

Distinguishing funeral bonds and prepaid funerals from funeral insurance

A submission to the Treasury by the Australian Funeral Directors Association

22 August 2019



AUSTRALIAN
FUNERAL
DIRECTORS
ASSOCIATION

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20 YEARS OF
INFLUENCE

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Foreword

The Australian Funeral Directors Association (AFDA) is pleased to provide our submission to the Department of The Treasury to assist its deliberations in considering its response to the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry (the Royal Commission).

Formed in 1935, AFDA is the only national funeral service organisation with Member Firms in every state and territory. AFDA is a public company, limited by guarantee, that is administered by an elected Board with a National Office and six Divisional Offices.

AFDA is widely recognised as the authoritative voice on all funeral industry matters and its key objective is to optimise the funeral experience and ensure quality delivery of service to the wider community by enhancing and promoting professional funeral standards.

AFDA has 157 members with principal head offices with an additional 145 premises/branches totalling 302 funeral premises. AFDA also has 63 Affiliate Members who are suppliers to the industry. AFDA members represent the majority of funeral directors in Australia.

The funeral industry is subject to comprehensive regulation at the state-level including requirements to be registered. AFDA members are subject to comprehensive minimum standards to become, and retain membership including complying with a Code of Conduct and a Code of Ethics and achieving a yearly minimum of continuing professional development for staff. Most states also have legislation that governs the provision of prepaid funerals and funeral bonds facilitated by funeral directors.

AFDA agrees that it is important to provide products for consumers that set their mind at ease and offer real value. We also agree that providers of funeral insurance, including funeral life policies and funeral expenses policies, ought to be required to hold an Australian Financial Services Licence (AFSL) and be bound by the provisions of the *Corporations Act 2001* (Cth) (Corporations Act).

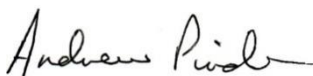
However, AFDA is concerned that there is potential that removing the exemption for funeral expenses policies and funeral benefits will extend the application of requirements under the Corporations Act and other legislation, to funeral directors who provide or facilitate other preneed funeral funding products such as funeral bonds and prepaid funerals. This is clearly not the intention of the Royal Commission recommendation and would have adverse effects on consumers by:

- limiting their choice and access to preneed funeral products
- increasing the costs of those products.

Our submission aims to provide assistance to the Department of The Treasury by providing further information and clarification about preneed funeral funding products that are facilitated by funeral directors to assist consumers to put aside funds to pay for their funeral in the future. This includes funeral bonds and prepaid funerals. These products are distinct from insurance policies including funeral expenses policies, in both their nature and their effect. The opprobrium rested by the Royal Commission on funeral insurance sales tactics cannot be ascribed to funeral directors.

We are happy to assist Treasury further by providing any additional information you require.

AFDA has been assisted by Nous Group to prepare this submission.



Andrew Pinder
National President



1 Overview

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry¹ (the Royal Commission) found that there is widespread misleading or deceptive conduct in the sale of funeral insurance to consumers (particularly vulnerable consumers) and that funeral insurance products carry 'the potential for consumers to pay more in premiums over the life of the policy than they will receive as a benefit when they die'². Accordingly, it recommended that the sale of funeral insurance should not be exempt from the provisions in the *Corporations Act 2001* (Cth) (Corporations Act) that apply to other financial products.

The Royal Commission recommended that funeral expenses policies should no longer be exempt from the definition of financial product, and that there should be clarity that funeral expenses policies are subject to the consumer protection provisions in the *Australian Securities and Investment Commission Act 2001* (Cth) (ASIC Act).

The government response to the Royal Commission recommendations agrees to remove the exemption for funeral expenses policies from the definition of financial products for the purposes of the Corporations Act and to ensure it is clear that the consumer protections under the ASIC Act apply to funeral expenses policies.

AFDA supports the regulation of the sale of funeral insurance directly to consumers as it is a product that is of little value.³

The AFDA distinguishes funeral bonds and prepaid funerals from funeral insurance.

Funeral bonds and prepaid funerals have proven to be an effective way for consumers to 'put aside' the money for their funeral. It provides peace of mind at the same time as having that money protected, (particularly by state legislation), and through the regulation of friendly societies where the funds for funeral bonds are often held.

