

## A GUIDE TO MAKING APPLICATION FOR REGISTRATION OF A FUNERAL CONTRIBUTION FUND OR A PRE-PAID FUNERAL FUND

These notes have been prepared to assist in the completion of an Application for registration of a funeral fund. Incomplete applications or failure to provide all required information will result in a delay in processing and assessing your application. NSW Fair Trading is obliged to make a decision on your completed application within 6 months of the date of application. The Act prescribes that if no decision is made within that time, the application is deemed to be refused. The application fee need not be included with the application form, however it must be paid prior to registration.

Applicants are also encouraged to refer to the *Funeral Funds Act 1979* and Funeral Funds Regulation 2016 when completing this application form. The full text of this legislation can be viewed or downloaded at <http://www.legislation.nsw.gov.au>.

### Question 1 - STATUS OF APPLICANT

Prior to amendments to the *Funeral Funds Act 1979* (the Act) which came into effect on 30 November 2004, certain funeral funds were exempt from registering under the Act. Funeral contribution funds exempt from the Act included friendly societies, certain medical or hospital benefit organisations, insurance companies, and other bodies that were specifically exempted by the Minister. Pre-paid funeral funds exempt under the Act were granted an exemption on the basis of their size, and on the condition that they did not accept new business. Some funeral director businesses that had entered into pre-paid contracts or contribution funeral fund arrangements prior to the Act were also granted exemptions under similar conditions. If you are uncertain whether you fall into one of these categories you can contact Registry Services on 1800 502 042.

Amendments to the Act now require **all funds** to be registered. Previously exempt funds had until 31 May 2005 to seek registration, or they may be required under the Act to transfer all contributions or trust monies to a registered funeral fund. Funeral funds that were exempt prior to 30 November 2004 may be entitled to an exemption from some of the requirements of the Act, but must still obtain registration. Fair Trading, in considering individual applications, will make a determination regarding any exemptions from the requirements of the Act depending on each funeral fund's circumstances. Applicants will be advised of any determination after appraisal of the application.

### Question 2 – TYPE OF FUND

The Act permits registration of two types of fund; these are funeral contribution funds and pre-paid funeral funds. These funds are defined in section 4 of the Act. Broadly, however, funeral contribution funds are designed to allow a consumer to make small periodic payments until their death. The amount of contribution is generally determined by the fund based upon actuarial assessments. Upon death the fund will then either contribute towards the payment of a funeral service or provide a cash benefit towards the cost of the service. Only companies registered under the *Corporations Act 2001* may apply for registration of a funeral contribution fund. The minimum number of company directors is three. Single director companies are not acceptable for registration. Funeral contribution funds are specifically excluded under section 13(1)(a) from carrying on a pre-paid funeral benefit business.

A *pre-paid funeral fund* is one where the consumer chooses the types of goods and services to be supplied for their funeral, and pays for the cost of that funeral service in advance. This may be a lump sum or it may be in instalments, but the cost of the funeral service is fixed by the agreement. The pre-paid funeral agreement provides for the delivery of the funeral service as contracted when the

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consumer dies. Money paid by a consumer under a pre-paid funeral agreement **must** be paid into a pre-paid funeral fund, which is a trust fund. The trustee must be either a corporate trustee (with a minimum of three directors) or a minimum of three individual trustees. There are restrictions on funeral directors being involved in the management of a pre-paid funeral fund. You should refer to section 36 of the Act and the registration requirements in Question 5B to be aware of these restrictions.

### **Question 3A & 3B – APPLICANT DETAILS**

Full details of all directors and individual trustees must be provided as requested in the form. Company applications must provide a certified copy of their certificate of incorporation. Applicants with names registered under the *Business Names Registration Act 2011*, should include details of any registered business names relevant to the conduct of funeral fund business.

### **Question 4 – CHARACTER & REPUTATION OF DIRECTORS/TRUSTEES**

Fair Trading may refuse to grant registration to an applicant based on the character and reputation of directors, other officers of the company, or individual trustees. Applicants should be aware that Fair Trading may conduct a criminal history check in assessing eligibility for registration. Please ensure that you provide sufficient details to enable any nominated referees to be contacted. Each director or individual trustee must complete the declaration as to character at Attachment C. Please note that there are penalties under the Act for the provision of false or misleading information in any documents lodged under the Funeral Funds Act.

### **Question 5A – REQUIREMENTS FOR REGISTRATION (funeral contribution fund)**

The requirements for registration are set out in section 13 of the Act. In particular, a company seeking registration of a funeral contribution fund is not entitled to registration if it also conducts a pre-paid funeral benefit business as defined by the Act. Any income derived from the funeral contribution fund must be applied to providing funeral benefits to contributors or the management expenses of the fund, and contributors are not allowed to become members of the company. This question requires information from you to establish these matters, amongst others. You will need to provide evidence of these eligibility requirements.

