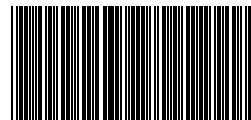




Filed: 27 October 2022 7:33 PM



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Form 2

## ORIGINATING PROCESS – COVERSHEET AND ACKNOWLEDGEMENT

IN THE MATTER OF THE ABORIGINAL COMMUNITY BENEFIT FUND PTY LTD

### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2022/00321916

### TITLE OF PROCEEDINGS

First Plaintiff	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION ABN 86768265615
Second Plaintiff	Minister for Fair Trading
First Defendant	David Michael Stimpson in his capacity as liquidator of the second to eighth defendants
Second Defendant	THE ABORIGINAL COMMUNITY BENEFIT FUND PTY LTD
Number of defendants	8

### FILING DETAILS

Filed for	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION, Plaintiff 1 Minister for Fair Trading, Plaintiff 2
Legal representative	Michael Sloan
Legal representative reference	
Telephone	03 9679 3512
Your reference	1000 040 886

### HEARING DETAILS

This application will be heard at Supreme Court Sydney on 7 November 2022 at 10:00 AM

### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Originating process (Corporations Law) Other, along with any other documents listed below, were filed by the Court.

Corporations Law Originating Process (Form 2) (2022.10.27 Originating Process - signed.pdf)  
Affidavit in Support of Originating Process (20221026 - Open Affidavit of Melissa Smith.pdf)

[attach.]

IN THE SUPREME COURT OF NEW SOUTH WALES

No. of 2022

DIVISION: Equity  
REGISTRY: Sydney  
Corporations List

**IN THE MATTER OF The Aboriginal Community Benefit Fund Pty. Limited (in liquidation) ACN 055 222 565 and others**

**Australian Securities and Investments Commission**  
First Plaintiff

**Minister for Fair Trading**  
Second Plaintiff

-and-

**David Michael Stimpson**  
in his capacity as liquidator of the  
**Aboriginal Community Benefit Fund**  
**Pty. Limited (in liquidation)**  
and others as listed in the Schedule  
Defendants

## Originating Process

### A. DETAILS OF APPLICATION

This application is made:

1. By the first plaintiff under s 90-15 of Schedule 2 (the **IPS**) to the *Corporations Act 2001* (Cth) (the **Act**) and s 75 of the *Supreme Court Act 1970* (NSW); and
2. By the second plaintiff under the IPS as applied as a law of New South Wales by s 5F of the Act, s 74 of the *Funeral Funds Act 1979* (NSW) and s 16 of the *Corporations (Ancillary Provisions) Act 2001* (NSW), and s 75 of the *Supreme Court Act 1970* (NSW).

It is an application for the appointment of special purpose liquidators to the second to eighth defendants, and for associated orders.

## Interlocutory relief

On the facts stated in the supporting affidavits, the plaintiffs apply for the following interlocutory relief:

1. The plaintiffs have leave to commence and continue this proceeding against the second to eighth defendants.
2. The plaintiffs have leave to be represented in these proceedings by separate solicitors and counsel.
3. Until further order and subject to revocation by the Court, there be an order pursuant to s 10(1) of the Court Suppression and Non-publication Orders Act 2010 (NSW) (Suppression Act) prohibiting the disclosure (by publication or otherwise) of certain evidence filed in the proceeding (and to be identified in the interim orders).

## Final relief

On the facts stated in the supporting affidavits, the plaintiffs apply for the following relief.

The relief sought in paragraphs 1 to 10 is sought (a) in respect of the third and sixth to eighth defendants, by the first plaintiff; and (b) in respect of the second, fourth and fifth defendants, by the second plaintiff, alternatively the first plaintiff.

