

**ROYAL COMMISSION
INTO MISCONDUCT IN THE BANKING,
SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY**

**ROUND 4 PUBLIC HEARINGS
ACBF CASE STUDY**

SUBMISSIONS ON BEHALF OF ACBF GROUP HOLDINGS PTY LTD

Introduction

- 1) ACBF Group Holdings Pty Ltd (ACBF) was granted leave to appear in the Round 4 Public Hearings by order of the Commissioner dated 25 June 2018.
- 2) These submissions respond to the submissions made orally by Counsel Assisting the Royal Commission, Ms Orr QC, at the conclusion of the Round 4 public hearings in Darwin on 6 July 2018 in relation to the ACBF Case Study.¹
- 3) These submissions have been prepared on the basis that the Royal Commission does not propose to make any findings concerning ACBF beyond those identified in the submissions of Counsel Assisting. If the Royal Commission does intend to make findings or recommendations in relation to ACBF beyond those identified in the submissions of Counsel Assisting, ACBF requests the opportunity to addresses such further findings or recommendations before they are made and published.
- 4) The Royal Commission conducted the Round 4 public hearings over 10 days between 25 June and 6 July 2018 under the *Royal Commissions Act 1902* (Cth). ACBF was granted leave to appear throughout the public hearings but did so only for the duration of the ACBF case study on 3 and 4 July 2018.

¹ Transcript 6.7.18, P-4129 to P-4136.

The evidence

- 5) The evidence before the Royal Commission, relevant to the ACBF case study, consists of exhibits 4.143 to 4.169, inclusive, and the testimonial evidence of Ms Tracey Walsh and Mr Bryn Jones.

Misconduct findings – suggested breach section 12DA and 12 DF of the ASIC Act

- 6) Counsel Assisting submits that it is open to the Royal Commission to find that: *“ACBF may have breached its obligations under section 12DA of the ASIC Act to not engage in conduct that is misleading or deceptive, or is likely to mislead or deceive, and under section 12DF subsection (1) of the ASIC Act which prohibits a person from engaging in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity of any financial services.”*²
- 7) This submission should not be accepted.
- 8) Counsel Assisting identified two aspects of ACBF’s conduct that was said to support this submission.
- a) *“Most significantly, ACBF represents that it uniquely provides a product and service tailored to meet the needs of Australia’s Aboriginal and Torres Strait Islander people, and that its policies are beneficial for Aboriginal and Torres Strait Islander people... It is open to find that ACBFs products and services, the sale of which is targeted to Aboriginal and Torres Strait Islander people are not, in fact, tailored to meet the needs of these people, or beneficial for those people for a number of reasons.”*³; and
- b) *“Separately, ACBFs current advertising materials, even with the disclaimer which has not always been used, may induce consumers into thinking that it’s an Aboriginal-owned company. Its materials use colours, red, yellow and orange, associated with Aboriginal culture and use imagery which is significant in Aboriginal and Torres Strait Islander culture. The name of the plan includes the word “Aboriginal”, the promotional material includes references to ACBF*

² Transcript 6.7.18, P-4133: 20-25

³ Transcript 6.7.18, P-4133: 25-32

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.”⁴

Tailored and beneficial

- 9) ACBF accepts that it has promoted ACBF products as being “tailored” to meet the needs of Aboriginal and Torres Strait Islander people.⁵ However, ACBF submits that it is neither misleading, nor deceptive, or potentially so, for ACBF to promote its products as being tailored to the needs of Aboriginal and Torres Strait Islander people.
- 10) Mr Jones identified the ways ACBF products are tailored to the needs of Aboriginal and Torres Strait Islander people at pages P-3804 to P-3805⁶ as follows:
- a) ACBF products are specifically intended for Aboriginal and Torres Strait Islander clients, having been underwritten by Crown Insurance Ltd after Australian insurers declined to underwrite ACBF policies “citing difficulties with underwriting people in Aboriginal communities.”⁷ Mr Jones explained in evidence that the difficulty in obtaining underwriting for ACBF policies in 2001 was “because we’re group insured, and no one would insure a demographic that were made up predominantly of Indigenous” people.⁸
 - b) ACBF permits a client to miss up to four premium instalment payments, and then allows a further period of 31 days, before a policy might be cancelled for non-payment. During this time ACBF makes multiple attempts to contact customers and arrange payment of arrears.⁹ In circumstances where automatic debit defaults are common amongst the Aboriginal and Torres Strait Islander client group¹⁰, the additional protections offered to ACBF clients who miss instalment payments is one way ACBF products are tailored to meet the needs of its Aboriginal and Torres Strait Islander clients.

