FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Pattenden (Liability and Penalty – Law) [2026] FCA 1690

File number(s):	NSD 935 of 2023
Judgment of:	**KENNETT J**
Date of judgment:	11 November 2026
Catchwords:	**CORPORATIONS** – where the Australian Securities and Investments Commission (**ASIC**) seeks declarations, the imposition of pecuniary penalties and disqualification orders against five defendants for contraventions of ss 180(1), 181(1) and 182(1) of the *Corporations Act 2001* (Cth) – where ASIC reached agreement on liability and relief with the second defendant – where the second defendant was a director of the relevant entities (**the ACBF Entities**) that operated funeral funds marketed predominantly to Indigenous communities – where the second defendant, among other defendants, also had an interest in the company with which the insurance funds were insured (**Crown**) and agreed to an increase in the insurance premiums payable by one of the ACBF Entities to Crown – whether the second defendant failed to consider the effect of the financial arrangements with Crown on the ACBF Entities and failed to consider or pursue alternative insurance arrangements – whether the second defendant failed to manage a conflict of interest and preferred his and/or another defendant's interests to the interests of the ACBF Entities in maintaining the insurance arrangements with Crown – whether the Court should make the declarations sought by ASIC
Legislation:	*Corporations Act 2001* (Cth) ss 180(1), 181(1), 182(1), 206C(1)(a)(i), 206E(1)(a)(ii), 1317E(1), 1317G(1) *Federal Court Rules 2011* (Cth) r 40.02
Cases cited:	*Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission* [2021] FCAFC 49; 284 FCR 24
Division:	General Division
Registry:	New South Wales

National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Number of paragraphs:	24
Date of hearing:	24 April 2026
Counsel for the Plaintiff:	D McLure SC with C Conde and J Fumberger
Solicitor for the Plaintiff:	Australian Government Solicitor
Solicitor for the Second Defendant:	C George of Carey Litigation Lawyers

ORDERS

NSD 935 of 2023

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**JONATHAN LAW** Second Defendant

ORDER MADE BY: **KENNETT J**

DATE OF ORDER: **11 NOVEMBER 2026**

THE COURT ORDERS THAT:

1. Pursuant to s 1317G(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), within 30 days of this order, the second defendant pay to the Commonwealth a pecuniary penalty of $50,000 for contraventions by the second defendant of ss 180(1), 181(1) and 182(1) of the Corporations Act relating to Aboriginal Community Benefit Fund No 2 Pty Ltd (**ACBF 2**).
2. Pursuant to s 206C(1)(a)(i) and/or s 206E(1)(a)(ii) of the Corporations Act the second defendant is disqualified from managing corporations for a period of six years from the date of this order.
3. The second defendant pay a contribution of $10,000 to the plaintiff's costs of and incidental to the proceeding.

THE COURT DECLARES THAT:

4. Under s 1317E(1) of the Corporations Act that, in his capacity as a director of ACBF 2, between 4 September 2017 and 30 November 2018, the second defendant:
   (a) failed to consider properly or at all the effect of the Crown Insurance Services Limited (**Crown**) arrangements on the financial position of ACBF 2;
   (b) failed to consider properly or at all whether continuing the policy with Crown was in the best interests of ACBF 2 and its fund members;

(c) failed to consider properly or at all whether there were alternative options available to ACBF 2 that would have been in the best interests of ACBF 2 and its fund members;

(d) failed to pursue properly or at all any alternative options available to ACBF 2;

(e) preferred his, the first defendant's and Crown's financial interests in causing ACBF 2 to maintain its Crown arrangements;

(f) preferred his, the first defendant's and Crown's financial interests in causing or allowing ACBF 2 to accept or agree to pay the increased premium, payment of which occurred on 15 occasions between 4 September and 30 November 2018; and

(g) failed to ensure properly or at all that ACBF 2, as trustee for the funeral fund operated by it (**Fund 2**), took all necessary and reasonable steps to protect the Fund (contrary to cl 13.9 of the trust deed),

and by reason of the above:

(h) failed to discharge his duties to ACBF 2 with the degree of care and diligence that a reasonable person would exercise, if they were a director or officer of a corporation in ACBF 2's circumstances, and occupied the office held by the second defendant, and had the same responsibilities within the corporation; and

(i) as a result, breached s 180(1) of the Corporations Act.

5. Under s 1317E(1) of the Corporations Act that, in his capacity as a director of ACBF 2, between 4 September 2017 and 30 November 2018:

(a) the second defendant:

(i) had an indirect financial interest in the Crown policy held by ACBF 2;

(ii) caused or allowed ABCF 2 to maintain the arrangements with Crown without taking any or all necessary steps to consider and pursue the alternative options available to ACBF 2;

(iii) caused or allowed ABCF 2 to pay an increase in premiums of 100% without taking any or all necessary steps to consider and pursue the alternative options available to ACBF 2;

(iv) failed to take all necessary steps to manage the conflict of interest that arose between his duties to ACBF 2 and his interest in Crown and the

first defendant's duties to ACBF 2 and the first defendant's interest in Crown;

(v) used his position as director or officer of ACBF 2 to:

A. obtain an advantage for himself, the first defendant and Crown; and

B. cause a detriment to ACBF 2.

(b) the second defendant's conduct referred to in 5(a) above:

(i) was not in good faith in the best interests of ACBF 2;

(ii) was done for the improper purpose of gaining an advantage for himself, the first defendant and Crown; and

(iii) resulted in the second defendant:

A. gaining an advantage for himself, the first defendant and Crown; and

B. causing detriment to ACBF 2.

(c) by reason of the circumstances in 2.1 and 2.2 above, the second defendant:

(i) failed to exercise his powers and discharge his duties in good faith in the best interests of ABCF 2 and for a proper purpose, and as a result contravened s 181(1) of the Corporations Act; and

(ii) used his position contrary to and in contravention of s 182(1) of the Corporations Act.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

KENNETT J

Introduction

1 By its originating process filed on 30 August 2023 the plaintiff (**ASIC**) seeks declarations, the imposition of pecuniary penalties, and disqualification orders under (respectively) s 1317E(1), s 1317G(1) and s 206C(1)(a)(i) and/or s 206E(1)(a)(ii) of the *Corporations Act 2001* (Cth) (**the Corporations Act**) against each of the five defendants. These remedies are sought for contraventions of ss 180(1), 181(1) and 182(1) of the Corporations Act.

2 ASIC reached agreements on liability and relief with the first defendant (**Mr Pattenden**), the second defendant (**Mr Law**), the third defendant (**Mr Wilson**) and the fifth defendant (**Mr Clayton**). No agreement was reached between ASIC and the fourth defendant (**Mr Jones**). These reasons deal with the issues of liability and relief in respect of Mr Law, which were the subject of joint submissions and a short hearing on 24 April 2026.

3 As with *Australian Securities and Investments Commission v Pattenden (Liability and Penalty - Pattenden)* [2026] FCA 1616 (**the Pattenden reasons**), the submissions proceeded from a statement of agreed facts and admissions (**SAFA**) dated 30 January 2026. The SAFA is lengthy and does not need to be discussed in detail in order to articulate my reasons for the orders that will be made. However, where pecuniary penalties are imposed, there is virtue in members of the public being able to know in some detail what was the conduct that attracted the penalties. The full text of the SAFA is therefore annexed to these reasons.

4 I have also annexed the parties' joint written submissions (**the submissions**). Those submissions summarise the factual background accurately and in some detail. I am content to adopt that summary rather than repeat the exercise.

5 The parties jointly proposed the making of the following orders:

(a) two declarations under s 1317E(1) recording, in respect of ACBF 2, contraventions by Mr Law of:

(i) s 180(1);

(ii) ss 181(1) and 182(1)

of the Corporations Act;

(b) an order under s 1317G(1) requiring payment of a pecuniary penalty of $50,000;

(c) an order under s 206C(1)(a)(i) and/or s 206E(1)(a)(ii) disqualifying Mr Law from managing corporations for six years; and

(d) an order that Mr Law pay a contribution of $10,000 towards ASIC's costs of and incidental to the proceeding.

6 For the reasons set out below, I am satisfied that the orders proposed by the parties should be made.

Contraventions of the Corporations Act

7 The issues in the proceeding concern the period from 4 September 2017 to 30 November 2018 (**the relevant period**). During the relevant period, Mr Law was a director of the companies referred to as **ACBF 2**, **ACBF Plans** and **ACBF Community** (together **the ACBF Entities**). The ACBF Entities operated funeral funds (**the Funds**) which were marketed mostly to Indigenous communities. They operated as part of a single business (**the ACBF business**).

8 Mr Law had become a director of the ACBF Entities on 18 May 2017. He was not involved in their day-to-day operations.

9 Each of the ACBF Entities was required by its trust deed or plan rules to insure the lives of members. Each maintained an insurance policy with Crown Insurance Services Limited (**Crown**). Under those policies Crown was entitled to change the rates at which premiums were calculated on three months' written notice. Mr Pattenden and Mr Law were also the ultimate owners of the shares in Crown.

10 Mr Law had been a director of Crown since 2008. He ensured that Crown's regulatory requirements in Vanuatu were met and that its accounts were audited. He also took steps on behalf of Crown in its dealings with the ACBF Entities from time to time.

11 On 4 September 2017, Crown doubled the monthly premiums payable by ACBF 2's fund (**Fund 2**). This was a decision taken by Mr Pattenden. On Mr Pattenden's instructions, Mr Law drafted and then signed and sent the letter to ACBF2 notifying it of the premium increase.

12 Orders are sought against Mr Law only in respect of ACBF 2. The premium increase had a significant negative impact on ACBF 2. There were various steps that the directors of ACBF 2 could have considered taking in order to protect Fund 2 and its members against increases in the insurance premiums payable to Crown. No such steps were considered within the relevant period.

13 Mr Law admits (in terms set out in more detail in the SAFA) that, during the relevant period, in contravention of s 180(1) of the Corporations Act:

(a) he failed to consider the effect of the Crown insurance policies on the financial position of ACBF 2, to consider whether the Crown policy were in the best interests of members of Fund 2 and to consider or pursue alternatives to the insurance arrangements with Crown (including whether to renegotiate or cancel the policy and find a new insurer, or wind up the Fund); and

(b) he preferred his, Crown's and Mr Pattenden's interests in causing ACBF 2 to maintain the Crown policy and causing or allowing ACBF 2 to accept or agree to pay the increased premium and failed to ensure that ACBF 2, as trustee of Fund 2, took all necessary and reasonable steps to protect the Fund contrary to the trust deed.

14 Mr Law also admits that, during the relevant period, in contravention of ss 181(1) and 182(1) of the Corporations Act, he failed to take all necessary steps to manage the conflict of interest that arose between his and Mr Pattenden's duties to ACBF 2 and their interest in Crown, used his position as an officer of ACBF 2 to obtain an advantage for Crown (and ultimately himself and Mr Law), and caused detriment to ACBF 2.

15 These contraventions are clearly established on the facts set out in the SAFA, for the reasons explained in the joint submissions.

Declarations

16 As explained in the Pattenden reasons, ss 180(1), 181(1) and 182(1) are defined as "civil penalty provisions" by s 1317E(3) of the Corporations Act and 1317E(1) requires the Court to make a declaration of contravention if it is satisfied that a person has contravened a civil penalty provision. In the light of my acceptance that Mr Law contravened ss 180(1), 181(1)

and 182(1) in the ways described in the joint submissions, declarations will be made in the form proposed by the parties.

Disqualification orders

17 The provisions of the Corporations Act empowering the Court to make disqualification orders, and the approach of the Court to such orders, are discussed in the Pattenden Reasons at [16] to [19]. That discussion does not need to be repeated here but forms part of the basis for the conclusions expressed below.

18 The parties jointly propose an order disqualifying Mr Law from managing corporations for a period of six years. For the reasons set out in the joint submissions at [113] to [128], I am satisfied that such an order is appropriate. In particular:

(a) Mr Law knew or ought to have known that the premium increase would be very damaging to the interests of ACBF 2. He admits that he did not consider properly or at all the effect of the Crown arrangements on the financial position of ACBF 2 or whether continuing to insure with Crown was in the best interests of ACBF 2 and fund members.

(b) Mr Law had been a director of and had an interest in Crown since 2008. Crown had been established in order to insure the ACBF Entities and had no other clients. Mr Law therefore was (or at least should have been) well aware of the relationship between the ACBF Entities and Crown, including the role and interests of Mr Pattenden, and the position that the ACBF Entities were in as a result of that relationship.

(c) Mr Law had only been a director of the ACBF Entities for a relatively short time before the relevant period. However, he had been a director of Crown (albeit not in Australia) for a much longer period and therefore had some experience with what was required of a director.

(d) The premium increase created a substantial risk that ACBF 2 would become insolvent within about four years, leaving fund members without cover and unable to recover cancellation benefits..

(e) Mr Law, through his interest in Crown, derived a financial benefit from ACBF 2 continuing to pay premiums to Crown. He also received remuneration for the work that he performed for Crown.

(f) In these circumstances considerations of general and specific deterrence call for a significant period of disqualification.

(g) In important respects Mr Law acted on the instructions of Mr Pattenden, who was the key decision-maker who initiated the premium increase. For that reason he should face a shorter disqualification period than Mr Pattenden. However, his involvement as a director and the ultimate owner of shares in Crown makes his involvement in the contraventions more significant than those of some other defendants (Mr Jones and Mr Clayton).

(h) Mr Law has engaged constructively with ASIC, including by attending two examinations and accepting service in the present proceeding despite not being a resident of Australia. He has admitted the contraventions and accepted responsibility for them through the SAFA. That has avoided the cost to the public of a contested hearing which would have run for around three weeks.

(i) Two separate declarations are to be made, involving contraventions of three civil penalty provisions. However, the parties submit, and I agree, that the contraventions should be treated as a single course of conduct.

Pecuniary penalties

19 The Pattenden reasons also discuss the approach of the Court to the assessment of civil penalties generally (at [21] to [24]) and the approach to cases where the parties present an agreed position as to penalties (at [25] to [26]). Those discussions (which are consistent with the joint submissions) do not need to be repeated here but form part of the basis for my conclusions as to pecuniary penalties.

20 The joint submissions at [113] to [128], to which I have already referred above, are also directed to the appropriateness of the proposed pecuniary penalty of $50,000. I have taken into account the factors discussed in those paragraphs, important aspects of which have been noted above in connection with the proposed disqualification.

21 Having engaged in contraventions of ss 180(1), 181(1) and 182(1) of the Corporations Act in respect of ACBF 2, Mr Law is liable to a maximum penalty of $600,000. The contraventions

were serious and involved Mr Law preferring his own interests to those of a company of which he was a director. However, it is also significant that:

(a) Mr Law had substantial experience as a director, but had only been a director of companies in Australia for a short time;

(b) Mr Law was not the initiator or the prime mover in the conduct that led to the contraventions and acted substantially under the direction of Mr Pattenden; and

(c) Mr Law has (as noted above) cooperated with ASIC, taken responsibility for his conduct and saved the public from the expense of a lengthy hearing.