1. Pursuant to s 90-15(1) of the IPS, that two registered liquidators to be identified in the orders (the **Special Purpose Liquidators**) be appointed jointly and severally as additional liquidators of the second to eighth defendants (the **Entities**).
2. The Special Purpose Liquidators' appointment is limited, in the terms of the work to be undertaken by them, to the matters identified in orders 3 to 7 below.
3. The Special Purpose Liquidators may conduct investigations into all dealings or transactions:
  - (a) between any of the Entities;
  - (b) between:
    - (i) any of the Entities; and
    - (ii) any past or current directors (including any person whom the Special Purpose Liquidators consider might have been a shadow or de facto director), officers, shareholders, lawyers, accountants or other advisers of any of the Entities and any person associated (as defined by s 9 of the Act) with any of those persons;
  - (c) constituting or forming part of any disposal or transfer of assets, money or property of any of the Entities;

- (d) concerning potential claims or claims against any person identified in orders 3(a) to 3(c) relating to any dealing or transaction identified by investigations pursuant to orders in orders 3(a) to 3(c);
  - (e) concerning potential claims or claims for voidable transactions or insolvent trading in respect of any of the Entities under s 588FE of the Act; and
  - (f) concerning potential contraventions of the Act committed by any director (including any person whom the Special Purpose Liquidators consider might have been a shadow or de facto director) or officer of any of the Entities.
4. The Special Purpose Liquidators of the Entities may prepare, make applications for and conduct, with the assistance of instructing solicitors and counsel, such examinations under sections 596A and 596B of the Act (including as applied as a law of New South Wales) as are necessary or desirable for the purposes of the investigations referred to in orders 3(a) to 3(f).
  5. The Special Purpose Liquidators may commence and conduct proceedings concerning any of the matters identified in orders 3(a) to 3(f).
  6. The Special Purpose Liquidators may take steps in relation to the matters in orders 3, including the commencement of legal proceedings, to ensure preservation and protection of the assets of the Entities whether or not in the possession of the Entities.
  7. The Special Purpose Liquidators may exercise any of the powers of a liquidator (under the Act or otherwise) that the Special Purpose Liquidators believe necessary to undertake the work described in orders 3 to 6 above.
  8. The first defendant (the **General Purpose Liquidator**):
    - (a) refrain from exercising any of the powers given to the Special Purpose Liquidators in orders 3 to 7 above, except with the prior written consent of the Special Purpose Liquidators (such consent not to be unreasonably withheld) or by leave of the Court; and
    - (b) use reasonable endeavours to assist the Special Purpose Liquidators to exercise the powers given to them in orders 3 to 7 above, including by providing any documents or information previously prepared or obtained by or for the General Purpose Liquidator (including in his prior capacity as voluntary administrator) in investigating or pursuing any claim in relation to any of the matters set out in orders 3 to 7 above.
  9. Each plaintiff (in respect of each company to which the Special Purpose Liquidators were appointed on the motion of that plaintiff) and the Special Purpose Liquidators have leave to apply to the Court in this proceeding to extend the purposes for which the Special Purpose Liquidators are appointed or the powers that the Special Purpose Liquidators are entitled to exercise, and otherwise generally, in respect of the Entities.
  10. Pursuant to s 7 of the *Courts Suppression and Non-Publication Orders Act 2010* (NSW) (**Suppression Act**), on the basis of the grounds in s 8(1)(a) of that Act:

- (a) disclosure (by publication or otherwise) of all or part of certain affidavits and exhibits filed in this proceeding (with the affidavits and parts to be identified in the orders) (the **Protected Information**) and any information contained in the Protected Information be prohibited; and
  - (b) the documents referred to in 10(a) above be retained in the Court file in an envelope marked "*Confidential: to be opened only by order of the Court*".
11. Pursuant to s 11 of the Suppression Act, order 10 applies throughout the Commonwealth.
  12. Orders 10 and 11 inclusive apply until 31 December 2027 or until further order, whichever is the sooner.
  13. Orders 10 and 11 do not prevent the disclosure of the Protected Information:
    - (a) to the first defendant and to his legal representatives solely for the purposes of this application;
    - (b) by the first defendant to the extent that the first defendant had that information independently of this proceeding;
    - (c) to and by the Special Purpose Liquidators and their legal representatives for the purposes of this application and for the purposes of exercising the powers given to them by these or any further orders;
    - (d) by the plaintiffs and their lawyers for the purposes of carrying out any of their functions; or
    - (e) by further order of the Court made on application of which the plaintiffs have been given at least three business days' notice.
  14. Such order for costs as the Court sees fit.

Date:



.....  
Signature of the solicitors for the First Plaintiff



.....  
Signature of the solicitors for the Second Plaintiff

This application will be heard by ..... at [address of Court] at .....\*am/\*pm on .....

