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TRANSCRIPT OF PROCEEDINGS

O/N H-911842

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

9.46 AM, WEDNESDAY, 4 JULY 2018

Continued from 3.7.18

DAY 37

MS R. ORR QC appears with MR M. COSTELLO as Counsel Assisting with MR M. HOSKING and MS S. ZELEZNIKOW

MR B. McMILLAN appears for ACBF Group Holdings Pty Ltd

MR A. CHESHIRE SC appears for Select AFSL Pty Limited

MR R.J. WEBER SC appears for St Andrews Life Insurance Pty Limited and Bank of Queensland Limited

<CROSS-EXAMINATION BY MS ORR

5

THE COMMISSIONER: Yes, Ms Orr.

10 MS ORR: Mr Jones, I want to move to asking you some questions about the advertising materials for the ACBF Plan in recent years?---Yes.

15 Now, could I ask you to look at ASIC.0025.0001.7206. Now, this is a paper produced by Cresser Creative Strategy + Design, Cresser consultancy, in 2012 for ACBF?---I have never seen this document.

15

Well, I will take you through it. It is an ACBF document?---From what I can see, yes.

20 Provided to the Commission by ASIC. Now, you can see the reference to Cresser Creative Strategy + Design down the bottom there?---I can.

25 And what we see when we read this document – you will see the date on the front, 28 August 2012, is that in August 2012 Cresser consultancy undertook a review of ACBFs branding and advertising concepts. Were you aware of that?---No, I wasn't.

25

All right. If we turn to 7207, we see a brand review that was done by Cresser Consultancy. And if you stay in the left-hand column, you see the heading Recommended Proposition?---I do.

30 Yes. Above that is the Current Proposition which is:

Don't leave your family in debt.

35 And the recommended proposition from Cresser was that:

35

Aboriginal Community Funeral Plans is Australia's only Aboriginal funeral plan and have been providing payouts to Aboriginal families for 20 years.

40 You see that?---I do.

40

And do you see the heading Verifications under that?---I do.

And one of the verifications identified by Cresser Consultancy is that you are an:

45 *Aboriginal focused business that understands their clients' needs.*

?---Correct.

And do you see in the middle column creative devices to support the core messages and proposition?---I do.

5

And one of those creative devices identified by Cresser was:

Understanding: imagery of Aboriginal people reinforces the core market.

10

?---I do see that.

Now, if we move to the right-hand column, we see an image of the ACBF logo at that time?---Yes.

15

The logo was red, yellow and black?---Yes.

The colours of the Aboriginal flag?---Yes.

20

And the logo featured a number of figures holding hands?---Correct.

And what do they appear to be carrying to you, Mr Jones?---A stick and a baby.

Sticks and a baby?---Yes.

25

Thank you. And then if we pan back from that image and move to the next page, 7208, we see that Cresser recommended a new, simplified, modernised logo with the tag line:

For you, for your family.

30

You see that?---Correct.

And that logo was also in red, yellow and orange colours?---Correct.

35

And if we go back to 7207 we see that Cresser's recommended visual positioning, right down the bottom on the right-hand side, included imagery of Aboriginal people and clients; see that?---Yes.

40

So before this the visual images on ACBF materials featured motifs of the rainbow serpent, an important figure in indigenous culture?---Yes.

45

Now, ACBF implemented a number of these recommendations, didn't they, including adopting the new logo and the new tag line?---On some of their merchandise, yes.

Yes. We saw the new logo on your website page yesterday?---Yes. That was after I had come into the business, yes.

Yes. But you know from that that these recommendations were accepted?---I wasn't aware of those recommendations at all, sorry.

5 Right. But you know that that is – the Cresser recommended logo and tag line is the logo and tag line that ACBF now uses?---It is.

All right. I tender this document, Commissioner.

10 THE COMMISSIONER: Exhibit 4.152, Aboriginal Community Funeral Plan branding concepts, ASIC.0025.0001.7206.

15 **EXHIBIT #4.152 ABORIGINAL COMMUNITY FUNERAL PLAN
BRANDING CONCEPTS (ASIC.0025.0001.7206)**

MS ORR: Now, since adopting these recommendations which were made in 2012, ACBF has advertised the ACBF Plan through print media?---I'm unaware of what print media, but I believe they might have.

20 Well, ACBF has advertised its policies in The Koori Mail; are you aware of that?---No, I'm not.

25 Well, I will ask you to look at ASIC.0025.0003.1947. This is an internal ASIC memorandum. And could I ask you to turn to – if we could have 1949 and 1950 on the screen. Do you see a reference there to advertising types relating to ACBF?---I do.

30 You see there:

Newspaper advertising: National Indigenous Times and The Koori Mail.

At the top of the page on the right-hand side?---I do

35 What is The Koori Mail, Mr Jones?---I believe it's an Aboriginal and Torres Strait Islander mail.

An Aboriginal and Torres Strait Islander publication?---I believe so.

40 Now, could I ask you to look at – I will tender this document.

THE COMMISSIONER: What should I describe it as, Ms Orr?

45 MS ORR: It's an undated ASIC internal memorandum entitled Investigation into ACBF Funeral Plans Decision by FSE to NFA.

THE COMMISSIONER: Undated ASIC internal memorandum investigation into ACBF – is it?

MS ORR: Yes.

5

THE COMMISSIONER: Yes.

MS ORR: Yes.

10 THE COMMISSIONER: ASIC.0025.0003.1947, exhibit 4.153.

EXHIBIT #4.153 ASIC INTERNAL MEMORANDUM INVESTIGATION INTO ACBF (ASIC.0025.0003.1947)

15

MS ORR: Could I ask you now to look at ASIC.0025.0001.7204. Now, this is an ACBF advertisement, Mr Jones?---Again, I haven't seen that, sorry.

20 Do you see the reference to Koori Mail in the bottom left-hand corner in the small print at the bottom?---I do.

25 So this appears to us to be an advertisement placed by ACBF in the Koori Mail. Are you unable to assist with whether that is the case?---If that's the evidence you have, yes. I – I – I'm unaware of it. I - - -

I see?--- - - - honestly haven't seen it.

30 But you see that this is the ACBF imagery?---I - - -

You see the old logo in the left-hand corner and the new logo in the bottom right-hand corner?---I do.

35 And this information all relates to the ACBF Funeral Plan, doesn't it?---I believe so, yes.

Yes. I tender that document, Commissioner.

40 THE COMMISSIONER: ACBF advertisement Koori Mail, ASIC.0025.0001.7204 exhibit 1.454.

EXHIBIT #4.154 ACBF ADVERTISEMENT KOORI MAIL (ASIC.0025.0001.7204)

45

MS ORR: You saw the reference in the previous documents to advertisements also being placed in the National Indigenous Times?---Sorry?

5 Did you see the reference, in the previous document I took you to, to advertisements for ACBF also being placed in the National Indigenous Times?---I didn't see that reference. Sorry, I was looking - - -

Would you like to see that again?---No, that's fine.

10 Okay. Do you know what the National Indigenous Times is?---I'm not 100 per cent aware, but - - -

You don't know what it is, Mr Jones?---I'm sure it's times for the national indigenous. Another publication.

15

Could I ask you to look at ASIC.0025.0001.7200. This is another advertisement, this time with the words National Indigenous Times in the bottom left-hand corner for ACBF?---I see that.

20 So we understand that this is the advertisement placed by ACBF in the National Indigenous Times. Are you able to comment on that?---I'm unaware. That's the first time I've seen that.

But again you see the ACBF - - -?---I do see that.

25

- - - imagery and information that pertains to the ACBF fund?---I do.

Thank you. I tender this, Commissioner.

30 THE COMMISSIONER: ACBF advertisement, National Indigenous Times, ASIC 0025.0001.7200, exhibit 1.455.

35 **EXHIBIT #1.455 ACBF ADVERTISEMENT, NATIONAL INDIGENOUS TIMES (ASIC 0025.0001.7200)**

MS ORR: Now both of these advertisements I just took you to include a disclaimer in white letters at the bottom of the photo. Do you see that?---I do.

40

And the disclaimer reads:

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

?---I see that.

Why did ACBF include that disclaimer in its advertising?---It was before my time, so I'm not 100 per cent sure, but from my understanding it's a directive that was given by our legal party at the time.

5 Well, it was introduced into ACBFs materials after ASIC took action against ACBF in 1999?---Okay.

The action that ASIC took at that time related to marketing practices for fund number 2. Are you aware of that?---No, I'm not.

10

And in that action brought by ASIC, the allegation was that ACBFs marketing practices were misleading and deceptive and unconscionable. Are you aware of that?---I know that there has been confusion over the years, and that was why they had to put that comment in there.

15

Confusion about what, Mr Jones?---Whether it was an Aboriginal – owned by an Aboriginal company or not.

20 So ASIC alleged in a court proceeding that ACBF was engaging in misleading and deceptive conduct and unconscionable conduct in relation to its marketing practices?---Okay.

25

Do you know what ACBF did in response to those allegations?---I – it is before my time, so I'm not 100 per cent sure.

AC - - -?---I - - -

30

I'm sorry?---I have had 25 years to try and get up to speed or had the past 25 years to try and catch up on in my short tenure, so - - -

How have you done that, Mr Jones?---Through as much research as I can do whilst trying to focus on taking the company forward.

35

Did you have a background in insurance before you took on your role with ACBF?---No, I didn't.

You hadn't worked in the insurance industry at all?---No, I haven't.

40

Did you have a background with dealing with Aboriginal and Torres Strait Islander people?---I volunteered with Aboriginal - - -

You have volunteered?---I have volunteered, in a volunteer capacity, yes.

45

Can you explain what you had volunteered for?---I fed the homeless for seven years and I also went out to Palm Island on mission trips to work with indigenous – indigenous communities out on Palm Island.

And other than that had your work involved engagement with Aboriginal and Torres Strait Islander people in any way?---No, it hasn't.

5 So what were your qualifications for your role, Mr Jones?---It was under the premise that I was to try and modernise and bring the appropriate people in that did have the relevant experience and knowledge and know-how to take the company forward.

10 What skills did you have that enabled you to do that?---To bring the appropriate people together.

What work had you been engaged in before this role?---I was a – teaching children sport and also working within the IT sector.

15 So how did you come to get this role, Mr Jones?---I was introduced to the owner, and I suggested some changes that he needed to make in order to modernise the company and combat some of the negative publicity that was there, and to try and help the company move forward.

20 How were you introduced to the owner?---I – I just – I know him.

Is he a friend of yours?---No, he's not.

How do you know him?---Through a relationship that he has.

25 What's that relationship, Mr Jones?---He banks with my father.

So he's a client of your father's?---Yes.

30 That's how you came to meet him?---No, I met him at a coffee shop.

Met him at a coffee shop?---Yes.

35 And you made some suggestions for how the ACBF business could be improved?---Yes.

And based on that he hired you as the CEO and made you a director of the organisation?---No, it wasn't based on that.

40 What was it based on, Mr Jones?---I attended his business and saw changes that he could make, just from a technological point of view, as well as how he could better position himself or the company. He's not actively involved in the company, so I met with individuals that were running the company at the time.

45 Do you have any qualifications, Mr Jones?---No, I don't.

All right. I want to return to the litigation commenced by ASIC that contained the allegations that I have described to you about misleading and deceptive conduct by

ACBF. I asked you if you knew how ACBF had dealt with that litigation. You don't know how that litigation was responded to by ACBF; is that right?---I know they made certain changes.

5 Do you know that they entered into consent orders to resolve that litigation?---I'm aware of some consent orders.

All right. Could I show you those. They are ASIC.0032.0003.0001. So these are consent orders in the Federal Court in a proceeding between ASIC and various
10 ACBF entities. Do you see that?---I do.

That were made here in Darwin on 24 September 1999?---I see that.

Do you see that date?---I do.
15

And if we go to 0006 within that document, we see the orders that were made by consent. So these were orders that ACBF agreed to. Do you see that?---I do.

And at paragraph 11 we see that by these consent orders ACBF was required to orally advise customers at the time of promoting or marketing its funds that it was not connected with or sponsored by government or Aboriginal organisations?---I see that.
20

And if we turn to paragraph 15 on page 0008 – is that possibly your phone, Mr Jones?---No, it's not.
25

No. We see at 0008 at paragraph 15 that ACBF was also required by these orders to:

30 *...remove from any marketing materials the Aboriginal flag and any words to the effect that it was established to advance the welfare of the Aboriginal community.*

Do you see that?---I do.

35 I tender the consent orders, Commissioner.

THE COMMISSIONER: Consent orders Federal Court of Australia, 24 September 1999 ASIC.0032.0003.0001, exhibit 4.156.

40

EXHIBIT #4.156 CONSENT ORDERS FEDERAL COURT OF AUSTRALIA DATED 24/09/1999 (ASIC.0032.0003.0001)

45 MS ORR: Before we leave that document, could I ask you to return to 0006 and look at paragraph 12 of those orders. Do you see there a requirement made by those orders in relation to information that needed to appear on the first page of written text

of marketing material and within the introductory commentary on that text? Do you see there the requirement to include in that text:

5 *Advice to the effect that ACBF was a private company and that the funds were not sponsored by or otherwise connected with any governmental or similar body or an Aboriginal organisation.*

?---I do.

10 All right. Now, since these consent orders, some of ACBFs advertising materials relating to the ACBF Plan have included a disclaimer, haven't they?---They have.

But not all of them?---I'm not 100 per cent sure.

15 You're not sure? Well, could I show you ASIC.0025.0003.1947. Now, this is the document I showed you before that was the internal ASIC memo. And could I ask you to look at ASIC.0025.0003.1950 within that document. It's the same part of the document we looked at before that contained a table showing ACBF advertising, and I had asked you to look at the newspaper advertising section in that table. Do you
20 see the reference below that to internet advertising?---I do.

So ACBF had advertised its policies using a banner on the National Indigenous Times website, we see here, for periods in 2013?---Okay.

25 You see that?---I see that.

And could I ask you to look at ASIC.0025.0001.7189. Now, is this the banner that was used on the National Indigenous Times website? Do you see – to assist you, the words at the bottom left of the page, "Web banner"?---It appears to be. Again, this
30 was well before my time.

This isn't something you've been able to familiarise yourself with yet, Mr Jones?---No, I've never seen that.

35 But we see that this is described as a web banner and it relates to ACBF, includes the ACBF logo?---I see that.

And describes the ACBF plan as:

40 *Australia's only Aboriginal dedicated funeral plan.*

?---I see that.

45 It doesn't include any disclaimer, does it, Mr Jones?---No, it doesn't.

Do you know why not?---No, I'm not aware.

This was a breach of the orders made by the Federal Court, wasn't it, Mr Jones?---It appears to be.

I tender that document, Commissioner.

5

THE COMMISSIONER: Web banner screenshot National Indigenous Times website, ASIC.0025.0001.7189, is exhibit 4.157.

10 **EXHIBIT #4.157 WEB BANNER SCREENSHOT NATIONAL INDIGENOUS TIMES WEBSITE (ASIC.0025.0001.7189)**

15 MS ORR: Now, if we could go back to our ASIC memo again, I want to ask you about radio advertisements that ACBF used. So if we could go back to ASIC.0025.0003.1947, and if we could go to 1949 within that document. See at the bottom of the page the reference to radio advertisements?---I do.

20 ACBF had advertised its policies through advertisements on the National Indigenous Radio Service 36 times?---I see that.

And could I ask you to look at ASIC.0025.0001.0005. This is a script for one of those radio advertisements, Mr Jones?---I see that.

25 You see that? Do you see client ACBF, agency Cresser, date 29 November 2012?---Yes.

The script doesn't include the disclaimer, does it?---No, it doesn't.

30 Why not, Mr Jones?---Again, that was before my time.

Before your time. You're not able to explain that?---No, I'm not.

I tender - - -

35

THE WITNESS: That's the first time I've seen that, sorry.

MS ORR: I tender that document, Commissioner.

40 THE COMMISSIONER: Radio script 29 November 2012, ASIC.0025.0001.0005 exhibit 4.158.

45 **EXHIBIT #4.158 RADIO SCRIPT DATED 29/11/2012 (ASIC.0025.0001.0005)**

MS ORR: Do I take, Mr Jones, from the fact that you haven't seen these documents, there's one of two explanations: that ACBF doesn't keep records of its advertisements, or you haven't read ACBFs records of its advertisements? Which is it?---It's – there are a lot of records. I haven't found those specific marketing records.

You don't know if - - -?---I don't have the marketing records.

- - - ACBF has records of these advertisements?---No, I don't.

Okay. ACBF also advertised through television advertising, didn't it?---It did.

Yes. ACBF advertised its policies on Imparja?---I wasn't aware of Imparja.

Do you know what it is, Mr Jones?---An indigenous network.

An indigenous network. And you accept that there were advertisements made on Imparja as well?---To my – the best of my knowledge, yes.

Yes. And in recent promotional material used by ACBF, the logo is often accompanied by the statement:

Over 20 years working in the Aboriginal community.

Are you familiar with the use of those words?---Yes.

And are those words what you refer to in one of your recent media releases from last week; are they culturally appropriate communications? That's the words that you used in your media release?---I'm unaware, you haven't been advised otherwise.

What were you referring to when you referred to culturally appropriate communications?---Ensuring that they were respectful.

What communications were you referring to?---Any communications. It was still going through that cultural audit and we were working with that indigenous organisation to ensure that any and all ongoing communication is culturally appropriate.

ACBFs promotional material has been very successful, hasn't it, Mr Jones?---It may – it depends on interpretation.

Well, ACBF provides a very large number of Aboriginal and Torres Strait Islander people with funeral insurance, doesn't it?---It does service a – a portion of the population, yes.

It's a large proportion of the Aboriginal and Torres Strait Islander community, isn't it?---I'm unaware of the exact proportion.

Well, can I give you an example. Can I take you to some statistics about your policies and their coverage on Palm Island in Queensland. Could I ask that you be shown CBA.0001.0390.0011. Now, you won't have seen this document before, Mr Jones. It's a document that was provided to the Commission by CBA. Created by
5 CBA in January this year. Do you see that date?---I do.

By its Group Customer Advocacy and it's entitled supporting Palm Island customers?---I do.

10 Now, Palm Island has a very high Aboriginal and Torres Strait Islander population. Do you agree?---It does.

And if we turn to 0012 in this document, we see some statistics about the population of Palm Island. Can you see from the table on the right-hand side that about 94 per
15 cent of the Palm Island population identify as Aboriginal and Torres Strait Islander people?---I do.

And you can see from this slide that Palm Island has about 2446 residents?---I do.

20 We see here that about 897 of them are Commonwealth Bank customers. Do you see that from the second table?---I do.

Active, current customers?---I do.

25 So about a third of the customers on Palm Island are CBA customers?---Yes.

And CBA, we see in this document, looked at the accounts of those customers and, as I will show you, they looked particularly at the direct debits coming out of those accounts. So could I ask you to look at 0015. So this analysis – this is a page
30 showing some analysis by CBA of direct debit payments coming out of those accounts over a five month period to January 2008, which is the date of the document. I'm sorry, January 2018. Do you recall the date of the document?---Yes.

35 So CBA was looking at a five month period prior to that time, and CBA found that there were a large amount of direct debits, do you see at the top of the page, "For non-essential services targeting those customers"?---I see that.

And the table shows the top 20 direct debit companies targeting Palm Island customers in the five month period?---I see that.

40 And the first entry in the table is ACBF Funeral Plans Proprietary Limited?---I see that.

45 So over that five-month period, there were 1433 direct debit transactions from the CBA customers to ACBF Funeral Plans?---I see that.

For a total amount of over \$34,500?---Correct.

And that made the ACBF Plan the company to which direct debits on Palm Island were most frequently made over that five month period. Do you see that, when - - -?---Yes.

5 - - - you look at the other figures in the table?---Yes, I do.

And separately, a few lines down from that entry, do you see another entry, which is:

Aboriginal Community Benefit Fund Proprietary Limited.

10

?---Where was that, sorry?

I think we had a red dot next to it a moment ago to assist you. Do you see that?---I do.

15

And the Aboriginal Community Benefit Fund was the subject of 612 further transactions?---Correct.

Is that fund number 2?---It is.

20

Yes. And those 612 transactions led to a total amount of more than 12,900 in direct debits over this five month period?---Correct.

You see at the top of the slide under the heading Addressing Direct Debit:

25

CBA notes that the top categories of direct debits on Palm Island were pay day lenders

They were the highest. Followed by funeral insurance and life insurance?---Correct.

30

And we see from the category column in the table that ACBF was the only provider of funeral insurance?---Correct.

So if we use this as an example of an Aboriginal and Torres Strait Islander community, we see very high uptake of your product, don't we?---From what it appears, yes.

35

Yes. I tender that document, Commissioner.

THE COMMISSIONER: Supporting Palm Island customers, CBA presentation, January 2018, CBA.0001.0390.0011, exhibit 4.159.

40

EXHIBIT #4.159 RTING PALM ISLAND CUSTOMERS, CBA PRESENTATION, JANUARY 2018 (CBA.0001.0390.001)

45

MS ORR: Now, does ACBF intend to continue to market the ACBF Plan to Aboriginal and Torres Strait Islander people?---With conjunction with any government directions, and ensuring that it's culturally appropriate, and meets within the guidelines, yes.

