



AUSTRALIAN
FUNERAL
DIRECTORS
ASSOCIATION

Australian Funeral Directors
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KEW EAST VIC 3102

The Hon. Frank Pangallo MLC
Member of the Legislative Council
Parliament House
North Terrace
ADELAIDE SA 5000

30 August 2021

Dear Mr Pangallo,

Re: DRAFT FUNERAL INDUSTRY BILL

Thank you for the invitation to participate in the round table discussion hosted by yourself on the 31st of May and for the opportunity for our members to review the proposed draft Funeral Industry Bill.

The Australian Funeral Directors Association (AFDA) is the peak industry body with members in all States and Territories representing around 60% of the 160,000 deaths in Australia annually.

It is AFDA's understanding that 'the Bill is to amend the Fair-Trading Act to provide for improved consumer transparency and transparency in all facets of the funeral industry, through improved regulation and compliance with industry standards and full disclosure of the goods, costs and conditions of services and products provided. It is intended that the Bill also cover arrangements such as pre-paid funeral plans and new funeral brokerage services.'

AFDA supports the intent of the draft Funeral Industry Bill which is to ensure that the high standards expected by consumers at this often difficult and challenging time in their lives, will continue to be maintained and enhanced with the utmost dignity and respect. Members join AFDA because of the high standards required by the Association and the care shown for client families.

It should be noted that AFDA members are already bound by a Code of Ethics and Practice policy and Code of Professional Conduct policy (see attached).

In reviewing the draft Funeral Industry Bill, AFDA seeks clarity in relation to the following sections of the Bill:

	Section of Bill	Comments
1.	<p>Part 1—Preliminary</p> <p>1—Short title</p> <p>This Act may be cited as the Funeral Industry Act 2021.</p>	<ul style="list-style-type: none"> Can we seek further clarification as to why this act is being proposed? Is it a requirement of the Burial and Cremations Act 2013?
2.	<p>Section 7:</p> <p>A funeral director must—</p> <p>(a) in the case of a funeral director who is carrying on business as a funeral director on the commencement of this section—within 60 days after that commencement: and</p> <p>(b) in any other case—within 30 days of commencing business as a funeral director,</p> <p>give notice to the Commissioner of—</p>	<ul style="list-style-type: none"> funeral director means a person who carries on the business of arranging for the disposal of human remains; Who is a "funeral director" when in an incorporated business? Lack of clarity as to whom the reporting obligation falls on. No accreditation. May be multiple "funeral directors" or people with that title within an organisation, even a small organisation. When a new funeral director starts within an existing business, do they have to provide an update within 30 days or is it the organisation that has to provide the information under 7(2) because it is a change in the information of the business? Or both to avoid the penalty which can be imposed on either? Compare sections 7(1)(c) and 7(1)(i) and reference to "if the funeral director is a company" incorporated under the Corps Act. Which is it? A person or an entity? What is the process for issuing a penalty under this provision (and other provisions where there is an applicable penalty for contravention)?
3.	<p>Section 7(1)(h):</p> <p>(h) the full name of every person employed or engaged in the funeral director's business; and</p>	<ul style="list-style-type: none"> "engaged in the business" captures everyone, even people contracted to the business such as cleaners. What other organisation is required to register every single person employed by or engaged in the business? Does this include clergy/celebrants engaged to conduct the funeral at a Chapel? Staff to live stream, plant maintenance, electricians. The list is extensive. How will privacy issues be addressed? What is the definition of 'engaged by a funeral director'? Conducting one funeral only for example and may not be required again. How long would a name be retained on the registry? What is the purpose that the provision is directed towards? What is the harm that the Bill is attempting to address? Is this limited only to the personnel who are based in South Australia?
4.	<p>Section 7(2):</p>	<ul style="list-style-type: none"> who is the person?