⁴ Transcript 6.7.18, P-4134: 6-13

⁵ See, for example, Exhibit 4.150

⁶ Transcript 3.7.18

⁷ Exhibit 4.146, Statement of Mr Jones, at paragraph 2.3(c)

⁸ Transcript 3.7.18, P-3806: 9-11.

⁹ Transcript 3.7.18, P-3806: 16-17; Exhibit 4.146 at paragraph 17.1.

¹⁰ See evidence of Mr Boyle at P:3721: 38-42; P:3740: 28 to P:3741: 11; and Ms Edwards at P:3741: 15.

c) ACBF undertook cultural awareness activities “to ensure that the communication with [its] policy holders and customer base was culturally appropriate.”¹¹ More recently, ACBF engaged MURA Connect to undertake a cultural audit of ACBF organisation and prepare a Reconciliation Action Plan for the organisation.¹² ACBF accepts the findings of that report is committed to implementing its recommendations¹³ including that ACBF develop a workforce of “culturally competent staff who possess an understanding of Aboriginal and Torres Strait Islander culture and practices and have the confidence to successfully communicate with Aboriginal and Torres Strait Islander people about sensitive issues.”¹⁴

11) Counsel Assisting identified six bases for the submission that ABCF’s products were not, in fact, tailored to meet the needs of Aboriginal and Torres Strait Islander people or beneficial for those people; namely:

a) *“First, ACBFs health classification system may result in Aboriginal and Torres Strait Islander people paying more than they would if they obtained funeral insurance from another insurer.”*¹⁵

i) There does not appear to be any evidence upon which the Commission could accept this submission. There is no testimonial or documentary evidence that any ACBF clients has paid more in premiums due to ACBFs health classification system than they would if they had obtained funeral insurance from another insurer. In the absence of such evidence, or comparative analysis of the policies and health restrictions of products offered by other insurers, this submission could only be speculative in nature and should not be relied upon to make any finding adverse to ACBF.

b) *“Second, until very recently, ACBF policies did not pay out for suicide, despite the high rates of suicide in the Aboriginal and Torres Strait Islander community.”*¹⁶

¹¹ Transcript 3.7.18, P-3806: 19-20.

¹² Transcript 4.7.18, P-3831: 22-24; Exhibit 4.160

¹³ Transcript 4.7.18, P-3831: 27-29

¹⁴ Transcript 4.7.18, P-3838: 44 to P-3839: 28

¹⁵ Transcript 6.7.18, P-4133: 32-35.

¹⁶ Transcript 6.7.18, P-4133: 35-37.

- i) Mr Jones explained that ACBF policies did not respond to death by suicide until a policy change in September 2017.¹⁷ However, prior to this and since its inception, ACBF has offered a refund of premiums paid up to an amount equal to but not more than the payout amount would have been in the event a policy holder dies by suicide.¹⁸ Mr Jones explained in evidence that ACBF did not deduct administrative costs from these refunds, meaning refund payments in cases of suicide were made at a loss to ACBF.¹⁹ Mr Jones said:

“I understand this has been a vexed issue for some time, with many of our customers and local community groups strongly opposed to coverage in the event of suicide, as it may be seen to condone it. I stress this issue is not a financial or commercial decision for ACBF, but a decision taken after much consultation with members. This policy was recently reversed. Historically, ACBF would always make an *ex gratia* payment in the event of suicide.”²⁰

- ii) It is accepted that exhibit 4.168 is evidence of one ACBF staff member suggesting that there had been “backlash from the community” as a result of ACBFs previous policy not to cover suicide. Partially as a result of exhibit 4.168, ACBF moved to change that policy. However, that evidence does not undermine Mr Jones’ evidence, which should be accepted, that “many of our customers and local community groups [were] strongly opposed to coverage in the event of suicide, as it may be seen to condone it.”