5

So did you say in conjunction with any government directions. Is that what you said?---Directions.

10 Like what directions, Mr Bryn – Mr Jones, I'm sorry?---Well, I was unaware of some of the things that you've shown me today, and I will ensure that anything going forwards will be meeting any guidelines from government agencies and regulators.

What were you unaware of, Mr Jones?---I was aware that we had to have the – the disclaimer - - -

15

Yes?--- - - - that you showed earlier on.

Yes?---And we will continue to do so. And if there's any instances where we haven't, they will be immediately rectified.

20

And you said in conjunction with any government directions and ensuring that it's culturally appropriate and meets the guidelines. Could I just ask you about those – the second and third matters there, culturally appropriate and meets the guidelines?---I would love to sit with Mr Boyle and Ms Edwards and ensure that any future promotion or publication is in direct consultation within the community.

25

And it hasn't been the case so far, has it?---I've made efforts to, and that was part of my meeting with Aaron Davis from ICAN, was to change the direction and ensure that we are on the right path. I'm not saying that we weren't, but from - - -

30

You're not saying you weren't?---No. I'm saying that there's a – what had been conceived in the past, if there was any wrongdoings, that I'm here to help direct us – this company going forwards.

35

I thought you had been brought in to change things; is that right?---Yes.

So things had gone wrong in the past?---They may have.

40

Well, there was a need to bring someone in to change things, so things had gone wrong?---It's changing, also, with the times. Like, the company hadn't changed.

45

And how have you changed the company with the times, Mr Jones?---We're introducing (a) the cultural audit, ensuring that the systems – updating the computer systems, we're going to give customers their own log-in details so that they can, at their own discretion, pick and choose what benefit amount they would like, to ensure that they've got all the tools at hand, so there's no hawking involved or humbugging,

and that they can ensure that they can keep their own accounts up to date or elect in or elect out.

5 Are you aware of difficulties with internet access in remote Aboriginal and Torres Strait Islander communities, Mr Jones?---I am.

10 But the changes you've made are largely technological changes designed for users of the internet?---They are. And we're also growing our customer service team to ensure that they can adequately meet any demand by way of phone calls, and we're ensuring that any print media is adequately appropriate and has picture diagrams to ensure that they adequately understand the products in which they're signing up to, and going forwards I want to ensure that we're meeting that – that need.

15 You referred a number of times to the cultural audit. Can I take you to the report of that cultural audit now?---Yes.

Which is ACBF.0003.0001.0114. So this is a report produced by MURA Connect; is that right?---That's correct.

20 What is MURA Connect?---It's an indigenous-based organisation.

25 What sort of indigenous-based organisation, Mr Jones?---They – I approached them to prepare a RAP, or Reconciliation Action Plan, for us as an organisation, and also to produce a cultural audit of the organisation.

And does ACBF intend to implement the recommendations proposed by MURA Connect in this report?---Yes.

30 Okay?---We're currently working with them to – to act on their recommendations.

All right. Could we turn to 0118 in the document. Now, we see there that ACBFs goal is to have its products widely recognised and trusted within Aboriginal and Torres Strait Islander communities. Do you see that?---I do.

35 And:

MURA has provided ACBF with a process by which to meet its long-term goal of having ACBF products widely recognised and trusted within those communities.

40

Do you see that?---Yes.

So amongst other things:

45 *MURA has recommended that ACBF establish a list of trusted businesses, NGOs, community groups and individuals within Aboriginal and Torres Strait Islander communities, and enter into formal partnerships with appropriate –*

that might be intended to be “where appropriate”:

that can be engaged and approach to sign up community members to ACBF products.

5

?---Correct.

So ACBF intends to do that, to enter into formal partnerships with entities?---Where appropriate, yes.

10

That can be engaged to promote and sign up community members?---Where appropriate, yes.

And have you entered into any formal partnerships?---No, we haven't.

15

And MURA also recommended that ACBF promote its products and services through attendance at community events, like NAIDOC week, reconciliation week and sporting carnivals; you see that?---Correct.

20

You're going to do that?---We've got stands at NAIDOC events, yes.

And MURA recommended that ACBF ensure that ACBF promotional products are distributed to Aboriginal medical centres, Legal Aid, and Aboriginal Land Council offices. You intend to do that?---If that's part of their recommendation and that's appropriate, yes.

25

And MURA also recommended that you continued to leverage your existing customer base for the purpose of signing up new customers, didn't they?---They have.

30

Yes. So if we turn to 0121, we see under the heading Audit Findings that:

Given the large number of ACBF policyholders under the age of 18 (approximately 5000 at present) it appears that a large number of parents are taking out cover for their children. Couple this with a large number of sign-ups that are obtained via referrals from current customers, it makes sense for ACBF to offer incentives for its current customers to sign up additional policyholders.

35

40

Do you see that?---I do.

And MURA made two recommendations on this front. That you:

Research the benefits and cost to ACBF in offering referral discounts to existing policyholders.

45

See that?---I see that.

And that you:

Research the benefits and cost to ACBF in offering family policies at a reduced rate, instead of having each family member signing up to an individual policy.

5

?---I see that.

Have you implemented those recommendations, Mr Jones?---No. Well, that's part of what the actuary is looking at.

10

All right. I want to come back to this document shortly, but for now I will tender it.

THE COMMISSIONER: Exhibit 4.160, Cultural Audit Report, MURA Connect, ACBF.0003.001.0114.

15

MS ORR: I think 0001.

THE COMMISSIONER: So the number is ACBF.0003.0001.0114.

20

**EXHIBIT #4.160 CULTURAL AUDIT REPORT MURA CONNECT
(ACBF.0003.0001.0114)**

25 MS ORR: Now, I want to turn to asking you some questions about how you sell your policies, Mr Jones. ACBF, we know from your statement, offers its policies through a number of different channels; is that right?---Correct.

30

Through phone inquiries, in-bound phone inquiries?---Correct.

Through in-bound website inquiries?---Correct.

Through what you refer to as local in-field support and attendance?---Correct.

35 What are you referring to there, Mr Jones?---At the time of my statement there was still some field representatives that were in the field, and they were approaching existing customers, and updating information where necessary, and where they referred new customers.

40 So they were approaching existing customers and updating where necessary. You mean updating their policies?---Updating their details, yes.

Yes. And referring new customers. Is that what you said?---If they knew anyone that would benefit from it, yes.

45

So asking the existing customers if they could refer other potential customers?---Yes.

So you said at the time of your statement that was still the position, that those field representatives were in the field?---Yes.

Your statement is only a short time ago?---Yes.

5

So has the position changed in between when you made your statement and - - -?---We were in the – in the process of transitioning field reps out of the field.

And have you completed that transition, Mr Jones?---Yes, we have.

10

So you now have no local in-field support and attendance?---We've got four indigenous ladies that are networking and working in the field to create connections with bodies.

15 I want to make sure I understand the work of the women you've described, Mr Jones. You said that they're networking. What do you mean by that?---They're attending land councils and other organisations.

20 For what purpose?---To see if there's an opportunity to work with land councils to offer our product to those that may need it.

So they're looking for sales opportunities through land councils?---Correct.

25 And you also said they were working to create connections. Are there any other ways that they're working to create connections?---Well, there's other bodies that work within - - -

30 Sorry, could you - - -?---There are other organisations that work within the indigenous communities.

And the work with those other organisations is also about creating sales opportunities?---Yes. And supporting – and supporting them where we can as well.

35 Supporting who?---Other organisations, whether it be through resources or through manpower.

40 Okay. So these four indigenous women that you've referred to are liaising with various organisations, and part of their role is to create further sales opportunities?---Yes.

45 Okay. Now, in your statement you mentioned this transition that you were going through in relation to the use of your in-field team, and you said at paragraph 10.2 of your statement that the transition was due to increased competition and higher acquisition and legislative compliance costs?---Correct.

Do you recall that?---Yes.

So what is the – I just want to understand both of those things, the increased competition and the higher acquisition and legislative compliance costs?---There are other funeral services that are being offered - - -

5 Yes?--- - - - within the market.

Yes?---And to maintain a sales – in-field sales team, it comes at a cost.

10 So there is increased competition, but you’re pulling your sales people out of the field sales; is that what you’re saying?---Correct.

To deal with the increased competition?---To change the way we go forward, yes.

15 I see. And what are the higher acquisition and legislative compliance costs you’re referring to?---Sorry, say that again?

What are the higher acquisition and legislative compliance costs that you’re referring to in 10.2?---The higher acquisition, so the cost of maintaining our sales team.

20 And what are the legislative compliance costs?---The – I’m unaware what I was referring to there, sorry.

Did you write this statement, Mr Jones?---Yes, I did.

25 This is your language, “legislative compliance costs”?---Obviously, it was in consultation with counsel and – and those that I needed to source the information - - -

30 Well, are they your - - -?--- - - - from, to ensure that it was appropriate and in line with where the company’s at.

Are they your words, “legislative compliance costs”?---Yes.

35 So what were you referring to?---The ongoing cases with the likes of FOS and other Legal Aid groups.

So - - -?---I believe taking the field staff out of the field would eliminate any challenges going forwards.

40 So there are issues for ACBF with ongoing FOS cases and ongoing engagement with Legal Aid groups?---There’s a small percentage, yes.

And that’s what you’re referring to here?---That was, yes.

45 And you say that you’ve made redundancies in the team, in this paragraph of your statement, and that they have been made after a consultation process in recent weeks. What was the consultation process?---With MURA Connect.

Now - - -?---And the management team at the time.

You also say at paragraph 7.2 of your statement that you have:

5 *...regional field representatives who are invited to existing members' houses and periodically drop in every six months to update information and ensure their details are correct.*

10 See that?---Yes. It's the same field staff I was - - -
Same people?--- - - - talking about before.

Is it?---Correct.

15 So that's the work they were doing, the dropping in every six months to update information and ensure details were correct?---Yes.

So they were going to people's houses?---Yes.

20 And they were able to sell policies in those houses, weren't they?---If they were invited to, yes.

25 Yes. So still a form of door-to-door selling that was going on until very recently?---Yes.

But you say you've now ceased that?---We have. And we made those directives prior to the Royal Commission.

30 As a result of what, Mr Jones?---The transitioning process, realising that times had changed and the need for door-to-door sales had changed.

As a result of the engagement of the Royal Commission with your entity?---No, just in general, with the greater community.

35 You tell us in your statement that you don't record the number of policies that you sell via each of the different channels; is that right?---No, we don't. No, we don't.

40 But we know from the MURA Connect report that the majority of your policies are obtained via word of mouth referrals, from current policyholders which are followed up by on the ground field staff. That's right?---Correct.

45 Okay. Now, has ACBF previously had an arrangement with the Department of Human Services that permitted it to deduct plan payments from a customer's Centrelink benefits using the Centrepay system?---They did.

And there was a written agreement between ACBF and the Department of Human Services that permitted that to occur?---Correct.

And as part of that written agreement, ACBF was not permitted to sell its policies in an unsolicited setting. Are you aware of that?---Correct.

That was a condition of the arrangement?---Correct.

5

And then – excuse me – in May 2015, the Minister for Human Services made a decision that funeral insurance premiums would no longer be permitted to be collected by Centrepay?---Correct.

10 And ACBF was the only funeral insurance provider that used Centrepay to collect its premiums, wasn't it?---I wasn't aware of that.

Well, perhaps if I show you a document to assist you with that. RCD triple – I'm sorry, RCD.9999.0055.0036. This is another judgment from the Federal Court, Mr
15 Jones. Have you seen this judgment?---No. But I've been briefed by counsel.

You know that this judgment resulted from a challenge made by ACBF to the Minister's decision that funeral insurance premiums wouldn't be permitted to be collected by Centrepay?---Correct.

20

So ACBF challenged that decision in the courts?---They did.

And that was an unsuccessful challenge?---From my understanding, on appeal, yes.

25 Yes. And could I ask you to turn to 0041 within that document. Paragraph 10 of the judgment, do you see there a reference to the decision made by the Minister on 22 May 2015 and the press release issued by the Minister?---Yes.

And do you see towards the bottom in the last few lines:

30

Though ACBF is not named expressly in this minute –

So there's a minute referred to above that:

35

...it is stated in it that, "The department is aware of only one provider using Centrepay for funeral insurance, but that provider has over 8800 customers. Other evidence makes it clear that the provider referred to was none other than ACBF."

40

?---I see that.

So you accept that you were the only funeral insurer collecting your payments via the Centrepay system?---From what I've just read, yes.

45

I tender that document, Commissioner.

THE COMMISSIONER: Reasons for judgment ACBF v Chief Executive Centrelink, RCD.9999.0055.0036, exhibit 4.161.

5 **EXHIBIT #4.161 REASONS FOR JUDGMENT ACBF V CHIEF EXECUTIVE CENTRELINK (RCD.9999.0055.0036)**

10 MS ORR: Now, as a result of that decision and your unsuccessful challenge to that decision, the agreement that you had with the Department of Human Services no longer is operative?---From my understanding, yes.

15 Yes. So the condition within that agreement that you couldn't sell your products in unsolicited settings is no longer operative?---From my understanding, yes.

20 Yes. Thank you. Now, I want to ask you some questions about the staff within your organisation, Mr Jones, and I want to go back to some observations made by MURA Connect in their cultural audit report which is ACBF.0003.0001.0114. Now, could I ask you to look at 0116 within this document. We looked at this page earlier. I'm sorry, I don't think we did look at this page earlier. We see on this page that MURA found, as part of this audit, that from the interview and information gathered – do you see this under Audit Findings?---Yes.

25 Continuing:

From the interview and information gathered there appears to be a lack of cultural notwithstanding and cultural confidence amongst the majority of ACBF employees.

30 ?---I accept that.

That was the finding?---Yes.

35 And MURA also found that:

40 *Recruitment processes tend to focus on the skills required to perform the role whilst failing to recognise the inherent business requirements of the need to have an understanding of Aboriginal and Torres Strait Islander culture and history, and the ability to communicate effectively and sensitively with Aboriginal and Torres Strait Islander people.*

?---I see that.

45 And MURA recommended that ACBF develop a workforce of:

Culturally competent staff who possess an understanding of Aboriginal and Torres Strait Islander culture and practices and have the confidence to

successfully communicate with Aboriginal and Torres Strait Islander people about sensitive issues.

?---Correct.

5

And in relation to recruitment practices, MURA recommended that:

10 *Of those positions which have inherent business requirements to frequently engage with Aboriginal and Torres Strait Islander people, communities and businesses, consider where it makes business sense for them to be filled strictly by Aboriginal and/or Torres Strait Islander people.*

?---Yes.

15 Have you implemented any of those recommendations, Mr Jones?---Yes, we have. We're working with MURA Connect on all future appointments.

20 So you're working to develop a workforce of culturally competent staff?---Yes. Prior to MURA Connect coming in, I engaged a local elder to come in and run a cultural day.

Had that happened before?---I believe it had. I'm not sure when, but from my understanding that had happened before.

25 So in what ways are you implementing these recommendations, Mr Jones?---Well, we're working with MURA Connect to employ – so they're actively on the ground as well as providing induction material that will help address those issues.

30 So is that the four Aboriginal and Torres Strait Islander women that you've referred to in your evidence?---No, it's not.

So who – have you engaged any other Aboriginal and Torres Strait Islander people?---We're attempting to, yes.

35 But apart from those four, you have not yet engaged any others?---No.

Okay. Now, in your statement you provide information about the incentive and KPI structure for your infield staff?---Correct.

40 They're paid \$20 for each new nominee that they sign up?---Correct.

And that's a discretionary payment that's made in addition to their salary and allowances?---Yes.

45 And what does the discretion hinge on?---That they had to make three fortnightly payments before receiving that.

So the payment, as you explain it in your statement, is made in two parts: 50 per cent is payable after those first three fortnightly payments are received from the policy holder?---Correct.

5 And the remaining 50 per cent is payable after you've received the sixth fortnightly payment from the new policy holder?---That was a new directive, yes. Prior to that it was \$20 per nominee on the third payment. That was the model that we had inherited.

10 So there's a concern that policyholders are going to cancel their policies within a short period of time after being signed up?---I believe that's standard in the insurance industry.

And people won't get their incentive payment if that occurs?---No.

15

And you also have KPIs and incentives that relate to your sales staff who are not out in the field, don't you?---Sales staff that aren't in the field?

Yes?---No.

20

So answering phones?---No, there's no sales incentive for phone people – those on the phone.

25 No KPIs?---No. As a team, they're – they're encouraged to ensure that they're answering phones within the first three rings.

That's it? That's all they're encouraged to do?---That I know of, yes. To the best of my knowledge.

30 Well, what guidance are they given about how to undertake their sales task?---They're not so much sales people on the phones. They're customer service. So if someone rings up for a quote, they read the appropriate scripting, and ensure the person understands at the other end of the phone.

35 Well, you've referred to inbound phone calls as one of your sales channels, haven't you, Mr Jones?---Yes.

So they do sell products?---They – yes.

40 Yes. And are they given no guidance other than to pick up after – before the first three rings?---Three rings, and they read the – the sales presentation to the person on the other end of the phone ensuring that all their details are correct.

45 Are you saying they have never had KPIs, Mr Jones?---I'm – I'm not sure.

Well, can I ask that you look at ACBF.0006.0001.0045. Now, this is a letter to a sales representative, who's not an in the field sales representative, explaining the terms and conditions of their employment. Do you see that?---Yes, I do.

5 It's dated 13 February last year?---Yes. Well, that was well before my time. I haven't seen this letter.

Are you familiar with letters that you send now to your representatives when you hire them?---I try and make myself aware, yes.

10 Well, can I ask you to look at the second page of this letter, 0046. And do you see the specific duties there, referred to as the KPIs?---Yes.

And the KPIs required them to:

15 *Complete applications for 10 new nominees each week.*

?---Correct.

20 And to:

Call on existing clients to review their policies.

?---Correct.

25 And if they met or exceeded their KPIs they were entitled to a \$20 bonus for each new nominee?---That may have been the case, yes. I've never seen that in practice whatsoever in my time at ACBF.

30 Well, do you mean that these people who are employed under these letters, and told that this is the way they will be remunerated, were not remunerated in this way?---I'm unsure. I'm not sure who that letter refers to and whether they're still within the business.

35 The \$20 bonus was only payable, again, if they got the first three payments from the policy holder?---Okay.

And they were also entitled to a \$10 payment for each new method of payment for a client. Are you familiar with that?---No, I'm not.

40 Why would ACBF pay a bonus in respect of a policy holder switching their payment method?---I'm unaware. It may be because certain methods were unsuccessful.

45 So this appears to have been the position as conveyed by ACBF to people they hired in 2017. And I want to take you to a similar letter from this year. I will tender this letter first, Commissioner.

THE COMMISSIONER: Letter of appointment ACBF Administration Proprietary Limited, 13 February 2017, ACBF.0006.0001.0045, exhibit 4.162.

5 **EXHIBIT #4.162 LETTER OF APPOINTMENT ACBF ADMINISTRATION PROPRIETARY LIMITED DATED 13/02/2017 (ACBF.0006.0001.0045)**

10 MS ORR: Could I ask that you look at ACBF.0006.0001.0154. And we see this is a letter sent by ACBF to a new employee on 4 April this year?---Yes.

I assume you're familiar with this form of letter, Mr Jones, because it's in your period of time with ACBF?---Correct.

15 I'm sorry?---Correct.

Yes. And now if we could turn to 0168 within this letter, we will see a page headed Bonus Terms. So this is a letter for representatives who are not infield, isn't it?---This is one of the indigenous letters.

20

This is one of the indigenous women, is it?---From what I believe, yes.

The four indigenous women you referred to before?---Correct.

25 Okay. So they're entitled to bonuses, we see, from this page?---Correct.

You see that? So there's a sliding scale for these employees?---Correct.

30 For the first 29 additional nominees that are signed up, they're paid \$20?---Correct.

And for between 30 and 39 additional nominees, they're paid \$30?---Correct.

And so on, culminating in them being paid \$70 for between 70 and 100 additional nominees?---Correct.

35

So these are the terms on which you have engaged the four indigenous women who are doing the networking work that you described earlier?---Initially, yes.

40 What do you mean initially, Mr Jones?---Initially, they were engaged to see whether they would be able to sell under the same mannerisms – or the same method and, realising that they weren't able to, we have since transitioned them into different positions where they're networking, as I stated before.

45 But they're networking to make sales opportunities. That was your evidence?---Yes.

All right. So do you say they were remunerated on these terms for a period but they are no longer?---Yes.

What's the basis for their remuneration now?---It's – I mean, it's still based on connections that they make and sales that are generated from it.

Yes?---But not from door-to-door sales, no.

5

This doesn't say door-to-door sales, this is about the number of nominees who are signed up?---Yes.

10 Are they still remunerated on the basis of the number of nominees that they sign up?---Correct.

Okay. Thank you. So how many of your employees are currently remunerated on this basis, this sliding scale basis?---There's four.

15 Thank you. They are the four indigenous women?---They are, correct.

Thank you. I tender this letter, Commissioner.