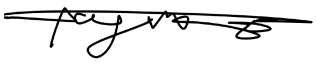
22 Taking these matters into account, I am satisfied that the proposed pecuniary penalty is proportionate to the penalties proposed in relation to Messrs Pattenden, Wilson and Clayton and is within the "permissible range" referred to in *Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission* [2021] FCAFC 49; 284 FCR 24 at [127] (***Volkswagen***).

Costs and disposition

23 An order for costs in a lump sum is expressly authorised by r 40.02 of the *Federal Court Rules 2011* (Cth) and would, in any event, be within the Court's implied power in circumstances where the parties agree as to the amount that should be paid. There is no reason not to make the proposed costs order.

24 Orders will therefore be made in the terms proposed by the parties.

I certify that the preceding twenty-four (24) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Kennett.

Associate: 

Dated: 11 November 2026

ANNEXURE 1

STATEMENT OF AGREED FACTS AND ADMISSIONS OF THE SECOND DEFENDANT

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: GENERAL **NO NSD 935 OF 2023**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

RONALD JOSEPH PATTENDEN
and others
Defendants

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Filed on behalf of the Plaintiff, ASIC Prepared by: Jody Marshall
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Annexure A **23**

THE COURT DECLARES THAT **23**

Mr Law **23**

THE COURT ORDERS THAT **25**

PART I INTRODUCTION

1. This Statement of Agreed Facts and Admissions (**SAFA**) is made jointly by the plaintiff (**ASIC**) and the second defendant (**Mr Law**) for the purposes of section 191 of the *Evidence Act 1995* (Cth).

2. ASIC commenced these proceedings against Mr Law and the first defendant (**Mr Pattenden**), the third defendant (**Mr Wilson**), the fourth defendant (**Mr Jones**) and the fifth defendant (**Mr Clayton**) on 30 August 2023. ASIC seeks declarations that the defendants contravened ss 180(1), 181(1) and 182(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), orders that the defendants pay pecuniary penalties to the Commonwealth and disqualification orders against the defendants from managing corporations.

3. By reason of the agreed facts and admissions in this document, Mr Law admits that, between 4 September 2017 and 30 November 2018 (the **Relevant Period**), he contravened ss 180(1), 181(1) and 182(1) of the Corporations Act in relation to ACBF 2 (as defined below).

PART II PARTIES AND BACKGROUND

2.1 THE PARTIES

4. ASIC is a body corporate established by s 7 of the *Australian Securities Commission Act 1989* (Cth) and that continues by operation of s 261 of the ASIC Act. It is entitled to sue by reason of s 8 of the ASIC Act.

5. The facts relevant to the roles and responsibilities of each of the defendants are set out in Part 2.5 below.

2.2 THE ACBF BUSINESS

6. The proceedings relate to certain companies in the **ACBF** business, which operated to provide funeral benefits to nominated persons on the death of a fund member or nominee.

7. The ACBF group of companies relevantly included:

7.1. The Aboriginal Community Benefit Fund Pty Limited (**ACBF 1**). ACBF 1 operated **FUND 1**;

7.2. Aboriginal Community Benefit Fund No 2 Pty Ltd (**ACBF 2**). ACBF 2 operated **FUND 2**;

7.3. ACBF Funeral Plans Pty Ltd (**ACBF Plans**). ACBF Plans operated **Fund 3**;

7.4. Community Funeral Plans Pty Ltd (**ACBF Community**). ACBF Community operated **Fund 4**;

7.5. ACBF Consultants Pty Ltd;

7.6. ACBF Group Holdings Pty Ltd (**ACBF Group Holdings**); and

7.7. ACBF Administration Pty Ltd (**ACBF Administration**).

8. ACBF 2, ACBF Plans and ACBF Community are referred to collectively in this SAFA as the **ACBF Entities**.

9. The ACBF business was a single business with common management across each of the entities within that business. During the Relevant Period, Mr Law was a resident of Vanuatu and a director of the ACBF Entities.

10. In the period from 2010 to 30 November 2018, the ultimate holding company of the group of companies through which the ACBF business operated was Just Solutions Limited (**Just Solutions**), a company registered in Vanuatu. Just Solutions owned the majority of the shares in ACBF Group Holdings, being the Australian company which ultimately owned the ACBF group of companies.

2.3 OPERATION OF THE FUNDS

11. In summary, each of the relevant ACBF Entities operated as follows. Further details are set out below.

12. ACBF 2 was trustee of Fund 2, which operated as a trust established by deed. ACBF 2 operated Fund 2 from 1993 for the purpose of providing funeral benefits to nominated persons on the death of a fund member. Fund 2 was marketed, and only available, to Indigenous Australians. Fund 2 was closed to new members from 2004.

13. ACBF Plans operated Fund 3 from 2005. Fund 3 was subject to plan rules and was registered as a contributory funeral benefit business under the *Funeral Funds Act 1979* (NSW) (**Funeral Funds Act**). ACBF Plans operated Fund 3 for the purpose of providing funeral benefits to nominated persons on the death of a fund member, and was marketed to, and until September 2017 was only available to, Indigenous Australians.

14. ACBF Community operated Fund 4 from 2005. Fund 4 was subject to plan rules and was registered as a contributory funeral benefit business under the Funeral Funds Act. ACBF Community operated Fund 4 for the purpose of providing funeral benefits to nominated persons on the death of a fund member, and was marketed to non- Indigenous Australians.

15. ACBF Administration provided the ACBF Entities with various administrative services in return for an administration fee. Further details in relation to ACBF Administration are set out below.

2.3.1 ACBF 2 and Fund 2

16. Between at least 2002 and 30 November 2018, Fund 2 relevantly operated as follows:

16.1. fund members were required to make fortnightly payments as contribution amounts;

16.2. the contribution amount to be paid by fund members was set out in the application form signed by the member and automatically increased according to the fund member's age as follows;

Age	**Contribution amount**
0-19	$6
20-29	$8
30-39	$10
40-49	$14
50-59	$20
60 and over	$26

16.3. the contribution amounts paid by fund members were held on trust by ACBF 2 and were to be applied in accordance with the provisions of the trust deed;

16.4. on the death of the fund member who had made at least 2 payments,

and following the making of a claim to ACBF 2, ACBF 2 would pay $6,000 to a nominated person (subject to any increase of the amount to be paid, made on application by a member after paying contribution amounts for at least one year);

16.5. where a fund member wrote to ACBF to cancel their membership, they would receive a payment on cancellation subject to having made 26 or more payments and having not increased the amount payable by ACBF 2, in an amount equal to one third of the member's total membership payments from the 26th payment onwards;

16.6. if the fund member applied to increase the amount to be paid, they were required to agree to give up their entitlement to a cancellation benefit;

16.7. where a fund member missed payment of 4 payments in a calendar year:

16.7.1. the fund member became a non-financial member. Fund 2 was not required to make a payment on the death of a non-financial member;

16.7.2. ACBF2 would write to the non-financial member, asking that they recommence payments and pay all outstanding amounts within 1 month.

16.7.3. if the non-financial member did so, they would no longer be a non- financial member;

16.7.4. if the non-financial member failed to do so, membership was automatically cancelled and no payment was required to be made either on cancellation or on the death of the member; and

16.8. where Fund 2 was wound up and there were surplus funds following the payment of Fund 2's debts and liabilities, fund members entitled to receive a cancellation benefit would be entitled to be repaid an amount up to the maximum amount of their cancellation benefit.

17. Under the trust deed for Fund 2, ACBF 2 had the power to take such action as it thought fit for the adequate protection of any part or parts of the Fund.

18. The trust deed for Fund 2:

18.1. stated that it could not be amended except in accordance with the

provisions of the trust deed; and

18.2. could potentially be amended on application under s 81 of the *Trustees Act 1925* (NSW) by ACBF 2 to the Court.

19. Prior to Fund 2 closing to new members in 2004, as at 31 December 2003, Fund 2 had approximately 15,760 members (including non-financial members).

20. As at June 2017, Fund 2 had approximately 5,809 members. Each of those members had made fortnightly contributions to Fund 2 since at least 2004.

21. As set out further below, Fund 2 was required to maintain an insurance policy to underwrite the lives of its fund members. From 2002, ACBF 2 used Crown Insurance Services Limited (**Crown**) as its underwriter.

22. For the financial year 1 July 2016 to 30 June 2017, ACBF 2:

22.1. received member contributions of $1,811,606;

22.2. paid administration fees to ACBF Administration of $1,184,765;

22.3. paid underwriting premiums to Crown of $578,633;

22.4. received payments from Crown of:

22.4.1. $626,000 by way of claim payments; and

22.4.2. $15,584 by way of profit share payments; and

22.5. had a net operating profit of $9,794.

23. As at 30 June 2017, ACBF 2 had net assets of $952,622, including approximately $1.44 million of cash and cash equivalents. The cash held by ACBF 2 was intended to cover the value of cancellation benefits payable to those members entitled to a cancellation benefit.

24. For the financial year 1 July 2017 to 30 June 2018, ACBF 2:

24.1. received member contributions of $1,715,764;

24.2. paid administration fees to ACBF Administration of $1,118,603;

24.3. paid underwriting premiums to Crown of $922,990;

24.4. received payments from Crown of:

24.4.1. $546,091 by way of claim payments; and

24.4.2. $61,650 by way of profit share payments; and

24.5. had a net operating loss of $198,779.

25. As at 30 June 2018, ACBF 2 had net assets of $753,843, including $1,210,447 of cash and cash equivalents.

26. On 24 November 2021, ACBF 2 went into administration.

27. On 2 March 2022, a liquidator was appointed to ACBF 2. On 11 April 2022, a receiver was appointed to Fund 2.

2.3.2 ACBF Administration

28. ACBF Administration provided various administration services to each of the ACBF Entities and Funds 2, 3 and 4 in return for a fee.

29. The fees charged by ACBF Administration were not based on the cost to ACBF Administration to provide those services to each of the ACBF Entities.

30. ACBF Administration paid dividends each year from its net profits and retained profits to ACBF Group Holdings. For the financial years from 2015 to 2018, the revenue, expenses, profits and dividends paid by ACBF Administration were as follows:

Financial year	Administration fee revenue	Total expenses	Profit	Dividends paid
FY2015	$4,240,799	$1,088,998	$3,151,801	$2,270,000
FY2016	$4,401,586	$1,286,665	$3,114,921	$2,170,000

FY2017	$4,127,546	$1,834,896	$2,292,650	$2,110,000
FY2018	$3,592,104	$3,132,687	$459,417	$410,000

2.3.3 ACBF Group Holdings

31. ACBF Group Holdings was the ultimate holding company of ACBF 1, the ACBF Entities and ACBF Administration. As set out in further detail below, from 2010 ACBF Group Holdings was owned by Just Solutions.

32. ACBF Group Holdings:

32.1. earned revenue from the receipt of dividends from ACBF Administration;

32.2. had nominal expenses; and

32.3. paid dividends to Just Solutions which, for financial years 2015 to 2018, matched the value of the dividends paid by ACBF Administration to ACBF Group Holdings, being:

32.3.1. Financial year 2015: $2,270,000;

32.3.2. Financial year 2016: $2,170,000;

32.3.3. Financial year 2017: $2,110,000; and

32.3.4. Financial year 2018: $410,000.

2.4 CROWN ARRANGEMENTS

33. To operate the Funds, each ACBF Entity was required by the trust deed or plan rules (as applicable) to maintain an insurance policy that underwrote the lives of its fund members. Between 2002 and at least 30 November 2018, ACBF 2, ACBF Plans and ACBF Community chose to satisfy the requirement to maintain an insurance policy by insuring with Crown.

34. Crown:

34.1. was registered in Vanuatu by Mr Pattenden in 2002;

34.2. provided insurance services to the ACBF Entities from 2002;

34.3. between 2002 and 30 November 2018, operated its business from Vanuatu; and

34.4. between 2002 and 30 November 2018, was not subject to prudential or other regulatory requirements in Australia.

35. Between 2002 and 15 February 2022, the ACBF Entities were the only entities insured by Crown.

36. Under the terms of the policies with Crown:

36.1. the ACBF Entities were required to pay premiums to Crown (cl 9.1);

36.2. on the death of a fund member or other nominee (as relevant), Crown was required to pay the relevant ACBF Entity the relevant sum insured (cl 8.2);

36.3. Crown had the power to vary the premium by giving the ACBF Entity three months' written notice (cl 9.5.1 for ACBF 2 and cl 9.5 for ACBF Plans and ACBF Community);

36.4. where an ACBF Entity failed to pay the required premium 14 days after the due date, Crown could give three months' notice of termination and the policy would lapse and cover would cease (cl 9.6 for ACBF 2 and cl 9.9 for ACBF Plans and ACBF Community);

36.5. the policies were renewable annually at the expiry of the policy year, being the 12 months between annual review dates;

36.6. there was no obligation on Crown to renew the policies at the annual review date;

36.7. Crown and the ACBF Entities had a profit-sharing arrangement in accordance with a self-participation formula; and

36.8. Crown was not required to provide services to the ACBF Entities other than the payment of claims by fund members.

37. Crown's premiums for Fund 2 were structured as "level premiums". Level premiums did not vary by age, unlike the premiums charged by Funds 3 and 4 which increased as members aged.

38. A consequence of an insurer charging level premiums is that the financial burden on the insurer increases as members age, particularly for a closed fund such as Fund 2. Typically, an insurer manages this by setting the premium rate so that in the early years the premiums paid by the fund are higher than the cost of expected claims, so that the insurer can retain some of the premiums to cover the increased claim costs in later years.

39. The premiums received by Crown from Fund 2 for financial years 2002 to 2016 significantly exceeded the cost of claims paid by Crown for Fund 2. In financial year 2017, Crown for the first time paid more in claims for Fund 2 than it received by way of premiums. As set out in more detail below, on 4 September 2017 Crown doubled the premiums payable by Fund 2 with effect from 1 August 2017, the result of which was that for financial year 2018 Crown again received more in premiums from Fund 2 than it paid in claims.

40. From 2003 (for Fund 2) to at least 2018, Crown paid to each of Funds 2, 3 and 4 a 'profit share' based on a formula.

41. The table below sets out for financial years 2002 to 30 November 2018 for Fund 2 the premiums received by Crown, claims paid by Crown, profit share paid by Crown and the net profit or loss of Crown.

