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INTO MISCONDUCT IN THE BANKING, SUPERANNUATION  
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**Submission by ACBF Group Holdings Pty Ltd**

1. This is a submission by ACBF Group Holdings Pty Ltd and subsidiary companies (collectively “**ACBF**”) in response to the Interim Report of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (“**Royal Commission**”).
2. The submission will provide an outline of the position of ACBF regarding the current, and future, legislative and policy framework that should apply to the Funeral Benefits Industry (“**FBI**”).

**Current and Future Legislative Frame Work – Funeral Benefits Industry**

3. ACBF submits that the current legislative and policy frame work as it relates to the FBI does not require a major overhaul. If the amendments proposed are put into effect, ACBF does not envisage any difficulty in complying with them as it is already in the process of applying for and obtaining an Australian financial services licence (“**AFSL**”) and is committed to best practice internal governance.
4. The Royal Commission has uncovered endemic failures of banks and the Australian Securities and Investments Commission (“**ASIC**”) to address a wide-spread culture of poor outcomes for customers. No such findings were made regarding the FBI.
5. The Interim Report refers to a report issued by ASIC in 2014 titled ‘*Report 454: Funeral insurance – A snapshot*’ (“**Report 454**”). This report included

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*“recommendations for improving the features of funeral insurance products to potentially address issues raised in this report and elsewhere.”<sup>1</sup>*

6. We note that Report 454 was based, in part on ‘*Report 292 Paying for funerals: How consumers decide to meet the costs*’ (**“Report 292”**). That report was based on consumer research however the sample size was only 25 consumers, none of which identified as Aboriginal or Torres Strait Islander. This appears to be far too small a sample size on which to base any resulting policy recommendations for the entire FBI industry, let alone any recommendations that focus specifically on Aboriginal and Torres Strait Islanders.
7. We respectfully submit that if any policy changes are to be made as a result of ASIC’s work in Report 454 and/or Report 292 then the Royal Commission should recommend a report be undertaken that seeks the input of a far larger survey sample size.
8. Report 454 recognised that:

*ASIC does not have a product intervention power. While we can and do take action regarding misleading conduct, if conduct is not misleading ASIC does not have powers to prevent funeral insurance products creating situations where consumers may:*

  - i. pay more in insurance premiums over a long period than the benefit that will be available under the policy; or*

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<sup>1</sup> Australian Securities and Investments Commission, *Report 454: Funeral insurance: A snapshot*, October 2015, 4 [4].

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*ii. have to cancel a policy due to unaffordable premiums, despite having paid premiums over a long period (and potentially in excess of the benefit available under the policy).*

*Our focus has been on ensuring that consumers are not being misled by advertising or disclosure, and on providing financial education resources to assist consumers make informed financial decisions.”<sup>2</sup>*

9. Report 454 was also considered in ASIC’s ‘*Submissions in response to certain of the general questions identified by Counsel Assisting inclosing submissions*’ in the following terms:<sup>3</sup>

*“The current regulatory framework in respect of funeral expenses products is not adequate. ASIC considers that certain elements could be amended to improve consumer outcomes and industry participant behavior and practice in order to meet community standards and expectations. On the evidence before the Royal Commission in case studies 1 and 2, many of the product design and sales practice issues that ASIC identified in Report 454 Funeral Insurance: A Snapshot51 (Report 454) remain a concern, particularly when targeted towards low income consumers or Indigenous consumers.”<sup>4</sup>*

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<sup>2</sup> Australian Securities and Investments Commission, *Report 454: Funeral insurance: A snapshot*, October 2015, 12 [28] – [29].

<sup>3</sup> Australian Securities and Investments Commission, ‘*Submissions in response to certain of the general questions identified by Counsel Assisting inclosing submissions*’, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Submissions of The Australian Securities and Investments Commission, Round 4: Experiences with Financial Services Entities in Regional and Remote Communities.

<sup>4</sup> *Ibid* 14 [32].

