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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-911841

**THE HONOURABLE K. HAYNE AC QC, Commissioner**

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

**DARWIN**

**10.01 AM, TUESDAY, 3 JULY 2018**

**Continued from 2.7.18**

**DAY 36**

**MS R. ORR QC appears with MR M. COSTELLO as Counsel Assisting with MR M.  
HOSKING and MS S. ZELEZNIKOW  
MR G.M.J. McINTYRE SC appears with MR L. HOGAN for ASIC  
MR B. McMILLAN appears for ACBF**

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, our first witnesses this morning are Mr Nathan Boyle and Ms Lynda Edwards.

5

**<LYNDA EDWARDS, SWORN [10.01 am]**

10 THE COMMISSIONER: Thank you. Do sit down.

**<NATHAN BOYLE, AFFIRMED [10.01 am]**

15

THE COMMISSIONER: Thank you very much. Do sit down. Yes, Ms Orr.

MS ORR: Mr Boyle, if I could start with you. Your name is Nathan Boyle?

20 MR BOYLE: Yes.

MS ORR: And you are a senior policy – I'm sorry, you are a senior policy analyst with the Indigenous Outreach Program within the Financial Capability team at ASIC.

25 MR BOYLE: Yes.

MS ORR: And your work address is 100 Market Street in Sydney.

MR BOYLE: That's right.

30

MS ORR: Mr Boyle, have you been issued with a summons to attend and give evidence today.

MR BOYLE: I have.

35

MS ORR: Do you have that summons there with you.

MR BOYLE: I do.

40 MS ORR: I tender that summons.

THE COMMISSIONER: Sorry. Exhibit 4.137 will be the summons to Mr Boyle.

45 **EXHIBIT #4.137 SUMMONS TO MR BOYLE**

MS ORR: And, Mr Boyle, did you make a statement to the Commission, dated 25 June 2018?

MR BOYLE: I did.

5

MS ORR: Now, is there an amendment that you wish to make to that statement?

MR BOYLE: There is one, yes.

10 MS ORR: Is the amendment you wish to make to paragraph 60 of that statement?

MR BOYLE: Yes, it is.

MS ORR: And in paragraph 60, should the word “lenders”, as it appears in the final line, be replaced with the words “lease providers”?

15

MR BOYLE: Yes.

MS ORR: So that the final sentence of that paragraph reads:

20

*While we see this in pay day lending, small consumer credit contracts, and consumer lease providers, we do not see it regularly in other areas.*

MR BOYLE: Yes, that’s right.

25

MS ORR: Do you have a pen that allows you to initial that amendment there, Mr Boyle?

MR BOYLE: I do.

30

MS ORR: It’s page 19. Yes, you have that there? Thank you, Mr Boyle. With that amendment, are the contents of your statement true and correct?

MR BOYLE: They are.

35

MS ORR: I tender that statement.

THE COMMISSIONER: Exhibit 4.138, the statement of Mr Boyle.

40

**EXHIBIT #4.138 STATEMENT OF MR BOYLE DATED 25/06/2018**

MS ORR: Now, could you please describe, firstly, Mr Boyle, your cultural background?

45

MR BOYLE: Yes, I'm a Wiradjuri man. My family is from central western New South Wales, but I grew up on Biripi country my whole life, and I now live on Gadigal country in Sydney.

5 MS ORR: Thank you. And could you tell us about your professional background, Mr Boyle.

MR BOYLE: Yes. I have completed a law degree, but I want to make it quite clear that I am not a lawyer. I have been working in indigenous policy issues  
10 professionally since 2006, and in financial services issues for the indigenous people specifically since around 2009, and I have been in my current role at ASIC since 2011.

MS ORR: Now, Mr Boyle, have you been involved in advisory groups in the course  
15 of your work?

MR BOYLE: Yes, I have.

MS ORR: Could you tell us about your work for those advisory groups?  
20

MR BOYLE: Yes. As part of my professional role in ASIC I sit on the National Indigenous Consumer Strategy reference group, which implements and – and designs the National Indigenous Consumer Strategy. I have also sat on the indigenous advisory group of the national Indigenous Financial Services Network from  
25 approximately 2011 until 2015. I sit on the advisory group for the North Queensland Indigenous Consumer issues Taskforce, and outside of my role at ASIC, I also sit on the indigenous advisory group of the indigenous financial resilience research that's being conducted by the Centre for Social Impact and the First Nations Foundation, and I'm on the indigenous advisory group of the Financial Rights Legal Centre.

MS ORR: And are you also, Mr Boyle, on the editorial panel of the Indigenous Law  
30 Bulletin?

MR BOYLE: Yes, I am.  
35

MS ORR: Thank you. Now, could you please give us a brief overview of the work of ASICs Indigenous Outreach Program?

MR BOYLE: Yes, ASICs Indigenous Outreach Program is a team of lawyers and  
40 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  
45 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.

Our second role is working with the financial services industry to try and show them where policies and procedures that they have might not be adequately servicing indigenous financial consumers, and to really take them out and show them how the policies work on the ground to try and increase financial inclusion of indigenous people. And then we also take reports of misconduct from indigenous consumers and their advocates about their interactions with financial services, and we will assist ASICs other teams to conduct investigations and enforce activities in a culturally appropriate way and assist ASIC to engage with indigenous witnesses on the ground so that they can provide their evidence comfortably.

10 MS ORR: How does ASIC decide where to conduct its Aboriginal and Torres Strait Islander outreach work?

MR BOYLE: As with all agencies, I think we do have limited resources and we would love to do our outreach work everywhere, but we try and pick areas where we think we're going to have the greatest impact. So where we think that a particular community has a serious issue accessing a particular financial service, we might engage with that community and take industry leaders there to show them what the issues are. We will also get requests to travel to communities about particular issues from consumer advocates or indigenous consumers themselves, or from time to time we will be asked by other government agencies to conduct outreach for particular purposes, and an example of that is the fee-free ATM initiative where our team provided some education to communities that didn't have other – other money management workers in them.

25 MS ORR: Can you explain what ASICs Indigenous Help Line is?

MR BOYLE: Yes, ASIC runs both a telephone and email help line, and that provides direct access to myself and other members of my team, so consumer advocates and indigenous consumers can contact that help line any time that they have an issue that they think we might be able to assist with. But as part of the National Indigenous Consumer Strategy we also have a no – no wrong door policy. So any indigenous consumer or their advocate can ring us about any problem and we will try and direct them to the appropriate service, if it's not us.

35 MS ORR: And how many calls do you tend to receive on that line each year?

MR BOYLE: Each year we would receive in excess of 500 calls, I – I would estimate.

40 MS ORR: And could you just finally tell us a little bit more about your specific role within the Indigenous Outreach Program?

MR BOYLE: Yes. I'm a senior policy analyst and I've been in the team since 2011, as I said before. The team has only been around since 2009, so really shortly after ASIC started a particular focus on assisting indigenous consumers, I have been involved in the team. I am involved in all aspects of the work of the team, so I help

to produce or advise on financial capability materials, I assist in taking evidence, and preparing witnesses for court, and also in leading – leading industry tours, I guess, for want of a better term, to indigenous communities to try and highlight the barriers.

5 MS ORR: Thank you, Mr Boyle. I will come back to ask you some further questions, but could I turn to you now, Mrs Edwards. Your name is Lynda Edwards?

MS EDWARDS: Yes, that's correct.

10 MS ORR: You are the coordinator, financial capability, at Financial Counselling Australia?

MS EDWARDS: Yes.

15 MS ORR: And Financial Counselling Australia's head office is at 179 Queen Street in Melbourne?

MS EDWARDS: Correct.

20 MS ORR: Now, Mrs Edwards, have you been issued with a summons to attend the hearing today?

MS EDWARDS: I have.

25 MS ORR: Do you have that summons with you?

MS EDWARDS: I do.

MS ORR: I tender that summons.

30

THE COMMISSIONER: Exhibit 4.139, the summons to Mrs Edwards.

**EXHIBIT #4.139 SUMMONS TO MRS EDWARDS**

35

MS ORR: And Mrs Edwards, have you made a statement to the Commission dated 22 June 2018?

40 MS EDWARDS: I have.

MS ORR: And is there an amendment that you wish to make to paragraph 57 of - - -

MS EDWARDS: Yes.

45

MS ORR: - - - your statement? And is that amendment to the fourth line in that paragraph?

MS EDWARDS: Yes.

MS ORR: And is the amendment to amend the word “changed” to read “charged”?

5 MS EDWARDS: Correct.

MS ORR: So that that sentence now reads:

10 *This was because Aboriginal and Torres Strait Islander people were charged  
each time they checked their account balance or withdrew cash.*

MS EDWARDS: Correct.

15 MS ORR: Have you made that amendment to the statement, Mrs Edwards?

MS EDWARDS: Yes.

MS ORR: Have you initialled that?

20 MS EDWARDS: No.

MS ORR: Thank you. If you could initial that. And with that amendment, are the  
contents of your statement true and correct?

25 MS EDWARDS: Yes.

MS ORR: I tender the statement, Commissioner.

30 THE COMMISSIONER: Exhibit 4.140 is the statement of Mrs Edwards.

**EXHIBIT #4.140 STATEMENT OF MRS EDWARDS DATED 22/06/2018**

35 MS ORR: Mrs Edwards, could I ask you, too, to please describe your cultural  
background?

40 MS EDWARDS: Yes. I’m a Wangkumara woman from New South Wales –  
central New South Wales – sorry, far west New South Wales. I live now on  
Wiradjuri country in central New South Wales. I would like to take this opportunity  
now to let you know that I am off country, and I would like to acknowledge the  
Larrakia nation and pay my respects to the people of the Larrakia nation. Yes. So  
and – so Narromine is approximately 430 kilometres from Sydney.

45 MS ORR: Thank you. That’s where you reside?

MS EDWARDS: Yes, it is.

MS ORR: Yes. Now, could you also tell us about your professional background, Mrs Edwards?

5 MS EDWARDS: So I – I had 11 years working with local government as a finance officer and 13 years working with Catholic Care in ..... in central New South Wales. I was employed as a program manager and worked predominantly with Aboriginal and Torres Strait Islander people in a financial counselling capability role. I am an accredited financial counsellor with financial counselling New South Wales, and am currently studying a diploma of financial counselling.

10 MS ORR: Thank you. And are there government or community sector bodies in which you have participated over the years?

15 MS EDWARDS: Yes, I have been a representative on a number of government and community sector bodies. These include the Commonwealth Consumer Affairs Advisory Council, which is an advisory body to federal government, the Indigenous Financial Services Network, that's working with the banking industry, and I have also assisted Financial Counselling Australia on a voluntary basis to coordinate the Aboriginal and Torres Strait Islander forum, which is an annual one-day event for financial counsellors and capability workers. I also sit on the indigenous resilience research project with First Nations Foundation and the Centre for Social Impact. I am a member of the Telstra indigenous advisory body and I partner with First Nations Foundation on shared practices and program and activities that are specifically designed by and for Aboriginal and Torres Strait Islander people.

25 MS ORR: Thank you, Mrs Edwards. And could you please give the Commission a brief overview of the work that Financial Counselling Australia does?

30 MS EDWARDS: Yes. Financial Counselling Australia is the peak body for financial counsellors in Australia. Financial counsellors provide advice and support to people that are in financial hardship. They work predominantly in community organisations, and their services are free. They give advice – independent, confidential advice, and funding for financial counselling services are mainly provided by federal and state government. Financial Counselling Australia was formed in 1984, and it is a federated body. There are seven members of financial counselling, which are the state and territories. Individual financial counsellors are then members of their respective state – state and territory associations.

40 Financial Counselling Australia's role is to coordinate and support financial counsellors in their profession, and to advocate for a fairer marketplace. This includes sharing information, providing professional development and training, developing resources for financial counsellors, writing submissions in response to policy proposals, and participating in relevant consultation groups around indigenous financial literacy.

45 MS ORR: And, Mrs Edwards, what's the difference between a financial counsellor and financial capability worker?

MS EDWARDS: Financial Counselling Australia's current contract with the federal government is to support financial capability workers. Financial capability workers are the ones that participate and run education – educational workshops around financial literacy to people on the ground. At the moment, there are approximately 5 70 financial capability workers across Australia, and approximately 40 of those work predominantly in Aboriginal and Torres Strait Islander communities. Yes.

MS ORR: And how many financial counsellors work with Financial Counselling Australia?

MS EDWARDS: There's approximately 780 financial counsellors across Australia. And 10 per cent of those work predominantly with Aboriginal and Torres Strait Islander people in communities, and there are just over 50 financial counsellors that identify as Aboriginal and Torres Strait Islander.

MS ORR: Thank you, Mrs Edwards. Now, could I move to asking both of you some questions. Can I start, Mrs Edwards, with you, by asking you about the obstacles that are faced by Aboriginal and Torres Strait Islander people who live in regional and remote communities when engaging with financial services entities?

MS EDWARDS: Yes. There are a number of barriers that – that Aboriginal and Torres Strait Islander people in remote and regional communities come into contact, and that's – certainly, one of those is about access. So many communities are long distances from branches and, you know, an example of that is the community of Mutitjulu, at the base of Uluru, is 470 kilometres from the nearest branch. And so people – many people living in remote communities find it very difficult to access any bank – any bank branches due to, obviously long distances, but also to the environment. So many people have to travel across, you know, dirt roads. So when the rains come, you know, roads are cut for months at a time.

Language and literacy are a major problem for regional and remote particularly remote communities where English is, you know, can sometimes be, you know, second, third or even a fourth language. So understanding, you know, what banking products are, and particularly products where it's written, is – is always really difficult for Aboriginal and Torres Strait Islander people. There's very limited understanding of banking products. So – there's – you know, there's not that understanding of what actually is an interest rate and what does it actually mean.

And certainly, the total – you know, cost of a loan is – is something that, you know, that a lot of Aboriginal and Torres Strait Islander people in those communities do not understand. We have culture and kinship within our communities, and the understanding that one person can be responsible for another and the environment that they live in, so having kinship, which is a type of cultural obligation, will actually play a role in people's financial affairs, and unfortunately most of the financial services don't understand cultural obligation when it comes to hardship policies. The other barriers that Aboriginal and Torres Strait Islander people – is that there is a trust, so it's really inappropriate to disagree or not talk to someone.

And we found that in door-to-door sales where, you know, there's not that opportunity for people to say, "Go away." They will sit and they will stand and listen to the person, and obviously then sign a contract. We have really low incomes within Aboriginal and Torres Strait Islander regional and remote communities. We  
5 know that the majority of people in those communities are on Centrelink benefits, and trying to purchase food in remote communities can be really difficult as well. So the cost of groceries within those regional and remote communities could be twice or three times the amount that people would pay in urban centres.

10 MS ORR: Now, Mr Boyle, on my count, Mrs Edwards has raised seven different obstacles there. Can I take you to each of those and ask you if you would like to comment on any of them? The first was access to financial services, particularly geographical access to financial services. Would you like to comment on that?

15 MR BOYLE: Yes. But first I would just like to say that the – and commenting on your opening statement yesterday, there is as much diversity amongst Aboriginal and Torres Strait Islander people in terms of financial knowledge and capability as there is in the broader population, and in the work that my team does at ASIC we tend to  
20 come across people who have much lower levels of financial literacy, and are at the edge, and being excluded financially, but certainly the comments that I make today – I don't want them to be taken as applying to all Aboriginal and Torres Strait Islander people living in remote areas. So the first was the geographical isolation.

MS ORR: Yes.  
25

MR BOYLE: And, yes, we see a lot of barriers that come from geographical isolation. People being significant distances from bank branches does mean that it's difficult for them to get a face-to-face service, and that is compounded by  
30 identification issues for indigenous people – and I know we will talk about that as another issue, but if an indigenous person in a remote community wants to access a financial service and they don't have appropriate identification or communication, then at the moment often they're being asked to travel to the nearest branch, and as Ms Edwards – or as Lynda said – that would be 480, 500 kilometres away.

35 And that request is often made to people if they lose a key card, for example, and they contact the branch and they're unable to pass the authentication process over the telephone. Then they're asked to go to the local branch. So geographical isolation really does present a major barrier. Also, in a lot of particularly remote and very  
40 remote indigenous communities, information and communication technology is only relatively recently implemented into the communities. And as an example, I was in the Anangu Pitjantjatjara Yankunytjatjara lands in north-west South Australia four weeks ago, and mobile telephone networks were only turned on in that community six weeks ago. So there are still communities in Australia that don't have reliable  
45 internet or telephone coverage, and that makes it very difficult for people to contact their bank branches as well.

MS ORR: Now, the second set of obstacles that Mrs Edwards referred to I understood to relate to both language and literacy. Do you wish to comment on those?

5 MR BOYLE: Yes. There is a small, but significant, proportion of indigenous people that still don't have very good English literacy skills. So there are people who struggle to read or understand financial concepts, and there are people that do struggle to communicate over the telephone with financial service providers. So that is a significant issue. Educational levels in Aboriginal and Torres Strait Islander communities, particularly regional and remote areas tend to be much lower than the general population, and that means that they are unable to comprehend and to understand the complex language that's used in many financial agreements or by financial service providers.

10  
15 MS ORR: Now, Mrs Edwards also referred to a lack of understanding of how financial products work. Would you like to comment on that?

MR BOYLE: Yes, absolutely. I – I would second what Lynda said in regards to that. Aboriginal and Torres Strait Islander people have a relatively recent, particularly in rural – regional and remote areas, have a relatively recent experience at working with financial services. So for a lot of people they were subject to income management policies and – and haven't had access or the ability to make their own decisions about finances, so there is a real lack of understanding about the way that financial products do work, and Lynda gave the example of people not understanding interest rates, and we certainly come across that.

In one of the matters that ASIC ran, people were being charged 48 per cent interest under a contract and, as part of our investigation of the misconduct, we asked people what their understanding of that interest rate was. Was 48 per cent good or was that a bad interest rate? A lot of people told us that it was very good, and people told us that the higher the interest rate was, the better it was. So people – I think out of about 20 people that we spoke to, only two people could tell us that interest was actually money that you paid on top or extra. So if people can't understand interest rates, then that means that they have real difficulties understanding a whole range of other financial products and services.

Another example would be overdrafts, or informal overdrafts on – on banking accounts where people have a debit card and go to an ATM. For a lot of Aboriginal and Torres Strait Islander people, if money comes out of their bank account they think that they did have money in their bank account. So we see a lot of people being charged quite significant fees where they've had a direct debit dishonour or where their account has gone into overdraft and they really weren't aware that overdrafts existed or that there were fees attached to that.

45 MS ORR: Mrs Edwards also referred to Aboriginal culture and kinship structures. Could you tell us a bit more about that?

MR BOYLE: I can, and I don't propose to be an expert on anyone's kinship structure other than my own family, and my own community's, but we do have relatively complex kinship structures. 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 necessarily blood relations – that are also seen by us as being the most appropriate person or the closest family contact for financial services issues.

And we see that playing a particular – particularly disadvantageous role in the administration of deceased estates around superannuation, because under the – under the trust documents and the way that superannuation estates are passed out, it does tend to have a focus on the nuclear family, and for a lot of Aboriginal and Torres Strait Islander people that will not be the appropriate person to receive the estate. So we do see families that will have a deceased estate and there will be conversations made, but because the appropriate person to receive the benefit under that estate is not a family member that – that is allowed to receive that payment, we see people not even make an application.

MS ORR: Now, I want to come back to you to talk about the other factors that Mrs Edwards raised but while we're talking about culture and kinship structures can I ask you, Mrs Edwards, in your work, what does it mean to have the sorts of obligations – excuse me – that both of you have discussed in a practical sense, in an Aboriginal community?

MS EDWARDS: A typical example is for funerals, when people are attending funerals. So what would normally happen is families would travel to the community where the funeral is being – being held and the hosting family that – where they would stay would be responsible for feeding the family. So that could possibly mean that there are 20 more people that live in the home – that stay in the home for the length of time. And in some remote communities the grieving process, because all of the community grieve together, could be weeks rather than just days in a traditional western society. So, you know, the electricity goes up because there's extra people in the house.

One of the things is that, you know, because family members need to be there, it's culturally appropriate for family members to be there, that sometimes they can't get there, so then the sharing of resources, ensuring that – you know, petrol is paid for people to be able to drive to and from the funeral, is one of those examples.

MS ORR: Thank you.

MR BOYLE: Just touching on what Lynda said around funeral arrangements as well, that is another area where our kinship structures do play a significant role. So funeral insurance products, for example, they often have particular beneficiaries who can make the claims, whereas in remote Aboriginal communities in particular, there can be a certain member of the community that's responsible for making – for making arrangements for funerals, and they're not necessarily the people who have

the ability to make claims under funeral insurance policies. So we do see that sometimes having – having a negative effect as well.

5 MS ORR: Now, returning to the obstacles identified by Mrs Edwards, another obstacle that Mrs Edwards identified related to the trust that Aboriginal and Torres Strait Islander people can place in others. You refer in your statement to the concept of “gratuitous concurrence”. Are you able to explain what that means?

10 MR BOYLE: Yes. Gratuitous concurrence is a tendency for Aboriginal and Torres Strait Islander people to agree to a proposition that’s put to them, or to make affirmative noises in response to a proposition that’s put to them, regardless of whether or not they agree with that proposition. So that’s the first way that gratuitous concurrence plays out. And the second way is where an indigenous person will answer “yes” to a question that they don’t understand, rather than want to appear silly, and so there is a tendency among Aboriginal and Torres Strait Islander people not to want to appear rude to a financial services provider, for example, and they will agree “yes, yes” even without understanding what they’re being asked.

20 MS ORR: The final matters that Mrs Edwards referred to related to low income and the high cost of living in remote communities. Would you like to comment on either of those matters?

25 MR BOYLE: I will comment briefly, which is that – and, again, we – we see unemployment and the types of employment programs that Aboriginal and Torres Strait Islander people, particularly in remote areas, have playing out in the superannuation sector again. So a lot of Aboriginal and Torres Strait Islander people in remote communities are part of employment programs run by the government, like the Community Development Employment Program for example, which requires people to undertake work or like activities for up to 25 hours a week, and we see a lot of Aboriginal and Torres Strait Islander people that don’t see the difference between them kind of government employment programs and paid employment. So that creates difficulties for people in understanding whether or not their family members might have had superannuation or whether they themselves will have superannuation.

35 Just with that gratuitous concurrence aspect, I would like to go back to that just briefly because I think it’s quite a difficult concept to understand. But in a recent outcome that we had with Clear View Life Assurance Limited we listened to a range of call recordings, as part of investigating some misconduct that was reported to us, and what we heard in some of those calls was people who were being walked through the process of signing up to a funeral or life insurance policy, and they were saying “Yes” or “Mmm”, and in a couple of the calls, we’ve seen consumers that said the – the telephone representative would ask them, “Can you provide us with your bank details?”

45 And they say, “We don’t – I don’t want to pay anything”, “No you won’t have to pay anything now, just provide us with your bank details.” “Yes, okay.” And they

provided the details and ended up being signed up to policies that they never intended to sign up for. So that's the way gratuitous concurrence can play out in practice, that people will provide details that they're asked for by someone they see in a position of authority over the telephone, including bank details and other  
5 personal information, to the point they've provided enough information to have entered into a contract even though they never intended to.

MS ORR: Now, is there anything else that either of you would like to say generally about obstacles encountered by Aboriginal and Torres Strait Islander people in  
10 remote communities in their dealings with financial services entities?

MS EDWARDS: No. Not at this time, no.

MR BOYLE: The only other real barrier for people that I see – and I am sure that  
15 there are others that I've missed – is enforcing their rights in financial services. So the way that we enforce our rights in Australia is through – through the court systems, and we have an adversarial type system where people are represented, and often when we're investigating financial services misconduct or allegations of poor  
20 behaviour in indigenous communities, people want to present their evidence as one story, and it is quite difficult for them to then enforce their rights in a court in the way that we usually would in Australia.

MS ORR: Now, I want to move on to particular products, and the way Aboriginal and Torres Strait Islander people engage with those products, but before I do that  
25 could I return to something that you said earlier, Mr Boyle, which was about difficulties experienced by Aboriginal and Torres Strait Islander people in meeting the identity requirements in dealing with banks, in particular. Could you tell us some more about that?

