of self-regulation.

[AFDA, VIFD and NFDA] endeavour to promote compliance with their guidelines; however, the major problem with this form of self-regulation by industry associations is that not all funeral directors are members of an industry association...The guidelines differ from association to association, so there is no consistent industry standard, and associations have limited resources to enforce and police their guidelines....there are no adverse ramifications for funeral directors who don't comply...in an industry where there are problems, and we would submit that there are problems in our industry, self-regulation by industry association is inherently ineffective.²

5.9 Embalmers working within the funeral industry are also subject to self-regulation through their industry association.

In the absence of any formal regulation, qualified embalmers and mortuary personnel are essentially regulated by the Australian Institute of Embalming and acceptance by employers of the technical nature, expertise and knowledge required for professional mortuary care.³

The AIE also supports the introduction of a minimal but fair and reasonable regulatory framework to protect professional standards, provide a safe working environment for employees and uphold community expectations.

Issues with Self-Regulation

Membership of industry associations

5.10 Not all funeral directors in Victoria belong to at least one of the recognised industry associations. Association coverage of the industry could be as low as 20% to 25% of the number of funeral businesses operating in Victoria given the entry into the industry of a considerable number of new firms over the past twenty years.⁴ Many of these smaller firms with limited experience in the industry are not members of any industry association and, therefore, are not subject to industry controls.

5.11 New Zealand, which has a funeral industry slightly smaller in size to that in Victoria,⁵ also currently has self-regulation of its funeral industry. Self-regulation may be successful in New Zealand due to the high level of industry association membership. Industry association coverage through FDANZ stands at about 85% of all funeral businesses with a further 10% of businesses belonging to the Funeral Service Council of New Zealand, leaving only a small percentage of businesses not subject to the control of an industry association.⁶ This is substantially different from the level of industry association coverage in Victoria.

Adherence to agreed standards

5.12 For self-regulation to be effective, individual funeral directors must achieve and maintain agreed standards of practice. Standards have been developed by the various industry associations and are promulgated through several Codes of Ethics and Practices. However, the lack of a single agreed industry-wide standard has resulted in a lack of consistency across the industry in Victoria.

5.13 Generally, industry associations lack the personnel and financial resources to effectively enforce their standards. Therefore, non-adherence to standards can often be reported or discovered on an accidental basis. The AFDA relies on self-reports from members every three years to ensure compliance with their standards for premises, equipment and vehicles. Independent inspections are carried out randomly. The VIFD uses an even less stringent form of inspection by regulating its members through adherence to its Code of Ethics.

5.14 Where a funeral director or embalmer does not adhere to the agreed standards under this system of self-regulation, penalties can be applied by the industry associations to their members. Penalties can range from explaining the circumstances of the breach to a meeting of members, being asked to rectify the fault or termination of active membership.

Evaluation of Self-Regulation

5.15 Self-regulation can be an effective means of regulating an industry if all members of the industry are committed to following an

agreed set of practice standards which are consistent across the industry. Self-regulation also allows individual businesses a degree of flexibility in implementing required standards. This has been and continues to be important for the funeral industry, given the diversity in size and location of businesses operating within the industry.

5.16 The effectiveness of self-regulation of the funeral industries in Victoria and New Zealand provides a clear contrast. In order to enhance the professional status of the industry, the FDANZ has attempted on four occasions to gain occupational regulation of the funeral industry by government. Each request has been declined as the Ministry of Health and the Ministry of Consumer Affairs are satisfied with the level of industry self-regulation in New Zealand. Currently, FDANZ is working with other interested parties to produce an Industry Code of Practice which will further support self-regulation.⁷ In Victoria, the establishment of this Inquiry and its Terms of Reference may indicate that some practices within the funeral industry need to be improved.

5.17 In an effective self-regulatory system, there needs to be a mechanism to enforce compliance with standards as, without such a mechanism, penalties can only be applied to association members and not across the industry. As it is not in the interests of the associations to reduce their membership numbers, there have been very few instances of the most severe penalties being applied. A disadvantage of termination of membership is that the funeral director or embalmer is not prevented from continuing to conduct their business. A similar or more serious breach to that which

resulted in loss of membership could subsequently occur without the peer control inherent through association membership.

5.18 Members of the funeral industry argued to the Committee that allowing the current system of self-regulation to continue risks further incidents occurring which relate to unprofessional or criminal conduct by funeral directors, the embalming of bodies by untrained persons, and public health and occupational health and safety misdemeanours. Incidents have been brought to the attention of the Committee to illustrate that self-regulation of industry association members in regard to compliance with practice standards has not occurred. The unregulated nature of the industry has led to a lack of confidence among industry employees as these incidents have serious ramifications for the health and safety of employees as well as protection of the public.

5.19 In their evidence to the Committee, the AFDA noted that community expectations of the behaviour of the funeral industry are not met under a system of self-regulation.

Clients are entitled to expect that things are being done properly behind the scenes without needing to scrutinise this for themselves...The community trusts the funeral industry do the right thing, and whilst most funeral directors in Victoria do, regrettably some funeral directors are simply not worthy of this trust. So the current system, based on trust, is totally ill-equipped to deal with rogue operators.⁸

A summary of current legislation, regulations and industry self-regulation is contained in Table 5.1.

Finding 5.1

That the current system of self-regulation of the funeral industry in Victoria is unsatisfactory given the diversity of businesses within the industry, the level of coverage of the industry associations, the lack of agreed industry-wide standards, and ineffective measures available to enforce compliance with existing voluntary standards.

VOLUNTARY CODE OF PRACTICE

5.20 Self-regulation of an industry may be assisted through the use of a Voluntary Code of Practice. For the purpose of this report, a Voluntary Code of Practice refers to a document which sets out specific standards of conduct for the funeral industry in relation to its provision of service to consumers. As the Victorian Government's submission to the Committee noted, a well-considered code of practice which has whole of industry support can act as a form of industry control by setting agreed standards of best practice. If the code is properly publicised, monitored and enforced, it can also benefit consumers by informing them about the standards they should expect from funeral industry practitioners.⁹

Existing Funeral Industry Codes

5.21 Currently, the funeral industry associations, including the AIE, all have Codes of Ethics which their members must adhere to in order to become and continue to be members. The industry associations also have practice standards detailing the minimum

standards of premises, equipment and vehicles which their members must achieve and maintain.

Codes of Ethics

5.22 The Codes of Ethics applying to VIFD members and AFDA and NFDA members in Victoria contain similarities in their references to standards of service, adequate facilities, client confidentiality, trained staff, provision of written estimates, 'good taste' in advertising, and knowledge of legislation. The VIFD code is based on the NFDA code, with the removal of the first point relating to Australian ownership and the last two points relating to supporting the industry and fellow members through reputable business practices. Differences between the three codes occur in the areas of providing information about the range of services, respect for client diversity, dispute resolution, dealings with government authorities, and pre-paid funerals.