- c) “*Third, as ASIC found in its 2015 report, ACBF is the only insurer with significant numbers of persons insured under 30 for whom premiums are being paid.*”²¹

- i) ABCF is the only funeral insurer specifically dedicated to Aboriginal and Torres Strait Islander clients. Mr Jones accepted in evidence that “the proportion of individuals covered by [ACBF] policies who are young people has been high for a number of years” but explained that this was

¹⁷ Transcript 4.7.18, P-3860: 20; Exhibit 4.160 at paragraph 21.2 and 23.1(c).

¹⁸ Exhibit 4.160 at paragraph 23.1(c).

¹⁹ Transcript 4.7.18, P-3877: 12-31

²⁰ Exhibit 4.160 at paragraph 21.2

²¹ Transcript 6.7.18, P-4133: 39-44.

“proportional to the age distribution of indigenous Australians from the ABS.”²² In fact, due to the appalling mortality rates for Aboriginal and Torres Strait Islander people, by far the largest proportion of Aboriginal and Torres Strait Islander people, as reported by the ABS, are under 18 years of age.²³

ii) Reliance is placed by Counsel Assisting on exhibit 4.151 and the findings²⁴ made by ASIC in that document in respect of the spread of lives insured by age. However, Mr Jones noted in evidence that the figures used by ASIC for the purposes of its report were life expectancy figures for the general Australian population, not allowing for the very different life expectancy of Indigenous Australians.²⁵ When those rates are considered, it is apparent why ABCF covers more young people than insurers whose client base is not predominantly Indigenous.

d) *“Fourth, ACBF is not an Aboriginal organisation, nor is it affiliated with any Aboriginal or government organisation.”*²⁶

i) ACBF does not represent itself as an Aboriginal organisation or as being affiliated with any Aboriginal or government organisation. Since the Federal Court consent orders entered into by ACBF in 1999²⁷ ACBF has endeavoured to ensure materials have included a specific acknowledgement that ACBF is not an Aboriginal organisation and is not affiliated with any Aboriginal or government organisation.²⁸

ii) It is accepted that some of the advertising material shown to Mr Jones during oral evidence did not contain the disclaimer. However, Mr Jones explained “I was unaware of some of the things that you’ve shown me today, and I will ensure that anything going forwards will be meeting any guidelines from

²² Transcript 3.7.18, P-3807: 43-45.

²³ See Exhibit 4.150 at page 2.

²⁴ Particularly at ASIC.0025.0003.1764

²⁵ Transcript 3.7.18, P-3810: 46 to P-3811: 1.

²⁶ Transcript 6.7.18, P-4133: 44-46.

²⁷ Exhibit 4.156

²⁸ See Exhibits 4.154 and 4.155; Exhibit 4.149; Exhibit 4.146.2; Exhibit 4.146.3; Exhibits 4.146.5 to 4.146.11; Exhibit 4.147.6; Exhibit 4.144.3

government agencies and regulators.”²⁹ In circumstances where Mr Jones and ACBF were not required to interrogate any historical records of advertising materials³⁰ or confirm the provenance of the advertising materials shown to Mr Jones in evidence, it is submitted that this is an entirely appropriate response to any historical failure to comply with the Federal Court consent orders.

e) *“Fifth, the ACBF policy is an expenses only policy. This is not sufficiently clear from some of ACBFs promotional and marketing material. The policy is unlikely to cover all aspects of sorry business.”*³¹

- i) There does not appear to be any specific evidence before the Royal Commission upon which it could find that ACBF policies are *“unlikely to cover all aspects of sorry business”*. Mr Boyle and Ms Edwards spoke generally about “sorry business”³² including that some funeral insurance policies “don’t take into account the journey that sorry business takes.”³³ Ms Edwards noted “... it’s not just really about the burial. There’s all other things that are involved in that, and certainly around family and whole communities coming together.”³⁴
- ii) ACBF policies do cover funeral expenses beyond the actual funeral, such as wake costs and travel.³⁵ However, given the obvious limitations on payments made to policy nominees under funeral expenses insurance products, it seems most unlikely that any such product would “cover all aspects of sorry business.” On that basis, it is submitted that the Royal Commission would not make any finding adverse to ACBF in this regard.