AFDA provides this submission to assist the Department of The Treasury in its consideration of the response to the Royal Commission recommendations as they particularly relate to funeral bonds and prepaid funerals. In this submission we focus on:

- Describing the distinguishing features of the different preneed funeral funding products to demonstrate that prepaid funerals and funeral bonds should not fall within the definition of 'funeral expenses policies' and this is not intended by the current legislation, nor by the Royal Commission.⁴
- Summarising the current regulatory scheme with particular emphasis on the fact that prepaid funerals, and to the extent they are facilitated by funeral directors; funeral bonds are already subject to comprehensive consumer protection regimes.
- Submitting that the objectives of the Royal Commission to regulate funeral insurance providers who provide funeral expenses policies can, and should, be achieved without widening the net to include funeral directors who arrange prepaid funerals and facilitate funeral bonds.

¹ *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1*, 2019.

² ASIC, Report 454, 29 October 2015, 20 [47], as cited in *ibid.*, p. 286.

³ *Royal Commission into Misconduct into the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1*, 2019, p. 285.

⁴ In this submission we refer to preneed funeral funding products as an overarching descriptor of those products available in the market to enable consumers to put aside funds for funeral expenses before their death.

2 Background

AFDA supports the Royal Commission findings and concerns about funeral insurance and has observed that the product is not well understood by consumers and is often of little value.

2.1 The Royal Commission findings and recommendations in relation to funeral insurance

This section describes the recommendations of the Royal Commission which affect the regulation of preneed funeral funding products.

Recommendation 4.2

The Royal Commission highlighted the limited benefit of funeral insurance. The Royal Commission addressed the high rate of funeral insurance policy cancellations, with most consumers flagging increased cost of premiums as the reason for cancellation. Evidence was also given on the predatory unsolicited tactics used in the sale of insurance to young people living regionally and remotely, where the policies had little value to them.⁵

Commissioner Hayne recommended the removal of the exemption of funeral expenses policies from the definition of a financial product in section 765A(1)(y) of the Corporations Act and regulation 7.1.07D of the *Corporations Regulations 2001* (Cth) (Corporations Regulations). This exempts the funeral insurance industry and those who sell funeral expenses policies from the requirement to hold an AFSL, and from being bound by the general obligations contained in section 912A of the Corporations Act.⁶

The report then turned its focus to the ASIC Act. The consumer protection provisions of Part 2, Division 2 of the ASIC Act do not apply to funeral expenses policies. Uncertainty was raised as to whether the exemption applied to the sale of funeral insurance.⁷ The Commission therefore recommended that the Act be amended to clearly show that the consumer protection provisions apply to funeral expenses policies.

Recommendation 4.2 – Removing the exemptions for funeral expenses policies

The law should be amended to:

- remove the exclusion of funeral expenses policies from the definition of 'financial product'; and
- put beyond doubt that the consumer protection provisions of the ASIC Act apply to funeral expenses policies.⁸

The government response to the Royal Commission notes that the government agrees to remove the exemption for funeral expenses policies from the definition of financial products for the purposes of the Corporations Act, and ensure that it is clear that the consumer protection provisions of the ASIC Act apply to funeral expenses policies.⁹

Recommendation 7.3

The Commission referred to the need to simplify the law around financial services. In general, the use of exceptions increases the complexity of the legislation. The Commission therefore recommended that,

⁵ *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1*, 2019, p. 284.

⁶ *Ibid* p. 286.

⁷ *Ibid* p. 287.

⁸ *Ibid* p. 288.

⁹ *Restoring Trust in Australia's Financial System, The government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, 2019, p. 22.

where possible, exceptions and qualifications in legislation governing financial services entities should be eliminated.¹⁰

Recommendation 7.3 – Exceptions and qualifications

As far as possible, exceptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated.

In its response: 'The government agrees to simplify the financial services law to eliminate exceptions and qualifications to the law, where possible. The government also agrees to identify the norms of behaviour and principles that underpin legislation as part of the legislative simplification process'.¹¹

2.2 Preneed funeral funding products

This section describes the current range of preneed funeral funding products. There are currently three main categories of products in the market:

- prepaid funerals
- funeral bonds
- funeral insurance.

This section outlines the structures and key differences between the three products to provide the factual basis for understanding the distinctive nature of the products and how they are sold.

