



18 November 2019

Australian Competition & Consumer Commission
Email: infocentre@accg.gov.au

Dear ACCC,

RE: Unconscionable conduct in the funeral industry

I write in regards to unconscionable conduct within the funeral industry and call on the ACCC to undertake a market study to investigate these matters further.

Funeral industry practices are not helping consumers to find options that best suit their needs. In fact, some practices that make costs hard to identify or understand seem to be structured to take advantage of families when they are most vulnerable.

CHOICE's in-depth investigation into the funeral market in Australia found that certain practices within the sector severely limit the choice of consumers at one of the most stressful times of their lives, including:¹

¹ Jeong, S 2019, *CHOICE funerals investigation: How much do funerals cost?*, 20 September 2019, <https://www.choice.com.au/health-and-body/healthy-ageing/ageing-and-retirement/articles/funerals-investigation-how-much-do-funerals-cost>

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 | Fax 02 9577 3377 | Email campaigns@choice.com.au | www.choice.com.au

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- the lack of competition in the industry;
- unclear pricing;
- unclear ownership of funeral providers; and
- common business practices that involve withholding information or misinforming people about their options.

CHOICE has uncovered that InvoCare, Australia's largest funeral company, have structured their funeral contracts to include an 'administration fee'. This description is misleading, because the fee does not cover any type of service, and therefore operates as a pre-emptive penalty. For this reason, it is essentially an unfair contract term, because its inclusion is not reasonably necessary to protect the legitimate interests of the party advantaged by the term (InvoCare). CHOICE also considers the deliberate inclusion of the term to be unconscionable because of the particular vulnerabilities of funeral consumers and InvoCare's full knowledge of their special disadvantage.

People grieving are vulnerable

Arranging a funeral can be a highly emotional process, often with added time pressures if the death of a loved one was unexpected. CHOICE considers recently bereaved people organising a funeral to be of 'special disadvantage' under the consumer law due to their typically vulnerable state. The impact of grief, time constraints and cultural pressures to purchase a funeral service also make this group particularly susceptible to exploitative practices.

Research indicates that consumers in this market are:²

- unlikely to shop around, often relying on word-of-mouth or previously used providers;
- often in a vulnerable state and may feel uncomfortable enquiring about more affordable options, particularly as the purchasing context is markedly different than other major purchases (e.g. weddings);
- are unaware of options available (e.g. using a funeral director is not a legal requirement) and are sold bundled products and services; and

² NSW Government 2019, *Fair Trading Regulation 2019 Regulatory Impact Statement*, p 14
https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0019/534520/Fair-Trading-Regulation-2019-Regulatory-Impact-Statement.pdf

- are unaware of the breakdown and concentrated ownership of the market, which limits consumer choice.

CHOICE has found that the decision-making ability of consumers is often impacted by these factors, during an already stressful time. As a result, consumers are almost always reliant on funeral suppliers and are limited in their ability to shop around. The absence of transparent pricing information exacerbates this, as people feel uncomfortable questioning the price given to them. For this reason, consumers are more susceptible to overcharging, misinformation and unsatisfactory services.

A 2019 CHOICE survey³ about consumer experiences in the funeral market demonstrates the level of misinformation and dissatisfaction with funeral services across the industry:

“Our relative’s funeral service supplier made it quite difficult to use an outside [coffin] supplier, so to avoid raising stress levels we succumbed to using theirs, costing an extra \$2000.”

“I think funerals are way too expensive... The costs just add to the stress of losing a loved one. Some people feel obligated to spend money they don't have in order to honour the deceased. The cost of a casket for cremation is often over \$1,000... It's an industry that really needs to be scrutinised in terms of the fees they charge.”

“All aspects from a funeral home – church, cemetery, reception food... cost way more than you could reasonably expect. Remember they are not grief counsellors, they are salespeople.”

“I didn't realise I could have brought my daughter home for a short period of time. I wasn't told of this option and now deeply regret not doing so.”

³ This research is based on a survey of n=548 Voice Your Choice panelists. Fieldwork was conducted from 20 to 27 March 2019.

InvoCare's administration fee

A key example of the problems people face within the funeral industry is the administration fee set out in the schedule of estimated charges and tax invoice for all of InvoCare's funeral businesses. This fee is applied upfront and only deducted if the funeral purchaser makes a payment in full within 21 days of the funeral service.⁴ CHOICE considers that there are three main problems with this fee:

1. It is a flat fee regardless of how much is purchased or when the payment is made;
2. It is a disguised late fee that has been charged upfront before the customer has had the opportunity to pay late or on time; and
3. It is a fee for no service.

