Submission

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We would like to put forward a submission in respect of **Funeral Insurance**.

While the questions raised fall under the broad categorisation of *Remote Communities*, we believe the issues around funeral insurance products are more widespread in the Australian context. Therefore, we would like to put forward a more far-reaching regulatory proposition:

the prohibition of the marketing and sale of insurance products relating only to funeral-related goods and services

While this may seem like a drastic intervention, there are a number of reasons that support our position:

1. Funeral insurance is life insurance.

Funeral insurance is in essence low-value life insurance, a financial product albeit often perceived as a ‘savings plan’. The benefit is paid in cash to the beneficiary with no restrictions on whether the funds are disbursed for the funeral expenses of the insured. In addition, the risks consumers face associated with funeral insurance are similar to other life insurance products where premium default results in the loss of all benefits and any premiums paid.

The funeral insurance industry is already sizeable. A comprehensive study undertaken by ASIC in 2015 found that in the 2014 financial year approximately $315 million in funeral insurance premiums was paid on 437,274 active policies covering 743,421 lives. The sum insured was generally between $4,000 ad $15,000 with an average of $8,859[1] for each individual policy (ASIC, 2015).

The incidence of policy cancellations is quite high and, in 2014, 72,091 policies were cancelled, representing a ‘lapse rate’ of 16.5%. Of these cancellations 65% were initiated by the customer (largely in the first year - 55%) with the remaining 35% cancelled by the insurer for non-payment of premiums. The cost of the policy is the most cited reason for cancellation (ASIC, 2015).

Therefore, if funeral insurance is maintained as a financial product, it should be marketed and sold as life insurance since as it is in essence, a life insurance product.

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[1] This does appear to represent ‘overinsurance’ as the study by van der Laan and Moerman (2017) confirms the average basic or essential services funeral was ~ $5,500 in 2016.

2. Consumers have other ways to manage the risk of unexpected funeral expenses.

Recent research (van der Laan & Moerman, 2017) demonstrated that funerals do not need to be expensive. That research found that in 2016 the average cost for a *basic* or *essential services* funeral (with cremation) as defined by the NSW Fair Trading Act 1987 was ~ $5,500. Variations in pricing were driven by the funeral provider (i.e. whether an Invocare Ltd brand or not) and method of procurement (online vs. telephone contact) rather than location (urban vs. remote). Less costly options are available which reduce the financial risk of funeral expenses, for example, a direct committal (cremation without a 'service') is available for around $1,500 - $1,800 in most parts of Australia. Additionally, there is evidence of community-based and not-for-profit funeral providers attempting to provide low-cost alternatives for consumers in need.

In situations where a consumer wishes to make arrangements prior to death, other products exist in Australia. First, a pre-paid or pre-need funeral allows the consumer to purchase the products and services required at today's prices. Most funeral providers will allow consumers to pay for a pre-paid funeral in instalments. This is already regulated (see for example https://www.fairtrading.nsw.gov.au/buying-products-and-services/buying-services/funerals/contributory-and-pre-paid-funerals).

Second, funeral bonds allow the consumer to pay a deposit and/or a further lump sum or instalments in an independently managed investment fund. The capital and interest can only be realised on death and paid to the estate or to a funeral director to cover funeral expenses. In cases of default on instalments, the consumer does not automatically 'lose' the funds invested. Funeral bonds also have certain financial advantages for those receiving Centrelink benefits (ASIC, 2015).

Post-death options include accessing superannuation benefits. Approximately 15.6 million Australians have a superannuation account as at 30 June 2018 (ATO, 2018) and it is possible have funds released to pay for a funeral of either the account holder or a dependant. There are also a variety of schemes under the general heading of 'bereavement' payments that those receiving government benefits may be able to access to contribute toward paying for a funeral.

Funeral insurers use moral panic by reinforcing the perception of high funeral costs through aggressive marketing that funeral expenses create a significant financial burden on 'loved ones'. While undoubtedly it is the case that funeral expenses can create a financial burden, a different financial burden is being created through funeral insurance by stepped premiums and default risk.