Prepaid funerals

A consumer who chooses a prepaid funeral enters directly into a contract with a chosen funeral director both for the funeral services to be provided, and for the prepayment for that funeral service. The consumer then works with the funeral director to design the main features of the funeral and determine a fixed cost. The cost is paid either in lump sum or through a payment plan directly to the funeral director who then deposits the money in a financial institution, most likely a friendly society, until the person it is held for dies.

In discussing funeral arrangements, the primary purpose of the discussion with the funeral director is the specific needs associated with the funeral service, burial or cremation. The funeral director provides information to the consumer about how they can pay for those services as part of that discussion. They do not provide any financial advice.

A prepaid funeral gives a consumer the funeral at today's cost. The price is set at the time of the contract. This can result in considerable savings with the risk of increasing prices borne by the funeral director.

Prepaid funeral contracts are regulated by state legislation. Most states have legislation that regulates the requirements for prepaid funeral consumer contracts. Each Act requires that money paid to the funeral provider in respect of a prepaid funeral contract is to be held in an account with a friendly society or other registered organisation.¹² Friendly societies are subject to the regulatory requirements of other financial institutions.

Government has encouraged and supported prepaid funerals by ensuring that amounts paid are not part of a person's assets for pension calculation purposes.

¹⁰ *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1, 2019, p. 44.*

¹¹ *Restoring Trust in Australia's Financial System, The government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 2019, p. 38.*

¹² A friendly society is defined under the *Life Insurance Act 1995* (Cth), s 16C.

Figure 1 | Buying Prepaid Funerals



Funeral bonds

A funeral bond is a payment for a consumer's future funeral which involves the payment of either a lump sum or regular instalments to a friendly society.

It is similar to a prepaid funeral, in that money is placed in a specified fund. The difference lies in the fact the money increases with time and any bonus or credits are added to the bond. The bonus or credits provided by the friendly society are akin to interest accrued on the payment and should not be seen as some other incentive or inducement to obtain the bond.

There are two avenues for a consumer to obtain a funeral bond:

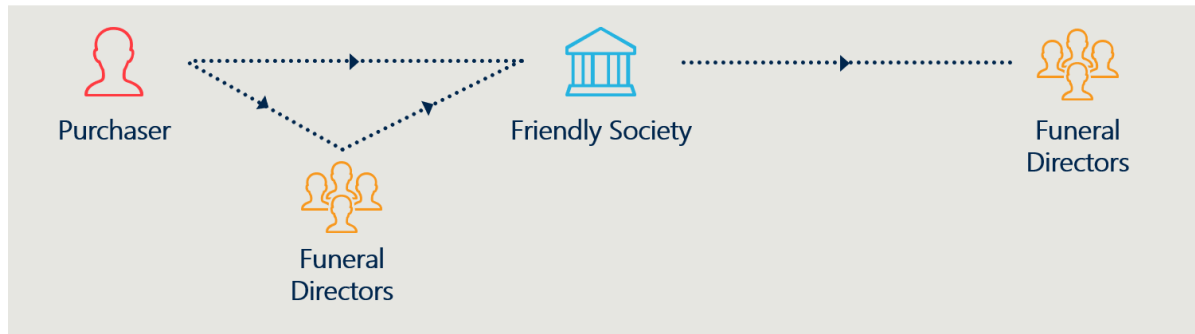
1. A consumer may contract with a funeral director of their choice for funeral services who facilitates the deposit of the consumer's money into a bond account in the name of the consumer.
2. A consumer can deposit money into a funeral bond with the friendly society of their choice and can later assign or nominate the bond to a funeral director for the provision of funeral services or to their estate.

Where a funeral bond deposit is facilitated by the funeral director this is integral to the discussion about the funeral, burial or cremation services and is one element of the information provided. The amount of money in the bond account at the time of death is the amount available to cover the funeral expenses. Key aspects of funeral bonds are:

- All funds are placed in a bond account under the name of the consumer.
- They are capital guaranteed.
- All proceeds and capital from funeral bonds must be used for the sole purpose of contributing to the funeral service.
- Funds are only released after the purchaser has passed away and the funeral services have been provided or conducted.
- The funeral bond does not cease to exist if the consumer stops paying the instalments, though it may not meet the cost of the funeral.
- A funeral bond cannot be withdrawn prior to death.