Table 5.1 Summary of legislation, regulation and self-regulation in the funeral industry (Victoria)

Self-Regulation	Government Legislation and Regulations
Transportation of the body	
<p>The codes of practice of the various industry associations detail minimum standards required for membership. Funeral directors who are not members of industry associations may choose to adopt standards applied by international bodies or of their professional preference.</p>	<p>There are no legislative acts or regulations which stipulate conditions for the transport of a body.</p>
Preparation of the body	
<p><i>Infection Control Guidelines for the Funeral Industry, Parts A, B & C</i></p> <p>These are guidelines developed by Health Department Victoria, the Australian Funeral Directors' Association (Vic) and the</p>	<p><i>Coroner's Act 1985</i></p> <p>-Funeral directors must be knowledgeable of the 'reportable deaths' provisions of the Act as well as provisions relating to autopsy, release of a body and exhumation.</p>

<p>Australian Workers' Union for the practice of infection control during handling of the body and preparation of the body.</p> <p><i>Infection Control Guidelines for the Funeral Industry, Part D</i></p> <p>These guidelines are for use in the process of embalming.</p> <p><i>Australian Institute of Embalmers</i></p> <p>Self-regulated through its Code of Ethics and standards of membership. Embalmers in Australian are not required to be members of the AIE.</p>	<p><i>Health Act 1958</i></p> <p>-Section 126, Part VI Management and Control of Infectious Diseases, permits the Secretary of the Department of Human Services to order a funeral director to give possession of a body in their care to a registered medical practitioner for the purpose of carrying out an autopsy.</p> <p><i>Embalming for transportation of a body over long distances</i></p> <p>The Australian Quarantine and Inspection Service requires that bodies being repatriated <i>into</i> Australia be embalmed, though this requirement may be lifted in exceptional circumstances. Individual airlines have their own policies on whether they will carry an embalmed or unembalmed body.</p>
<p>Storage of the body</p>	
<p>The codes of practice of the various industry associations</p>	<p><i>Cemeteries and Crematoria</i></p>

<p>detail minimum standards required for membership. Funeral directors who are not members of industry associations may choose to adopt standards applied by international bodies or of their professional preference.</p>	<p><i>Regulations 2005</i></p> <p>Part 4 Interment, Section 13, states that:</p> <p>A person must not bring bodily remains or body parts to be interred into a public cemetery, or convey those remains or body parts within a public cemetery, unless the remains or body parts are enclosed in a coffin, container or receptacle—</p> <p>(a) that is clean and hygienic; and</p> <p>(b) that is constructed of wood, metal or other substantial material; and</p> <p>(c) from which neither offensive or noxious emissions nor matter from those remains or body parts will escape.</p>
<p>Registration of death</p>	
	<p><i>Births, Deaths and Marriages Registration Act 1996</i></p> <p>-requires funeral director in charge of arrangements to</p>

	provide the Registrar with all information required for registration of the death.
Pre-Paid Funerals	
	<p><i>Funerals (Pre-Paid Money) Act 1993</i></p> <p>-Requires that the consumers receive a copy of the contract, documents relating to the investment and receipt for monies paid to the funeral organiser.</p> <p>-Restricts the way monies can be invested and requires funeral directors to maintain a register of all contracts.</p>
Registration or licensing of businesses, individuals	
	Funeral companies must comply with relevant business registration procedures in Victoria, as apply to any other business.
Funeral Home Premises	

<p>The codes of practice of the various industry associations detail minimum standards required for membership. Funeral directors who are not members of industry associations may choose to adopt standards applied by international bodies or of their professional preference.</p>	<p><i>Health Act 1958</i></p> <p>-the act applies to the funeral industry in the same manner as any other business (prevention of fire, control of waste substances).</p> <p><i>Planning and Environment Act 1987</i></p> <p>Provides the legislative framework for local governments to establish planning frameworks, including conditions for the use of land, and outflow of waste products.</p>
<p>Conditions of Work</p>	
	<p><i>Occupational Health and Safety Act 2004</i></p> <p>Outlines the employer's responsibility to maintain a safe workplace and the employee's contribution to workplace health and safety.</p> <p>Funeral Industry Award 2003 - Details wages and related</p>

	<p>matters, hours of work, leave and breaks, overtime, shiftwork and weekend work for those employed in the business of funeral directing or coffin making.</p>
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Practice standards

5.23 The practice standards of the AFDA, the VIFD and the NFDA contain general statements about the need to ensure the maintenance of acceptable standards of occupational health and safety and public safety as well as provision of a responsive service meeting community expectations. There is also a requirement to have gained all necessary licences, permits and registrations, and to meet government standards where they may be higher than the standards set by the industry associations.

5.24 The standards are quite detailed in their requirements for mortuary facilities, transfer vehicles and hearses. Mortuary facility standards are almost identical with only slight differences in some minor details. The AFDA and the VIFD standards explicitly state that a hearse can be used as a transfer vehicle and vice versa if the conditions for each are met. The AFDA standards specify in detail the type of Personal Protective Equipment and cleaning materials that must be carried in the transfer vehicle and make reference to the *Infection Control Guidelines for the Funeral Industry*.¹⁰

Issues with a Voluntary Code of Practice

Stakeholders

5.25 Developing a single industry-wide code of practice would require co-operation between a diverse range of stakeholders including industry associations and representatives of businesses which are not currently members of any industry association. Given the structure of the industry and the large number of businesses operating within it which are not affiliated with one of the industry associations, involving all industry stakeholders in meaningful decision making may be a difficult task.

5.26 Government bodies (especially those concerned with public and environmental health, and education and training) as well as unions and employee associations would need some level of involvement in the development of a code of practice. Independent bodies representing consumers should also be involved in the development of a code of practice to ensure that the needs of consumers are considered. Therefore, a diverse range of stakeholders would need to be consulted during the development of a Voluntary Code of Practice to ensure that the code was approved and supported by the industry as a whole, received the support of government and met the needs of the community.

Content of the code

5.27 As the separate industry associations already have in operation their own codes of practice, the basis of a best practice code already exists. As evident from the current codes, stakeholders hold differing opinions about the acceptable level of 'minimum standards'. Agreement would depend on the willingness of some stakeholders to negotiate either a raising or lowering of their current minimum standards. Such agreement is vital to ensure industry-wide support for the code.

Informing consumers

5.28 For a Voluntary Code of Practice to be effective, its existence and contents must be widely publicised and readily available to industry personnel and consumers to ensure that all parties are aware of the standards which can be expected when dealing with a company which has agreed to abide by the code.

Administering the code

5.29 An industry-based body would need to be established to administer the code. This would entail establishment and ongoing costs which could be passed onto consumers. The funeral industry would need to decide whether it had the finances to administer a code, monitor and review its operation, educate its members about the code, promote the code to the public, and establish and maintain a dispute resolution scheme.¹¹ Without such a body, there would be

no means of enforcing the code and, therefore, dealing with breaches of the code by funeral industry practitioners.

Voluntary codes in other industries

5.30 A variety of industries and professions have established voluntary codes of practice. For example, the voluntary code of practice for dance parties introduced on 30 December 2004 was developed through co-operation of the Victorian government, police, Metropolitan Ambulance Service, the entertainment community and other interested groups. Adherence to the Code of Practice for Supermarket Carry Bags by retailers has reduced the number of plastic bags used throughout Australia and increased public awareness of the associated environmental benefits. Teachers and midwives in Victoria have also agreed to abide by codes of professional practice as part of their registration process. Therefore, such codes can be established in an industry where there is a wide range of stakeholders.

Evaluation of a Voluntary Code of Practice

5.31 The particular characteristics of the funeral industry make it impractical to compare the success of codes existing in other industries and professions with the development and implementation of a code of practice for the funeral industry. However, the successful implementation of such codes and subsequent level of public awareness demonstrates that a Voluntary Code of Practice can benefit an industry and consumers.

5.32 The creation of a single code of practice for the funeral industry appears possible as the basic outline of such a code already exists within the industry association codes. As the practice standards relating to premises, vehicles and equipment currently in use by the AFDA, the VIFD and the NFDA display more similarity than difference, the development of a best practice code for the funeral industry would be an achievable option. However, there is no valid argument for forcing separate associations to forego their individual Codes of Ethics as these reflect the underlying ideologies of the associations such as 'family operated' or 'Australian owned'.

5.33 In conjunction with the current regime of self-regulation by industry association, adherence to an industry-wide Voluntary Code of Practice could be one method of improving standards across the industry. However, this aim would not be achieved unless all funeral service practitioners, whether association members or not, adhered to the code. It is unlikely that unscrupulous traders would subscribe to a code voluntarily. A Voluntary Code of Practice may be the first step towards establishing an Authorised Code of Practice, which is discussed in the next section.

Finding 5.2

That the establishment of a Voluntary Code of Practice for the Funeral Industry would not be beneficial without the support of legislation requiring adherence to the code by all practitioners within the industry.