	<p>A person who carries on business as a funeral director must, within 30 days of any change occurring in the information required to be provided to the Commissioner under subsection (1), give the Commissioner notice of the change.</p>	<ul style="list-style-type: none"> • If the company is an interstate incorporated enterprise the changes could be very frequent. Do these provisions concerning the naming of personnel extend to personnel who are employed by an incorporated business but who work in a State other than SA?
<p>5.</p>	<p>Section 8(3):</p> <p>The Registrar must make the registers available for inspection by members of the public on a website maintained by the Registrar or by other electronic means</p>	<ul style="list-style-type: none"> • What does this mean for privacy for personnel who are engaged in the business? Not permitted to search the electoral roll for anyone's details other than your own - why is this permissible? Even when searching for your own details, they are only confirmed if they are an exact match for what is on the roll. • Even lobbyists for Parliament (where you would expect they should be identified because of the risks of corruption) are only named if they carry out a lobbying activity (i.e., Director, MD, CEO) etc. https://lobbyists.ag.gov.au/register • What does it mean for personnel who are trying to evade domestic violence for example? Does it mean that they won't be able to work any longer in the funeral industry in South Australia (or anywhere if this legislation has extra-territorial reach)?
<p>6.</p>	<p>Section 9(8):</p> <p>(8) A funeral director must not contravene the code of practice.</p> <p>Maximum penalty: \$10 000.</p> <p>Expiation fee: A fee of an amount (not exceeding \$2 000) prescribed by the regulations.</p>	<ul style="list-style-type: none"> • Who decides whether they have contravened the Code and to what standard? Appears that an infringement notice can be issued but the authorised officers are not empowered under the Act to issue penalties or expiation fees (see section 11 and 12). • What is the relevant process for issuing a penalty?
<p>7.</p>	<p>Section 10:</p> <p>(1) in a prominent position at each place at which a funeral direction carries on business;</p> <p>(3) A funeral director must, before entering into a funeral contract with a person, provide the person with -</p> <p>(a) funeral-related information; and</p> <p>(b) the price of each of the particular goods and services to be supplied under the contract; and</p> <p>(c) the costs of any disbursements that will be payable by the person under the contract; and 30</p> <p>(d) the total amount that will be payable by the person under the contract.</p>	<ul style="list-style-type: none"> • Section 10(1) Foyers and chapels are not the appropriate place for price charts when mourners are attending funerals. Funeral homes are not supermarkets, technology or car sales type businesses. Should only be required to be displayed in arrangement/conference rooms. • Section 10(3) goes beyond what is contemplated in the Schedule, i.e., "A reasonable estimate of the price of each of the following goods and services provided by the funeral director" • This section requires a hard quote to be given to the customer before entering into the funeral contract - "the total amount that will be payable by the person under the contract". How are amendments to the contract to be managed? Will the funeral director have to issue multiple contracts to accommodate changes in requests? • Allowance for reasonable estimates for third party fees. This does not consider burial issues relating to doctors' fees, stone masons,

	<p>(5) If a funeral director fails to provide a person with information as required by subsection (3), any agreement entered into with the person for the supply of goods and services in relation to the disposal of human remains is void and of no effect.</p> <p>(6) Nothing in this section prevents a funeral director from supplying—</p> <p>(a) any goods or services in relation to the disposal of human remains not referred to in Schedule 2 or the regulations; or</p> <p>(b) goods or services in relation to the disposal of human remains in the form of a package (provided that the funeral director has complied with this section).</p>	<p>printers, travelling fees for contractors based on time/does not consider regional issues.</p> <ul style="list-style-type: none"> • This may delay the funeral and could limit items included in the funeral contract. To make the entire contract void, unless all third-party costs are provided, could delay the funeral due to the risk to the contract. • What does it mean in practice that the contract is void and of no effect? If the person has been buried the family don't have to pay? If the contract is void, the family no longer have any relevant arrangements and have to make them with someone else? This does not allow for contractor and regional issues out of the funeral directors control. • What is the harm that the legislation is attempting to address? • Note that section 10(6) notes that nothing in the section prevents the funeral director from providing certain services [are there any such services?] - but why would they if don't have a contract to do so, and presumably no right to do so if the contract is void? • What is meant by a "package" in this context? What is it trying to address?
8.	<p>Section 11—Appointment of authorised officers</p> <p>(1) The following persons are authorised officers for the purposes of this Act:</p> <p>(a) the Commissioner;</p> <p>(b) persons appointed as authorised officers under section 76 of the Fair-Trading Act 1987;</p> <p>(c) persons appointed as authorised officers under this section.</p>	<ul style="list-style-type: none"> • How does this clarification of an Authorised officer differ from the already agreed officer definition on the Burial and Cremations Act 2013?
9.	<p>Sections 12 and 13 re powers of authorised officers</p>	<ul style="list-style-type: none"> • The powers are extreme including search and seizure powers - are they commensurate with the positive requirements of the Act? What is the harm that is sought to be addressed? • If the powers are to be directed at breaches of the Code (Schedule 1) those are not black and white provisions? For example, what is the standard to decide if any of the following are being breached or at risk of being breached? <ul style="list-style-type: none"> • <i>A funeral director must treat human remains in the custody of the funeral director with dignity and respect at all times.</i> • <i>A funeral director must ensure that the funeral director has access to suitable facilities and equipment to enable the funeral director to care for the remains of any deceased persons in the custody of the funeral director.</i> • <i>A funeral director must ensure that the funeral director has access to sufficient</i>