Government has encouraged and supported the use of funeral bonds as a savings approach by ensuring that amounts paid into funeral bonds are not part of a person's assets and bonus payments (interest) are not part of income for social security purposes such as pension entitlements.

Figure 2 | Buying Funeral Bonds



Funeral Insurance

Funeral insurance is an insurance policy to meet funeral costs at a future date. A consumer purchases a policy which has a benefit amount payable on the death of the nominated person under the policy. The purchasing of funeral insurance involves paying premiums over one's lifetime. A consumer must continue to pay these premiums otherwise the insurance policy is cancelled, and the consumer's payments are lost.

Due to this structure there is the potential for the consumer to pay more in premiums over their lifetime than they will receive in funeral cover. As an example, if you have an insurance policy of \$10,000 – that is your insurer will pay out \$10,000 in expenses for your funeral - and you pay a total of \$10,000 in premiums at age 70 but then live a further 10 years; you will pay more in premiums than the amount of your cover.

Premiums are often stepped, meaning they increase with age and time. If a consumer is unable to pay the premiums and is forced to cancel the insurance policy, a consumer will not receive any benefits or return of the money previously paid towards the policy.

The Royal Commission took evidence about two types of funeral insurance: funeral life policies and funeral expenses policies. It contrasted funeral life policies and funeral expenses policies, noting that a funeral expenses policy will pay funeral expenses up to a nominated limit.¹³ The Royal Commission recommendations expressly relate to funeral expenses policies.

¹³ *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Volume 1*, 2019, p. 285.

3 Current regulatory framework regulating preneed funeral funding products

National, state, and territory legislation regulates the provision of preneed funeral financial products. In this section we outline the current regulatory framework that applies to each type of preneed funeral funding product. This will inform the discussion about the options for addressing the issues raised by the Royal Commission without limiting the provision of safe and well-regulated preneed funeral funding products such as prepaid funerals and funeral bonds. The Corporations Act and the Corporations Regulations define a financial product which is discussed in Section 4.

3.1 Federal regulatory framework of preneed funeral funding products

The Royal Commission outlined the regulatory scheme that applies to funeral insurance products noting that funeral expenses policies are life policies under the *Life Insurance Act 1995* (Cth) (Life Insurance Act) and contracts of life insurance under the *Insurance Contracts Act 1984* (Cth).¹⁴

ASIC has regulatory responsibility for the conduct and disclosure obligations of insurance companies and friendly societies, and the Australian Prudential Regulation Authority has prudential responsibility for these organisations.

The provision of preneed funeral products is regulated by ASIC under the consumer protection provisions of the ASIC Act but are not covered by the financial services licensing and conduct regime of the Corporations Act. The exemption provisions are described below.

The Corporations Act exemption for funeral benefits and funeral expenses policies

The Corporations Act defines a financial product as a 'facility through which a person makes a financial investment, manages a financial risk, or makes non-cash payments.'¹⁵ The Act specifies things that are financial products including: an interest in a fund, a contract of insurance, or a security.¹⁶

If something is defined as a financial product and a person provides advice, sells, or engages as an agent in the acquiring of that product; that person is providing a financial service. Any person in a business that provides a financial service is:

- Required to hold an AFSL.
- Bound by the general obligations required by financial services licensees in s912A.
- Required to follow the financial and regulatory obligations determined by ASIC's regulatory documents.¹⁷

A person providing a financial service is also subject to the anti-hawking provisions in the Corporations Act which restrict the unsolicited selling of a product.¹⁸

The ASIC Act provides protections to consumers in their dealing with financial services. A person provides a financial service when they deal in a financial product, and a financial product is defined as it is in the Corporations Act.

¹⁴ Ibid p. 286.

¹⁵ *Corporations Act 2001* (Cth) s 763A.

¹⁶ Ibid s 764A.

¹⁷ Ibid Part 7.6 Div 3.

¹⁸ Ibid s 992A.

These policies that provide for funeral expenses only are regulated by ASIC under the consumer protection provisions of the ASIC Act, but are not covered by the financial services licensing and conduct regime of the Corporations Act.

The definition of a financial product under the Corporations Act provides for two exemptions that relate to preneed funeral funding products.

A funeral benefit is exempt from the definition of a financial product

Section 765A(1)(w) of the Corporations Act identifies specific things that are not financial products including a 'funeral benefit'.