AUTHORISED CODE OF PRACTICE

5.34 The development of a Voluntary Code of Practice can be the first step towards having the code recognised under legislation and, therefore, becoming authorised or mandatory. An Authorised Code of Practice is one which is supported by government through legislation and applies to the whole of an industry, not only the members of industry associations or those who may have subscribed to a voluntary code.

Issues with an Authorised Code of Practice

5.35 The issues with the development of an Authorised Code of Practice are the same as those for a Voluntary Code of Practice. This section discusses the additional issues of government involvement, legislation, and the costs involved in moving from a voluntary to an authorised code.

Government involvement

5.36 Involving the government in formal regulation of the funeral industry introduces a new level of regulation into the industry. If this is not desirable, a level of co-regulation could be considered. Under a co-regulatory scheme, the funeral industry would develop and administer a code with the government providing a level of support which may not be as strong as prescribing the code in detail in legislation. For example, the government could delegate the power to industry to regulate and enforce the code. Another option is for the government to prescribe a code as a regulation (i.e. prescribed

voluntary code) but have the code apply only to those members of the industry who subscribe to it.

Legislation

5.37 The *Fair Trading Act 1999* has provision for codes of practice to be drafted by the Director of Consumer Affairs Victoria (Section 94) or for codes prepared by industry to be recommended by the Director (Section 95). Under Section 96 of the Act, regulations prescribing a code of practice can be made. As this type of legislation is subordinate legislation, penalties for breaches of the regulations (i.e. the code of practice) are less than under primary legislation.

Costs

5.38 Before an Authorised Code of Practice could be established, a Regulatory Impact Statement would need to be developed so this would involve costs for both government and industry. Once established, administration costs would be borne by both government and industry but there would be an increase in enforcement and monitoring costs for government.

5.39 All participants in the industry would be faced with compliance costs to a varying degree. Where current standards in the industry meet those prescribed under the Authorised Code of Practice, compliance costs would be minimal as it can be assumed that many businesses would already be operating at the required level. However, compliance costs for the many small businesses which form a major portion of the funeral industry may be substantial and

the businesses, in order to remain viable, may have to pass these costs onto consumers.

Evaluation of an Authorised Code of Practice

5.40 Self-regulation of the funeral industry is currently recognised by many industry participants and government to be an ineffective method of regulation. Almost certainly, a Voluntary Code of Practice would not be taken up by the business operators who are of concern to the industry and the wider community. Therefore, an Authorised Code of Practice is preferable to a voluntary code as part of a regulatory package to ensure that industry-wide standards of service are established and maintained.

5.41 An Authorised Code of Practice would be a cost effective way for government to introduce enforceable measures and allow them to be updated in response to industry requirements rather than by the lengthy process of passing primary or subordinate legislation. Non-compliance with the code could be addressed through the application of appropriate penalties; therefore, it is fairer in principle than a voluntary code which is unlikely to be adopted by all participants in the industry.

NEGATIVE LICENSING OF ALL EMPLOYEES

5.42 Negative licensing is a system of regulation whereby an individual does not have to apply for any form of licence in order to conduct a business but may be subject to sanctions, such as a ban

from working in the funeral industry, for breaches of prescribed standards or a recognised code of practice.

Issues with Negative Licensing

No fees or compliance costs

5.43 With a negative licensing system, there are no fees or compliance costs imposed on the industry. Therefore, there are no costs which may legitimately be passed onto the consumer or costs to be absorbed by the business. As the cost of any new regulatory scheme resulting from this inquiry and its impact on consumers has been a concern expressed by several smaller operators in the industry¹², negative licensing should be well-received by the industry if cost were the main concern.

5.44 Additionally, an advantage over a positive licensing system is that resources which would be used to administer a licensing system are available for active enforcement of legislation providing standards against which to measure inappropriate behaviour.¹³

Reactive consumer protection

5.45 The threat of being banned from an industry because of inappropriate behaviour may be a deterrent to some operators. However, the risk of being caught may not be enough to deter the more unscrupulous operators. Enforcement options could entail lengthy court proceedings during which time the operator would still be able to conduct their business. Evidence has been presented to this inquiry to demonstrate that an unscrupulous operator who is

brought to the attention of the public through media exposure can simply close down one business and open another under a different business name.¹⁴ The Victorian Government's submission to the Inquiry argued that

Negative licensing allows the government to remove individuals from the funeral industry and prohibit them from operating in the future. This option allows the government to punish unscrupulous operators without placing an excessive burden on the rest of the industry.¹⁵

However, the effective and permanent removal of unscrupulous operators from the funeral industry would require a system of registration in order to check new entrants into the industry.

No barriers to participation

5.46 Negative licensing does not establish any barriers to participation in an industry. This can be advantageous in that dominant industry associations cannot seek to restrict competition by setting stringent entry conditions.¹⁶ However, in the case of the funeral industry, it may be desirable that people entering the industry achieve certain criteria such as educational qualifications or experience in the operation of a funeral business. Under a system of negative licensing, it is not possible to screen individuals and prevent those with inappropriate characteristics from entering the industry.

Establishment of a code of practice

5.47 Negative licensing is a reactive form of regulation as complaints against a recognised code of practice must be made

before any action is taken against an unscrupulous operator. Complaints of inappropriate behaviour would have to be made with reference to a code of practice with which the entire funeral industry had agreed to comply. This code would need to be developed and publicised to consumers to encourage awareness of standards of appropriate and inappropriate behaviour within the funeral industry.

Evaluation of Negative Licensing

5.48 Negative licensing has many financial benefits to the funeral industry over requiring all or some of the individuals in an industry to be licensed under a positive system. If cost were the only consideration in addressing issues within the funeral industry, negative licensing would be a suitable regulatory measure.

5.49 A major concern within the funeral industry is how to prevent incompetent or unscrupulous traders from entering the industry and how to control or remove such traders who may currently be operating in the industry.¹⁷ In order to achieve this through the use of negative licensing, there would need to be legislative support in the form of a recognised code of ethics, practice or conduct against which complaints could be made. Such a code could be authorised as subordinate legislation under the *Fair Trading Act 1999*.

5.50 For negative licensing to be an effective form of regulatory control for the funeral industry, all the operators in the funeral industry would need to be identified to ensure that information about standards of appropriate behaviour could be targeted appropriately. There would also need to be a mechanism to monitor compliance

across the industry and a clear avenue for complaints would also have to be developed and publicised.

REGISTRATION OF ALL EMPLOYEES WITHIN THE FUNERAL INDUSTRY

5.51 As stated in the previous section, for a system of negative licensing to be successful, all the operators in the funeral industry would need to be identified. Registration of all employees within the funeral industry (i.e. funeral directors and their staff) is one way of achieving this and also gaining some control over standards of behaviour within the funeral industry.

Issues with Registering All Employees

Identifying all employees

5.52 Employees within the funeral industry fulfil a variety of roles as described in the first chapter of this report. Employees may also be engaged on a full-time, part-time, casual or contract basis and work for varying lengths of time within the industry. In addition, they are employed by an unknown number of companies which may not be easily identifiable through any business register.

Registering authority

5.53 Such an extensive registration process would require the establishment of a specific authority to handle the registration process. There would need to be a process developed to register all

current employees, advise newcomers to the industry of the registration requirement, and track movements of employees into and out of the industry.

Evaluation of Registering All Employees

5.54 It would be extremely difficult, firstly, to identify all employees working in the funeral industry in all roles and under all working arrangements and, secondly, justify the need to register all such employees given the nature and extent of problems identified within the industry by this inquiry.

5.55 Registering all employees would be an initial step in instigating a negative licensing system but it would be difficult to justify the expense of establishing an authority to do so and to identify any tangible benefits to the industry or the community through such a process.