MR BOYLE: Yes. So Aboriginal and Torres Strait Islander people have been  
30 subject to a lot of government policies historically, including policies around the removal of children. So a lot of Aboriginal and Torres Strait Islander people in regional and remote communities don't register births, deaths or marriages. And that means that they don't have a birth certificate, for example, and without a birth  
35 certificate it can be quite difficult to access other types of identification documentation such as a driver's licence, or – or Centrelink.

The other issue with identification is that Aboriginal and Torres Strait Islander people again particularly in remote and regional areas tend to have a range of names.  
40 They might have their traditional skin name, they might have a birth name, they might have an adoptive name and it is not uncommon to see people having identification documents in all three of those names. And I can give you one brief example to highlight, illustrate that issue, which was – I was in Lockhart River, I think it was in 2013, doing some work on superannuation. And a gentleman came to  
45 me and he was 72 years of age, and I believe at the time the life expectancy there was 58 years for men.

He had superannuation and he said to me, “When will this money come to me?” We told him he had reached his condition of release and there were financial counsellors there to provide assistance. When we asked for his identification documents, we asked if he had a birth certificate and he said, “Yes.” The government had come to  
5 the community and helped people to access birth certificates a couple of years ago. And his name was Normie, N-o-r-m-i-e, so his birth certificate was in that name and obviously with his surname as well. But often when government departments issue birth certificates after someone has been born, or a significant period of time later they will register the birth as either 1 January or 1 July in the year that the person  
10 believes that they were born, and that was the case for Normie.

In a lot of remote communities, people don’t have access to the range of services that we do in cities or in – or in in urban centres. To get a driver’s licence in a remote community, often you go to the police station. And that was the case with Normie:  
15 he had gone to the police station and he remembered his real date of birth, for example, was 23 March. He told the police officer that and been handed his driver’s licence and his driver’s licence said his first name was Norman. He said to the police officer, “That’s not my name, my name is Normie.” And the police officer told him, “No, no, Normie is not a real name, your name is Norman.” So he had two formal  
20 identification documents, but both had different names and different places of birth. And we see that played out in a whole – often.

MS ORR: So you mentioned the superannuation context there. The superannuation context and the bank context are the two contexts in which those difficulties arise. Is  
25 that right?

MR BOYLE: That’s where we see it most often, yes.

MS ORR: Yes. Yes. And in the banking context, how do identification issues  
30 emerge?

MR BOYLE: Identification issues emerge really at two key points in the banking system. So the first is at establishing a bank account. If you don’t have adequate identification documentation, it can be almost impossible to even open a standard  
35 bank account which means that a proportion of Aboriginal and Torres Strait Islander people are completely financially excluded and don’t have access to even basic financial products. The second place that we see identification play a role – and I think I mentioned it briefly earlier – was where someone might lose a debit card, for example, or lose a banking product and need to have a new card issued. And they  
40 will contact their bank via the telephone, and it can be quite difficult for people to identify themselves or to answer the questions that are asked over the telephone.

Sometimes, we see financial services have policies about the types of questions that are asked and they can only ask questions in a certain way which might not make  
45 sense to an Aboriginal person in a remote community. So, for example, one that we come across quite regularly is where we will contact –we will be assisting someone to contact a financial services entity and they will be asked, “What is your street

address?” And in a lot of remote communities there aren’t street names and the person will say, “I don’t have a street address.” Or they will be asked three or four times what the street address is, whereas if they were asked, “What number is on the front of your house?” Then they can answer that question.

5

But sometimes the language means that people aren’t able to meet the identification requirements. And, as I said earlier, that often results in – has in the past resulted – we’ve had specific examples of it – of people failing that identification process and then being told to travel to their nearest bank branch. And Lockhart River is a community I will come back to again in that circumstance. So the closest bank branch to Lockhart river is in Cairns, and I had a call a couple of years ago from a lady who had lost her bankcard, had failed the identification processes, and was then told to travel to Cairns to visit her local branch. And it was during the wet season, so the only way that she could get to Cairns was to fly, which was quite expensive, and she was quite distressed when she contacted us.

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MS ORR: Mrs Edwards, would you like to comment on identification issues for Aboriginal and Torres Strait Islander people in their dealings with bank or with superannuation funds?

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MS EDWARDS: So for financial counsellors we realise that verifying identification for many Aboriginal and Torres Strait Islander people is – is really challenging. You know, sometimes we know that documents are actually not kept by the person. It’s usually –sometimes kept by either the mother or matriarch or grandmother within the families, and many Aboriginal and Torres Strait Islander people in remote communities can be transient. So they may not even be in a place where their birth certificate is. In 2016 AUSTRAC released - - -

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MS ORR: I’m sorry. If you could just repeat that, Mrs Edwards.

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MS EDWARDS: Sorry, in 2016 AUSTRAC released new guidance about the requirements for identification for – for financial entities and that’s where, you know, those entities – instead of getting birth certificates could actually get people to identify by going to a community – local Aboriginal and Torres Strait Islander community service, or a local elder. Unfortunately, those processes are not always kept and used by – by financial entities and we know that for financial counsellors, in particular, the time to assist people in proving their identities can be a real challenge and takes a long time.

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MS ORR: What proportion of financial counsellors’ time, in dealing with Aboriginal and Torres Strait Islander clients, do you think is made up of dealing with identification problems, assisting with identification problems?

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MS EDWARDS: I would say probably, for Aboriginal and Torres Strait Islander people, more time than – than is actually required. And it seems that every financial counsellor that is actually working with – or most financial counsellors working with

45

Aboriginal and Torres Strait Islanders are saying that majority of a day would be taken trying to help a person prove their identity.

5 MS ORR: Mr Boyle, what have you observed about the uptake of the AUSTRAC guidance about alternative ways of satisfying identification requirements?

10 MR BOYLE: Yes, so that AUSTRAC guidance that allows people to provide alternative documentation when they can't meet the standard 100 points identification has been acknowledged, and taken up by financial services institutions at the kind of head office level, but what we've seen is that often the existence of that alternative guidance or alternative ways for indigenous people to identify themselves to financial services providers hasn't filtered down to the customer facing staff or to the telephone staff. So whilst the guidance is there and – and we see commitment to implementing the alternative guidance by the financial services industry, we're still  
15 not seeing a real reduction in the difficulties that people are having identifying themselves on the ground.

20 It often takes people to elevate that to – to someone like myself at ASIC in order for that to be highlighted to a financial institution, that there are alternative policies in existence. So yes – and we receive regular reports from people who – who are aware of the guidance, consumer advocates who will contact our assistance line and say, “Look, I've still been having difficulties with my clients, and they're still being told to go to local bank branches or they're not being assisted to get into that additional process.” So I think the policies are there, and they're known by the institutions, and  
25 the institutions have a commitment to applying them, but that – that hasn't necessarily reached the customer facing staff, which means the difficulties still exist.

MS EDWARDS: And - - -

30 MS ORR: Any observations about that, Mrs Edwards?

35 MS EDWARDS: Yes. And that certainly has been reported by financial counsellors where they are actually talking to financial services staff at the coalface where they are saying, “You know, have you seen the AUSTRAC guidance?” And they would say, “What is that?” So then taking them through that process and then realising that there are other alternatives to identification.

40 MS ORR: What do you observe about the numbers of employees of financial services entities who are indigenous people?

45 MS EDWARDS: Just personally myself, so I have actually met – and I actually know some Aboriginal and Torres Strait Islander people that have actually worked in – in the banking industry that have left because they were pressured to sell products to Aboriginal and Torres Strait Islander people that they knew themselves were not appropriate.

MS ORR: Do you think it would be valuable for indigenous people to be employed by financial services entities to assist in engagement with indigenous people?

5 MS EDWARDS: You know, I think – you know, most financial services, and particularly the banks, with reconciliation action plans, as long as they’re ones that are actually going to be – you know, they’re – you know, competent in – in working within that document, and listening to Aboriginal and Torres Strait Islander staff that, you know, say what their challenges are. You know, I think that – you know, it would be – you know, very beneficial to have Aboriginal and Torres Strait Islander  
10 people within branches, because I know myself if I go into a branch and I see an Aboriginal and Torres Strait Islander person there, that’s the person that I want to know, that I would like to deal with.

15 MS ORR: Mr Boyle, do you have any views about that?

MR BOYLE: I certainly think that more employment of Aboriginal and Torres Strait Islander people in the financial services industry would assist institutions to understand the issues and would certainly make it easier for indigenous people, particularly those in regional or remote areas, to access the services. Just having a  
20 voice that understands a person’s needs or the difficulties that they’re facing can make them feel much more comfortable, and it can also make people more open and less likely to fall into practices like gratuitous concurrence. If they’re dealing with another Aboriginal and Torres Strait Islander person, they can form a bit of a relationship and often feel more comfortable asking questions and asserting their  
25 rights, so certainly I would support more employment of Aboriginal and Torres Strait Islander people in the financial services sector.

MS ORR: Can I turn now to asking you some questions about the particular financial products that are used by Aboriginal and Torres Strait Islander people in  
30 these communities, and their understanding of those products. Can I start with you, Mr Boyle, and could I ask you to explain how Aboriginal and Torres Strait Islander people in remote and regional communities use debit cards?

35 MR BOYLE: Yes, certainly. I mentioned briefly earlier that Aboriginal and Torres Strait Islander people use debit cards, but I guess to explain debit cards, Aboriginal and Torres Strait Islander people might have a debit card or a credit card, or cards with overdrafts, and often we find that people in remote and regional areas don’t understand the differences between the various types of cards. So that’s the first  
40 thing. But ATM fees have been a significant issue in particularly remote indigenous communities, and there was an ATM taskforce quite a number of years ago that wanted to investigate the impact that ATM fees were having on remote indigenous people’s finances because consumer advocates had been reporting that a significant proportion of people’s income was being taken by ATM fees. And ASIC was part of that taskforce with the Reserve Bank and Treasury, as I understand it.  
45

But what people observed was that the ATM fees that were being charged in those communities, they were comparative to urban areas, so they weren’t a great deal

higher, but what the issue was – and why people were spending so much on ATM fees – was that real lack of understanding about how debit cards work. And so the behaviour that was observed was someone would go and put their card in an ATM machine in the morning and find out that they didn't have any money in there yet,  
5 and they would be charged a fee. They might do that two or three times, and then they money would be in their account. They would withdraw \$20 from their account, and then they will put their card in again to check balances.

10 So people were sometimes paying five or six bank fees in order just to withdraw \$20, and again the withdrawal of small amounts of money by Aboriginal and Torres Strait Islander people in remote areas is often a way for them to manage their money. So they will withdraw a small amount of cash, what they need for that day, and that way they are able to budget that over the fortnight. But that means that making them regular small withdrawals is costing them a fee each time.

15 MS ORR: Can I ask you a question about another concept that you refer to in your statement that I think might be relevant to the answer you've just given, and that's the concept of "humbug". Could you explain what "humbug" is?

20 MR BOYLE: Yes. So demand sharing, for want of a better term, is something that Aboriginal and Torres Strait Islander cultures have had for many thousands of years, in that we have obligations – reciprocal obligations to care for each other and provide support, both emotional and in terms of kind of material objects or food. That has  
25 extended, now, into the financial services space where often there is an obligation to assist other family members with money, but where repeated demands are made for money and it becomes almost a bit of a hassle that particular family members are often requesting money, sometimes from more vulnerable people, then that's coined "humbug".

30 Where someone is being repeatedly requested to provide money for family members and it sometimes leaves them with not enough money for themselves, and so that is – that's why I said sometimes that people do withdraw them smaller amounts of money so they know that if they've only got \$20 with them then that is probably all they will be humbugged for that day.

35 MS ORR: And are debit cards shared by Aboriginal and Torres Strait Islander people in these communities?

40 MR BOYLE: Yes. Often a debit card will be shared, and other people will have access to both the debit card and the PIN number. That's both just as a result of general demand sharing obligations but also has the result of other services. Informal credit services, for example, in indigenous communities, book-up for  
45 example, where some providers will require Aboriginal and Torres Strait Islander people to leave their debit card and their PIN number and details of their income at a store to access that service. So the person might be without access to their own banking products for some time, and then they will utilise other family members' products to do that.

I just wanted to make one more comment about the debit cards as well, which is whilst some people withdraw quite small amounts of money, \$20 at a time, sometimes people do need to withdraw larger amounts of money, and on ATMs that are located in very remote communities often there are withdrawal limits of, say,  
5 \$200, which means that in order to access \$1000, you need to pay five bank fees, because you need to withdraw five lots of \$200.

MS ORR: Mrs Edwards, a number of themes have come up in Mr Boyle's answer about the use and understanding of debit cards in these communities. Can I ask you  
10 to comment on those themes, including humbugging?

MS EDWARDS: Yes, certainly. So we know that in – through the financial counsellors that Aboriginal and Torres Strait Islander people in their communities are sharing debit cards and PINs, and there – other reasons for that is, if it's an elderly  
15 person, they don't always remember their PIN. So it's usually the younger people that would actually hold that card or family member. You know, that – that then sort of leaves people open to, you know, economic abuse. But in most cases, you know, people – yes, do share and do that because of cultural obligation.

20 So when we're thinking about, you know, kinship and cultural obligations, we need to think that – you know, for Aboriginal and Torres Strait Islander people sharing and looking after each other and looking after the environment has been for 40 – over 40,000 years. Money has only really been in our – in Aboriginal and Torres Strait  
25 Islander society – it would be just on three generations. So it's a really early – it's a really early experience for Aboriginal and Torres Strait Islander people, and for people in remote communities it's probably even less than that. And so it is really challenging. So, you know, if you're responsible for someone, you know, emotionally, socially, you're also responsible for them economically too.

30 So it's – it's really difficult to be able to say to a family member, you know, "I can't help you", because I know that with majority – majority of Aboriginal and Torres Strait Islander people that's really playing with our spirit and, you know, that's not in the spirit of giving. So certainly it is a real challenge for Aboriginal and Torres Strait  
35 Islander people. So in regards to the debit cards, we know – and Financial Counselling Australia was one of those services that went on the road in regards to that taskforce for ATMs. And we are seeing, you know, we have seen at that time the multiple use of debit cards when accessing the ATMs.

40 And, you know – and that's because the payments that Centrelink would give, so – it doesn't actually mean that it's going to be there at 7 o'clock in the morning. It could be at any time during the day. It could be in the afternoon. So people are continually checking to see if their payments are there. And sometimes we can see fees for a day have been \$12.50, you know, anything up to \$16 for people to – to be able to just  
45 check to see if their payments are in there, and not really understanding that every time they put their card in that there's a fee around that, so - - -

MR BOYLE: Particularly where people have a lack of English language skills. If people are unable to read in English, then often the warning that comes up on an ATM doesn't mean anything to them, and they don't realise they're being charged a fee. So one of the things that ASIC did was, a number of years ago, we partnered  
5 with the Territory Insurance Office to produce talking ATM posters in a range of indigenous languages, so that when people go to use the ATM it talks to them in their language and says, "By the way, you will be charged a fee and here's some – here's some tricks to avoid being charged multiple fees." So that's a real issue that people – people making their multiple transactions aren't making them with the knowledge  
10 that they are being charged a fee each time.

MS ORR: Now, you've both referred to the work of the taskforce that led to the ATM fee-free initiative. Mr Boyle, can you explain what that initiative involves?

MR BOYLE: Yes. So the fee-free ATM initiative was – helped – helped to be put  
15 together by the Australian Bankers Association, and a range of financial service providers, banks and credit unions, have joined into the fee-free ATM initiative. And basically in a range of very remote indigenous communities as defined by the Australian Bureau of Statistics, a range of financial services providers have come  
20 together and made an agreement to make those ATM fees free for people – ATM transactions free. In very remote indigenous communities, usually an ATM is – is privately owned, as opposed to being owned by a branded institution, which means that they will charge fees.

So the way that it works is that at the moment they're – under the first authorisation, which has recently been extended – under the first authorisation there was 84 ATMs in very remote indigenous communities that met the criteria of being a part of the fee-free initiative. There's a range of criteria that an ATM must meet to – to be able  
25 to participate in that program, so it must be in a very remote indigenous community, it must not be located at a venue that sells alcohol or other gambling products, and a range of other factors. The latest authorisation doesn't provide a limit on the maximum amount of ATMs that can be part of that fee-free ATM initiative but, as I  
30 understand it, there still is around 84.

MS ORR: Around 84 ATMs?

MR BOYLE: Yes.

MS ORR: And are you able to say how many communities those 84 ATMs serve?  
40

MR BOYLE: Lynda and I were having a discussion about this this morning.

MS EDWARDS: Yes. I can probably answer that. So at the moment there's 82  
45 ATMs that are – that have been approved by the ACCC. And in – in that, there are approximately 70 communities that are participating in that. So some of those communities have multiple ATMs. One of the things that would be beneficial for people in those communities is that if there's a sign on there saying this is a free –

fee-free ATM would be really helpful. So that if they go to one, they know if that sign is not there, then they should go to another to be able to use it.

5 MS ORR: And in your view, Mrs Edwards, has this been an effective initiative?

MS EDWARDS: We have seen that there has been considerable savings for Aboriginal and Torres Strait Islander people by using these ATMs, yes.

10 MS ORR: Do you have any observations about the effectiveness of the initiative, Mr Boyle?

15 MR BOYLE: It has significantly reduced the detriment that's been caused by ATM fees in the communities where there are fee-free ATMs. However, the roll-out of the program hasn't always been effective. So when we were providing education in a range of those communities back, I believe, in 2013, in a number of the communities we visited there wasn't any cash in the – in the fee-free ATMs, so people were still needing to use ATMs that were charging them with fees. And I had a recent report – I think it was three weeks ago from the Commonwealth Bank, and they have a job title called a customer advocate that travels out to Aboriginal and Torres Strait  
20 Islander communities to find out about their experience with the bank.

And the Commonwealth Bank rang me to say their customer advocate had recently been on Palm Island where there is a fee-free ATM, and that the customer advocate had noticed that Commonwealth Bank customers were still being charged ATM fees by the ATM deployer. And so, as I understand, the Commonwealth Bank is  
25 currently trying to think about how to refund those fees to those customers. But – so where the fee free ATMs are working and they regularly have cash and they are not charging fees, then it has significantly reduced the impact of those fees. But it's not a perfect system and, because of the criteria that have been set up for the program,  
30 there are other communities that certainly could benefit from having a fee-free ATM. In particular, where there is no other brand of ATM that they could use, so that they could always have – have fee free transactions.

35 MS ORR: Mrs Edwards, have you observed communities that would benefit from these fee free ATMs but don't meet the criteria for the fee-free ATMs?

40 MS EDWARDS: Yes, we have. So what was required at the beginning of the discussion was for people to nominate a community, and I know that in – within my own community – I come from Wilcannia in far west New South Wales. I nominated my community, but unfortunately the only ATM in the community was at the local club, so it wasn't eligible for – for a free ATM. And Wilcannia sits 200 Ks from Broken Hill one side, and about 260 Ks from Cobar the other side, and it's actually listed as one of the 10 most disadvantaged communities in Australia.

45 MS ORR: And that community is not eligible for a fee-free ATM?

MS EDWARDS: No, it's not. No.

MS ORR: Mr Boyle, do you wish to say anything more about that?

MR BOYLE: The only other thing that I would say is that as a – and not  
commenting necessarily commenting on the criteria, but as a result of that sometimes  
5 the fee-free ATM in the community is in an area where people don't visit regularly.  
So there are some communities that have a fee-free ATM but we still see the  
majority of transactions happening at an ATM that charges fees. That again is often  
as a result of people not realising one ATM is fee-free, or not understanding they are  
being charged a fee either, but also that the ATM people prefer to go to, because it is  
10 at the local shop, or it's at the place where they drive into a community isn't part of  
that trial as a result of the criteria.

MS ORR: Is it common in your experience, Mrs Edwards, for debit cards to be lost  
by people in Aboriginal and Torres Strait Islander communities?

MS EDWARDS: Yes. One of the challenges for the remote communities we've  
seen as financial counsellors is not being able to keep documentation very well. So,  
you know, there's not a lot of people that actually have a wallet to be able to put their  
cards in or their birth certificate. So it has always been a real challenge that – you  
20 know, these cards are lost and then the process of actually trying to prove  
identification and getting another card – debit card for clients has taken a lot of time  
for financial counsellors.

MS ORR: Now finally, in relation to debit cards and transaction accounts, can I ask  
25 you Mr Boyle about informal overdrafts that can be attached to these accounts. In  
your experience, do Aboriginal people understand when they have an informal  
overdraft attached to these accounts?

MR BOYLE: No. People tend not to understand that – what an informal overdraft  
30 is. If they use the ATM card to withdraw money and the money comes out, then  
people tend to think that they did have money in their account, which is where  
people are getting caught out with sometimes being charged overdrawn fees or  
interest rates on the overdrawn amount when they just simply weren't even aware  
that that was a possibility for them to be charged.

MS ORR: And is that something that you see as well, Mrs Edwards?

MS EDWARDS: Yes. Definitely, yes.

MS ORR: Now, can I turn to credit cards. Mrs Edwards, are credit cards commonly  
40 used by Aboriginal and Torres Strait Islander people in remote and regional  
communities?

MS EDWARDS: In the experience of financial counsellors with the clients that  
45 they are seeing, there are not many people that have credit cards, and that's simply  
because people do not understand what a credit card is. For those people that may  
have it, which are very – there are very few, particularly that are seeing financial

5 counsellors, they see credit cards as free cash, not as something that they actually have to pay back. And they certainly don't understand the interest rate of a card and how long it would actually take to pay back, to be able to – yes, pay back to the credit card, you know, over many, many years if they're just paying the minimum amount for that credit card.

10 MS ORR: Could I ask that we bring up on the screen a document that you've provided us, Mrs Edwards, which is RCD.9999.053.0001. This is a colour version of a document that you've annexed to your statement, Mrs Edwards, which is a photograph. Now, is this a photograph of visual tools that Financial Counselling Australia uses to demonstrate the differences between a debit card and a credit card?

15 MS EDWARDS: So Financial Counselling Australia doesn't actually use this resource. So this resource was made by a financial counsellor and capability worker - - -

MS ORR: Thank you.

20 MS EDWARDS: - - - here in the Northern Territory. And they realised that, you know, for many of their clients visual is the way that Aboriginal and Torres Strait Islander people learn the most. And because writing, particularly for people who have English as a second, third, or even fourth language, there was just no – there was no possibility for people to actually understand what debit and credit cards were doing. So this visual – and I will quote the workers – so the workers that actually sent me this photo – so our people are very visual, we respond to the language of art through paintings on canvas or in the sand. The use of visual versus literacy is used to start the conversations with client that we see being – English as being fifth or sixth on the list of languages that can be communicated.

30 Art is a universal language. So the painting on the right is the debit system versus credit system. So yours and theirs, banks. The drawings provoke and encourage the discussion and demonstrates that when a client uses a debit card and non-revolving credit facilities, they are in a happy place within themselves. The lower section depicts the negative emotions felt by creating debt by having contracts and credit cards in a general owing – in a general way of owing money. And the painting on the left depicts how banks and debt collectors are connected and why the client gets letters demanding payment. For example, car loans and phone accounts.

40 The drawings demonstrate that conversation between the banks and the credit reporting agencies, being negative or positive. This was initiated due to clients getting letters demanding payments from Go Cards and having little or no understanding of what happens after they get the goods and then getting statements from credit providers. So basic cards and credit cards on – are indistinguishable from each other because both are green. So green is the colour for basic card and 45 green is also the colour for the Go Card. So this story then actually begins the conversation for the financial counsellor or capability worker to have a conversation around financial literacy.

MS ORR: Thank you, Mrs Edwards. Could I tender that colour depiction of the annexure to Mrs Edwards' statement, Commissioner.

THE COMMISSIONER: Will I call it banking visual aids?

5

MS ORR: It's described in the statement as visual tool used by financial capability workers in Alice Springs.

THE COMMISSIONER: Visual tool used by financial capability workers,  
10 RCD.9999.053.0001, exhibit 4.141.

**EXHIBIT #4.141 VISUAL TOOL USED BY FINANCIAL CAPABILITY  
WORKERS (RCD.9999.053.0001)**

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MS ORR: Mr Boyle, could I ask you to comment on the use and understanding of credit cards by people in these communities?

20 MR BOYLE: Yes. I would agree with Lynda. Credit cards, we see less people having credit cards than debit cards and we do hear of less issues with credit cards in very remote indigenous communities. Certainly, there are pockets of – there are certain communities where we see a larger number of people that have – that have got a credit card, and when people do have a credit card they usually don't  
25 understand how it works in detail, or how the interest rate works. And one example that I can think of was, again, a lady in quite a remote community, she had a credit card of \$2000, and she thought that that was her \$2000 bank account.