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*“There are two amendments to the current regulatory framework that should be made (each explained in further detail below):*

- a. first, a funeral expenses policy should be a financial product covered by the financial services licensing and conduct regime of the Corporations Act. That is, the exclusion effected by regulation 7.1.07D of the Corporation Regulations 2001 should be removed; and*
- b. secondly, but dependent on the first matter, a funeral expenses policy that becomes such a financial product should also be made the subject of the:*
  - i. design and distribution obligations; and*
  - ii. product intervention power, contemplated by the exposure draft Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2017, with civil criminal penalties available for failure to comply.*

*This would result in industry or product specific regulation for funeral expenses products and financial services providers in respect of them, within the rubric*

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*of financial services regulation. Such industry or product specific regulation is appropriate where:*

- a. the risk of consumer detriment is relatively high and/or the detriment suffered if things go wrong is potentially significant and possibly irremediable;*
- b. the suitability and quality of services is hard to gauge before or even after purchase; and*
- c. there is a risk of predatory practice.”<sup>5</sup>*

10. ACBF considers that a significant benefit would be derived by Aboriginal and Torres Strait Islander communities if the commission were to recommend that dishonour fees be removed from banking clients with direct debit arrangements. In the experience of ACBF clients may often pay more in dishonour fees than the direct debit payment that was due to be made. ACBF agrees with the comments made by Nathan Doyle before the Royal Commission:

*“Dishonour fees can be quite – can have quite a significant impact on people in these communities. So, dishonour fees, for example, a direct debit has been set up to take money – a recurrent bill, for example, out of someone’s account. Because of Aboriginal and Torres Strait Islander people’s generally lower level of understanding about how finances operate generally, people sometimes won’t know which day the money does go into their account or they won’t*

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<sup>5</sup> Ibid 14 – 15 [33] – [34].

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*understand the way the direct debits work. So, what we see, not uncommonly, is that people might have a direct debit set up to come out of their account on the day before their income comes in, so they are repeatedly having to pay them dishonour fees.”<sup>6</sup>*

11. ACBF submits that the Commission should consider recommendations that either:
- a. disallow Banks from charging dishonour fees in circumstances where accounts are overdrawn by relatively small sums; or
  - b. require Banks to ensure that dishonour fees are commensurate to the payment that has been rejected and do not amount to the imposition of unfair penalties on their customers.
12. ACBF does not necessarily agree that FBI should come under the financial services licensing regime and considers that there are potentially significant difficulties that will arise if such a recommendation is to be implemented. The Commission has heard a significant amount of evidence pertaining to the difficulties of financial literacy amongst Aboriginal and Torres Strait Islander communities. If FBI is required to implement a more comprehensive disclosure regime for clients then consideration must be given to how best implement such changes for remote and disadvantaged communities. The existing AFSL process is not necessarily a process that will may be optimally applied within these communities.

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<sup>6</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Transcript, Nathan Boyle, 3 July page 3740

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13. With respect to the above point, ACBF sees the need for inter-agency consultation prior to the implementing of further disclosure requirements so that simplified disclosure processes can be considered for remote and disadvantaged communities.

*Flaws with the ASIC submission and Interim Report*

14. With due respect to ASIC, its submission is fundamentally flawed because the *Australian Securities and Investments Commission Act 2001* (Cth) ("**ASIC Act**") does not apply to the activities of ACBF. So too is the interim report to the extent that it suggests that ACBF have issued financial products to consumers and that representations made with regard to those products were misleading or deceptive or likely to be so.

15. As identified by ASIC, the products issued by ACBF are not insurance products within the meaning of the ASIC Act. Rather, they are funeral benefit products regulated by the New South Wales Office of Fair Trading pursuant to the *Funeral Funds Act 1979*.<sup>7</sup> As a result of this, the recommendations made by Counsel Assisting the Commission with regard to potential breaches of the ASIC Act could never be actioned because this Act, and these enforcement provisions, do not apply. From a policy perspective this is important because the Commission would fall into error were it to recommend

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<sup>7</sup> <https://www.fairtrading.nsw.gov.au/buying-products-and-services/buying-services/funerals/contributory-and-pre-paid-funerals>

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legislative and regulatory amendment upon a mistaken belief with regard to the operative regime.