LICENSING THE MORTUARY

5.56 Within the premises of a funeral business, a mortuary is an area which is used for the preparation and storage of bodies. Preparation can range from basic washing of the body, simple disinfection and packing of body orifices using very few invasive procedures to varying levels of embalming requiring invasive techniques and the use of specialised equipment. During embalming, blood and waste material are removed from the body and replaced with preservative chemicals and reconstructive materials. The waste material produced from mortuary operations

includes blood, water contaminated with chemicals or solid waste, sharp instruments and disposable protective clothing and needs to be treated in a manner which will not endanger public or environmental health.

Issues with Licensing Mortuaries

Location of the mortuary

5.57 Individual funeral premises do not all contain or need to contain a fully-equipped mortuary. Larger firms in the Melbourne metropolitan area may use central mortuaries which service several branches. It is not uncommon for smaller metropolitan firms and rural and regional firms may have an arrangement to use a mortuary at the premises of another funeral director for the times when they may need to carry out extensive body preparation and their mortuary facilities and equipment may not be adequate for the task.¹⁸ Other companies operated by individuals may have an arrangement to use the mortuary facilities attached to a hospital. Therefore, it cannot be assumed that the premises of each funeral business will contain a fully-equipped mortuary but most will require, as a minimum, a mortuary area for basic body preparation and refrigerated body storage.

Mortuary standards

5.58 The industry associations have practice standards for the mortuaries of their member firms. These standards cover elements such as:

- the siting of the mortuary and adjacent vehicle access within the funeral premises;
- service connections;
- dimensions of the room;
- specifications for an impervious finish to floor, walls and ceiling;
- drainage which prevents the discharge of solid material to the public drainage system;
- insect screening of all external doors and windows;
- the provision of a sink for hand-washing;
- mortuary tables and fixtures able to be easily cleaned;
- the capacity and operating temperature of refrigerated body storage facilities;
- first aid facilities;
- waste disposal facilities for sharps and solid waste;
- toilet and shower facilities; and
- lighting and ventilation.

Licensing authority

5.59 As local councils are involved with the establishment of funeral businesses through their Planning Departments and also have

Environmental Health Officers who ensure that the businesses have the facilities in place to operate in a manner which does not endanger public health, it may appear logical to extend their responsibility to be the licensing authority for mortuaries connected to funeral businesses.

5.60 Licensing mortuaries has been attempted by Logan City Council in Queensland somewhat unsuccessfully. They are the only municipality in Queensland requiring mortuaries to be licensed and, since enacting their subordinate legislation to enable this, have not received any new applications for mortuaries. There is pressure from the three funeral directors currently operating in the area to have this law repealed.

5.61 New South Wales also had a requirement for mortuaries to be approved by the local authority prior to the introduction of the *Public Health (Disposal of Bodies) Regulation 2002*. However, the new legislation raised the issue of whether the licensing of mortuaries should be the responsibility of local councils or the NSW Health Department to ensure state-wide consistency and avoid the duplication of responsibility within the regulatory framework. Currently, this issue is under review.

Environment or activities

5.62 Generally, in any jurisdiction where approval has been given for the operation of a mortuary, the approval covers only the physical environment of the mortuary, the equipment to be used in the mortuary, the disposal of waste and the keeping of administrative registers. Licensing a mortuary has not enabled the licensing

authority to specify the manner in which activities take place within the mortuary or the qualification level of people who conduct the mortuary procedures.

Evaluation of Mortuary Licensing

5.63 Licensing a mortuary which is attached to funeral premises or used by a funeral director in conducting their business would be one way in which the physical environment of the mortuary could be controlled to ensure a minimum level of standards. As there are existing standards which industry association members adhere to as well as standards for hospital and coronial mortuaries and pathology departments where similar procedures are carried out, the development of standards to form part of any licensing requirements would be achievable.

5.64 In situations where the licensing authority has been a local authority perhaps lacking the specialised knowledge of the operations of embalming practice within a mortuary, the licensing of mortuaries as a separate entity within a funeral business has not been a successful endeavour. The situation in New Zealand is similar to that in Australia. In New Zealand, funeral practices have an annual local authority licensing inspection to ensure they comply with the *Health (Burial) Regulations 1946*, which are currently under review.

5.65 In America and Canada, licensing mortuaries is regulated, as is the whole industry, through an extensive network of state and provincial funeral boards which have the authority to license funeral directors and the premises from which they operate. Licensing the

mortuary premises cannot exert any control over the activities which occur within it nor the people who conduct mortuary procedures. However, in these countries, such people are also required to be licensed and have appropriate levels of training to ensure that they are capable of carrying out mortuary procedures in a safe and appropriate manner.

5.66 Licensing a fully-equipped and utilised mortuary through an appropriate licensing board operating under state legislation could eliminate situations which have occurred where bodies have been prepared in inappropriate facilities such as private houses which have not been subject to even a local authority inspection process. Consideration may be given to excluding those funeral directors with limited mortuary facilities whose body preparation procedures are confined to cleansing and dressing the body. This would accommodate funeral directors from cultural and religious groups whose beliefs and practices do not support embalming or invasive body preparation techniques, as well as smaller firms who engage the services of an external mortuary as required.

LICENSING EMBALMERS

5.67 As discussed in Chapter 3, there is currently no legislated requirement for the registration or licensing of embalmers in Victoria, though the Australian Institute of Embalmers has its own qualification requirements for membership. This is also the situation throughout Australia. Given the technical nature of embalming work, health and safety issues for embalmers and the trust placed in

embalmers by the community, accreditation, registration or licensing of all practitioners engaged in embalming would seem advisable.

Issues with Licensing Embalmers

Definition of an embalmer

5.68 Section 5.3 of the *Funeral Industry Award 2003* defines an 'embalmer qualified' as a person who is eligible for membership of the AIE and/or the British Institute of Embalming. Implicit in this definition is the recognition that some people carrying out embalming processes may not be qualified; this has been supported by evidence provided to this inquiry.¹⁹

5.69 As different levels of embalming may be carried out, it is important to define what level of treatment is covered by the term 'embalming'. This definition would then affect any definition of an 'embalmer' in terms of who should be licensed and the level of treatment they would be licensed to provide. Body preparation refers to the washing of the body with germicidal soap and other specially prepared disinfectants and is a non-invasive procedure. Presentation and preservation of the body are further steps in the embalming process. Presentation is deemed essential for a successful viewing and presents the deceased in a 'natural and dignified manner'. The AIE and the AFDA prefer that the next of kin's permission be sought prior to any embalming work.²⁰ The state of the deceased body or the family's preference will determine the extent of embalming. Such work may be cosmetic, involve minor body restoration work, or one or all of the embalming procedures.²¹

Eligibility requirements

5.70 Generally, international standards for the licensing of embalmers require that the embalmer has successfully completed a course of study, which has involved both theoretical and practical components under the supervision of a fully-qualified embalmer as a mentor, undertakes some form of continuing education in order to maintain skill levels, and is eligible for membership of a recognised association.

Training

5.71 Training for the Certificate IV in Funeral Services (Embalming) is currently available from two Registered Training Operators (RTOs) located in Victoria and from at least one other RTO based in New South Wales which is authorised to provide this training in Victoria. Training involves around 800 hours of tuition over two years and involves both theoretical and practical training under the tutelage of a qualified mentor.

5.72 Certificate IV level training is suitable for an embalmer working relatively autonomously who may also supervise others. The trainee would be skilled in recognised industry practices with a particular emphasis on hygiene standards.²²

Continuing education

5.73 The AIE requires ongoing active members to complete at least five full embalms in a 12 month period, in addition to completing

further education requirements which are approved by the AIE Board.

Association membership

5.74 As there are currently no controls over who may call themselves an embalmer or who may carry out various levels of the embalming process and membership of the AIE is not a requirement for practice, there are an unknown number of people who have not undertaken a formal course of study who perform embalms. The AIE currently lists 263 members, including 15 student members, 1 overseas member and 7 retired members.²³

Licensing authority

5.75 As the AIE is the sole association for embalmers in Australia and identifies its members by their qualification number, it seems logical that this association should have a role to play in any accreditation process.