30 So she would pay her entire income on to that card each fortnight, but she didn't realise why she had less and less money to spend on food each fortnight until we visited the community and explained it to her. So we see it – we see less people being impacted by credit cards in remote communities, but where people do have a credit card, we see people not understanding them and sometimes being caught out by that misunderstanding of how the product works.

35

MS ORR: Mrs Edwards, could I ask you to explain the concept of a basic bank account?

40 MS EDWARDS: Yes. So through the Australian Banking Association, banks are required to have a concession account for people that are on Centrelink benefits, and also on – yes, so that where there's no fees attached to that – to that account. And, you know, this is actually – will be assisting people financially by not having fees and charges debited from their account for the amount of time that – you know, that they're using their debit cards and, you know, this is really important when we think  
45 about how many times people go and check, you know, if their income is in the – in the bank or if they're withdrawing small amounts of cash which they use as a

budgeting tool. So majority – all of banks – most – yes, all of the banks are required to have concession accounts.

5 MS ORR: Now are you familiar, Mrs Edwards, with the draft revised Banking Code of Practice that is currently with ASIC for approval?

MS EDWARDS: A little bit, I am, yes.

10 MS ORR: Yes. Could I show you RCD.9999.0037.0502. You see there the obligations that are proposed in the new Banking Code of Practice in relation to basic accounts which involve raising awareness of those accounts.

MS EDWARDS: Yes.

15 MS ORR: Giving information that is easily accessible about those accounts.

MS EDWARDS: Yes.

20 MS ORR: Offering those accounts if someone asks for one and they are determined to be eligible for one.

MS EDWARDS: Yes.

25 MS ORR: And training staff to help them to recognise a customer or potential customer that may qualify for one of those accounts.

MS EDWARDS: Yes.

30 MS ORR: Now, can I ask you about your observations of the extent to which banks are currently complying with these sorts of obligations?

35 MS EDWARDS: What we've found through the financial counsellors is that certainly the banks are – are not very proactive in promoting these – this product, and certainly people that are going in and opening accounts, there's no conversation around, you know, their income or possible income, so that there's no opportunities for people then to even know about basic concession accounts. We've had conversations with the bank around, you know, identification for people, particularly Aboriginal and Torres Strait Islander people that are coming in.

40 The banks are really concerned that they don't want to ask people to identify because they're – they're – you know, they think they're going to be seen as – as racist, or – or not actually acting in the best interests of the client. But what I can say is that Aboriginal and Torres Strait Islander people have been asking to identify over a very long period of time, and certainly through a lot of other services, like health, schools,  
45 universities, and that's because it was around trying to be as much – as supportive as possible to Aboriginal and Torres Strait Islander to close the gap, but also to offer

services that would be really appropriate. So – yes, but certainly on – at the coalface, very few people are being told about basic bank accounts.

5 MS ORR: And in your experience are banks asking Aboriginal and Torres Strait Islander customers to identify as Aboriginal and Torres Strait Islanders?

MS EDWARDS: No, they're not, simply because of the reasons that I've just said, that they don't want to seem to be not acting in the best interest of the client.

10 MS ORR: And I take it from the answer you've given that you would regard it as valuable for that practice to change?

15 MS EDWARDS: Certainly. I mean, we've had lots of conversations with banks where they said, "We are doing the best for our Aboriginal and Torres Strait Islander customers," and it has always been the thought was, "Okay, so you must ask them to identify?" And they go, "No." "Well, how do you know you're working in the best interest of Aboriginal and Torres Strait Islander people?"

20 MS ORR: Mr Boyle, can I ask you to comment on those topics. There's a few things in there about identification by Aboriginal and Torres Strait Islander people in their dealings with financial services entities, but also about your experiences with the promotion of basic bank accounts.

25 MR BOYLE: So the identification issue, I will begin with that, because it would be a great thing, I think, if banks and other institutions were able to identify which customers that they had that were Aboriginal and Torres Strait Islander. Particularly where people lived in remote or regional areas, really assists the bank to be able to direct people to then appropriate policies, like the alternative identification arrangements, and I have had some discussions with other people in the financial services industry recently, and one executive was talking to an executive at a  
30 different institution, and that other institution said, "No, we don't have any Aboriginal and Torres Strait Islander clients." But actually had no way of knowing whether they do or they don't, and it's very likely that that institution does have indigenous clients, and could benefit from some further thought about how to best  
35 service those clients.

So I would support the fact that having an identification of people being Aboriginal and Torres Strait Islander would certainly benefit and in particular it would allow institutions to know that they do have indigenous clients. The basic bank accounts,  
40 on the ground in practice, we do come across a lot of low income earners that are on accounts that charge fees when they might otherwise be eligible for a basic bank account. As I understand it, the banks do have a commitment to provide basic and low fee accounts to low income earners, but most often that is happening – if an Aboriginal and Torres Strait Islander person themselves identifies themselves to the  
45 bank as being someone that is eligible for one of them accounts, and it doesn't seem to have been proactive across the board to try and provide low income earners with them fee-free accounts.

MS ORR: Yes.

MS EDWARDS: Can I just say that – you know, what – one of the things that would be really beneficial for Aboriginal and Torres Strait Islander people, and also for the banks as well, is to be proactive in that space. So, you know, when people’s – when their income goes into the bank, it’s always identified. So you will see on a bank statement, you know, the – the payment has come from Centrelink and it’s for NewStart or it comes from families and it’s, you know, obviously family tax benefit, that the banks would be proactive about that and say, “Hey, this person is actually on a low income and on a Centrelink payment, but they’ve actually got an account that pays fees. We need to contact person and say there’s a better product for them.” That would be really beneficial.

MS ORR: Why is it important for Aboriginal and Torres Strait Islander people who live in these communities – Mr Boyle, I will ask you this – to have access to fee-free accounts?

MR BOYLE: A lot of people in very remote indigenous communities are on substantially low incomes. And so even a small fee of, say, 10 or \$20, is quite a significant proportion of people’s income if they are in sole receipt of – of welfare support payments, or that they are in employment that pays them periodically or a very low amount. So having fee free accounts means people will have access to the entire proportion of the funds that are placed into their bank account, whereas when people are being charged them fees sometimes a fee \$20 is 10 per cent of the person’s income for the fortnight.

MS ORR: Commissioner, could I tender that draft revised Code of Banking Practice. It may be in evidence from other hearings, but I think it would be useful to have it in evidence for this block of hearings too.

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THE COMMISSIONER: Exhibit 4.142, proposed Code of Banking Practice, RCD.9999.0037.0502.

35 **EXHIBIT #4.142 PROPOSED CODE OF BANKING PRACTICE  
(RCD.9999.0037.0502)**

MS ORR: Now, Mrs Edwards, sticking with the topic of fees, can I ask you: in your experience, how significant a problem are overdrawn fees for Aboriginal and Torres Strait Islander people in remote communities?

MS EDWARDS: Well, if you think about someone that’s on a Centrelink benefit that may have overdrawn fees, which could be \$6 at a time, that’s just continuing every day until it actually picks up that – that payment, you know, it’s – it could possibly be, you know, as Nathan said, 20 per cent of their income. And sort of not understanding that, you know, that – the need to not go and draw too much money

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out, particularly if there's a direct debit, is just another – another reason of Aboriginal and Torres Strait Islander people not actually understanding banking products.

5 MS ORR: Mr Boyle, would you like to comment on overdrawn fees and their impact on people in these communities?

10 MR BOYLE: Yes. We've had reports of very significant overdraft fees where often people's entire income, or a significant proportion of that income, when it goes into their bank account will be used to pay off that overdraft facility. Some of the overdraft facilities don't have monetary limits, so it can be a person's entire payment that goes to that overdraft, which means that the person becomes trapped in a – in an overdraft cycle, for want of a better term, where they are continuously paying overdraft fees and always receiving less and less of their income.

15 MS EDWARDS: Yes. So, you know, at the moment there is a code of operation that sets out – you know, how a service provider can actually recoup that money. And at the moment, you know, they can only access 10 per cent of a person's income. And you know, we're simply saying that – you know, at least 90 per cent, 20 people should be able to be able to keep that amount of their income support payments. So people can negotiate with the banks to take a little bit more but, you know, obviously there's a code of operation for a particular reason for people that are on low income, and unfortunately, you know, for – this has actually been removed in the – so it's not actually included in the 2018 Code of Banking Practice.

25 MS ORR: Could I just ask you on that point, Mrs Edwards, to look at a page within the document we just tendered which is RCD.9999.0037.0523. So back to the revised, proposed banking Code of Practice. And could I just ask you to look at clause 181 of that document.

30 MS EDWARDS: Yes.

35 MS ORR: So in the new code are we right in thinking that there will be an obligation to comply with the code of operation?

MS EDWARDS: There could possibly, but what we're finding is the code of operation is not being used by banks - - -

40 MS ORR: Yes.

MS EDWARDS: - - - in a systemic way.

MS ORR: Yes. So the obligation will be there.

45 MS EDWARDS: Yes.

MS ORR: But your experience is that there are difficulties with complying with that obligation.

MS EDWARDS: Yes.

5

MS ORR: Is that right?

MS EDWARDS: That's correct.

10 MS ORR: Mr Boyle, would you like to comment on that?

MR BOYLE: I don't have direct experience of any issues. I have heard anecdotally that some people that are on welfare payments as the main source of their income, when they do have overdraft facilities for example, that sometimes more than 10 per cent of their income is being taken to pay that off, when the code of operation would provide an obligation for a financial service provider to make sure that they were leaving the consumer with 90 per cent of that income in order to pay for their essential – essential goods.

20 MS ORR: Yes.

MR BOYLE: And in terms of direct expense .....

MS ORR: And can I ask you, Mr Boyle, how significant a problem you think dishonour fees are for Aboriginal and Torres Strait Islander people in these communities?

MR BOYLE: 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 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 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.

I have had some very positive experiences with the financial services sector about identifying and resolving them situations. So I can think of one example where I was contacted by someone at the Commonwealth Bank who had noticed a significant number of – of dishonour fees were being charged in a particular area, and the bank had done some research and identified that it was a postcode that had a significant indigenous population, and that bank contacted us – its indigenous outreach program – to ask us could we work with the bank, and with the business that was regularly having them direct debits come out at inappropriate times, to make sure that they did set up direct debits with the customers on a day that there would likely be money in their account.

And so I wonder, regarding direct debits, whether if someone is either identified as being on a low income, or on a welfare support payment, whether there couldn't be an obligation on a financial services provider to assist that customer to set up a direct debit at a time when it is more likely there will be money in this account because that would definitely reduce the impact of them fees and that can be quite significant.

MS ORR: So you have referred there to failed direct debit payments. In your experience are they a common cause for dishonour fees for people in these communities?

MR BOYLE: Yes, very common.

MS ORR: And do you agree with that, Mrs Edwards?

MS EDWARDS: Yes. I do, yes.

MS ORR: Can I ask both of you, starting with you - - -

THE COMMISSIONER: Just before we leave that, are there other causes of dishonour fees other than failed direct debits?

MS EDWARDS: Not that I'm aware of.

MR BOYLE: No, not that I'm aware of either.

THE COMMISSIONER: I would have thought they would all be DDs, direct debits, but - - -

MR BOYLE: I believe so, because that would be the only time a dishonour fee was charged when there wasn't money in a bank account .....

MS ORR: Can I ask you, Mrs Edwards, whether you think that banks could be doing more to ensure that appropriate fee structures are in place for Aboriginal and Torres Strait Islander people in remote and regional communities?

MS EDWARDS: Yes. I think that, you know, there is opportunities for – for banks to work with financial counsellors, and I know that banks do refer customers to financial counsellors around, you know, their accounts and how they're using their accounts. Probably being more proactive, particularly around the basic accounts. You know, we know that there are no fees and charges. I wonder, though, if those bank – basic bank accounts do attract a dishonour fee and, you know, if that – if that is the case, then banks should be working proactively with the – with the customer to actually find out what's actually happening.

Nathan mentioned that some of those direct debits could be – could be coming in prior to people getting their income, but we have seen too that it actually does come after the income, because people know that the direct debits are going to be there and

they tend to not leave money in there. So one of the things that the banks could be doing is working with people to say, you know, “You have this account.” You know, “Maybe set up a bills account where that direct debit would come out so that the money’s always in there,” as an example.

5

MS ORR: Mr Boyle, do you have any comments about how banks could improve their fee structures to assist Aboriginal and Torres Strait Islander people in these communities?

10 MR BOYLE: I think that it would be – in terms of fee structures, where there are fees being charged on accounts it would be great if the financial services sector could provide more information to people about the fee structures and about the fees that can be charged, in a language that they can understand, or in a way that they can understand, because regardless of what the fee structure is or how low the fees might  
15 be, most accounts do have some type of fee attached to them, even no fee accounts might have a direct debit dishonour fee, for example, and I think – yes, the biggest thing that could be done would be assisting people to understand the fees that are being charged and making sure people are aware of fees that may be charged on their account.

20

For example, if there is an informal overdraft, specifically explaining what an overdraft facility is to a customer and making sure that they’re aware of how much they will be charged or potentially, on a basic bank account, not having any informal overdraft facility at all.

25

MS EDWARDS: And I would like to add there that, you know, given that Aboriginal and Torres Strait Islander people are very visual that, you know, some of those resources around bank fees could actually be resources that are visual and very easily explained, rather than having big words around what a – you know, a fee  
30 structure is. If you spoke to an Aboriginal and Torres Strait Islander person and you said, you know, “What’s the fee structure in your bank?” They would probably not even understand what that actually means. So having resources that are really in plain – in very plain and very visual would be – would be helpful.

35 THE COMMISSIONER: Do either of you see any problem in saying, “No informal overdrafts on a basic account”? Is that going to lead to a problem of – which – about which I need to think, do you think?

40 MS EDWARDS: I think that people are – it’s really people’s choices, but if I had to take a hard line and think about basic bank accounts, I would probably say no to overdrafts on basic bank accounts.

THE COMMISSIONER: No ODs.

45 MR BOYLE: And I – I would agree with Lynda. We don’t want to take choice away from people, but in terms of basic bank accounts they are a particular bank account and you can choose to have one if you’re on a low income. If you wanted to

access an informal overdraft facility you could certainly move from your basic bank account into a fee charging one. So I can't see any issue in banning overdraft facilities outright on basic or no fee bank accounts.

5 THE COMMISSIONER: And if you wanted a formal overdraft, you would have to apply, and the bank would have to meet the responsible lending obligations, wouldn't they?

MR BOYLE: As I understand it, yes.

10 MS EDWARDS: Correct, yes.

MS ORR: Commissioner, that might be a convenient time for a brief break, if - - -

15 THE COMMISSIONER: Sure.

MS ORR: Yes.

20 THE COMMISSIONER: When do you want me to come back, Ms Orr?

MS ORR: Half past would be fine.

THE COMMISSIONER: Or 25 to?

25 MS ORR: Sorry, I am a bit slower. Yes, 25 to would be great, thank you.

THE COMMISSIONER: All right.

30 **ADJOURNED** [11.26 am]

**RESUMED** [11.35 am]

35 THE COMMISSIONER: Yes, Ms Orr.

40 MS ORR: I have asked both of you questions about some credit products, about credit cards. But can I ask you some questions about some other consumer lending products. You may have heard in the opening statement my reference to car loans, and the importance of car loans within these communities. Is that something that either of you are able to comment on, the importance of the car and, therefore, the importance of finance to acquire a car in these communities?

45 MS EDWARDS: I can start. Yes, I can probably start with that. No, given the remoteness of many communities, a car is really important to people in that community. And we know that Aboriginal and Torres Strait Islander will usually

commonly access a car yard to – to purchase a car. And – but what we found is that car dealerships will often take advantage of Aboriginal and Torres Strait Islander people by giving them car loans with high interest rates or give them, you know, cars that are actually not – are lemons, and certainly will sell them, you know, insurance  
5 that really is not worth the paper that it's written on.

We know that – through the financial counsellors that some car dealers will actually drive into communities with trucks with cars on them to sell them, when they know that royalty payments are coming into the community, and usually these cars then  
10 break down within a couple of weeks. And obviously, being in a remote community, where do you go to get your car fixed, and so the cars never – never get fixed. We – in regards to the financial counsellors, many of these loan contracts are really irresponsible lending, and that – that Aboriginal and Torres Strait Islander people are given these loans that is far in excess of – of what their income is. So there's – you  
15 know, where there's no savings history, there's – they have very little opportunities to – to pay off the debt and then are left, obviously, with high debts.

MS ORR: Mr Boyle, do you observe difficulties with car financing in these communities?  
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MR BOYLE: Yes. And cars are almost an essential item for some people, particularly when they're at a significant distance from services like hospitals or – or other places. So people really do rely on having access to a motor vehicle because people are on lower incomes and, in very remote communities, geographically  
25 isolated from mainstream lenders. That means that often people are trying to finance their car in other ways, and one way that is common for people in very remote communities to finance cars is through informal credit provision like book up, which is often, at the moment, not captured by the National Consumer Credit Protection Act, so we do see people being given quite significant loans on varying terms that  
30 aren't subject to the responsible lending requirements of our legislation.

MS ORR: You've mentioned book up a couple of times this morning and I mentioned it yesterday in the opening statement as well. Could you explain exactly what book up is?  
35

MR BOYLE: Yes. So book up is like an informal store account, in its simplest terms if I can't afford bread and milk, I go to the shop, they write down "bread and milk" and the cost, and then I come and pay that off when I've got cash available in my bank account. But in some disadvantageous book up operations we're seeing  
40 terms such as requiring consumers to leave their debit card and their personal identification number with the store and then we're seeing people remove all or nearly all of the consumer's income from their account each fortnight to reduce that debt.

45 And because book up in and of itself isn't captured at the moment necessarily as a financial product, unless it meets certain requirements, or it's captured as a financial product but not as a credit facility subject to regulation by the legislation – to be

subject to regulation by the Credit Act, you must have a fee or a charge for providing the service and the credit must be provided for a period of more than 62 days. And so what we do see is commonly, where people are entering book up arrangements and they don't want to be subject to the regulation of the Credit Act, that they are just  
5 keeping records in such a format that we can't possibly prove that fees are being charged or that the debt is being deferred for a period of time.

MS ORR: And you in your statement to the work ASIC is doing with the Department of Prime Minister and Cabinet in relation to potential forms of regulation  
10 for book up. Can you explain what that work is?

MR BOYLE: Yes. At the moment consumer advocates have been raising book up issues with us for a long time, and we've been consulting widely with Aboriginal and Torres Strait Islander people around an appropriate way to regulate that service. And  
15 so we are trying to bring a range of best practice requirements into the provision of book up, including record keeping requirements. So if there are record keeping requirements it will be much easier for ASIC to take action where communities are identifying unconscionable conduct with us, and we're at the stage where that consultation will begin probably in the second half of this year.

MS ORR: Is book up a practice that you would like to make any observations about, Mrs Edwards?  
20

MS EDWARDS: Yes, so we have seen – financial counsellors have reported book up and we know that, within some communities, the practice of book up is actually  
25 keeping people in a – in a cycle of financial hardship, because normally what would happen is that they would book up until they get – they get their pay day, and when they actually have to pay the account at the store, because they won't let them use the store until they pay their account, it's – majority of their – their benefits would  
30 actually go on book up. And so then for the next fortnight then they have to depend on book up again.

So it is certainly a predatory practice, and certainly a lot of consumers in that space are not even given the opportunity to see any transaction records of what they may  
35 have purchased. I know I can't certainly remember what I purchased two weeks ago, you know, certainly people are not actually being given that opportunity, as far as we're aware of.

MR BOYLE: I did want to say about book up, though, that ASICs view is it is ..... if  
40 it operates according to best practice principles that it is a very good service that can assist people to manage their income between pay days. I myself grew up using book up accounts, and if we didn't have access to book up then we would have gone without things like bread and milk. So ASICs view is that where it does operate according to best practice principles that it can be a very good service for  
45 communities to make sure they have food and other essential items between pay days. But it's where – where that behaviour is not – not operating according to best

practice principles, and sometimes is deliberately falling outside of regulation by ASIC, that we do see really unscrupulous behaviour happening.

MS ORR: Mr Boyle - - -

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MS EDWARDS: And the financial counsellors are actually seeing that as well. That, you know, in those cases it is beneficial. It's where the predatory behaviour comes in that it's where people are put at a disadvantage.

10 MS ORR: So Mr Boyle, you referred to unscrupulous behaviour and, Mrs Edwards, you've referred to predatory behaviour. Are there other consumer lending products where you see that formality of behaviour in connection with in these communities?

MS EDWARDS: So we know that it's not under the terms of reference for this – for  
15 this Commission, but pay day lending and consumer leases have a huge negative impact on Aboriginal and Torres Strait Islander people. We know that, you know – that people are often get a pay day loan for a very short period of time. So it's up to 16 days and one year. And we have seen that these loans – the interest rate on those loans are really, really high. Consumer leases are the same. Consumer leases are  
20 where people go and get white goods such as furniture and, you know, fridges. And we've seen that the contract price of those goods compared to the retail price and the value of the goods are – are – the gap is quite considerable.

Where – you know, we have seen cases where a person has got a washing machine,  
25 for example, and it could be – the value of the good could be \$600 but through a consumer lease they could be paying \$2000 for that particular washing machine. And with – we've known that in some cases, some – the annual interest on some of those consumer leases could be anything up to 884 per cent. And both – both of those practices are very predatory, they're very unfair, and it really does – does show  
30 irresponsible lending, and we see where some of these contracts actually when the – are still being charged for goods, even after the lease has expired.

So certainly, it has been – it's one of those products – these are both products that  
35 actually – you know, then impact on people's finances and where, you know, that they have little choice because for pay day – for consumer leases people pay via Centrelink, by Centrepay. So, you know, what these companies do is, "You can get this", so we know they drive into communities with the washing machine in trucks. "You can get this washing machine. It only costs, you know, \$30 a fortnight. You don't have to pay it straight away. Here is a Centrepay form. All you have to do is  
40 sign it. You will be fine." And people are then stuck in those contracts for those consumer leases.

MS ORR: Mr Boyle, would you like to comment on those matters?

45 MR BOYLE: ASIC receives a significant amount of reports of misconduct in relation to both consumer lease providers and small amount credit contract providers, which are otherwise referred to as pay day lenders, and we do see some behaviours

that are less than ethical, I guess, in that we've heard reports of senior members of the communities, elders for example, that are trusted and respected, being provided with incentives to introduce the company to other members of the community, and when that happens then we're likely to enter into an agreement because they're being introduced to that service by someone they trust.

So yes, we do get a lot of reports of misconduct and we've had a range of outcomes against consumer lease providers that have been breaching the laws that we administer. I did just also want to step back to car loans very briefly, because I did talk about car loans that are – that are unregulated at the moment, in terms of people accessing them through book up. But we – ASIC has also taken action where motor vehicle finance providers have been providing car loans that are regulated to indigenous consumers, and one of those was the Channic litigation that we ran in Yarrabah, which is a community outside of Cairns, and in – in that matter we had it raised with us consumers were being loans that, almost from the first time they had to make a repayment, they were unable to afford the repayments.

And people had being asked to provide cash deposits of 2 to \$3000 in order to purchase the motor vehicles. They were then charged brokerage fees between 550 and \$990 for introduction to the lender, and the lender was owned by the same individual that also owned the car yard, and what we've seen in that case was that often people would default on the – on the repayments under the loan, and then that car would be repossessed from them and sold under the same terms to other people in the community. And those loans were being charged at an interest rate of 48 per cent, which is the highest allowable – the highest allowable interest rate.

So we do see quite predatory practices again in those instances. And again, that was the matter I spoke about before where people did tell us that the higher the interest rate the better, as they understood it, in entering them car loans. So we do see in the regulated space as well some predatory behaviour. And what people said to ASIC when they were reporting to ASIC was that the car provider knew there would be some money coming into Aboriginal communities around Cairns at that time, and that's why the behaviour began.

MS ORR: What was the nature of the money that was coming into the community at that time

MR BOYLE: Cyclone Yasi had been through not long before and a lot of people in the community received cyclone emergency relief payments of two or \$3000 for the damage to their houses.