²⁹ Transcript 4.7.18, P-3830: 9-11.

³⁰ Transcript 4.7.18, P-3875: 36.

³¹ Transcript 6.7.18, P-4133: 46 to P-4134: 2.

³² Transcript 3.7.18, P-3748 to P-3751.

³³ Transcript 3.7.18, P-3751: 6-7.

³⁴ Transcript 3.7.18, P-3751: 7-9.

³⁵ See Exhibit 4.146.3 at ACBF.0007.0001.0033

- f) *“Sixth, unlike some other policies available in the market, it is a design feature of the ACBF Plan that any policy holder may pay more in premiums than they will ever be entitled to receive.”*³⁶
- i) It is accepted by ACBF that there are ACBF policies, if maintained over a long enough period, may result in the policy holder paying more in premiums than the benefit amount provided under the policy. However, there is no direct evidence to support the submission that this is “a design feature of the ACBF Plan”. Mr Jones explained in evidence that ACBF had engaged its actuary to consider the possibility of capping contribution payments once policy holders had paid the equivalent of their maximum benefit amount in premiums.³⁷ Further, Mr Jones evidence was that “in the overwhelming majority of cases, the benefit paid out on the death of a nominee exceeds the premiums paid in by the plan holder.”³⁸ Since 2013, in 83% of all claims paid by ACBF, the amount paid under the policy was higher than the amount of premiums paid by the plain holder.³⁹ Further, since 2013, more than 50% of ACBF plan holders had paid less than 49.9% of the funeral benefit amount (pay out) made at the time of the claim⁴⁰, meaning that in the majority of claims paid by ACBF, the payment made was more than double the amount the plan holder had paid in premiums.

12) ACBF submits that the evidence before the Royal Commission supports a conclusion that ACBF products do, generally, provide a benefit to Aboriginal and Torres Strait Islander people who might otherwise find it difficult or impossible to meet the costs of a funeral. The voluminous testimonials provided by ACBF clients at Exhibit 4.146.45 speak to those benefits. That evidence as unchallenged and should be accepted by the Royal Commission. It should not be discounted or disregarded on the basis of the evidence of Ms Walsh, a single ACBF customer called to speak of her specific experience and perception of ACBF.

Use of the word “Aboriginal” and colours and imagery associated with Indigenous culture

³⁶ Transcript 6.7.18, P-4134: 4-6.

³⁷ Transcript 3.7.18, P-3796: 25-31.

³⁸ Exhibit 4.146 at paragraph 15.3.

³⁹ See Exhibit 4.146.44.

- 13) The use of the word “Aboriginal” and associated imagery in ACBF materials is directly related to the intended purpose of ACBF and its products to meet the need for funeral insurance in Aboriginal and Torres Strait Islander communities. It is not intended to mislead or deceive, and is unlikely to do so in circumstances where a specific disclaimer is included in those materials to advise that ACBF is not an Aboriginal organization or affiliated with any governmental or Indigenous organization. ACBF remains committed to ensuring it meets any obligations to display that notification.
- 14) Further, Counsel Assisting refers to the fact that ACBF “*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.*” Both these statements are true and could hardly be said to be misleading or deceptive, or potentially so, in respect of “*nature, the characteristics, the suitability for their purpose, or the quantity of any financial services.*”⁴¹

Misconduct findings – cultural significance of funerals to Aboriginal and Torres Strait Islander people.