20 THE COMMISSIONER: Offer of employment ACBF Administration Proprietary Limited, 4 April '18, ACBF.0006.0001.0154, exhibit 4.163.

EXHIBIT #4.163 OFFER OF EMPLOYMENT ACBF ADMINISTRATION PROPRIETARY LIMITED DATED 04/04/2018 (ACBF.0006.0001.0154)

25

MS ORR: Now, can I turn, Mr Jones, to the information that ACBF requires from a prospective plan holder when they apply for a policy?---Yes.

30 The customer needs to submit an application form, just as Ms Walsh did?---Correct.

Yes. And that includes a health statement that needs to be completed?---Correct.

35 And ACBF uses the disclosed pre-existing health conditions to determine a health level of 1, 2 or 3 that will be assigned to the nominee?---Correct.

And the nominee's health level and age are the two factors that determine the fortnightly premium?---Correct.

40 And that's done using a health and age levels pricing table that you've included in your statement?---That's correct.

And we see from that that a nominee with a level 3 health level pays the most expensive premiums?---Yes.

45

Now, where do your health classifications in that table come from?---I believe from actuary information.

What's the basis for designating certain conditions as level 1, level 2 or level 3?---The assumed risk associated with insuring someone with certain health classifications.

5 So does ACBFs health classification system result in higher premiums for people with medical conditions that are more common amongst Aboriginal and Torres Strait Islander people than amongst Australians generally?---I'm unsure.

Well, if you say it's about assumed risk?---Yes.

10

What's the basis for dealing with the assumed risk?---I dare say it's their health conditions and the mortality rate that's associated with those.

15 So your system results in higher premiums for people with medical conditions that are more common amongst Aboriginal and Torres Strait Islander people?---If that counts to the higher mortality rate of indigenous Australians, then yes.

Yes. So you charge them more on that basis?---Yes, because the risk is higher.

20 I want to ask about your premium structure. You deal with this in your statement in some tables that follow paragraph 11. Policyholders can choose their benefit amount; is that right?---Correct.

25 So if you get a level 1 or a level 2 health classification, the range for your chosen benefit amount is from 6000 to \$20,000?---Correct.

And if you're given a level 3 health classification, your benefit amount can be from 4000 to \$10,000?---Correct.

30 Now, could I ask you to look at ASIC.0025.0003.1757. This is the ASIC analysis of the funeral insurance sector in Australia, issued in April 2014, that I took you to yesterday?---Yes.

35 Could I ask you to look at a different section of the report, at 1769. We see there some findings of ASIC about the average sum insured for funeral insurance. Do you see the heading towards the bottom of the page?---Yes.

You see from paragraph 49 that:

40 *Among all insurers as at 30 June 2013, the average sum they were insured for was 8859.*

?---Yes.

45 And:

The average sum insured among all new insurees was slightly higher at \$10,631.

?---Correct.

5

But your customers were insured for an average amount, we see in paragraph 50, of about \$6700. Do you see that?---6700?

10 Yes. So do you see in paragraph 50 that for active policies those insured with a particular insurer, whose name is redacted, were covered for the highest average amount, which was \$11,309, and in contrast, your customers were insured for the lowest average amount at \$6709?---Yes.

15 That was the finding of ASIC?---Okay.

15

And if we look at the table over the page at 1770 we see a list of the insurers that ASIC looked into, and the names of all the other insurers are redacted, but we see where you appear, at the bottom of the table with the lowest average insured amount?---Correct.

20

Do those figures concern you, Mr Jones, that your clients are insured for far less than clients of other insurers?---No, because it's proportional to the – what the individuals elect is affordable and appropriate for them at the time.

25 But what they can elect is determined by the health rating that you give them. We saw that there are bands that they can't exceed depending on the particular health classification you've ascribed?---They can all get a higher than \$6000 benefit if they elect to. They just will have to pay more, which is directly related to the risk associated.

30

Well, is that right? You tell us in your statement that they can only choose an amount within a particular band depending on their health classification. Do you remember that I asked you and you agreed that for a level 1 and level 2, the band was 6 to 20,000?---Correct.

35

And for a level 3 classification, it's 4 to 10,000?---Correct.

40 So does that concern you that they are being insured for amounts far less than what some other insurers are insuring?---Sorry, so you would – are you inferring that we should have a 15 and \$20,000 amount - - -

45 No. I'm just asking you whether you are concerned?---Sorry, I'm just confused with the question. I just – if we – if we need to add a 15 and 20,000 band for level 3, then we can do that, but it's – the costs associated with it would – would increase as well.

45

Right. So how have you come up with those bands? That's through your actuary's work, is it?---From my understanding.

Yes?---This is what I - - -

5 But are you proposing now to change those bands so that people can insure for a higher amount?---If that's – if that's what's being inferred, where – my understanding is the tables that are there, which I've inherited, were put in place by previous management under the guise of – or under the direction of an actuary.

10 And are they appropriate tables, Mr Jones?---I believe with the mortality inherent risk within the indigenous, yes.

I see. I see. Well, each of your types of policies, your three different types of policies, uses a stepped premium structure, doesn't it?---Yes.

15 You understand what a stepped premium structure is?---I do.

Okay. So each nominee enters a – a new – as they enter a new age bracket in the contribution table that you've told us about in your statement, the amount of their premiums goes up?---That's correct.

20 Okay?---This table is given to them at the time of the application.

Yes?---Yes.

25 They receive a copy of that table?---Yes.

And, putting to one side the table itself, does ACBF disclose to them in any other way that their premiums are going to increase over time?---Other than that, no.

30 Can I ask you to look at another ASIC document, which was a report produced by ASIC in October 2015, ASIC.0800.0008.0030. This is a report published in October 2015 by ASIC entitled Funeral Insurance: a Snapshot?---Correct.

You see that? You're familiar with this report, Mr Jones?---Yes. Yes, I have read it.

35 And we see on this front page that it gives a snapshot of the funeral insurance market in Australia in 2013 and 2014?---Correct.

And this report contained a number of recommendations to funeral insurers?---Yes.

40 And one of those recommendations was that funeral insurers provide an upfront estimate of the total cost of the policy based on the options offered. You're familiar with that?---I am.

45 Does ACBF provide an upfront estimate of the total cost of the policy to its customers?---No, it doesn't.

Why not, Mr Jones?---I'm unaware as to why it hasn't acted on that. Moving forwards, that's something that we will add in to those recommendations, into all future promotion and any information given out.

5 Do you understand that this involves engaging with the particular customer and giving them an upfront estimate of the total cost of the policy to them? It's not about your marketing material, it's about your engagement with each potential customer?---Each and every time that they take out a quote.

10 Yes. So you say you're going to commence doing that?---Yes.

And you don't know why you haven't done that, up until whenever you're going to start doing it, given that this recommendation was made in October 2015?---Yes.

15 You don't know why?---I don't know why.

All right. I tender - - -

20 THE WITNESS: It's been part of the IT platform that we're releasing, and I understand that it's online, and those that are in remote locations will struggle to – to do that, but it will be part of the scripting for any phone calls, any documentation going forwards, any engagement with individuals, that we will make that directive that they are fully aware of the total cost to premium - - -

25 So you will do this going forward?---Yes.

You will comply with the recommendation?---Yes, 100 per cent.

30 I tender the document, Commissioner.

THE COMMISSIONER: ASIC report 454, Funeral Insurance: a snapshot October '15, ASIC.0800.0008.0030, exhibit 4.164.

35 **EXHIBIT #4.164 ASIC REPORT 454 FUNERAL INSURANCE: A SNAPSHOT, OCTOBER 2015 (ASIC.0800.0008.0030)**

40 MS ORR: Now, you agreed yesterday, Mr Jones, that your plan holders can end up paying more in premiums than they would ever be entitled to recover under the policy?---A small proportion of them, yes.

This is what you referred to as the “unders and overs” yesterday?---Correct.

45 And you have provided numbers in your statement of the plan holders for each of the three types of policy who have already paid more in insurance premiums than their current maximum benefit available?---Correct.

Now, in the case of the ACBF Plan, 572 of your 13,460 plan holders are in that position: they've already paid more than they could ever recover under the policy?---Correct.

5 And you told us yesterday that in January there was a management directive by which you would release policyholders from making future premium payments if they called and identified that they were struggling to make contributions?---Correct.

10 And we discussed yesterday – and I think you agreed – that that would only happen if the customer called and requested that it happen?---Correct.

15 Could I ask you to look at ACBF.0003.0001.0136. This is a document that ACBF produced to the Royal Commission. Yes. I think we need to pan up higher to see the title of the document. The version that we have of this document has a title, and headings to the columns. The title reads Future Payments Being Waived. Are you familiar with the document in that form, Mr Jones?---I am.

Yes. You know what this document is?---I've seen it, yes.

20 Yes. And the columns – the first column is headed Reference Number. The second column Paid?---Correct.

25 The third column Payout, the fourth column Date Approved, and the final column Letter Sent?---Correct.

So this document lists all of the accounts for which policyholders have been released from making future premium payments?---That's correct.

30 So there are 26 accounts listed?---Yes.

And we can see that in two of those accounts the policy holder hasn't, in fact, paid more in insurance premiums than the maximum benefit available?---Sorry, could you repeat that?

35 There are two instances, which are the eighth and the 10th row down, where the person has paid an amount in the second column which is less than their payout figure in the third column?---Yes, I can see that.

40 So that means that there are 24 accounts where you've waived future payments in circumstances where the person has paid more than their entitlement?---Yes.

I tender that document, Commissioner.

45 THE COMMISSIONER: ACBF list of future payments waived, ACBF.0003.0001.0136, exhibit 4.165.

**EXHIBIT #4.165 ACBF LIST OF FUTURE PAYMENTS WAIVED
(ACBF.0003.0001.0136)**

5 MS ORR: Can I come back to the ASIC report from 2015, ASIC.0800.0008.0030. I
want to ask you about another recommendation within that report. Are you aware
that ASIC recommended in this document that if the total amount of premiums
payable under a policy has the potential to exceed the benefit amount – this is at
10 0035 – in those circumstances an insurer should clearly and prominently disclose this
to the consumer as an identified risk. Do you see the third dot point in the first
row - - -?---I do.

- - - on the right-hand side?---I do.

15 Continuing:

*If the total amount of premiums payable under a policy has the potential to
exceed the benefit amount, clearly and prominently disclose this to consumers
as an identified risk.*

20

Does ACBF do this?---No.

Why not, Mr Jones?---I'm unaware as to why it doesn't do it.

25 So again a recommendation made by the regulator in October 2015 that has not been
adopted by ACBF?---And it should be, and it will be.

So you intend to implement this recommendation as well?---Yes.

30 So how are you going to do that?---With counsel, with those that - - -

How are you going to clearly and prominently disclose this matter to consumers as
an identified risk?---We will ensure it's part of any disclaimer in bold, and verbally,
and visually shown, which is culturally appropriate to the people that we're - - -

35

So you plan to do this by expanding the disclaimer on your promotional
material?---Disclaimer, and making sure that any material that is produced is shown
with pictorials and - - -

40 When will you start doing that?---Straight away.

And you can't explain why it has taken almost three years to implement that
recommendation?---I can't. It was well before my time, sorry.

45 Okay. I'm going to ask you now about cancellations of your policies, Mr Jones.
You say in your statement that ACBF only cancels policies in a limited number of
circumstances?---Correct.

One of those is if the plan holder asks for it to be cancelled?---Correct.

Another is if a plan holder passes away and either receives the payout or doesn't?---Correct.

5

You also cancel if there are multiple missed payments?---Correct.

And under your rules, under your plan rules, you're entitled to cancel if the payment arrears become equal to or exceed the amount of four payments payable by that person?---In one year, yes.

10

Yes. Now in a media release, one of the media releases from last week, the one published last Wednesday, ACBF.0008.0001.0204, the 27 June media release – and if we look at the back page, 0205 – I'm sorry, it's on the screen. Do you see under ACFP versus other funeral funding options you provide a list of things that:

15

Unlike other funeral funding options, ACFP offers members –

do you see that?---I do.

20

And the third last thing that you offer members – I'm sorry, the fourth last thing is:

Ability to miss up to three payments in any calendar year and remain covered.

25

?---Correct.

Now, is that a fair characterisation of what you're doing here, Mr Jones? You're offering to the customer an ability to miss up to three payments?---We are. Other policies, with other insurers, I don't believe are as lenient.

30

So you have turned your entitlement under the plan rules to cancel a policy after four payments into a positive selling point: you're offering the ability to continue with the policy after missing up to three payments?---We're ensuring that those that want to continue with their benefit, that there's the appropriate means to continue to be covered.

35

And if you cancel a plan the nominee loses all of their cover?---Yes, they do.

No money is paid back to them?---No, it's not.

40

And in your statement in paragraphs 18 to 20, we see after those paragraphs some tables that provide an overview of the number of cancelled policies and the reasons for the cancellation. I might move to those tables. I've already tendered that media release, Commissioner.

45

THE COMMISSIONER: Yes.

MS ORR: See after paragraph 20:

Overview of circumstances of cancelled policies.

5 And on this page we're dealing with fund number 2?---Correct.

And we see in the table at paragraph 19 that for fund number 2 – I'm sorry, I'm just trying to find the reference to this. I can see that there's – I'm sorry, there's 260 policyholders who have cancelled their policy. Do you see that in paragraph 19, the
10 table there?---Yes.

Over what period have 260 policyholders cancelled their fund number 2 policies?---I believe the information's from 1 January 2013.

15 From – so over the last five years; is that right?---Yes.

And if we look at the table in paragraph 18, we see that for that fund, ACBF has cancelled 1862 policies. Do you see that?---Whereabouts, sorry?

20 So under 18, we've got a table that's called Policies Cancelled by ACBF?---Correct.

So there's a much larger number of policies cancelled by ACBF than cancelled by the policy holder. 1862 compared to 260?---Correct.

25 And how many of those 1862 ACBF cancellations occurred as a result of non-payment of premiums?---Of the 1862?

Yes?---It would be all of them.

30 All of them. Thank you. And in relation to the community plan we see in paragraph 19 the table there, that 166 policyholders have cancelled their policy?---Correct.

Is that, again, over that five year period?---Yes, it is.

35 And ACBF has cancelled 161 of those policies?---Correct.

Now, this is the fund that is not referable to – not provided for the Aboriginal and Torres Strait Islander community?---Correct.

40 Yes. And, again, is the 161 policies cancelled by ACBF entirely referable to non-payment of premiums?---Correct.

And for the ACBF Plan, the plan that is directed to Aboriginal and Torres Strait Islander people, we see that 9121 policyholders have cancelled those
45 policies?---Correct.

Again, over the five year period?---Correct.

And 13,175 of the policies have been cancelled by ACBF?---Correct.

Again, do we – do we understand that the entirety of those cancellations were due to non-payment of premiums?---Yes. Following the ruling where Centrepay was no longer a payment method, despite many attempts to contact those customers, a large – my understanding is 6000 of those customers were directly related to the Centrepay falloff.

Were they people that worked out after the Centrepay – the use of Centrepay to pay your premiums was cancelled, are they people that worked out the amount of the premiums that were being paid - - -?---No.

You say these - - -?---That's from people that we cancelled.

I see?---Because we – they're uncontactable.

I see?---Yes.

You couldn't find them?---No.

Even though you had been deducting amounts from their Centrelink benefits?---Yes.

6000 of them?---Yes.

And you had no ability to contact them?---In every instance where there's one missed payment, a text goes out, a phone call is made, a letter is sent, in every instance of a missed payment.

So these were people whose location you didn't know?---No.

But you were continuing to accept their premium payments?---Because if they're paying, there's – we're sending out documentation. And if they're paying, then – and if we're unable to contact them, then - - -

But how were you going to talk to them in the event that there was a need to pay them out?---Well, that's why we had field reps going around updating people's information because they do change their contact details frequently.

Right. But at that time, when you ceased to be able use the Centrepay system, you had 6000 Aboriginal and Torres Strait Islander customers whose whereabouts were not known to you?---That's correct.

Thank you?---We made our best efforts to contact each and every one of those.

If you cancel a nominee's plan for non-payment of premiums, they have to reapply to get a new plan, don't they?---In some instances, yes.

Well, in what instances? In all instances they would have to start again, wouldn't they?---They can either reinstate the previous plan or create a new plan, yes.

5 But they wouldn't get any credit from the previous plan because it was over?---If they applied their waiting period to their premium, at least the premium amount would be waived. In the first instance as soon as the first payment's received, if they're a level 1/2, they immediately receive \$6000 cover - - -

10 Yes?--- - - - after the first payment. If they're a level 3, they immediately receive \$4000 cover.

But the amount that they've paid under the policy that has been cancelled is not carried across, is it?---Well, no.

15 No. Thank you. Now, I want to ask you about what happens when a claim is made, assuming it's a person whose whereabouts you know. We see at 12.1 of your statement that you say that:

20 *All ACBF funeral plans pay the full protected benefit from the date of joining.*

?---They – sorry, restate that.

25 Well, I will just ask you to look at 12.1 of your statement, “Since all ACBF funeral plans”. Do you see this, the second sentence?---I do.

Continuing:

30 *...will pay the full protected benefit from date of joining, as opposed to paying an accrued value from a savings account, it was critical to protect the interests of existing members by providing a balanced and fair stepped contribution table that reflects the age and pre-existing health related risks associated with new members.*

35 ?---Correct.

So you're telling us there that your plans pay the full protected benefit from the date of joining?---Sorry, that's an error. That's what I was meaning was the – cover of the \$6000 immediately.

40 Yes. You don't, do you? You don't pay the full protected benefit from date of joining?---From the date of joining? It's from the first payment where they receive the \$6000 cover and after 12 months they receive the full benefit.

45 Could you just repeat that? I want to make sure I understand that. What – what do you say happens after the first payment?---After the first payment they are covered for up to \$6000.

What do you mean up to \$6000?---Well, they are covered the \$6000 for funeral related costs.

5 After they make the first payment?---After the first payment, yes, correct.

Right. And what else did you say?---And then after 12 months if they have elected a higher benefit amount of than \$6000, they are covered for that benefit amount.

10 Can I ask you to look at ASIC.0025.0001.0582. This is one of your training manuals provided to the Commission, Mr Jones. You've seen this document before?---No, I haven't.

Well, all of - - -?---Not the 2013 version, no.

15 You have seen this document before, haven't you? It was a document that the Commission drew your lawyers' attention to prior to you giving evidence?---I may or may not have. I'm not - - -

20 You don't know if you've seen this document?---Not this April 2013 training manual, no.

Did you look at the documents that the Commission identified for your lawyers prior to you giving evidence?---Whatever they provided to me, yes, but I have not seen this document.

25 Can I ask you to look at 0602 - - -

30 THE COMMISSIONER: Well, Ms Orr, is there any doubt raised about this document having been provided to – for the information of the witness? Mr McMillan?

MR McMILLAN: I will just confirm that, if I could, Commissioner.

35 MS ORR: I will wait for Mr McMillan to look at that because this is an ASIC produced document and it is possible, Commissioner, as Ms Zeleznikow draws to my attention, that it was notified to ASIC but not notified to ACBF.

THE COMMISSIONER: Well, I want to get to the bottom of it, Ms Orr.

40 THE WITNESS: I'm sorry, I'm only speaking to - - -

THE COMMISSIONER: Just a moment. Just a moment, Mr Jones. We will sort this out and then we will give you a chance to have a go in a sec.

45 MR McMILLAN: Commissioner, it's not in the list of materials that I've been instructed were brought to our attention that might be referred to by Counsel Assisting.

THE COMMISSIONER: Yes.

MR McMILLAN: But we certainly may have been given access to it in the suite of materials for this case study, but it wasn't – as I understand – in the list of materials
5 that we were specifically referred to.

THE COMMISSIONER: Yes.

MS ORR: I think that's right, Commissioner. This is a document that was produced
10 under a notice to produce directed to ASIC. Yes, directed to ASIC. And I apologise. It appears we have not included it on the list that was notified to ACBF prior to Mr Jones' evidence. So I will ask you to just take some time looking at the section that I'm going to direct you to, Mr Jones, which is 0602. Do you see the page benefit amounts and payouts? I would like you to look in particular to 9.2 limitations on the
15 payout amount?---Yes.

And do you see the paragraph there:

20 *After the first full payment is received there is immediate cover for \$6000 in the event of that nominee's death. There is a waiting period before the chosen benefit amount will be paid.*

?---Correct.

25 So what's the waiting period?---12 months, from my understanding. This document, as well, has since changed.

All right. So - - -?---So that's why I was unaware of it.

30 So this document, we see that in each year the maximum benefit available increases by \$2000 until they get to the maximum benefit amount. Has that changed as well?---Yes, it has.

35 All right. And you heard Ms Walsh's evidence that she received a maximum benefit certificate when she got to that point. Is that still the practice of ACBF, to issue - - -?---No.

- - - maximum benefit certificates?---No, it's not.

40 When did that change?---I'm unaware. I'm unaware, I'm sorry.

But you know it has changed?---I haven't been made aware that it's a practice currently.

45 So it could still be the practice, Mr Jones?---It could be. I only am aware of the current policies that we're selling, and - - -

You're not aware of whether you send out maximum benefit certificates still?---No.

