



THE FUNERAL DIRECTORS' ASSOCIATION OF NSW LTD

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SAPPHIRE
PARTNERS



ACC HIGGINS

Manager
Financial Services Reform Taskforce
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: FuneralExpenseReforms@treasury.gov.au



Dear Sir or Madam

Re: Removal of the Exemption for Funeral Expenses Policies Exposure Draft



The **Funeral Directors Association of NSW** (the "FDA") is the pre-eminent funeral industry association in NSW, with 140 member businesses representing funeral directors, cemeteries and crematoriums, and ancillary businesses and organisations as well as industry suppliers.

PLATINUM
PARTNERS

The FDA and its members are very much aware of the sensitivities surrounding funeral services and acknowledge the importance of our roles within the communities we serve. We welcome many of the key findings from the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the "Report")* including those directly related to **Funeral Insurance** and their associated financial risks for consumers.



The association, however, is concerned with the legislative and regulatory changes proposed in the *Removal of the Exemption for Funeral Expenses Policies Exposure Draft (the "Exposure Draft")* in that they appear to encompass **Pre-Paid Funeral Plans** together with **Funeral Insurance** products. There are distinct differences between these products that should preclude them from being grouped together for regulatory purposes.



Pre-Paid Funeral Plans are a contractual arrangement between a person or client directly with a funeral director. This arrangement is an agreement requiring the funeral director to perform the funeral services requested by the client (as detailed

in the contract) at an undetermined date in the future (i.e. at the time of death) with no additional costs being payable by the client's estate at the time of the funeral for those goods and services provided as detailed in the contract.

Whilst the contractual arrangement is directly between the client and the funeral director, various state legislation dictate the requirements for *Pre-Paid Funeral Plans* including the investment of pre-paid funds into an approved scheme. This prevents the funeral director from holding pre-paid funds until the contracted services have been performed (i.e. the funeral service) at which time the funeral director is permitted to claim their expenses from the fund manager.

It is important to note, however, that the funeral director is obligated to provide the contracted services regardless of the value of the claim received. Historical evidence shows that in most cases, fund returns do not keep up with the funeral directors and disbursement or third-party expenses that the funeral director is responsible to provide under the contractual arrangement. Despite this, the client still receives the goods and services they have previously paid for and the funeral director must bear any burden of loss.

There are multiple *Pre-Paid Funeral Plan* fund managers Australia wide and whilst a few funds are operated by Friendly Societies, several are not. These funds must still adhere to the relevant legislative requirements within their respective states (for example, in NSW, it is the *Funeral Funds Act 1979*).

Whilst there doesn't appear to be any direct reference to *Pre-Paid Funeral Plan* products in the Report's Interim or Final Reports, **Funeral Insurance** products are mentioned, and it is quite clear the intent of the proposed legislative changes is to encompass *Funeral Insurance* products within ASIC's regulatory framework. Statements and observations contained within the reports, such as, "...the statistic gathered by the Australian Securities and Investments Commission ("ASIC") as at 30 June 2014 suggest that funeral insurance policies sold directly to consumers are of little value..."¹ and "...many 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 reinforce the general concerns relating to *Funeral Insurance* products which have contributed to the proposed legislative and regulatory framework.

Unlike *Funeral Insurance* products, *Pre-Paid Funeral Plans* are not offered directly by the fund manager to the public and are instead a contractual agreement directly between the client and the funeral director for the supply of a funeral service. The Australian Taxation Office (the "ATO") forms the view that the funeral director has achieved an income from "pre-selling" these services and as such, the funeral director is liable for Goods and Services Tax ("GST") on these services at the point the pre-paid contract is entered into – not at the later date when the funeral is supplied. This reinforces the nature of the product in that the contractual agreement between the client and the funeral director (relating to the funeral service) is independent to the arrangement between the funeral director and the fund manager (relating to the investment of the funeral director's "future" entitlement to the funds).

As *Pre-Paid Funeral Plans* do not fall within either category of the two types of *Funeral Insurance* products referred to in the Report, defined as *Funeral Life Policies* and *Funeral Expense Policies*³, it is apparent the intent of the Exposure Draft's proposed legislative changes is not to impact *Pre-Paid Funeral Plans* with additional regulatory burdens. This view is reinforced by the Exposure Draft's direct exclusion of *Pre-Paid Funeral Plans*

¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry *Final Report*, vol 1, p285; see also *Interim Report*, vol 1, p263.

² Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry *Final Report*, vol 1, p286; see also *Interim Report*, vol 1, p263 and ASIC, Report 454, 29 October 2015, p20 [47].

³ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry *Final Report*, vol 1, p285; see also *Interim Report*, vol 1, p262-263.

operated by friendly societies as they are not impacted through definition of ***friendly society funeral product*** in **subregulation 7.6.01(7)** of the **Corporations Regulation 2001**.

Given the nature of the product and the objective of the Report, the FDA believes that **all** *Pre-Paid Funeral Plans* should be included in the exemption described above - not just those operated by friendly societies.

Similarly, the proposed insertion of **subregulation 7.6.01(1)(ta)** into the **Corporations Regulations 2001** as follows:

- (ta) a financial service provided by a person in the following circumstances:
 - (i) the financial service is providing financial product advice in relation to a friendly society funeral product, or dealing in a friendly society funeral product;
 - (ii) the person is a funeral services entity, or an employee, director or other officer of a funeral services entity;
 - (iii) the financial service is provided in the funeral services entity's ordinary course of business as a funeral services entity;

would potentially create a requirement for the funeral director to hold an Australian Financial Services Licence (an "AFSL") when arranging a *Pre-Paid Funeral Plan* for a client (unless the fund was managed by a friendly society).

Since the contractual arrangement between the client and the funeral director does not differ, regardless of whether or not the fund manager is a friendly society, and as the contractual agreement lies between the client and the funeral director (not the fund manager), the Exposure Draft's proposals would seem unnecessarily confusing and onerous for both the funeral director and the public.

The FDA recommends the definition of ***friendly society funeral product*** be broadened to incorporate ***Pre-Paid Funeral Plans*** as well and an amendment to the proposed insertion of **subregulation 7.6.01(1)(ta)** into the **Corporations Regulations 2001** be made to include ***Pre-Paid Funeral Plans*** with ***friendly society funeral product*** in **subsection (i)**.

Yours faithfully

Tony Cividin

Executive Officer

Funeral Directors Association of NSW