MS ORR: All right. Can we move from consumer lending products to a different form of financial product, which is funeral insurance. Now, Mrs Edwards, could we start by having you explain the cultural significance of funerals for Aboriginal and Torres Strait Islander people.

MS EDWARDS: Yes, certainly. So given that Aboriginal and Torres Strait Islander people have strong kinship values and cultural obligation, the process around death is actually called “sorry business”. And sorry business is the journey that begins when a person is dying until they actually pass away. For – and it could –  
5 and it could actually continue after their death as well. So for Torres Strait Islander people the laying of the headstone a year after burial is a very important traditional ceremony. Sorry business is a very ceremonial practice, particularly in remote communities that are very traditional. It may involve the whole community.

10 And we know – and financial counsellors have reported that at time of sorry business then there’s no actual work or programs or activities that can be run in these communities, and sorry business for many of these traditional communities could go for weeks, as I explained earlier in my statement. But, you know, when whole  
15 communities come together to grieve, that means that more people will need to be fed, and it’s usually up to the hosting families that would actually have to provide food and shelter for people to be able to participate in these ceremonial practices. And what we’ve – what financial counsellors have found in their work with clients, particularly Aboriginal and Torres Strait Islander clients, is prioritising of funeral payments over everything else is quite high.

20 And so, you know, people will start paying less for food because they actually don’t want to, you know, not pay for funeral expenses, because of the ceremonial practice that comes with it. So yes, it’s actually quite a – a cultural practice that happens not just only in traditional communities and remote communities, it certainly happens in  
25 urban communities as well, where families come together to grieve as a whole.

MS ORR: And, in your view, is there a relationship between the cultural significance of sorry business and the uptake by Aboriginal and Torres Strait Islander people of funeral insurance?

30 MS EDWARDS: Yes, certainly, because – the importance of the actual funeral ceremony. So 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, and we know that – that the majority of people that have these funeral  
35 products also have those – those contracts to cover their children or their grandchildren in some cases. For grandmothers, we do know that there are grandmothers that have their grandchildren on contract as well that, you know, could be there as soon as they are born.

40 MS ORR: The contracts you’re referring to there are funeral insurance contracts?

MS EDWARDS: Yes. They are, yes. And – you know, in the past, these products were sold door to door to people, and the way that they were sold to Aboriginal and Torres Strait Islander people was really around those kinship obligations and cultural  
45 obligations. So, you know, an example of that is ACBF, so Aboriginal Community Benefit Fund, who went door to door selling products to Aboriginal and Torres Strait Islander people. So those people thought that that service was an Aboriginal service,

so were very trusting and wanted to sign up because of the – the ceremonial practice of funerals.

5 And in some cases, people who – you know, of dark complexion were used to sell that product because it meant a relationship was – or would start immediately because the trust in another, you know, whether it’s an Aboriginal person or a dark-skinned person. And the fact is that, you know, the conversations with leading  
10 Aboriginal and Torres Strait Islander services within communities around, you know, displaying posters of the – of the service, then led people to believe that, “Okay, this is actually an Aboriginal service that I can actually trust and I will, you know, become a member of that service and pay into that fund.”

15 MS ORR: Now, Mr Boyle, can I ask you to comment on a number of themes from Mrs Edwards’ answers to my questions. Firstly, about the cultural significance of sorry business; secondly, about the relationship of that cultural significance to the uptake of funeral insurance; and, thirdly, about the practices for the selling of funeral insurance that Mrs Edwards has commented on.

20 MR BOYLE: Absolutely. So sorry business is a very significant cultural aspect for Aboriginal and Torres Strait Islander people, and funerals in general, I think, for all people are quite a significant time. I think both because of the cultural obligation to make sure that sorry business occurs in a culturally appropriate way, and that certain ceremonial business is conducted, that that does increase people’s reliance on  
25 making sure that they have appropriate amounts of finance to cover the cost of – of funerals as they occur, but also Aboriginal and Torres Strait Islander people have – have, generally, a much lower life expectancy of other people and because of our cultural obligations to – to demand share and share resources, often Aboriginal people have an obligation to provide financial support for a larger range of funerals than just their immediate family.

30 And I think because funerals are quite expensive – I think the figure that you quoted yesterday was somewhere between 4 and \$15,000 on average – people in very remote indigenous communities in particular tend to be on quite low incomes, so people know that it’s a significant cost and they are going to be concerned about  
35 making sure that they meet that. So that does encourage them to think about ways that – that they might pay for the funeral. So both the cultural significance and the cost of funerals and the number of funerals that people are obligated to contribute to increase people’s reliance on – on funeral products. I apologise - - -

40 MS ORR: I’m sorry, by giving you three topics to deal with, that was very unfair. The third topic that I asked you to consider was the sales practices.

45 MR BOYLE: Yes. The sales practices we have seen, and I think Lynda pointed to the Aboriginal Community Benefit Fund, and as an example, that company between 2015 and ’16 were sending out large posters to Aboriginal people that were members of their fund, and the posters used words like “awarded” or “certificate” or “achieved” and so that the amount of money that a person had – had reached the

benefit amount of, so maybe they reached a \$20,000 benefit amount, for example, but the policies that were being issued at that time were funeral expenses only policies. So where the certificate might have said people are awarded, “You’ve reached \$30,000, this certificate is awarded to you for reaching a \$30,000 benefit.”

5

Where the funeral on average costs between 7 and \$15,000, then \$30,000 was really a misrepresentation of the total amount of benefit that people would be able to obtain under the policy. And we receive regular reports, both from consumers themselves and from consumer advocates, that people seeing them posters and they’ve seen quite significant amounts of money – they’ve never had access to \$30,000 before, for example, and that led them to sign up to the posters. We’ve also had them saying reports that Lynda spoke about where people have thought that the Aboriginal Community Benefit Fund, in particular, was an Aboriginal organisation and that it was set up to – to benefit them and not knowing that it was a private company.

15

We’ve heard from consumers that people have conflated a previous type of fund that used to be run by the New South Wales Aboriginal Land Council, for example, which was a contributory funeral fund, and people don’t often realise that that’s not the same as ACBF from reports that – that we receive. We also had reports that – that ACBF representatives were not always explaining the key features of the products and that many people didn’t realise that they were only covered for funeral insurance. That policy also had suicide exclusions previously, and we received reports from both consumer advocates and indigenous consumers themselves where people are quite upset when someone has passed away through suicide.

25

The other ways that we do see them kind of policies being sold is over the telephone, and certainly we see other insurance providers and funeral product providers contacting people over the telephone and signing them up to – to these kind of policies, and over the telephone we’ve seen in the sale funeral insurance products, I think I mentioned earlier ..... life insurance limited, where we’ve seen gratuitous concurrence play out in leading people to enter them contracts when they did not intend to as well, so that the marketing practices have obviously had an impact on encouraging people to enter into those contracts.

30

MS ORR: Mrs Edwards, could I ask you about some matters that you refer to in your statement in connection with funeral insurance. You refer to situations where individuals that Financial Counselling Australia has dealt with hold multiple funeral insurance policies. Could you explain that?

35

MS EDWARDS: Yes. So what we – what we’ve seen is that when a client actually comes in and – and they disclose that they have funeral insurance and under further investigation we see that that funeral insurance has been – has been supplied to the client even though that the company was aware that they also had funeral coverage by the local Aboriginal organisations, particularly under royalty payments and so, you know, the second insurance was really, you know, not needed for that particular – for those clients, because they were already covered, but they still sold the product to the – to the clients in regards to that.

40

45

MS ORR: And you refer to issues that clients raised with Financial Counselling Australia about policies not covering all aspects of sorry business. Could you explain that?

5 MS EDWARDS: That's right. So a majority of the funeral products, insurance  
products that are around now don't take into account the journey that sorry business  
takes. So 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. And when people were signed up to some of these products, they thought  
10 that it covered the whole cost of funerals, including wakes, and obviously it didn't.  
So they were receiving their certificates that had, "You have \$20,000", you know,  
"That you've paid into your funeral fund." And – but when – and they think that,  
"Okay, if the funeral is only \$8000, then I will actually get \$12,000 refunded to me."  
And it didn't – it doesn't work that way.

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MS ORR: Now, Mr Boyle, are you aware of situations in which Aboriginal and  
Torres Strait Islander people have had their funeral insurance policy cancelled for  
non-payment of premiums?

20 MR BOYLE: Absolutely, yes. We see that not infrequently where people are  
unable to keep up with their premiums and have policies cancelled as a – as a result  
of that. I would also like to make comment on what Lynda just said as well, which is  
that we do see quite a large number of people that are taking out funeral insurance  
policies where they also have their funeral covered through another means. So there  
25 are a range of land councils that will provide funeral benefit payments to Aboriginal  
and Torres Strait Islander people still in New South Wales. As an example, there's  
up to \$1500 towards funerals that can be provided from the Aboriginal Land Council  
and a range of other government bodies.

30 We also have areas where funeral and sorry business practices are covered under the  
native title agreements, or under funds received from native title agreements, and we  
have seen people who have purchased funeral insurance policies when the entire cost  
of their sorry business is already covered through a native title agreement. So we  
often see people getting into these kind of funeral products where they are already  
35 covered. Again – and there are some difficulties accessing deceased estates under  
superannuation, but an increasing proportion of Aboriginal and Torres Strait Islander  
people do have superannuation when they pass away, and under superannuation  
often there is a death benefit or other kinds of insurance that can assist in paying for  
these products. So we see people entering into products that where their – where  
40 their funerals are already covered.

We see people, as you've just asked, having their products cancelled as a result of  
not making payments, but also within the first five years of owning a funeral  
insurance product across the board – not just for Aboriginal and Torres Strait  
45 Islander people, but ASICs research report found that 55 per cent of all funeral  
insurance policies are cancelled in the first five years of the policies having been  
opened, and 65 per cent of those policies are cancelled by the consumer directly as

opposed to being cancelled as a result of missed payment of fees. And to me, I guess that indicates that potentially the consumer either didn't particularly want to enter into that contract to begin with, or didn't have the terms of the contract explained to them adequately.

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And so they've made a decision within that first 12 month period to cancel the policies. And we also see that funeral insurance policies, people often pay a significant amount more in insurance premiums, or for the policies they're entering into, than the benefit they will ever obtain under the policy, and just as an example of that in our 2014 report –research report into funeral insurance in Australia, we found that across the board, for all Australians, that less than five per cent of funeral insurance products have been held for more than eight years. So anyone who has had a funeral insurance product for greater than eight years, 95 per cent of them people have paid more than any benefit they will ever get out.

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MS ORR: Now, can I ask you, Mrs Edwards, how Aboriginal and Torres Strait Islander people tend to pay payments under their funeral insurance policies? Is it done by – is it done by direct debit? How do the payments occur?

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MS EDWARDS: There are a couple of ways now. Initially, with ACBF it was via Centrepay. So the majority nowadays for funeral insurance is paid by direct debit. And that's usually set up by the company that's selling the product. And so, you know, relying on – on cultural obligation and people's responsibility to community and family, you know, people are signing up to these products and – and not really sort of understanding what the products are about. I have a – I am well aware of a case in our community where a mother has signed on to funeral products for herself and her five children for \$44 a fortnight, and her main source of income is Newstart on Centrelink. And so we – you know, we can see the importance of people, you know, doing this, so – and not – and they're not actually understanding the direct debit system, then actually puts them at risk of not paying for their funeral insurance, and then at risk of actually losing their contract.

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MS ORR: In your experience, are Aboriginal and Torres Strait Islander people in remote communities aware of how to cancel a direct debit?

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MS EDWARDS: Not – they – they do know that they – they can be cancelled. The challenge around that is with – with many financial services is that they tell Aboriginal and Torres Strait Islander people that they cannot cancel their direct debits, even though it's their account and their money. They suggest to them that they have to actually go back to the creditor, and it's a creditor's responsibility to cancel the direct debit, when we know under the code that a – that they can actually cancel their own direct debit. And this is the problem with staff in banking services at the coalface of actually not knowing what the rules are around direct debits.

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MS ORR: Can I ask you to look at another page of the revised Code of Banking Practice, the draft RCD.9999.0037.0517. You can see that the obligations that are proposed under the revised code include, in paragraph 134, an obligation upon

request to give a list of direct debits and recurring payments on a person's account for up to the previous 13 months.

MS EDWARDS: Yes.

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MS ORR: And do you see in paragraph 135 the obligation to promptly process a request to cancel direct debits?

MS EDWARDS: Yes.

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MS ORR: And the obligation in paragraph 136 to promptly assist, if a request is made, to investigate an unauthorised direct debit?

MS EDWARDS: Yes.

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MS ORR: And information that needs to be provided in connection with any cancellation or complaint referred to in paragraph 137.

MS EDWARDS: Yes.

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MS ORR: In your experience, are banks complying with the sorts of obligations that we see here?

MS EDWARDS: Not systemically, no. So what we're seeing is that banks are refusing people to cancel direct debits. And when a direct debit does go out, it's cancel – when it is cancelled it takes a very long time then to retrieve the money that has been taken, and so financial counsellors are dealing with this on a daily basis, I would imagine.

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MS ORR: Mr Boyle, can I ask you to comment firstly on this issue in relation to cancellations of direct debits?

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MR BOYLE: Cancellations of direct debits – we – we have heard where people have had difficulties cancelling direct debits. I haven't come across it as – as much of a significant issue as – as Lynda has ..... Lynda hears more directly about that issue than I do, but in terms of direct debits being listed on people's bank statements, particularly in communities where English is not a first language and where a majority of the community might not speak, or speak very functional English, or be able to read in English, then what we often find is that people don't realise that they have got direct debits set up.

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There might be a direct debit that has been recurring for a number of years and we hear reports that people just don't realise, and when it's raised with them, "Do you realise that you're paying for this consumer lease, for example, under a direct debit?" And people are like, "No, I've had that lounge for five years." And under the terms of that – of the contract, it rolls over: if the person doesn't cancel the consumer lease or the direct debit at the end of the contract, it just starts a new contract. So I think

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it's certainly a good obligation that banks would be happy to provide a list of direct debits and recurring payments for the previous 13 months.

5 The obligation at the moment is – really has the onus on a consumer to request that information, and potentially it would be good to reverse that onus and to have the banks provide a general list of them recurring payments to people proactively, rather than the onus being on the consumer to request a copy of that statement, and certainly if that was a separate document – as opposed to being somewhere contained at the back of a bank statement – for people with lower levels of literacy, that might  
10 – might make them more aware of what direct debits they are paying for in their account if it comes through in a separate communication.

MS ORR: And we heard Mrs Edwards refer before – in answering my question about methods of payment for funeral insurance, Mrs Edwards referred to in the past  
15 funeral insurance payments sometimes being made via Centrepay. Is that something you've seen as well?

MR BOYLE: Absolutely. I think that it would be fair to say that the majority of the funeral insurance contracts that we've had raised with us were being paid by –  
20 through Centrepay prior to funeral insurance being removed as a – as a – an item that could be paid for using Centrepay, which is the direct – the bill paying service operated by the Department of Human Services. And just to let you know how that works, it was designed as being a bill paying mechanism to assist indigenous people and other low income earners, Centrelink recipients, to make sure that they were able  
25 to pay for essential items like rent and electricity.

And that bill paying mechanism takes money out of people's welfare income and pays that to – to their – to their landlord, for example, it will pay their rent before the remainder of their Centrelink income comes to their bank account. So it's a way of  
30 ensuring people can manage their budgets. But we did see a lot of people, prior to funeral insurance being removed from the Centrepay system, that were paying for their funeral insurance through Centrepay, and even the information that's given about Centrepay deductions has recently improved but prior to that, several years ago when we first started receiving reports of people paying for funeral insurance  
35 through Centrepay, Centrepay deductions were not itemised on people's Centrelink income statements.

It used to just say "Centrepay \$300", for example, and that might have covered your rent, your electricity and two consumer leases and a funeral insurance product. So  
40 once people started to get itemised listings of the payments they were making through their Centrepay deductions we've seen a lot of people cancelling contracts that they had forgotten that they were paying for through that mechanism. And I believe that direct debit is now the most common way that Aboriginal and Torres Strait Islander people do pay for funeral insurance.  
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MS ORR: Can I turn now to ask you questions about one other form of financial product, which is superannuation. Both of you have made some references already

in the course of your evidence to difficulties encountered by Aboriginal and Torres Strait Islander people in dealing with superannuation funds. So could I ask each of you to address in turn what you see is the major issues for Aboriginal and Torres Strait Islander people in dealing with their superannuation entitlements.

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MS EDWARDS: Firstly, can I say that issues around superannuation take up an enormous amount of time for financial counsellors and capability workers in assisting Aboriginal and Torres Strait Islander people in remote and regional communities, and we know that the challenges and barriers around that is, obviously, low numeracy and literacy levels. So many Aboriginal and Torres Strait Islander people in these communities do not understand the superannuation – how superannuation works, and really don't have the confidence to interact with the system without assistance. We know that there are lots of issues around proving identity.

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So in relation to proving who they are, and obviously for intestate accounts, we know that through that – the kinship relationships within Aboriginal and Torres Strait Islander people play a huge role and relate to the beneficiaries under a policy. And obviously – and Nathan alluded to this earlier, the life expectancy between Aboriginal and Torres Strait Islander people is significantly lower than other Australians, and we know that many Aboriginal and Torres Strait Islander people in regional and remote communities do die intestate.

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So superannuation is very broad. And some of the work that financial counsellors are doing is basically trying to find superannuation in the first place is – can be, you know, quite a challenge if people can't remember where they worked or where they were, not sure what their tax file number is, and so going through all the paperwork with that, explaining the words that are in – you know, that are – that are associated with claiming superannuation, or is – is always a challenge, because of English being a second or third language. So the major problems that most of the financial counsellors are seeing is the delay that it takes to be able to make a decision about any type of income or payments that people can actually apply for.

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Financial counsellors are seeing that not all forms are sent out at the same time. So you fill in one form, you send that away, "You have to fill in this form", so then that comes. We know that in majority of superannuation funds all the forms are all different and there are different ways of claiming, the different wording, so it's – it's quite a challenge, and as – one of the ways that I can sort of explain superannuation is that it's like you're trying to swim upstream of a river that's really, really heavy and hard. Trying to negotiate the system of superannuation for Aboriginal people is like that.

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And, after a while, you just become too tired. You're just tired from swimming upstream, and so you just give up. And by giving up, you're losing out on things that you – could actually benefit your life, for example, insurance if you actually have a disability or, you know, you're applicable for a TPD, for example. So, you know,

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the superannuation system is quite a – quite a really – a system that is really hard to navigate.

MS ORR: Mr Boyle.

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MR BOYLE: Yes. Access to superannuation for Aboriginal and Torres Strait Islander people is a particular passion of mine, and the same kind of issues in relation to access to that service exist as for the whole range of other financial service services. So identification issues that I spoke about earlier exist, but even where someone does have a full set of identity documents, then having them copied, having access to a photocopier that will copy them to a standard that will be accepted by financial services providers can be quite difficult. Some superannuation companies will have a requirement that they're certified by a certain person, and having access to someone to appropriately certify the documents in very remote communities can be very difficult.

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And as Lynda just said, all superannuation funds have different requirements about what kinds of identification documents that they will accept and what the certification process is. So that can be quite difficult for people. We see, inside of superannuation, an underutilisation of some of the insurance that is captured in superannuation products such as TPD insurance. It's not unusual for me to hear reports of financial counsellors meeting with indigenous people and finding out that they are totally and permanently disabled, and have a policy that they can make a claim for under their superannuation, and unfortunately, some of those instances we've heard that the time period people can make a claim through the TPD policy has expired because people weren't made aware that it existed.

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For deceased estates in particular, it is quite difficult at the moment. I referred before to the range of work type activities that are unpaid – that are undertaken by people, indigenous people, in particular living in remote communities. So often when a family member passes away the family aren't aware of whether or not the person will have superannuation. They will think, "Yes, my relative worked," but they won't know whether or not that was work that did provide a superannuation benefit for the person. So the way that people need meet to locate what superannuation might have existed for the deceased family member is often by contacting the Australian Taxation Office, because superannuation funds are required to report to the ATO when they hold super in a member's name.

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And at the moment, it's quite a difficult process for someone, because in order for the ATO to provide that personal information about what superannuation funds were reporting to you in the deceased relative's name they require people to get – to either have a will that shows they're the appropriate person to talk to or to seek letters of administration of the estate. That can be a costly process, and it can be a minimum of a couple of thousand dollars which makes it – yes, difficult for people to even find out whether or not that superannuation exists. And then once it does exist, as I said before, our kinship structures don't always align to the – to the people who are allowed to receive the benefits from superannuation from deceased estates.

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Regularly, we will hear of people that are trying to access either their own superannuation or that of a deceased person and that they will give up. They will just think that it's too hard, and that is really disappointing for me, because I think that there is a general assumption in the broader population of Aboriginal and Torres Strait Islander people don't always have superannuation, but there are people in remote communities – I was in ..... in Anangu Pitjantjatjara Yankunytjatjara lands just four weeks ago, and we came across people who had very significant superannuation balances, more than \$100,000, and that is their money and they should be able to access that the same as everyone else. They worked, they made contributions to superannuation, and unfortunately at the moment there isn't enough assistance being provided to people to make sure that they do get the benefit of that superannuation.

MS ORR: Mr Boyle, could you explain some of the work that you've been involved with to try and address some of the issues that you've just explained?

MR BOYLE: Yes, absolutely. And I certainly want to point out that there's a range of other people in organisations that have been involved as well, but I think as raised previously when I was in Lockhart River on different business back in, I think it was around 2012 that I was up there, we came across a significant number of people that did have superannuation that had reached a condition of release that were unable to access that at the time. Most of those members were from a superannuation fund called QSuper. So we came back and spoke at ASIC about how we might be able to help people to access their superannuation.

And we decided to take an executive from QSuper, head of technical operations at the time, Lyn Melcer, to Lockhart River to ask her to try and assist Aboriginal people to access their own fund. And I think Lyn will not mind me saying that, when she was first invited, she – her response her response was, "We treat all of our members equally, we certainly treat Aboriginal and Torres Strait Islander people equally, don't worry, we're not treating people any differently." But once she did come to the community she – at the end of the first day said, "This is outrageous. We are treating people equally, but that's not meaning they're equally able to access our services, and they're our members, and we have an obligation to provide them with funds."

As a result of that, and other work, consumer advocates for many years have been raising concerns with superannuation access that the industry, to their great credit decided to do some work around this, and they formed an industry indigenous superannuation working group which has now held two annual conferences to have a look at indigenous access and engagement issues around superannuation. And to increase identification – increase the ability for people to identify themselves, sorry, when they don't meet the standard 100 points of identification.

ASIC continues to work with the superannuation industry by trying to take senior representatives from funds out to Aboriginal communities so that they can really experience how their policies are – are affecting people on the ground, and whether or not the policies that are in place at head office level are appropriate for consumers

on the ground. And we've seen a range of funds make quite significant changes through their policies and procedures. So for example, again I will use the example of QSuper, but they have identified postcodes in their region that have a significant indigenous population and they have then worked with the Australian Taxation Office to find superannuation that has been transferred to the Australian Taxation Office's lost super and then they've proactively, as a fund, worked with community organisations in them postcodes to reunite people with their superannuation.

Lost super is another very significant form, and I think in the Kimberleys – which is another remote area of Australia – there's currently \$19.2 million of lost superannuation in that area, a significant proportion of that which would be for Aboriginal and Torres Strait Islander people, and whilst there is not data to show this, we would think that Aboriginal and Torres Strait Islander people become lost members at a higher rate than other people, and that's because someone becomes a lost member when their fund has tried to communicate with them twice and the letter, for example, has been returned to sender. Because of inefficient postal services in remote communities, a lot of people are having their communications returned to sender and then, as a result of that, having superannuation transferred to the ATO as lost super.

MS ORR: Mrs Edwards, would you like to comment further on any of the superannuation related issues that you see in light of Mr Boyle's answer?

MS EDWARDS: Yes. Certainly as financial counsellors that are on the ground and assisting people reconnecting with their superannuation and then, obviously, making – assisting them making claims, we do have some examples of where it has just been, you know, really difficult for financial counsellors to work with super and superannuation funds. So, you know, some financial counsellors say it can take months for a fund to make a decision about an income protection or a TPD claim or a death benefit. For example, one financial counsellor reported that it took 18 months for a TPD claim to be approved for a client who had end stage renal failure, and permanent paralysis on one side, as a result of a stroke.