You will need to provide evidence of these matters by reference to and inclusion of the company's constitution.

You must be able to demonstrate that the corporation is able to carry on the business of a funeral contribution fund successfully and to comply with the requirements of the Act and Regulation. These requirements would include, but are not limited to, the obligation to report annually and to provide actuarial assessments every three years to Fair Trading. This may be demonstrated in part by the completion of the declaration as to these matters in Attachment D. The capacity of the applicant to comply will also be examined by Fair Trading in respect of the financial and actuarial information required later in the application.

**Question 5B – REQUIREMENTS FOR REGISTRATION (pre-paid funeral fund)**

The requirements for registration of a pre-paid funeral fund are set out in section 36 of the Act. A corporation or individuals making application to be a trustee of a pre-paid funeral fund is not entitled to carry on the business of supplying funerals under pre-paid contracts. It is possible that a person who carries on such a business may be a member or officer of a corporate trustee of a pre-paid funeral fund. A corporate trustee should have 3 or more directors, and the majority of those directors should not be persons who carry on such a business.

The corporation or trustees, as the case may be, must be able to demonstrate their ability to comply with the requirements of the Act. This would include, but is not limited to, the obligations to report annually and provide actuarial assessments every three years to Fair Trading.

Clause 12 of the Regulation states trustees of pre-paid funeral funds will be required to enter into a bond or other approved financial arrangement with Fair Trading. This bond must be for an amount sufficient to secure the due administration of the fund. The amount of the bond will be determined by Fair Trading. You will be required at Question 9 to estimate the cost of administering the fund in the event of the corporate trustee or trustees becoming insolvent, bankrupt, or otherwise unable to undertake the administration of the fund. Fair Trading will advise you of any determination as to the amount of the bond prior to registration.

**Question 6 – ADDITIONAL INFORMATION TO BE SUPPLIED BY PREVIOUSLY EXEMPT FUNERAL CONTRIBUTION FUNDS AND PRE-PAID FUNERAL FUNDS**

The Registrar in assessing applications must be provided with accurate and comprehensive information to assist in making determinations under the Act.

As indicated earlier in this Guide, prior to 2004 many pre-paid and contribution funeral funds were exempt from registration because of their size and their commitment to not taking on any new business. All funds will now have to register however, it may not be appropriate for every fund to be subject to the full range of reporting obligations.

Section 24 of the Act requires a contributory fund to provide an annual return, which includes financial and audit reports. There is power for Fair Trading to exempt a fund from all or part of this requirement if it is satisfied that the fund is already required to report in a similar manner to another regulatory body. The reporting requirements apply whether the corporation is a public company, or a small or large proprietary company.

Sections 49C and 49G of the Act require a pre-paid fund to lodge an audit report and annual return. Fair Trading may exempt a pre-paid fund from annual reporting requirements if it is satisfied that the fund is already required to report in a similar manner to another regulatory body. You should provide information in answer to this question if, as a trustee you are already reporting. Other financial or management reports or assessments conducted by qualified practitioners may be included to support the application in response to this question.

**Question 7 – ADMINISTRATION BOND (pre-paid funeral funds only)**

Clause 12 of the Regulation states trustees (either corporate or individual) of pre-paid funeral funds will be required to enter into a bond or other approved financial arrangement with Fair Trading. This bond must be for an amount sufficient to secure the due administration of the fund. The bond is not a fidelity bond; rather it is an amount to be made available to cover the costs of administering the fund in the event that the corporate trustee or trustees become insolvent, bankrupt, or otherwise unable to undertake the proper administration of the fund. You should provide an estimate of the administration costs along with the basis for your estimate.

**Question 8 – INFORMATION ABOUT THE FUND AND ITS BUSINESS (funeral contribution funds only)**

The Act requires that funeral contribution funds be monitored closely with the objective of protecting the rights and funds of consumers dealing with the industry. For new funds it is necessary to determine the financial stability and viability of the fund prior to registration, as well as determining the manner in which its business is conducted.

This question requires you to provide information regarding the structure of the company and the nature of its business. If you haven't already provided a copy of your last annual financial statements and report in response to Question 6 (for previously exempt funds) then you should provide a copy of those documents in response to this question. If the company is new and has not yet lodged any statements or reports then you should indicate this and provide a copy of any budgeted profit and loss statement and balance sheet. Also provide copies of each version of the various agreements, contracts or other documents as required.

**Question 9 – ACTUARIAL INFORMATION (funeral contribution funds only)**

In order to be satisfied as to the financial stability and viability of the funeral contribution fund it is necessary to examine actuarial information.