Financial year	Premiums received from Fund 2	Claims paid to Fund 2	Profit share paid to Fund 2	Net of premiums less claims and profit share relating to Fund 2
FY2002	86.309	0	0	86,309
FY2003	1,208,338	489,000	153,548	565,790
FY2004	1,388,420	362,500	387,201	638,719
FY2005	1,388,175	457,000	243,239	687,936
FY2006	1,309,569	375,000	283,680	650,889
FY2007	1,223,137	444,000	221,244	557,893
FY2008	1,123,329	379,000	257,288	487,041
FY2009	1,046,937	421,000	188,374	437,563
FY2010	961,646	557,000	87,623	317,023
FY2011	900,132	456,500	108,006	335,626
FY2012	843,112	542,000	79,441	221,671
FY2013	793,366	626,500	46,460	120,406
FY2014	763,344	568,500	30,424	164,420
FY2015	728,767	465,000	67,782	195,985
FY2016	693,115	468,000	18,462	206,653

FY2017	578,633	626,000	15,584	(62,951)
FY2018	922,990	546,091	61,650	315,249
FY2019 to Nov	385,818	272,938	16,810	96,070
Total	**16,345,137**	**8,056,029**	**2,266,816**	**6,022,292**

2.5 MR LAW'S ROLE

42. Mr Law:

42.1. was a non-resident of Australia;

42.2. was a director of the ACBF Entities between 18 May 2017 and 30 November 2018;

42.3. was a director of Crown from 2008 until at least 30 November 2018;

42.4. held shares in Asian Markets Limited as a trustee for the Esperance Bay Trust. In accordance with a memorandum of wishes, at all relevant times distributions from the Esperance Bay Trust were requested to be paid to Mr Law's son;

42.5. held shares (as a minority shareholder) in Just Solutions, indirectly, by way of the shares held on trust in Asian Markets Limited during the Relevant Period;

42.6. held shares in Crown from:

42.6.1. January 2008 directly; and

42.6.2. from 2010 and throughout the Relevant Period, as a trustee for the Esperance Bay Trust.

43. While a director of the ACBF Entities and Crown, Mr Law:

43.1. was not involved in the day-to-day operations of the ACBF Entities;

43.2. made sure that for Crown all statutory matters were looked after such as regulatory reports to the Reserve Bank of Vanuatu and that Crown's accounts were audited annually; and

43.3. from time to time, took steps on behalf of Crown or one or more of the

ACBF Entities including as set out below in this SAFA.

44. From around 2014 and throughout the Relevant Period, Mr Law did not receive any direct benefit or detriment as a result of any increased profits received or losses sustained by Crown (despite the shareholding in paragraph 42.6.2 above). For the Relevant Period, Asian Markets Limited received a fixed return for its investment in Crown (via Just Solutions). This fixed return, and the value of the investment in Crown, depended on Crown remaining solvent and therefore Mr Law had an indirect interest in payments to Crown.

45. At least during the Relevant Period, in addition to the fixed return referred to above, Mr Law was paid $12,500 per quarter for roles relating to Crown. Mr Law was never paid any remuneration by any of the ACBF Entities for his role as director in relation to those entities.

46. On 30 November 2018, Just Solutions and ACBF Consultants Pty Ltd sold their shares in ACBF Group Holdings to Elah Valley Pty Ltd (**Elah Valley**). Mr Jones and Mr Clayton were the only directors and acquired ownership interests in ACBF Group Holdings through Elah Valley. As part of the sale agreement for ACBF Group Holdings, Elah Valley was bound to ensure that the ACBF Entities continued to insure with Crown. Mr Law received no financial benefit, directly or indirectly, from the sale of ACBF Group Holdings.

2.5.1 Other defendants

Mr Pattenden

47. Mr Pattenden was:

47.1. a director of ACBF 2 during the Relevant Period and also between:

47.1.1. 29 January 1992 and 18 October 2002;

47.1.2. 29 November 2007 and 7 January 2008; and

47.1.3. 19 May 2010 and 30 November 2018;

47.2. director of ACBF Plans during the Relevant Period and also between:

47.2.1. 10 December 1997 and 23 July 2007;

47.2.2. 29 November 2007 and 7 January 2008; and

47.2.3. 5 March 2014 and 30 November 2018;

47.3. a director of ACBF Community during the Relevant Period and also between:

47.3.1. 23 May 1996 and 23 July 2007;

47.3.2. 29 November 2007 and 7 January 2008; and

47.3.3. 5 March 2014 and 30 November 2018;

47.4. from at least April 2002 until 30 November 2018, responsible for overseeing the operation of and any significant decision relating to:

47.4.1. the ACBF business; and

47.4.2. the ACBF Entities,

and acted in the role of a chief executive officer or managing director of the ACBF business and the ACBF Entities during that time;

47.5. the founder and, at all material times, a director and, indirectly, the majority shareholder of Crown; and

47.6. indirectly, the majority shareholder of Just Solutions through Mr Pattenden's company Bu Teck Management Ltd (**Bu Teck**). Mr Pattenden was the sole shareholder of Bu Teck from October 2013.

48. Between 1996 and 2010, Mr Pattenden owned shares in ACBF Group Holdings. In 2010, Mr Pattenden sold his shares in ACBF Group Holdings to Just Solutions for $20 million, by way of vendor finance, with interest payable on demand by Mr Pattenden, to be repaid over approximately 12 years. From 2010 to at least 30 November 2018, Just Solutions received dividends from Crown and on paid those dividends to Bu Teck, which then paid those amounts to Mr Pattenden in repayment of the vendor finance.
ACBF Group Holdings also paid dividends to Just Solutions, which it on paid to Bu Teck, which then paid those amounts to Mr Pattenden.

Mr Wilson

49. Mr Wilson was:

49.1. a director of ACBF 2 and ACBF Plans between 18 November 2014 and 19 December 2017;

49.2. a secretary of ACBF 2 and ACBF Plans between 18 May 2017 and 19 December 2017;

49.3. a director of ACBF Community between 18 November 2014 and 23 October 2017; and

49.4. a secretary of ACBF Community between 18 May 2017 and 23 October 2017.

50. Mr Wilson was employed as the company accountant and financial controller for the ACBF business (and ACBF Entities) from 6 March 2014 and November 2015 respectively.

51. Mr Wilson formally ceased employment with the ACBF business (and ACBF Entities) on 7 February 2018, however he had stopped performing the duties of his role in around October or November 2017.

52. Throughout his employment with the ACBF business, Mr Wilson:

52.1. transferred dividends to Just Solutions from ACBF Group Holdings, and liaised with Mr Pattenden about the transfer of those dividends;

52.2. liaised with the actuary about actuary reports prepared for the ACBF Entities, which contained a statement that "[a]t the valuation date all Plan liabilities to pay funeral benefits have been insured with Crown Insurance Services, which is a Vanuatu company with the same majority ownership as the ACBF Group";

52.3. provided Mr Pattenden by email each month the figures relevant to the claims and premiums paid by each ACBF Entity to Crown;

52.4. was responsible for causing the financial statements of the ACBF Entities to be prepared and liaising with the auditors in this respect, and dealt with the financial statements of the ACBF Entities ended 30 June 2016.

Mr Jones

53. Mr Jones was:

53.1. a director and secretary of ACBF 2 from 18 December 2017 until 29 January 2021;

53.2. a director and secretary of ACBF Plans from in or around 18 December 2017 until 29 January 2021;

53.3. a director of ACBF Community from 23 October 2017 until 29 January 2021; and

53.4. the Chief Executive Officer (**CEO**) of the ACBF business between 5 October 2017 and 30 November 2018.

Mr Clayton

54. Mr Clayton ultimately took over the position of financial controller from Mr Wilson in around early October 2017. Mr Clayton was:

54.1. a director of ACBF Community between 23 October 2017 until 20 November 2018;

54.2. a secretary of ACBF Community between 23 October 2017 until 4 March 2019; and

54.3. the Chief Operating Officer (**COO**) and a financial controller of the ACBF business from 5 October 2017 until at least 30 November 2018.

55. During the Relevant Period, Mr Law:

55.1. acted in accordance with Mr Pattenden's instructions in relation to ACBF 2, ACBF Plans and ACBF Community; and

55.2. deferred to Mr Pattenden for overseeing the operation of and any significant decision in relation to ACBF 2, ACBF Plans and ACBF Community.

PART III ADMISSIONS ABOUT THE DOUBLING OF PREMIUMS FOR ACBF 2

3.1 PREMIUM INCREASE FOR ACBF 2

56. On or around 4 September 2017, Mr Pattenden called Mr Law and told Mr Law that Crown would double the premium payable by Fund 2, and instructed Mr Law to draft a letter from Crown to Fund 2 in relation to the doubling of premiums.

57. At 1:09pm on 4 September 2017, Mr Law emailed Mr Wilson, copied to Mr Pattenden:

> Following telephone call from Ron, see draft below to go on Crown letterhead.
>
> Can you check wording please and also advise new address. Is it better if Ron signs the letter rather than me?
>
> Thanks
>
> Jon
>
> **********
>
> **** 4th September 2017
>
> Michael Wilson
>
> Financial
>
> Controller/Director ACBF
>
> Group of Companies
>
> ????? (was 44A Griffith
>
> Street) Coolangatta 4225
>
> Dear Michael
>
> **Increase in premiums – Fund 2**
>
> In regards to Fund 2 we request that you increase the premiums by 100% to payers and nominees effective from 1st August 2017.
>
> This decision is being made due to payer higher risk
>
> factors. Kind regards
>
> Crown Insurance Services
>
> Limited Ron Pattenden
>
> Director

58. At 1:26pm on 4 September 2017, Mr Wilson responded to the email described at paragraph 57 above, stating that the "wording is fine… Doesn't really matter if it is you or Ron, either will do. Ron would probably ask you to sign this."

59. At 1:57pm on 4 September 2017, on instructions from Mr Pattenden, Mr Law sent a letter to Mr Wilson, copied to Mr Pattenden. The letter stated:

> **Increase in premiums - Fund 2**
>
> In regards to Fund 2 we request that you increase the premiums by 100% to payers and nominees effective from 1st August 2017.
>
> This decision is being made due to payer higher risk factors.

3.2 EFFECT OF THE PREMIUM INCREASE AND CROWN ARRANGEMENTS ON ACBF 2

60. Between 4 September 2017 and 30 November 2018, the premiums paid by ACBF 2 to Crown, the claims paid by Crown to ACBF 2, and profit share paid by Crown to ACBF 2 were as follows:

Payment date	Month for which payment relates	Premiums paid by ACBF2 to Crown	Claims paid by Crown to ACBF2	Profit share paid by Crown to ACBF2	Overall amount paid to Crown
6-Sep-17	Aug-17	$88,783.80	$114,000.00	$-	$(25,216.20)
5-Oct-17	Sep-17	$79,918.00	$36,000.00	$-	$43,918.00
1-Nov-17	Oct-17	$79,315.00	$45,000.00	$-	$34,315.00
4-Dec-17	Nov-17	$89,248.60	$66,000.00	$-	$23,248.60
3-Jan-18	Dec-17	$78,095.00	$61,000.00	$-	$17,095.00
2-Feb-18	Jan-18	$78,927.20	$31,000.00	$8,305.96	$39,621.24
2-Mar-18	Feb-18	$73,522.00	$22,636.67	$16,946.76	$33,938.57
4-Apr-18	Mar-18	$81,608.60	$47,990.66	$-	$33,617.94
3-May-18	Apr-18	$72,530.40	$15,000.00	$21,557.43	$35,972.97
1-Jun-18	May-18	$86,592.80	$50,363.06	$-	$36,229.74
2-Jul-18	Jun-18	$75,513.40	$26,100.87	$14,840.00	$34,572.53
3-Aug-18	Jul-18	$74,571.80	$86,661.34	$-	$(12,089.54)
3-Sep-18	Aug-18	$81,643.80	$66,000.00	$-	$15,643.80
4-Oct-18	Sep-18	$68,856.00	$31,029.22	$7,025.01	$30,801.77
Payment date	**Month for which payment relates**	**Premiums paid by ACBF2**	**Claims paid by Crown to ACBF2**	**Profit share paid by Crown to ACBF2**	**Overall amount paid to Crown**

		to Crown			
5-Nov-18	Oct-18	$76,795.30	$52,771.33	$-	$24,023.97
Totals		**$1,185,921.70**	**$751,553.15**	**$68,675.16**	**$365,693.39**

61. As referred to in paragraphs 22.5 and 24.5 above, ACBF 2 went from an operating profit of $9,794 for the financial year ending 30 June 2017 to an operating loss of
$198,779 for the financial year ending 30 June 2018. But for the doubling of premiums, ACBF 2 would have made an operating profit for the financial year ending 30 June 2018.

62. At the time of the premium increase and continuing until 30 November 2018:

62.1. Fund 2 was closed to new members;

62.2. ACBF 2 maintained cash reserves for the purpose of meeting its potential liability to pay cancellation benefits to fund members, which liability was not insured under the policy with Crown;

62.3. ACBF 2 was not accumulating, or attempting to accumulate, amounts from which to pay claims by fund members;

62.4. ACBF 2 did not otherwise maintain cash reserves for the purpose of paying fund members' claims and instead relied on the policy with Crown for this purpose, with such reliance arising from the fact that ACBF 2 did not have any alternative source of funds to pay member claims;

62.5. ACBF 2 could not increase its revenue from member contributions without:

62.5.1. altering the terms of the trust deed to allow it to increase member contributions, which, according to the trust deed, would have required the written consent of 75% of fund members; or

62.5.2. applying to the Court to seek a variation of the trust deed under s 81 of the *Trustees Act 1925* (NSW);

62.6. an increase in premium of 100% would have a significant negative

impact on ACBF 2's financial position:

62.6.1. With the doubling of the Crown premiums during the Relevant Period, ACBF 2's projected cash position went from remaining positive indefinitely to $0 within four years.

62.6.2. In addition, if ACBF 2 had been brought to an end, it would have had amounts available to pay creditors or fund members. If ACBF 2 had been wound up, there would have been surplus funds following the payment of debts and liabilities for eligible fund members to be repaid an

amount up to the maximum amount of their cancellation benefit. Similarly, if all fund members of ACBF 2 who were eligible for payment of a cancellation benefit validly cancelled their memberships, there would have been funds available for distribution to those members.

62.7. Fund 2 had options available to it in lieu of continuing the Crown arrangements, namely:

62.7.1. accepting the Crown higher premium rates but with mitigation by attempting to increase contribution rates or negotiating lower administration fees; and

62.7.2. attempting to negotiate and agree alternative terms with Crown;

62.7.3. attempting to find an alternative insurer;

62.7.4. attempting to move to a self-insurance arrangement;

62.7.5. attempting to negotiate lower administration fees;

62.7.6. attempting to increase contribution rates; and

62.7.7. winding up.

63. If calculations were performed at the time by Mr Law, the result of those calculations would have been:

63.1. ACBF 2 could have withstood a 33% premium increase by Crown and remained solvent for 15 years.

63.2. ACBF 2 could have accepted the Crown premium increase and remained solvent considerably longer with administration fee reductions and contribution increases.

63.3. If ACBF 2 could have self-insured and remained solvent for seven years and for considerably longer with administration fee reductions and contribution increases.

63.4. If ACBF 2 had been wound up, it would have sufficient funds to pay out all cancellation benefits.

64. At the time of the premium increase and continuing until 30 November 2018, there was a substantial risk that:

64.1. in the circumstances described in paragraphs 62 and 63 above, the effect of the premium increase, if it continued to be paid, would be that ACBF 2 would become insolvent within approximately four or less years and would need to be wound up.