Another reported it also took 18 months of TPD claim for a client who had emphysema and a back injury. We know that there's owner's request for information, a fund requesting a copy of a resume for an Aboriginal client, it would be highly unusual for an Aboriginal and Torres Strait Islander person in a regional and remote community to have a resume. You know, we hear stories of an old man living in a remote community, a fund requested his entire work history since leaving school including his trainings and qualifications.

Requesting copies of payslips for Aboriginal and Torres Strait Islander people, that may not have them, so – because they may not be clear about the employer who employed them, or the date that they last worked. So one older man making a claim for a TPD payment was forced to chase an employment termination letter from an employer he had worked for six years previously, after the fund refused to accept his claim because he couldn't nominate the exact day he last worked there. So there's

lots of – you know, identification is another issue. One financial counsellor had spoken to the superannuation fund and it had pointed them to – to impose the AUSTRAC identification requirements, and the – the fund told the financial counsellor who was helping the Aboriginal man that they had never heard of the AUSTRAC guidance and the statement by referee, and he could not use the form to approve his identity.

Later in – later in the same claim, the trustees for the fund refused to pay out the money unless the old man – the fellow actually provided his form of identification. You know, funds losing paperwork, we're hearing that all the time. You know, and the fact is that most of the superannuation funds are not very proactive when it comes to Aboriginal and Torres Strait Islander super accounts. We know that if super – if those funds have very little money in them, that the possibility of losing the insurance that's attached to that superannuation fund is very likely for Aboriginal and Torres Strait Islander people. So, you know – and this is one of the issues where superannuation funds also don't ask for people to identify as Aboriginal and Torres Strait Islander.

You know, if that was – if that was a requirement for the fund, they would actually be able to see that – that Aboriginal and Torres Strait Islander people who may not be working but have a super fund would certainly be able to access their insurance. So we have a case where a client was \$10 away from having his superannuation account closed, even though he had \$120,000 in insurance in that actual fund, so the financial counsellor was able to capture that for that particular person who was – who was actually trying to apply for a TPD because he was sick, and his employer had actually told him that, you know, he needed to go and see a CDP employer, because he was too sick to work.

So, yes – and not all funds have the same forms for early release or the same processes for early release of super and, you know, for financial counsellors this means a lot more work in – in being able to assist people that need to access that through either financial hardship or medical reasons.

MR BOYLE: Could I also comment as well on that early release through hardship. As Lynda's pointed out the life expectancy of Aboriginal and Torres Strait Islander people is much lower. ASIC hasn't formally considered the position on – on life expectancy and the preservation age of superannuation, but my personal perspective is that because of the inherent design of the superannuation system, the greatest growth in member balances happens in the last 10 years of having that account because of the compound interest. So I think it would be disadvantageous to reduce the preservation age, and that I want to make clear is not a formal ASIC position, but where I see there being greater benefit is around the early release and perhaps having Aboriginality or indigeneity as a factor being considered in determining whether superannuation should be released early for hardship purposes or for total and permanent disability as an example.

Lynda just mentioned renal failure, and we do have significant amounts of kidney disease and type 2 diabetes in Aboriginal and Torres Strait Islander communities. And at the moment it's very difficult for people to certify their illness to the satisfaction of their superannuation fund. Often, funds will require people to have  
5 two independent medical experts. Many communities in remote areas are only serviced by the Flying Doctor Service, for example, so it's almost impossible for a very ill person to get two medical professionals to certify that. And also, at the stage where someone is considered to have a terminal illness that would allow them to receive their Centrelink payments that's often once they are at the very end stage of  
10 receiving dialysis treatments, and they often don't receive the payment at a time when they can utilise it.

So I think that some more thinking could be done around the definition of total and permanent disability and where people are on – do have significant renal issues or  
15 significantly advanced type II diabetes that potentially Aboriginality could be used, given the lower life expectancy, as a factor to make it more likely for a superannuation fund to provide early access in those circumstances. However, obviously – with all things – it's quite complex and I would encourage the superannuation industry to have a conversation with members that they are releasing  
20 – or to government departments involved in the hardship process to make sure they really understand the circumstances of the indigenous consumer that is requesting access for hardship.

One concern for me has been the conversations in the industry at the moment about  
25 potentially bringing in early access for – as a result of domestic violence, and in my experience in remote indigenous communities in particular, where people are in domestic violence relationships, the perpetrator can try and force people to try and access their payments early to get that off them. So if it became known that you can access your superannuation early, as a result of domestic violence, my concern is that  
30 that might exacerbate people's personal situations.

So whilst I think that it should be made easier for people to access their superannuation early, I think that funds need to keep in mind the – the circumstances that their members might be living in and make sure that they take due diligence  
35 before providing the payment to make sure it is going to benefit their member. One of the other things I wanted to say is that superannuation, for a lot of – for a lot of remote indigenous people, a lot of people were subject to debentured labour policies under previous government policies and that meant that significant proportions of their income were placed in government trust accounts. That's referred colloquially  
40 to as stolen wages.

And when we're talking to Aboriginal and Torres Strait Islander people about superannuation, they kind of tend to contextualise that as being stolen wages. It's quite difficult sometimes for people who have had their wages taken from them to  
45 learn about a bank account that they can only access once they are – they are old and – and that they hear many of their family members passing away before they get the benefit from. So the education around what superannuation is and how it can benefit

people, we try and do as much as we can at ASIC to do that. We have got a couple of animations that raise awareness of that.

5 We go out – I was out four weeks ago and did a live interpreted session, Pitjantjatjara language speakers about what superannuation is, but that is another reason that people will give up at what might seem as a relatively small hurdle. You might think if someone has \$35,000 in superannuation and they’re being told, “You didn’t meet the identification requirements,” “Why wouldn’t they try again?” But the Aboriginal and Torres Strait Islander people they think often, and as reported to us, “Why would I try again. That money has been stolen, it’s gone. They’re not going to let me access.” So people will stop trying to access that at the first service.

15 And one really proactive thing that has been happening in this space – it’s the last thing I think I will mention – is that First Nations Foundation financial literacy charity that works specifically with Aboriginal people has partnered with – with some of the superannuation industry product disclosure statement December and has been funded by them to run a Big Super Day Out, which is a bit of a road show that goes and assists to provide that direct access to superannuation to indigenous consumers. So whilst there are difficulties, there are some beneficial things and I really do want to point out that the superannuation industry, as a subset of the financial services sector, really has been making efforts to – to improve indigenous people’s access.

25 MS EDWARDS: And if I could just make some points, just Nathan just mentioned First Nations Foundation in regards to the Big Super Day Out. And you know, we – within our Financial Counselling Australia’s partnership with First Nations people, there are some considerable points that they’ve raised in regards to superannuation, and if I may – if I could just go through a couple of those points. So this – they say that for most Aboriginal and Torres Strait Islander people, super will be their largest asset and only savings. They – if you are an Aboriginal and Torres Strait Islander person and you live remotely, you have about a two per cent chance of navigating the super system.

35 And Australians, including Aboriginal and Torres Strait Islander people, pay service through super to the tune of \$31 billion per year, but are not receiving services that they actually need. And in 2018, First Nation Foundation has found that no one can actually answer the question: “Will Aboriginal and Torres Strait Islander people have enough super for retirement because of the identity issue?” And I think they’re really important points for us to consider.

40 MS ORR: Okay. Now, in concluding, both of you have referred to a number of changes that you think could be made to improve the engagement of Aboriginal and Torres Strait Islander people in regional and remote communities with financial services entities, but can I ask each of you, starting with you Mrs Edwards, what is the single most important change that you think should be made?

MS EDWARDS: You know, there's a lot of things that I would like to be able to say, certainly around what would be really beneficial in this space, but if I had to pick a couple of things, if that's okay.

5 MS ORR: Have two, Mrs Edwards.

MS EDWARDS: Thank you. Thank you very much. I would say that to ensure any codes and legislation that – that is for financial services, is to make a requirement for those services to be really proactive in working with Aboriginal and Torres Strait Islander people, and particularly for that knowledge of those requirements to – to come – to be able to be known from the executive right to the coalface, so that everyone is – and there's training and information around that, so that, you know, that – you know, the coalface people are working appropriately with Aboriginal and Torres Strait Islander people, and I suppose for Financial Counselling Australia considering that, you know, we are regularly have clients referred to us from financial services, and also from energy companies, that government consider a levy on those services to be able to assist Financial Counselling Australia and financial counsellors to do their job on the ground.

20 MS ORR: Mr Boyle, what about you? What are the things that you think would make the most difference to deal with all of the issues that you've identified today?

MR BOYLE: Yes. And whilst it's not a bank specific thing I would like to second Lynda's comment that greater funding for financial counsellors from the industry would be a real benefit, because we do see that a significant proportion of indigenous people in remote and regional communities are unable to navigate financial services without assistance. But there are a range of policies, like the AUSTRAC alternative guidance and some other policies across the financial services sector, that are well known by the industry and that there is a commitment to at that head office level.

30 I think the biggest change that would really benefit things for indigenous consumers is if there was a concerted effort to make sure that all – all of the members of that service right down to the coalface, to the people who are on the telephone or who are dealing face-to-face with Aboriginal and Torres Strait Islander people, are – are aware of the policies that have been agreed to by the industry. And what I would really love to see is more executives from banks, and more policy makers from banks and from financial services institutions who are making these policies, to go out to Aboriginal communities and to see how the policies are actually working on the ground.

40 Because we've seen with Lyn Melcer and we've seen with a range of other executives that have visited communities with me that they might think that they have great policies, and they may very well policies, but it is only when they get out on the ground and they're helping their own customers or members with their own services where they realise the difficulties with them policies, and so the more policy makers and executives that go out and see how their institution is working on the ground in communities, I think that that's when we see the greatest change and

greatest increase in financial inclusion. So I think, yes, I would really like to see more policy makers go out and see how their policies are working.

5 MS ORR: Thank you for your assistance. I have no further questions, Commissioner.

THE COMMISSIONER: Thank you, Ms Orr. Mr McIntyre, is there anything you seek to raise?

10 MR McINTYRE: No. I think that covered the issues very thoroughly, sir.

15 THE COMMISSIONER: Is there any other party having leave to appear think to ask these witnesses any questions? No. Very well. Thank you very much for the help you've given. I am very grateful to you. And you may step down and you are excused.

**<THE WITNESSES WITHDREW [12.40 am]**

20 MS ORR: Commissioner, our first case study involves ACBF, the Australian Community Benefit Fund, and our first witness will be Tracey Walsh, a consumer. I'm in the Commissioner's hands about whether you would like us to start with Ms Walsh now or convene for an hour break and reconvene at an earlier point this  
25 afternoon?

THE COMMISSIONER: If I take five minutes, and we do quarter of an hour with Ms Walsh, and see how far we get - - -

30 MS ORR: Yes.

THE COMMISSIONER: Is that all right?

35 MS ORR: Yes, it is, thank you, Commissioner.

THE COMMISSIONER: All right. I will come back at quarter to.

40 **ADJOURNED [12.40 am]**

**RESUMED [12.46 am]**

45 THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, I call Tracey Walsh.

<TRACEY WALSH, SWORN

[12.47 am]

<EXAMINATION-IN-CHIEF BY MS ORR

5

THE COMMISSIONER: Thank you very much. Do sit down. Yes, Ms Orr.

MS ORR: Ms Walsh, your full name is Tracey Lee Walsh?---Yes, it is.

10

And you live at an address in Mooroopna in Victoria that's known to the Commission?---Yes, I do.

15

And what is your occupation, Ms Walsh?---Administration assistant at Rumbalara Aboriginal Co-operative.

Thank you. And did you receive a summons to attend and give evidence today?---Yes, I did.

20

Do you have that summons there?---Yes, I do.

I tender the summons, Commissioner.

25

THE COMMISSIONER: Exhibit 4.143, summons to Ms Walsh.

**EXHIBIT #4.143 SUMMONS TO MS WALSH**

30

MS ORR: And, Ms Walsh, did you make a statement to the Royal Commission dated 26 June this year?---Yes, I did.

And do you have that statement there?---Yes, I do.

35

Are the contents of that statement true and correct?---Yes.

I tender that statement.

40

THE COMMISSIONER: Exhibit 4.144, the statement of Ms Walsh.

**EXHIBIT #4.144 STATEMENT OF MS WALSH DATED 26/06/2018**

45

MS ORR: Ms Walsh, you are an Aboriginal woman?---Aboriginal Torres Strait Islander.

And can you explain where Mooroopna is, where you live?---Mooroopna is approximately two hours from Melbourne.

5 And can you tell us a little bit about your education, Ms Walsh?---I went to Wodonga High, went to year 10, halfway.

And you're working now, you tell us, as an administration assistant at Rumbalara?---Yes, I am.

10 And can you explain to the Commission what the work of Rumbalara is?---  
Rumbalara is an indigenous based community organisation looking after the health  
and mental health of the wider indigenous community in Shepparton. We have a  
dental medical centre, Family Services, justice service, our KMS program which  
looks after pregnant women. There's a – we're a whole range covering from  
15 Shepparton down to Wodonga and up to Mildura.

And what does your work at Rumbalara involve?---I do the reception, which is  
answering the phones, but not just that. I book the cars, and I also do the booking for  
our patients that attend medical – medical appointments in Melbourne.

20 And in 2005 were you employed at Rumbalara?---Yes, I was.

What was your role at that time?---I was receptionist administration assistant in the  
administration department.

25 Now, Ms Walsh, do you recall learning in 2005 that a representative from the  
Aboriginal Community Benefit Fund would be visiting Rumbalara?---Yes.

30 And do you recall how you learned that that person was coming to Rumbalara?---We  
had posters put up in our medical centre and also brochures could be found at the  
reception desk.

35 And what do you recall about, firstly, those posters?---On the posters it had the  
Rainbow Serpent, which is very important to the indigenous community. It was right  
around the poster and on the brochures, and what got me the most was the little  
family in the middle. They were all holding hands and family is so important to the  
indigenous community.

40 And do you recall the colours that were used - - -?---The background colours was  
cream, the colour of the snake was red/black, and the family was just sort of like a  
black print.

45 And do you recall any of the words that were used on the posters or  
brochures?---Aboriginal funeral funds, and it had the date it would be there – would  
be at Rumbalara.

- And what did the posters and the brochures say to you about ACBF as an organisation?---That it was an indigenous organisation, because of the word “Aboriginal”.
- 5 And did the images or the colours on the material have any bearing on your interpretation?---Well, the rainbow serpent is important because that’s one of the creators of all the rivers, and just the family in the middle was more important.
- And did you think that ACBF was run by Aboriginal people?---Yes, I did.
- 10 And did you think that ACBFs insurance was specifically directed to Aboriginal people?---Yes.
- Were those things important to you?---Very, because it’s an Aboriginal organisation.
- 15 I – I like to support other indigenous community organisations.
- And having seen those posters and brochures, and having formed the views that you’ve just given evidence about, did you decide to go and see the ACBF representative when they came to Rumbalara?---Yes, I did.
- 20 And why did you decide to go see them?---Well, at – at the time I had a friend, Leslie, pass away. He looked after my mum and dad. He was like a son to my mum and dad. And I didn’t want – his family had to go in their superannuation, because he didn’t have any kind of funeral fund, so I didn’t want – want to have my mum and
- 25 dad, who were just pensioners, or my – or my sisters or brothers have – to have to do the same thing.
- Do you mean for you?---For me, yes.
- 30 Yes. Yes. And do you recall how old you would have been at this time roughly, Ms Walsh?---Not that I can recall, sorry.
- How old are you now, Ms Walsh?---53.
- 35 Thank you. And had you had any form of funeral insurance before this time?---No, I did not.
- And did you then meet with the ACBF representative at Rumbalara?---Yes, I did. It was just like – it was – we didn’t have appointment times. We just went in and had a
- 40 – a discussion with them.
- And do you recall anything about the appearance of that person you spoke with?---Very same complexion as me, he was – he was male and – yes.
- 45 And did you think that he was Aboriginal?---Yes, I did.

Now, what do you remember about the discussion that you had with this person at Rumbalara?---Just about how – how good the Aboriginal funeral service was for Aboriginal people. This is the representative, not myself. And so I just, you know, wanted to join up and I explained to him what happened to my friend.

5 And do you recall how long, roughly, that discussion took?---It would be about a half an hour. Wouldn't be any more than that.

10 And do you recall giving that person any information about yourself in the course of that meeting?---My name, address, date of birth, medical history.

And do you remember any discussion in that meeting about how much money would be available for your funeral expenses if you joined up?---Not at the time.

15 And do you remember any discussion about who you wanted your funeral benefit paid to?---Yes. My mum, Pamela Fay Walsh.

And do you remember being given any documents by that person - - -?---At the time.

20 - - - in the meeting. And during that meeting, did you agree to take out funeral insurance with ACBF?---Yes, I did.

And what did you think you would be entitled to under that policy?---The policy, plus any money that was left over, would go to my family to pay for – for the funeral, and so on, yes.

25 And what did you think would happen after this meeting?---That I would get forms stating my policy and what I got and what I was entitled to.

30 And did your parents take out funeral insurance around the same time?---Yes, they did, yes. It was for the same reason, that Leslie had passed away and they had nothing at the time, and they were just pensioners.

And do you recall who they took out - - -?---InsuranceLine.

35 Thank you. Now, could I ask you to look, Ms Walsh, at the first annexure to your witness statement, which is RCD.0024.0016.0003?---Yes. The Aboriginal community funeral plan?

40 Yes, plan holder application form?---Yes.

Do you have that there?---Yes, I do.

45 Do you know what this document is, Ms Walsh?---It's my plan for my policy.

Now, if we turn to the second and third pages, if we could have those on the screen together, 0004 and 0005. Is this your handwriting, Ms Walsh?---No, it's not.

And do you recall how this information came to be in this form?---As far as I can recall, I think I received it in the mail.

5 Okay. And we see information on the left-hand page there about your address, which has been blocked out, and your date of birth, which has also been blocked out. Was that information which you have on the document in front of you correct?---Yes.

10 And under the heading Payee, towards the bottom of that page, do we see there that your mother is listed as the nominated person to receive a payout if you passed away?---Yes.

And that was your intention?---Yes.

15 And then if we turn to 0006. We see there a page entitled Health Statement?---Yes.

And this page includes information about health conditions and there is a tick next to mental or nervous condition?---Yes.

20 And details provided are:

*Depression – antidepressants.*

25 ?---Which I'm on, which is Aropax.

So that was correct at the time?---Yes – yes, it is, and I felt – I was – wanted to be upfront.

30 Yes?---I wasn't ashamed of having mental health - - -

Yes?--- - - - issues, yes.

So you gave that information to ACBF?---Yes.

35 And we see that recorded in this form. Now, we see that the form has a signature on it, which has been blocked out on the screen, but you have that in front of you?---Yes.

40 Is that your signature on the form?---Yes, it is.

And do you think that you might have signed this form after it had been sent to you already filled out?---Not that I can recall, sorry.

45 You don't recall?---No.

Yes. But that's your signature?---Yes, it is.

Yes. And we see the date of 30 November 2005 next to your signature?---Yes.

5 Now, can I ask that we go back to the first page of this form, 0003. Now, does the imagery on this page of the form with the rainbow serpent around the edge and the family in the centre look like the imagery that you had seen on the ACBF posters and brochures?---That's exactly right, yes.

That's the imagery you saw?---Yes.

10 Now, do you recall being contacted by ACBF about your health condition?---Not that I recall, sorry.

15 Could I ask you to turn to the second exhibit to your statement, RCD.0024.0016.0001?---Yes. Yes, I've got that.

Now, this is a letter to you from ACBF dated 15 December 2005, and you've been shown a copy of this letter at the time that you put your statement together; is that right?---Yes.

20 But you don't remember receiving this letter - - -?---No.

But we can see from this letter, on the first page, that ACBF told you that due to your depression and the medication you were taking they could not give you a benefit amount of \$12,000 but could give you a benefit amount of \$8000?---Yes.

25 Do you see that?---Yes.

And they also told you that your fortnightly payments in the following paragraph were going to be \$36?---Yes.

30 Now, could I ask you just to turn back to your first exhibit, RCD.0024.0016.0004. Now, if we look at the second box on the page, we see there, does it look to you as though your benefit amount in the third column from the right was originally listed as \$12,000, and that has been struck through and changed to \$8000?---Yes.

35 And does it also look to you that, after you had received that letter, a decision was made to change your payments from \$18 a fortnight to \$36 a fortnight?---Yes.

40 And do you see also that your health level appears to have been originally described as health level 1, and that has been struck through and you have been assigned health level 3?---Yes.

45 Now, having received that letter from ACBF telling you that your fortnightly payments would be \$36, did you commence making those payments in that amount?---Yes, I did.

And what did you think would happen if you died before those payments had got to \$8000, which was your benefit amount?---Get the \$8000.

5 Yes. And what did you think would happen if you paid more than \$8000 before you died?---That it would go to my family.

And did you make those payments to ACBF on a regular basis, Ms Walsh?---Yes, I did, every fortnight.

10 And were there a small number of occasions where you missed those payments?---Yes, there was, but I doubled up \$72 the next fortnight.

And what did you think the consequences would be if you stopped making payments?---I would lose the whole amount, no matter how much I paid.

15 Commissioner, that might be a convenient time.

THE COMMISSIONER: Yes. If we come back at 2 o'clock.

20 MS ORR: Yes. Thank you, Commissioner.

THE COMMISSIONER: Yes.

25 **ADJOURNED** [1.02 pm]

**RESUMED** [2.01 pm]

30 THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Ms Walsh, we heard in your evidence before lunch that you took out the policy with ACBF at the end of 2005. Do you recall that?---Yes.

35 And you started making your \$36 a fortnight payments after that time?---Yes.

Now, could I ask you to look at the third exhibit to your statement, ACBF.0001.0001.0148. Now, this is a certificate in your name issued by ACBF, Ms Walsh?---Yes.

40 And we see that the certificate reads:

45 *This certificate is awarded to Tracey Lee Walsh, nominee under plan, Aboriginal community funeral plan to acknowledge they have attained their chosen benefit amount of \$8000.*

- And we see that the date of issue is 14 April 2008. Do you recall receiving this certificate, Ms Walsh?---Yes, that's very clear to me.
- 5 And what did you understand this certificate to mean?---That I – I had paid my \$8000 policy, and – yes.
- What did you think would happen to any money you paid after this time?---Any money that was left over or paid over that amount would go to my family.
- 10 And why did you think that ACBF was telling you that you had paid the \$8000?---Just to say that I paid it. It was really important to me, so.
- In 2008 did you move from Mooroopna to Wodonga?---Yes, I did.
- 15 And why did you move to Wodonga?---My father had – had Alzheimer's, and my mother had broken her collarbone, so my father wasn't sort of mentally well, and my mother just couldn't be – couldn't shower herself, so I resigned from my position and went to look after them.
- 20 And when you went to look after them in Wodonga, did you work?---No, I couldn't work. They were both – couldn't – my father couldn't be left alone, and mum couldn't manage dad by herself.
- So what was your form of income at that time?---The carer's pension from
- 25 Centrelink.
- Now, throughout that period when you were caring for your parents and receiving carer's pension, did you continue to make your fortnightly payments to ACBF?---Yes, I did.
- 30 And did you care for your parents in Wodonga until about 2010?---Yes.
- And at that time did your parents move into aged care?---Yes. They moved into Bupa Aged Care in Wodonga.
- 35 And when your parents moved into aged care did you move back to Mooroopna?---Yes, I did.
- And did you apply for another job at Rumbalara?---Yes, I did.
- 40 And were you successful - - -?---Yes.
- - - in getting that job? Now, do you recall telephoning ACBF in about 2012 in relation to the amount that you were covered for under the plan?---Not that I can
- 45 recall, sorry.

All right. Now, could I ask you to look at your witness statement and paragraph 18 of your witness statement. Perhaps if we could have WIT.0001.0072.0004 and 0005 on the screen at the same time. Do you see there in paragraph 18 of your statement, towards the bottom of the first page, Ms Walsh - - -?---Yes.

5

- - - you explained that in about 2012 you got worried about how much you were covered for, as you didn't think that \$8000 would be enough to cover the cost of your funeral, and you tried to increase the maximum benefit amount under the plan. And you say that you:

10

*...remember calling ACBF to ask whether they would increase the amount of the plan but, to the best of my memory, ACBF did not increase it.*

Is that correct?---No. They didn't increase it.