- 15) The evidence before the Royal Commission does not support the submission by Counsel Assisting that ACBF “plays on the cultural significance of funerals to Aboriginal and Torres Strait Islander people, and indigenous mortality statistics, to actively sell its policies to children and young people in those communities, in circumstances where they have little need for the product.”⁴²
- 16) There is no evidence at all that ACBF “plays on the significance of funerals to Aboriginal and Torres Strait Islander people” and Mr Jones specifically denied that allegation when put to him in evidence.⁴³
- 17) Quite to the contrary of the finding proposed by Counsel Assisting against ACBF, the evidence of Ms Edwards was to the effect that there was as strong correlation between the importance of “sorry business” to Aboriginal and Torres Strait Islander

⁴⁰ Exhibit 4.164 at paragraph 15.3(a).

⁴¹ *Australian Securities and Investment Commission Act 2001*, sub-section 12DF(1).

⁴² Transcript 6.7.18, P-4133: 40-44.

⁴³ Transcript 3.7.18, P-3803: 41-42.

people and the uptake of funeral insurance. “Aboriginal and Torres Strait Islander people know that there’s a cost to, you know, someone passing away, and they certainly don’t want to leave that cost for family.”⁴⁴

- 18) The suggestion made by Counsel Assisting that children and young people in Indigenous communities “have little need” for funeral insurance also fails to appreciate the significantly higher mortality rates for Indigenous infants and children when compared with non-Indigenous infants and children.⁴⁵

Misconduct findings – absence of disclaimer.

- 19) Counsel Assisting submits that it is open to find that ACBF has engaged in misconduct by failing to include the disclaimer that ACBF is a privately-owned company with no government or Aboriginal community affiliations in some of its advertising materials.

- 20) This submission should not be accepted.

- 21) It is noted that the advertising materials shown to Mr Jones in evidence were apparently obtained from ASIC and were presented to the Royal Commission containing annotations presumably made by ASIC. Apart from those annotations, there is no evidence before the Royal Commission as to the provenance of those advertisements or the circumstances in which they were published. As noted earlier in these submissions, Mr Jones and ACBF were not required by the Royal Commission to interrogate any historical records of advertising materials⁴⁶ prior to the public hearing and, as such, Mr Jones was not able to offer any explanation for those advertisements that did not appear to include the disclaimer. Nonetheless, Mr Jones committed ACBF to ensuring that “going forwards [ACBF] will be meeting any guidelines from government agencies and regulators.”⁴⁷

Misconduct findings – suggested breach of s.12DB of ASIC Act.

- 22) Counsel Assisting submits that “ACBFs marketing materials as a whole, and specifically ACBFs statements about its dedication to the Aboriginal community,

⁴⁴ Transcript 3.7.18, P-3748: 32-34.

⁴⁵ See Exhibit 4.150 at page 2.

⁴⁶ Transcript 4.7.18, P-3875: 36.

convey a representation that ACBF has the approval or endorsement of the Aboriginal community in a general sense.”⁴⁸ It is suggested that these alleged representation may be “a false or misleading representation that services have sponsorship approval, performance characteristics, uses or benefits” in breach section 12DB(1)(e) of the ASIC Act.

- 23) These submissions have already dealt with the suggestion the ACBF material makes misleading representations about the use or benefits of its products.
- 24) The submission made here by Counsel Assisting appears to be directed to the use of the word “Aboriginal” and associated imagery and colours in ACBF material. These submissions have already address why such use is not, and could not be, misleading in a general sense. The materials referred to in evidence before the Royal Commission do not contain any statement or reference to ACBF having “sponsorship approval” or approval or endorsement of the Aboriginal community in a general sense. The inclusion of an entirely truthful statement that ACBF “spent over 20 years working in the Aboriginal community” could not reasonably be considered a misleading representation as to the “sponsorship approval, performance characteristics, uses or benefits” of ACBF financial products.
- 25) This submission should not be accepted.

Proposed findings that ACBF conduct fell below community standards and expectations

- 26) Counsel Assisting submits that it is open to the Royal Commission to find that ACBF’s conduct fell below community standards and expectations in seven respects.
- a) *“First, contrary to ASICs recommendations, ACBF fails to adequately warn its policyholders that they may pay more under their policies than they will ever be entitled to receive by way of payout.”*⁴⁹

⁴⁷ Transcript 4.7.18, P-3830: 9-11.