Why – when they were sent, which might still be the case, why were or are they sent?---I'm unaware. It was before my time, sorry.

5

You don't know why maximum benefit certificates are sent to your policyholders?---I believe that it was a way – from what I could gather, it might be a way to notify the individual that their benefit amount has increased.

10 Their amount has increased?---Yes. So Ms Walsh's statement when she was referring to when she received it in 2008, she hadn't actually paid \$8000 by that stage.

She hadn't?---No.

15

So the certificate was inaccurate?---Was – no, it was letting her know that her benefit amount had increased in correlation with the amount of payments that she had received.

20 I just want to make sure again I understand that. Can we have a look at the certificate that Ms Walsh received, and I should first tender that document, Commissioner.

25 THE COMMISSIONER: ACBF training manual, April 2013, ASIC.0025.0001.0582, exhibit 4.166.

**EXHIBIT #4.166 ACBF TRAINING MANUAL, DATED APRIL 2013
(ASIC.0025.0001.0582)**

30

THE WITNESS: Could I also note that I only found that out yesterday as well.

35 MS ORR: What did you find out yesterday, Mr Jones?---That – well, the information that had been tendered by Ms Walsh regarding the certificate and - - -

40 What do you mean by that? Did you see her statement for the first time yesterday?---No, I saw her statement prior to that, but the information regarding – specifically relating to the certificate, and that she had believed that she had been paid up to – that she had paid \$8000 in 2008, that information I was only made aware of yesterday.

I see?---Through the statement.

45 By listening to Ms Walsh's evidence?---Yes – yes.

So the certificate is ACBF.0001.0001.0148. Now, you say this was about telling Ms Walsh that her benefit amount had increased?---Yes.

5 Is that what you said? From what amount to what amount?---Well, I believe if she had have signed up at \$6000, that it might have been a certificate to let her know that she had been moved up to the next bracket.

Well, we know she signed up at \$8000, didn't she?---Yes.

10 And we see that the language in this certificate is that it is awarded to her to acknowledge that she has attained her chosen benefit amount of \$8000?---Yes, just referring to the document that you had on the screen before, just following those rules on the different years, so she would have started at six, and then in correlation to the amount of payments she had made they would then move her up to the next
15 bracket.

I see. So prior to this day even though she had a maximum \$8000 benefit she would only have been entitled to \$6000?---Yes. As part of the rules that were shown on the
20 previous screen.

I see. And on this date, because of the period of time she had held the policy, she became entitled to an \$8000 - - -?---That's correct.

25 So it wasn't about her having paid \$8000 - - -?---No.
- - - at that time?---No.

It was about the entitlement that she had from this date?---Yes.

30 Because of the period in which she had held the policy?---Yes, that's correct.

Now, can I ask you, while we're looking at this, to also look at ACBF.0001.0001.0067. So this is a letter that was sent to Ms Walsh on 10 January 2007?---Correct.
35

Headed Increase in Chosen Benefit Amount?---Correct.

Now – just excuse me for a moment. In this letter, Ms Walsh is advised that she has received an increase in chosen benefit amount, as was advised at this time.
40

Do you see that?---I do.

Continuing:

45 *When a benefit amount of 4000 or 6000 is chosen for the life of the plan, once your first plan payment is received, the plan would pay that benefit amount following the death of the nominee.*

?---Correct.

Continuing:

5 *When a benefit amount of 8000 or more is chosen, once your first plan payment is received there's immediate cover for 6000. The amount of that cover increases each year until it reaches the chosen benefit amount.*

?---Correct.

10

Now, what was the purpose of this letter?---I'm unsure, other than letting her know that that was the rules to which - - -

15 So I'm just trying to understand why she got a letter about these matters on 10 January 2007 and then she also received the document that we just had on the screen in April 2008 which you say was conveying the same things?---Correct. I'm not sure whether it directly correlated to any phone calls that she may have made to ACBF, and this was a letter that was subsequently sent.

20 But do you say that the same message was being conveyed by the January 2007 letter and the April 2008 certificate?---I believe that was the purpose.

At two different points in time?---Yes.

25 Do you think that might be confusing for the recipient of these communications to understand?---I can't speak to the nature of why this letter was being produced.

All right. I tender that letter, Commissioner.

30 THE COMMISSIONER: ACBF letter to Tracey Walsh, 10 January '07, ACBF.0001.0001.0067, exhibit 4.167.

35 **EXHIBIT #4.167 ACBF LETTER TO TRACEY WALSH DATED 10/01/2007 (ACBF.0001.0001.0067)**

40 THE COMMISSIONER: While it's up, Ms Orr, do we need to go beyond this page or not?

MS ORR: Yes. We were going to go to the third page of this letter while I was dealing with some questions - - -

45 THE COMMISSIONER: You take the course.

MS ORR: - - - with Ms Walsh.

THE COMMISSIONER: - - - which seems best from you.

MS ORR: Do I take it from that, Commissioner, that you would like to ask some questions about this letter?

5

THE COMMISSIONER: No.

MS ORR: No. I will return to that letter when I'm asking about Ms Walsh, but just dealing with cancellations and bases for cancellations now. We've talked about missing payments, and that being a basis for cancellation. Another thing that you tell us in your statement is a basis for cancellation by ACBF is where there has been a failure to disclose a pre-existing illness; is that right?---Correct. Correct.

10

And you tell us in your statement that:

15

Claims would not have been refused on this basis prior to January this year, but that recent changes to the Centrepay rules have required a greater level of scrutiny in this regard as a matter of fairness to existing members.

That's paragraph 21.3(b) of your statement?---Correct.

20

And later in your statement at paragraph 22, you say that:

25

ACBFs new management has assessed the declined membership and policies due to the federal government's injunction to stop Centrepay as a payment method and the fiduciary duty to other policyholders and members.

30

So perhaps if we could have 22.1 and 21.3(b) both on the screen that would be helpful. Is this – is this your language, Mr Jones, this reference to the federal government's injunction and the fiduciary duty to other policyholders and members?---To a large extent, yes.

35

That's your language?---It's not something I would generally convey, but in this setting, yes.

What are you referring to there?---I was referring to the 6000 members that the company had lost due to Centrepay, and I can't speak to why previous management didn't pull up those that were – hadn't disclosed pre-existing illnesses on their applications.

40

You didn't lose these customers due to Centrepay, did you?---They were paying by Centrepay.

45

Yes?---Yes.

What you lost was the ability to charge these customers who you had already lost?---Yes, but their – I did say a large majority of those people were still unaware that they're not covered.

5 They may have been unaware that they were covered in the period when you were deducting payments from their Centrelink benefits?---That may also be the case, yes.

Well, up until quite recently, ACBF denied claims where the nominees' cause of death was suicide or intentional self-injury, didn't it?---It has.

10 So if we – if we focus on the ACBF plan, the previous policy was that if a nominee committed suicide or died as a result of intentional self-injury, the payout was limited to the amount that ACBF determined had been paid by way of premiums?---Correct.

15 Is that right?---Correct.

And then you tell us at paragraph 21.2 of your statement, at the top of the left-hand side of the screen, that your policy in relation to payouts upon suicide has recently changed?---In between July and October last year, yes.

20

And you say that your policy was informed by the fact that this is a vexed issue?---Correct.

25 And you say that ACBF's view was that many of its customers and local community groups were strongly opposed to coverage in the event of suicide as it may be seen to condone it?---That was my understanding, yes.

30 That was your understanding?---From what I've been told by previous - - -

And that's what you've told us in your statement?---Yes.

Is that correct, Mr Jones?---I was purely speaking from what I'd been told.

35 I want to suggest to you that it was in fact the case that ACBF received backlash from the community in relation to its previous policy about suicide?---It's a tragic occurrence, and yes. In any circumstances when a family that's grieving is denied, they would - - -

40 Well, is it correct that customers and local community were strongly opposed to coverage in the event of suicide, as you tell us in your statement?---I can't speak to – to that, other than what I've been told by previous - - -

So someone has told you that that was the position?---That was the position.

45

Who has told you that?---People within the – the business.

Which people within the business?---Staff members that have been – been employed by the company for anywhere up to 15, 16 years.

5 At what level are they employed, these people you spoke to about this?---One is the lady we have in claims.

A lady in claims?---And other team leaders.

10 And that's what they have told you, that customers and local community groups were strongly opposed to coverage in the event of suicide?---That that's what their understanding of the position was, yes.

15 All right. Can I ask you to look at ACBF.0003.0001.0137. This is an ACBF document that you've looked at, Mr Jones. Have you looked at this one?---In the lead-up to this, yes.

Yes. And we see it's called:

20 *Proposal to reconsider payout restrictions for suicide.*

?---Yes.

25 Do you know who wrote this document, Mr Jones?---One of our staff members that – suicide was close to her.

And we see on the first page a reference to:

30 *Currently the Aboriginal Funeral Plans Proprietary Limited and the Aboriginal Community Benefit Fund Number 2 Proprietary Limited do not make a payout upon the passing of a nominee or member where the cause of death is suicide or intentional self-injury. Over the years, we have felt a backlash from the community in relation to this. I would like to request this exclusion to the payout conditions be re-evaluated.*

35 Do you see that?---I do.

40 And if we turn to – yes, the third paragraph there, we see references to the position of Other Funeral Insurance Companies which is to offer suicide and intentional injury cover after a period of 12 months?---Yes.

Continuing:

45 *After careful research, it appears we may be the only company that does not offer suicide coverage.*

?---Again, I can't speak to what research she did.

Well, do you have any reason to dispute that?---No, I don't.

5 And the author of this paper refers under the heading Australian Bureau of Statistics to some statistics recording that Aboriginal people have the highest youth suicide rate in the world, and the highest suicide rate overall of every country, with the exception of Greenland. Sorry. We will just need to pan back so you can see that?---I regret - - -

10 Yes?---Yes, it's a disgrace that our indigenous are facing such high statistics of suicide.

15 And that you were not paying out for suicide?---I can't speak to the management on the past. Certain judgments would also be – had to be a risk associated with that, with actuary reports and information as well. It all links back to the assumed risk as well.

20 So this was a paper prepared by one of your staff about the consequences of your non-payment for suicide, and it was an exhortation to management to change that policy, wasn't it?---Correct, yes.

I tender that document, Commissioner.

25 THE COMMISSIONER: ACBF internal memorandum concerning payout restrictions for suicide, ACBF.0003.0001.0137 exhibit 4.168.

EXHIBIT #4.168 ACBF INTERNAL MEMORANDUM CONCERNING PAYOUT RESTRICTIONS FOR SUICIDE (ACBF.0003.0001.0137)

30 MS ORR: It's clear from that document that the author's view was that the backlash from customers and local community was about you not paying out on suicide?---Correct.

35 Yes. Contrary to what you said in your statement?---That's – there's always two sides that what one's position might be ultimately will be different to those that are in the situation at the time.

40 Well, the organisation was aware, as a result of this paper, of this author's view and this author's assessment of the position of customers and the local community?---That's correct. And we've since changed that position, so - - -

45 Well, you tell us in your statement at paragraph 21.2 that the issue wasn't a financial or commercial decision, but a decision taken after much consultation with members. That's the decision to change your policy?---It was both of those.

And what form did your consultation take?---Speaking to the actuary, and management – other management at the time.

5 So there was no consultation with members of the fund?---We've spoken to some members, yes.

How many, Mr Jones?---I can't tell you off the top of my head. I wasn't a hundred per cent engaged – well, I wasn't engaged at this time.

10 So this is based on what other people have said to you?---Told me, yes, correct.

We see from 21.3(c)(ii)(b), which is further down – we might need to go to the next page:

15 *Pre-September 2017 suicide had the following rules applied. In general terms the position now is that if a person joins post September 2017, and they've been a nominee for 12 months or more, full payment is made on the nominee's suicide.*

20 Is that right?---That's correct.

That is the current position?---Yes.

25 And in the media release that you published last week on 27 June, you said that ACBF will pay a refund of all contributions in case of suicide without administrative charges?---That was prior to the July 2017. The new policy does state that a full payment after 12 months will be paid, but between when they join to 12 months they will receive their full – any money that they've paid to date back in full.

30 But you didn't make that distinction clear in your media release?---I apologise. It needs to be clearer.

Well, it was quite misleading, wasn't it, Mr Jones?---That wasn't – that was – there was no intention to mislead

35

Can I ask you just to look at exactly what you said at ACBF.0008.0001.0204. You will need to look at the second page of that media release which is 0205. We looked at this part of your media release before. This is under the heading ACFP versus Other Funeral Funding Options:

40

Unlike other funeral funding options, ACFP offers members –

And do you see the third last dot point:

45 *...refund of all contributions in case of suicide without administrative charges.*

?---I do, and that should read within the first 12 months, and after 12 months the full benefit.

5 That's not what it says, is it, Mr Jones?---No. I agree and that needs to change. We're happy to retract it and issue a policy – apology to that effect.

10 Well, you issued another media release two days later on 29 June, and that is ACBF.0008.0001.0206. So this is the 29 June media release, and in this media release you said – yes, under the heading Suicide, third paragraph down:

ACFP stands with Aboriginal and Torres Strait Islander families in the grief that suicide brings. We have chosen to cover suicides as a result of compassion for our policyholders. We do not seek to profit from suicides, and in fact our suicide payouts are made at a loss.

15 You see that?---I do.

20 Well, why is it the case that ACBFs suicide payouts are made at a loss?---I don't believe that should be stated that way.

Is that another error - - -?---Yes.

- - - in the media releases?---Yes.

25 And you repeated those statements in the media release that you published on 2 July, and I will show you that ACBF.0008.0001.0202. So your statement became even more definitive in this media release under the heading Fact Check:

30 *ACFP does not profit from suicide. The Aboriginal Community Funeral Plan does not profit from suicides. We have never profited from suicides. In fact, all payments we make related to suicide are paid at a loss.*

?---That was referring to prior to 2017 that we refund - - -

35 Well, that's not what it says, is it, Mr Jones?---No, it's not.

40 So another error in your media release under the heading Fact Check?---I think the issue in the creation of these media releases was in conjunction with the news story the ABC was looking to run, and they were directly related to questions they were asking.

And they were - - -?---And – it – I understand that it does appear to be deceiving, and it's not the intention in which they were written.

45 Well, they are inaccurate statements - - -?---They are.

- - - in response to that media coverage, aren't they?---They are.

But portrayed as fact checks?---Incorrect.

5 ACBFs recent move to provide coverage in relation to suicide is now being used by it as a sales tool, isn't it?---Not as a sales tool, but as a means to ensure those who have taken out policies are aware of the fact that we do cover suicide now.

10 Well, you've made – put quite a degree of emphasis on it in the 2 July media release that we have on the screen at the moment. We see a large section of this media release under the heading Aboriginal and Torres Strait Islander Suicide – The Sad Facts. And multiple quotes from you in there. And we see you, in the second last paragraph, calling:

15 *...on all Australian Governments and community groups to address these longstanding issues that have been firmly in the public eye since the Royal Commission into Aboriginal Deaths in Custody over 30 years ago.*

?---Correct.

20 So you agree that you are, in your public materials, placing considerable emphasis on your new position in relation to payments for suicides?---Because I believe it's a tragedy – tragedy that – how indigenous Australians are facing suicide, which is far outweighed by those that are non-indigenous.

25 But for a considerable period of time your policies in relation to the payout of suicide did not result in benefits being paid?---That's correct.

30 And in response to that tragedy that you've just referred to?---The – again, I can't speak to why policies hadn't had it included, other than what I've been told. The research is only just now becoming available regarding indigenous suicide.

Is that right? You describe it in this media release as a longstanding issue that's been firmly in the public eye since the Royal Commission into Aboriginal Deaths in Custody over 30 years ago?---It has been an issue, yes.

35 I tender that media release, Commissioner.

THE COMMISSIONER: ACBF media release, 2 July '18, ACBF.0008.0001.0202, exhibit 4.169.

40

**EXHIBIT #4.169 ACBF MEDIA RELEASE DATED 02/07/2018
(ACBF.0008.0001.0202)**

45 MS ORR: So although you've now liberalised your position in relation to payouts on suicide MURA, in its cultural audit, recommended that you still strengthen your

processes around the mental health assessment to new policyholders. Do you recall that?---Yes.

5 And MURA expressed concern in their work about the fact, that in comparison to non-indigenous Australians, Aboriginal and Torres Strait Islander people have a higher prevalence of both diagnosed and undiagnosed causes of mental illness?---Correct.

10 And MURA recommended that, given that a feature of your funeral plan is to make a payment after 12 months if a policy holder commits suicide, that there needed to be more rigour placed around the health assessment of new policyholders, as this presents an ongoing risk for the business. Do you recall that?---Correct.

15 And do you plan to implement that recommendation?---If we can help our members with any of the information that we have on hand - - -

In what way would that be helping your members?---If we could direct them to services that could better assist.

20 It's about directing them to services, not about dealing with the ongoing risk for your business?---We're in a risk business, so they do go hand in hand. I do have compassion for the people that we represent, and if we can honestly and wholeheartedly help those individuals, then yes. And that's where I would like to work with government agencies that I believe that we – we have certain information
25 on hand which would benefit government agencies by way of the health information that we've collected over the years.

30 That's why you're going to – that's why you have and will continue to collect that information? To help government agencies?---No, I'm just saying that there is an opportunity that we could help government agencies if they too are struggling to collect certain information from individuals.

35 It's about managing your risk, isn't it? It's about managing your risk, given that these policies are provided to Aboriginal and Torres Strait Islander people, and they are a group of the community with a higher prevalence of diagnosed and undiagnosed cases of mental illness?---That's correct.

40 Now, do you know what the average value of claims paid by ACBF is?---Not off the top of my head.

45 Well, if we could return to ASICs work, ASIC.0025.0003.1757. And we turn to 1778. This was the analysis as at April 2014. We see there that in the 12 months to June 2013, the average value of each claim paid by ACBF was \$5842. Do you see that entry in the table?---I do.

And the claims paid as a percentage of the premiums received was 13.6 per cent?---I see that.

So that percentage was lower than the percentage of premiums received by any of the other funeral insurance providers surveyed by ASIC?---It depends on what data was provided by ACBF at the time. We know that we hold people's – the members' policyholders' money for 15 months, so that they can hold a wake 12 months after or at any time during that period, and we encourage our members to take up that within the 15 months prior. So I can't speak to that data, because I don't see what sits behind it.

Well, this was data that each of the insurers who participated in this ASIC work provided to allow ASIC to analyse the funeral insurance sector at this point in time, and we can see from the data that was provided, that the average claim payout for an ACBF customer was lower than the average claim payout for customers of any of the other funeral insurers?---Okay.

Does that concern you, Mr Jones?---Well, it does, and I would like to look into the data that sits behind it.

We also see that, as a percentage of the premiums received, it was the lowest percentage across each of the insurers who were surveyed. You paid less out from the money that you brought in from these customers?---It depends if the – if they've used the data that was paid directly to funeral homes or whether it was across the greater expenses that were paid out.

Why is there a material difference whether it was that form of data or the other?---That data – it does – is something that I would like to look into.

You know that ASIC sent an information request to ACBF seeking the information that it used in its analysis that went into this report?---So I've been told.

Are you familiar with that?---Yes.

Yes. So ACBF provided the data that was relied on by ASIC?---Okay.

Yes?---We would – yes.

Yes?---We would also differ from those that have – from other funeral insurers that pay their full amount directly to the individual, and that might be part of that difference.

But this is about the amount of claim paid. Not where it was paid to, how much was paid, and you paid the least?---Okay.

I want to finally ask you some questions, Mr Jones, about Ms Walsh and the evidence that she gave yesterday. You were present for that evidence?---I was.

And you heard that Ms Walsh obtained her plan with ACBF in late 2005?---Correct.

After she met with an ACBF consultant at Rumbalara?---Correct.

She was initially given a level 1 health classification?---Correct.

5 And that meant that ACBF was initially willing to give her a \$12,000 maximum benefit for \$18 fortnightly payments?---Correct.

Yes. But she was subsequently contacted by ACBF and told that she had been reclassified as having a level 3 health classification?---Within a short period of time.
10 I believe it was within two to three weeks she was contacted.

And she was contacted and told that she had been reclassified as having a level 3 health classification?---Yes. I believe – I mean, this is well before my time, but I believe it was due to the fact that she was taking ongoing medication - - -

15 Yes, but - - -?--- - - - daily.

Medication for depression?---Yes.

20 That was what resulted in the change to her health classification. And that reclassification resulted in her maximum benefit amount being reduced by a quarter, and her fortnightly payments doubling?---Again, that – it’s the assumed risk that the company holds and the tables that are present.

25 So on the basis of the information about Ms Walsh taking medication for depression, ACBF decided to reduce her maximum benefit amount and charge her more for that reduced amount?---That has happened, yes.

That’s what happened?---Yes.

30 Yes. And she began making fortnightly payments under the plan?---From what I can see, yes.

Yes. And she made those payments regularly?---Yes.

35 And on the few occasions that she fell into arrears she repaid the arrears promptly?---From what I understand, yes.

40 Now, if I could go back to 10 January 2017 letter that we had on the screen before, ACBF.0001.0001.0067. I’m sorry, I think I may have said 2017. 2007. I apologise if I confused you there, Mr Jones. And we see there – perhaps if we could bring up the remaining two pages of this letter. This is the letter that I took you to before advising Ms Walsh that she has received an increase in her chosen benefit amount?---Correct.