15

Yes. And you did make this call to them in about 2012?---Yes, I did.

And you asked for them to increase the amount of your plan and they did not; is that right?---No, they did not.

20

Then in 2014, did your father pass away?---Yes, he did.

And who organised your father's funeral?---Myself and my younger sister, Kelly.

25

And how much did your father's funeral cost?---Approximately \$9000.

And did that cause you to have concerns about your \$8000 funeral plan?---Yes, it did. Greatly, it did.

30

Can you explain those concerns?---Well, when – when we went in and we purchased the coffin, which was about \$5000, the flowers were 300, the booklets – I can't remember how much they were – and I just knew that I wasn't going to be covered by the time – touch wood that it's not soon – when I pass away. I knew that I wasn't going to have enough money.

35

And what did you do as a result of those concerns?---As best that I can recall, I recontacted Aboriginal funeral funds again to see if I could have it increased.

And do you recall what they said to you?---Not that I can recall, sorry.

40

You deal with this in paragraph 21 of your statement, which is on the right-hand side?---Yes.

Do you see there you say:

45

*Not long after my dad passed away, I called ACBF - - -*

?---Yes, I do recall that sorry.

Continuing:

5 *And spoke to a receptionist about increasing my maximum benefit amount.*

?---Yes – yes.

Continuing:

10

*I remember that the receptionist said that she was sorry to hear about my parents.*

?---Yes, I remember that.

15

Continuing:

*I cannot remember anything else about my conversation, but ACBF did not increase my benefit amount.*

20

?---That's right.

And in June 2016 did your mother pass away?---Yes, she did.

25 And who organised your mother's funeral?---Myself and my younger sister.

And how much did your mum's funeral cost?---That went up to – increased another \$2000. So around – approximately around about \$11,000.

30 And around that time did you start getting some assistance from the Consumer Action Law Centre?---Yes, I did.

And did you find out through the Consumer Action Legal Centre at that time that ACBF was not an Aboriginal organisation?---Yes, I did, and I was shocked.

35

And did Consumer Action send a letter to ACBF on your behalf in about November 2016?---Yes, they did.

40 And you've annexed that letter to your statement as annexure 4, RCD.0024.0016.0008?---Is that the letter dated 11 November?

Yes?---Yes.

45 Is that the letter that you understand Consumer Action sent to ACBF on your behalf at this time?---Yes.

And if we turn to the second page of that letter, we see there under the heading Misleading and Deceptive Conduct that Consumer Action allege that you had been misled into thinking that ACBF was an Aboriginal run organisation?---Yes.

5 And that you also had thought that all of the money you put into the plan would be available on your death. Do you see that in the first paragraph under the heading?---Yes, I do.

10 Then did Consumer Action tell you that they received a response to this letter from ACBF?---Yes, they did.

And you've annexed that response as annexure 5 to your witness statement, RCD.0024.0016.0011?---Yes.

15 And did Consumer Action discuss the contents of this letter with you?---Yes, they did.

And if we start with the first page of this letter we see that the lawyers for ACBF told you, in the paragraph 2, up from the heading Background:

20

*Ms Walsh's plan provides the benefit of \$8000 in exchange for a fortnightly payment of \$36. As at today's date, Ms Walsh has paid \$10,152 in total under her plan.*

25 ?---Yes.

And do you recall Consumer Action discussing that with you?---Yes, they did.

30 And if we turn then to 0019 – this is a lengthy letter, but if we turn to 0019 in the document, we see there the response of ACBF to the allegation of misleading and deceptive conduct. And do you see, Ms Walsh, under the sentence:

*It follows that the reliance has to be reasonable –*

35 that ACBFs lawyers said to Consumer Action:

40 *You have not provided any evidence on which a claim of misleading and deceptive conduct can be made out. There is no basis for Ms Walsh to think that the word "plan" would necessarily mean that all of the fortnightly payments she made for the duration she was a plan holder would be repaid. The word "plan" simply describes an effort to address a particular contingency. It does not invite any conclusion one way or the other about the availability or refunding of money under the plan. This is especially so in this case given the many, many interactions between ACBF and Ms Walsh over the*

45 *years, the explanations of the plan provided to Ms Walsh on those occasions, and the documents that were in fact provided to Ms Walsh to explain the plan.*

Now, pausing there Ms Walsh, the interactions between you and ACBF over the years, were the interactions that you had with them about your request to increase the payment amount, firstly?---Yes, it was, or - - -

5 And secondly about when you could not make your repayments?---That's right.

Yes. Your payments, I should say?---Yes.

And you were arranging for a double payment to follow?---Yes.

10

And the lawyers for ACBF went on to say in this letter:

*The documentary evidence provided by ACBF shows Ms Walsh was provided with all of the relevant plan documents, including the information guide, the plan rules, and the application form, on a number of occasions. These documents plainly indicate the true nature of the plan. In any event, even in the event of some hypothetical wrongdoing by ACBF, reliance on the wrongdoing at this point would be unreasonable. Ms Walsh received all of the plan documents in 2005, but took 11 years to approach a legal adviser to obtain an explanation of terms. ACBF has not made a statement or engaged in conduct that was false or misleading. It follows that any claim by Ms Walsh based on some misleading or deceptive conduct is bound to fail.*

20

And then over the page, at 0020, Ms Walsh, we see under the heading Resolution, third paragraph down:

25

*The documentary evidence discloses no wrongdoing by ACBF, and in fact makes it clear that Ms Walsh fully understood the plan, and acknowledged and declared that she did to ACBF. Further, ACBF's established practices when dealing with customers face-to-face leave no doubt Ms Walsh received a full verbal explanation of the plan and its rules.*

30

And over the page, 0021:

*ACBF takes nothing more seriously than the rights and treatment of its customers, which is reflected in the massive investment it makes in compliance and staff training. This is why it does not hesitate to instruct us to categorically reject your claims, and offers to settle those claims, as those offers to settle are made on the premise of allegations ACBF knows to be false. ACBF continues to be dismayed by groups such as yours purporting to represent the interests of ACBF's very own customers. Any allegation that ACBF is guilty of any wrongdoing cannot be sustained. Please cease your campaign against our client.*

35

40

45 So that was the letter that Consumer Action received in response to their letter to ACBF on your behalf?---Yes, it is.

What did you think when you were told about this letter, Ms Walsh?---I was just – my personal thoughts, just disgusted.

5 And in March 2017 Consumer Action sent another letter to ACBF on your behalf?---Yes, they did.

And you've annexed that as exhibit 6 to your statement, RCD.0024.0016.0022?---Yes.

10 Now, as far as you know, Ms Walsh, was there any reply from ACBF to this letter on 8 March?---Not that I can recall.

15 Thank you. And this was a letter in which Consumer Action asked ACBF to review its categorisation of your cover, and your associated payment requirements. Do you see that?---Yes, I do.

Now, has Consumer Action recently assisted you to lodge a dispute with ACBF with the Financial Ombudsman Service?---Yes, they have.

20 And have you annexed, as annexure 7 to your statement, a copy of submissions filed by Consumer Action with the Financial Ombudsman Service on your behalf?---Yes, they have.

25 And that is FOS.0039.0001.0014?---Yes.

Those are the submissions on your behalf to FOS?---Yes, it is.

30 And in annexure 8 to your statement, you've annexed a copy of ACBFs response to those submissions dated 7 June this year. FOS.0039.0001.0139?---Yes.

And do we see from the third paragraph in that letter:

35 *ACBF maintains categorically that it has not engaged in misleading or deceptive conduct, or unconscionable conduct, or ever discriminated against Ms Tracey Walsh.*

Do you see that?---Yes, I do.

40 And then at 0141 we see in paragraph 16 that ACBF said to FOS:

45 *ACBF utilises colours and images associated with the Aboriginal people and, indeed, the word "Aboriginal", on the basis that it is a service which was set up for the benefit of Aboriginal people. At no time was it inferred to Ms Walsh that ACBF was an Aboriginal company and, in fact, the opposite is true.*

Do you see that?---Yes.

And at 0145 under the heading ACBF position towards the end of this letter, we see that ACBF said to FOS:

5           *The continued allegations against ACBF and suggestion that Ms Walsh's case is appropriate means to require the—*

Sorry –

10           *...that Ms Walsh's case is appropriate means to require the production of statistical information and defence of ACBF globally is both vexatious and an abuse of process.*

So these were the submissions made by ACBF in response – in response to your FOS complaint?---Yes, they were.

15

Now, having made these submissions to FOS, on 7 June this year did Consumer Action receive from ACBF an offer to settle your dispute with them?---Yes, they did.

20           And you've annexed a copy of that offer as exhibit 9 to your statement, which is CALC, CALC.0001.0001.0001. Now, the offer that was made to you was an offer that your cover – we see this from the final paragraph – your insurance cover would be increased to \$10,000, you would not be required to make any further payments to ACBF to maintain your cover, and you were to withdraw your matter before the Financial Ombudsman Service?---Yes.

25

And you were given 14 days to consider that offer?---That's correct.

And have you told ACBF that you will accept that offer?---Yes, I have.

30           Yes. And have you, through Consumer Action, told ACBF that you will discontinue your dispute in FOS?---Yes, I will.

35           Now, before you reached this agreement with ACBF, were you worried that if you stopped paying ACBF for your funeral plan, you would lose all of the money that you had paid?---I was told I would lose the money I paid.

And was that a matter of concern for you, Ms Walsh?---Yes, it was.

40           Did you feel that you had any choice about whether to continue to pay ACBF for your plan?---No. I felt like they had me over a barrel.

In what way, Ms Walsh?---Well, if I don't – if I drop it, I lose all this money that I've paid since 2005 that I can't afford to lose. And it's my money. It's not their money, it's my money.

45

And you had been told by ACBF, in the correspondence that they sent to Consumer Action in December 2016, that at that point you had paid more than \$10,000 on your plan?---Yes.

5 Did you feel that you could walk away from that amount of money?---No, I can't. Although I work full-time, I pay my bills. I can't afford to lose that much money.

And if you had walked away from that amount of money, would you have had enough money to pay for your funeral?---I would have had to go into my  
10 superannuation.

Is the position now that, after you sign a formal agreement with ACBF, you will not have to make any more payments to them?---Yes. And thank God for that.

15 And you will have \$10,000 available for your funeral expenses?---Yes, I will.

And what do you understand will happen now if your funeral expenses are less than \$10,000?---I don't know.

20 Do you feel that ACBF would have made this offer to you if you hadn't brought a dispute against them in the Financial Ombudsman Service?---No, I don't. I think they thought I would just forget about it once again, but not this time.

And can I ask, in conclusion Ms Walsh, why you've come forward to tell this story to the Royal Commission?---For myself, but for my community, the Yorta Yorta community, that people are in the same position as me, that they think they will get all their money back, when ACB know full well that they will only get their policies. People – people haven't been told the truth about these policies. I've got elders that have been in these funeral funds for years, and they plan to give the money to their  
30 families so that they can survive. Now, these elders will go to their grave not knowing how hard it would be for these families, thinking that they've – thinking that they've got the money there to help their families. ACB don't know nothing – do they know anything about the Yorta Yorta community? No, they don't. They don't know how many of my elders that are caught up in these policies. I – look, I'm  
35 angry. I'm angry. At no time was I given any information. I have never seen one of your representatives in the Goulburn Valley. I've had cards put in my door. And all you – all I get at Christmas time is – is a bloody calendar. That's how much – that's how much you take notice of me. Do you know anything about the community within Mooroopna or Shepparton? It's one of the largest communities and you have  
40 not bothered to come down and talk to us. By God, when people find out about this in my community, they're going to be angry. They're going to be scared. I've got an elder that's been in a funeral fund for years, and they're only going to get their policy back. These people have been used and used and used over the generations and it's just another profit making off our backs.

45 Thank you very much, Ms Walsh?---Thank you.

I have no further questions.

THE COMMISSIONER: Just wait a moment, Ms Walsh.

5 MS ORR: Ms Walsh, if you wouldn't mind just - - -

THE COMMISSIONER: Just – you need to wait a bit. There's a representative here from ACBF who may wish to ask you some questions. What's the position, Mr McMillan?

10

MR McMILLAN: Yes, I seek leave, Commissioner.

THE COMMISSIONER: Yes.

15

**<CROSS-EXAMINATION BY MR McMILLAN**

**[2.25 pm]**

MR McMILLAN: Thank you.

20

Ms Walsh – could I ask, please, for Ms Walsh to be shown document RCD.0024.0016.0003, the plan application form. Now, Ms Walsh, you were asked some questions about this from Counsel Assisting earlier today and you said, I think, that you recall receiving a copy of this application form in the mail?---Not that I can recall, sorry.

25

All right. Could I ask you, please, to look at – if Ms Walsh could be shown pages 004 and 005 together on the screen. Now, you recall being shown these pages earlier today, Ms Walsh?---Yes, I can.

30

And I think you acknowledge in your evidence earlier that the signature, which appears on page 005, which is redacted on the screens but which you have a copy of in front of you, is your signature?---Yes, it is.

35

When you signed that document, was it dated 30 November 2005? You will see the date below your signature?---Yes, it is.

So did you write that date or - - -?---No, I did not.

40

Do you recall whether you in fact signed it on the date that was written there?---Not that I can recall.

If the date had been written there and you had signed it on some other day, would you have sought to amend the form to reflect the date that you actually signed it?---Not that I can recall.

45

Did you read this form before you signed it?---Not that I recall, because it's been such a long time ago. 2005.

5 Would you normally read a form like this before you signed it?---Yes, I would, but because it was a funeral and I didn't have anything, I just wanted to get it done, so that my parents didn't have to run around trying to look for the money.

10 You will see on page 005, the section above your signature titled – entitled Acknowledgement and Declaration. Can you see that? Perhaps if that section - - -?---Yes, I've just got it.

- - - could be made a little larger for Ms Walsh?---Yes, I've got it.

15 Thank you. And you will see there that there are a number of numbered paragraphs from 1 to 8?---Right.

And they are – those paragraphs are a number of statements framed as statements in the first person:

20 *I have –*

And the first one is:

25 *I have viewed the Aboriginal community funeral plan visual presentation.*

?---Right.

30 And you will see next to it there's a box with yes and a box with no, and yes has been ticked?---I didn't tick it.

All right. When you signed this form, did you observe that that box was ticked or not ticked?---No, I just signed the form.

35 Did you read through the remaining acknowledgements that were there?---Very quickly, as far as I can remember.

40 So you understood then, when you were signing the form, that you were acknowledging that you had done the things that are listed in that list of numbered paragraphs?---Not that I can remember, sorry.

Well, you say you read through it quickly. Did you understand that you were acknowledging that you had viewed the Aboriginal community funeral plan visual presentation?---As I said, I – not that I can recall.

45 And also the next numbered paragraph 2:

*I have had the plan explained to me.*

?---At no time was it properly explained to me, sorry.

Continuing:

5            *I was given the opportunity to ask questions and was satisfied with the answers given.*

?---When – if you understood how – how important a funeral is, and that my parents were on a pension, I just wanted to get it signed and get it completed so that the money could be taken out of my pay. It was for peace of mind.  
10

Now, the third numbered paragraph reads:

15            *Prior to the completion of this application, I was given copies of the Aboriginal community funeral plan rules and information guide.*

?---I was not given that at the start of having that plan and that's as clear as day.

But you think you've been given those at some later stage?---At a – many years after that.  
20

All right. Can I ask you about the occasion when the ACBF representative came to your workplace?---Rumbalara Aboriginal Co-operative, that's my workplace.

25            To Rumbalara, yes?---Yes.

That's where the representative ..... and that's where you spoke with him - - -?---Yes, the Rumbalara – he was based out of the Rumbalara medical centre.

30            And you told Counsel Assisting earlier today that you thought that person was Aboriginal?---Yes, I did.

Did you ask him anything about his kin or his country?---That – if you understood the Aboriginal community, you know that's a very rude question to ask someone.  
35

So you made – you made an assumption based on the colour of his skin?---It wasn't an assumption, it was just polite.

40            All right. Was there anything other than the colour of his skin that led you to believe that he was Aboriginal?---That Aboriginal funeral funds were Aboriginal. At no stage was I told that they were – were not.

45            All right. Could I ask, please, for Mrs Walsh – Ms Walsh to be shown exhibit – document ACBF.0005.0001.0002. Now, Ms Walsh, this is a document that's been produced by Mr Jones, the director of ACBF, and his evidence is that this is a visual presentation that's given to customers. Could I just ask, please, for the operator to scroll through to the next page. Now, do you recall being shown this visual

presentation at the time that you signed up to your plan?---At no time. And actually, the purple wasn't in it at that time. It was a cream background with the snake around it and with the family in the middle. This – when I was doing my statement, the only time I received that was when you sent papers back. At no time have I seen this.

5

So you've just described a document with a cream background and a snake around it?---Yes – yes.

Was that a presentation you were shown?---No, it wasn't. It was just on that form I was given, and on the policy when I had paid my 8000. I have never seen this document.

All right. Could I ask, please, for Ms Walsh to be shown exhibit – document ACBF.0007.0001.0021. Now, again, this is a document that has been produced by Mr Jones, and his evidence is that this is the information guide that you were provided with your policy?---No, it's not.

Now, you said a few moments ago that you think you have been provided with an information guide at some stage after you signed the application form?---I have not seen these documents. The only document I can recall, if my – when I got my policy saying that I got 8000. None of this – the only thing that was on it was the cream background, the snake around it, and just the family. I have – I have never seen any of this paperwork. The only paperwork I have gotten are the signed papers, and also the policy award, and that was it. I have never – I have never received any of this paperwork. This is the first time I've seen this.

All right. I will just ask – I will go to another document in a moment but I will just ask you to take note of the words that are printed at the bottom of the page on that document:

30

*The plan is run by a private company which is not connected with or sponsored by any governmental or similar body or Aboriginal organisation.*

?---No, I –

35

I am not asking you for your comment?---I'm sorry, I - - -

Take note of it and I will show you another document if I can?---Right. Yes.

Could I ask please, for Ms Walsh to be shown FOS.0039.0001.0170. This is annexure 4 to your statement, Ms Walsh. Is that the information guide you recall receiving?---That is a sticker and I have never seen any of that work on any paperwork I've received at any stage.

So this is not the guide that you've just described to me with the ..... around the outside - - -?---No, I have never – I have never received any paperwork like that.

Now, you were asked some questions by Counsel Assisting about your communications with ACBF over the years?---Right.

5 And I think you said that the majority of those communications were about either changing your payment arrangements - - -?---That's right.

- - - or increasing your benefit?---That's right.

10 Now, you recalled telephoning ACBF – and I think you thought it was about 2012 – to discuss increasing your benefit amount?---As far as I can recall.

15 And I want to suggest to you that it was when you called ACBF for that purpose, that it was explained to you that your benefit could be increased but that there would be an additional fee payable by you if it was increased?---And that fee was \$10,000 and I would have to pay \$42. At no stage was I told that. I didn't even know about that until I received some of the paperwork in regards to the Royal Commission.

20 So when you suggest that ACBF didn't increase your benefit at that time it's accurate, isn't it, to say that the reason for that is because you didn't wish to pay the additional premium?---I – I didn't even know about the additional premium. I had not been told about the \$10,000 or the 42 – \$42 a fortnight.

25 Could I ask, please, for Ms Walsh to be shown document ACBF.0004.0001.0011. And this is, Ms Walsh, a record of communications between you and ACBF which is annexed to one of Mr Jones' statement at exhibit BJ2. And could I ask, please, for – sorry – for page 0017 to be shown on the screen. And the last entry on that page is an entry from 6 August 2012. And it's recorded there – do you see that? The last entry?---The last entry, "Tracey phoned and wanted - - -"

30 Continuing:

35 *...wanted to know how much it would cost to increase her benefit amount to 15,000. Explained due to level 3 and age the max is 10,000 and would be \$42 per fortnight. Explained changes taking place and would add her to our database –*

and so on –

40 *...to increase her benefit amount.*

?---No.

So you deny that that conversation occurred?---I deny that conversation.

45 All right. Excuse me, Commissioner. I have no further questions, thank you, Commissioner.

THE COMMISSIONER: Yes. Is there anything arising, Ms Orr?

MS ORR: No, thank you, Commissioner.

5 THE COMMISSIONER: Thank you very much. Thank you very much, Ms Walsh.  
You may step down.

10 <THE WITNESS WITHDREW [2.38 pm]

MS ORR: Commissioner, the next witness in this case study is Mr Bryn Jones.

15 THE COMMISSIONER: Yes. Is Mr Jones in the hearing room? If you would be  
good enough to come into the witness box, Mr Jones.

20 <BRYN JONES, SWORN [2.39 pm]

<EXAMINATION-IN-CHIEF BY MR McMILLAN

25 THE COMMISSIONER: Do sit down, Mr Jones. Yes, Mr McMillan.

MR McMILLAN: Thank you, Commissioner. You are Bryn Jones, spelt B-r-y-n J-  
o-n-e-s?---Correct.

30 And your business address is at Marine Parade at Coolangatta in  
Queensland?---Correct.

And you are the director of ACBF Group Holdings Proprietary Limited?---Correct.

35 Mr Jones, you received a summons requiring your appearance before the Royal  
Commission?---I did.

Do you have a copy of that summons with you?---I do.

40 I tender the summons, Commissioner.

THE COMMISSIONER: Exhibit 4.145, summons to Mr Jones.

45 **EXHIBIT #4.145 SUMMONS TO MR JONES**

MR McMILLAN: Mr Jones, you have prepared two statements in relation to the requests by the Commission. I will deal with them separately. First of all, you dealt – you prepared a statement dated 13 June 2018 in response to the Commission’s Rubric 4-02 and produced some 45 exhibits to that statement?---Correct.

5

You have that – a copy of that statement with you?---I do.

Now, I understand that there are some amendments you need to make to that statement. First of all at paragraph 2.3, subparagraph (e)?---Correct.

10

And I understand that the amendment that you wish to make in the – on the second last line of that paragraph is to delete the acronym “ACBF” and replace it with the words “Crown Insurance Limited”?---That’s correct.

15

Is that correct? Can you make that amendment or – if you haven’t already, and initial the amendment, please. And the second – have you done that? Thank you. And the second amendment that you – I understand you wish to make is to paragraph 23.1 subparagraph (f) on page 23?---Correct.

20

And in subparagraph (ii) of subparagraph (f), I understand you wish to delete the words “Supreme Court” and replace them with the words “Full Federal Court”?---That’s correct.

25

Would you make that amendment and initial it, please? Now, noting those amendments, are the contents of your statement true and correct to the best of your knowledge and belief?---They are.

I tender the statement and the bundle of exhibits, Commissioner.

30

THE COMMISSIONER: Statement and exhibits of Mr Jones, 13 June ’18, exhibit 4.146.

35

**EXHIBIT #4.146 STATEMENT AND EXHIBITS OF MR JONES DATED 13/06/2018**

MR McMILLAN: You have produced a second statement for the Commission dated 11 June 2018 in response to the Commission’s Rubric 4-10?---I have.

40

And there are seven exhibits to that statement?---There are.

And I understand that you also need to make an amendment to this statement at paragraph 7.1?---I do.

45

Now, as I understand it, the amendment you wish to make is in the second sentence beginning on the third line – beginning with “in the event of suicide” and it is to

delete some words that refer to a different customer and not Mrs Walsh – or Ms Walsh. That’s right, isn’t it?---That’s correct.

5 And I understand that the amendment you wish to make will be such that the sentence will now read:

*In the event of suicide or self-harm, a full payout will not be made, but Ms Walsh’s payee would be entitled to a refund of the sum of premiums paid up to the benefit amount (eg \$8000).*

10 ?---That’s correct. I will get you to repeat that, if that’s all right.

I will. Thank you:

15 *In the event of suicide or self-harm, a full payout will not be made but Ms Walsh’s payee would be entitled to a refund of the sum of premiums paid up to the benefit amount (eg \$8000).*

20 ?---Correct.

Could you initial that change to paragraph 7.1, please. That amendment being noted, is the – are the contents of your statement true and correct to the best of your knowledge and belief?---They are.

25 I tender that statement and the exhibits, Commissioner.

THE COMMISSIONER: Exhibit 4.147, the statement of Mr Jones and its exhibits, 11 June ’18.

30 **EXHIBIT #4.147 STATEMENT OF MR JONES AND ITS EXHIBITS DATED 11/06/2018**

35 MR McMILLAN: If it please the Commission, that’s the evidence-in-chief.

THE COMMISSIONER: Yes, thank you. Yes, Ms Orr.