64.2. if ACBF 2 was wound up in insolvency, ACBF 2's policy with Crown would be terminated and the members of Fund 2 that were entitled to a cancellation benefit may not be able to recover all or part of any cancellation benefit they were owed;

64.3. if fund members' cover was cancelled, they would be without funeral cover; and

64.4. the members of Fund 2 were never told, and therefore could not and did not know or understand, the matters referred to in subparagraphs 64.1 to 64.3 above, and had no way of knowing them unless explained to them by information provided by ACBF 2.

65. Mr Law ought to have known the fact described at subparagraph 64.1 above because it would have been revealed had he asked for analysis to be undertaken of the effect of the 100% premium increase on ACBF 2's financial position, which he did not do but ought to have done.

3.3 MAINTAINING THE CROWN ARRANGEMENTS FOR THE ACBF ENTITIES

66. At various times in September 2018, Mr Jones and Mr Clayton communicated with the Office of Fair Trading New South Wales (**NSW Fair Trading**) about whether the Crown arrangement was in the best interests of fund members.

67. In September 2018, two months prior to Mr Law's resignation as director, Mr Jones advised Mr Law of NSW Fair Trading's concerns.

68. As a result of NSW Fair Trading's concerns and the ACBF business's involvement in the Financial Services Royal Commission, from around 20 September 2018, Mr Jones and Mr Clayton gave some consideration to whether:

68.1. the ACBF business should offer a new product; and

68.2. for that new product, the ACBF business should insure with an Australian insurer rather than with Crown.

69. Despite the matters in paragraphs 66 to 68 above, at no time during the Relevant Period did Mr Law consider properly, or at all, changes to the insurance arrangements with Crown for Fund 2.

PART IV FORMAL ADMISSIONS RELATING TO SS 180(1), 181(1), 182(1) OF THE CORPORATIONS ACT

70. By 4 September 2017, and continuing until 30 November 2018:

70.1. Mr Pattenden was the majority owner and ultimate controller of Crown, with Mr Law acting in accordance with Mr Pattenden's instructions in his capacity as director of Crown. Mr Pattenden had a direct financial interest in Crown, and Mr Law had an indirect financial interest in Crown, and benefitted financially from ACBF 2 insuring with Crown;

70.2. Mr Law knew or ought to have known that if the premiums paid by ACBF 2 to Crown were to double from the amount paid by ACBF 2 before the Relevant Period, then there was a risk for ACBF 2 that it would become insolvent;

70.3. Mr Law knew that on 4 September 2017, Mr Pattenden and Mr Wilson hadagreed that the premium paid by ACBF 2 to Crown would increase by 100% effective from 1 August 2017 at Mr Pattenden's direction;

70.4. Mr Law knew that ACBF 2 paid Crown premiums in amounts that were double the amount of the premium that had previously been paid;

70.5. Mr Law ought to have known that an increase in premium of 100% would have a significant negative impact on ACBF 2's financial position;

70.6. Mr Law ought to have known that the effect of the premium increase, if it continued to be paid, would be that ACBF 2 would become insolvent within approximately four or less years and would need to be wound up;

70.7. Mr Law ought to have known that there was a substantial risk that if ACBF 2 was wound up in insolvency, the remaining members of Fund 2:

70.7.1. would not be able to recover all or part of any cancellation benefit they were owed; and

70.7.2. would be without funeral cover;

70.8. Mr Law ought to have known that the members of Fund 2 did not know or understand the matters referred to in paragraphs 70.6 and 70.7 above, and had no way of knowing them unless explained to them by information provided by ACBF 2;

70.9. Mr Law ought to have known at the time of the premium increase and continuing until 30 November 2018 that there was a reasonable chance that if the members of Fund 2 understood the matters referred to in paragraphs 70.6 and 70.7 above, they would cancel their membership with Fund 2;

70.10. Mr Law knew or ought to have known that ACBF 2 maintained its policy with Crown at the increased premium;

70.11. by causing or allowing ACBF 2 to maintain its policy with Crown at the increased premium, Mr Law and Mr Pattenden (through Crown) benefitted financially from ACBF 2 continuing to pay premiums; and

70.12. Mr Law preferred the financial interests of Crown, himself and Mr Pattenden over the financial interests of ACBF 2 and fund members.

71. A reasonable director or officer of a corporation in ACBF 2's circumstances and who occupied the office held by Mr Law and had the same responsibilities, and who had knowledge of the risks to ACBF 2 and its fund members referred to in paragraph 70 above, in acting with care and diligence when considering whether:

71.1. to pay the increased premium to Crown on behalf of ACBF 2; and

71.2. to continue to maintain ACBF 2's policy with Crown, would have taken all necessary steps to:

71.3. consider whether the Crown policy was in the interests of ACBF 2, both generally and at the time of the doubling of ACBF 2's premium;

71.4. pursue alternatives to ACBF 2's insurance arrangements with Crown, including considering whether to:

71.4.1. attempt to renegotiate the Crown insurance policy;

71.4.2. cancel the Crown insurance policy and attempt to transition to self- insurance (and whether and how to amend the trust deed to allow for this);

71.4.3. attempt to find a cheaper external insurer;

71.4.4. attempt to increase reserves from which to pay Crown;

71.4.5. attempt to notify members of the risks to Fund 2 inherent in the arrangements with Crown; and

71.4.6. wind up the trust and pay eligible members who were entitled to it a cancellation benefit.

72. At all times from 4 September 2017 (the date of the decision to increase the premium) and continuing until 30 November 2018, Mr Law:

72.1. failed to consider properly or at all the effect of the Crown arrangements on the financial position of ACBF 2;

72.2. failed to consider properly or at all whether continuing the policy with Crown was in the best interests of ACBF 2 and its fund members;

72.3. failed to consider properly or at all whether there were alternative options available to ACBF 2, as described in paragraph 71.4 above, that would have been in the best interests of ACBF 2 and its fund members;

72.4. failed to pursue properly or at all any of the alternative options described in paragraph 71.4 above;

72.5. preferred his, Mr Pattenden's and Crown's financial interests in causing ACBF 2 to maintain its Crown arrangements;

72.6. preferred his, Mr Pattenden's and Crown's financial interests in causing or allowing ACBF 2 to accept or agree to pay the increased premium, payment of which occurred on 15 occasions between 4 September 2017 and 30 November 2018; and

72.7. failed to ensure properly or at all that ACBF 2, as trustee for Fund 2, took all necessary and reasonable steps to protect the Fund (contrary to cl 13.9 of the trust deed).

73. Mr Law, for each of the acts or omissions described in paragraph 72 above, between 4 September 2017 and 30 November 2018:

73.1. failed to discharge his duties to ACBF 2 with the degree of care and diligence that a reasonable person would exercise, if they were a director or officer of a corporation in ACBF 2's circumstances, and occupied the offices held by Mr Law, and had the same responsibilities within the corporation; and

73.2. as a result, breached s 180(1) of the Corporations Act.

74. By reason of the matters described in paragraph 70 above, and Mr Law's position as director of ACBF 2 as set out in Part 2.5 above, Mr Law:

74.1. caused or allowed ACBF 2 to maintain the arrangements with Crown from 4 September 2017 until 30 November 2018 without taking any or all necessary steps to consider and pursue the matters in paragraph 71.4 above;

74.2. caused or allowed ACBF 2 to pay an increase in premium of 100% without taking any or all necessary steps to consider and pursue the matters in paragraph 71.4 above; and

74.3. failed to take all necessary steps to manage the conflict of interest that arose between his and Mr Pattenden's duties to ACBF 2 and his and Mr Pattenden's interest in Crown;

74.4. used his position as a director or officer of ACBF 2 to:

74.4.1. obtain an advantage for himself, Mr Pattenden and Crown; and

74.4.2. cause a detriment to ACBF 2.

75. Mr Law's conduct referred to in paragraph 74 above:

75.1. was not in good faith in the best interests of ACBF 2;

75.2. was done for the improper purpose of gaining an advantage for himself, Mr Pattenden and Crown; and

75.3. resulted in Mr Law:

75.3.1. gaining an advantage for himself, Mr Pattenden and Crown; and

75.3.2. causing detriment to ACBF 2.

76. For each of the acts or omissions described in paragraphs 74 and 75 above, between 4 September 2017 and 30 November 2018, Mr Law:

76.1. failed to exercise his powers and discharge his duties in good faith in the best interests of any of ACBF 2 and for a proper purpose, and as a result contravened s 181(1) of the Corporations Act; and

76.2. used his position contrary to and in contravention of s 182(1) of the Corporations Act.

77. From 4 September 2017 until 30 November 2018, the contraventions of ss 180(1), 181(1) and 182(1) of the Corporations Act by Mr Law, as admitted by Mr Law in paragraphs 73 to 76 above:

77.1. materially prejudiced the financial interests of ACBF 2 and its members;

77.2. materially prejudiced the ability of ACBF 2 to pay its creditors; and

77.3. were serious.

PART V ADMISSIONS OF OTHER FACTS

5.1 THE NATURE OF THE LOSS OR DAMAGE SUFFERED

78. Paragraphs 62.6 and 63 above outline how the increase in Crown premiums by 100% for ACBF 2 had a significant negative impact on ACBF's financial position and describes alternative scenarios or possibilities that could have been pursued by Mr Law. The total amount of increased premium that was paid by ACBF 2 to Crown during the Relevant Period was approximately $592,961.

79. The above alternative scenarios or possibilities may be contrasted with what actually took place, namely, that ACBF 2 entered liquidation in March 2022, with members and creditors to receive no or negligible payments.

80. As described in paragraph 71.4 above, Mr Law had options available to him to pursue for ACBF 2 in lieu of continuing the Crown arrangements or varying the arrangements with Crown but did not consider or pursue any such alternative options.

5.2 MR LAW'S FINANCIAL POSITION

81. Mr Law does not rely on his financial position to mitigate the penalty.

5.3 WHETHER PREVIOUSLY FOUND TO HAVE ENGAGED IN SIMILAR CONDUCT

82. Mr Law has not been found to have engaged in similar conduct.

5.4 COOPERATION WITH ASIC AND CONTRITION

83. Mr Law:

83.1. despite being a resident of Vanuatu and not being a resident of Australia, agreed to participate in two section 19 examinations, responded to a section 33 notice, and accepted service of this proceeding; participated in the mediation in good faith at which time the proceedings against him were settled;

83.2. cooperated with ASIC to agree a detailed SAFA setting out the underlying facts and admissions going to his liability and penalty;

83.3. cooperated with ASIC and agreed to the declarations set out at Annexure A; and

83.4. agreed to give evidence to assist ASIC in this proceeding if required.

84. As a result of his willingness to settle the matter, ASIC has been spared a contested trial of an estimated 3 week duration with the consequent savings

in time and cost to the public and ASIC (as it will enable it to focus on and pursue other matters).

Date: Click here to enter text.

.....

James
Docherty AGS
lawyer
for and on behalf of the Australian Government
Solicitor Lawyer for the Plaintiff

.....

Mitchell Carey

Carey Litigation Lawyers

Lawyer for the Second Defendant

ANNEXURE A

SHORT MINUTE OF ORDERS

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: GENERAL **NO NSD 935 OF 2023**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

RONALD JOSEPH PATTENDEN

and others named in the Schedule
Defendants

THE COURT DECLARES THAT MR LAW

1. Under s 1317E(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that, in his capacity as a director of Aboriginal Community Benefit Fund No 2 Pty Ltd (**ACBF 2**), between 4 September 2017 and 30 November 2018, the Second Defendant:

    1.1. failed to consider properly or at all the effect of the Crown Insurance Services Limited (**Crown**) arrangements on the financial position of ACBF 2;

    1.2. failed to consider properly or at all whether continuing the policy with Crown was in the best interests of ACBF 2 and its fund members;

    1.3. failed to consider properly or at all whether there were alternative options available to ACBF 2 that would have been in the best interests of ACBF 2 and its fund members;

    1.4. failed to pursue properly or at all any alternative options available to ACBF 2;

    1.5. preferred his, the First Defendant's and Crown's financial

interests in causing ACBF 2 to maintain its Crown arrangements;

1.6. preferred his, the First Defendant's and Crown's financial interests in causing or allowing ACBF 2 to accept or agree to pay the increased premium, payment of which occurred on 15 occasions between 4 September 2017 and 30 November 2018; and

1.7. failed to ensure properly or at all that ACBF 2, as trustee for the funeral fund operated by it (**Fund 2**), took all necessary and reasonable steps to protect the Fund (contrary to cl 13.9 of the trust deed),

and by reason of the above:

1.8. failed to discharge his duties to ACBF 2 with the degree of care and diligence that a reasonable person would exercise, if they were a director or officer of a corporation in ACBF 2's circumstances, and occupied the office held by the Second Defendant, and had the same responsibilities within the corporation; and

1.9. as a result, breached s 180(1) of the Corporations Act.

2. Under s 1317E(1) of the Corporations Act that, in his capacity as a director of ACBF 2, between 4 September 2017 and 30 November 2018:

2.1. the Second Defendant:

2.1.1. had an indirect financial interest in the Crown policy held by ACBF 2;

2.1.2. caused or allowed ACBF 2 to maintain the arrangements with Crown without taking any or all necessary steps to consider and pursue the alternative options available to ACBF 2;

2.1.3. caused or allowed ACBF 2 to pay an increase in premium of 100% without taking any or all necessary steps to consider and pursue the alternative options available to ACBF 2;

2.1.4. failed to take all necessary steps to manage the conflict of interest that arose between his duties to ACBF 2 and his interest in Crown and the First Defendant's duties to ACBF 2 and the First Defendant's interest in Crown;

2.1.5. used his position as a director or officer of ACBF 2 to:

2.1.5.1. obtain an advantage for himself, the First Defendant and Crown; and

2.1.5.2. cause a detriment to ACBF 2.

2.2. the Second Defendant's conduct referred to in 2.1 above:

2.2.1. was not in good faith in the best interests of ACBF 2;

2.2.2. was done for the improper purpose of gaining an advantage for himself, the First Defendant and Crown; and

2.2.3. resulted in the Second Defendant:

2.2.3.1. gaining an advantage for himself, the First Defendant and Crown; and

2.2.3.2. causing detriment to ACBF 2.

2.3. by reason of the circumstances in 2.1 and 2.2 above, the Second Defendant:

2.3.1. failed to exercise his powers and discharge his duties in good faith in the best interests of ACBF 2 and for a proper purpose, and as a result contravened s 181(1) of the Corporations Act; and

2.3.2. used his position contrary to and in contravention of s 182(1) of the Corporations Act.

THE COURT ORDERS THAT

3. Under s 1317G(1) of the Corporations Act that, within 30 days of this order, the Second Defendant pay to the Commonwealth of Australia a pecuniary penalty

of $50,000 for contraventions by the Second Defendant of ss 180(1), 181(1) and 182(1) of the Corporations Act relating to ACBF 2.

4. Under s 206C(1)(a)(i) and/or s 206E(1)(a)(ii) of the Corporations Act that the Second Defendant is disqualified from managing corporations for a period of 6 years from the date of this order.