⁴⁸ Transcript 6.7.18, P-4134: 18-22

⁴⁹ Transcript 6.7.18, P-4134: 28-31

- i) Mr Jones acknowledged⁵⁰, in evidence, that ACBF had not implemented the recommendation of the ASIC report⁵¹ and committed ACBF to implementing it “straight away”.⁵²
- b) *“Second, again contrary to ASICs recommendations, ACBF fails to provide an upfront estimate of the total cost of the policy.”*⁵³
- i) Similarly, Mr Jones acknowledged in evidence that this recommendation had not been implemented but committed to doing so.⁵⁴
- c) *“Third, ACBF actively seeks to sell its policies to children and to young people in circumstances where they are unlikely to receive any benefit from the policy.”*⁵⁵
- i) It is apparent from the evidence before the Royal Commission that ACBF does not “sell its policies to children and young people” but rather to adults who might nominate a child or grandchild for coverage. Counsel Assisting put to Mr Jones in evidence that ACBF “actively attempt[s] to sell policies for whom the nominee, the person whose life is insured, is a child.” He responded: “I don’t – I have never seen that in my time.”⁵⁶
- ii) Mr Jones then addressed the allegation that ACBF specifically targets children as follows:
- “I don’t necessarily believe they go after or have attempted to sign up grandchildren. There is times when individuals have had children, or they know of people that have had children pass away or grandchildren pass away, and they can’t meet the cost of their funerals, and that in itself spurs, I know from recent indications, that that is a huge indicator for people to take out policies.”⁵⁷

⁵⁰ Transcript 4.7.18, P-3849: 21

⁵¹ Exhibit 4.151

⁵² Transcript 4.7.18, P-3849: 24-40

⁵³ Transcript 6.7.18, P-4134: 31-32

⁵⁴ Transcript 4.7.18, P-386: 40 to P-3847: 10.

⁵⁵ Transcript 6.7.18, P-4134: 31-34.

⁵⁶ Transcript 3.7.18, P-3808: 11-13.

⁵⁷ Transcript 3.7.18, P-3808: 21-26

- iii) Further, ACBF repeats and relies upon the submissions made at paragraph 18 above and notes that Indigenous children have a mortality rate four times greater than non-Indigenous children in Australia.
- d) *“Fourth, ACBF generally refuses to credit payments made towards a plan holder’s previous plan if the plan holder reinstates a plan after cancellation. ACBF does this despite understanding that there is a very high rate of cancellations for non-payment of premiums across its policyholders.”*⁵⁸
- i) ACBF offers members whose policies have been cancelled due to non-payment of premiums the opportunity to make payment of arrears and resume existing policies.⁵⁹ In the case of customers who contacted ACBF after their policies were cancelled following the Centrepay decision, “they were either reinstated in full or signed up to new policies.”⁶⁰
- ii) ACBF further notes that the Centrepay decision may have disadvantaged many Aboriginal and Torres Strait Islander customers who experience automatic debit defaults in circumstances where no such fees were charged for non-payments under the Centrepay system.⁶¹
- e) *“Fifth, ACBF fails to adequately disclose its waiting period to plan holders, and at least historically provided confusing information to its plan holders about the completion of their waiting periods.”*⁶²
- i) It is important to note that all ACBF products include some cover, albeit not the full benefit amount, upon payment of the first instalment payment.
- ii) The ACBF Plan Rules and Information Guides⁶³ provided to Plan Holders clearly explain the nature and effect of waiting periods applicable to ACBF policies. The new presentation⁶⁴ given to potential clients has also improved this disclosure.

⁵⁸ Transcript 6.7.18, P-4134: 36-39

⁵⁹ See Exhibit 4.146 at paragraph 17.1.

⁶⁰ Transcript 4.7.18, P-3837: 1-2.

⁶¹ Transcript 4.7.18, P-3875: 46 to P-3876: 6.

