

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 29/10/2020 1:36:29 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	NSD1182/2020
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v ACBF FUNERAL PLANS PTY LTD (ACN 081 021 141) & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 29/10/2020 1:46:41 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2
Rule 2.2

Originating process

Federal Court of Australia No. NSD of 2020
District Registry: New South Wales
Division: General

**IN THE MATTER OF ACBF FUNERAL PLANS PTY LTD (ACN 081 021 141) AND
YOUPLA GROUP PTY LTD (ACN 074 081 146)**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

**ACBF FUNERAL PLANS PTY LTD (ACN 081 021 141) and another named in the
schedule**

Defendants

A. DETAILS OF THE APPLICATION

This application is made under:

- (a) ss 12GBA(1), 12GD(1) and 12GLB(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), as those sections stood between 1 January 2015 and 30 November 2018 (the **Relevant Period**);
- (b) s 21 of the *Federal Court of Australia Act 1976* (Cth); and
- (c) s 39B(1A) of the *Judiciary Act 1903* (Cth).

The nature of the proceeding is an application for relief for contraventions of ss 12DA(1) and 12DB(1) of the ASIC Act by the First Defendant, in which the Second

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Conrad Gray, ASIC		
Law firm (if applicable)			
Tel	+61 2 9911 2313	Fax	+61 1300 729 000
Email	Conrad.Gray@asic.gov.au		
Address for service (include state and postcode)	Level 5, 100 Market Street Sydney NSW 2000		



Defendant was knowingly concerned or to which it was a party, within the meaning of s 12GBA(1)(e) of the ASIC Act as it stood during the Relevant Period, including relief by way of declarations and orders for the payment of pecuniary penalties.

On the facts stated in the accompanying Statement of Claim, the Plaintiff claims as follows.

I. DECLARATIONS

(a) Against the First Defendant

1. A declaration that, by representing during the Relevant Period, in the course of offering, promoting and selling the Aboriginal Community Funeral Plan (**ACF Plan**), that the First Defendant was owned or managed by an Aboriginal person or persons, the First Defendant:

- (a) engaged in conduct, in trade or commerce, in relation to financial services that was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA(1) of the ASIC Act; and
- (b) made, in trade or commerce, in connection with the supply or possible supply or promotion of financial services, a false or misleading representation in contravention of s 12DB(1)(f) of the ASIC Act.

2. A declaration that, by representing during the Relevant Period, in the course of offering, promoting and selling the ACF Plan, that the ACF Plan had Aboriginal community approval, the First Defendant:

- (a) engaged in conduct, in trade or commerce, in relation to financial services that was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA(1) of the ASIC Act; and
- (b) made, in trade or commerce, in connection with the supply or possible supply or promotion of financial services, a false or misleading representation in contravention of s 12DB(1)(e) of the ASIC Act.



3. A declaration that, by representing during the Relevant Period, in the course of offering, promoting and selling the ACF Plan, that the ACF Plan was more beneficial to Aboriginal persons than other funeral insurance products generally available at that time, the First Defendant:

- (a) engaged in conduct, in trade or commerce, in relation to financial services that was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA(1) of the ASIC Act;
- (b) made, in trade or commerce, in connection with the supply or possible supply or promotion of financial services, a false or misleading representation in contravention of s 12DB(1)(a) of the ASIC Act; and
- (c) made, in trade or commerce, in connection with the supply or possible supply or promotion of financial services, a false or misleading representation in contravention of s 12DB(1)(e) of the ASIC Act.

4. A declaration that, by representing during the Relevant Period, in the course of offering, promoting and selling the ACF Plan, that, upon death of a Nominee, a Plan Holder would receive a payout in the form of a lump sum of the chosen benefit amount, the First Defendant:

- (a) engaged in conduct, in trade or commerce, in relation to financial services that was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA(1) of the ASIC Act;
- (b) made, in trade or commerce, in connection with the supply or possible supply or promotion of financial services, a false or misleading representation in contravention of s 12DB(1)(a) of the ASIC Act; and
- (c) made, in trade or commerce, in connection with the supply or possible supply or promotion of financial services, a false or



misleading representation in contravention of s 12DB(1)(e) of the ASIC Act.

(b) Against the Second Defendant

5. A declaration that, during the Relevant Period, the Second Defendant was knowingly concerned in, or party to, each of the contraventions referred to at paragraphs 1 to 4 above by the First Defendant, within the meaning of s 12GBA(1)(e) of the ASIC Act as it stood during the Relevant Period.

II. PECUNIARY PENALTIES

6. An order pursuant to s 12GBA(1) of the ASIC Act (as it stood during the Relevant Period) that, within 30 days of the order, the First Defendant pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate.
7. An order pursuant to s 12GBA(1) of the ASIC Act (as it stood during the Relevant Period) that, within 30 days of the order, the Second Defendant pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate.

III. INJUNCTIONS

8. An order pursuant to s 12GD(1) of the ASIC Act, in a form determined to be appropriate by the Court, restraining the Defendants from engaging in conduct, in the nature of the conduct the subject of the abovementioned declarations, which would contravene ss 12DA(1) or 12DB(1) of the ASIC Act.

IV. ADVERSE PUBLICITY ORDERS

9. An order pursuant to s 12GLB(1) of the ASIC Act that, within 30 days of the order, the Defendants take all reasonable steps to cause to be published, at their own expense, a notice to be provided to all Plan Holders that purchased an ACF Plan on behalf of a Nominee or Nominees in the Relevant Period, stating that they have been ordered to pay a pecuniary



penalty because they have engaged in conduct that is misleading or deceptive or is likely to mislead or deceive, and made false or misleading representations, in a manner and form approved by the Court.

10. An order pursuant to s 12GLB(1) of the ASIC Act that, within 30 days of the order, the Defendants take all reasonable steps to cause to be published, at their own expense, an advertisement stating that they have been ordered to pay a pecuniary penalty because they have engaged in conduct that is misleading or deceptive or is likely to mislead or deceive, and made false or misleading representations, in a manner and form approved by the Court.

V. OTHER ORDERS

11. An order that the Defendants pay the Plaintiff's costs of and incidental to the proceeding.
12. Such further or other orders as the Court considers appropriate.

A handwritten signature in cursive script, appearing to read 'Conrad Gray'.

.....
Conrad Gray

Signature of the Plaintiff's legal practitioner

B. NOTICE TO DEFENDANTS

TO: ACBF Funeral Plans Pty Ltd (ACN 081 021 141)
The Strand' SE T216 L 2
72-80 MARINE PARADE
COOLANGATTA QLD 4225

AND TO: Youpla Group Pty Ltd (ACN 074 081 146)
The Strand' SE T216 L 2
72-80 MARINE PARADE
COOLANGATTA QLD 4225



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.

C. FILING

Date of filing:

.....

Registrar

This originating process is filed by Conrad Gray for the Plaintiff.

D. SERVICE

The Plaintiff's address for service is:

Australian Securities and Investments Commission

Level 5, 100 Market Street, Sydney, New South Wales 2000

Attention: Conrad Gray and Michael Hershan

Email: Conrad.Gray@asic.gov.au

Michael.Hershan@asic.gov.au

It is intended to serve a copy of this originating process on all Defendants.



Schedule

Federal Court of Australia

No. NSD

of 2020

District Registry: New South Wales

Division: General

**IN THE MATTER OF ACBF FUNERAL PLANS PTY LTD (ACN 081 021 141) AND
YOUPLA GROUP PTY LTD (ACN 074 081 146)**

Second Defendant: YOUPLA GROUP PTY LTD (ACN 074 081 146)