16. Further, the recommendations made with regard to potential misleading and deceptive conduct cannot be borne out against ACBF when it is considered that the products issued are not in a legislative sense recognised as insurance products but as funeral benefit products. This reflects the incontestable truth that everyone will die. The products are fundamentally different from traditional insurance policies because by their very nature it is inevitable that every person that maintains the policy will ultimately claim upon it (subject to meeting the conditions of the policy). Put differently, the event in relation to which the financial product is obtained is inevitable rather than a contingency that can be insured against in the traditional sense. This, in ACBF's submission, is why such products are quite properly not characterised as insurance products within the regulation of the ASIC Act. By their very nature they are something very different to insurance and need to be addressed separately because different considerations apply both from the issuers' point of view and from the policy holder's point of view than is the case in a traditional insurance situation. What flows from this is that the criticisms made of it in this regard as a basis for legislative amendment are fundamentally flawed because they are premised in terms of traditional insurance but quite different considerations apply to products of this nature.

17. Furthermore, the argument that the ACBF products are somehow financial products ignore the further ambit of the *Corporations Act 2001* (Cth) ("*Corporations Act*"), as amended. Section 765 A (1)(y) of the Corporations Act in conjunction with regulation



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7.1.07D of the Corporations Regulations 2001 state specifically that a funeral benefit defined as below is not a financial service.

*REG 7.1.07D Specific things that are not financial products: funeral expenses policy*

*(1) For paragraph 765A(1)(y) of the Act, a funeral expenses policy is not a financial product.*

*(2) In this regulation:*

*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.*

18. This correlates with the definition in Section 765 A (1) (y) of the Corporations Act which provides that:

*SECT 765A Specific things that are not financial products*

*(1) Despite anything in Subdivision B or Subdivision C, the following are not financial products for the purposes of this Chapter:*

*(w) a funeral benefit;*

*Interestingly a funeral benefit is defined in Section 9 of the Act as, "funeral benefit" means 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. The Commission would fall into error were it to recommend legislative change on the basis of ASIC's complaint that ACBF's current advertising materials, even with the disclaimer which has not always been used, may induce consumers into thinking that is an Aboriginal-owned company. The essence of the complaint is that ACBF's promotional material includes references to ACBF having spent over 20 years working in the Aboriginal community, and the plan is described as Australia's only funeral insurance plan dedicated to the Aboriginal community. The origin of this statement was a historical case brought by ASIC against ACBF in the Federal Court upon consumer

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protection legislation that no longer exists. Settlement was brokered under that earlier legislative scheme and disclaimers have appeared on all marketing material since that time although not business cards, which was never a requirement on the Consent Order agreed by ASIC at the time (attached).

20. As a consequence of the above, it is simply not the case that the Commission could find that ACBF likely breached the ASIC Act because it does not apply. More deeply however, the fundamental premises upon which the breaches are said to have occurred are flawed in circumstances where funeral benefits are of a different nature to insurance products and the historical complaints with regard to ACBF do not apply in any meaningful way given the different scheme that applied at the time.

*If the proposed amendments are made*

21. Whether or not these amendments are put in place, it is the intention of the ACBF to obtain an AFSL which was outlined by ACBF's Chief Executive Officer during the hearings.<sup>8</sup> ACBF is committed to good governance and is in the process of taking these steps in any event.

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<sup>8</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Transcript, Bryn Jones, 3 July page 3794, 3797.

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22. In *Aboriginal Community Benefit Fund Pty Ltd v Chief Executive Centrelink* ('ACBF v Centrelink'),<sup>9</sup> Justice Logan made the following remarks relating to the decision of the Chief Executive of Centrelink to disallow direct payments by ACBF policy holders through 'Centrepay':

*"Paternalism by the Crown and officers of the Crown towards aboriginal Australians has a very long history.*

*In 1836, a Select Committee of the House of Commons of the United Kingdom's Parliament furnished to that parliament a report, the Report from the Select Committee on Aborigines (British Settlements). As Commissioner Elliott Johnston QC recorded in the National Report of the Royal Commission into Aboriginal Deaths in Custody (Royal Commission into Aboriginal Deaths in Custody, National Report, (1991) Vol 2, para 10.3.18), in this Select Committee report the committee "recommended a Protector be appointed in each colony who would learn their language, distribute gifts (other than liquor), introduce a simple set of laws, collect statistical information regarding population, act as a magistrate and provide legal representation". This report was acted upon in the Australian colonies and such action continued after Federation. Well into the 20th century an office of Protector of Aborigines or an equivalent office was to be found in the several States, along with related legislative provision.*

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<sup>9</sup> [2016] FCA 769.

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*The facts of this case are not in dispute in any material way. They offer a reminder that, in the view of Ministers of the Crown and officers of their departments, there is still a place today for a form of such paternalism.”<sup>10</sup>*

23. It is our respectful submission that this approach should not be taken with the stakeholders, customers and the communities we work with.