The definition of a funeral benefit is: a benefit that consists of the provision of funeral, burial or cremation services, with or without the supply of goods connected with such services.¹⁹

Funeral benefits include prepaid funerals and funeral bonds. Funeral bonds, like prepaid funerals, are integral to the provision of funeral, burial, or cremation services as they can only be used for those services and for no other purpose. Therefore, funeral bonds cannot be separated from the provision of the funeral, burial, or cremation services.

A funeral expenses policy is exempt from the definition of a financial product

Under s.765A(1)(y) 'a facility, interest or other thing declared by regulations ... is not a financial product.' The Corporations Regulations declares a funeral expenses policy not to be a financial product for the purposes of the Corporations Act.

Funeral expenses policy:

'...means a scheme or arrangement for the provision of a benefit consisting of the payment of money, payable only on the death of a person, for the sole purpose of meeting the whole or part of the expenses of, and incidental to the person's:

- (a) funeral; and
- (b) burial or cremation.²⁰

Funeral expenses policy refers to, and specifically contemplates, funeral insurance products within its remit. Funeral expenses policy in its normal use contemplates a policy. A funeral bond, or prepaid funeral cannot be construed as a policy in the normal use of that term, and particularly as it relates to insurance.

By including a specific reference to funeral expenses policy in the Corporations Regulation pursuant to section 765A(1)(y) the legislature draws a distinction between financial products such as funeral bonds and prepaid funerals that satisfy the definition of funeral benefit under section 765(1)(w) and funeral expenses policies. In this way it makes it clear that the definition of funeral expenses policies is not intended to apply to funeral benefits.

The exemptions mean that licensing and other requirements do not apply

As a funeral benefit and a funeral expenses policy are both separately exempt from the definition of financial products, persons selling or facilitating a consumer in the purchase of prepaid funerals and funeral bonds (funeral benefits) and third parties selling funeral insurance (funeral expenses policies) are not:

- Required to hold an AFSL.
- Bound by the general obligations required by financial services licensees in section 912A.

¹⁹ Ibid s 765A(1)(w).

²⁰ Ibid s 765A(1)(y); *Corporations Regulations 2001* (Cth) r 7.1.07D.

- Required to follow the financial and regulatory obligations determined by ASIC’s regulatory documents.²¹

State regulatory frameworks for preneed funeral funding products

Each state in Australia has comprehensive legislation that applies to the provision of prepaid funerals and funeral bonds facilitated through a funeral director.

The definition of prepaid funeral contract in each state’s Act covers prepaid funerals and funeral bonds facilitated by a funeral director.

Prepaid and funeral bond arrangements are regulated by state legislation. Table 1 provides an outline of the features of the prepaid funeral legislation in each state.

Table 1 | State legislation for prepaid funeral contracts

State	Prepaid funeral legislation	Stipulates contractual relationship	Cooling off period	Termination rights	Regulates where and how money is invested	Requirement to register prepaid services
WA ²²	✓	✓	✓	✓	✓	✓
VIC	✓	✓	X	✓	✓	✓
TAS	✓	✓	X	✓	✓	✓
NSW	✓	✓	✓	✓	X	✓
SA	✓	✓	X	✓	✓	X
QLD	✓	✓	✓	✓	✓	X

Each of the features of the state protections is described in more detail below.

Right to terminate

State Acts allow for termination and the refund of funds held in the bond account where there has been a breach by the funeral director, where the funeral director has closed, or in some other special circumstances. The New South Wales, Western Australia, and Tasmanian Acts require that funeral directors must include arrangements to transfer the contract for supply of the funeral if the purchaser moves or passes away interstate.

Where and how is funeral money held

It is common practice that money prepaid for funeral expenses is invested in a funeral benefit fund established with a Friendly Society or other investment company registered under the Life Insurance Act.

Registration

All state legislation (except South Australia and Queensland) requires funeral directors to register prepaid funeral contracts.

²¹ *Corporations Act 2001* (Cth) Part 7.6 Div 3.

²² WA legislation is currently in draft form for comment.

4 AFDA's position

AFDA strongly supports the proper and appropriate regulation of preneed funeral funding products:

- to protect the interests of consumers
- to continue to provide consumer choice in the market
- to ensure consumers are fully informed about the products and services they purchase to give them peace of mind about the payment and security of their funeral expenses when they die.