5.76 The establishment of a separate licensing authority should also be considered. However, this would entail considerable expense especially if its sole purpose was to license embalmers. Any regulatory option resulting from this inquiry should consider incorporating a licensing requirement for embalmers.

International Perspective

New Zealand

5.77 In New Zealand, embalming is more common than in Australia with many funeral businesses embalming as a standard practice. Although the misconception that embalming is required by law in New Zealand has been expressed during the conduct of this inquiry, there is no legislative requirement for all bodies to be embalmed or for embalmers to be licensed.

Canada

5.78 In Canada, embalmers and funeral directors are licensed on a provincial basis with requirements varying across the thirteen provinces. Many funeral directors are also embalmers and embalming can only be performed by a licensed embalmer or by a trainee embalmer under the supervision of a licensed embalmer.

United Kingdom

5.79 Embalmers working in the United Kingdom are not required to hold any type of operating licence.

United States of America

5.80 In all American states, except Colorado, embalmers are required to hold a licence to operate. Training for an embalmer usually involves two years of college and an apprenticeship in a funeral home. Embalmers must satisfy both national and state

registration board requirements so the legislative control over embalmers is quite strong.

Evaluation of Licensing Embalmers

5.81 Whether or not licensing of mortuaries eventuates, it is important for the confidence of the community and the funeral industry to be able to exert some control over the activities occurring within a mortuary, especially those carried out during the preparation of human remains.

5.82 Requiring that all embalmers are accredited, registered or licensed in some way could ensure that the only people carrying out invasive procedures on human remains have a specified level of qualification and are able to embalm in a manner which is both safe and respectful. However, there should also be a legislative control, similar to that enacted in New South Wales public health legislation (*Public Health (Disposal of Bodies) Regulation 2002, clause 11*), to make it an offence with appropriate penalties for anybody without a recognised qualification to embalm a body.

Finding 5.3

The Committee is aware of current training and recognition of qualification of embalmers and supports the recognition of prior learning for current practitioners. The implementation of an accreditation and registration system for embalmers should be monitored so that training requirements are not used to limit entry into the profession.

Recommendation 5.1

That embalmers be accredited and registered and that it is an offence to embalm (use invasive body preparation techniques on) a body without being an accredited and registered embalmer.

Recommendation 5.2

That it is an offence for any person other than a registered embalmer to carry out any embalming procedures on the body of a deceased person carrying a List A communicable disease. In the case of the removal of pace-makers and other battery-powered devices prior to cremation, the current Regulation applies.

LICENSING THE PRINCIPAL OF THE BUSINESS

5.83 Consumer Affairs Victoria believes that occupational licensing and regulation builds consumer confidence by screening entrants into industries and preventing those with backgrounds prone to unethical behaviour from inclusion.²⁴ As with other businesses, an individual who wishes to establish a business as a funeral director needs to register a business name for a fee of \$71.60 with CAV. If the person is conducting the business under their personal name, without the addition of any extra words such as 'Funerals', then registering a business name is optional. Accountability to customers of the business would be covered by provisions of the *Fair Trading Act 1999*, including provisions relating to misleading or deceptive

conduct (s. 11), unconscionable conduct (s. 8), false representation in relation to goods and services (s. 12) or unfair terms in consumer contracts (Part 2B, particularly s. 163).²⁵ Additional, formal qualifications are not required to establish a business as a funeral director. This may not prevent the entry into the industry of unscrupulous operators for purely commercial gain.

Licensing the Principal or Licensing the Business?

5.84 An issue investigated during public hearings was whether a funeral business should be licensed or whether the principal of the business should be subject to some type of licensing control. Many in the industry did not agree with licensing at all through fears that such a licensing system was unnecessary and costly for funeral directors who would be forced to pass their costs onto consumers. Funeral directors were generally divided on this issue; of those who agreed with licensing in principle, some felt that the premises, equipment and vehicles should be of a certain standard while others agreed with licensing individuals. This is a fairly typical comment:

With respect to the issue of (licensing) individuals as opposed to companies, I think the premises would have to be licensed, obviously, to ensure they meet certain standards, but I have always been of the opinion that we are individuals working in this field and as individuals we should be responsible for our own actions, not a company as such that you are working for. I know that companies can punish or deal with individuals in their companies who do not meet certain procedures or standards, but there again I still think the responsibility lies with the individual more so than with a company.²⁶

5.85 Issues of concern which have been brought to the attention of the Committee concerning inappropriate practices within some funeral businesses generally concern the activities of people rather than the business activities of the companies. Unethical, unsafe or illegal practices have been condoned, encouraged or ordered by managerial staff. Therefore, a designated person needs to be accountable for the daily activities at any location from which a funeral business is operating.

Issues with Licensing the Principal of the Business

Identifying the principal

5.86 There are several issues associated with identifying the principal of a funeral business as, given the diversity of the industry, this is not as straightforward as it may seem.

5.87 For small businesses operating from a single location, it is likely that the person who has registered the business name is the owner of the business and is involved in daily operation of the business. A typical situation, especially in rural and regional areas, is that the funeral business is operated by a couple or a family who live on-site or close by. For businesses of a medium size operating from up to five locations, it is likely that this is still the situation and, although the owner might not physically be at every site every day, it is reasonable to expect that this person would have a good knowledge of the operations of each of the separate locations. Depending on the size of the business, responsibility for daily operations could be delegated to a manager who, in effect, would become the principal at that location.

5.88 However, for larger firms operating from multiple locations, it may be quite difficult to discern a chain of responsibility. The ‘owner’ of the business may be a multinational firm with little or no direct contact with the daily operations at each separate location. In this instance, the ‘owner’ (i.e. a large company) could be identified as the principal but the reasoning behind having at least one licensed individual at each location, or at least responsible for the work being done there, is to ensure that there is an experienced and possibly formally-qualified person in charge of daily operations.

Eligibility requirements

5.89 At most funeral businesses, the person in charge would be a funeral director. In order to be licensed as the principal of the business (i.e. a licensed funeral director), an individual could be expected to hold a certain qualification or have a certain level of experience in the industry and be of reputable character. It is not within the terms of reference of this inquiry to determine what these might be. However, Service Skills Victoria has suggested to the Committee that a minimum qualification could be a Certificate II in Funeral Services (Funeral Operations).²⁷

5.90 In New South Wales, an attempt to license funeral directors was unsuccessful (see Chapter 2) and would have, in effect, operated as a negative licensing system with two convictions being recorded against a person as being sufficient to show that that individual was not a ‘fit and proper person’ to be a funeral director.

Licensing authority

5.91 In order to license the principal of a funeral business, either a special licensing authority would need to be created or this function could be absorbed into an existing authority such as the Business Licensing Authority. The costs and benefits of establishing a new authority or the capacity for the BLA to include a further licensing obligation into its current structure would need to be considered before any such scheme progressed.

5.92 The BLA maintains industry standards by imposing conditions on licences and also provides access to accurate public registers. In administering licensing, registration and permission provisions contained in certain Acts, the BLA seeks to ensure that only eligible businesses and individuals enter these industries.