5. The Second Defendant must pay a contribution of $10,000 to the Plaintiff's costs of and incidental to the proceeding.

SCHEDULE

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES

Division: General **No NSD 935 of 2023**

RESPONDENTS

Second Respondent	Jonathan Glen Law
Third Respondent	Michael Brendan Wilson
Fourth Respondent	Bryn Elwyn Jones
Fifth Respondent	Geoffrey Peter Clayton

Date: Click here to enter text.

ANNEXURE 2

Form 1

Rule 2.13(2)

JOINT SUBMISSIONS
OF ASIC AND SECOND DEFENDANT

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: GENERAL **NO NSD 935 OF 2023**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

RONALD JOSEPH PATTENDEN and others
Defendants

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A INTRODUCTION

1. These submissions are jointly filed by the Plaintiff (**ASIC**) and the Second Defendant (**Mr Law**).

2. Between 4 September 2017 and 30 November 2018 (**Relevant Period**), Mr Law was a director of **ACBF 2**, **ACBF Plans** and **ACBF Community** (collectively, the **ACBF Entities**), which operated funeral funds mostly marketed to Indigenous consumers, and a director of a Vanuatuan company Crown Insurance Services Limited (**Crown**) from 2008 until at least 30 November 2018, which underwrote the funds operated by the ACBF Entities (being **Fund 2**, **Fund 3** and **Fund 4** respectively).

3. On 4 September 2017, Crown doubled the premium payable by ACBF 2. This had a significant negative impact on ACBF 2.

4. Mr Law admits that, during the Relevant Period, in contravention of s 180(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**):

   4.1. he failed to consider the effect of the Crown insurance policies on the financial position of ACBF 2, to consider whether the Crown policies were in the best interests of members of ACBF 2 and to consider or pursue alternatives to the insurance arrangements with Crown (including whether to renegotiate or cancel the policy and find a new insurer, or wind up ACBF 2);

   4.2. he preferred his, Crown's and another director of the ACBF Entities and Crown, **Mr Pattenden's**, interests in causing ACBF 2 to maintain the Crown policies, causing or allowing ACBF 2 to accept or agree to pay the increased premium and failed to ensure that ACBF 2, as trustee of Fund 2, took all necessary and reasonable steps to protect the Fund contrary to the trust deed.

5. Mr Law also admits that, during the Relevant Period, in contravention of ss 181(1) and 182(1) of the Corporations Act, he failed to take all necessary steps to manage the conflict of interest that arose between his and Mr Pattenden's duties to ACBF 2 and his and Mr Pattenden's interest in Crown, used his position as an officer of ACBF 2 to obtain an advantage for Crown, himself and Mr Pattenden, and caused a detriment to the ACBF 2.

6. The parties have filed a Statement of Agreed Facts and Admissions on 30 January 2026 (**SAFA**). **Annexure A** to the SAFA set out the **Agreed Proposed Orders**, which seek:

   6.1. two declarations under s 1317E(1) of the Corporations Act;

   6.2. a pecuniary penalty of $50,000 under s 1317G(1) of the Corporations Act;

   6.3. a disqualification order under s 206C(1)(a)(i) and/or s 206E(1)(a)(ii) of the Corporations Act that Mr Law be disqualified from managing corporations for a period of 6 years; and

   6.4. an order that Mr Law pay $10,000 as a contribution towards ASIC's costs of and incidental to the proceeding.

B THE CONTRAVENING CONDUCT

B1. FACTUAL BACKGROUND

ACBF business

7. The ACBF business was a single business with common management across each of the entities within that business. During the Relevant Period, Mr Law was a resident of Vanuatu and a director of the ACBF Entities.[1]

8. The ACBF group of companies relevantly included: **ACBF 1**, ACBF 2, ACBF Plans, ACBF Community, ACBF Consultants Pty Ltd, **ACBF Group Holdings** and **ACBF Administration**.[2]

9. In the period from 2010 to 30 November 2018, the ultimate holding company of the group of companies through which the ACBF business operated was Just Solutions Limited (**Just Solutions**), a company registered in Vanuatu. Just Solutions owned the majority of the shares in ACBF Group Holdings.[3]

Operation of the Funds

10. The SAFA explains in detail the way in which the Funds of each of the ACBF Entities operated.[4]

11. In summary, for Fund 2:

    11.1. ACBF 2 was trustee of Fund 2, which operated as a trust established by deed.[5]

    11.2. ACBF 2 operated Fund 2 from 1993 for the purpose of providing funeral benefits to nominated persons on the death of a fund member. Fund 2 was marketed, and only available, to Indigenous Australians. Fund 2 was closed to new members from 2004.[6]

    11.3. On the death of the fund member who had made at least 2 payments, and following the making of a claim to ACBF 2, ACBF 2 would pay $6,000 to a nominated person (subject to any increase of the amount to be paid, made on application by a member after paying contribution amounts for at least one year).[7]

    11.4. Where a fund member wrote to ACBF to cancel their membership, they would receive a payment on cancellation subject to having made 26 or more payments and having not increased the amount payable by ACBF 2, in an amount equal to one third of the member's total membership payments from the 26th payment onwards.

    11.5. Where Fund 2 was wound up and there were surplus funds following the payment of Fund 2's debts and liabilities, fund members entitled to receive a

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1 SAFA at [9].

2 SAFA at [7].

3 SAFA at [10].

4 SAFA at Section 2.3, [11]-[32].

5 SAFA at [12].

6 SAFA at [12].

7 SAFA at [16.4].

cancellation benefit would be entitled to be repaid an amount up to the maximum amount of their cancellation benefit.[9]

11.6. The trust deed for Fund 2:

(a) required Fund 2 to maintain an insurance policy to underwrite the lives of its fund members. From 2002, ACBF 2 used Crown as its underwriter;[10]

(b) provided ACBF 2 with the power to take such action as it thought fit for the adequate protection of any part or parts of the Fund;[11]

(c) could not be amended except in accordance with the provisions of the trust deed, and could potentially be amended on application under s 81 of the *Trustees Act 1925* (NSW) by ACBF 2 to the Court.[12]

11.7. On 24 November 2021, ACBF 2 went into administration.[13]

11.8. On 2 March 2022, a liquidator was appointed to ACBF 2. On 11 April 2022, a receiver was appointed to Fund 2.[14]

12. ACBF Administration provided administration services to each of the ACBF Entities and Funds 2, 3 and 4 in return for a fee.[15] The fees charged by ACBF Administration were not based on the cost to ACBF Administration to provide those services to each of the ACBF Entities.[16]

13. ACBF Group Holdings was the ultimate holding company of ACBF 1, the ACBF Entities and ACBF Administration.[17] ACBF Group Holdings earned revenue from receiving dividends from ACBF Administration, had nominal expenses and paid dividends to Just Solutions for financial years 2015 to 2018.[18]

Crown arrangements

14. The SAFA explains in detail the way in which the Crown arrangements with each of the ACBF Entities operated.[19]

15. Between 2002 and at least 30 November 2018, ACBF 2, ACBF Plans and ACBF Community chose to satisfy the requirement to maintain an insurance policy by insuring with Crown.[20]

16. Crown:

16.1. was registered in Vanuatu by Mr Pattenden in 2002;

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9 SAFA at [16.8].

10 SAFA at [21].

11 SAFA at [17].

12 SAFA at [18].

13 SAFA at [26].

14 SAFA at [27].

15 SAFA at [28].

16 SAFA at [29].

17 SAFA at [31].

18 SAFA at [32].

19 SAFA at Section 2.4, [33]-[41].

20 SAFA at [33].

16.2. provided insurance services to the ACBF Entities from 2002;

16.3. between 2002 and 30 November 2018, operated its business from Vanuatu; and

16.4. between 2002 and 30 November 2018, was not subject to prudential or other regulatory requirements in Australia.

17. Between 2002 and 15 February 2022, the ACBF Entities were the only entities insured by Crown.[22]

18. In summary, under the terms of the policies with Crown:[23]

18.1. the ACBF Entities were required to pay premiums to Crown (cl 9.1);

18.2. Crown had the power to vary the premium by giving the ACBF Entity three months' written notice (cl 9.5.1 for ACBF 2 and cl 9.5 for ACBF Plans and ACBF Community);

18.3. the policies were renewable annually at the expiry of the policy year, being the 12 months between annual review dates;

18.4. there was no obligation on Crown to renew the policies at the annual review date;

18.5. Crown and the ACBF Entities had a profit-sharing arrangement in accordance with a self-participation formula; and

18.6. Crown was not required to provide services to the ACBF Entities other than the payment of claims by fund members.[24]

19. From 2003 (for Fund 2) to at least 2018, Crown paid to each of Funds 2, 3 and 4 a 'profit share' based on a formula.[25] The table at paragraph 41 of the SAFA sets out for financial years 2002 to 2018 the premiums received by Crown from Fund 2, claims paid by Crown to Fund 2, profit share paid by Crown to Fund 2 and the net profit or loss of Crown relating to Fund 2.[26]

20. In each financial year prior to financial year 2017, Crown received more in premiums from Fund 2 than it paid to Fund 2 for claims and profit share. In financial year 2017, Crown paid more to Fund 2 in claims and profit share than it received in premiums from Fund 2.[27]

21. As set out in more detail below, on 4 September 2017 Crown doubled the premiums payable by Fund 2 with effect from 1 August 2017, the result of which was that for financial year 2018 Crown received more in premiums from Fund 2 than it paid in claims.[28]

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22 SAFA at [35].

23 SAFA at [36].

24 Crown's premiums for Fund 2 were structured as "level premiums", which did not vary by age, unlike the premiums charged or Funds 3 and 4 which increased as members aged. This placed a financial burden on the insurer as members aged, especially for a closed fund like Fund 2: SAFA at [37]-[38].

25 SAFA at [40].

26 SAFA at [41].

27 SAFA at [39].

28 SAFA at [39].

22. In total, for financial years 2002 to 2018, for Fund 2:[29]

22.1. Crown received $16,345,137 in premiums;

22.2. Crown paid $8,056,029 in claims;

22.3. Crown paid $2,266,816 in profit share; and

22.4. Crown's net premiums received less claims and profit share was $6,022,292.

Mr Law's role

23. Mr Law was a director of each of the ACBF Entities between 18 May 2017 and 30 November 2018 and a director of Crown from 2008 until at least 30 November 2018.[30]

24. Mr Law was not involved in the day-to-day operations of the ACBF Entities.[31]

25. For Crown, Mr Law oversaw that all statutory matters were looked after such as regulatory reports to the Reserve Bank of Vanuatu and that Crown's accounts were audited annually.[32] Mr Law also took steps on behalf of Crown or one or more of the ACBF Entities from time to time. His liaising with the ACBF Entities in relation to the premium increase is detailed in paragraphs 56 to 59 of the SAFA.[33]

26. Mr Law held shares:

26.1. in Asian Markets Limited as a trustee for the Esperance Bay Trust. In accordance with a memorandum of wishes, at all relevant times distributions from the Esperance Bay Trust were requested to be paid to Mr Law's son.[34]

26.2. (as a minority shareholder) in Just Solutions, indirectly, by way of the shares held on trust in Asian Markets Limited during the Relevant Period;[35]

26.3. in Crown from:[36]

(a) January 2008 directly; and

(b) from 2010 and throughout the Relevant Period, as a trustee for the Esperance Bay Trust.

27. On 30 November 2018, Just Solutions and ACBF Consultants Pty Ltd sold their shares in ACBF Group Holdings to Elah Valley Pty Ltd (**Elah Valley**). The Fourth Defendant (**Mr Jones**) and the Fifth Defendant (**Mr Clayton**) were the only directors and acquired ownership interests in ACBF Group Holdings through Elah Valley. Mr Law received no financial benefit, directly or indirectly, from the sale of ACBF Group Holdings.[37]

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29 SAFA at [41].

30 SAFA at [42].

31 SAFA at [43.1].

32 SAFA at [43.2].

33 SAFA at [43.3].

34 SAFA at [42.4].

35 SAFA at [42.5].

36 SAFA at [42.6].

37 SAFA at [46].

Other defendants

28. The other defendants in the proceeding are Mr Pattenden, the Third Defendant, Mr Wilson, the Fourth Defendant, Mr Jones and the Fifth Defendant, Mr Clayton. Each was a director of the ACBF Entities at various times during the Relevant Period.[38]

29. Mr Pattenden was also the founder and, at all material times, a director and, indirectly, the majority shareholder of Crown; and indirectly, the majority shareholder of Just Solutions through Mr Pattenden's company Bu Teck Management Ltd (**Bu Teck**). Mr Pattenden was the sole shareholder of Bu Teck from October 2013.[39]

30. Between 1996 and 2010, Mr Pattenden owned shares in ACBF Group Holdings. In 2010, Mr Pattenden sold his shares in ACBF Group Holdings to Just Solutions for $20 million, by way of vendor finance, with interest payable on demand by Mr Pattenden, to be repaid over approximately 12 years. From 2010 to at least 30 November 2018, Just Solutions received dividends from Crown and on paid those dividends to Bu Teck, which then paid those amounts to Mr Pattenden in repayment of the vendor finance. ACBF Group Holdings also paid dividends to Just Solutions, which it on paid to Bu Teck, which then paid those amounts to Mr Pattenden.[40]

31. During the Relevant Period, Mr Law acted in accordance with Mr Pattenden's instructions in relation to, and deferred to Mr Pattenden for overseeing the operation of and any significant decision in relation to, the ACBF Entities.[41]

Premium increase for ACBF 2

32. On or around 4 September 2017, Mr Pattenden called Mr Law and told him that Crown would double the premium payable by Fund 2, and instructed Mr Law to draft a letter from Crown to Fund 2 informing it of this.[42] Mr Law drafted a letter and sent a copy to Mr Wilson in an email at 1:09pm on 4 September 2017, copying Mr Pattenden, and stated that the decision to increase premiums by 100% was being made "due to payer higher risk factors", to be signed by Mr Pattenden on behalf of Crown.[43]

33. At 1:26pm on 4 September 2017, Mr Wilson responded to the email described at paragraph 32 above stating that the "wording is fine" and that "Doesn't really matter if it is you or Ron, either will do. Ron would probably ask you to sign this".[44]

34. On instructions from Mr Pattenden, Mr Law proceeded to finalise the letter and sent it to Mr Wilson at 1:57pm on 4 September 2017, copied to Mr Pattenden.[45]

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38 SAFA at [47], [49], [53]-[54].

39 SAFA at [47.5]-[47.6].

40 SAFA at [48].

41 SAFA at [55].

42 SAFA at [56].

43 SAFA at [57].

44 SAFA at [58].

45 SAFA at [59].

Effect of the premium increase on ACBF 2

Effect of increase

35. The premium increase had a substantial negative effect on the financial position of ACBF 2. ACBF 2 went from an operating profit of $9,794 for the financial year ending 30 June 2017 to an operating loss of $198,779 for the financial year ending 30 June 2018.[46]

36. This occurred in circumstances where Fund 2 was closed to new members and where ACBF 2 could not increase its revenue from member contributions without altering the terms of the trust deed (which required the written consent of 75% of fund members or an application to the court to vary the trust deed).[47] The effect of these matters is that ACBF 2 could not unilaterally increase its revenue from member contributions, and was not gaining any new members (instead the member numbers were declining over time).