		<p><i>space to appropriately store the remains of deceased persons in the custody of the funeral director.</i></p> <ul style="list-style-type: none"> • <i>A funeral director must act in the best interests of the funeral director's clients.</i>
10.	<p>Sections 14 and 15:</p> <p>14—Complaints about funeral directors</p> <p>A person may make a complaint about a funeral director to the Commissioner.</p> <p>15—Investigation of funeral director by Commissioner</p> <p>If the Commissioner receives a complaint about a funeral director, the Commissioner must investigate the complaint unless the Commissioner considers the complaint to be frivolous or vexatious.</p>	<ul style="list-style-type: none"> • If a complaint is received it "must" be investigated. This means that investigations could occur even where the matter is being addressed by the funeral director. • How would the Commissioner triage such complaints? There is no time limitation for a complaint? (cf time limit for proceedings at 25). Does that mean that historic complaints could be investigated once the legislation is passed? • Ability to investigate should be discretionary. • Can the Commissioner investigate in their own right or is this complaint based only?
11.	<p>Section 17(1):</p> <p>(1) If, after conducting an investigation under this Act, the Commissioner is satisfied that—</p> <p>(a) a person who carries on business as a funeral director has contravened this Act or a relevant Act; and</p> <p>(b) the conduct involved is likely to bring the funeral industry into disrepute or diminish public confidence or trust in the funeral industry,</p> <p>the Commissioner may make 1 or both of the following orders:</p> <p>(c) an order prohibiting the person from carrying on business as a funeral director;</p> <p>(d) an order prohibiting the person from occupying a position of authority in a body corporate that carries on business as a funeral director.</p>	<ul style="list-style-type: none"> • Clarification required as to what is a "relevant Act"? Limited to the list under Schedule 1, but that is not limited? • Who determines this? Against what criteria? • The Commissioner is the investigator, the determiner and the judge under the Act. Other bodies that have a right to investigate, determine and issue a penalty include ACMA and ATO - for black and white breaches of relevant Acts. ASIC and ACMA have a power to issue prohibitions so that is on all fours. • Who is responsible for issuing the penalties in section 18? Are they civil pecuniary penalties (standard of proof?) • Who is responsible for deciding that a statement is false or misleading, see section 21? • Section 17 does not provide a power to commence proceedings for breach of this Act?
12.	<p>Section 19:</p> <p>(1) A person against whom a prohibition order is made by the Commissioner under section 17 may apply to the Tribunal under section 34 of the <i>South Australian Civil and Administrative Tribunal Act 2013</i> for review of the decision of the Commissioner to make the order.</p>	<ul style="list-style-type: none"> • What form of review? Merits or judicial? The word "review" is used, not "appeal". • This section only relates to the prohibition orders made by the Commissioner.

13.	<p>Section 25:</p> <p>(1) Proceedings for an offence against this Act must be commenced—</p> <p>(a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the Criminal Procedure Act 1921; or</p> <p>(b) in any other case—any time within 3 years after the date of the alleged commission of the offence or, with the authorisation of the Attorney-General, at any later time within 6 years after the date of the alleged commission of the offence.</p>	<ul style="list-style-type: none"> • Clarification required as to which sections which might lead to proceedings (as opposed to an order made by the Commissioner)? Sections where the conduct is described as an "offence"? • - section 13 - hindering a person; • - section 18 - contravention of prohibition orders [don't appear that prohibition orders themselves are offences]; • - section 21 - false or misleading statements or declarations [not described as an offence, just subject to a penalty but an example of circumstances in which proceedings may be brought, see section 24]; • What about sections where a penalty is imposed? What is the standard of proof and who has standing to bring proceedings, if any? Cf s77(1) of the Competition and Consumer Act 2010 (Cth) for example which sets out who can bring proceedings for a civil penalty and the timing for doing so.
14.	<p>Schedule 1—Code of practice</p> <ul style="list-style-type: none"> • A funeral director must not embalm human remains or carry out any other invasive procedure on human remains without the consent of the funeral director's client. • A funeral director must not rent a casket or coffin without the approval of the funeral director's client. • A funeral director must not advertise or promote any funeral life insurance or funeral expenses insurance. • A funeral director must not advertise or promote any estate planning or financial planning services. • A funeral director must not provide, offer to provide, or advertise or promote, any service for the making of wills (including self-made wills). • A funeral director must establish and maintain a procedure for dealing with complaints from clients. 	<ul style="list-style-type: none"> • Does the treatment of a deceased comply with the SA health Regulations – treatment of a deceased? • Any reference to embalming should include a reference to being performed by only qualified embalmers holding proper qualifications to provide embalming. • Referencing rental of a casket or coffin appears at odds with the Burial Cremation Act regarding identification of the deceased and nameplate affixed to coffin/casket. • A funeral director may currently or plan to in the future decide to sell auxiliary services and may include the above items and these conditions may be restrict the ability for a funeral director to trade? This also raises concerns if pre-paid funerals were to be categorised in the same way, this would have a large impact on operators in SA currently. • Funeral life insurance or funeral expenses insurance should be dealt with via the ASIC requirements that came out of the Banking Royal commission rather than state legislation. • Pre-Paid funerals offer travel protection within their goods. How would funeral directors advise of the benefits of travel insurance? • Clients have the option of registering a member complaint with AFDA. The complaint is investigated by the AFDA Complaints Committee. Alternatively, the complaint can be communicated to Consumer Affairs.
15.	<p>Schedule 2 - Funeral-related information</p>	<ul style="list-style-type: none"> • Not all of these items will be required by a consumer, suggest the Commissioner refer to