Acts administered by the BLA

Consumer Credit (Victoria) Act 1995, for credit providers and finance brokers
Estate Agents Act 1986, for estate agents and agent's representatives

Introduction Agents Act 1997

Motor Car Traders Act 1986

Prostitution Control Act 1994, for prostitution service providers and approved managers of brothels

Second-Hand Dealers and Pawnbrokers Act 1989

Travel Agents Act 1986

Cost

5.93 Fears have been expressed that the cost of any licensing scheme would not be able to be absorbed by smaller businesses. Such a fear is based on the assumption that there would be a flat, across-the-board licensing fee structure. However, there are other ways of assessing the cost of a licence. For example:

In my opinion (a per funeral levy) is probably the only way that funding for licensing could be obtained. This is the way we pay our association levies. We pay a base fee and then it has a sliding scale. I think it is 0 to 300 funerals at a certain figure, 300 to 1000 at a slightly lesser figure per funeral and so on, so that the figures levied on us relate to our capacity to pay, depending on the number of funerals. That model of fees is a fantastic model to work on. It means it is fairer for everyone.²⁸

5.94 The BLA charges an initial application fee and an annual licensing fee. For the above-mentioned traders who are required to be licensed, the fees and charges are as follows (GST is not applicable):

Table 5.2 Business Licensing Authority fees and charges (current as at September 2005)²⁹

Traders	Application fee	Annual licensing fee
Credit providers	No charge for registration	
Financial brokers	\$157.40 (individuals previously disqualified)	N/A
Estate agents	\$262.30 (individual) \$498.30 (company)	\$131.10 (individual) \$288.50 (company)
Introduction agents	\$199.30	N/A
Motor car traders	\$816.10	\$1,020.70
Travel Agents	\$262.30	\$251.80
Second-hand dealers	\$115.40	\$419.60
Pawnbrokers	\$31.50	\$419.60
Brothel managers	\$266.70 (applicable for 3 years)	\$251.80
Prostitution service providers	Brothel - \$3,500 Escort Agency - \$1,750 Brothel & Escort Agency - \$3,500	Brothel - \$2,000 Escort Agency - \$2,000 Brothel & Escort Agency - \$2,000

5.95 Other industries and professions, where the requirements for qualifications are set at a much higher level than any that could be envisaged for funeral directors, have these annual licensing fees for 2005.

Table 5.3: Annual licensing fees in other professions³⁰

Regulatory Body	Annual Registration Fee
Victorian Institute of Teaching	\$60
Nurses Board of Victoria	\$80
Physiotherapists Registration Board of Victoria	\$110
Architects Registration Board of Victoria	\$150

Cross-border issues

5.96 If a licensing system for funeral directors is established in other Australian states, mutual recognition of licences across state borders would ensure that rural and regional businesses are not disadvantaged by having to obtain licences for two or three separate states.

Evaluation of Licensing the Principal of the Business

5.97 Licensing the principal of a funeral business is a way of introducing more rigorous accountability into the industry rather than through the methods of self-regulation or adherence to a Code of Practice, either voluntary or authorised. It is a more proactive approach than negative licensing which provides a method of removing undesirable practitioners from the industry only after they

have transgressed; the consequences of such activity could be disastrous for families or the industry as a whole.

5.98 Identifying a person at each funeral business as the 'principal' is necessary so that one person on site is ultimately responsible for the practices carried out at that location. This is also a means of establishing one point of contact at each funeral business for the dissemination of information, especially in times of emergency. Although there are issues with identifying one person as a principal, it is feasible and a necessary step in order to ensure accountability.

5.99 Eligibility requirements for a licensed funeral director would need to be developed in consultation with the industry associations, stakeholders such as RTOs and individual funeral directors who are not affiliated with industry associations. Naturally, implementation of any licensing scheme would need to be long-term and could be considered in conjunction with other states which may also be considering a similar approach to regulation of their local funeral industries.

5.99 The infrastructure in the form of the BLA exists to administer a licensing system for funeral directors. However, such licensing would need to be mandated under legislation which would have to be developed for this specific purpose.

5.100 The cost to the funeral industry of any licensing system would need to take into account the diversity within the industry and the need to maintain standards while not prescribing conditions that would prevent the entry of new or innovative businesses to the industry.

5.101 The Registry of Births, Deaths and Marriages operates an on-line death registration service for funeral directors. Currently, there are 139 funeral companies or their branches registered for access to this online system in Victoria. The Registry supports the concept of licensing funeral directors as, at present, funeral directors are provided with access to this service on the basis that the registry has had dealings with them in the past. However, there is no way for the registry to assess the legitimacy of people purporting to be new funeral directors. A licensing system would provide a register against which the activities of funeral directors could be monitored, as well as acting as a tool through which unusual or suspicious behaviour could be detected.³¹

APPOINTING A FUNERAL INDUSTRY OMBUDSMAN

5.102 Chapter 4 contains a comprehensive discussion of consumer reluctance to complain about the funeral industry and inadequacies in the current complaint resolution processes. Self-regulation of the funeral industry could be enhanced by the appointment of a Funeral Industry Ombudsman as an ombudsman would provide an independent complaint resolution process for the funeral industry and could also assist in establishing industry standards of best practice.

Function of an Ombudsman

5.103 The function of an ombudsman is to investigate complaints and then express an opinion about whether the complaint is justified

and recommend how it should be resolved. In order to function effectively, the ombudsman must be independent, accessible, have clear powers and procedures, and be able to implement decisions resulting from inquiries.

Independence

5.104 A Funeral Industry Ombudsman would need to be appointed by a board which is independent of the funeral industry. By 'independent', it is not meant that the funeral industry should not have representation on the board but that no particular groups within the industry should dominate that board.

Accessibility

5.105 A Funeral Industry Ombudsman scheme would need to be well-publicised and should be available to complainants without charge or the need for legal representation. This type of scheme is usually accessed after the consumer feels dissatisfied with the resolution suggested by an individual company.

Powers and procedures

5.106 A Funeral Industry Ombudsman must have access to all relevant documents and information and have the power to question witnesses. As an industry ombudsman usually works within a co-operative atmosphere with members of the industry who have pledged their support to such a scheme, these powers can be granted without redress to legislation.

Implementation of decisions

5.107 Under such a scheme, there should be a reasonable expectation that the decisions of the Funeral Industry Ombudsman would be complied with. In cases where non-compliance occurred, the Funeral Industry Ombudsman should have the power to publicise such non-compliance, whether in an annual report or in some other form.

Issues with Appointing a Funeral Industry Ombudsman

Industry coverage

5.108 In order to be truly effective, a Funeral Industry Ombudsman must be able to receive complaints from the community and other sources regarding the entire funeral industry (not only as it has been defined for this inquiry) which would include funeral businesses and their staff, embalmers, mortuary transport services, cemetery and crematoria operations, funeral celebrants and suppliers of goods and any other services used during the conduct of a funeral.

Level of complaints

5.109 It can be argued that the present number of complaints originating from community experience with the funeral industry through all avenues of complaint, even at a national level, is so low that it does not justify the appointment of a Funeral Industry

Ombudsman. However, as explained in Chapter 4, complaining about funeral service is a complex issue.

5.110 Currently, there is no independent avenue for complaints about the professional conduct of those involved in the funeral industry and no avenue at all for clients of funeral directors not affiliated with an industry association. If there was an avenue such as an ombudsman, the level of dissatisfaction may remain the same but dissatisfied families would have an avenue through which to channel their complaints as one does not currently exist.

Independent adjudication

5.111 A Funeral Industry Ombudsman would provide independent adjudication of disputes between bereaved families, funeral directors and any other parties who may be involved such as hospitals, cemeteries and ministers of religion. Currently, initial complaints are handled by the funeral industry associations and, therefore, it is reasonable to doubt their impartiality in disputes involving their members.

Funding

5.112 Industry ombudsman schemes are normally funded by the members of the scheme based on a contribution commensurate with the turnover of the business. Although the ombudsman is effectively being paid by the industry, diversity of interests within the industry and the community should ensure that the ombudsman remains independent and impartial.

Legislation

5.113 An ombudsman who operates in the public sector needs to do so under legislation. For example, the office of the Victorian Ombudsman which handles complaints against Victorian government departments, public statutory authorities and the officers of local councils was established under the *Ombudsman Act 1973*. However, in the private sector, an ombudsman operates under the auspices of a board especially convened for the purpose and does not require government legislation to do so.

Ombudsmen in Other Jurisdictions

5.114 As the concept of an ombudsman first appeared in Victoria over thirty years ago, the community, industry and government should be accustomed to the operation of such schemes. As well as state-based ombudsmen, there are also ombudsmen acting at a national level such as the Banking and Financial Services Ombudsman. Examples of current schemes are provided in the box.