3. Consumers are confused about the products in the market.

Financial products that relate to the provision of funeral goods and services are complex and consumers find it difficult to navigate the various risks and benefits. While a majority of consumers pay for funerals on an 'as needed' basis; funeral insurance, funeral contribution schemes or plans (as in the ones marketed by ACBF), funeral bonds and pre-paid funerals all are pre-need products. These financial arrangements differ according to: whether they are capital guaranteed; the restrictions on benefit spend; whether there is a penalty for premium default; choice of funeral provider; and, a plethora of bespoke terms and conditions.

4. Consumers are being exploited.

The opportunity for consumer exploitation is high (particularly in areas where financial literacy is low, such as indigenous communities and those from a low socio-economic background). Funeral practices are culturally situated and in a country such as Australia with a culturally and ethnically diverse population, there is further opportunity to exploit vulnerable consumers. Funerary practices are likely to diverge in these populations, however funeral insurance is a standard product. For example, there is no evidence in the ACBF case study that culturally specific practices were covered by ACBF 'funeral plans'. Predatory marketing and sales tactics have been evidenced before the Commission by product providers preying on unsophisticated consumers. Additionally, the public response to van der Laan and Moerman (2017) provides anecdotal evidence that the case studies before the commission were not isolated. There are also many reports of 'upselling' by funeral directors once the value of the funeral insurance became known, another opportunity for exploitation of vulnerable consumers.

More sophisticated consumers are likely to have other forms of financial arrangements in place for the event of an untimely death (life insurance, life insurance packaged with superannuation, pre-paid arrangements or funeral bonds). The regulatory burden of consumer protection is high and increasingly complex.

Response to General Questions in Interim Report

If our submission to prohibit funeral insurance fails to gain regulatory and community support, then the questions that are outlined in the interim report are responded to as follows.

1. Are funeral policies, or particular kinds of funeral policy, financial products warranting intervention by ASIC in the exercise of its product intervention powers?

For clarification we will consider 'funeral policies' in the question to relate to financial insurance (and funeral contribution schemes or plans as *defacto* funeral insurance). Yes, funeral insurance policies are fraught and at best should be sold as life insurance or prohibited.

2. Should all forms of funeral insurance be financial products for the purposes of Chapter 7 of the *Corporations Act 2001* (Cth)?

Yes, funeral insurance provides a cash settlement with no restriction on how the funds are spent, therefore it is in essence low value life insurance (a financial product). Funeral contribution schemes or plans (i.e. ACBF) stipulate that the benefit be used for a funeral and associated costs, but are still a financial product. In the case of ACBF, the funeral plan is covered by a master life insurance policy. Therefore, regulation might prevent those without a financial services license being able to market and sell products such as funeral contribution schemes (i.e. ACBF).

However, even if funeral insurance type products are considered financial products for the purposes of the *Corporations Act 2001* (Cth), it does not prevent the predatory marketing and sales tactics such as those described by the evidence before the Commission in the *Select* case study. All consumers of these kinds of products are vulnerable (it is most commonly a once only purchase). The information provided to consumers is complex and difficult to understand. In particular, the agreements that consumers sign, while containing the rights and obligations of both parties (in legal jargon), place them at a distinct disadvantage. If the consumer was as sophisticated as the product issuer, would the consumer like to include other provisions to protect themselves?

3. Should all forms of funeral insurance be covered by Part 2 Division 2 of the *Australian Securities and Investments Commission Act 2001* (Cth)?

Yes. Consumers should have the same protections as for other financial products. As noted above, they are complex arrangements and are primarily marketed to unsophisticated comsumers.

4. Should it be unlawful to sell funeral insurance for persons under 18 years?

If the person under 18 years is in good health, their life expectancy (and premium payments) is likely to be approximately 60 years or more. This results in a financial windfall to the insurer. Either premium payments will outstrip the benefits by a large multiplier due to their 'stepped' nature (see for example CPSA, 2011 which reports payments of up to $140,000 for a $6,000 premium when the policy is purchased at 50) or the policy lapses due to premium default. Both situations benefit the insurer and could be considered oppressive on the consumer. Especially when those electing to take out funeral insurance are likely to have limited means and many are receiving government benefits (such as in the indigenous community).

References:

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