	Section 1 —Funeral goods and services provided by a funeral director	the price disclosure parameters implemented by Dept of Fair Trade in NSW
16.	Schedule 2—Funeral-related information Section 2 – Disbursements <ul style="list-style-type: none"> A reasonable estimate of the following disbursements: 	<ul style="list-style-type: none"> Not all of these items will be required by a consumer, suggest the Commissioner refer to the price disclosure parameters implemented by Dept of Fair Trade in NSW Disbursements - add - Fees paid to a third party for the transportation and storage of human remains Disbursements - add - Fees paid to a third party for the mortuary preparation (including embalming) of the human remains.
17.	Schedule 2 – Funeral-related information Section 3 - Other funeral related information	<ul style="list-style-type: none"> Update - The location of the mortuary used by the funeral director and the name of the "business and" owner or manager of the mortuary" (<i>assuming this is for third party mortuary services</i>) Add - "The method of transporting human remains before burial or cremation; and the name of the business and owner or manager of the transport service- <i>again, if a third-party service provider.</i>

Additionally, AFDA seeks clarity in relation to the following:

"the Commissioner may make 1 or both of the following orders:

(c) an order prohibiting the person from carrying on business as a funeral director;

(d) an order prohibiting the person from occupying a position of authority in a 20 body corporate that carries on business as a funeral director.

(2) The Commissioner may—

(a) stipulate that a prohibition under subsection (1) is to apply—

(i) permanently; or

(ii) for a specified period; or

25 (iii) until the fulfilment of specified conditions;"

If a funeral director is alleged to have contravened the Act, the Commissioner can prevent that person either temporarily or permanently being a funeral director. While the Act seems reasonable in its requirements of funeral directors, there are likely to be several items that would be considered low-level breaches. AFDA seeks confirmation as to how this would be enacted, and what recourse there would be for a funeral director to challenge the decision made by the Commissioner?

AFDA also wishes to highlight there are a range of businesses that provide services where prices are not available until a discussion has been held between the business and client such as doctors, lawyers, and accountants. Currently information is provided before a contract is signed, and the client can make changes to the funeral arrangements, consider options and / or change funeral directors.

At present, the identification of the deceased is not required to be conducted by a family member; instead, it can be done at the place of death by a doctor or nursing staff. This creates a possible risk in that the identification is done before the deceased is placed

into the coffin. It would be beneficial for all parties for the identification to be conducted when the deceased is in the coffin.

Viewing and identification of the deceased is a key element of the funeral service and also demonstrates to the family that the deceased has been appropriately and hygienically prepared. Requiring the family to view and identify the deceased makes the service and care provided visible to the family and is also an essential element of the funeral service and ritual.

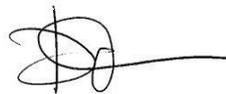
Thank you for the opportunity to review the proposed draft Funeral Industry Bill.

If we can be of any further assistance, please contact Dale Gilson ceo@afda.org.au at your earliest convenience.

Yours faithfully

A handwritten signature in cursive script that reads "Lawlor".

David Lawlor
SA/NT State President

A handwritten signature in cursive script that reads "Dale Gilson".

Dale Gilson
Chief Executive Officer