24. The decision in *ACBF v Centrelink* also provided a short summary of the provenance of ACBF:

*“ACBF initially conducted “a contributory style, pre-paid fund” (still in operation) but, following requests from members, established a funeral insurance style fund in 1993. That fund was originally underwritten by National Mutual and, after merger, by AXA. In about 2001, AXA refused to continue to underwrite the insurance style fund, because of the high mortality rate of its members.*

*ACBF then sought an alternative re-insurer. One was unable to be found in Australia but in about 2002 one was found overseas.*

*Since 2002, ACBF has accepted and paid 100% of claims under the insurance fund immediately.*

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<sup>10</sup> Ibid [1] – [3].

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*Those representations were accompanied by testimonials supportive of the continuance of the Centrepay deduction arrangement from an Aboriginal community health corporation, an aboriginal community worker and a number of individual fund members.”<sup>11</sup>*

25. It is our submission, that if our organisation actually conducted itself in the way that has been characterised in the Interim Report (which is denied), these matters would have been ventilated and brought before the Federal Court. This did not occur. Further, were ACBF to conduct itself in this manner, it would be liable to such prosecution before the Courts. The decision above was overturned by the Full Court of the Federal Court on appeal, as the Court found that Justice Logan had erred regarding the authority of Centrelink to cease the payments to ACBF through ‘Centrepay’.<sup>12</sup>

26. ACBF remains very proud of its service to plan holders and their families. ACBF continues to strive to ensure that we comply with our obligations in delivering those services.

Despite a number of adverse allegations made against ACBF in the Interim Report, it is our submission that the evidence before the Royal Commission demonstrates that current legislative and policy frame work has facilitated the resolution of matters

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<sup>11</sup> Ibid [19].

<sup>12</sup> *Chief Executive Centrelink v Aboriginal Community Benefit Fund Pty Ltd* (2016) 248 FCR 236.

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between the ACBF and ASIC and between ACBF and its customers. It is submitted that this demonstrates that the current regime is capable of regulating the sector and amendment is not required. Moreover, it is submitted that the policy concerns raised in response to these criticisms are misplaced, particularly in circumstances where the product issued by ACBF is not a traditional insurance product and is not suited to regulation in the same manner as traditional insurance products.

**Matters raised at the Royal Commission have been address and resolved**

27. In ACBF's submission, the matters identified below must be taken into account from a policy perspective when determining whether amendment to the current legislative scheme is required.

*Interactions with ASIC*

28. The Interim Report of the Royal Commission regarding the *Case Study: Remote Communities – 1 Aboriginal Community Benefit Fund (“Case Study”)* as they relate to the ACBF asserted that there was a possibility that ACBF had engaged in the following behaviour:

- a. Misleading and deceptive conduct;<sup>13</sup>
- b. Conduct falling below community standards;<sup>14</sup>
- c. Culture, governance and remuneration practices;<sup>15</sup> and

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<sup>13</sup> Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Interim Report 2018 Vol 2, 452 [1.4.1]

<sup>14</sup> Ibid 455 [1.4.2].

<sup>15</sup> Ibid 457 [1.4.3].

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d. Effectiveness of response and redress.<sup>16</sup>

29. ACBF takes these matters very seriously. They are matters however that have previously been resolved with both ASIC and the single witness who appeared as part of the hearings. They are not, with due respect, live complaints.

30. As was outlined in the Interim Report, consent orders were made by the Federal Court of Australia as a consequence of the matters as raised by ASIC in 1999.<sup>17</sup> The orders related to provisions of the *ASIC Act*, namely:

- a. section 12CA – *Unconscionable conduct within the meaning of the unwritten law of the States and Territories*;
- b. section 12CB – *Unconscionable conduct in connection with financial services*;
- c. section 12DA – *Misleading or deceptive conduct*; and
- d. section 12DB – *False or misleading representations*.

31. The orders required the ACBF group of companies to:

- a. retain external consultants;<sup>18</sup>
- b. prepare a compliance program;<sup>19</sup>
- c. stipulated the content of the compliance program;<sup>20</sup> and
- d. the requirements for annual reports.<sup>21</sup>

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<sup>16</sup> Ibid 457 [1.4.4].