There are three core arguments in AFDA's submission:

1. Prepaid funerals and funeral bonds are entirely different products to funeral expenses policies; and are not contemplated in the Royal Commission findings and recommendations.
2. Funeral directors are subject to comprehensive state regulation both in the conduct of their funeral services business, and in the provision of prepaid funerals and the facilitation of funeral bond products. They should not be subject to additional requirements under national legislation.
3. The exclusion of funeral expenses policies from the definition of 'financial product' cannot be justified however, the exclusion of funeral benefits that includes prepaid funerals and funeral bonds should not be removed. For clarity, the definition of funeral benefit should be expressly stated not to include funeral insurance, and the expressed intent in removing the exclusion for funeral expenses policies should specify that it applies only to funeral insurance products and not to other funeral benefits.

Each of these is elaborated in turn.

4.1 Prepaid funerals and funeral bonds are not funeral expenses policies

Removing the exemption for funeral expenses policies to address consumer harm

The Royal Commission expressly contemplates the regulation of funeral expenses policies that are a specific type of funeral insurance. The concerns raised in evidence before the Royal Commission and the evidence provided in the ASIC report²³ relate specifically to the conduct relating to the sale of funeral expenses policies including to; young people, people in remote and regional areas, and to Aboriginal and Torres Strait Islander people where those policies are of little value to them.

The Royal Commission expressed concern that these sales tactics may not be covered by the consumer protection provisions of the ASIC Act and accordingly considered this should be put beyond doubt. In addition, the design of the product itself presents an issue that more money can be paid in premiums over time than the value of the policy amount to be paid out. In addition, the entire investment may be lost if the payment of premiums stops.

The problem the proposed changes to the legislative exemption is seeking to address is expressly this problem that relates only to the value of these insurance products and the way in which they are sold. By removing the exemption from the definition of financial product these products will be regulated in the same way as other funeral insurance products such as funeral life products. Those who sell these products will be subject to the full suite of regulatory requirements including licensing and other ASIC requirements. Removing the exemption for this product will address significant consumer harm.

By contrast there is no evident problem to be addressed in relation to the provision of prepaid funerals and funeral bonds.

²³ ASIC, Report 454, 29 October 2015.

First, there was no evidence presented to the Royal Commission expressing concern about the conduct of funeral directors in arranging or facilitating the arrangement of prepaid funerals and funeral bonds.

Secondly, the provision of prepaid funeral products is already regulated by state legislation to protect consumers' funds.

Thirdly, prepaid funeral products and funeral bonds are safe and secure products that advantage consumers in several ways; including providing a fixed-price for funeral services into the future or providing interest in the form of bonuses for bond accounts. There is no consumer harm associated with the provision of these products.

Removing exemptions and qualifications to simplify the financial services law

There is no evident problem

As noted above, prepaid funerals and funeral bonds are not funeral expenses policies to which the specific recommendation applies or ought to apply.

The general exemption of funeral benefits does apply to these products. While there is no specific recommendation or proposal to remove the exemption for funeral benefits identified by the Royal Commission or in the government response, it is contemplated in Recommendation 7.3 that as far as possible exemptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated. The government response agrees to simplify the financial services law to eliminate exceptions and qualifications where possible.

On the basis that there is no evident problem or consumer harm arising from the provision or facilitation of prepaid funerals and funeral bonds, and they offer an alternative to funeral insurance products, there is little or no justification for changing the regulatory settings as they relate to these products. It is AFDA's submission that the costs of removing the exemption will outweigh the benefits.

The removal of the exemption has considerable disadvantages that outweigh any advantages

The removal of the exemption for funeral benefits has the advantage of simplifying the financial services laws.

Removing the exemption has several significant disadvantages.

For consumers who are seeking to ensure peace of mind for themselves and their loved ones, being able to make arrangements directly with funeral directors who are skilled at arranging funeral services and the associated payment or savings plans; provides an appropriately caring, thoughtful, and knowledgeable service.

If the exemption for funeral benefits is removed, funeral directors would require an AFSL to provide this important service. Funeral directors are expert at making arrangements for and providing funeral services. They are not financial advisers and do not wish to be or claim to be. The impact of removing the exemption will be to require funeral directors to qualify as financial advisers and obtain a licence. This will result in an increased cost for the prepayment or savings service facilitated by the funeral director or will have the effect of removing the option for prepayment or savings for consumers at the time of prearranging their funeral service.