45

We see the remainder of the letter on the left-hand side of the screen, and on the right-hand side of the screen we see the heading Benefit Amounts Payable?---Correct.

5 *Tracey Lee Walsh, chosen benefit amount \$8000. Amount now payable \$8000 for the life of the plan. There are no further increases for this nominee.*

Now, was that accurate?---I'm unaware whether that was accurate at the time.

10 Was there an amount now payable of \$8000 for the life of the plan?---I believe they're talking about the benefit amount.

Well, it says "amount now payable", Mr Jones?---I just believe that's incorrectly worded or it could have been clearer. I can't speak to that document other than that.

15

It was an expenses only policy, wasn't it, Mr Jones?---Correct.

And if the expenses for Ms Walsh's funeral were less than \$8000, she would not be paid \$8000, would she?---No, she wouldn't.

20

And where in this letter do we see her being made aware of that fact?---It should have referenced previous documentation or it should have had the reference in the documentation herself.

25 Well, instead she's told by this letter that there's an amount now payable of \$8000 for the life of the plan?---Correct.

That wasn't accurate, was it?---Not from that information there.

30 Was it accurate, Mr Jones?---No.

No. Thank you. All right. Now, within the period that Ms Walsh had her policy, she contacted ACBF on at least one, if not more, occasions in an attempt to try and increase her maximum benefit amount?---Correct.

35

And ACBF did not increase her maximum benefit amount?---No, they did not.

And until very recently – and I will come to this – ACBFs position was that it would not raise the maximum benefit amount?---Correct.

40

So we heard through Ms Walsh's evidence that in late 2016 and early 2017, Ms Walsh's lawyer and ACBFs lawyers exchanged correspondence about Ms Walsh's plan?---From my understanding, yes.

45 Did you hear the references to that correspondence in Ms Walsh's evidence yesterday?---I did.

So Ms Walsh's lawyers notified ACBF that they considered that ACBF may have engaged in misleading and deceptive conduct in respect to Ms Walsh?---Correct.

5 And ACBF's lawyers sent a letter in response, which you saw me place on the screen yesterday?---I did.

And you heard me read extracts from?---I did.

10 And in that letter, ACBF strongly refuted the concerns expressed by Ms Walsh's lawyers in relation to the potentially misleading nature of the representations?---Correct.

15 Now, you've now heard Ms Walsh's evidence. Do you maintain that position?---I maintain the position from when she was first engaged. I do see that in this specific letter, two years after she had signed up, that that could be seen as misleading.

She was misled, wasn't she?---I don't believe she was.

20 You don't believe she was misled?---In that letter, maybe.

No, in - - -?---But in the previous correspondence - - -

In her dealings with ACBF?---I don't - I honestly don't think she was.

25 She wasn't misled into believing that ACBF was an Aboriginal organisation?---I don't believe so.

30 Can I ask that you look at the letter from your lawyers to Ms Walsh's lawyers, RCD.0024.0016.0011. And could I ask you to look to 0020. We see, under the heading Resolution there, strong statements from ACBF's lawyers in response to the allegations from Ms Walsh's statements - from Ms Walsh's lawyers. You see the third paragraph:

35 *The documentary evidence discloses no wrongdoing by ACBF, and in fact makes it clear that Ms Walsh fully understood the plan.*

Do you see that?---I do.

40 Do you maintain that position, Mr Jones?---From looking at the application form, yes, and the policy on how sales reps - what they - what documentation they need and processes they needed to follow, yes.

45 So having heard Ms Walsh's evidence yesterday you maintain that she fully understood the plan?---If she read the documentation that she signed, yes.

Well, I want to understand whether you accept, based on her evidence yesterday, that Ms Walsh did not fully understand the plan?---I'm - I'm unaware of whether or not

she has or has not, other than her statement. I believe that the policy itself, that she signed, speaks to the fact that she understood.

You heard about her understanding of the plan yesterday, didn't you?---Yes.

5

You heard that she thought that if she paid more than it would cost for her funeral expenses, the amount that she had paid would go to her family?---I can't speak to that.

10 But you heard her evidence yesterday?---I heard – I heard that. I heard that.

That that was her understanding?---Yes.

And that wasn't the case, was it?---No.

15

She was only ever going to receive the amount that it cost to pay for her funeral expenses?---In documentation that she would have been provided, it clearly states that – the contrary to that.

20 States?---States the contrary to her belief.

I see?---That all expenses would be paid up in to the benefit amount.

25 But what if it was less than the benefit amount. What if her funeral was \$7000 in cost?---The current – then that money was held in trust until such time as, if the family don't utilise that money afterwards, it's stated in the document takes that that money would be donated to the Fred Hollows Foundation.

30 I just want to understand that. You say the money that would be left over was held in trust?---Yes.

35 What was the trust it was held in?---I'm – I'm not sure of the actual trust itself. It's held that their family themselves can – can draw on up until the time 15 months after the – the passing away, and after such time that money is then donated to the – or contributed to the Fred Hollows Foundation.

Are you sure about this, Mr Jones?---From my understanding, yes.

40 Did you refer to any of this in the statement that you provided to the Commission addressing Ms Walsh's statement?---From my recollection, no.

45 So you now say, for the first time that any amount that was left over after her funeral expenses had been paid, would have been held in a trust that - - -?---I'm not sure if they're held in a trust per se but the money that's left over, if it's not drawn on by the family, the payee, then that money is, after 15 months, donated to the Fred Hollows Foundation.

So you say it was available to her family to draw on?---Yes.

I want to be clear about this?---Yes.

5 That's not something that you told us in your witness statement?---I apologise, there was no intention to – to deceive there.

We're just trying to understand what the situation is?---Yes, that's the situation.

10 And we rely on your witness statement to understand the situation. So you say it was available to her family to draw on, and if they did not draw on it after 15 months, it would have gone to the Fred Hollows Foundation?---Correct.

15 And is there anywhere in the documents that were provided to Ms Walsh that made that clear?---The information guide, yes.

The information guide makes clear - - -?---Well, it – it should.

20 - - - each of those things you have told us?---It should. From my understanding, under the current policies and the practices of the past, that was the case.

25 Well, I'm happy to show you the information guide that you've annexed to your statement, Mr Jones, and you can see if you can direct us to the portion that deals with the matters you've just given evidence about. It's ACBF.0004.0001.0036. It's the sixth exhibit to your second statement dealing with Ms Walsh. If we turn to the next page we see an index, and if we turn to the following pages. It might be simpler if I allow you to flick through the hardcopy that you have in front of you as an exhibit to your statement?---It hasn't addressed that within the - - -

30 Nothing in the – I'm sorry?---In the information guide, it doesn't address that. In the current information guide it does address that, so that's where the confusion comes, sorry.

35 I see. So it might be the position if someone was to take out a plan with you now?---Yes, correct.

But it was not the position for Ms Walsh, was it?---No.

40 Her family would not have had access to any funds that were left over after the payment of her funeral expenses?---I'm unsure of the practice before.

Well, you've just read the information guide?---Yes. It just doesn't address what happens to the money after - - -

45 Well, it makes clear that the only money that will be paid out is the amount to cover the funeral expenses, doesn't it?---Correct.

All right. Could I just take you back to your correspondence, your lawyer's correspondence to Ms Walsh's lawyers, RCD.0024.0016.0011, and we were at page 0020 of that document. I had asked you some questions about the section headed Resolution. I just want to direct your attention to the paragraph that starts:

5

Analogous complaints to the Financial Ombudsman Service (FOS) have been made in the past and those complaints have failed.

10 And we see reasons put forward by ACBF's lawyers about why those claims had failed, including that:

15 *The complainants had waited so long to allege some conduct caused them detriment and relying on that conduct was, in any event, so unreasonable as to break any chain of causation. In our view, these are all difficulties that would be faced by Ms Walsh should she initiate a dispute with FOS.*

Do you see that?---I do.

20 So she was warned by this letter not to take her matter to FOS because she would fail?---I'm unaware. That was prior to my time, but - - -

Well, you can see what's - - -?---From reading – from reading that, I believe that was sent to the Legal Aid group that were representing her at the time, yes.

25 Yes. And you agree that by making these statements in that letter, ACBF was warning Ms Walsh not to go to FOS, because she would fail?---Potentially, yes.

30 Why “potentially”, Mr Jones?---Well, obviously, the counsel that she has would have to make a decision on whether or not they would succeed under the - - -

Yes. But this was the position being conveyed by your lawyers?---That's their position. I can't speak to that other than the advice and counsel that they give.

35 Well, having said this to Ms Walsh, Ms Walsh nevertheless decided to lodge a dispute with FOS in the face of these statements, didn't she?---She has.

40 And ACBF filed lengthy submissions in response to her FOS dispute?---I'm unaware. They were sitting with our solicitors for some time, and it's only in recent times that, obviously, that I've been made aware of it, and - - -

Well, ACBF instructed its solicitors to make those submissions, didn't it?---They did.

45 Yes. And those submissions had the same general tenor as this correspondence. They strongly refuted Ms Walsh's position?---I'm sure it's a terminology that all solicitors use in their documentation when they're sending it out.

Do you agree that they strongly refuted Ms Walsh's position?---I agree.

5 Yes. But despite that, on the same day as filing those submissions that strongly refuted Ms Walsh's position, ACBF sent a letter to Ms Walsh's lawyers offering to settle the dispute?---Correct.

10 And why did ACBF make the offer to Ms Walsh at that time?---I dare say from the mounting legal costs that the position was, it was – it would be cheaper to settle than to continue to fight it.

So the offer was made because it was cheaper to pay Ms Walsh out than to continue to defend the claim?---I can't speak to the nature of the – the offer or those that instructed the solicitors to make that offer.

15 Well, who instructed the solicitors to make that offer? You're the CEO, Mr Jones?---Sorry, I thought you were referring to the letter that was sent in 2016 or '17.

20 No, no, I'm talking now about the offer that was made as the same day as your submissions were filed in FOS?---Yes. Sorry.

Did you instruct the offer to be made?---Yes.

And why did you do that?---To move forward.

25 Because of the legal costs?---That and I didn't believe it was a case, from looking at the documentation, that we had deceived Ms Walsh, and that I was sympathetic to the fact that she had paid more.

30 I am sorry, you were sympathetic to the fact that?---That she had paid over her benefit amount.

35 Yes?---Yes. And we wanted to continue – we wanted to increase the benefit amount to the \$10,000 and we would – no longer wanted – or she would no longer have to continue to contribute.

So you didn't believe that she had been deceived or misled; is that right?---No, that's correct.

40 But you had mounting legal costs in defending the claim and you felt some sympathy for her because she had paid over her maximum benefit amount?---Of course, yes.

And she wouldn't recover the amount that she had paid over that amount?---Yes.

45 Now, that settlement offer was made after ACBF became aware that Ms Walsh was going to be giving evidence in the Royal Commission, wasn't it?---Correct.

So ACBFs offer to Ms Walsh was also informed by its knowledge that she would be coming here, as she did yesterday, to give evidence about these events?---Similar to the other circumstances where individuals – this is well prior to the Royal Commission, the instances where we had elected, to those that had contacted us, stop
5 benefit amounts being deducted – sorry, premiums being deducted or paid, that’s the position that we took.

But Ms Walsh had contacted you about those matters for some time. She had, through her lawyers, talked to you about those matters since 2016, and you didn’t
10 make any offer to her at that time?---That wasn’t – I wasn’t party then, so I can’t speak to previous management.

I see. And it was only after it became clear that she would be attending and giving evidence that this settlement offer was made at this time?---Correct.
15

Thank you. I have no further questions for the witness, Commissioner.

THE COMMISSIONER: Yes. Thank you very much, Ms Orr. Yes, Mr McMillan.
20

<RE-EXAMINATION BY MR McMILLAN [12.22 pm]

MR McMILLAN: Thank you, Commissioner. I apologise for my voice, and to the extent that I’ve interrupted learned Counsel Assisting with my coughing, I apologise. It’s that time of year, unfortunately.
25

Mr Jones, you were asked a number of questions by Counsel Assisting about the advertising that ACBF has run in newspapers, on radio, and on television going back to 2012?---Correct.
30

You were shown a number of examples of those advertisements which you told Counsel Assisting you hadn’t seen before. Prior to giving evidence here today, had you been asked by the Royal Commission to investigate ACBFs previous advertising in indigenous communities?---No.
35

You were also asked some questions about the decision of Justice Logan in the Federal Court relating to the ability of ACBF customers to pay their premiums using the Centrepay facility?---Correct.
40

And you were asked some questions about ACBFs challenge to that decision by the Minister?---Correct.

From your perspective what was the benefit to ACBFs customers for using the Centrepay facility as opposed to a direct debit facility?---That there was no fees associated with payments that were unsuccessful.
45

So those would be dishonour fees?---Dishonour fees, yes, correct.

And is that – are dishonour fees a problem for ACBF customers who now use direct debit facilities?---Yes, it is.

5

Do you wish to say any more about that?---We're working with the Commonwealth Bank in providing when the new payment system comes in, the instant payment system comes into line, with the (b) point, which is their payment merchant, that it would have reduced or no fees associated with any deducting.

10

Thank you. You were also shown a letter – and could I ask for the letter to be put on the screen again – ACBF.0006.0001.0046. I'm sorry, I think I've gone to the page that you were asked about. Could I go to the first page of that document, please. You recall being asked about this letter from February 2017?---Correct.

15

And Counsel Assisting suggested to you, in her preface to her questions, that this was a letter sent to a sales representative who is not in the field. Do you remember her suggesting that to you?---I do.

20

Now, could I ask for page 0046 to be shown again. Under the section General Duties – I'm sorry, under the section – I apologise, it is on the previous page, 0045. Yes. Under the section Location, could you just read that to yourself, and the paragraph immediately above it starting with the words, "It is essential – " have you read that?---Yes.

25

Now, it would appear from those paragraphs that this letter was sent to one of the company's employees based in Rockhampton?---From reading that, yes.

30

Are there any non-field staff based in Rockhampton?---No.

So should we conclude, or the Commission conclude, from that that this letter must have been sent to one of the field staff?---Correct.

35

You were also asked – thank you. You were also asked about an ASIC report – I'm sorry, you were asked some questions about the 6000-odd members whose plans were cancelled following the failed challenge to the Centrepay decision?---Correct.

And it was suggested to you that, rather, it was a case that their plans were failed after you were unable to locate those customers following that decision?---Correct.

40

Do you recall that? Have any of those members whose plans were cancelled by ACBF following that decision subsequently contacted the company to say, "Here I am, am I still covered"?---Any that did?

45

Have any of those members whose plans were cancelled - - -?---I'm aware that some have, yes.

And what have been ACBFs response to those customers?---They were either reinstated in full or signed up to new policies.

5 You were asked about a number of the media releases that were issued in late June and early July this year, and specifically you were asked some questions about those media releases' comments about suicide?---Correct.

10 And specifically Counsel Assisting drew your attention – I'm sorry, Commissioner – to the suggestion in those releases that suicide payments made by ACBF were made at a loss?---Correct.

Has ACBF paid out any of its policies in relation to suicide since that policy was changed to allow for such payments?---I believe they have.

15 Do you know how many?---No, I'm not sure.

That policy change was relatively recent, wasn't it?---That's correct.

20 And prior to that, had ACBF paid any of its – well, paid out on any of its policies in relation to suicide?---In some instances, yes.

And those payments were by way of refund of fees rather than paying on the policy, weren't they?---Correct. Or in all instances, yes.

25 In all instances?---In that case, yes.

Were administration charges deducted from those refunds?---No.

30 So is that the loss that's referred to in those media statements?---Yes.

The fact that the administration charges were not charged?---Yes.

35 It was suggested to you by Counsel Assisting, when she was questioning you about Ms Walsh, that ACBF had reduced Ms Walsh's premium from \$12,000 to \$8000. Do you recall that suggestion being made?---I do.

THE COMMISSIONER: The premium or the amount covered?

40 MR McMILLAN: I'm sorry, Commissioner, yes. The benefit amount?---Correct.

The suggestion was that the – that ACBF had reduced the benefit amount from 12,000 to 8000?---Correct.

45 Could I ask you, please, to have a look at RCD.0024.0016.0001. Now, this is the letter you were shown earlier that appears to have been sent to Ms Walsh on 15 December 2005?---Correct.

And I think you referred in your evidence earlier, prior to being shown this letter, to your recollection that Ms Walsh was contacted by ACBF within a few weeks of her application?---That's correct.

5 And it's – you can see, from the third paragraph of that letter, ACBF explaining to Ms Walsh that it was unable to process her application with the chosen benefit amount?---Correct.

10 But rather that they accepted her application for the benefit amount of \$8000?---Correct.

15 So is it the case that ACBF reduced her benefit amount from 12,000 or is it, rather, that her application was not accepted at that level, but accepted at a lesser level?---Yes.

The latter is true?---The latter is true, sorry.

20 THE COMMISSIONER: I look forward to you explaining that distinction to me later, Mr McMillan.

MR McMILLAN: I'm sorry.

THE COMMISSIONER: No doubt in writing. Yes, go on.

25 MR McMILLAN: And finally, Mr Jones, you were asked about your statement which was produced in response to the Commission's Rubric 4-10, and I think it was suggested to you that that statement was produced in response to Ms Walsh's statement. You recall that suggestion?---Yes.

30 Your suggestion – your statement, in response to Rubric 4-10, was dated on 13 June 2018, and Ms Walsh's statement is dated on 26 June 2018. Did you have Ms Walsh's statement at the time of preparing your statement?---I can't recall.

35 All right. Thank you, Commissioner, I have no further questions.

THE COMMISSIONER: Did you have a draft of her statement? Did you have a draft of her statement at the time that you prepared your statement?---I may have. Yes, I would have.

40 Yes. Do you want to follow that up, Mr McMillan, at all?

MR McMILLAN: No, thank you, Commissioner.

45 THE COMMISSIONER: Ms Orr.

MS ORR: Just to be clear, Commissioner.

On 21 May 2018, you were served with a Rubric seeking a statement which annexed an outline of Ms Walsh's evidence?---Correct.

Thank you.

5

THE COMMISSIONER: Yes. Thank you very much, Mr Jones. You may step down. You're excused from further attendance.

10

<THE WITNESS WITHDREW

[12.34 pm]

15

MS ORR: Commissioner, that concludes the case study in relation to ACBF. We turn now to a case study in relation to Select. If possible, could we have 10 minutes prior to commencing that case study to allow us to deal with some set-up issues for the next witness.

20

THE COMMISSIONER: Is 10 going to be enough? If I come back at quarter to – well, look, I will say I will come back at quarter to. If the set-up takes longer, tell me and I won't come in, but let's aim for quarter to 1.

MS ORR: Thank you, Commissioner.

25

THE COMMISSIONER: Yes.

ADJOURNED

[12.34 pm]

30

RESUMED

[12.46 pm]

35

MS ORR: Now, as I indicated, we are moving to a case study about Select AFSL and our first witness is Ms Kathy Marika.

THE COMMISSIONER: Yes.

MS ORR: I understand, Commissioner, that Ms Marika would like to take an oath.

40

<KATHY BALNGAYNGU MARIKA, SWORN

[12.46 pm]

45

<EXAMINATION-IN-CHIEF BY MS ORR

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

5 MS ORR: Ms Marika, your full name is Kathy Balngayngu Marika?---Yes.

And you live at an address in Orange in New South Wales that's known to the Royal Commission?---Yes.

10 What is your occupation, Ms Marika?---My occupation now, I've retired.

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

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

I tender the summons, Commissioner.

THE COMMISSIONER: Exhibit 4.170, the summons to Ms Marika.

20 **EXHIBIT #4.170 SUMMONS TO MS MARIKA**

25 MS ORR: And did you make a statement to the Royal Commission dated 19 June 2018?---Yes.

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

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

I tender the statement, Commissioner.

THE COMMISSIONER: Exhibit 4.171, the statement of Ms Marika, 19 June '18.

35 **EXHIBIT #4.171 STATEMENT OF MS MARIKA DATED 19/06/2018**

40 MS ORR: Now, Ms Marika, I understand you have some hearing difficulties?---Yes.

So I will try and speak loudly and slowly, but if you have difficulty hearing will you please let me know?---Yes, I do. Thank you.

