

# Fair Trading (Funeral Pricing) Regulation 2022

Explanatory notes for SL 2022 No. 5

made under the

*Fair Trading Act 1989*

*State Penalties Enforcement Act 1999*

## General Outline

### Short title

Fair Trading (Funeral Pricing) Regulation 2022

### Authorising law

Section 113 of the *Fair Trading Act 1989*

Section 165 of the *State Penalties Enforcement Act 1999*

### Policy objectives and the reasons for them

The policy objectives of the *Fair Trading (Funeral Pricing) Regulation 2022* (the Regulation) are to:

- increase price transparency in the funeral market in Queensland; and
- empower consumers by improving access to upfront, itemised prices for funeral goods and services.

Engagement with a funeral provider will occur for most Australians at some stage, potentially as a vulnerable consumer, and can involve a significant expenditure. The cost of a funeral varies depending on the nature of the service provided and the package of goods and services (for example, cremation or burial, transportation, casket, flowers, and memorial videos). Prices can also vary depending on the funeral provider and location. Reports on the funeral industry indicate that the average cost of a basic funeral is \$6,000, and the average cost for a premium funeral is \$15,000.

Research undertaken by the consumer advocacy group CHOICE across Australia found that pricing information for goods and services can vary significantly and pricing information is often only available by requesting a quote from a funeral services provider. Trying to obtain a breakdown of costs from funeral directors was also difficult due to the bundling of goods and services. Due to the circumstances surrounding funerals, consumers may feel uncomfortable enquiring about more affordable options and may not make a decision that best suits their needs.

Following a campaign by CHOICE seeking further regulation of the funeral industry, over 700 Queensland consumers wrote to the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, requesting consideration of regulating upfront funeral prices consistent with New South Wales (NSW).

In February 2020, NSW introduced a revised information standard to regulate the display of funeral prices, under the *Fair Trading Regulation 2019* (NSW). The information standard requires funeral directors to display the price of goods and services at each place of business and any public website.

## **Achievement of policy objectives**

The Regulation will achieve the objectives by:

- requiring a funeral director to display upfront funeral price information in relation to the goods and services offered by the funeral director, at the funeral director's place of business and online if the business has a website;
- requiring a funeral director to provide a person that asks about the funeral director's goods and services with information about the goods and services:
  - within 48 hours after the person asked for the information (or a longer period if agreed); and
  - prior to an agreement being entered into for the supply of goods and services; and
- prohibiting funeral directors from entering into agreements with a person in relation to the supply of goods and services for the burial or cremation of a body, unless information about the price of each of the goods and services; the costs of any disbursements that will be payable; and the total amount payable by the person have been provided to the person.

The Regulation also amends the *State Penalties Enforcement Regulation 2014*, made under the *State Penalties Enforcement Act 1999*, to allow offences under the Regulation to be dealt with by way of infringement notice. The inclusion of infringement notices is to help ensure compliance with the Regulation. The Independent Pricing and Regulatory Tribunal (IPART) of NSW found compliance levels in NSW could be improved even with the legislated requirements in place, therefore recommending that state commence enforcement action for non-compliance.

## **Consistency with policy objectives of authorising law**

The Regulation supports the objectives of the *Fair Trading Act 1989* set out in section 3, by improving consumer wellbeing through consumer empowerment and protection, fostering effective competition and enabling the confident participation of consumers in markets in which both consumers and suppliers trade fairly.

## **Inconsistency with policy objectives of other legislation**

The Regulation is largely consistent with and modelled on the *Fair Trading Regulation 2019* (NSW) requirements for upfront funeral price information, as outlined under the relevant NSW information standard.

## **Alternative ways of achieving policy objectives**

The Department of Justice and Attorney-General released an options paper for public consultation seeking comment on three options for reform:

1. implementing a regulation under the *Fair Trading Act 1989*;
2. updating the Queensland voluntary code of conduct for funeral directors; or
3. maintaining the status quo.

Option 1 was to introduce a regulation under the *Fair Trading Act 1989*, as consistent as possible with the NSW information standard, which would require funeral directors to provide upfront itemised pricing on the goods and services they provide.

Option 2 was to amend the existing and voluntary Queensland Funeral Industry Code of Conduct (the Code) to specifically provide that upfront itemised pricing should be provided on a funeral services provider's website (if they have one) and at their place of business, before the customer engages a specific funeral provider. However, this option did not propose to make the Code mandatory, meaning that compliance with the updated Code would remain voluntary.

Option 3 was to continue the status quo by relying on industry participants behaviour in relation to upfront pricing.

The Regulation implements Option 1. This option received the highest level of support from respondents to the options paper.

## **Benefits and costs of implementation**

A Regulation may have some additional administrative costs to businesses that are not providing upfront funeral prices at present; however, these costs are not expected to be significant, particularly as some funeral service providers operating in Queensland are already voluntarily providing upfront pricing information for consumers on their websites. Additionally, any costs are considered to be outweighed by the benefits to consumers by increasing clarity and transparency of prices.

Implementing the Regulation will have resource impacts on the Queensland Office of Fair Trading, including operating costs (for communications, website adjustments, stakeholder inquiries and compliance program development). The implementation and ongoing compliance/enforcement costs will be absorbed into the Queensland Office of Fair Trading's wider industry compliance monitoring program of activity delivered by Brisbane and regional officers.

## **Consistency with fundamental legislative principles**

The Regulation is consistent with fundamental legislative principles.

## Consultation

### *Consultation on the options paper*

The options paper was released for consultation from 12 August 2021 to 7 October 2021. The options paper was released on both the Office of Fair Trading and Get Involved websites. It was also promoted via Office of Fair Trading social media, a media release, a funeral association newsletter article and direct email to Queensland funeral businesses identified with an email address. Peak stakeholders were also notified, including CHOICE, Council of the Ageing and professional funeral associations.

Of the three options, Option 1 received the most support from stakeholders, due to the following reasons:

- prices need to be provided industry wide and not on a voluntary basis;
- it will empower consumers by allowing them to compare prices easily;
- it provides the right balance of regulation to safeguard consumers and foster increased competition and innovation;
- it should address the problem customers face in arranging a funeral (information asymmetry, pricing opacity, rushed decision making);
- following the NSW model is preferred for consistency of laws; and
- the NSW model has been independently assessed by IPART of NSW and the information standard is considered justified.

### Regulatory Impact Assessment

The Office of Best Practice Regulation (OBPR), within the Office of Productivity and Red Tape Reduction, considered a Preliminary Impact Assessment on a proposal to regulate upfront funeral prices, consistent with the approach taken in NSW. OBPR advised that further regulatory assessment was not required under the Queensland Government Guide to Better Regulation, as the proposed changes appear unlikely to result in significant adverse impacts or additional burden of regulation.