40 <CROSS-EXAMINATION BY MS ORR [2.44 pm]

MS ORR: Mr Jones, you’re a director of ACBF Group Holdings Proprietary Limited?---I am.

45 And what does the ACBF stand for in that corporate entity?---Aboriginal Community Benefit Fund.

And you were appointed a director relatively recently, on 19 November last year?---That is correct.

5 And you've been put forward by ACBF to give evidence about what you describe as the life policies offered by ACBF, as well as Ms Walsh's experiences with ACBF?---That's correct.

Now, you're also CEO; is that right?---There in similar time.

10 And what organisation are you CEO of?---The current ACBF administration, as well as ACBF Community Funeral Benefits Funds – sorry, Aboriginal Community Benefit Funeral Funds.

15 Sorry, I just want to understand which organisation you're a CEO of. You're a director of ACBF Group Holdings Proprietary Limited?---That is correct.

Which organisation are you CEO of?---ACBF Funeral Plans Proprietary Limited. Sorry.

20 Right. Now, you were appointed as CEO of that organisation, Mr Jones, as part of a management change; is that right?---That's correct.

25 You were appointed, we see from a media release that ACBF has issued within the last few days, to bring a fresh and transparent perspective to ACBF?---That's correct.

30 Why was a fresh and transparent perspective needed for ACBF, Mr Jones?---I think under some of the proceedings of the past the management at the time, with media misrepresenting the company, they felt a need to restrict information being shared. My appointment, I believe in the company, in what we're doing, we help lots of individuals, and basically I believe we've got nothing to hide and that's where that perspective comes.

35 I just want to understand that. You say that as a result of proceedings in the past, the media misrepresented the work of your company?---That's correct.

In what way?---In terms of previous ASIC rulings and other legal challenges or changes to legislation which directly affected the operation of the business.

40 And how did the media misrepresent those matters, Mr Jones?---By insinuating that customers can pay up to \$100,000, and that's financially impossible.

Are there any other ways in which you say the media misrepresented your organisation?---Not reflecting the true good that we do within the community.

45 Not reflecting?---The true good. The good that we do within the community in terms of the claims that we have paid out on, the representation that customers always pay in less than what they actually receive.

So to make sure I understand this, after there had been what you describe as misrepresentations by the media about your company, you were brought in to do what?---Basically, there was a transition process. Obviously over 25 years, the company hadn't necessarily changed with the times by way of technology. So my –  
5 my position was to help move and transition the company away from the technology block, but also the – bring the cultural differences into the company. And I – I immediately saw that there was a need to – with the – what had been reflected in the media, and by some of the reflections with some of the cases that had been raised with the likes of FOS, that there was a position where we needed to really ensure that  
10 we were culturally on point and I immediately – when I was appointed director and CEO, I reached out to Aaron Davis of ICAN to get his perspective on how we could better communicate with our customer base and his perspective on what we could do to better the community as a whole. Since – since then, we also appointed an indigenous-based organisation to run a cultural audit on the company. And we're  
15 following their leads on how we could ensure that our products were appropriate to the people that we were advertising and working for.

I want to come to that cultural audit, Mr Jones. But before I leave this topic, the fresh and transparent perspective that you were brought in to achieve, do I take from  
20 that that you accept that you were not transparent with your customers beforehand?---No. I think the perspective was to the media, and to – to lock down some of the accusations that were being made against the organisation as a whole.

This wasn't about your customers; it was about the way the media were portraying you?---Yes, correct.  
25

So you are part of a management change designed to respond to the media depiction of your organisation?---Yes. There had never been any advertising about the company, there was no rebuttals to media accusations, and basically I saw that there  
30 was a need to change that messaging and improve it.

You say there was no advertising about your products?---About the good that we do.

I see?---And nothing directly related to refuting some of the claims that were made in  
35 the media.

And that's part of what you're now doing; is that right?---That's the idea behind it, yes. Obviously, it's through a process. We've engaged in community organisations to ensure that we do that appropriately to the community in which we benefit.  
40

And is it also by issuing media releases? We see that you've issued three media releases over the last week?---It – yes.

That's part of this new strategy of rebutting what's being said about you in the media?---To ensure that the right message is being portrayed. It's hard with, obviously, the resources we have and to ensure that we can – we have the opportunity to have our say.  
45

I want to come to those media releases, but before I move to those matters, I want to understand a bit more about your corporate structure, because you're not the only director of ACBF Group Holdings, are you?---No, I'm not.

5 There are two other directors?---Correct.

One of those is Mr Jonathan Law?---That's correct.

10 And you tell us in your statement that Mr Law is not involved in the management or day-to-day operations of the company?---Correct.

And the other is Mr Ron Pattenden?---That's correct.

15 And Mr Pattenden is the founder of ACBF?---That's correct.

And he has been a director since May 2013?---That's correct.

And you tell us in your statement that his appointment was made – and I quote you:

20 *Simply to comply with legislative provisions with respect to the required number of directors.*

?---From my understanding. It was before my time, so - - -

25 That's why he was appointed a director?---I believe so.

And you say:

30 *He has limited understanding and involvement in the day-to-day operations of the group.*

?---Correct.

35 Despite being the founder of the organisation?---That's correct.

Now, are any of the directors of ACBF Aboriginal or Torres Strait Islander people?---No, they're not.

40 Are any of the managers of ACBF Aboriginal or Torres Strait Islander people?---No, they're not.

Is ACBF an Aboriginal organisation?---It's an organisation that works for the benefit of those – that identify – self-identify as Aboriginal or Torres Strait Islander.

45 So it works for the benefit of those who identify as Aboriginal or Torres Strait Islanders?---That's correct.

Is it an Aboriginal organisation?---What's the definition?

5 Well, I want you to – you interpret that term as you wish. Would you say yes or no to a descriptor of your organisation as an Aboriginal organisation?---It's not owned by an Aboriginal or a Torres Strait Islander; it is not run by an Aboriginal and Torres Strait Islander; is it – the purpose behind it is to benefit those that are Aboriginal and Torres Strait Islander? Yes.

10 So it's not owned by or run by Aboriginal or Torres Strait Islander people, but you say the benefit – the purpose behind it is to benefit Aboriginal and Torres Strait Islander people?---That's correct.

Does that, in your view, make it an Aboriginal organisation?---Not in my view.

15 Thank you. Is your organisation sponsored by or affiliated with any Aboriginal organisation?---No.

Are you sponsored by or affiliated with any governmental organisation?---No.

20 And the majority of staff at ACBF are not Aboriginal or Torres Strait Islander people?---We do have a number, but the majority would be no.

The majority are not?---No.

25 And how many Aboriginal and Torres Strait Islander people do you employ, Mr Jones?---Those that have identified - - -

Yes?--- - - - would be six.

30 I'm sorry?---Six.

Six. Out of how many staff?---28.

35 Thank you. Now, ACBF has been in business for more than 25 years; is that right?---Correct.

40 And ACBF policyholders can have one of three types of policy; is that right?---There are legacy – legacy products or policies that can be had. Right now, there is the Aboriginal Community Funeral Plans and Community Funeral Plans.

But some of your policyholders still hold a legacy product; is that right?---That's correct.

45 So there are three policy types in total?---Correct.

And ACBF offers each of those three types of policies through a different entity?---That's correct.

And ACBF Group Holdings Proprietary Limited is the sole or majority shareholder of each of those three entities?---That's correct.

5 Now, for each of those types of funeral insurance policy, ACBF is underwritten pursuant to the terms of a group life insurance policy through an offshore insurer; is that right?---That's correct.

10 Now, before I turn to each of those three types of policies I just want to make sure I understand the terminology used by ACBF in the key documents that govern those policies. You've annexed those key documents to your statement. They are the plan rules and the information guide; is that right?---Correct.

For each of the three types of policies?---Correct.

15 So you've annexed, as I understand it, the plan rules and the information guide for two of the types of policies. Does that sound right?---I'm not 100 per cent sure, sorry.

20 Well, the documents use three particular terms that I want to make sure that I understand. The first term is "plan holder". Now, is that the person who applies for and holds the funeral plan?---Correct.

Like Ms Walsh?---Correct.

25 And the second term used in the documents is nominee?---Correct.

Is that the person nominated by the plan holder upon whose death ACBF will make a payout?---Correct.

30 So Ms Walsh was also the nominee?---Correct.

And they're the person whose life is the subject of the policy; is that right?---That's right.

35 So the nominee and the plan holder can be the same person, so that the person who has the plan is also the person whose life is the subject of the plan?---Correct.

40 It might be someone else as well, if the plan holder takes out the plan to cover someone else's life?---Correct.

A parent for their child, for example. So an ACBF plan can have multiple nominees; is that right?---That's correct.

45 Yes. Now, the third term that your documents use is "payee". Is this the person who gets the payout on the nominee's death?---That's correct.

So the payee might be a relative of the nominee?---Yes.

And the idea is that, on the death of the nominee, the payee gets a payout that they can direct towards expenses that are associated with the nominee's funeral?---Correct.

5 Okay. Now, who gets a copy of the plan rules and the information guide? The plan holder, the nominee, or the payee?---The plan holder.

The plan holder. Are they the only ones that get that?---That's correct.

10 Thank you. Now, I want to turn to the three types of policy. The first one that you deal with in your statement is the Aboriginal Community Benefit Fund Number 2. I'm going to call that fund number 2. And fund number 2 offered benefits in the event of death?---Correct.

15 And fund number 2 hasn't accepted any new members since 2004?---Correct.

Why not, Mr Jones?---Through – because of legislative changes.

20 Legislative changes. What legislative changes are you referring to?---To the Full Court hearing.

Are you referring to a court case brought against ACBF?---Yes, I am.

25 There was a Federal Court decision in 2004. Is that the one you're referring to?---I believe so.

30 That was a case brought by ASIC against fund number 2, and that was a case in which ASIC alleged that fund number 2 had breached section 992A of the Corporations Act, and that's a provision that prohibits a person from offering a financial product for sale in the course of, or because of, an unsolicited meeting with a person. That was the allegation made against fund number 2?---To my knowledge.

35 And that provision sometimes referred to as the anti-hawking provision. Are you aware of that?---I am.

And the Federal Court found that the policy that was sold by fund number 2 was not a funeral expenses policy as defined by the corporations regulations. Were you aware of that?---I'm not 100 per cent.

40 I'm sorry?---Only from what I've been told, yes.

You've been told that?---Yes.

45 The product was, therefore, a financial product to which the anti-hawking provision applied; have you been told that?---I wasn't aware that it was directly related to that.

You weren't aware of that?---Directly related to that case.

- Well, the findings of the Federal Court in that case were that the policy that fund number 2 was offering was a financial product and, therefore, the prohibition on selling it in an unsolicited sales setting applied. Do you accept that?---Okay. Yes.
- 5 And the Federal Court made orders recognising that fund number 2 had been selling the policy in a way that breached the anti-hawking provision. Do you understand that?---Yes.
- And because that policy was found by the court to be a financial product, fund number 2 would have needed an Australian financial services licence to continue selling the policy. Do you understand that?---Yes.
- 10 Yes?---Yes.
- 15 So after the Federal Court decision ASIC sent a letter to fund number 2, which is referred to as a no action letter, in which ASIC said that it wouldn't take any further action in relation to that conduct if fund number 2 stopped taking members. Are you aware of this?---I am.
- 20 And fund 2 gave that undertaking to ASIC and stopped taking new members?---Yes.
- Yes. So those are the circumstances in which fund number 2 ceased taking on new members?---Yes.
- 25 Yes. And at the time that fund number 2 did accept members before that response to the ASIC letter following the Federal Court case, you needed to be a member of an Aboriginal community to be eligible for membership of that fund, didn't you?---Not 100 per cent sure, sorry.
- 30 Well, you tell us that in your statement. You tell us that at paragraph 3.1, subparagraph (a), subparagraph (2) of your statement. Would you like to look at that, Mr Jones?---Where they self-identify?
- 35 Yes. They were the people to whom the fund was open. People who self-identified as Aboriginal and Torres Strait Islanders; is that correct?---Correct.
- Okay. Now, there are still 2472 fund 2 policies on issue, all held by members of the Aboriginal community?---Correct.
- 40 Correct. Okay. So that's the – that's the first of the policies, the fund number 2 policy. The second policy you tell us about in your statement is a policy that's offered through a different corporate entity, which is Community Funeral Plans Proprietary Limited; is that right?---Correct.
- 45 And the policy that's offered by that entity you refer to in your statement as the Community Plan?---Sorry, could you repeat the start of that question?

The policy that's offered through the Community Funeral Plans Proprietary Limited entity is called the Community Plan. That's how you refer to it - - -?---Correct.

5 - - - in your statement. And the Community Plan was first offered in 2005?---Correct.

And the Community Plan, you tell us in your statement, provides a benefit payout to meet funeral and related expenses?---Correct.

10 And payouts are made directly to funeral directors or other suppliers of funeral related expenses?---That's correct.

15 So is the Community Plan a funeral expenses policy within the meaning of the Corporations Regulations?---Yes, I believe it comes under the Funeral Plans Act.

Well, you've dealt with this in paragraph 3.1(c)(i) of your statement. So do you see what you've said about the Community Plan in that paragraph? Do you understand, Mr Jones, whether a policy of the sort that you've described in that paragraph – a policy where payouts are made directly to funeral directors and other suppliers of funeral related expenses, do you understand whether that's a funeral expenses policy within the meaning of the Corporations Regulations? It's a matter of some significance, legally. Do you understand whether that's the case?---I do – well, to the best of my knowledge, yes.

25 You think it's a funeral expenses policy?---I understand that – from my understanding, the community funeral plans was a set up to meet the expenses of funeral related costs. My understanding was – and this is what has been told to me since my recent tenure – is that the reason why we don't need an AFSL licence was because money doesn't go – directly to the person themselves, but gets paid out.

30 That's why it's significant, isn't it? Because if it's a funeral expenses policy, you're not required to hold an Australian financial services licence to offer it?---That's correct.

35 And this entity doesn't hold an Australian financial services licence, does it?---No, but we would love to have an AFSL licence.

40 Well, would you? Because that would mean that the anti-hawking provision applicable to the sale of financial products that I referred to earlier would apply to this policy, wouldn't it?---Yes, they would.

45 And at the moment, it doesn't?---No, they don't, but like I explained at the beginning, there's a transitioning process, and the idea recognising the challenges that door to door sales – the door to door sales approach clearly does not work within the – (a) the community, but in the greater community. Times have changed and there was a need for it in the early founding years of the company.

Why was there a need for it then, Mr Jones?---Because there was no means for those people in remote locations to be able to access services.

5 What do you mean by that? The only way to sell to people in those communities is to go door to door?---That was a means that was established in that time, yes. We have made provision to move away from door to door sales as a sales approach. I don't believe in it, and there's a transitioning process away from that.

10 Are you still undertaking any door to door sales, Mr Jones?---We have made certain positions redundant, so that we're not. We have engaged indigenous employees to come on board initially in the early stages, being this year, to see if from a cultural point of view whether door to door sales would work. What was evident was that we need to transition away from those door to door sales, and we've -- we're in the process of transitioning them into community outreach officers. They are  
15 indigenous. They are, obviously, culturally aware, and when -- we're respectful of the people we stand to benefit and represent.

20 So are these the six indigenous people that you referred to before, these are the people you've recently hired?---That's four of - - -

Four of them?---Four of the six, yes.

When were those four people hired?---To my knowledge - - -

25 Yes?--- - - - between the beginning of the year and March.

Okay. So before that you had two indigenous people?---We've recently put on other indigenous staff members.

30 Well, you told me you had six?---Yes. So we've -- well, we've got -- we do have six. We've got a trainee in the office, and I recently found out one of our existing staff members has identified as indigenous.

35 And do I understand from the answer you just gave that you're still deciding whether you will conduct door to door sales in the future?---No. We have made that decision that we won't.

Won't?---We won't, and it's not my intention to do that.

40 So ACBF will not sell door to door?---No.

Is that your evidence?---Yes, yes. Correct.

45 You are currently legally permitted to do so because you don't have, in the Community Plan an AFSL, or the anti-hawking provision applying to you?---Correct.

So are you going to move across to a different structure where you take on an Australian financial services licence and become subject to the anti-hawking provision?---Yes.

5 When will that occur?---We've been instructed halfway – from my understanding we were instructed halfway through last year that we should not apply, for the fact that the previous actions against us would preclude us from receiving one.

I see?---To all honesty, I would love to come under that.

10

I see?---I'm not adverse to having regulations and – and working within the – the guidelines.

So you - - -?---And I would - - -

15

I'm sorry?--- - - - actually be encouraged to work with Mr Boyle and Ms Edwards in coming up with an appropriate strategy on how to adequately meet (a) the needs of the community that clearly need funeral insurance, and find a – a way that's appropriate to benefit those members. I understand that there are people that do pay over, and that doesn't sit well with me. It is insurance, in the sense where there are overs and unders – just last month we had one member pay two payments and pass away at the age of 31, with four children, and be immediately paid out \$6000. Now, that's someone that benefits from our policies and our products, and unfortunately insurance does have – has to have those overs and unders, and where we can minimise that we will, and that's my honest opinion. I have engaged our actuary to work on a method to – or come back with the study on whether or not we can actually stop (a) at a benefit amount and have no more payments paid in, that would be my ideal approach. His initial reaction to that is that there's a substantial cost to obviously administering each member, and we would have to make sure that that is financially viable. It was never the intention to rip anyone off, and that's the God's honest truth.

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25

30

You say that, Mr Jones, but you've been with the organisation since December last year?---Yes, but my speaking to (a) the founder - - -

35

The founder who's not involved in the day-to-day operations?---Yes, yes. I have spoken to him. I'm not saying I speak to him on a day-to-day basis, but that was the honest intention. So going forwards, I want to work with those community leaders and organisations and Mr Boyle – I would love – I found that really informative, and I want to engage with those community groups and regulatory bodies that are honestly working for the good of the community. And that was part of my reason why I engaged with Aaron Davis from ICAN, who was very vocal in what he said about ACBF, and I needed to – if I was going to be director and CEO of the company, I wanted the opportunity to be able to hear his side, and even – even speaking to him, it was – it took time for him to even open up and trust me that I'm actually in it for the good of the community.

40

45

I just want to pick up on a couple of aspects of the evidence you've just given, Mr Jones. The first is, going back to the start of your answer there, I take it your understanding is that you won't receive an Australian financial services licence if you apply for one - - -?---Yes.

5

- - - because of the past conduct of ACBF?---Yes.

But is it your intention to operate as if the obligations that attach to holders of Australian financial services licences apply to you nonetheless?---Yes.

10

That is your intention?---Yes.

And are you familiar with the obligations that are imposed on holders of Australian financial services licences?---We have put means in – measures in place to appoint a – a responsible manager. We've said that. There are necessary courses to be able to help us move towards that. Is it an instant process? No. Obviously, I need to work within the confines of everyday business, and – and changing policies and procedures. I want to do that in line with the – the benefit of the community that we – we represent.

15

20  
What do you understand to be the key obligations for holders of Australian financial services licences?---Obviously working within the regulatory means and disclosing the – well, for one, not giving financial advice unless you've got the appropriate qualifications, but also – I mean, I need to do further investigations myself, so I can't  
25  
proclaim to know it inside and out, but - - -

Are you able to identify any of the statutory obligations on AFSL holders?---Not off the top of my head, no.

30  
Are you familiar with the statutory obligation to act efficiently, honestly and fairly?---Yes, and that's – I mean, that's how we conduct ourselves.

35  
That's how you have conducted yourselves?---Yes. Obviously I come under the fiduciary duty of (a) to the members that are paying, but also to the regulation as to what my position as director - - -

40  
Well, I want to come back in particular to that obligation to act fairly, as we move through some aspects of your operations, but another part of the evidence that you gave moments ago that I want to ask about is the work that you said you were doing with an actuary. Do I understand that the evidence you gave about that was that you are presently investigating whether it is financially viable for you to take a position which means that you do not require further payments from policyholders once they have reached their maximum benefit amount?---That's correct. And we've made  
45  
measures to – as people come forward prior to the Royal Commission, actually made those changes. We've sent out documentation to customers to that effect.

5 Do you mean there are some instances where you have said to customers who have raised this issue with you that you won't require them to continue to make payments beyond their maximum benefit?---That's correct. No, not – not ..... to cease. Those that have paid over their amount, I – we instructed them that they won't have to further make payments.

10 Is this what you refer to in paragraph 15.2(b) of your first statement, Mr Jones, on page 12 – I'm sorry, your statement was originally provided to us without the document ID numbers, but we have that now. 15.2(b):

*ACBF plan – new –*

15 and that's the third policy that I'm yet to come to and ask you questions about – are you referring to the:

*...management directive since January 2018 to release policyholders from making future premium payments if they call and identify they are struggling to make contributions.*

20 ?---That's correct.

So that's what you're referring to?---Yes.

25 So that's only if people call and tell you that they're in hardship?---That's correct.

30 But you are not across the board requiring people to cease making their payments once they've reached their maximum benefit amount?---Our – as part of the decision going forward, and that's why we've appointed the actuary, to push towards giving us the proper research and breakdown. I need to, obviously, ensure the longevity of the – the member base that I represent and ensure that it was appropriate to make that decision, point – that I couldn't make it without having the accurate information at hand.

35 And when do you expect to receive that information that will allow you to make that decision?---I'm unaware exactly. The research is still being conducted, but soon.

40 All right. I want to come back to the community plan and just ask you a few more questions about that before we move to the third plan, which is the ACBF Plan. Under the Community Plan, which we've established was a funeral expenses plan that wasn't covered by the anti-hawking provision, you didn't need to be a member of the Aboriginal community to be part of that plan; is that right?---No.

45 And you still don't need to be a member of the Aboriginal community to hold one of those plans?---No. We don't ask people to identify either way.

Well – and consistently with that, the sales presentation materials about that plan that you’ve annexed to your statement don’t make any references to the Aboriginal community, do they?---No.

5 And they don’t make use of colours or imagery that’s associated with Aboriginal and Torres Strait Islanders?---No.

Okay. So when you say that your organisation acts for the benefit of Aboriginal people, are you referring to the third policy you have, which you refer to in your statement as the ACBF Plan?---Correct.

10 And that plan is offered through a third entity which is ACBF Funeral Plans Proprietary Limited?---Correct.

15 And that was also established in 2005?---Correct.

And it’s the equivalent of the Community Plan, but it’s set up for Aboriginal people; is that right?---Yes.

20 And why did this plan start being offered in 2005?---Due to those regulatory changes.

Yes. I think when you refer to regulatory changes, you’re referring again to the implications of the Federal Court’s decision - - -?---Yes.

25 - - - in the litigation against fund number 2 in 2004; is that right?---That is correct.

So like the Community Plan, it was set up as a result of that decision because you couldn’t take any more members into fund number 2 without acquiring an Australian financial services licence?---Correct.

30 Now this fund, the ACBF Plan, is also not a financial product. There is no need for ACBF Funeral Plans Proprietary Limited to have an AFSL licence?---No.

35 And the anti-hawking provision doesn’t apply?---Not to my knowledge.

Now, ACBF has issued three media releases in the last week, all in the lead-up to these hearings, and I want to take you to the second media release which was issued on Friday last week, because that media release describes the reasons for which the ACBF Plan was set up. So could I ask you to look at ACBF.0008.0001.0206. So this is a media release put out by your organisation on 29 June?---Correct.

40 And we see there under the heading Corporate Structure:

45 *The laws affecting funeral insurance are complex and change from time to time. These law changes have resulted in changes to our funeral insurance offerings. Usually, law changes are prospective. This means that we can*

5 *continue to offer older products to continuous policyholders from before the law change, but not to new policyholders. For legislative compliance reasons, we created new legal entities for each type of policy. ACFP, Aboriginal Community Funeral Plans, is the funeral insurance policy we offer under the current legislation. To allow us to more efficiently administer all of these policy types, we created ACBF Group Holdings Proprietary Limited which provides administrative services to all of our policies.*

10 That was what the media release from last week said, Mr Jones?---Correct.

But there was no change in the laws, was there?---No.

15 So why does your media release refer to changes in the laws?---I believe that they were referring to the case that was brought against fund number 2.

The law didn't change. You were found to have breached the law and you then needed to set up operations in a different way as a result of that finding. That's what has happened, isn't it? But that's not how you've described things in this media release?---No.