## **B. NOTICE TO DEFENDANT(S) (IF ANY)**

TO:

**David Michael Stimpson** in his capacity as liquidator of  
The Aboriginal Community Benefit Fund Pty. Limited (in liq) ACN 055 222 565,  
Aboriginal Community Benefit Fund No 2 Pty Ltd (in liq) ACN 054 951 923,  
ACBF Funeral Plans Pty Ltd (in liq) ACN 081 021 141,  
Community Funeral Plans Pty Ltd (in liq) ACN 074 081 208,  
Youpla Administration Pty Ltd (in liq) ACN 154 497 195,  
Youpla Pty Ltd (in liq) ACN 632 405 933 and  
Youpla Group Pty Ltd (in liq) ACN 074 081 146

SV Partners, 22 Market Street, BRISBANE QLD 4000

**The Aboriginal Community Benefit Fund Pty. Limited (in liq) ACN 055 222 565**  
SV Partners, 22 Market Street, BRISBANE QLD 4000

**Aboriginal Community Benefit Fund No 2 Pty Ltd (in liq) ACN 054 951 923**  
SV Partners, 22 Market Street, BRISBANE QLD 4000

**ACBF Funeral Plans Pty Ltd (in liq) ACN 081 021 141**  
SV Partners, 22 Market Street, BRISBANE QLD 4000

**Community Funeral Plans Pty Ltd (in liq) ACN 074 081 208**  
SV Partners, 22 Market Street, BRISBANE QLD 4000

**Youpla Administration Pty Ltd (in liq) ACN 154 497 195**  
SV Partners, 22 Market Street, BRISBANE QLD 4000

**Youpla Pty Ltd (in liq) ACN 632 405 933**  
SV Partners, 22 Market Street, BRISBANE QLD 4000

**Youpla Group Pty Ltd (in liq) ACN 074 081 146**  
SV Partners, 22 Market Street, BRISBANE QLD 4000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- a) the application may be heard and final relief given,
- b) directions may be given for the future conduct of the proceeding,
- c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

**Note.**

Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

Not applicable.

**D. FILING**

Date of filing: [*date of filing to be entered by Court officer*]

This originating process is filed by Ashurst Australia for the first plaintiff.

**E. SERVICE**

The First Plaintiff's address for service is

c/- Ashurst Australia  
Level 11, 5 Martin Place  
Sydney NSW 2000  
Attention: Michael Sloan

The Second Plaintiff's address for service is

c/- Holding Redlich  
Level 65, 25 Martin Place  
Sydney, NSW, 2000  
Attention: Bede Haines

It is intended to serve a copy of this originating process on each defendant.



**Schedule of Parties**

No. of 2022

IN THE SUPREME COURT OF NEW SOUTH WALES

Division: Equity

Registry: Corporations

**IN THE MATTER OF The Aboriginal Community Benefit Fund Pty. Limited (in liquidation) ACN 055 222 565 and others**

**Australian Securities and Investments Commission**  
First Plaintiff

**Minister for Fair Trading**  
Second Plaintiff

-and-

**David Michael Stimpson in his capacity as liquidator of  
The Aboriginal Community Benefit Fund Pty. Limited (in liq) ACN 055 222 565,  
Aboriginal Community Benefit Fund No 2 Pty Ltd (in liq) ACN 054 951 923,  
ACBF Funeral Plans Pty Ltd (in liq) ACN 081 021 141,  
Community Funeral Plans Pty Ltd (in liq) ACN 074 081 208,  
Youpla Administration Pty Ltd (in liq) ACN 154 497 195,  
Youpla Pty Ltd (in liq) ACN 632 405 933 and  
Youpla Group Pty Ltd (in liq) ACN 074 081 146**  
First Defendant

**The Aboriginal Community Benefit Fund Pty. Limited (in liq) ACN 055 222 565**  
Second Defendant

**Aboriginal Community Benefit Fund No 2 Pty Ltd (in liq) ACN 054 951 923**  
Third Defendant

**ACBF Funeral Plans Pty Ltd (in liq) ACN 081 021 141**  
Fourth Defendant

**Community Funeral Plans Pty Ltd (in liq) ACN 074 081 208**  
Fifth Defendant

**Youpla Administration Pty Ltd (in liq) ACN 154 497 195**  
Sixth Defendant

**Youpla Pty Ltd (in liq) ACN 632 405 933**  
Seventh Defendant

**Youpla Group Pty Ltd (in liq) ACN 074 081 146**  
Eighth Defendant