⁶² Transcript 6.7.18, P-4134: 39-41

⁶³ Exhibits 4.146.2 to 4.146.5

⁶⁴ Exhibit 4.146.9

- iii) However, as noted above, ACBF is committed to ensuring that any failure to adequately and clearly disclose the nature and effect of waiting periods is remedied.
- iv) ACBF is committed to implementing any recommendation the Royal Commission may make in this regard.
- f) *“Sixth, the product provided by ACBF is a very low value product when understood in light of the claims paid as a percentage of premiums received.”*⁶⁵
- i) This submission appears to be a reference to the findings of the ASIC report based upon data from a single financial year, 1 July 2012 to 30 June 2013.⁶⁶ The data analyzed in respect of ACBF included the total premiums collected and the total claims paid in that year. It is submitted that the Royal Commission should not draw any conclusions as to the value of ACBF products, which have been on offer for more than 25 years, based on the data from a single year only.
- ii) The table on page 22 of the report shows that 97 claims, amounting to \$567,457, were paid by ACBF in the 2013 financial year. That amounted to 13.6% of the total amount of premiums received by ACBF on all its policies on offer in that year. However, it is submitted that the more relevant equation for the Royal Commission to consider in assessing the “value” of ACBF products is the ratio of Claim Amounts Paid to Premiums Received on the policies paid out. Unfortunately, the Royal Commission did not request any such evidence from ACBF.
- iii) However, is submitted on the basis of the evidence before the Royal Commission, including in paragraph 15.3 of Exhibit 4.146, that it is likely the vast majority of those 97 claims paid by ACBF in 2012-2013 were paid in amounts greater than the total amount of premiums paid by the Policy Holder for the relevant product.

⁶⁵ Transcript 6.7.18, P-4134: 41-43

⁶⁶ Exhibit 4.151 at pages 22-23 (ASIC.0025.0003.1778-1779).

- iv) On that basis, it is submitted that the Royal Commission would not be satisfied there is sufficient evidence to support the finding proposed by Counsel Assisting.
- g) *“Seventh, ACBF has breached the orders made by the Federal Court in 1999 in failing to consistently utilise the required disclaimer in its advertising materials.”*⁶⁷
- i) The alleged failure to utilise the disclaimer required by the Federal Court consent orders is addressed earlier in these submissions.
- ii) ACBF repeats its commitment to ensuring compliance with disclosure requirements in future and intends to implement any recommendation made by the Royal Commission in that regard.

Causes of suggested misconduct

Sales incentive scheme

- 27) Counsel Assisting submits that it is open to the Commissioner to find that the suggested misconduct by ACBF “can be attributed, at least in part, to ACBFs remuneration and bonus scheme for its sales and field representatives.”⁶⁸
- 28) Mr Jones gave evidence that ACBF was moving away from door-to-door sales and “in the process of transitioning field reps out of the field.”⁶⁹ The focus of ACBF sales in future will be on in-bound phone calls and correspondence and building partnerships with Indigenous organisations.⁷⁰
- 29) As noted above, the evidence does not support a finding that ACBF targets “vulnerable persons” or “infant children”. There is no evidence whatsoever that ACBF sales methods are “aggressive”. Not even Ms Walsh made such an allegation.
- 30) Further, it was not put to Mr Jones in cross-examination by Counsel Assisting that the incentive scheme employed by ACBF “actively encouraged ACBF employees to

⁶⁷ Transcript 6.7.18, P-4135: 1-3

⁶⁸ Transcript 6.7.18, P-4135: 7-9.

⁶⁹ Transcript 3.7.18, P-3834: 7.

aggressively target vulnerable persons”. As such, it would be most unfair for the Royal Commission to make any finding of that nature.

Corporate Culture

31) Counsel Assisting further submits that “it is open to the Commissioner to find that ACBF did not have a corporate culture which enabled it to communicate and sell its products to Aboriginal and Torres Strait Islander people in a respectful manner.”⁷¹

32) As noted by Mr Jones in his evidence, the findings of the MURA Connect report⁷² in this regard are accepted by ACBF, along with a commitment to implement its recommendations⁷³ or those of the Royal Commission.