<sup>17</sup> *Federal Court of Australia, No. D12 of 1999*.

<sup>18</sup> Ibid [2] – [3].

<sup>19</sup> Ibid [4] – [5].

<sup>20</sup> Ibid [6] – [9].

<sup>21</sup> Ibid [10].

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32. The orders also related to conduct of the ACBF companies,<sup>22</sup> entry into aboriginal land<sup>23</sup> and orders relating to payments.<sup>24</sup> ACBF were required to pay ASIC's costs of \$15,000.

33. ASIC also commenced proceedings against ACBF in 2004<sup>25</sup>. This matter was not taken any further by ASIC as ACBF agreed to take no further members into the relevant fund.<sup>26</sup>

34. Despite the suggestion from the Interim Report that ACBF "appears" to have breached the 1999 order (which ACBF denies), no action has been taken by ASIC in this regard, nor has ASIC contacted ACBF regarding these concerns. What this demonstrates is that the regulator is actively managing the sector, including ACBF, and that its regulation when enforced is effective in obtaining results. In the instances where the regulator has raised concern with regard to ACBF, it has responded and in the two instances where proceedings have been instituted, they have been resolved at early stages. It is difficult to rely on these instances as representative of any proper complaint against ACBF, and by extension a complaint against the regulatory regime, because to the extent that the matters were raised they were effectively and lawfully resolved.

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<sup>22</sup> Ibid [11] – [15].

<sup>23</sup> Ibid [16].

<sup>24</sup> Ibid [17] – [21].

<sup>25</sup> *Commission v Aboriginal Community Benefit Fund Pty Ltd* [2004] FCA 178.

<sup>26</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Transcript, Bryn Jones, 3 July page 3792. Ibid Rowena Orr, QC, 3 July page 3800, paragraph 40.



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*ASIC's Focus on ACBF and the FBI*

35. ASIC has had a focus on the FBI and ACBF since at least 1999 including making comments regarding ACBF in its Report 454. ASIC has also produced an online resource, which is available for download, which is specifically targeted to Aboriginal and Torres Strait Islander people titled '*Paying for funerals*'.<sup>27</sup>

36. ASIC have also had an Indigenous Outreach Program since 2009. According to Nathan Boyle, a Senior Policy Analyst with the Indigenous Outreach Program within the Financial Capability team at ASIC, the program is comprised of:

*“a team of lawyers and analysts with specialist skills working with Aboriginal and Torres Strait Islander communities. We've had a formal program at ASIC called the Indigenous Outreach Program since about 2009, and our team performs a range of functions. The first is to provide financial capability education to Aboriginal and Torres Strait Islander consumers, and we do that predominantly through resources that are placed on the MoneySmart website, as well as through face-to-face interactions, and a range of other innovative types of financial capability devices that we design to try and assist indigenous people to understand financial services.”*<sup>28</sup>

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<sup>27</sup> Australian Securities and Investment Commission, 'Paying for funerals', July 2017  
<https://www.moneysmart.gov.au/media/131954/paying-for-funerals.pdf>

<sup>28</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Transcript Nathan Boyle page 3714 paragraph 40.

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37. In his witness statement, to the Royal Commission Mr Boyle also said:

*“ASIC has received reports of alleged misconduct from Indigenous Australians with respect to ACBF Funeral Plans Pty Ltd (ACBF). Anecdotally, a significant number of Indigenous consumers hold a funeral insurance plan through ACBF. ACBF specifically targets Indigenous consumers in selling a funeral plan product called ‘the Aboriginal Community Funeral Plan’.*

*I have observed in my work that ACBF funeral insurance sales representatives have misrepresented:*

- (a) the suitability of the product for the Aboriginal community;*
- (b) the price (a lack of clarity on the amounts that a consumer may pay in total over the course of the policy) and benefits of the product (that it only covers the expenses of the funeral (and certain associated costs) regardless of any excess in the sum insured for); and*
- (c) that the company was owned, managed by or benefitted Aboriginal persons. For example, we have heard anecdotal evidence that ACBF has used dark-coloured persons, such as people of Indian origin, to attend communities to sell the products. The name of the fund used by ACBF is the “Aboriginal Community Benefit Fund” (while there is a disclaimer in the ACBF’s written publications as to there being no connection to a government or Indigenous organization, this may not*