37. Further, ACBF 2 was not accumulating, or attempting to accumulate, amounts from which to pay claims by fund members.[48] Apart from the cash reserves that ACBF 2 maintained for the purpose of meeting its potential liability to pay cancellation benefits to fund members, which liability was not insured under the policy with Crown,[49] ACBF 2 did not otherwise maintain cash reserves for the purpose of paying fund members' claims. Instead, it relied on the policy with Crown for this purpose, and had no alternative source of funds to pay member claims.[50]

38. Once the premium paid by ACBF 2 was doubled, its projected cash position went from remaining positive indefinitely to $0 within four years.[51]

39. If ACBF 2 had been brought to an end, it would have had amounts available to pay creditors or fund members eligible for cancellation benefits.[52] If ACBF 2 had been wound up, there would have been surplus funds following the payment of debts and liabilities for eligible fund members to be repaid an amount up to the maximum amount of their cancellation benefit.[53] Similarly, if all fund members of ACBF 2 who were eligible for payment of a cancellation benefit validly cancelled their memberships, there would have been funds available for distribution to those members.[54]

40. At the time of the premium increase and continuing until 30 November 2018, there was a substantial risk that:[55]

    40.1. in the circumstances described in paragraphs 36 to 39 above, and paragraphs 43 to 44 below, the effect of the premium increase would be that ACBF 2 would become insolvent within approximately four or less years and would need to be wound up;

    40.2. if ACBF 2 was wound up in insolvency, ACBF 2's policy with Crown would be terminated and members of Fund 2 that were entitled to a cancellation benefit

46 SAFA at [61].

47 SAFA at [62.1], [62.5].

48 SAFA at [62.3].

49 SAFA at [62.2].

50 SAFA at [62.4].

51 SAFA at [62.6.1].

52 SAFA at [62.6.2].

53 SAFA at [62.6.2].

54 SAFA at [62.6.2].

55 SAFA at [64].

may not be able to recover all or part of any cancellation benefit they were owed; and

40.3. if fund members' cover was cancelled, they would be without funeral cover; and

40.4. the members of Fund 2 were never told, and therefore could not and did not know or understand, the matters referred to in subparagraphs 40.1 to 40.3 above, and had no way of knowing them unless explained to them by information provided by ACBF 2.

Options available to ACBF 2

41. During the Relevant Period, Mr Law failed to consider properly or at all any alternatives to the premium increase or the arrangement with Crown. This failure persisted from the time of the increase for Fund 2 to the date on which Mr Law ceased as a director of each of the ACBF Entities.

42. In September 2018, approximately two months prior to Mr Law's resignation as director, Mr Jones informed Mr Law of concerns that NSW Fair Trading had in relation to whether the Crown arrangement was in the best interests of fund members.[56] Despite this, nothing was done by Mr Law.[57]

43. Had Mr Law considered changes to the arrangement with Crown, properly or at all, he would have identified the options that Fund 2 had available to it rather than continuing the insurance arrangement with Crown. In particular, Fund 2's options were:[58]

43.1. accepting the Crown higher premium rates but with mitigation by attempting to increase contribution rates or negotiating lower administration fees;

43.2. attempting to negotiate and agree alternative terms with Crown;

43.3. attempting to find an alternative insurer;

43.4. attempting to move to a self-insurance arrangement;

43.5. attempting to negotiate lower administration fees;

43.1. attempting to increase contribution rates; and

43.2. winding up.

44. If calculations were performed at the time of the premium increase on 4 September 2017 by Mr Law, the result of those calculations would have been:[59]

44.1. ACBF 2 could have withstood a 33% premium increase by Crown and remained solvent for 15 years.

44.2. ACBF 2 could have accepted the Crown premium increase and remained solvent considerably longer with administration fee reductions and contributions increases.

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56 SAFA at [66]-[67].

57 SAFA at [69].

58 SAFA at [62.7].

59 SAFA at [63].

44.3. If ACBF 2 could have self-insured and remained solvent for seven years, and for considerably longer with administration fee reductions and contribution increases.

44.4. If ACBF 2 had been wound up, it would have sufficient funds to pay out all cancellation benefits.

45. Mr Law ought to have known the fact described at paragraph 40.1 above because it would have been revealed had he asked for analysis to be undertaken of the effect of the 100% premium increase on ACBF 2's financial position, which he did not do but ought to have done.[60]

B2. SECTION 180

Principles

46. Section 180(1) of the Corporations Act provides:

> (1) A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:
>
> (a) were a director or officer of a corporation in the corporation's circumstances; and
>
> (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

47. The test under s 180(1) is an objective one and is measured by what an ordinary person, with the knowledge and experience of the relevant director, would have done.[61] This objective standard requires the court to consider what an ordinary person, with the knowledge and experience of the defendant, must be expected to have done in the circumstances if he or she was acting on his or her own behalf.[62]

48. Directors and officers are required to take reasonable steps to place themselves in a position to guide and monitor the management of the company.[63] A director or officer should become familiar with the fundamentals of the business in which the corporation is engaged, and he or she is under a continuing obligation to keep informed about the activities of the corporation.[64]

49. There are two elements to the content of the duty of reasonable care and diligence: (a) the circumstances of the company; and (b) the position and responsibilities of the officer.[65]

50. In relation to the circumstances of the company, this includes: the type of company; the provisions of its constitution; the size and nature of the company's business; the composition of the board.[66]

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60 SAFA at [65].

61 *Shafron v ASIC* (2012) 247 CLR 465; [2012] HCA 18 at [18]; *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1397].

62 *ASIC v Green County Pty Ltd* [2025] FCA 367 at [374].

63 *ASIC v Noumi Ltd (No 4)* [2024] FCA 1192 at [24].

64 *ASIC v Noumi Ltd (No 4)* [2024] FCA 1192 at [24].

65 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1397]; *ASIC v Noumi Ltd (No 4)* [2024] FCA 1192 at [20].

66 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1397]; *ASIC v Noumi Ltd (No 4)* [2024] FCA 1192 at [21]; *ASIC v Maxwell* (2006) 59 ACSR 373; [2006] NSWSC 1052 at [100].

51. In considering the acts or omissions of a particular director, the Court will consider factors including the director's position and responsibilities, the director's experience and skills, the terms and conditions on which he had undertaken to act as a director, how the responsibility for the company's business has been distributed between the directors and the company's employees, the informational flows and systems in place and the reporting systems and requirements within the company.[67]

52. The word "responsibilities" in s 180(1) directs attention to the factual arrangements operating within the company and affecting the director or officer in question, as opposed to the legal duty of care arising in particular circumstances. The director's responsibilities are not confined to statutory responsibilities and include whatever responsibilities the officer concerned had within the corporation, regardless of how or why those responsibilities came to be imposed on that officer.[68] It does not refer to only specific tasks delegated to the relevant director or officer by the corporate constitution or a board or members' resolution or otherwise. It is a wider concept referring to the acquisition of responsibilities not only through specific delegation, but also through the way in which work is in fact distributed within the corporation and the expectations placed by those arrangements on the shoulders of the individual director or officer.[69]

53. In order for an act or omission of the director to be capable of constituting a contravention of s 180, there must be reasonably foreseeable harm to the interests of the company caused thereby.[70] Liability under s 180(1) may be triggered where a director's failure to exercise reasonable care and diligence has caused or allowed the company to contravene the law, at least where it was reasonably foreseeable that such contravention might harm the company's interests.[71] It is the failure to guard against the foreseeable harm flowing from the company's contraventions that leads to the conclusion that the directors or officers did not discharge the degree of care and diligence required of them by s 180(1).[72] The reference to "harm" is best understood as "referencing harm to any of the interests of the corporation"; it is not confined to financial harm.[73]

54. Accordingly, relevant to the question of breach of duty is the balance between the foreseeable risk of harm to the company flowing from the contravention on the one hand, and on the other the potential benefits that could reasonably be expected to have accrued to the company from that conduct.[74] Not only must the court consider the nature and magnitude of the foreseeable risk of harm and degree of probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action, but the court must balance the foreseeable risk of harm against the potential benefits that could reasonably be expected to accrue from the conduct in question.[75] Such a question is to be answered having close regard to the "circumstances existing at

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67 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1397].

68 *ASIC v Green County Pty Ltd* [2025] FCA 367 at [375].

69 *ASIC v Rich* (2009) 236 FLR 1; [2009] NSWSC 1229 at [7202].

70 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1430].

71 *ASIC v Noumi Ltd (No 4)* [2024] FCA 1192 at [26]-[27].

72 *ASIC v Noumi Ltd (No 4)* [2024] FCA 1192 at [27].

73 *ASIC v Green County Pty Ltd* [2025] FCA 367 at [379].

74 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1430].

75 *ASIC v Mariner Corporation Ltd* (2015) 241 FCR 502; [2015] FCA 589 at [451].

the relevant time, without the benefit of hindsight, and with the distinction between negligence and mistakes or errors of judgment firmly in mind".[76]

55. Where there is a transaction involving the potential for conflict between interest and duty, the duty of care and diligence falls to be exercised in a context requiring special vigilance, calling for scrupulous concern on the part of those officers who become aware of that transaction to ensure that any necessary corporate approvals are obtained and safeguards are put in place.[77]

56. In assessing whether a director has met the requisite standard of care and skill, it may be relevant to have regard to expert evidence.[78]

Contraventions – ACBF 2

57. Section 180(1) applies to Mr Law as during the Relevant Period he was a director of ACBF 2.[79]

58. This was so in circumstances where, during the Relevant Period:[80]

58.1. Mr Pattenden was the majority owner and ultimate controller of Crown, with Mr Law acting in accordance with Mr Pattenden's instructions in his capacity as director of Crown. Mr Pattenden had a direct financial interest in Crown, and Mr Law had an indirect financial interest in Crown, and benefitted financially from ACBF 2 insuring with Crown;

58.2. Mr Law knew or ought to have known that if the premiums paid by ACBF 2 to Crown were to double from the amount paid by ACBF 2 before the Relevant Period, then there was a risk for ACBF 2 that it would become insolvent;

58.3. Mr Law knew that on 4 September 2017, Mr Pattenden and Mr Wilson had agreed that the premium paid by ACBF 2 to Crown would increase by 100% effective from 1 August 2017 at Mr Pattenden's direction;

58.4. Mr Law knew that ACBF 2 paid Crown premiums in amounts that were double the amount of the premium that had previously been paid;

58.5. Mr Law ought to have known that an increase in premium of 100% would have a significant negative impact on ACBF 2's financial position;

58.6. Mr Law ought to have known that the effect of the premium increase, if it continued to be paid, would be that ACBF 2 would become insolvent within approximately four or less years and would need to be wound up;

58.7. Mr Law ought to have known that there was a substantial risk that if ACBF 2 was wound up in insolvency, the remaining members of Fund 2:

(a) would not be able to recover all or part of any cancellation benefit they were owed; and

(b) would be without funeral cover;

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76 *ASIC v Rich* (2009) 236 FLR 1; [2009] NSWSC 1229 at [7242].

77 *ASIC v Adler* (2002) 168 FLR 253; [2002] NSWSC 171 at [372(14)].

78 *ASIC v Green County Pty Ltd* [2025] FCA 367 at [381].

79 SAFA at [42.2].

80 SAFA at [70].

58.8. Mr Law ought to have known that the members of Fund 2 did not know or understand the matters referred to in paragraphs 58.6 and 58.7 above, and had no way of knowing them unless explained to them by information provided by ACBF 2;

58.9. Mr Law ought to have known at the time of the premium increase and continuing until 30 November 2018 that there was a reasonable chance that if the members of Fund 2 understood the matters referred to in paragraphs 58.6 and 58.7 above, they would cancel their membership with Fund 2;

58.10. Mr Law knew or ought to have known that ACBF 2 maintained its policy with Crown at the increased premium;

58.11. by causing or allowing ACBF 2 to maintain its policy with Crown at the increased premium, Mr Law and Mr Pattenden (through Crown) benefitted financially from ACBF 2 continuing to pay premiums; and

58.12. Mr Law preferred the financial interests of Crown, himself and Mr Pattenden over the financial interests of ACBF 2 and fund members.

59. A reasonable director or officer of a corporation in ACBF 2's circumstances and who occupied the office held by Mr Law and had the same responsibilities, and who had knowledge of the risks to ACBF 2 and its fund members referred to in paragraph 58 above, in acting with care and diligence when considering whether:[81]

59.1. to pay the increased premium to Crown on behalf of ACBF 2; and

59.2. to continue to maintain ACBF 2's policy with Crown,

would have taken all necessary steps to:

59.3. consider whether the Crown policy was in the interests of ACBF 2, both generally and at the time of the doubling of ACBF 2's premium;

59.4. pursue alternatives to ACBF 2's insurance arrangements with Crown, including considering whether to:

(a) attempt to renegotiate the Crown insurance policy;

(b) cancel the Crown insurance policy and attempt to transition to self-insurance (and whether and how to amend the trust deed to allow for this);

(c) attempt to find a cheaper external insurer;

(d) attempt to increase reserves from which to pay Crown;

(e) attempt to notify members of the risks to Fund 2 inherent in the arrangements with Crown; and

(f) wind up the trust and pay eligible members who were entitled to it a cancellation benefit.

60. At all times from 4 September 2017 (the date of the decision to increase the premium) and continuing until 30 November 2018, Mr Law:[82]

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81 SAFA at [71].

82 SAFA at [72].

60.1. failed to consider properly or at all the effect of the Crown arrangements on the financial position of ACBF 2;

60.2. failed to consider properly or at all whether continuing the policy with Crown was in the best interests of ACBF 2 and its fund members;

60.3. failed to consider properly or at all whether there were alternative options available to ACBF 2, as described in paragraph 59.4 above, that would have been in the best interests of ACBF 2 and its fund members;

60.4. failed to pursue properly or at all any of the alternative options described in paragraph 59.4 above;

60.5. preferred his, Mr Pattenden's and Crown's financial interests in causing ACBF 2 to maintain its Crown arrangements;

60.6. preferred his, Mr Pattenden's and Crown's financial interests in causing or allowing ACBF 2 to accept or agree to pay the increased premium, payment of which occurred on 15 occasions between 4 September 2017 and 30 November 2018; and

60.7. failed to ensure properly or at all that ACBF 2, as trustee for Fund 2, took all necessary and reasonable steps to protect the Fund (contrary to cl 13.9 of the trust deed).

61. Based on the matters described in paragraph 60 above, between 4 September 2017 and 30 November 2018, Mr Law:[83]

61.1. failed to discharge his duties to ACBF 2 with the degree of care and diligence that a reasonable person would exercise, if they were a director or officer of a corporation in ACBF 2's circumstances, and occupied the offices held by Mr Law, and had the same responsibilities within the corporation; and

61.2. as a result, breached s 180(1) of the Corporations Act.

B3. SECTIONS 181(1) AND 182(1)

Principles – s 181

62. Section 181(1) of the Corporations Act provides as follows:

> A director or other officer of a corporation must exercise their powers and discharge their duties:
>
> (a) in good faith in the best interests of the corporation; and
>
> (b) for a proper purpose.