Examples of Ombudsmen

Energy and Water Ombudsman

The Energy and Water Ombudsman was established in April 2001 to receive complaints and facilitate the resolution of these complaints between customers and Water Authorities.

Public Transport Ombudsman

With the privatisation of the public transport system in August 1999, the Victorian Ombudsman was no longer able to handle complaints against the privately-owned companies. The Public Transport Ombudsman was appointed in July 2004 to provide the public with access to an independent complaints-handling mechanism for issues relating to Victoria's public transport operators and transport-related suppliers.

International Perspective - United Kingdom

Funeral Ombudsman Scheme

5.115 In the United Kingdom, the Funeral Ombudsman Scheme (FOS) was established in 1994 by the Funeral Standards Council and the Funeral Planning Council. Initially, about one-third of funeral directors were covered by the scheme. By 2000, although membership of the scheme was voluntary, membership numbers had increased to around two-thirds of funeral directors.

5.116 Two of the three industry associations active in the United Kingdom supported the scheme. The FOS offered clients of these member organisations an independent complaints and conciliation process. Where agreement between a funeral business and its client could not be reached, the Ombudsman provided an independent assessment of the situation and delivered an adjudication with the funeral director bound to accept the findings.

5.117 Complaints that reached the FOS were those where the funeral business in question felt that a reasonable resolution had already been reached. However, many businesses found that the Ombudsman's decisions and the reasoning that underpinned them provided a basis for reviewing and updating procedures. Thus, as well as providing an independent avenue for consumer complaints, the FOS was also a mechanism for discovering and disseminating best practice.

5.118 As well as the intention of becoming the single avenue for funeral industry complaints, the FOS was also hopeful of developing a Funeral Profession Code of Practice. The scheme ceased operation in September 2002 when one of the industry associations withdrew its financial support so the industry associations reverted to handling complaints themselves. See Chapter 4 for further information.

Evaluation of Appointing a Funeral Industry Ombudsman

5.119 Appointing a Funeral Industry Ombudsman has clear advantages for the industry and for consumers. However, unless all members of the industry voluntarily agree to subscribe to the scheme, a Funeral Industry Ombudsman would still encounter the problems currently faced under self-regulation where the controlling powers of the industry associations only apply to their own members.

5.120 An ombudsman scheme in the private sector is a form of self-regulation but one in which all members of an industry can be bound by the decision of the Ombudsman through compulsory membership of the scheme. This has an advantage over the suggestion of compulsory membership of one of the industry associations which may be based on ideologies with which an individual funeral director does not agree.

5.121 A Funeral Industry Ombudsman would be able to provide independent and impartial advice and conciliation of disputes, especially those relating to professional conduct. Apart from industry associations which do not have industry-wide coverage, there is currently no avenue which can handle such complaints. In addition, complaints about the funeral industry would be directed to one entity so issues with particular practitioners or an operational aspect of the industry could be more easily tracked than at present with complaints being directed through a variety of sources.

5.122 Currently, the level of complaint within the funeral industry is low, which could be seen as a contraindication to establishing a Funeral Industry Ombudsman scheme. However, the scheme in the United Kingdom was not developed in response to a high level of complaint but more as a pro-active solution to raising standards within the industry and providing consumers with a single source of redress. This type of scheme also provides an avenue for third party complaints such as a complaint made by a social worker on behalf of bereaved parents.

5.123 An ombudsman also fulfils a role of providing information and advice to the industry about best practice. As the issue of standards

has been raised as an industry concern but there is discussion about at what level they should be set, a Funeral Industry Ombudsman could provide a resource, independent of the industry associations, to oversee the development of standards.

5.124 Models exist in Victoria for successful industry-based ombudsmen schemes so the establishment of a Funeral Industry Ombudsman could be informed by the experience of these schemes as well as international experience. As many of the issues faced by the funeral industry are national rather than state or local issues, the development of a Funeral Industry Ombudsman to encompass the industry nationally could also be considered. The development of a national Funeral Industry Ombudsman would also assist in ensuring funding for the scheme at a level to allow its effective operation.

ESTABLISHING A FUNERAL INDUSTRY COUNCIL

5.125 Evidence presented to this inquiry has shown that a wide range of issues relating to the funeral industry need to be addressed; however, there is currently no single forum with the necessary expertise in which this can be accomplished. The creation of a single body supported by the industry and authorised by government to effect change within the industry could be an effective means of achieving this.

Issues with Establishing a Funeral Industry Council

Membership

5.126 A balanced membership for a Funeral Industry Council could be drawn from the funeral industry, peak bodies representing both employers and employees, consumer groups, and suppliers to the industry as well as representatives of government departments and agencies.

5.127 Associate members could be invited to attend council meetings for specific reasons such as providing expert advice or information on particular issues.

Function

5.128 A Funeral Industry Council could fulfil a number of functions such as:

- providing registration or licensing facilities for members of the funeral industry including embalmers;
- developing and administering a funeral industry code of practice;
- taking a leading role in consumer education about all aspects of the funeral industry;
- developing, promoting and managing a complaint resolution process;
- establishing a central registry for pre-paid funeral contracts;

- overseeing the licensing and inspection of mortuaries;
- appointing an ombudsman;
- providing a forum for funeral industry issues; and
- representing the Victorian funeral industry on any national bodies.

Currently, some of these functions are handled by industry associations or existing government agencies while others are new or enhanced functions resulting from the recommendations of this inquiry.

Funding

5.129 Similar industry councils are funded either through registration fees or through government funding depending on how the council originated. For example:

- The Victorian Institute of Teaching was established as an independent statutory authority with registration fees as its funding base. Government will supplement the income from teacher registrations on a fee-for-service basis. Teacher regulatory bodies funded mainly by teachers' subscriptions operate in Queensland, Tasmania and South Australia.³²
- The Nurses Board of Victoria is a self-funded statutory authority incorporated under the *Nurses Act* 1993.³³
- Both the Physiotherapists Registration Board of Victoria³⁴ and the Architects Registration Board of Victoria³⁵ were established by the Parliament of Victoria under legislation.

5.130 A Funeral Industry Council could be funded through industry subscription in the form of licensing or registration fees or with government assistance if the council was established under legislation.

5.131 An additional source of funding could be through a levy on each funeral conducted in Victoria. However, the industry would be justified in recuperating this cost from the consumer as part of the disbursements.

5.132 If part of the functions of the council were to be those currently undertaken by other agencies, it would be reasonable to divert funds from the other agencies to the council in order to support its performance of these functions.

National Perspective

Funeral Industry Council (NSW)

5.133 The establishment and operation of the Funeral Industry Council of New South Wales was discussed in Chapter 2. As part of the terms of reference for the current NSW parliamentary inquiry into the funeral industry, the Standing Committee on Social Issues will inquire into and report on the role and structure of the FIC by 17 November 2005. Any recommendations resulting from that inquiry should be considered in relation to the establishment of a Funeral Industry Council for Victoria.

5.134 The funeral industries in Victoria and New South Wales have similarities and differences. In common, both states have a large

number of funeral directors who do not belong to any industry associations; therefore, there are a large number of funeral directors who are not subject to the self-regulatory mechanisms of industry associations. If an individual conforms with the existing regulations for public health, a funeral business can be started by a person without qualifications or experience in the industry. However, in New South Wales, there is a level of vertical integration³⁶ which does not exist in Victoria as New South Wales allows private operation of cemeteries and crematoria. There has been criticism of the FIC structure by the Combined Pensioner and Superannuants Association of NSW as they are concerned that small operators in the funeral industry are not adequately represented on the FIC.

Queensland Funeral Industry Regulation Working Party

5.135 The QFIRWP represents only a small sector of the funeral industry, namely the industry associations operating in Queensland, and was formed at the request of the Minister for Justice. See Chapter 2 for further information. The QFIRWP fulfils the role of an advisory body to the Minister for Justice but it does not hold any legislated authority in regard to the funeral industry.