Ms Walsh

33) Counsel Assisting submits that it is also open to the Commissioner to find that ACBF did not effectively and adequately respond to the detriment suffered by Ms Walsh, one of its customers, as a result of its misconduct.⁷⁴

34) It was submitted that:

“After misrepresenting the plan to Ms Walsh, and after Ms Walsh challenged ACBFs actions in this regard, ACBF corresponded with Ms Walsh in an aggressive and hostile manner over a significant period of time before finally making an offer to settle Ms Walsh’ s dispute. This was despite the fact that at the time that Ms Walsh’ s lawyers first complained to ACBF Ms Walsh had already paid substantially more than she would ever be entitled to receive under her policy.”⁷⁵

35) ACBF denies that it misrepresented the plan to Ms Walsh and submits that the evidence before the Royal Commission does not support a finding to that effect.

36) Notwithstanding Ms Walsh’s evidence that she misunderstood the plan and the wrongly assumed that ACBF was an Aboriginal organisation, the documentary

⁷⁰ Transcript 3.7.18, P-3833 to P-3834

⁷¹ Transcript 6.7.18, P-4135: 17-19.

⁷² Exhibit 4.160

⁷³ Transcript 4.7.18, P-3831: 27-29.

⁷⁴ Transcript 6.7.18, P-4135: 25-27.

evidence suggests that she ought to have understood the nature of the plan, and in fact, attested to doing so. The application form⁷⁶ signed by Ms Walsh contains declarations and acknowledgements that Ms Walsh “viewed the Aboriginal Community Funeral Plan visual presentation”⁷⁷ and had been “given copies of the Aboriginal Community Funeral Plan Rules and Information Guide”⁷⁸.

- 37) Ms Walsh admitted under cross-examination that she read through the acknowledgements on the application form before she signed it, albeit, “very quickly”.⁷⁹
- 38) Those documents clearly disclose the nature of the plan on offer to Ms Walsh, including that it was a funeral expense plan, and included the unambiguous disclaimer that ACBF is not “not connected with or sponsored by any governmental or similar body or Aboriginal organisation.”⁸⁰
- 39) Ms Walsh’s evidence as to her misunderstanding is not consistent with the contemporaneous documentary evidence. In those circumstances, it is submitted that the evidence does not support a finding that ACBF misrepresented the plan to Ms Walsh or that Ms Walsh was in any other way was misled by ACBF.
- 40) The correspondence tendered⁸¹ between Ms Walsh’s lawyers and those acting for ACBF was certainly robust, but it was not “*aggressive and hostile*” and was not delivered to Ms Walsh personally.
- 41) Further, exhibit 4.147.2 sets out the significant history of Ms Walsh’s communications with ACBF about her policy. In that context, the period of interactions between her and ACBF’s respective solicitors could not reasonably be described as “*over a significant period of time.*”
- 42) Finally, Ms Walsh accepted in her evidence that she had accepted ACBFs offer to resolve her dispute and would withdraw her complaint to the Financial Services

⁷⁵ Transcript 6.7.18, P-4135: 27-32.

⁷⁶ Exhibit 4.144.1

⁷⁷ A copy of which is Exhibit 4.146.7

⁷⁸ Copies of which are Exhibits 4.146.2 and 4.146.3, respectively.

⁷⁹ Transcript 3.7.18, P-3780: 34-35.

⁸⁰ See Exhibit 4.144.8 at FOS.0039.0001.0154.

⁸¹ Exhibit 4.167

Ombudsman.⁸² That resolution involved ACBF increasing Ms Walsh's maximum benefit payment from \$8,000 to \$10,000 and waiving all future premium payments.

43) As a result of this agreement, Ms Walsh will have paid only marginally more in premium payments over the life of her policy than the maximum benefit payable under the policy. In those circumstances, it is submitted that Ms Walsh has not suffered any "detriment" as a result of her interactions with ACBF.

44) In all the circumstances, it is submitted that the evidence does not support a finding that ACBF did not effectively and adequately respond to the detriment suffered by Ms Walsh as a result of its misconduct.

B I McMillan
Counsel for ACBF Group Holdings Pty Ltd

13 July 2018

⁸² Transcript 3.7.18, P-3777: 19-31.