45 Now, Ms Marika, could you tell the Commission about your cultural background?---My cultural background is – we are raised with respect and cultural value, of teaching what is good. We go through a lot of discipline. In the early age,

- once we come out of the hospital, and we are surrounded by family with the hot sauna being placed on our body for respecting, then once we grow older we go through a big sauna of they create coal on the fire, and then cover that with paperbark, so we breathe in the heat for healing. I come from a big family of cultural teaching and teaching us respect and passing on the respect and discipline to others, other culture, and other people who have different languages, you know, in my community. We go through all that, and plus keep continue teaching respect and discipline to younger children. I am doing that now with my grandchildren.
- 5
- 10 Ms Marika, where were you born and raised?---I was born in north-east Arnhem Land.
- North-east Arnhem Land?---Yes.
- 15 And you were raised there?---Yes.
- You identify as an Aboriginal woman?---Yes.
- And you are a Yolngu woman; is that right?--- Yolngu. Yes.
- 20 And what is your first language, Ms Marika?---My first language is Yolngu Matha. Yolngu Matha?---Yes.
- 25 And what is your second language?---My second language is English.
- Do you speak any other languages?---I understand other languages in my community, but not speak.
- 30 Yes, thank you. And when did you leave East Arnhem Land and move to New South Wales?---I moved to New South Wales in 1996.
- And how old are you now, Ms Marika?---I am 60 year old.
- 35 And do you have any children?---I got three children, two boys and one girl.
- And do you have any grandchildren?---I have five grandchildren, and they're all girls.
- 40 And when you lived in the Northern Territory, did you work?---I worked for the Department of Health in my community.
- And what did you do with the Department of Health?---I was an assistant nurse.
- 45 Thank you. And when you moved to New South Wales, did you work?---I – I worked for NAISDA Dance College.

For a dance college?---NAISDA.

NAISDA - - -?---Dance college.

5 Yes?---And then I worked for Bangarra Dance company until I retired.

And when did you stop working for Bangarra Dance company?---2015.

10 And why did you stop working at that point?---I stopped working because of my lumbar problem, my back.

Yes?---And sciatica in my left leg.

15 And since you stopped working with Bangarra, you've received the Centrelink Newstart allowance?---Yes.

And do you support other people on your Newstart allowance?---Yes, I do. I support my – my children and my grandchildren with little bit of money. Yes, I do.

20 You tell us in your statement that between September 2015 and December 2016 you supported one of your granddaughters?---Yes, and she's here with me, yes.

25 And another granddaughter came to live with you this year?---She moved in to live with me this year, yes.

Yes. So you support two of your granddaughters?---I do.

30 Now, Ms Marika, in late 2015, did you get some telephone calls from Let's Insure?---I did.

35 And during those telephone calls did you sign up to a funeral insurance policy with Let's Insure?---I didn't really sign up with the Let's Insure because the – the phone call I got was a private call. So for me to understand the speech of language, talking, I couldn't catch up what they were saying.

You - - -?--- riding over me and there was a little bit of saying what I said, but not like the others, they spoke longer than me, which I didn't really hear.

40 So you had difficulties understanding them in the telephone calls?---Not with the different accents, I can't understand what they're saying.

45 Yes, I see. Now, when you got those calls, did you want funeral insurance?---I thought about it. I really didn't want to tell them that to sign me in for the life insurance through – through Let's Insure, because I had life insurance benefit already through work.

So you already had funeral insurance through - - -?---Yes.

- - - your work; is that right?---Yes.

Yes. Now, I'm going to play you a recording that was provided to us by Let's
Insure. And I'm going to ask for the transcript of that recording to be placed on the
5 screen at the same time. Now, there are a number of recordings I want to play for
you, but this recording is from a call on 24 August 2015. And parts of the recording
have been removed because they contain personal information about you and your
family, including their names and birthdays?---All right.

10 Yes. Now, the recording is SAF.0001.0001.0069. And the transcript is
SAF.0001.0001.0080. And before we start that, can I just indicate, Commissioner,
that the quality of this recording is poor in parts. The other recordings that we will
play later are clearer. Could we play that recording, please.

15

RECORDING PLAYED

MS ORR: Ms Marika, was that your voice that we heard as one of the three voices
20 on that recording?---Yes.

And do you remember getting that telephone call?---I do.

And what did you understand was going on in that telephone call?---In the telephone
25 call, I thought they were on a – practicing a survey on me which – I don't know what
survey or what for.

And what - - ?---Before them talking about their life insurance.

30 And what did you think was going to happen after that call?---The lady who was
talking then before then gave it to a man called [REDACTED] who said he was
going to make me join into the life insurance.

Thank you, Ms Marika. I see the time, Commissioner. We're going to move to
35 some other recordings. Each of these recordings and transcripts are exhibits to Ms
Marika's statement.

THE COMMISSIONER: Is it best to break now?

40 MS ORR: Yes.

THE COMMISSIONER: Best to go on – best to break?

MS ORR: I think it is best to break now and we will move to some other recordings
45 after the break.

THE COMMISSIONER: All right. Well - - -

MS ORR: I'm sorry, if you wouldn't mind just giving me just a moment,
Commissioner. Yes. Ms Zeleznikow reminds me that there is a non-publication
direction in relation to the names of the participants in these phone calls. So to the
extent that there has been a reference to someone's name, it is the subject of a non-
5 publication direction.

THE COMMISSIONER: Even though they're only the given names of?

MS ORR: Yes, I believe the direction has been made, Commissioner.
10

THE COMMISSIONER: Right. Okay. Well, if we come back at – shortly after 2
o'clock. Is that the best thing to do, Ms Orr?

MS ORR: Yes, I think we can probably come back at 2 o'clock. I am trying to – at
15 2 o'clock. Yes, I'm told that the technical arrangements will be fine at 2 o'clock,
Commissioner.

THE COMMISSIONER: Okay. We can come back at 2 then.

MS ORR: Thank you, Commissioner.
20

ADJOURNED [1.02 pm]

25 **RESUMED** [2.00 pm]

THE COMMISSIONER: Yes, Ms Orr.
30

MS ORR: Ms Marika, the last – the recording that I played to you before lunch was
of a call from 24 August 2015. Can I ask you to listen to another recording from a
call recorded on the following day, 25 August 2015. The recording is
SAF.0001.0001.0070. And the transcript SAF.0001.0001.0082.
35

RECORDING PLAYED

MS ORR: Ms Marika, was that your voice again that we heard on that call?---Yes.
40

And do you remember receiving that call from Let's Insure?---Yes.

And at the time you received that call were you still working with Bangarra Dance
45 company?---I was, yes.

And did you have funeral cover through Media Super through your employment?---Yes.

5 And at that point did you want to buy another funeral insurance policy?---They were forcing me to sign in, yes.

Now, do you remember getting another call from Let's Insure about two weeks later, on 9 September 2015?---Yes.

10 Yes. Now, that was a 38 minute call, so I want to play you two parts of that call. Do you understand?---Okay.

15 Yes. So if we could first play SAF.0001.0001.0071, from the start until 3 minutes and 28 seconds into the call, please. And you have – we have the transcript SAF.0001.0001.0085 on the screen.

RECORDING PLAYED

20 MS ORR: Now, Ms Marika, I will play you another later part of the call in a few minutes but, before I do, was that your voice again on that recording?---Yes.

25 And do you remember this call?---I do.

And what do you remember about what the person from Let's Insure was saying to you?---That call – I was busy with the people coming in from Orange and doing my carpet and it was a bit of an interruption for me to be able to answer the call that day. Yes.

30 How did you feel about the way the Let's Insure person was speaking to you in this call?---I don't know to put them together from – from talking about – the first bit they talked about before going into life insurance policy, you know. It was bit of misunderstanding to be able to hear them properly of the change of the policy from one to another. I told them that I didn't want it. I told them I've already had one, but he seemed to be really pushing or asking me to say yes.

35 And did you find the person easy or difficult to understand?---Sorry?

40 Did you find him easy to understand or difficult to understand?---Difficult, really, the way he was talking with a bit of a laugh in between our conversation, didn't make sense.

45 And was he using words that you understood?---Half I understood and half I didn't.

And did you feel you knew what to say back to him?---It took me a while to think what to say back to him, yes.

And did you feel that he was giving you time to say things back to him?---Yes.

You had enough time?---No.

5 No. Not enough time?---No.

Why – why do you – could you explain why you need time – when someone is talking to you, why it helps you for that to be not too fast?---Well, person need to understand that on the other end, person need to think and sort out what to say before
10 answering back to a person, but in our culture – our culture is for the young people to listen to the old people saying, or let – let us think, we will come with the answer to give back to the person, but this one like – you know, he – he – he would be talking, talking, talking. Didn't give me time to talk, what to think.

15 And is it particularly important for you to have time when someone is speaking to you in English?---Yes.

And why is that?---The – sorry, I didn't catch it, sorry.

20 Why is it important for you to have some time in a conversation when someone is talking to you in English?---Because I need to translate it for myself, in Yolngu Matha, to put it into English.

So you need to translate it in your head as the conversation goes? And did you feel
25 that the man was talking in an appropriate way to you in this conversation?---The – the other people?

The person in this call, was the way he was talking to you appropriate?---Not really,
30 no.

And why is that? Can you explain that?---I think the – the speech is too fast for me to catch up with, like – thinking about the word – what each – actually each word means to be able to put it in sense in my language before talking to the person.

35 And did you feel he was listening to you?---He wasn't listening, no.

And what did you understand to be the reason he was calling you?---To sign me up for life insurance with them.

40 And do you remember talking about your children and your grandchildren in this call?---Well, he asked me if I had family and I told him about my family.

And did he ask you for information about your family?---Yes. Their age and their date of birth.

45 And why did you think he was asking you for that information?---Well, he say it is part of their policy to record all – all the family into one list.

All right. Now, can I ask you to listen to another part of that same call. This part is four minutes and 15 – I'm sorry, four minutes and 51 seconds into the call. And we're going to play until 11 minute and 20 second mark, please.

5

RECORDING PLAYED

10 MS ORR: Ms Marika, by the end of this call, what did you think had happened?--To me, it sounded like I had no choice to make, except that thing what he was offering me.

And what do you think - - -

15 THE COMMISSIONER: Ms Orr, I am told there's some hiccup with the sound, or some aspect of the feed is not working. I think that's the position.

MS ORR: Perhaps we should take a brief break.

20 THE COMMISSIONER: We probably should break and see if we can sort it out and then come back. Perhaps if you send for me when you - - -

MS ORR: Yes.

25 THE COMMISSIONER: - - - know what the position is.

MS ORR: Yes.

30 **ADJOURNED** [2.25 pm]

RESUMED [2.38 pm]

35

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, I understand we've fixed those technical difficulties.

40 THE COMMISSIONER: Yes. I gather it was with the – not the feed generally, but the sound particularly for the transcription - - -

MS ORR: That's right.

45 THE COMMISSIONER: - - - arrangements. They matter too.

MS ORR: Yes.

Now, just before the break, Ms Marika, I had asked you by the end of that telephone call that we had just listened to, what did you think had happened? Do you - - -?---I thought – I thought about it, what he was trying to say to me, getting all my children’s name and their date of birth, and my phone – phone number – I thought
5 that he wouldn’t take any money out of my children’s accounts, because I didn’t give him my children account. I thought that he would be taking money out of my account, because he didn’t listen to me what I tried to say to him about the life insurance cover. I would be paying that for all of us, and my grandchildren and my children to bury me.

10 To bury you?---Yes.

Yes. I know it’s hard to remember back to what you thought at a particular point in time a long time ago, but do you think you understood after that call that you had
15 agreed to a funeral insurance policy, not just for you, but also funeral insurance for your three children and your five grandchildren?---The person on the other side, on the other line, didn’t listen to me what I had in mind to talk to him, but instead, he – he spoke all the way through, never gave me chance for each phone call that he has been ringing me, plus others, he’s been ringing me, giving me a chance to talk, but I
20 have that in – in my mind to tell them, but I didn’t get a chance, except to say yes for whatever they have offered me to say.

And the next day, 10 September 2015, we know that you called Let’s Insure again and you asked to speak to the person you’d spoken to the previous day?---Yes, I did.

25 Yes?---Yes, because I got a missed call from them.

I see?---So I tried to ring them back.

30 And the person that picked up the phone said that that person would call you back - - -?---Yes.

- - - when you called them. And later that day, they did call you back; is that right?---They did, yes.

35 And in that call the person from Let’s Insure asked you to provide him with information about your family and about your friends. Do you remember that?---Yes.

40 And why did you think he was asking for that information?---That’s a good question too, because I keep thinking about that question of why he was asking me for – for more information about myself and my family.

45 Were you not sure at the time why - - -?---Not sure.

Yes. Now, this was a 29 minute call on this day, so again we’re just going to play some parts of it. We’re going to play six short parts. Okay?---Yes.

So the first one of those is three minutes and 34 seconds into the phone call, and ends four minutes and 46 seconds into the call. That's SAF.0001.0001.0073. And the transcript is SAF.0001.0001.0105 at 0107.

5

RECORDING PLAYED

10 MS ORR: Is that your voice we hear again there, Ms Marika? Is that your voice - - -?---Yes.

15 - - - talking to the Let's Insure person? And why did you think you were being asked these questions?---He was offering me the vouchers. He told me about the vouchers before, then he said he was going to give me voucher from Coles and Myers, which I didn't get.

20 Can we move to the second excerpt from this call, which is seven minutes and 22 seconds in, and ends 8 minutes and 23 seconds into the call. SAF.0001.0001.0105 is the transcript at 0108.

RECORDING PLAYED

25 MS ORR: Now, this was later in the call, and you were being asked not just to give information about your family and friends but also about people you worked with?---Not really people I work – not only people I work with, but my friends also, he wanted their numbers and names and said to me the more I gave number and people's names, he would give – give me more vouchers.

30 Yes. Now, if we could go to the third excerpt from the call, which is 11 minutes and 53 seconds into the call, and ends 12 minutes into the call. 0109 is the transcript reference.

35

RECORDING PLAYED

40 MS ORR: And then we will move to the fourth excerpt which is 13 minutes and 15 seconds into the call and ends 13 minutes and 29 seconds for the call. 0110 for the transcript.

RECORDING PLAYED

45

MS ORR: And the fifth excerpt is 20 minutes and 13 seconds into the call and ends 20 minutes and 26 seconds into the call, 0114 on the transcript.

5 **RECORDING PLAYED**

MS ORR: And the final excerpt is 21 minutes and 33 seconds into the call and finishes 21 minutes and 56 seconds into the call, page 0115 of the transcript.
10

RECORDING PLAYED

15 MS ORR: So do we take from that recording, Ms Marika, that you were looking on your phone for numbers of people you knew, looking on your old phone and your new phone?---Yes.

20 Yes. And what did you think that the person you were speaking to was going to do with the information you gave him?---I – I thought he would give me more vouchers. That was on my mind.

And did you ever get any vouchers, Ms Marika?---No. No.

25 No. And about a week after this, on 16 September 2015, did you call Let's Insure to try to cancel your policy?---I did, yes.

Now, this is a short call, so I will play you the whole recording.
SAF.0001.0001.0074, and the transcript is SAF.0001.0001.0120.
30

RECORDING PLAYED

35 MS ORR: That was your voice we heard on that recording, Ms Marika?---Yes.

And then I will play you a recording of a call from Let's Insure to you later that day. Again, it's a fairly short call, so I will play you the whole call. It's SAF.0001.0001.0075, and the transcript is SAF.0001.0001.0122.
40

RECORDING PLAYED

45 MS ORR: So Ms Marika, in those phone calls you were trying to cancel your policy; is that right?---Yes.

And you were trying to cancel your policy because it was too much money for you?---Yes, it took too much.

5 But Let's Insure told you that you could have a month for free instead?---They told me that, but I didn't get that.

10 You didn't get that?---For free. I don't know what the month of free for, because they didn't explain it to me. I was struggling of hearing. It was really hard for me to hear, yes.

And how much money – do you remember how much money Let's Insure was taking out of your bank account for these payments at this time?---\$60 a month.

15 Okay. And after you tried to cancel your policy, did Let's Insure keep calling on your phone?---Yes.

And in your statement you say that sometimes they called you day after day and sometimes once a week?---Well, they never left me alone.

20 And did you understand why they were calling you?---Maybe to get more names for people and phone numbers. The – the more names, numbers I would give them.

And did you speak to them on some of those occasions?---Did the people that I - - -

25 Yes. Did you – did you answer - - -?---Yes.

You did? And did you understand what they were talking to you about?---I told them to be aware of a phone call coming in. That's all.

30 Sorry, could you just that just again, Kathy? Aware?---I rang and told my friends and family for the phone call coming in, be aware.

Yes?---It's going to be a private number.

35 And in March 2016 did you decide to get some help from Legal Aid?---That's when I looked for help, and found a brochure - - -

Yes?--- - - - for – from the Legal Aid, and voucher - - -

40 And did it - - -?---Moneys Worries, to call – the brochure.

Yes. Money Worries?---Yes.

45 And did the brochure tell you legal Wade were coming to Condobolin?---They were coming to Condobolin for other people – to see other people to help, and I found them at the family support in Condobolin.

And did you go to see them about your electricity bills?---That was my first thing, yes, to seek help.

And did they help you with your electricity bills?---They helped me, yes.

5

And did they also find out from you that you were paying for funeral insurance that you told them you couldn't afford?---That's right, yes.

And did they help you to cancel the policy?---The person from the Legal Aid was there helping me with that.

10

Yes. And did they tell you that they were going to write to Let's Insure about your insurance?---Yes.

Yes. And you've given us, as one of the exhibits to your statement, a copy of the letter that Legal Aid sent to Let's Insure on your behalf in November 2016. So that's exhibit 15 to your statement. It will come up on the screen, SAF.0001.0001.0059, and is this the letter that you understand was sent to Let's Insure by Legal Aid?---Yes.

20

Yes. And if we have a look partway through that letter, at 0063, we see that Legal Aid told Let's Insure that they thought there was some legal issues with the way they had been dealing with you?---Yes.

And we see those legal issues referred to in this letter? A list of some of the issues that they were going to raise with Let's Insure. You see that that was in the letter?---Yes.

25

Yes. And I will just ask that we look at 0064 in the letter before moving on, because we see there that your lawyers made a proposal to Let's Insure asking for a refund of the premiums that you paid. Do you remember that?---Yes.

30

Yes. And you've also given us, as exhibit 16 to your statement, a letter that Legal Aid got back from Let's Insure, and that's SAF.0001.0001.0067. We see there that Let's Insure said to Legal Aid:

35

We dispute the allegations made in your letter and confirm that all times we have acted properly and in accordance with the law. However, as an act of goodwill, we will refund all premiums paid on the above policies, currently totalling \$1,890.34, subject to your client's authorisation for us to cancel their policies.

40

That's what Let's Insure said to Legal Aid?---I think so.

Yes. And do you remember getting any money back from Let's Insure after Legal Aid helped you?---I don't remember.

45

Yes. And do you still have a funeral insurance policy with Let's Insure?---Yes.

You still have one now or was it cancelled?---No.

5 Cancelled?---Cancelled, yes.

Yes. Thank you very much, Ms Marika. I have no further questions.

10 THE COMMISSIONER: Yes. Mr Cheshire.

MR CHESHIRE: No, thank you, Commissioner.

15 THE COMMISSIONER: Yes. Mr Weber, do you – no? Ms Marika, thank you for coming?---Thank you very much for your time of listening.

No, thank you. And you may leave the witness box and go and join the rest of your family?---Thank you.

20 Thank you.

<THE WITNESS WITHDREW [3.04 pm]

25 MS ORR: Commissioner, the next witness is Mr Russell Howden from Select AFSL.

THE COMMISSIONER: Yes, Mr Howden.

30 **<RUSSELL HUGH HOWDEN, SWORN [3.05 pm]**

35 **<EXAMINATION-IN-CHIEF BY MR CHESHIRE**

THE COMMISSIONER: Thank you very much, Mr Howden. Do sit down. Yes, Mr Cheshire.

40 MR CHESHIRE: Thank you, Commissioner.

Sir, would you give the Commission your full name, please?---Russell Hugh Howden.

45 And your occupation is you are managing director of Select AFSL; correct?---That is correct.

And your professional address is level 11, North Tower Railway Street in Chatswood, New South Wales; is that correct?---That's correct.

5 And do you have a – you are here by virtue of a summons issued for you to attend; is that correct?---That is correct.

Do you have the original of that?---Yes, I do.

10 Commissioner, I tender that.

THE COMMISSIONER: Exhibit 4.172, the summons to Mr Howden.

15 **EXHIBIT #4.172 SUMMONS TO MR HOWDEN**

MR CHESHIRE: And, Mr Howden, you have provided witness statements in response to rubric issued by the Commission numbered 4-23, 4-31 and 4-42; correct?---That is correct.

20 You have – you have also provided some further information in response to notices to produce served upon you by the Commission, numbered NP475, 495, 497, and 654; is that correct?---That is correct.

25 The information given in those witness statements and responses, are they correct to the best of your information, knowledge, and belief?---Yes, they are.

Commissioner, I tender those documents.

30 THE COMMISSIONER: The witness statement in answer to Rubric 4-23 becomes exhibit 4.173.

35 **EXHIBIT #4.173 WITNESS STATEMENT IN ANSWER TO RUBRIC 4-23**

THE COMMISSIONER: Witness statement in relation to Rubric 4-31 will be exhibit 4.174.

40 **EXHIBIT #4.174 WITNESS STATEMENT IN RELATION TO RUBRIC 4-31**

45 THE COMMISSIONER: The witness statement in relation to Rubric 4-42 will be exhibit 4.175.

EXHIBIT #4.175 WITNESS STATEMENT IN RELATION TO RUBRIC 4-42

MR CHESHIRE: And, Commissioner, I also tender the responses to the notices to
5 produce that I have asked Mr Howden about. They have further information in
addition – I am not tendering the documents, but in the actual response letters there’s
further information provided.