Flat fee

The fee is a fixed amount of \$352.00 including GST, regardless of the cost of the funeral. This means that customers who do not purchase a premium funeral package must pay a higher proportion in administration fees, relative to their purchase. One person who was invoiced this fee was quoted \$6,069.00 for their funeral package. The administration fee represents 5.8% of this estimated total. For another person who purchased a \$11,749.00 funeral package, and paid \$10,000.00 upfront, the administration fee comprised an additional 20% of the remaining cost invoiced, which was \$1,749.00 (**Attachments A and B**). This flat fee unnecessarily penalises people who either do not or can not purchase more expensive funeral packages.

Misleading late fee

Due to the often unplanned and circumstantial nature of funeral purchases, people entering this market can experience confusion and inertia. InvoCare takes advantage of consumer confusion by obscuring the purpose of the administration fee with its name, when it is

⁴ Within the terms and conditions of InvoCare's funeral services agreement (**Attachment C**), clause 4 states: 'The Administration Fee set out in the Schedule of Estimated Charges will apply to all accounts not paid in full within 21 days of the funeral service. If the balance of the account is paid in full within 21 days of the funeral service, you will be entitled to a refund of the Administration Fee. If the balance of the account is paid in full on or before the date of the funeral service, the Administration Fee will not be charged in your Final Invoice.'

essentially a late fee charged upfront. The late fee is applied by default then deducted later, creating an unacceptable risk that people will pay a late fee, despite paying on time. One person who paid in full upfront was still charged – and paid for – an administration fee (**Attachment D**). CHOICE does not believe that this contract term is necessary to prevent potential future inconvenience to the business, particularly when that inconvenience (late payment) has not occurred.

CHOICE is also concerned that by including a preemptive late fee in customers' total funeral cost, InvoCare appears to be in breach of s48 (7) of the Australian Consumer Law, which states that businesses have to give you the minimum total price of a product or service as a single figure. In **Attachment E**, we see that the total minimum price isn't listed at all. Instead the customer must deduct the administration fee from the maximum price listed. This practice unfairly puts the onus on the customer to discern the correct price and increases the likelihood of them paying more than is owed.

Further, people who are unable to make a full payment within 21 days due to financial hardship or other extenuating circumstances that can accompany an unforeseen death are likely to be disproportionately affected by these conditional fees. Excessive late payment fees can exacerbate people's experiences of vulnerability and have a compounding impact on their financial wellbeing. By deliberately concealing the true nature of the fee, InvoCare capitalises on people's confusion in the market and trust in funeral suppliers.

Fee for no service

The administration fee is listed in the schedule of estimated charges and tax invoice with other funeral goods and services provided, giving the incorrect impression it is a fee for a service. The everyday consumer would assume that the administration fees are similar in purpose to the 'professional fees' that are also listed in the schedule and invoice. It is unclear what services the administration fee covers and when CHOICE corresponded with a representative from InvoCare, they stated that the administration fee is named so because it 'covers the administration needed to follow up accounts outside of the 21 day terms'.⁵

⁵ Email received from Jacinta Gale Communications & PR Manager at InvoCare on 1.11.19.

Compounding factors

InvoCare's market consists entirely of vulnerable people – the recently bereaved who are often in a headspace of shock, grief and stress. These vulnerable consumers do not have the luxury of time to discern unfair contract terms or shop around for a substitute. Even if they were to do this, it would be difficult as InvoCare controls a third of the metropolitan funeral market and applies the administration fee across its different brands. People are often unaware that different brands are owned by the same company, limiting their capacity to shop around. Compounded by the time pressures of organising a funeral, these people are unlikely to realise they are subject to unfair contract terms.

Due to the special disadvantage of bereavement that is characteristic of InvoCare's customers, it is unconscionable that the company includes the administration fee in its contract terms across its various brands. We would like to see the ACCC investigate this matter further to ensure that vulnerable consumers purchasing funerals are not further disadvantaged in this market.

For further information, please contact CHOICE on apereira@choice.com.au

Yours sincerely,

Amy Pereira

Campaigns and Policy Advisor

57 Carrington Road Marrickville NSW 2204

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