20 You've made it look as though there was an external matter that affected your decision about your entity structure which was a change in the law?---The external factor being the case, yes. I understand.

25 The external factor was the Federal Court finding that you were acting in breach of the law, wasn't it?---Yes, that's it.

30 So this is not an accurate description of your corporate structure and the reasons for your corporate structure, is it?---No. Not when it's put like that.

Now, like the community plan – before I move on, I should tender that media release which I will return to, Commissioner.

35 THE COMMISSIONER: Media release 29 June 2018, ACBF.0008.0001.0206, exhibit 4.148.

**EXHIBIT #4.148 MEDIA RELEASE DATED 29/06/2018**

40 MS ORR: So I think as we've identified, like the Community Plan, the ACBF plan is a – not a financial product so you don't need an AFSL licence. You agree with that?---Correct.

45 It's a funeral expenses policy within the meaning of the corporations regulations?---Correct.

And the anti-hawking provision doesn't apply?---Correct.

So you are permitted to sell in an unsolicited setting?---Correct.

5 Okay. Now, who can be a plan holder under the ACBF Plan?---We don't preclude anyone from being a member, other than their age and illness.

And how does their age and illness influence whether they can be a plan holder?---The underwriter and – have established the rules in which - - -

10

And what are those rules, Mr Jones?---So they can't be over the age of 69.

Yes?---And there's a list of different illnesses that, obviously, are deemed to be high risk.

15

Can they be under the age of 18? I'm talking about the plan holder, who might not be the nominee, but can the person who takes out the plan be under 18?---Yes, they can.

20 And how does that work?---The parents elect who they want to be their nominees.

No, that's about the nominees. I'm talking now about the plan holder, the person who takes out the plan. Can that person be under 18?---My understanding from our legal counsel was that they can if they've got their parents' permission. It's not something that has ever been acted on in that sense.

25

Well, you deal with this in 3.1(b)(iii) of your statement, which is page 4 of your statement. You say there that:

30 *Under this plan any person can be a plan holder with the age limit to join being 69 years of age. However, under office procedures, any person 18 years old or over can apply to be a plan holder, or a 17 year old if a parent or guardian is present and co-signs the application.*

35 Is that right?---From my understanding of it, yes.

Okay. So that's the plan holder, the person who can take out the plan. Who can be a nominee?---Anyone, as long as they are nominated by the plan holder and they fit within the restrictions of the policy.

40

You say any person can be a nominee under the ACBF plan? That's the person whose life is the subject of the plan?---As long as they're under the age of 69 and meet the health restrictions, yes.

45 Well, could I ask you to go to the third exhibit of your statement, which is ACBF.0007.0001.0021. This is the information guide for the ACBF Plan?---Yes.

And if we turn to 0027 in that document, we see there under the heading Eligibility who can be a nominee. Do you see that at the top of the page?---I do.

Continuing:

5

*The plan is open to all Aboriginal persons under 70 years of age at the time of application.*

That's what your information guide says?---Correct.

10

So to be a nominee, you need to be an Aboriginal person under 70 years of age?---I wasn't around at the creation of this document, but from reading that, yes.

Yes?---If they're self-identified.

15

Well, your plan rules define what an Aboriginal person is. Could I take you to the second exhibit to your statement, which is ACBF.0007.0001.0043. So these are the rules for the ACBF plan, and if we enlarge clause 1.2 we see the definition of Aboriginal person. It includes:

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*A member of the Aboriginal race of Australia, persons that such a person regards as members of his or her family, and persons that an applicant considers come within the categories set out in clause 1.2(a) and (b).*

So you need to meet that definition to have your life the subject of an ACBF funeral plan?---Correct.

Okay. Now, the situation with the ACBF funeral plan is that it is marketed by your organisation to Aboriginal and Torres Strait Islander people as a policy designed for them. Do you agree?---Correct.

30

You refer to it throughout your statement as the Aboriginal plan?---Correct.

And in all the ACBF material that you've annexed to your statement it's referred to as the Aboriginal Community Funeral Plan?---Correct.

35

It's described that way in the presentations that are made to potential members. Do you agree?---Correct.

And - - -?---Sorry, just to that point, it does – in our presentations, it does say that we're not an Aboriginal company, and that we're not associated with any government agency.

40

I see. But it is described as a policy designed for Aboriginal people?---And it is. Recognising the – the need within the community, the payment terms, and the repayment terms are designed to help Aboriginal and Torres Strait Islanders that identify, in the sense where four missed payments can – can occur which are

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fortnightly payments, which is eight weeks, and then there's a further 31 day exclusion period, and in that time if any claims were to be made we would honour those. In the – and we don't cancel policies. So that's effectively close to 12 weeks, which over and extends the standard insurance products.

5

Is that the way in which you say your policy is for the benefit of Aboriginal and Torres Strait Islander people, that you permit four missed payments before a 31 day exclusion period kicks in within which you would still honour a claim?---Yes, that's one component of it. Obviously, we also – a point of difference is obviously that we pay out for any cause after the first payment. An example of that - - -

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Could you just say that again? You pay out for any?---We pay – we honour claims - - -

15

Yes?--- - - - after the first payment has been received.

20

Yes. How long have you done that, Mr Jones?---From my understanding, from inception. That's just from my understanding. So the idea there is, where other funeral policies – it's accidental death that they cover within 12 months or 18 or 24 months. So there's many cases, like I mentioned before, that there's a 31 year old that passed away last month that had made two payments, and that had received \$6000. So in that sense it is tailored to meet the needs of those that are – that need the policy at the time.

25

Do you say you have no waiting period to access the maximum benefit amount?---Under the previous fund 2, that and – I'm not 100 per cent sure of when it changed, and I'm not – but the current policy is there is no waiting time on getting the initial 4 to \$6000. After the 12 months has occurred, if they've elected to have more than \$6000 benefit or if they're a level 3 and they've elected to have more than \$4000 benefit, they will increase after 12 months. They're the only exclusions. Up until July last year, between July and October, suicide was the only exclusion. I was part of the initial consultation around making that change. I wasn't employed at the time of making – helping make that change. However, my full tenure in my position, suicide is covered. What I would like to also say is that the mortality rate, to me, it's home to me just for our Australian indigenous and there is a huge need for greater awareness around that, and coming into the business and seeing it firsthand, it has been an enlightening process which is home to me and it's something that there needs to be greater awareness around it.

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What do you say to the proposition that you are taking advantage of the significance Aboriginal and Torres Strait Islander people place on funerals culturally?---I don't believe that to be the case.

45

Why do you have a product targeted to Aboriginal and Torres Strait Islander people?---Because there's a significant need for it. With the higher mortality, which in some instances is four or five times – infant mortality is five times that of non-

indigenous, and to me that's – whether it be lack of education, remote – lack of – like  
- - -

Sorry?---Not being able to access health services because of their remoteness - - -

5

Are you linking lack of education with the mortality rate? Is that what you were saying?---No. I'm talking about around getting – gaining greater access to health services, as well as education around health-related practices and things like that.

10 I want to come back to a number of things you've talked about there. I want to come back to your policy in relation to suicides and claims in relation to suicides, but can I continue firstly asking you some questions about the way you market the ACBF Plan to Aboriginal – potential customers. You have a website?---We do.

15 And the URL for that website is [www.aboriginalfuneralplan.com.au](http://www.aboriginalfuneralplan.com.au)?---Correct.

And on that website your plan is described as Australia's only funeral insurance plan dedicated to the Aboriginal community?---Correct.

20 And there's a number of photographs of Aboriginal and Torres Strait Islander people on that website. Do you agree?---I do.

And it features images which resemble indigenous dot paintings, doesn't it?---Yes.

25 I will just show you that, to be clear. RCD.0006.0007.0005. These are images from your website, Mr Jones?---Correct.

And if we turn to the following page – I'm sorry, we have a single page here, different to my copy. We see the images I was referring to that resemble dot paintings in the middle of the page?---Yes.

30

And we see pictures of Aboriginal and Torres Strait Islander people at the top of the page?---Correct.

35 And in this way, along with other ways, you are marketing the ACBF Plan to Aboriginal and Torres Strait Islander people?---Correct. It also says in the opening sentence that we are not an Aboriginal company.

40 Yes. I'm not asking you about that at the moment. I understand you are very keen to convey that. I'm talking about who you market this policy to. You market this to Aboriginal and Torres Strait Islander people as a product for them, don't you?---Correct.

45 Okay. And you tell us in one of your media releases, the media release from 27 June last week, that you provide a product and service that is tailored to meet the needs of Australia's Aboriginal and Torres Strait Islander people; is that right?---Correct.

Now, I will take you to that media release which is ACBF.0008.0001.0206. Before I do that, could I tender the web page, Commissioner.

5 THE COMMISSIONER: ACBF website screenshot, RCD.0006.0007.0005, exhibit 4.149.

**EXHIBIT #4.149 ACBF WEBSITE SCREENSHOT (RCD.0006.0007.0005)**

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MS ORR: If I could ask you to look at the 27 June media release. ACBF.0008.0001.0204. Now, this is your media release from 27 June last week?---Correct.

15 And we see there in the third paragraph down that you say that:

*Aboriginal Community Funeral Plan provides a product and service tailored to meet the needs of Australia's Aboriginal and Torres Strait Islander people.*

20 ?---Correct.

Now, pausing there, in what way is it tailored to meet the needs of Australia's Aboriginal and Torres Strait Islander people?---From my understanding – and this was around the underwriting side of things – that at the time of approaching  
25 underwriters within Australia, that there was certain underwriters that wouldn't underwrite solely indigenous lives, and in that sense, and with the payment terms, and - - -

30 I'm sorry, the payment terms. Is that where you're referring to the number of payments that can be missed - - -?---Missed and given the fact that - - -

35 - - - before cancellation?---Yes. And from my understanding there was cultural awareness activities that had taken place well prior to my appointment, and there were attempts to ensure that the members that they were being advertised – that were being advertised to understood the products.

40 So you've referred to three things, as I understand it there, that are how your product and service is tailored to meet the needs of Australia's Aboriginal and Torres Strait Islander people. The first is you've got an underwriter; is that right?---It's being able to insure people that wouldn't otherwise be covered due to their – their race.

Why do you assume they're incapable of being covered because of their race, Mr Jones? You - - -?---That wasn't – it – sorry - - -

45 You - - -?---It wasn't my belief, and it's not the belief of the company at all, but when the – when the founder approached different underwriters, they wouldn't – they wouldn't cover.

This was back in 2001; is that right?---From my belief – yes, from my understanding, correct.

5 You heard the evidence of Ms Walsh, that her parents obtained funeral insurance with another funeral insurer?---Yes.

10 Yes. So is it your position that one of the ways in which you presently provide a product and service tailored to meet the needs of Australia’s Aboriginal and Torres Strait Islander people is the fact that you have an underwriter?---It was more so that the group – because we’re group insured, and no one would group insure a demographic that were made up of predominantly indigenous.

15 So do you maintain that that’s one of the ways in which you’re providing a product and service that’s tailored to meet the needs?---It’s one of the ways.

Okay. And the second you referred to was the payment terms permitting a number of payments to be missed before the policy would be cancelled?---Correct.

20 And the third was something you referred to as cultural awareness activities?---To ensure that the communication with our policyholders and customer base was culturally appropriate.

25 What do you know about those cultural awareness activities, Mr Jones?---My understanding was in the early years there was people that identified of – as Aboriginal or Torres Strait Islanders that were part of the company, and then – and they spoke into the – into the actual products themselves.

30 So in the early years there were some people engaged by your company who were Aboriginal and Torres Strait Islander people?---That spoke into the products and services as well as how to communicate.

Those are the cultural awareness activities you’re referring to?---Yes. And I believe that there have been ongoing cultural awareness programs that have been run.

35 Have you provided any documents about any of those in your statements?---No, that’s just from what I’ve been told.

40 I see. And we see in this media release that underneath that sentence I just read to you there are three quotes, and the third of those is that:

*Our products and service are developed in consultation with indigenous communities to meet this real need.*

45 What’s the consultation that you engage in, Mr Jones?---From my understanding, there’s been groups over the years that have been engaged by the company. Of recent, I’ve engaged MIRAconnect, which is an Aboriginal organisation to help transition the changes that need to take place.

That's the cultural audit that you referred to earlier and which we will come to?---Yes.

Yes?---Yes.

5

Any other consultation?---I believe there has been consultation with land councils and other organisations over the years.

Any materials about that in your statement, Mr Jones?---No.

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I tender the second media release from 27 June, Commissioner.

THE COMMISSIONER: ACBF media release 27 June '18, ABCF.0008.0001.0204, exhibit 4.150.

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**EXHIBIT #4.150 ACBF MEDIA RELEASE DATED 27/07/2018  
(ACBF.0008.0001.0204)**

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MS ORR: Now, of the three types of policy that you have on offer, the ACBF Plan, the one that you say is tailored to meet the needs of Aboriginal and Torres Strait Islander people, has by far the largest number of policies on offer; is that right?---Correct.

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As at the date of your statement, there were 13,460 policies on offer?---That's correct.

So that's almost five times the number of policies on offer under fund 2 and the Community Plan put together?---Correct.

30

And about 4900 of those 13,000-odd policies are for individuals under 18 years of age; is that right?---That's correct.

35

So that's about 36 per cent of your ACBF plan policies. They're for individuals under the age of 18?---Correct.

And about 2000 of those policies are for individuals between the ages of 18 and 25?---Correct.

40

So that's about 15 per cent of the total number of policies?---Correct.

And the proportion of individuals covered by your policies who are young people has been high for a number of years, hasn't it?---Yes. It's also directly proportional to the age distribution of indigenous Australians from the ABS.

45

Could you explain that to me, Mr Jones?---The population breakdown of Australia from ABS data that we've – we've seen, it's directly proportional to – there's more young people than old people within the - - -

5 You say that explains why you have so many policies on offer to young people?---It helps speak to it. I'm not saying that's the – the sole reason. From all my findings, there's been nothing that shows or is evident that we've ever engaged with the outset to sign children up. With the higher mortality rate of children and across the board - - -

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I'm going to put to you squarely that you actively attempt to sell policies for whom the nominee, the person whose life is insured, is a child?---I don't – I have never seen that in my time.

15 Well, your sales representatives ask parents and grandparents to sign up their children and grandchildren, don't they?---I'm not – they don't actively go out to sign up their children or grandchildren. If they're signing up an individual and they have children, then yes.

20 When they sign up an individual, they are encouraged to attempt to sign up that individual's children and grandchildren, aren't they?---Part of the process, 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  
25 funerals, and that in itself spurs, I know from recent indications, that that is a huge indicator for people to take out policies.

But do - - -?---Also need to note that the – the price is substantially less, and - - -

30 It's cheaper to ensure the life of a child. Is that what you're saying?---It is. It takes – if someone was to be born – to take a policy at birth if a parent was to sign their child up, they wouldn't pay the full benefit amount for 34 and a half years.

35 So you have sales representatives who sign children up at birth?---There is parents that – they don't actively pursue that, and they don't – well, over the – over the time they haven't.

Well - - -?---Parents actually ring up – if they've – if they've experienced a – a loved one that has had a child pass away, and – I mean, I speak from being a father myself  
40 – to be able to – if you couldn't bury your child or your loved one and you had to scrape – try and scrape together through the community or through other family members to be able to bury your child, which is horrific, that in itself is – when people hear that, that's a motivator for them to be able to – to be – to have cover, and that has been a motivator in the past, and even now we receive phone calls from  
45 people after experiencing, whether it be stillborn or dying before the age of one – which is five times that of non-indigenous – that in itself, we have phone calls that are people who have attended the funeral of a child and they don't want to be in a

position where they have to wait weeks or months to be able to bury their child. And that's – it's a real – reality. And if we could do it – if they could have their funerals covered without needing funeral cover, or if there was enough resources for people to be able to draw on, then that's terrific. But it's not always the case, and I know  
5 that there was – Mr Boyle raised the fact that there was one and a half thousand dollars available. The – that doesn't bury someone. And it's a timely process as well. We've spoken to many councils. Land councils are interested, because they obviously provide some funding, but not all the funding. I think there needs to be further investigation to the funeral services industry, in the sense where they can  
10 sometimes exploit the individuals.

Well, could we stick with your organisation for the moment, Mr Jones, because I would like to ask some more questions. It's a motivator for you and your organisation to sell as many policies as possible, isn't it?---I believe the idea behind  
15 any business is to - - -

Yes. Do you accept my proposition?---Yes.

It's a motivator for you to sell as many policies as possible, and to keep people  
20 signed up to those policies for as long as possible. Do you accept that?---I accept that.

And you accept that your sales representatives, when signing up individuals, make inquiries of the individual about whether they have children or grandchildren and attempt to sell funeral policies for them?---I am unaware of the grandchildren, but  
25 children yes.

You know you have policyholders who have - - -?---I know there are policyholders of grandparents who have had to bury grandchildren that do actively – they pursue  
30 our policies and want to make sure that their children and grandchildren are covered.

And your staff pursue it too, don't they, Mr Jones? They attempt to sell the policies for grandchildren to grandparents?---That's not part of any sales model, but - - -

35 Well, it's part of your sales model, isn't it, Mr Jones?---My sales model?

Yes. Your organisation sales model involves your representatives attempting to sell policies to individuals that cover their children and their grandchildren?---Like – like  
40 I said before, it's – we're not actively going for children and grandchildren. If – yes, children. I understand that if a – if a mother wants to cover their children, that that is part – that they offer it to anyone that that individual wants to cover. If that individual is a grandmother and she elects to cover her grandchildren, they're not – she's not excluded from doing that, no.

45 And she elects to do that because you ask her to do that, don't you?---I don't. And I have never seen any documentation that shows the organisation actively doing that. I honestly - - -

You don't know if your sales representatives do that. Is that what you're saying, Mr Jones?---It's not within any sales procedures to do so.

Do you know if your representatives do that?---I don't.

5

Why don't you know that, Mr Jones?---Because it's not part of the sales model to actively pursue grandchildren. It's - - -

It's part of the sales model to sell as many policies to as many people as possible, isn't it?---Yes.

10

Okay. Are you familiar with the work that ASIC released in 2014 analysing the funeral insurance sector in Australia?---I've seen that recently.

All right. Could I just ask you to have a look at it. It's ASIC.0025.0003.1757. So you've read this report before, I assume, Mr Jones?---I have, amongst lots of other documentation, yes.

15

Yes. So this is, I would have thought, a fairly significant document in your line of work. It's a report by ASIC about their analysis of the funeral insurance sector in Australia?---Correct.

20

And we see from the front page that it's an analysis of the funeral insurance market in Australia as at 30 June 2013?---Correct.

25

Do you see that? And if we turn to 1757 within the document – I'm sorry, 1764 within the document, and if we could have 1764 and 1763 on the screen, that would be of assistance, so you can see what precedes this. So you see this is a section of the report dealing with the age profile of insurees?---Yes.

30

And what follows deals with active policies. Do you see that? You see the subheading there, "This relates to active policies"?---Correct.

And then we see a table that shows that ASIC categorised the age of insurees according to five age bands: 0 to 19, 20 to 39, 40 to 59, 60 to 79 and 80 plus. Do you see that?---Yes.

35

And then if we go down to paragraph 35, we see the conclusion of ASIC:

*ACBF has the highest proportion of insurees in the lower age brackets with almost two-thirds, 64 per cent of customers, aged below 30. Over one-third, 36 per cent of ACBF insurees are below the age of 15.*

40

Do you see that?---I do.

45

Can you explain why that is the case, Mr Jones?---Could I just highlight that 30 and 31 are citing the greater Australian population - - -

Yes?--- - - - and not the indigenous Australians mortality rate.

Yes. This is not about mortality rates, Mr Jones, this is about the age of the people whose lives are covered under insurance policies?---Yes.

5

Do you understand the conclusion in paragraph 35 that you are the insurer with the highest proportion of insurees in the lower age brackets?---Yes.

10 But you've told me that you don't actively sell to children. So can you explain why it is the case that you have the highest proportion of insurees who are children and young people?---That there's a larger proportion by percentage of indigenous youth by proportion, and the mortality rate is between four to five times that of non-indigenous.

15 Why does ACBF sell so many policies to children and young people, Mr Jones?---Like I said, that individuals elect to take up a policy because of their experience with mortality. I have a friend who's indigenous and, just to put it in context, I've been to six funerals in my life, three were – or two were my  
20 grandparents and one was an uncle. The others were around similar age to me. My friend is the same age as me, and he's been to 57 funerals, and they're family and close friends that are predominantly under the age of 50. So they are – indigenous Australians, unfortunately, are aware of death, and – and it's – it's a sad fact that they experience that, and that is a large motivator for them to – I mean, it's been said before on the – by Ms Walsh, that it's – they know that it's a prevalent within their  
25 society and it's not right.

And that is why you promote a fund particularly to them, isn't it, Mr Jones?---Because there's a – there's a significant need for it, yes.

30 I tender this document, Commissioner.

THE COMMISSIONER: ASIC Analysis Funeral Insurance Sector as at 30 June 2013, ASIC.0025.0003.1757, exhibit 4.151.

35

**EXHIBIT #4.151 ASIC ANALYSIS FUNERAL INSURANCE SECTOR AS AT 30 JUNE 2013 (ASIC.0025.0003.1757)**

40 MS ORR: I see the time, Commissioner, but if I could ask just a few more questions I can complete this topic.

THE COMMISSIONER: Yes.

45 MS ORR: I want to take you back to the 27 June media release, Mr Jones, ACBF.0008.0001.0206. Now, we see from this media release – I'm sorry, I'm just going to find the appropriate part for children. I'm sorry, I had the wrong media

release. I'm sorry, so on 27 June I want to direct your attention to – I've given the wrong number. ACBF.0008.0001.0204. I apologise. This is the media release from last Wednesday, and if we look to quotes from you towards the bottom of the page, we can see that the second one is:

5

*Given high infant mortality rates, particularly in remote locations, our Aboriginal and Torres Strait Islander community rightly expects access to dignified funerals for infants as well as adults.*

10 That's a quote from you? Is that right?---Yes.

And below that we see another quote from you:

15 *This is important for our Aboriginal and Torres Strait Islander community, who are two to four times more likely to die young than non-indigenous Australians. Even assuming zero administrative costs it would take 34.5 years for a member to contribute their benefit amount from birth.*

20 Now, is it your hope and your organisation's hope, Mr Jones, that Aboriginal and Torres Strait Islander people will sign their children up for funeral insurance from birth?---No, sorry, that is directly relating to the ABC publication.

25 The what publication?---The ABC publication that was – we were – we were getting – being asked by ABC to respond to the Royal Commission, and as a direct response to their questioning.

30 Why are you referring to how many years it would take for a member to contribute their benefit amount from birth?---Because it was being highlighted that we target children, which we wanted to highlight that we do not target children. In that statement, it was showing that it takes a long time for people to pay the full benefit amount.

35 And the longer they're part of your funeral plan, the greater the amount of premiums that you will receive?---Yes.

And if the premiums received can exceed the amount of benefit that they're eligible for, that's a factor here as well?---It is. It's been practice to increase people's benefit.

40 So if someone signs up at birth and their parent has been paying premiums to your company for many, many years, there's a fair chance they will exceed their maximum benefit amount, isn't there?---It would take at least 34 years if they were signed up from birth, yes.

45 What do you base that statistic on? What have you assumed is the premium payment?---The premium that's disclosed at the time of their application.

Disclosed to who?---The plan holder that's signed up, yes.

5 Yes. So you're assuming a standard fee. Is that what happens? If someone signs up from birth is there a standard fee that applies?---There's a table of costs which are disclosed with the different age brackets and their different health levels, yes.

All right. I can leave it there for today, Commissioner. I've tendered that 27 June media release.

10 THE COMMISSIONER: That's exhibit 4.150. Yes.

MS ORR: Thank you, Commissioner.

15 THE COMMISSIONER: Now, what time tomorrow depends on how we're travelling?

MS ORR: I think it would be useful to start slightly earlier tomorrow, Commissioner. 9.45.

20 THE COMMISSIONER: If we begin at quarter to 10.

MS ORR: Yes, thank you.

25 THE COMMISSIONER: 9.45. If you could be back here in time to begin at 9.45, Mr Jones, that would be good. I will adjourn until that time.

<THE WITNESS WITHDREW

[4.07 pm]

30

**MATTER ADJOURNED at 4.07 pm UNTIL WEDNESDAY, 4 JULY 2018**

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