63. The requirements of a duty to act in good faith include that the officer must (a) exercise their powers in the interests of the company; (b) not misuse or abuse their power; (c) avoid conflict between their personal interests and those of the company; (d) not take advantage of their position to make secret profits; and (e) not misappropriate the company's assets for themselves.[84]

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83 SAFA at [73].

84 *ASIC v Bettles* (2023) 169 ACSR 244; [2023] FCA 975 at [441(1)].

64. The case law remains unsettled as to whether establishing a contravention of s 181(1)(a) requires establishing that a director engaged deliberately in conduct which he or she knew was not in the company's best interests or whether it is determined objectively, involving an assessment by the court of what is reasonable in the circumstances.[85]

65. It is nevertheless well established that an allegation of breach involves both subjective and objective elements: subjective in the enquiry as to the director's subjective purpose, and objective in the assessment of whether that purpose was improper.[86]

66. In respect of s 181(1)(b), directors must exercise their powers for the purpose for which they were conferred, and not for any collateral or improper purpose.[87] A director will act for an improper purpose if the substantial purpose for the director's conduct was improper.[88] A director can make improper use of his or her position even if the director has the purpose or intention or belief that the conduct is in the interests of the company.[89] Mere disclosure of a conflict between interest and duty and abstaining from voting may be insufficient as the director may also be under a positive duty to take steps to protect the company's interest such as by using such power and influence as he or she had to prevent the transaction going ahead.[90]

67. In considering whether s 181(1) has been breached, the court (as with s 180(1)) seeks to balance "the foreseeable risk of harm against the potential benefits that could reasonably have been expected to accrue to the company from the conduct in question".[91]

68. Where a director acts in relation to a transaction in which he or a party to whom the director owes a fiduciary duty stands to gain a benefit without making adequate disclosure of his interest, that director acts "improperly" within the meaning of s 182(1).[92] Where a director has sought to obtain the consent of other directors of the company in respect of a conflicted transaction in a manner that keeps other directors "in the dark" is strong evidence that the benefits derived from that transaction are unreasonable, as is the lack of any evidence as to what the director did for the company in return.[93]

Principles – s 182

69. Section 182(1) provides as follows:

> A director, secretary, other officer or employee of a corporation must not improperly use their position to:
>
> (a) gain an advantage for themselves or someone else; or

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85 *ASIC v Bettles* (2023) 169 ACSR 244; [2023] FCA 975 at [441(2)]; *Special Gold Pty Ltd (in liq) v Dyldam Developments Pty Ltd (subject to a Deed of Company Arrangement) (No 2)* [2025] FCA 825 at [76].

86 *ASIC v Bettles* (2023) 169 ACSR 244; [2023] FCA 975 at [441(3)].

87 *United Petroleum Australia Pty Ltd v Herbert Smith Freehills* (2018) 128 ACSR 324; [2018] VSC 347 at [640].

88 *ASIC v iSignthis Ltd* [2024] FCA 669 at [591].

89 *ASIC v iSignthis Ltd* [2024] FCA 669 at [591].

90 *ASIC v Adler* (2002) 168 FLR 253; [2002] NSWSC 171 at [735(4)].

91 *ASIC v Bettles* (2023) 169 ACSR 244; [2023] FCA 975 at [441(4)].

92 *ASIC v Adler* (2002) 168 FLR 253; [2002] NSWSC 171 at [458(5)].

93 *ASIC v Adler* (2002) 168 FLR 253; [2002] NSWSC 171 at [458(3)].

(b) cause detriment to the corporation.

70. In order to prove a contravention of s 182(1), the following must be established: (a) that the officer "used" the position he or she held as an officer; (b) such use was improper; and (c) such conduct was for the purpose of gaining an advantage or to cause a detriment to the company.[94] The prohibition against making improper use of a director's position is a reference to the purpose of the conduct, and not the effect.[95]

71. The test of whether conduct is improper is objective,[96] and looks at the character of the conduct of the director in question.[97] The relevant conduct would be improper if it amounted to a breach of the standards of conduct that would be expected of a person in the officer's position by reasonable persons with knowledge of the duties, powers and authority of his or her position as an officer and the circumstances of the case, including the commercial context.[98] In a practical sense, the inquiry is whether the defendant's behaviour breached the norms of conduct thought necessary for the proper conduct of commercial life.[99]

72. A contravention of s 182(1) will be established if the defendant made improper use of his position for the purpose of gaining an advantage for himself or for some other person.[100] It is not necessary to show that the conduct brought about that advantage.[101]

73. Further, a director may act improperly with no intention of acting dishonestly or otherwise than in the best interests of the company as a whole. Where a director does something by the use of his position that is for an impermissible purpose, it will amount to an improper use of that position, even if the director honestly believes it to be in the interests of the company and where there was no personal advantage for the director.[102] That is, a director cannot escape a finding of improper use of position merely because he or she believed what he or she was doing was in the interests of the corporation.[103]

74. A director can act with a personal interest where the director has not freed their mind of that personal interest, provided that the director's personal interest was not the "actuating motive" rather than some bona fide concern for the benefit of the company.[104] Where a director's conduct is attributable to a range of different purposes, the "but for" test is ordinarily used to determine what the relevant purpose was, consideration being given to whether the director would still have acted in that way if the collateral purpose had not existed.[105]

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94 *ASIC v Bettles* (2023) 169 ACSR 244; [2023] FCA 975 at [442(1)].

95 *ASIC v iSignthis Ltd* [2024] FCA 669 at [591].

96 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1516].

97 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1518].

98 *ASIC v Bettles* (2023) 169 ACSR 244; [2023] FCA 975 at [442(2)]; *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1517].

99 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1517].

100 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1525].

101 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1525]-[1526].

102 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1527].

103 *ASIC v Mitchell (No 2)* (2020) 382 ALR 425; [2020] FCA 1098 at [1535].

104 *ASIC v iSignthis Ltd* [2024] FCA 669 at [592].

105 *ASIC v iSignthis Ltd* [2024] FCA 669 at [598].

Contraventions – ACBF 2

75. By reason of the matters described in paragraph 58 above, and Mr Law's positions within the ACBF business as set out in paragraphs 23 to 27 above, Mr Law:[106]

75.1. caused or allowed ACBF 2 to maintain the arrangements with Crown from 4 September 2017 until 30 November 2018 without taking any or all necessary steps to consider and pursue the matters in paragraph 59.4 above;

75.2. caused or allowed ACBF 2 to pay an increase in premium of 100% without taking any or all necessary steps to consider and pursue the matters in paragraph 59.4 above; and

75.3. failed to take all necessary steps to manage the conflict of interest that arose between his and Mr Pattenden's duties to ACBF 2 and his and Mr Pattenden's interest in Crown;

75.4. used his position as a director or officer of ACBF 2 to:

(a) obtain an advantage for himself, Mr Pattenden and Crown; and

(b) cause a detriment to ACBF 2.

76. Mr Law's conduct referred to in paragraph 75 above:[107]

76.1. was not in good faith in the best interests of ACBF 2;

76.2. was done for the improper purpose of gaining an advantage for himself, Mr Pattenden and Crown; and

76.3. resulted in Mr Law:

(a) gaining an advantage for himself, Mr Pattenden and Crown; and

(b) causing detriment to ACBF 2.

77. For each of the acts or omissions described in paragraphs 75 and 76 above, between 4 September 2017 and 30 November 2018, Mr Law:[108]

77.1. failed to exercise his powers and discharge his duties in good faith in the best interests of any of ACBF 2 and for a proper purpose, and as a result contravened s 181(1) of the Corporations Act; and

77.2. used his position contrary to and in contravention of s 182(1) of the Corporations Act.

C DECLARATIONS

78. As the Corporations Act stood at the time of the Relevant Period, s 1317E(1) provided that if a Court is satisfied that a person has contravened a civil penalty provision, it must make a declaration of contravention. At all times during the Relevant Period, ss 180(1), 181(1) and 182(1) were civil penalty provisions.[109]

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106 SAFA at [74].

107 SAFA at [75].

108 SAFA at [76].

109 Item 1 in the table at s 1317E(1) of the Corporations Act.

79. The declarations sought in the Agreed Proposed Orders ought to be made because the facts and admissions contained in the SAFA establish that the contraventions set out in the Agreed Proposed Orders have occurred.

D DISQUALIFICATION ORDERS

80. For the following reasons, the parties jointly submit that it is appropriate for the Court to make an order under s 206C(1)(a)(i) and/or s 206E(1)(a)(ii) of the Corporations Act that Mr Law be disqualified from managing corporations for 6 years.

D1. RELEVANT PROVISIONS

81. Section 206C(1) is engaged where the Court declares that Mr Law contravened ss 180(1), 181(1) and/or 182(1) of the Corporations Act.[110] It provides that, on application by ASIC, the Court may disqualify a person from managing corporations for a period that the Court considers appropriate if (a) a declaration is made under, relevantly, s 1317E (para (a)(i)); and (b) the Court is satisfied that the disqualification is justified.

82. Section 206E(1)(a)(ii) is engaged where the Court has declared that Mr Law has contravened the Corporations Act more than once, such as by contravening ss 180(1), 181(1) and/or 182(1) in the ways admitted in the SAFA and outlined above.[111] It provides that, on application by ASIC, the Court may disqualify a person from managing corporations for the period that the Court considers appropriate if the person has, relevantly, at least twice contravened the Corporations Act (para (a)(ii)); and (b) the Court is satisfied that the disqualification is justified.

83. Sections 206C(2) and s 206E(2) provide that, in determining whether the disqualification is justified, the Court may have regard to (a) the person's conduct in relation to the management, business or property of any corporation; and (b) any other matters that the Court considers appropriate.

84. As the criteria relevant to the exercise of the Court's discretion under ss 206C and 206E is the same, nothing turns on whether disqualification is made under one or the other provision.[112]

D2. PRINCIPLES

85. The principles relevant to the Court's discretion to make orders as to pecuniary penalties and disqualification were recently restated by McEvoy J in *ASIC v iSignThis Ltd*.[113]

86. **First**, the court has an established practice of considering the period of disqualification before considering whether any pecuniary penalty should be awarded, or the amount of that penalty.[114] In an appropriate case, the court may make a pecuniary penalty order in addition to a disqualification order, having regard to the purposes for which such orders are made.[115]

87. **Second**, while the primary purpose of a pecuniary penalty order is to act as a specific and general deterrent against repetition of like conduct, the primary aim of

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110 *ASIC v iSignthis Ltd* [2025] FCA 917 at [12].

111 *ASIC v iSignthis Ltd* [2025] FCA 917 at [12].

112 *ASIC v iSignthis Ltd* [2025] FCA 917 at [13].

113 *ASIC v iSignthis Ltd* [2025] FCA 917 at [14]-[26].

114 *ASIC v iSignthis Ltd* [2025] FCA 917 at [15].

115 *ASIC v iSignthis Ltd* [2025] FCA 917 at [15]; *ASIC v GetSwift Ltd* (2023) 167 ACSR 178; [2023] FCA 100 at [64]-[65].

disqualification orders is the protection of the public from the harmful use of the corporate structure, or from use that is contrary to proper commercial standards.[116] Protection of the public also extends to protection of individuals who deal with companies, including consumers, creditors, shareholders and investors. However, disqualification must not be excessive and no one should be "sacrificed for the public interest".[117]

88. **Third**, it is the different purposes of disqualification orders and pecuniary penalty orders that justify the long-standing practice of considering the imposition of a pecuniary penalty only after a disqualification order is considered.[118]

89. **Fourth**, the length of the period of disqualification and the seriousness of the contraventions in question are correlative. In assessing the appropriate length of disqualification, consideration is to be given to the degree of seriousness of the contraventions, the propensity that the defendant may have to engage in similar conduct in the future, and the likely harm that may be caused to the public. Longer periods of disqualification are reserved where contraventions have been of a serious nature such as those involving dishonesty and large financial losses.[119] Whether a contravention is "serious" is ultimately a question of fact.[120]

90. **Fifth**, a number of factors have been identified in the authorities as relevant to an assessment of the length of a period of disqualification, including the following:[121]

    90.1. whether the conduct was inadvertent or deliberate or continued, knowing and wilful or whether the director had acted dishonestly;

    90.2. whether the director has expressed any contrition or remorse;

    90.3. the experience and age of the director;

    90.4. the relevance of the contraventions to the company's business;

    90.5. the consequences of the contraventions committed by the director.

91. **Sixth**, previous cases will only provide general guidance for determining a penalty or length of disqualification.[122]

92. **Seventh**, cooperation with ASIC may also be a mitigating factor (but likely to a lesser degree) where cooperation has spared the community the expense of a contested trial and enabled the resources of the regulator to be allocated to other investigations.[123] But this should only be where it can fairly be said that an admission of liability (a) has indicated an acceptance of wrongdoing and a suitable and credible expression of regret; and/or (b) has indicated a willingness to facilitate the course of justice.[124]

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116 *ASIC v iSignthis Ltd* [2025] FCA 917 at [16].

117 *ASIC v iSignthis Ltd* [2025] FCA 917 at [16].

118 *ASIC v iSignthis Ltd* [2025] FCA 917 at [17].

119 *ASIC v iSignthis Ltd* [2025] FCA 917 at [18].

120 *ASIC v GetSwift Ltd* (2023) 167 ACSR 178; [2023] FCA 100 at [54].

121 *ASIC v iSignthis Ltd* [2025] FCA 917 at [19].

122 *ASIC v iSignthis Ltd* [2025] FCA 917 at [20].

123 *ASIC v iSignthis Ltd* [2025] FCA 917 at [23].

124 *ASIC v iSignthis Ltd* [2025] FCA 917 at [24] citing *Mornington Inn Pty Ltd v Jordan* (2008) 168 FCR 383; [2008] FCAFC 70 at [76].

93. **Last**, the principles of totality, course of conduct and parity also inform the court's consideration of disqualification. When determining the disqualification period to be imposed for multiple contraventions, the court should impose a disqualification period for each individual contravention and then take into account the totality principle to adjust that period to arrive at a total effective disqualification.[125]

94. Further, the principles on agreed relief (set out below in section E2) are not confined to agreement on pecuniary penalty, but apply equally to agreement on other forms of relief such as disqualification.[126]

E PECUNIARY PENALTIES

95. If the declarations of contravention sought in the Agreed Proposed Orders are made, the Court may order Mr Law to pay a pecuniary penalty: s 1317G(1). The parties jointly submit that a penalty of **$50,000** is appropriate, for the reasons set out below.

E1. RELEVANT PROVISIONS

96. A Court may order a person to pay the Commonwealth a pecuniary penalty of up to $200,000 if a declaration of contravention has been made under s 1317E, the contravention is of a corporate/scheme civil penalty provision and the contravention materially prejudices the interests of the corporation, materially prejudices the ability of the corporation to pay its creditors or is serious: s 1317G(1).

97. Accordingly, during the Relevant Period, the maximum penalty for a contravention of ss 180(1), 181(1) and 182(1) was $200,000.