THE COMMISSIONER: I am not then exactly clear what the tender is, Mr
10 Cheshire. Is it letters, documents, or – or what?

MR CHESHIRE: They - - -

THE COMMISSIONER: Generally speaking, we would presently be content with
15 the witness statements and then, if need arises, individual documents produced in
relation to the NTPs would come in, but ordinarily I would not go beyond the
witness statements.

MR CHESHIRE: The way the matter has developed, Commissioner, is the notice to
20 produce to were overlapping with the Rubrics in time.

THE COMMISSIONER: I’m sure they were.

MR CHESHIRE: So Mr Howden has provided some information which is only in
25 what are responses, being the letters which effectively said in response to the notices
to produce which say, in effect, “Here are the documents you have requested and
here is some further information as well.”

THE COMMISSIONER: All right. Well, if Counsel Assisting seek to tender that,
30 so be it, otherwise we will content ourselves with the witness statements, unless
when we – it comes your turn to examine further, there is some occasion to tender
those further documents.

MR CHESHIRE: Thank you. I will speak to Ms Orr about that. Thank you,
35 Commissioner.

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

40 <**CROSS-EXAMINATION BY MS ORR** [3.09 pm]

MS ORR: Mr Howden, you’re the managing director of Select AFSL?---That is
45 correct.

And Select is a wholly owned subsidiary of a company called Blue Ink Group
Proprietary Limited?---Correct.

And you've been put forward by Select to answer questions about the promotion and distribution by Select of funeral insurance, as well as in relation to the experience of Ms Marika that we've just heard evidence about?---Correct.

5 So Select promoted and distributed funeral insurance until earlier this year; is that right?---That is correct.

And the products promoted and distributed by Select were products which were issued by an entity called St Andrews?---Correct.

10 And the relationship between Select and St Andrews commenced in about 2013?---April 2013.

15 And from about 2010 St Andrews was owned by the Bank of Queensland?---Sorry, can you repeat that statement?

From about 2010, was St Andrews owned by the Bank of Queensland?---I'm not sure of the precise date but, yes, they were owned by the Bank of Queensland.

20 And St Andrews has recently been sold by the Bank of Queensland to another entity?---That is correct.

Now, Select promoted and distributed the St Andrews funeral insurance products under the brand of Let's Insure?---Correct.

25 And was Select the exclusive distributor of St Andrews funeral insurance products?---I can't say definitively whether St Andrews had relationships with other insurers. I know that, prior to entering into an arrangement with Select, they did have other products with other distributors.

30 So Select stopped distributing St Andrews funeral insurance products very recently, on 19 March this year?---That's correct.

35 Now before I proceed with some further questions, I just want to clarify a few points of terminology. In the request for a witness statement that was sent by the Commission to Select, the Commission asked for information about Select's operations. You recall that?---Yes.

40 And some of the information that the Commission requested sought to differentiate between Aboriginal and Torres Strait Islander policyholders and non-Aboriginal and Torres Strait Islander policyholders?---Correct.

45 And in your statement you tell us that Select does not request or gather, and has not requested or gathered, information regarding applicant's ethnicity for funeral insurance policies?---That is correct.

Okay. But you also tell us that, in line with guides provided to Select by St Andrews and by ASIC, Select has classified its customers residing in postcodes with an indigenous population of 15 per cent or higher as being Aboriginal Australians?---Correct.

5

And you make clear in your statement that that doesn't mean that all policyholders residing in those postcodes are Aboriginal Australians?---That's correct.

10 So when we speak – when you and I speak about Aboriginal and Torres Strait Islander policyholders, we will be speaking of people who you've identified as living in those postcodes?---That is correct.

15 Okay. Now, you've provided information about Let's Insure policyholders in your statement. As at 13 June this year, the date of your first statement, there was still 31,043 policies on issue to non-Aboriginal and Torres Strait – Aboriginal and Torres Strait Islander people?---Correct.

And that was for about 57,000 total lives insured?---Correct.

20 So that meant there were about 1.86 lives insured per policy?---Using that metric, yes, that's correct.

25 And you tell us that your annual premium income for that group is over \$22 million. This is 4.4 in your statement, Mr Howden?---Yes. My apologies, Ms Orr, but I actually thought you were going to start with Rubric 4-31, but you've gone on to Rubric 4-23. I don't have 4-23 with me at the moment.

Is that the other folder that you have?---No. That's the – the – the annexures.

30 I think your counsel will pass you a copy of your other statement now?---Thank you. Okay.

It is also – or was also on the screen, Mr Howden?---Okay. Yes, I do have that statement now.

35

So we see from that paragraph 31,043 policies, and an annual premium income of over \$22 million, for policies on issue to non-Aboriginal Australians?---Correct.

40 And, as at the same time, there was still 983 policies on issue to Aboriginal and Torres Strait Islander people?---Correct.

See that?---Yes.

45 With about 2544 lives insured?---That's correct.

Which means about 2.59 lives insured per policy on issue as opposed to the 1.86 for non-Aboriginal and Torres Strait Islander people?---That's correct. Correct.

And the annual premium income for policies on issue to Aboriginal Australians is just under \$840,000?---That's correct.

5 Now, as at the date of this statement, 13 June, St Andrews had a significant number of funeral insurance policies on issue to young people; is that right?---I'm not sure how you define "significant".

10 Well, if we look at the figures in your statement here, starting with 4.6, if we start with policies on issue to non-Aboriginal and Torres Strait Islander people under 18 years of age, there were 10,535 lives insured?---But that is not policies; those are lives insured.

15 Yes. So 10,535 lives insured where the life insured was under 18 years of age?---Correct – correct.

For a total premium income of about \$512,000?---Correct.

20 And in respect of Aboriginal and Torres Strait Islander people, there are currently about 683 lives insured where the life insured is under 18 years of age?---Correct.

25 So why did Select sell funeral insurance policies to children?---We don't sell, per se, to children. We offer two types of plans, one is a single plan, which by definition is one life insured on that plan. The family plan is typically two adults, and then we ask the person at the time of the call, "Would you like to add your children?" And that is similar to what the rest of the industry does. Sometimes they are called children's cover, or another definition, but it's just offering the ability to have the whole family covered under one policy. That doesn't mean to say that we are targeting people under 18 years old.

30 You've got a total annual premium income from the 683 Aboriginal and Torres Strait Islander lives insured under 18 of \$38,000 presently?---That's correct.

35 And for non-Aboriginal and Torres Strait Islander people between the ages of 18 and 25, you've currently got 5439 lives insured. We see that from 4.8?---Yes.

For an annual premium income of just under 1.07 million?---Yes.

40 And for Aboriginal and Torres Strait Islander people, between the ages of 18 and 25, you've got 335 lives insured for a total annual premium income of just under \$75,000?---That's correct.

45 That's 4.9, which is just cut off at the bottom of the screen. So what about that age bracket, Mr Howden? Why sell funeral insurance policies to people aged between 18 and 25?---Well, again, you can have a family policy where the – the older person could be 35 and the partner could be 23 or 24. Or you could have older people who – some are still residing with them, they have the option to add that person to the policy as well. So there's a variety of reasons. If you look at the overall mix of

policies that we have, roughly 64 per cent is over 50 years old. And look at the number of policy owners. And that has always been our target, is that sort of age band.

5 And over the last five years, Mr Howden, you've distributed a number of different types of funeral insurance policy?---That's correct.

Some policies have a fixed premium structure?---Correct.

10 Can you explain what that is?---Fixed premium essentially means that your premium stays fixed for the life of the policy - - -

And - - -?---And so does your sum insured stay constant.

15 And some policies have a capped premium structure?---That's correct.

Can you explain that?---Capped premium means that you won't pay out – your benefit amount will never be less than the premiums that you've paid.

20 And other policies have a stepped premium structure?---That's correct.

And that's where the amount of the premium increases as the person gets older?---Correct.

25 Do the majority of your policyholders have a stepped premium structure?---Yes, they do.

Now, are you familiar with ASIC report 454 on funeral insurance, which you may have heard me take Mr Jones to earlier today?---Yes, I am.

30 Are you aware that ASIC recommended in that report that funeral insurers provide an upfront estimate of the total cost of the policy?---Yes, we are aware of that.

35 Does Select do that?---I think in response to that we said at the time we don't actually – simply because we've got multiple on – on the same policy, it would be quite complex to do quite a few iterations of that. So that particular feature of giving a quote to age 90, or age 85 should I say, we don't do. But we did take on board the other recommendations contained in that report, including flattening the premium with the older ages, making sure they were level from age 80, and no
40 further premiums from 85.

So you haven't taken up the recommendation of ASIC to provide an upfront estimate of the total cost of the policy because you say it would be too difficult to do so?---The average length of a call is about 20 minutes, and depending on how many
45 people on that policy – because often what happens you give a quote and a client will ask you to give a different quote. So, you know, if we had to do a calculation in each case up to age 90, it's unlike a retail – an adviser-based product where you would do

a series of – full cost. If it was just one option that you could select, and that was no rider, ancillary costs attached to that it would be quite easy to do, because we could just simply say, for that sum insured, that’s what the total premium will be, assuming you don’t take – you take the fixed premium option or you take the stepped premium option.

It would assist your potential customers to know the total cost of entering into a policy with you upfront, wouldn’t it?---I agree it would assist them, yes.

10 You agree?---Yes, it would assist them.

But you don’t provide that assistance?---Currently, we don’t do that. No.

15 Do you have any plan to provide that assistance?---If we can work out a way to do it which is – is efficient from the – the client’s perspective, we’re happy to incorporate that feature.

20 Yes. So you said you average call is 20 minutes; is that right?---Depending on how many people are on the policy.

25 Yes. And how long do you think it would take to explain to the customer what the upfront cost of the policy was?---Because typically how the call would start, we would ask the client, “How could I give you a quote for a certain amount?” And they would say, “Is that affordable?” If it is not affordable, we try a different amount. Then we would add different benefits to that, and say, “Would you like to add accidental death or accidental serious injury?” Then we would say to you, “Would you like to add children, take children on, yes or no?” So there’s quite a few permutations in terms of where that could call could go. And if each time we had to do a forecast, it would be quite tricky – and it would be quite lengthy to do a forecast each time.

30 So each time you’re discussing a different option with the customer, they don’t have a critical piece of information, which is the total cost of that option to them?---No, no. At the end of that quote there’s no doubt what the cost is, and at the end of the call we recap the cost for each benefit.

35 But do you give the total upfront cost to the customer?---Sorry, I’m perhaps misunderstanding you. We give them upfront cost of the policy for the first year. If that’s what your question is, most definitely.

40 No, I’m talking about an upfront estimate of the total cost of the policy?---Assuming they went to age 85? No, we don’t do that.

45 THE COMMISSIONER: Well, can I understand how many variables there are? There’s three forms of premium payment: fixed, cap, stepped; is that right?---Correct.

There's the age of the life insured?---Whether they smoke, what their gender is.

Yes?---Whether they take accidental death, accidental serious injury.

5 Yes. I think we are at six or seven. Yes, go on. What other variables are there?---Those would be the main variables, counsellor.

Six or seven variables?---Correct.

10 Yes.

MS ORR: If we look at the recommendation made by ASIC at ASIC.0800.0008.0030. Within that document at 0035 we see that the recommendation is the second dot point in the right-hand column:

15

Provide an upfront estimate of the total cost of the policy based on the options offered, for example stepped or levelled premiums with or without consumer price index or automatic sum increases if the consumer lives to 70, 80 or 90.

20 That was the recommendation made in 2015?---That's correct.

And as I understand it, you have not acted on that recommendation?---Only because of the complexity of the options.

25 Do the vast majority of your policyholders hold policies under which they're capable of paying more in insurance premiums than the maximum benefit that's available to them under the policy?---The vast majority, yes, would have stepped premiums or fixed premiums.

30 Have?---Stepped premiums.

Yes. And they have a policy that allows a situation where they can pay more than they can ever recover?---Correct. But they are covered, similar to other insurance, outside the first 12 months for death, by any cause, for the full sum insured.

35

And over the last five years, St Andrews has cancelled 20,322 policies held by non-Aboriginal and Torres Strait Islander policyholders. We see this at 18.1 of your statement?---Yes.

40 So that's about 65 per cent of the current number of policies held that have been cancelled by St Andrews?---That's correct.

And in comparison, about half of that number, 11,082 – we see this from 19.1 – non-Aboriginal and Torres Strait Islander policyholders cancelled their own policies within that period?---That's correct.

45

And in the same period – in the same period, St Andrews cancelled 1582 policies held by Aboriginal and Torres Strait Islander people?---Correct.

5 So on my calculation, that's about 161 per cent of the current number of policies held by Aboriginal and Torres Strait Islander people?---I think the reason for the spike – and I am sure it will come up later – we effected a remediation program which so there was, like, 640 policies, and that would explain the – the spike there.

10 You say that explains the high levels of cancellation by St Andrews?---It is one of the contributors to the higher.

15 And we can see that a small fraction of that number, 282, Aboriginal and Torres Strait Islander policyholders cancelled their own policies in the same period?---Correct.

Now, is the most common basis for policy cancellation by St Andrews non-payment of premiums?---That would be the main reason, yes.

20 And over the last five years Select has offered its funeral insurance policies through four different sales channels; is that right?---That's correct.

Television advertising is the first?---Correct.

25 And the number of policies sold via the television channel is fairly small; is that right?---Correct.

The second channel is digital channels?---Correct.

30 And that accounted for about a third of the policies sold to non-Aboriginal and Torres Strait Islander people?---Correct.

And just over a quarter of the policies sold to Aboriginal and Torres Strait Islander customers?---Correct.

35 And Select also sold its policies through what you call the voice channel?---Correct.

That involved engaging external call centres to contact prospective customers?---Correct.

40 And that's what you refer to in your statement as an outbound sales process?---The external call centre would generate leads to pass through to us to call.

So you engage someone else to generate a lead?---Correct.

45 A prospective customer is identified by an external party?---So what those external parties would do, they would call people that aren't on the do not call register following an approved script, engage an interest as to whether the interested – they

would be interested in getting a quote. And once they got that interest and approval, they would pass the lead through to us.

So they would pass the name and phone number through - - -?---Correct.

5

- - - to Select. And that channel, that's the outbound sales process, is that right, that you refer to as the voice channel?---No. The only true, I suppose, inbound would be television, and then you have digital which is survey, which is almost like a quasi-inbound, because someone has expressed an interest online to getting a call back, and then you also have what we call the voice – or what we just discussed, both of which would involve an outbound call from us.

10

Yes, I understand?---Whereas the TV would be inbound.

15 And the voice channel accounted for the majority of sales to both non-Aboriginal and Torres Strait Islander customers and to Aboriginal and Torres Strait Islander - - -?---Correct.

20

- - - customers. It accounted for about 64 per cent of policies sold to non-Aboriginal and Torres Strait Islander customers?---Correct.

And about 53 per cent of policies sold to Aboriginal and Torres Strait Islander customers?---Correct.

25

And that was the channel that we've heard Select used to contact Ms Marika?---The recording that you played back was from a voice – voice lead, yes. So that's a

So that's how the sale to Ms Marika was effected, through that voice channel?---Correct.

30

Okay. And Select has a final channel, which is a channel that you've referred to in your statement as the referral channel?---Correct.

35

And did this channel stop being used at some point?---As we will go through later, yes. We had a referral process in place, but because it was abused we stopped that process.

And as we will come to, that was in May last year that you stopped the referral channel; is that right?---Correct.

40

But before that time, when a person signed up with Select, they would be sent a welcome pack?---That's correct.

And the welcome pack included a refer a friend flyer?---Correct.

45

And Select asked new policyholders to provide contact details for their friends and family?---Correct.

Now, if we could just look at that refer a friend flyer. SAF.0004.0001.0066. This is a copy of the refer a friend flyer, Mr Howden?---It is.

And the flyer tells us on the first page that:

5

Let's Insure is always looking for ways to reward our clients for their loyalty.

?---Correct.

10 And:

If a new policy holder refers a friend or relative who's also new to Select and who proceeds to take out a policy, the new policy holder will receive a \$20 Coles Myer gift card.

15

?---Correct.

Now, there are some disclaimers suggesting that policyholders should seek their friends or relatives permission to refer them. Do we see that - - -?---Yes.

20

- - - on this first page and on the back of the form, 0067?---Yes.

But there was no requirement to give any type of positive declaration that you had obtained consent from your friend or family member providing their details on this form?---Correct.

25

So what the form sought was the contact details of the people to be referred, their name, their relationship to the new policy holder, their postal address, their email address, and their contact numbers?---Correct.

30

And we see on the back of the page a reference on the back page – sorry, a reference there on the flyer – I will just find the part to blow up – I'm sorry, it's on the front page in the second paragraph:

35

...and there's no limit on the number of times you can refer friends. So you can keep on being rewarded.

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

40

So that was the refer a friend flyer that was used when your referral channel was still operational?---That's correct.

I tender that document, Commissioner.

45

THE COMMISSIONER: Let's refer a friend flyer, SAF.0004.0001.0066, exhibit 4.176.

EXHIBIT #4.176 LET'S REFER A FRIEND FLYER (SAF.0004.0001.0066)

5 MS ORR: Now, you tell us in your statement that sales made via the referral channel accounted for about 2.4 per cent of the policies that are presently on issue to non-Aboriginal and Torres Strait Islander customers?---Correct.

10 But they account for about 19.94 per cent of the policies on issue to Aboriginal and Torres Strait Islander customers?---That's correct. As I said earlier, when we get to that part we will explain what happened there.

15 Yes. So of the four sales channels, you accept that this is the channel that has the most significant discrepancy between sales to non-Aboriginal and Torres Strait Islander people and sales to Aboriginal and Torres Strait Islander people?---For 2015, yes.

Yes. Well, across the five year period?---But it was concentrated in 2015.

20 All right?---And it normalised outside those years.

So it was the events in 2015 that led to the skewing of those numbers; is that right?---Correct.

25 So in 2015 there was a spike in the number of funeral insurance policies sold by Select?---There was a growth in overall sales as a result of increased marketing spend, but there was a spike in sales to the 43 codes – postcodes that St Andrews had identified as being Aboriginal postcodes.

30 Yes, I see?---That's the spike, but the overall growth in 2015 was a result of increased marketing spend.

You say the overall growth was a result of your marketing schemes?---Marketing spend, yes.

35 Marketing?

THE COMMISSIONER: Spend.

40 THE WITNESS: Spend.

MS ORR: Spend. Thank you. But at least a portion of that spike was principally caused by an increase in the sales to Aboriginal and Torres Strait Islander people?---No. The – the spike to – sorry, I'm not sure if I understand the question there.

45 So the increase in total sales in 2015, part of that was attributable - - -?---Correct.

- - - to a spike in the sales to Aboriginal and Torres Strait Islander people?---Correct, yes.

Now, we see from the table in your statement following paragraph 25.2 - - -?---Yes.

5

Just wait till it comes up on the screen. If we could have 25.2 and 25.3 both on the screen, that will assist because 25.2 deals with sales to non-Aboriginal and Torres Strait Islander policyholders, and 25.3 deals with sales to Aboriginal and Torres Strait Islander policyholders. And we see there a spike in relation to sales to
10 Aboriginal and Torres Strait Islander policyholders. 2013, '14 and '16 the numbers were between 3.5 and 3.9 per cent, and in 2015 the number more than doubled to 7.8 per cent?---Correct.

15 Now, the principal source of the spike was an increase in the referral lead source; is that right?---That's correct. And if you go to my response in 28.4, you will see that referral to there increased to 43 per cent in 2015, whereas previously it was – the prior year it was 6 per cent and the year after 2015 was 2 per cent. So the spike occurred in 2015.

20 And almost half of the sales, 46 per cent that were made into those 43 postcodes between January and October 2015, were generated through the referrals lead source, weren't they?---That's correct.

25 And that was in comparison to the referrals source generating 7 per cent of sales outside of those postcodes?---Correct.

Now, could I ask you to look at SAF.0004.0001.0220. This is an internal file note, we see from the top that you were on the distribution list for this file note?---Correct.

30 And we see that this document refers to some analysis that has been conducted into this funeral sales spike?---Yes.

And at the bottom of the page, paragraph 7:

35 *The analysis identified that the proportion of sales for each type of lead source were broadly comparable as between the sales in the selected postcodes and sales outside of the selected postcodes except for the referral lead source. The referral lead source accounted for 622 sales made in selected postcodes during the review which represents 38 per cent of all referral generated sales during*
40 *the review period compared to the selected postcodes representing only 5 to 8 per cent for other lead generation sources. Sales in the selected postcodes sourced through referrals during the review period –*

45 we will just need to go over the page –

accounted for 49 per cent, which compared to only 8 per cent outside of the selected postcodes.

That was the results of the analysis?---Similar to the findings in this table, yes.

Yes. I will tender that document, which we will come back to.

5 THE COMMISSIONER: Select AFSL file note concerning meeting of 27 February '17, I think, SAF.0004.0001.0220, exhibit 4.177.