The removal of the exemption can therefore have the perverse outcome that those who are seeking to make arrangements and to save for their funeral expenses will be forced to purchase funeral insurance.

The outcome will be reduced competition in the preneed funeral funding market, reduced choice of providers, and increased inconvenience for consumers who are unable to make their arrangements with a single provider and at an increased cost. The increased costs will be passed on to all consumers. These costs will include training costs, registration costs, and ongoing compliance costs with the new requirements.

A further unintended consequence of removing the exemption for funeral benefits would be that cemeteries selling graves preneed and/or cremations preneed (direct to the public), would also require an AFSL to sell these products and make these arrangements as they would also be subject to the provisions applying to the sale of financial products.

All Australians will inevitably be required to avail themselves of funeral, burial, or cremation services. There may be some difficulty explaining why simplifying the financial services laws has resulted in increased cost of these essential services.

4.2 Additional obligations under national legislation are not justified

Funeral directors are subject to state regulation that includes specific requirements relating to their registration as funeral directors that specifically regulate the provision of prepaid funerals and facilitation of funeral bonds. These comprehensive regulatory arrangements have been put in place to protect consumers and have been effective in ensuring that consumers are:

- provided with appropriate information to inform their decision
- have cooling off rights
- have the right to terminate the arrangements
- regulate where and how money is invested.

In this regard, the current arrangements address any potential consumer harm that might arise and provide a comprehensive regulatory framework. The addition of any requirements for funeral directors would potentially have an adverse outcome for consumers.

Imposing additional regulatory requirements where the state legislation already provides consumer protections increases the regulatory burden for funeral directors who would be required to hold an AFSL and ensure they are compliant with all other ASIC requirements. This would increase the cost of the preneed funeral funding service and/or reduce the supply of the service. This will have adverse impacts on consumers.

4.3 Prepaid funerals and funeral bonds are safe and secure products that should continue to be exempt

Prepaid funerals have several advantages for consumers, including that they are designed to cover future costs at today's prices. They allow consumers to choose and pay in advance for a future funeral. This is particularly important for those who want a particular type of funeral or want certain features.

There are payment options available, including a lump sum payment or payment by instalments over time. The prepaid amount is capital guaranteed and the money cannot be lost. The government expressly supports the use of prepaid funerals as a means to save by exempting this from the assets test for the purposes of eligibility for the aged pension.

Funeral bonds also have advantages as they are exempt from the asset and income test for assessing eligibility for the aged pension. It is a means of saving that keeps money for funerals separate from other accounts and investments. This might also be important for those who want a particular type or style of funeral. Funeral bonds enable consumers to pay in advance while allowing details to be worked out later.

Those who enter into a bond arrangement are not locked in to a particular funeral director for the funeral service. A consumer can pay upfront or make payments until the chosen amount of the bond is reached²⁴. The investment is capital guaranteed and the amount deposited cannot be lost.

²⁴ To a limit of \$13250 currently.

4.4 Resolving the policy position

In AFDA's submission, prepaid funerals and funeral bonds should continue to be exempt from the definition of financial product under the Corporations Act and other relevant legislation. From a first principles policy analysis:

- There is no problem relating to these products that justifies a change in the current policy settings.
- The option available for government in meeting the intent and outcomes sought by the Royal Commission relating to the sale of funeral expenses policies includes removing the specific exemption of funeral expenses policies from the Corporations Regulations. AFDA supports this option.
- AFDA also supports the option of retaining the exemption for funeral benefit. In doing so, the definition of funeral benefit should be amended to expressly exclude funeral insurance products including funeral life products and funeral expenses products.
- The expressed intent in removing the exclusion for funeral expenses policies should specify that it applies only to funeral insurance products and not to other funeral benefits.
- The benefits of AFDA's preferred option outweigh the costs of the option. The benefits of maintaining the exemption for funeral benefits include:
 - consumer choice and access to products through continued supply of services by funeral directors
 - avoiding increased costs that would result were the exemption removed
 - not imposing additional regulatory burden, concomitant costs, and price increases in an important and large national industry that provides an essential service for all Australians.

AFDA considers the preferred option is the most appropriate way to achieve the outcome sought at the same time as imposing the least cost and reaping significant benefit for consumers.