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*be promoted in oral sales. In addition, there was once a NSW Aboriginal Land Council Community Benefits fund which was a contributory fund into which a small fortnightly amount could be contributed). The ACBF uses Indigenous artwork, colours and other iconography in its material.”<sup>29</sup>*

38. Despite the allegations above, combined with ASIC’s focus on our funds and the services we provide to our customers and potential customers, there have been no actions commenced against ACBF since 2004 by ASIC. This includes a period where ACBF received unsubstantiated negative publicity about its business model and products.<sup>30</sup>

39. ACBF also rejects any contention that particular individuals have been employed as a consequence of their ethnicity. It also objects to the contention ACBF employed “*dark-coloured persons*” to sell products in indigenous communities. There is no proper evidentiary basis to this contention and it ought to be rejected.

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<sup>29</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Witness Statement of Nathan Boyle, Rubric 4-30, page 15 paragraphs 46 – 47.

<sup>30</sup> ABC News Online, ‘Babies among thousands of Aboriginal children signed up to 'shocking' funeral insurance schemes’, By consumer affairs reporter Josie Taylor, Updated 21 Nov 2015, 2:43pm <<https://www.abc.net.au/news/2015-11-21/aboriginal-babies-being-signed-up-to-shocking-insurance-schemes/6958342>>; ‘ACBF: Aboriginal funeral insurance provider banned from Centrepay system following Appeal Court win’ By Kathy McLeish, Updated 15 Nov 2016, 8:41pm <<https://www.abc.net.au/news/2016-11-15/acbf-banned-from-centrepay-system-following-centrelink-win/8027936>>.

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40. It is submitted that ASIC has taken no action against ACBF because it has continued to meet its legal obligations in relation to the current law. Where there are concerns regarding any potential contraventions of legislation, we will immediately address these and work with ASIC, or any other appropriate regulator, to determine the best course of action in this regard.

*Governance and Community Engagement*

41. ACBF has also taken recent steps to improve its governance and culture by engaging an external consultant and also taking steps obtaining an AFSL which will impose stricter obligations on the organisation in the future.

42. Further to this, our CEO, Mr Bryn Jones outlined to the Royal Commission how he had engaged with Aaron Davis from the Indigenous Consumer Assistance Network Ltd (*ICAN*),<sup>31</sup> appointed of an actuary,<sup>32</sup> and engaged an indigenous community organisation (*MURA Connect*) to conduct a cultural audit of ACBF.<sup>33</sup> This demonstrates our commitment to continued improvement to ensure that our policy holders receive the best possible service and outcomes.

43. Additionally, to the above, ACBF has taken the following steps to rectify concerns identified in the course of Royal Commission hearings and by ASIC:

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<sup>31</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Transcript, Bryn Jones, 3 July page 3788.

<sup>32</sup> Ibid page 3798, paragraph 25.

<sup>33</sup> Ibid page 3788 paragraph 15 – 20 ; page 3806 paragraph 45.

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- a. the appointment of an insurance industry expert to review ACBF's operations;
- b. implementing a calculator that is made available to ACBF's clients that demonstrates how long it will take the client to pay in premiums the full benefit amount;
- c. disclosing to clients that they may pay more in premiums than any eventual benefit amount;
- d. the creation of an informative animated video to explain some of the other alternative measures individuals can take to pay for a funeral as well as highlighting some of the key relevant features of ACBF's products;
- e. sought to engage with ASIC's Indigenous Outreach Program and financial services providers operating in indigenous communities to help clients obtain relevant information which will assist them in making informed financial decisions;
- f. seeking further Aboriginal and Torres Strait Islander representation at all levels of employment across the business (from customer service to management) of ACBF;
- g. engaging directly with Aboriginal and Torres Strait Islander community leaders (in consultation with insurance and actuarial experts) to assess the needs of their communities to assist in product development;
- h. engaging actuarial services to enable ACBF to offer products with capped benefits and/or premiums and also offering further choices to our clients to enable them to select a product that suits their personal circumstances;

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- i. the removal of all door to door sales staff (this measure having been in place for some time); and
- j. updating the disclaimer used on ACBF's website to include the following (which visitors to the website must click "I Understand"):

*"ACBF Group Holdings Pty Ltd and Subsidiary Companies are a private company. We are not an Aboriginal company. We are not owned or operated by or associated with any governmental or similar body or any Aboriginal organisation.*