In order to be registered a funeral contribution fund is required to provide satisfactory actuarial information under section 12(2)(b)(iii) of the Act. The nature of the actuarial information is set out in the Question. An actuary is defined in section 4 as:

**Funeral Funds Act 1979**

**4 Definitions**

1. *In this Act, except in so far as the context or subject-matter otherwise indicates or requires:*

**actuary** means:

- (a) *a Fellow of the Institute of Actuaries incorporated by Royal Charter on 29 July 1884,*
- (b) *a Fellow of the Faculty of Actuaries in Scotland, or*
- (c) *the holder of a prescribed qualification as an actuary,*

*who has practised as an actuary for a continuous period of not less than 5 years.*

Care should be taken, however, that the actuarial projections comply with the requirements of Schedule 1 of the Regulation. This schedule is reproduced below:

**Funeral Funds Regulation 2016 Schedule 1 Actuarial projections**

**1 Actuarial projections**

1. *The actuarial projections referred to in clause 4 (1) (h) of this Regulation must include:*

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- (a) a “worst case” projection based on the assumption that a conservative expansion in the company’s funeral contribution business (that is, the minimum expansion necessary to ensure the viability of the company) occurs during each of the years to which the projection relates, and
- (b) a “best case” projection based on the assumption that a reasonably rapid expansion in the company’s funeral contribution business occurs during each of the years to which the projection relates.

2. Each projection:

- (a) must contain details of the basis of the projection (including the assumptions used as a basis for determining the rate of expansion in the company’s funeral contribution business), and
- (b) must contain summaries of statistics for family cover and single cover funeral contribution business, and
- (c) must separately specify the gross contributions for family cover and single cover funeral contribution business payable in each of the years of the company’s projected operations, and
- (d) must contain a projected revenue account for each of the years of the company’s projected operations, and
- (e) must contain a projected balance sheet as at the end of each of the years of the company’s projected operations, and
- (f) must contain a projected valuation balance sheet as at the end of each of the years of the company’s projected operations.

**2 Summaries of statistics**

- 1. The summaries of statistics referred to in clause 1 (2) (b) of this Schedule must separately specify in respect of family cover and single cover contributory funeral benefit business:
  - (a) the number of contributors, and
  - (b) the total amount of benefits for which the contributors to the fund are contributing as at the date of the projection, together with an estimate of the total amounts of benefits for which the contributors to the fund are likely to be contributing during each of the years to which the projection relates, based on the retail prices of the services included in those benefits, but excluding any contingent benefits in respect of the children of the contributors.
- 2. The summaries of statistics referred to in clause 1 (2) (b) of this Schedule must take into account:
  - (a) all business existing at the beginning of each of the years to which the projection relates, and
  - (b) all business acquired during each of those years, and
  - (c) all business discontinued during each of those years, classified according to the cause of the discontinuation.

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### **3 Projected revenue account**

*The projected revenue account referred to in clause 1(2)(d) of this schedule must distinguish between the following types of income and expenditure:*

- (a) income derived from contributions,*
- (b) income derived from investments,*
- (c) income derived from other sources,*
- (d) claims,*
- (e) new contributorship commissions,*
- (f) other expenses involved in the acquisition of new contributorships,*
- (g) contributorship renewal commissions,*
- (h) other expenses involved in the renewal of existing contributorships,*
- (i) income tax.*

### **Question 10 - RULES (funeral contribution funds only)**

The rules of a company proposing to carry on contributory funeral benefit business must provide that, on the death of any person:

- (a) who has contributed for at least 10 years to the funeral contribution fund proposed to be constituted by the company, and
- (b) who has ceased before his or her death so to contribute,

the company will pay an amount, equal to the paid-up value of the person's contributions, towards the cost of a funeral service for the person to be provided under an agreement between the company and a funeral director.

The paid-up value of contributions paid by a person is taken to be:

- (a) the amount certified by an actuary to be the equitable share to which the person is entitled in the funeral contribution fund proposed to be constituted by the company, or
- (b) the amount calculated in accordance with a formula certified by an actuary to be a formula from which that share can be calculated,

having regard to the contributions paid and benefits received by the person before the person ceased contributing to the fund.

### **Question 11 - OTHER MATTERS**

Fair Trading may exempt a funeral fund from certain requirements under the Act. Circumstances, such as the requirement to report to another regulatory authority, the size and whether the fund is accepting new business may be material considerations for Fair Trading in considering exercising any exemption powers. There is also provision for the waiver of or relaxation of the application fee in respect of those funds that would experience financial difficulties as a result of being required to make this application. In order to consider this Fair Trading will require details on the unjustifiable hardship the fund believes they are subject to. Provide details here for consideration by Fair Trading, or if already provided in response to other questions please provide details of where they appear in the application.