International Perspective

5.136 Neither New Zealand nor the United Kingdom has any form of licensing requirements for funeral directors. Therefore, there has not been the need to establish national boards to regulate the funeral industry in those countries.

5.137 In Canada and the United States of America, the funeral industry is more highly regulated with strict requirements for licensing funeral directors and more stringent controls over the operation of their businesses. Both countries have federal and state or provincial boards to oversee the operation of their respective funeral industries.

Evaluation of Establishing a Funeral Industry Council

5.138 The establishment of a Funeral Industry Council in Victoria would be both an innovative and a proactive approach to current and future issues in the funeral industry. In submissions received for this inquiry, there have been many expressions of interest from organisations and individuals who would like to have further input into many of the issues raised by this inquiry if they are indeed progressed in a manner calling for input from the industry and the community.

5.139 Although some of the suggested functions of the proposed council are currently undertaken by a range of associations and agencies from within and outside the funeral industry, consolidating these functions under the umbrella of a Funeral Industry Council could be beneficial for both the industry and the community. Dealing with one agency would be more efficient than dealing with several covering the same issue. Depending on the range of functions allocated to the board, the opportunity exists for the reputation of the funeral industry to be enhanced while providing a valuable source of information and advice to the community.

5.140 Models exist for the establishment of both industry and professional boards. If a Funeral Industry Council was to be established in Victoria, the New South Wales experience of the role and structure of the Funeral Industry Council (NSW) could be beneficial in ensuring that best practice was observed by Victoria.

CONCLUSION

5.141 The Committee recommends the establishment of a Funeral Industry Council for the regulation of the funeral industry in Victoria. Having regard to the evidence put before it, the Committee finds that such a Council is necessary to ensure the maintenance of community standards of service and care across the funeral industry through an authorised code of practice, and to address industry-specific issues (such as occupational health and safety) in an informed and co-ordinated manner. The Committee believes that such a Council would be instrumental in developing and promoting consumer education, improving consumer protection and ensuring effective sanction against those who transgress the industry code of practice.

5.142 The Committee recommends that a Funeral Industry Council manage a system of registration of principals (on-site managers) and premises, with the intention that such registration will ensure the application of minimum standards of care and professional conduct in line with the proposed authorised code of conduct. The Committee does not intend that such registration requirements be financially burdensome to funeral directors, and recommends that any

registration fees have consideration for small funeral companies, particularly those operating in rural and regional Victoria.

Recommendation 5.3

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

Recommendation 5.4

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

Recommendation 5.5

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

Recommendation 5.6

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

5.143 In conclusion, the Committee seeks to ensure that appropriate standards of care are delivered by a professional and caring funeral industry to all consumers, and that the health and wellbeing of funeral industry workers is maintained.

Endnotes

- ¹ David Cragg, AWU, *Hansard*, Public Hearings, Melbourne, 19 October 2004.
- ² Martin Tobin, AFDA, *Hansard*, Public Hearings, Melbourne, 19 October 2004.
- ³ Jennifer Burge, AIE, *Hansard*, Public Hearings, Melbourne, 19 October 2004.
- ⁴ Industry association membership in Victoria is approximately 75 firms. The total number of firms operating in Victoria could be around 400.
- ⁵ New Zealand funeral directors conduct around 28,000 funerals per annum compared to over 30,000 conducted in Victoria.
- ⁶ Robyn Grooby, Executive Officer, FDANZ, email communication, 27 October 2004.
- ⁷ Robyn Grooby, Executive Officer, FDANZ, email communication, 21 December 2004.
- ⁸ Martin Tobin, AFDA, *Hansard*, Public Hearings, Melbourne, 19 October 2004.
- ⁹ *Inquiry into the Regulation of the Funeral Industry – Submission by the Victorian Government*, p. 17.
- ¹⁰ These guidelines were developed by AFDA, the AWU and the Victorian Health Department in 1992.
- ¹¹ Department of Industry, Science and Tourism (1998) *Codes of Conduct: Policy Framework*.
- ¹² Concern with the cost of a regulatory scheme was expressed in written submissions received from Charles Crawford and Sons, White Dove Ladies Funeral Services, Taverna Funerals, National Funeral Directors Association of Australia, and The Brethren.
- ¹³ Queensland Health (2004) *The Tobacco and Other Smoking Products Act 1998 Review: Discussion Paper*.
- ¹⁴ Australian Funeral Directors Association (Victorian Division) *Submission, Appendix 2: ABC Four Corners, The Coffin Chasers, 14 October 2002*.
- ¹⁵ *Inquiry into the Regulation of the Funeral Industry – Submission by the Victorian Government*, p. 15.
- ¹⁶ Office of Regulation Reform (2004) *Regulatory Alternatives*. p 29.
- ¹⁷ Martin Tobin, AFDA, *Hansard*, Public Hearings, Melbourne, 19 October 2004.
- ¹⁸ Elizabeth Young, *Hansard*, Public Hearings, Melbourne, 19 October 2004, p.7.
- ¹⁹ Jennifer Burge, AIE, *Hansard*, Public Hearings, Melbourne, 19 October 2004, p.4.

- ²⁰ Jennifer Burge, AIE, *Hansard*, Public Hearings, Melbourne, 19 October 2004, p. 2.
- ²¹ *Victorian Purchasing Guide*, Funeral Services Training Package, September 2002.
- ²² *Victorian Purchasing Guide*, Funeral Services Training Package, September 2002; Jennifer Burge, AIE, *Hansard*, Public Hearings, Melbourne, 19 October 2004, p. 2.
- ²³ Jennifer Burge, AIE, *Hansard*, Public Hearings, Melbourne, 19 October 2004, p.2.
- ²⁴ Consumer Affairs Victoria, *Annual Report 2002-03*. p 55.
- ²⁵ *Inquiry into the Regulation of the Funeral Industry – Submission by the Victorian Government*, pp. 5-6.
- ²⁶ Phil Martin, Graeme Robertson Funerals, *Hansard*, Public Hearings, Geelong, 27 July 2004.
- ²⁷ Barbara Hawkins, Executive Officer, Service Skills Victoria, Submission, 17 November 2004.
- ²⁸ Chris Quinn, Quinn Funerals, *Hansard*, Public Hearings, Geelong, 27 July 2004.
- ²⁹ Business Licensing Authority Online, www.bla.vic.gov.au, accessed 8 September 2005.
- ³⁰ Victorian Institute of Teaching <http://www.vit.vic.edu.au/pdfs/websitefeeschedule.pdf> ;
Nurses Board of Victoria
[http://www.nbv.org.au/nbv/nbvonlinev1.nsf/\\$LookupDocName/applications](http://www.nbv.org.au/nbv/nbvonlinev1.nsf/$LookupDocName/applications);
Physiotherapists Registration Board of Victoria
http://www.physioboard.vic.gov.au/docs/regapp_application.pdf; Architects Registration Board of Victoria <http://www.arbv.vic.gov.au/wantreg1.html>. Accessed 18 April 2005.
- ³¹ Victorian Government submission, 14 April 2005, p 18.
- ³² Victorian Institute of Teaching <http://www.vit.vic.edu.au> Accessed 18 April 2005.
- ³³ Nurses Board of Victoria <http://www.nbv.org.au> Accessed 18 April 2005.
- ³⁴ Physiotherapists Registration Board of Victoria <http://www.physioboard.vic.gov.au> Accessed 18 April 2005.
- ³⁵ Architects Registration Board of Victoria <http://www.arbv.vic.gov.au> Accessed 18 April 2005.
- ³⁶ Vertical integration refers to the situation when a company owns and controls some or all of the stages in the provision of a product or service. As a result of this, there may be reduced competition in the industry as well as concerns about concentration of provision of services and restricted entry into the market.