10 **EXHIBIT #4.177 SELECT AFSL FILE NOTE CONCERNING MEETING OF 27 FEBRUARY 2017 (SAF.0004.0001.0220)**

MS ORR: You tell us in your statement that during 2015, you were aware of an increase in the overall sales of funeral insurance policies?---That's correct, because it was a planned increase based on increased marketing spend.

So you tell us that you believed at the time that the increase in sales was due to your increased marketing activities?---That's correct.

20 And you say that you weren't aware at the time of the proportionate increase in the number of sales attributable to Aboriginal and Torres Strait Islander people, because you didn't have information about people's ethnicity?---That's correct.

25 And you tell us that Select didn't learn of the proportionate increase in the number of sales to Aboriginal and Torres Strait Islander people until the end of October 2016?---That's correct.

30 And Select learned of that issue when St Andrews notified Select of the internal analysis that it had been doing?---That's -- that's correct. St Andrews actuarial department, and I think it was pursuant to the ASIC report, the 454 report, actuarial analysis. And they brought that to our attention. At that time, we didn't have an actuary.

35 You didn't have an actuary?---We didn't have an actuary. We're not a life insurance company.

So St - - ?---The first time we were aware of it was when St Andrews brought it to our attention.

40 Yes. So St Andrews had done a portfolio review?---Correct.

And that analysis was fed back to you at Select?---Correct.

45 And if we look at SAF.0004.0001.0207 we see this is an email chain entitled Let's Insure Funeral Portfolio Analysis and Questions. And we see from the first page that St Andrews' internal analysis was focused on ensuring that there was not an overrepresentation of sales to indigenous communities that could be construed as

potential mis-selling. Do you see that reference in an email to you on 31 October 2016?---Yes, I do.

5 And we see from the graph in that email that the analysis undertaken by St Andrews led them to come to the realisations that we've just discussed: that there had been a spike in sales to customers living in postcodes with a high proportion of Aboriginal and Torres Strait Islander people, and that the spike was largely attributable to the referrals lead source?---Correct.

10 I tender that email chain, Commissioner.

THE COMMISSIONER: Emails to Howden and others, 31 October 2016, SAF.0004.0001.0207, exhibit 4.178.

15

**EXHIBIT #4.178 EMAILS TO HOWDEN AND OTHERS
(SAF.0004.0001.0207)**

20 MS ORR: Now, you tell us in your statement that, when you learnt of this spike in sales, you were surprised?---We were very surprised by it, yes.

And this was because there had been no specific change in lead generation or acquisition processes or targeting of sales within those postcodes?---Correct.

25

And you attributed the spike to two sales incentive arrangements?---Correct.

I want to come back to those incentive arrangements. But, once this was identified, there was an investigation?---As soon as it was brought to our attention, we did an investigation. And we narrowed that down to the referrals. We then analysed it by representative, and we narrowed it down to two representatives that accounted for 50 – 54 per cent that had made the bulk of those sales.

30

So you found that there were, in your words in your statement, abuses of the referral processes by two particular sales representatives?---Correct.

35

Now, you referred to two representatives in your first statement, but since then have you found out there was at least one more sales representative who abused those processes?---That particular individual relates to Ms Marika.

40

Yes?---And that was the – the back of a voice lead, and he made a referral outside one of those 43 postcodes.

Yes. So you hadn't identified the person who sold Ms Marika her policy as one of the two - - -?---Correct, because it wasn't one of the 43 postcodes, yes.

45

I'm sorry?---The analysis we did was of the 43 postcodes.

Yes. And Ms Marika didn't reside in one of those postcodes?---Didn't reside there.

Now, do you still consider, Mr Howden, that the abuse of the referral processes by those particular representatives was responsible for the spike in funeral insurance sales to Aboriginal and Torres Strait Islander people by Select in 2015?---I definitely do, because if you look at the monthly analysis, one of the exhibits, certainly the year after that, it normalises in terms of an expected distribution.

Do you have any views on what motivated the behaviour of those representatives?---As I said in my statement, I believe there were two contributors to that. One was a sales incentive of a Vespa scooter which we ran up to June 2015, and the other one was a cruise to the Sunshine Coast from Sydney, three day cruise, which we ran up till September.

So two particular sales incentive programs. That's what you regard as the cause or the motivator for - - ?---I think they were contributors to that as well, as the referral process – the abuse of that referral process.

Do you think that the behaviour of these sales representatives was caused by the aggressive sales tactics that were sanctioned by Select?---We never, ever sanctioned aggressive sales tactics. If I may elaborate now – and it might be out of context to Ms Marika – and I'm sure we're going to come back to that – that was an appalling call, and there's was no way other than to explain that. It was terrible. That's certainly not something that we subscribe to.

Well, I want to come to the way you train your representatives to conduct those calls, Mr Howden, but do I take it for now that you don't accept that any part of this was caused by aggressive sales tactics that were sanctioned within your organisation?---I do accept, with hindsight, that we pushed our agents. All call centres will have productivity targets, and it's regrettable that, as a result of this, this spike happened.

So you accept that you pushed your agents with targets. Is that what you said?---All call centres have targets. We've got – we tabled those, KPIs, and every call centre will have a target to achieve in terms of KPIs.

So do you think another contributor to the conduct of these representatives was your KPIs and incentive structures?---I'm not saying it's perfect, our structure, but the industry that we operate is largely driven by commission. Over the years we've evolved that structure. Initially we based it just on the premium, then we had a flat amount per policy, a flat amount per life. So over the years, we have evolved, but the – we do need to incentivise the staff in the call centre to be productive, but I'm open to any other suggestions as to how we can achieve that.

So do I understand, Mr Howden, that you accept that your KPIs and incentive structure was a contributor to the conduct of these representatives?---In respect of these individuals, most definitely, but I wouldn't say that it would apply to all the other individuals, but - - -

Well, I'm talking about the structures that did apply just not – not just to these two people, but to all of your representatives. Do you accept that they were a contributor to the conduct of the two representatives?---No. What I'm saying is the commission is there for a purpose to ensure that staff are productive. I think what happened in this case, the – the attraction of the Vespa scooter and the cruise drove wrong behaviours in those two agents.

Well, I'm going to put to you – and I want to do this by reference to a number of documents – that this wasn't just about the Vespa and the cruise promotions: it was about more structural problems in the way you were training your staff to conduct these calls and the way you were incentivising them as to the results of these calls?---We have evolved our commission structure. It was designed to make agents productive but, at all times, the intended outcome was compliant sales.

Well, you had a quality assurance and a disciplinary framework at this time, did you?---Correct.

And do you think that your quality assurance and disciplinary framework was effective to discourage this sort of behaviour?---The structure was put in place from inception, and it was put in place by a very senior person with knowledge of the industry. We listen to a large amount of calls, and whenever there's a – something which requires action, we address it immediately.

So it was - - -?---We provided you with copies of all those monthly meetings.

And I want to take you to that, Mr Howden, because I want to put to you squarely that your quality assurance and disciplinary framework was ineffective to detect or discourage this sort of behaviour?---I can't say I agree with that statement, Ms Orr.

Okay. Well, I've put three different causal factors to you, and I want to deal with those each in turn. The aggressive sales tactic sanctioned by Select, the KPI and incentive structure, and the quality assurance and disciplinary framework. So I want to ask you some questions about each of those in turn. Can we start with the way you were training your staff with sales tactics. Could I ask you to look at SAF.0007.0001.0065. This is a presentation used by Select to train its sales representatives in 2015. It's a colour version of a black and white document - - -?---Correct.

- - - that you've annexed to your statement?---Yes.

THE COMMISSIONER: What date, Ms Orr?

MS ORR: The document is not dated, but we understand it to be a document that related to training in 2015; is that correct, Mr Howden?---That's correct, yes.

Yes. Now, an important message of this presentation, which I will take you to parts of, but which I understand you will be familiar with, is that there is no impediment to

making a sale to a customer who already holds a funeral insurance policy with another company?---Provided we provide the client with a quote for comparable cover, and it's a better – a better outcome for the client.

5 So you agree that there's no impediment – your staff are told there's no impediment in trying to sell to someone who already has a funeral insurance policy?---Correct.

Okay. And that's the subject of one of the slides in this presentation, at 0073. So we see there that after the initial introduction:

10

The customer should be asked if they have existing cover in place. The response by the agent will vary depending on the answer provided by the customer. Third party example, "Great, I speak to many people like yourself."

15 Now, that was the approach taken by the salesperson who spoke to Ms Marika we heard earlier today?---That's correct.

Continuing:

20

Respond: "Who do have cover in place and the great news is we've been priced up to 50 per cent cheaper than other plans on the market. So I'm just going to briefly explain what we can offer you and then provide you with an obligation free quote to save you some money." Or respond: "Who don't have cover in place and the great news is we've been priced up to 50 per cent cheaper than other plans on the market. So what I'm going to do today is explain to you what we can offer you and hopefully provide you and your family that peace of mind that if, God forbid, the worst the was to happen, something would be readily available so that the finances don't have to be worried out."

30

So that was the training given to your staff about how to handle a situation where a potential customer already had a funeral insurance policy?---Yes, that's correct.

35 And we see that also from another document that was in use in training your staff around this time. I will come back to this document but if I could tender it first, Commissioner.

THE COMMISSIONER: Service training Let's Insure 2015, SAF.0007.0001.0065, exhibit 4.179.

40

EXHIBIT #4.179 SERVICE TRAINING LET'S INSURE DATED 2015 (SAF.0007.0001.0065)

45

MS ORR: So we see from a document that is exhibit 5 to your second statement, your statement to do with Ms Marika, SAF.0003.0001.0087. Now, this is another

undated training document but which we understand was in use in 2015; is that correct?---I will just have to check the reference.

5 It's referred to in your statement, and it's annexure 5 to your statement, Mr Howden?---Well, I agree that is the training.

Yes. I think it's referred to in your statement of a copy of a typical training pack?---What point is that in my statement?

10 Paragraph 1.2?---That's correct.

And if we turn to 0115 in this document, we see from 115 that Select considered it important to train its representatives to try pitching – do you see the final line:

15 *Try pitching to a customer that already has cover and also to a customer who has no cover yet.*

?---That's correct.

20 So this was an identified situation, and your staff were trained in how to attempt to sell policies to people who already had funeral insurance cover?---That's correct, but if – as I said earlier, if they had existing cover in place, they had to make sure it was comparable. So if the client had fixed premium, we would have to quote a fixed
25 premium option and not a stopped premium option, and we had to make sure that if they had ancillary benefits, we also included ancillary benefits to make sure it was comparable. Provided they were comparable cover and they were quoting, yes, they were allowed to do that.

30 And another important message from the sales training at Select was that it was permissible to play upon a customer's fears in order to sell policies. Do you agree with that?---I see it's mentioned in one of the points. It's not fears; it's bringing to a customer the need to have insurance in place for the unexpected. That was the intent.

35 Well, could we have a look back at the document that I had taken you to a moment ago SAF.0007.0001.0065. And we see at 0076, we see that your staff were told that there were three impulse factors that will drive the immediate decision and they were rapport, fear of loss, and the Jones factor. The Jones factor is, I assume, a reference to keeping up with the Joneses; is that what that is?---Not quite as illustrious as that. It's mainly the fact other people have insurance. That was the intent behind it,
40 saying other people do have insurance in place.

And the reference to Jones?---I don't know – to be honest, we inherited this training module from another insurer.

45 Right?---The reason being a sales manager joined us from that insurer, and over the years we have improved, but the intent over there was to say by reference to people that already have cover, and that's why they referred to it as the Joneses factor.

I see. And the presentation says below those three impulse factors:

If you can align your product presentation to meet the common benefits and impulse factors listed above, your power to persuade will greatly increase.

5

?---That's correct.

10 So Select trained its representatives to align their presentation with a potential customer's fear of loss so that their power to persuade would increase?---The emphasis was on rapport. As I said, we inherited this from a previous company. Our emphasis was on rapport with the client. You have got to get the trust of the client to sell the features. In life insurance, we do have to sell.

15 And you need, in that process, to emphasise and work on their fear of loss as well?---I see it there, but I don't agree that's the main driver, no.

20 Well, this was the presentation given to your staff, wasn't it?---I know it was a presentation, but it's not the main driver. And if you look at the sale scripts and the compliance score cards, there's nothing that – which would suggest that fear or loss was the key driver to us.

Just your training of your representatives?---This particular presentation.

25 Yes. We see that another part of this training related to objection handling?---Yes.

And I want to come to that. And another part related to mechanisms for closing the sale. Can we have a look at 0065 – I'm sorry, at 0083. You see there, "Five types of final close"?---Yes, I do.

30 And at least four of those five types of final close that were endorsed by Select are designed to proceed from the assumption that a sale will be made. Do you see, in a direct sale, the representative simply asks for the sale?---Yes, I do.

35 And in the alternative sale the representative is instructed to present two options and ask the customer to select one, and often both options are a sales outcome. You see that?---I see it on the presentation.

And in the trade-off, the representative is to offer:

40 *To complete the application in return for action from the customer.*

?---Yes, I see that.

45 And in the assumptive final close:

The representative is to assume that the response is positive and lead the customer to mandatory confirmation.

See that?---Yes, I do.

And then there's tips for final closing, and one of them is to:

5 *Make it clear to the customer that the decision is being made.*

You see that? And you project confidence in your voice when you're doing that?---But if you see with the sales script we do have to get a clear yes for the policy to proceed.

10

Yes. But this is about how the representatives were conducting themselves in their attempt to get a yes, isn't it?---To be honest with you, I'm not – I've never done this training, but I – I do acknowledge that it is our training material.

15 Yes. It's the training - - -?---I don't know how this was conveyed.

Well - - -?---All I can say to you the standards we expect of the agents is a high standard.

20 Well this is what you were conveying to your agents about how you wanted them to do their job, wasn't it, Mr Howden?---But I don't even know all the answers to those assumptions there, and how they were conveyed to the agent.

25 Well, can we come to what this training told your representatives about how to handle objections from the customer. There was significant emphasis placed in this training on how to teach people to actively overcome potential customer objections. Do you agree with that?---Yes, I do.

30 And if we start at 0085, we see a slide on Objection Handling, and we see that Select told its representatives that it considered that objections could be a legitimate concern, but they could equally be a signal from a potential customer that they wished to negotiate, that they want more time, or require more information, or that they haven't really considered the offer. Do you see that?---Yes, I do.

35 And for those reasons a customer's objections needed to be handled by the - - -?---That's correct.

40 - - - sales representative. And the key message in relation to objection handling was to present a relevant feature, benefit, or aspect of service to help the customer view the product in a different light?---That's correct.

45 So to distract the customer in order to work around their objection?---I wouldn't call it distract. Sometimes you start – often you will start a call and the client is firstly lead what we would classify as warm leads as opposed to cold leads, where they express some sort of interest.

So a warm lead is someone who has expressed some sort of interest. Is that what you said?---That's right. That lead could be lukewarm or it's very hot, because it's inbound from a television campaign. A cold lead is someone that you find like an external call centre would do. We don't do cold calling. All our leads are what we
5 classify as warm leads, but often what happens at the start of the call someone will say they're not interested. But once you get into the call that call will change and the person will say, "In actual fact I didn't realise it was affordable, can I get that much cover?" As the call progresses it gets better in terms of the client's engagement, and identity – identifying with the product. What we have done though, over the years,
10 we changed our objection rule. Previously, we had a maximum of two objections per objection, to a maximum of two objections, and after third objection we will just let the call go.

I want to come to that, what – you tell people about how many times they should try and overcome an objection, but can I ask you first when a customer tells your sales representative at the outset that they are not interested, why not respect that and cease the call at that point?---Because first would say potentially I'm not interested and the client or the agent might respond to say, "How about I just give you a quote and you can see what it's – how much this will cost?" And overcome that first objection.
20

But the customer has said they're not interested, Mr Howden?---But they expressed an interest initially, when we first got the lead.

And then there's a process of attempting to wear them down, isn't there?---I wouldn't say wear it down. It's a maximum of two objections per objection.
25

Well, Select gave its staff a number of tips about how to handle objections, didn't they? We see that from this document?---Yes. And again, this was a document that we inherited - - -
30

I understand?--- - - - from another insurance company.

I understand, but it's - - -?---It was the basis we started.

It was a document you used to train your staff?---And it has evolved over the years.
35

Okay. So if we have a look at 0087, we see some Objection Handling Tips. And we see that the third tip is to, "Use third party examples"?---That's correct.

Does that mean referring to other customers' experiences?---That's correct.
40

And another is to link your trial or final close to the next step in the sales call flow?---Correct.

So that a customer can't exit the process, if you like?---The customer can always exit the process, particularly right at the end when you have to get a clear yes to start the policy.
45

Well, I want to put it to you that you trained people to make it very difficult for customers to exit the process, Mr Howden?---But it's a clear requirement that we do, and there's various stages, even when it comes to the banking section we've got to get a clear agreement from the client to proceed with that section, and at the final
5 stage we have to get another clear agreement.

We see from this page that you suggested to your staff that, at a minimum, they should attempt to handle each objection with two relevant objections?---That was the earlier rule that I said per objection, a maximum of two objections to that objection,
10 but if you had a third objection to the same objection they weren't allowed to proceed with it.

So do I take from that if a client – if a potential customer says they're not interested, that's one form of objection?---Correct.
15

And you can have two goes at trying to turn them around?---Previously – previously, yes could, yes.

And then if they say something else like, "I can't afford this," that's a fresh objection
20 and you can have another two guys at trying to - - -?---Previously, yes, you could.

And we see from this document that Select trained its representatives to treat objection handling as a feature of a number of different parts of the call, a number of different stages. Do you agree with that?---I agree that's in the material, yes, I do.
25

And the material also told your staff that as a final point they – they could drop to a lower cost, or remove features of the product if a price related objection was given?---Correct, because often a client can only afford a certain – to pay a certain amount.
30

And can I take you back to the other document – training document that we looked at before, the exhibit to your statement, SAF.0003.0001.0087. And if we turn to 0100, we see there that your staff were told that:

35 *Objection handling is an integral part of your role and will be required on 95 per cent of all calls you make.*

You see that?---Yes, I do.

40 And at 120, we see that the general position was:

The three objection rule, which means we can handle two objections and on the third objection we need to let the customer go and arrange a call back or, if more appropriately, advise them to call us back.
45

?---Correct.

But some objections, we see from 0119, didn't count towards the total objection limit?---So this is before you've actually got into the pitch - - -

Yes?--- - - - about the product.

5

Yes. So we see there in the first line:

Objections are not counted towards the total objection limit during the engagement phase, that is before the product pitch has started.

10

?---That's correct.

And at 118, we see that Select gave specific pointers for some types of objections, such as the "I'm not interested objection". Do you see that?---Yes.

15

Continuing:

This will be the most common thing you will hear in your calls but works slightly differently to other objections.

20

And Select considered if a potential customer said this they were not actually giving you a legitimate concern and, as a result, the objection needed to be handled slightly differently to determine why the potential customer was not interested. And then you could turn to the regular process of objection handling. Do you see that?---Yes, I do.

25

Now, having gone through those training documents Mr Howden, in 2015 when this is how your staff were being trained, you were training your representatives to sell and to sell aggressively?---Again, I would say they were selling to a lead, a client has expressed an interest, and I'm not saying in all cases all the agents on every single occasion weren't aggressive, I'm not saying that is the case, but they were trained to follow the rules, and the client had expressed an interest in getting the call back, and insurance has to be sold. It's one of those products. It's - it's life insurance, you have to explain the features and go through the price before someone decides to take out the product.

35

And you trained your staff to be persistent in their dealings with customers in an attempt to sell those policies?---They were certainly not of the nature of the call that we heard earlier.

40

Well, wasn't that call showing compliance with most of this training, Mr Howden?---No, there were quite a few things there that he didn't check with the client; he should have arranged a call back, because the client had insurance; he didn't know what the type of policy was; he didn't show any respect to that client, it was terrible. It wasn't a model call.

45

He was handling her objections, though, wasn't he?---He thought he was handling her objections, but he wasn't doing a good job, no.

5 Was the training that you gave to your staff modified in any way where you were seeking to make a sale to an Aboriginal and Torres Strait Islander person?---Definitely not.

10 And should it have been?---We as a business, and as the material, we have never actively targeted the Aboriginal community; it's not a focus of our business.

15 I'm talking about modifications to assist Aboriginal and Torres Strait Islander people in dealing with your calls?---Given what we heard from Ms Marika and the cultural sensitivities, I agree there's more care that has to be exercised there, but we wouldn't discriminate against someone if they had completed an online survey and come through to the sales process. So we don't always know if the person is Aboriginal. We don't ask them at the time of the call.

20 Yes. And should you ask them, Mr Howden?---We don't, but if we're allowed to ask them, we would be happy to ask that question.

I see. I'm sorry to have gone a bit later, Commissioner. I thought it might be useful to finish that topic.

25 THE COMMISSIONER: Yes. How are we travelling for time?

MS ORR: I think a 9.45 start again would be useful, thank you, Commissioner.

30 THE COMMISSIONER: If I could ask you to be back here in time to begin again at 9.45 tomorrow, Mr Howden?---Okay.

We will adjourn until that time.

35 <THE WITNESS WITHDREW [4.18 pm]

MATTER ADJOURNED at 4.18 pm UNTIL THURSDAY, 5 JULY 2018

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