*Aboriginal Community Funeral Plan is a funeral related expenses plan. It is not a savings plan / account. You may not receive a refund after the 30-day cooling-off period. Funeral Plan holders may pay more than their benefit amount. If payments are not maintained, you may forfeit your funeral related expenses cover."*

44. Our CEO also advised the Royal Commission that it is his intention to work with ASIC, Financial Counselling Australia and other community organisations to ensure that the ACBF is *"engage[d] with those community groups and regulatory bodies that are honestly working for the good of the community."*<sup>34</sup>

45. ACBF also has several particular features of its products that make it uniquely beneficial for the Aboriginal and Torres Strait Islander Community. The Commission

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<sup>34</sup> Ibid page 3796, paragraph 40.

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heard in evidence from Mr Boyle the following regarding kinship structures within Aboriginal and Torres Strait Islander communities:

*“And so Aboriginal and Torres Strait Islander people don’t view our family as being a nuclear family, as western communities tend to. We will have obligations to a range of other people in our communities and in broader - not even blood relations - that are also seen by us as being the most appropriate person or closest family contact for financial services issues.”<sup>35</sup>*

46. It is a feature of ACBF operated funds that these complexities are acknowledged and there are no associated restrictions on policies or products.

47. It is also a feature of ACBF operated funds that extraordinary expenses which may not be covered by standard FBI products are met, such as travel, food and accommodation expenses. The Commission heard that Aboriginal and Torres Strait Islander communities face additional travel costs for families to attend funerals. The challenges faced by remote communities in accessing financial services and the difficulties geographic isolation presents. Any policy changes recommended by the Commission should take into account the benefit to communities of having access to low cost alternatives for the payment of funeral expenses where remote communities generally have higher costs for basic goods and services and a corresponding lack of employment opportunities.

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<sup>35</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Transcript, Nathan Boyle, 3 July page 3722

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48. Mr Jones also stated in evidence the impact of higher Aboriginal and Torres Strait Islander mortality rates than the general population and the resulting need for FBI products in those communities. It is therefore much more likely that an Aboriginal or Torres Strait Islander person will have the need to meet funeral expenses of relatives in earlier stages of life, thus making the products of ACBF important for these communities. Any proper consideration of the need for amendment to the regulatory regime would properly incorporate a detailed consideration of the particular needs of the policy holders (and here, in particular, the Aboriginal or Torres Strait Islander Communities) and in turn the specific needs of those communities. The Commission, with respect, did not have the opportunity to hear the sort of detailed evidence that would properly inform it as to the appropriate amendments to be made to the regime should amendment be required, particularly given the particular vulnerabilities and nuances of the communities in issue.

*Settlement with Tracey Walsh*

49. Ms Tracey Walsh appeared at the Royal Commission to give evidence about her dispute against the ACBF.

50. During her evidence Ms Walsh confirmed that:<sup>36</sup>

- a. her dispute had been settled;

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<sup>36</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Transcript, Tracey Walsh, 3 July page 3777 paragraphs 15, 20 and 30.



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- b. that she would not be required to make any further payments for her plan with cover for \$10,000; and
- c. that the Consumer Action Law Centre had discontinued the dispute in with the Financial Ombudsman Service Limited ("*FOS*").

51. It is our submission that this settlement demonstrates how the current system facilitates efficient dispute resolution. It is our respectful submission that Ms Walsh's matter should not be re-litigated through this Royal Commission. If it also, with respect to Ms Walsh, difficult to rely on her evidence as a basis for a need for amendment to the regime in circumstances where the existing regime has facilitated the resolution of that particular dispute.

52. We also note that, in circumstances where the funds operated by ACBF are funeral benefit products and thus not a financial product, ACBF has voluntarily been a member of FOS since 2009. This demonstrates ACBF's commitment to best practice when it comes to resolving disputes with its clients.

### **Conclusion**

53. ACBF has always strived to maintain high levels of customer satisfaction while complying with its legal obligations. Whenever there has been disputes between ACBF and ASIC these matters have been resolved and the ACBF have implemented the changes required immediately.

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54. As has been outlined, ACBF support future legislative change that aligns our industry with other products that require an AFSL. ACBF will continue to work with our customers and their communities to continue to deliver high service levels. We look forward to the implementing any relevant recommendations of the Royal Commission as adopted in legislation.