98. The parties submit that, if the Court makes the declarations sought, the Court's discretion is enlivened in this case given the admissions made by Mr Law.[127]

99. The Court may act upon the admission of fact that the conduct in this case is serious.[128] In any event, conduct will be considered "serious" for the purposes of s 1317G(1)(b) if the default or neglect is "grave", "not trifling", "weighty", "important" or "significant" by reference to the potential or actual consequences of the contravention.[129] The potential or actual risks that Mr Law's contravening conduct presented to ACBF 2 and its members were significant and should be considered serious by the Court.

E2. AGREED PENALTY

100. The proper approach to civil regulatory orders that are sought on an agreed basis has recently been restated by this Court in *Australian Securities and Investments Commission v FIIG Securities Limited*[130] (***ASIC v FIIG***) and *Clean Energy Regulator v E Connect Solar & Electrical Pty Ltd*[131] and the parties adopt those principles.

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125 *ASIC v iSignthis Ltd* [2025] FCA 917 at [26].

126 *ASIC v Hawkins* [2025] FCA 121, Annexure A at [140], adopted as the reasoning of the Court at [3].

127 SAFA at [93], [101], [109].

128 *ASIC v Hawkins* [2025] FCA 121, Annexure A at [163], adopted as the reasoning of the Court at [3]. *ASIC v Newcrest Mining Ltd* (2014) 101 ACSR 46; [2014] FCA 698 at [57]:

129 *ASIC v Hawkins* [2025] FCA 121, Annexure A at [164], adopted as the reasoning of the Court at [3]; *ASIC v Hochtief Aktiengesellschaft* (2016) 117 ACSR 589; [2016] FCA 1489 at [97].

130 [2026] FCA 92 at [55]-[58].

131 (2023) 171 ACSR 216; [2023] FCA 1082 at [33]-[40].

101. In summary:

101.1. the High Court in *Commonwealth v Director, Fair Work Building Industry Inspectorate*[132] reaffirmed the practice of acting upon agreed penalty submissions stating:[133]

> Subject to the court being sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is *an* appropriate remedy in the circumstances thus revealed, it is consistent with principle and … highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty.

101.2. Where the court is sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences and to the appropriateness of the penalty, it is highly desirable for the court to accept the parties' proposal and to impose the proposed penalty.[134] There is an important public policy interest in giving effect to agreements as to penalty, particularly where such agreements encourage corporations to acknowledge contraventions and thereby avoid lengthy and complex litigation and promote predictability of outcomes in civil penalty proceedings.[135]

101.3. Further, the Court may assume that ASIC, as a specialist regulatory body, will fashion penalty submissions with an overall view to achieving compliance and will be in a position to offer informed submissions as to the effect of contraventions on the industry and the level of penalty necessary to achieve compliance.[136] Accordingly, while submissions of a regulator will be considered on their merits in the ordinary way, ASIC's views as to the appropriate penalty to achieve the necessary deterrent effect should be highly persuasive in the Court's consideration of the appropriate penalty.[137]

101.4. Accordingly, where the penalty proposed by the parties is within the permissible range, the court will not depart from the submitted figure merely because it might otherwise have been disposed to select some other figure.[138]

102. These principles are not confined to agreed submissions on pecuniary penalties but apply equally to agreement on other forms of relief. The High Court's conclusions as to the desirability of acting upon agreed penalty submissions were made in the context of its broader recognition that civil penalties are but one of numerous forms of relief which regulators could choose and pursue as a civil litigant in civil proceedings, including by

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132 *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482; [2015] HCA 46 (***FWBII***).

133 *FWBII* (2015) 258 CLR 482; [2015] HCA 46 at [58].

134 *FWBII* (2015) 258 CLR 482; [2015] HCA 46 at [58]; *ASIC v ANZ (No 3)* [2020] FCA 1421 at [78]; *ASIC v MLC Nominees* (2020) 147 ACSR 266; [2020] FCA 1306 at [114]; *ACCC v Coles* [2014] FCA 1405 at [72]; *ASIC v MobiSuper* [2021] FCA 855 at [28].

135 *ASIC v Allianz Australia Insurance Ltd* (2021) 156 ACSR 638; [2021] FCA 1062 at [128] (***ASIC v Allianz***); *FWBII* (2015) 258 CLR 482; [2015] HCA 46 at [28], [46]; *NW Frozen Foods Pty Ltd v Australian Competition and Consumer Commission* (1996) 71 FCR 285 at 290 (***NW Frozen Foods v ACCC***); *Volkswagen v ACCC* (2021) 284 FCR 24; [2021] FCAFC 49 at [126]; *ASIC v ANZ (No 3*) [2020] FCA 1421 at [78]; *ASIC v MLC Nominees* (2020) 147 ACSR 266; [2020] FCA 1306 at [114].

136 *FWBII* (2015) 258 CLR 482; [2015] HCA 46 at [60].

137 See *ASIC v Allianz* (2021) 156 ACSR 638; [2021] FCA 1062 at [127]; *FWBII* (2015) 258 CLR 482; [2015] HCA 46 at [61].

138 *ASIC v Hawkins* [2025] FCA 121, Annexure A at [142] citing *FWBII* (2015) 258 CLR 482; [2015] HCA 46 at [47], adopted as the reasoning of the Court at [3].

making submissions as to that relief.[139] This is consistent with the long-standing judicial support for agreed positions on declarations, injunctions and the like in civil regulatory proceedings, having regard to the public interest. [140]

E3. PRINCIPLES ON PENALTY ASSESSMENT

103. Under s 1317G, the Parliament has left it to the Court to decide what penalty is appropriate in all the circumstances having regard to the Court's own independent opinion.[141]

104. The fundamental principles may be summarised as follows.

105. **First**, the Court's discretion to impose a penalty must be exercised judicially; that is, fairly and reasonably.[142]

106. **Second**, the primary or sole purpose of civil penalties is to achieve deterrence.[143]

107. **Third**, the penalty must be "proportionate" and "appropriate" in the sense that it strikes a reasonable balance between oppressive severity and deterrence in the circumstances of the case.[144] The Court's task is to identify and balance all of the relevant factors and make a value judgment as to the appropriate penalty, a process described as "instinctive synthesis".[145] Having taken into account all relevant circumstances and discussed their significance, the court makes a value judgment as to what is the appropriate amount of penalty.[146]

108. **Fourth**, the Court should have regard to the prescribed maximum penalty and there should be some reasonable relationship between the maximum penalty and that imposed. The maximum provides a "yardstick" to be balanced with all other relevant factors, and the Court should not simply start with the maximum penalty and proceed by making proportional deductions to that amount.[147]

109. **Fifth**, in determining the pecuniary penalty, the Court must take into account all relevant matters.[148] Facts prior to the period being penalised may be taken into account in determining the penalty in the instinctive synthesis performed by the Court.

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139 See *FWBII* (2015) 258 CLR 482; [2015] HCA 46 at [24], [57]-[59], [63], [103], [107].

140 See *NW Frozen Foods v ACCC* (1996) 71 FCR 285 at 290; *ACCC v Coles* [2014] FCA 1405 at [74]-[76]; *ASIC v MobiSuper* [2021] FCA 855 at [37].

141 *ASIC v MLC Nominees* (2020) 147 ACSR 266; [2020] FCA 1306 at [117].

142 *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 at [40]; *ASIC v iSignthis Ltd* [2025] FCA 917 at [30].

143 *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 at [9]-[10], [15]; *ASIC v iSignthis Ltd* [2025] FCA 917 at [31]; *ASIC v Commonwealth Bank of Australia* [2021] FCA 423 at [4]; *ASIC v Westpac* [2019] FCA 2147 at [255].

144 *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 at [40]-[41], [46]; *ASIC v iSignthis Ltd* [2025] FCA 917 at [32].

145 *ACCC v Reckitt Benckiser (Australia) Pty Ltd* (2016) 340 ALR 25; [2016] FCAFC 181 at [44].

146 *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 at [46]-[48]; *ASIC v Mercer Financial Advice (Australia) Pty Ltd* [2023] FCA 1453 at [69]-[72]; *ASIC v GetSwift Ltd* (2023) 167 ACSR 178; [2023] FCA 100 at [64]-[65].; *ASIC v MLC Nominees* (2020) 147 ACSR 266; [2020] FCA 1306 at [117]; *ASIC v iSignthis Ltd* [2025] FCA 917 at [35]-[36].

147 *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 at [10], [52]-[55]; *ASIC v Mercer Financial Advice (Australia) Pty Ltd* [2023] FCA 1453 at [68]; *ASIC v iSignthis Ltd* [2025] FCA 917 at [33].

148 *ASIC v Westpac Banking Corporation (No 3)* (2018) 131 ACSR 585; [2018] FCA 1701 at [49].

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110. **Sixth**, additional factors may be taken into account as relevant considerations, insofar as they inform the penalty necessary to secure the objects of deterrence. However, not all factors that have been identified in previous cases will necessarily be relevant or important in every case, and they are not to be applied as a "rigid catalogue".[150]

111. **Last**, criminal law principles of totality, course of conduct and parity also inform the court's determination of penalty.[151] The course of conduct principle will apply where there is a sufficient interrelationship in the legal and factual elements of the acts or omissions constituting the contravening conduct.[152] In these circumstances, the court may, in its discretion, penalise the acts or omissions as a single course of conduct.[153] The court may also apply the totality principle to consider the entirety of the underlying contravening conduct to determine whether the "total" or aggregate penalty is just and appropriate.[154] Parity of penalty will be an important consideration where there are several defendants involved in the same events,[155] such as in this case. In this respect, where other things are equal, persons concerned in the same contravention should receive the same punishment; and where other things are not equal, a due discrimination should be made.[156] Where there is a difference in the disqualification period or penalty between different defendants, there must be a persuasive rationale, such as the part in which the defendant played in the contravention.[157]

F APPLICATION

112. For the following reasons, the proposed disqualification period and pecuniary penalty are appropriate having regard to the circumstances of the conduct and the relevant principles in relation to disqualification and pecuniary penalties set out above. Given the overlap, below we consider together the factors relevant to assessing pecuniary penalties and disqualification.

113. **Circumstances of the contravention**: Mr Law had an indirect financial interest in the payments to Crown[158] and preferred his, Mr Pattenden's and Crown's financial interests in causing ACBF 2 to maintain its Crown arrangements and pay the increased premium.[159]

114. Mr Law admits that, during the Relevant Period, he did not consider properly or at all the effect of the Crown arrangements on the financial position of ACBF 2 and whether

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150 *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 at [19]; *Australian Building and Construction Commissioner v CFMEU* (2017) 254 FCR 68; [2017] FCAFC 113 at [101]; *ASIC v Hawkins* [2025] FCA 121, Annexure A at [176], adopted as the reasoning of the Court at [3].

151 *ASIC v iSignthis Ltd* [2025] FCA 917 at [39]; *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 at [45]; *ASIC v Mercer Financial Advice (Australia) Pty Ltd* [2023] FCA 1453 at [69]-[70], [80].

152 *ASIC v MLC Nominees* (2020) 147 ACSR 266; [2020] FCA 1306 at [128].

153 *ASIC v MLC Nominees* (2020) 147 ACSR 266; [2020] FCA 1306 at [128].

154 *ASIC v MLC Nominees* (2020) 147 ACSR 266; [2020] FCA 1306 at [131]; *Mornington Inn Pty Ltd v Jordan* (2008) 168 FCR 383; [2008] FCAFC 70 at [5]-[7]; *Mill v The Queen* (1988) 166 CLR 59 at 62-63.

155 *ASIC v Australian Property Custodian Holdings Ltd* (2014) 322 ALR 45; [2014] FCA 1308 at [107]-[109]; *ASIC v Commonwealth Bank of Australia* [2020] FCA 790 at [77].

156 *ASIC v Australian Property Custodian Holdings Ltd* (2014) 322 ALR 45; [2014] FCA 1308 at [109];

157 *ASIC v MacDonald (No 12)* (2009) 259 ALR 116; [2009] NSWSC 714 at [320], [322]; *Gillfillan v ASIC* [2012] NSWCA 370 at [206].

158 SAFA at [44].

159 SAFA at [72.5], [72.6].

continuing the policy with Crown was in the best interests of ACBF 2 and its fund members.[160]

115. While the contraventions occurred during the Relevant Period, which extended over around 14 months, the facts relevant to the whole of the circumstances began in 2008, when Mr Law became a director of Crown and held a financial interest in Crown.[161] These facts may be taken into account in determining the penalty in the intuitive instinctive syntheses performed by the Court.[162]

116. The insurance arrangements with Crown had been ongoing for at least 15 years before the decision was made to double the premiums for ACBF 2. That arrangement had led ACBF 2 to the position that it found itself in on 4 September 2017, whereby ACBF 2 was not accumulating or attempting to accumulate amounts to pay members' claims and it was instead relying on Crown for this purpose and had no alternative source of funds to pay member claims.[163] This left it vulnerable to price increases by Crown. Mr Law had the options set out in paragraphs 59.4 above available to him to consider, but did not do so.[164]

117. **Age and experience of director**: At the time of the contraventions, while Mr Law had only been a director of the ACBF Entities since 18 May 2017, he had been a director of Crown since 2008 and was responsible for ensuring that Crown was complying with its regulatory reports to the Reserve Bank of Vanuatu and the annual auditing of Crown's reports.[165] In this sense, he had some experience with what was required of a director, albeit in an overseas context. This should be taken into account when considering the seriousness of the contraventions.

118. **Deliberateness**: Mr Law's conduct was deliberate in the sense that he was responsible for causing or allowing the conflict between his duties to ACBF 2 and his interest in Crown.[166] Mr Law knew or ought to have known by 4 September 2017 that if the premiums paid by ACBF 2 to Crown were to double from the amount paid by ACBF 2 before the Relevant Period, then there was a risk for ACBF 2 that it would become insolvent,[167] but caused or allowed the arrangements with Crown to continue until he ceased as a director of the ACBF Entities on 30 November 2018, and took no steps to consider any alternatives.

119. **Nature and extent of any loss or damage suffered**: the premium increase had a significant negative effect on the financial position of ACBF 2.[168] The impact of the premium increase, and Mr Law's conduct in causing it or allowing it to occur in the circumstances where the conflict existed and ACBF 2[169] had no other source of funds to pay member claims without insurance from Crown,[170] was that it created a substantial

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160 SAFA at [72].

161 SAFA at [42].

162 *ASIC v MLC Ltd* (2023) 168 ACSR 122; [2023] FCA 539 at [96] citing *ASIC v Commonwealth Bank of Australia* [2020] FCA 790 at [9].

163 SAFA at [62.3] - [62.4].

164 SAFA at [72.3], [72.4], [80].

165 SAFA at [42.2]-[42.3].

166 SAFA at [33], [35], [42], [74.3].

167 SAFA at [70.2].

168 SAFA at [62.6], [63], [78].

169 SAFA at [72.6].

170 SAFA at [62.3] - [62.4].

risk that ACBF 2 would become insolvent within approximately four or less years and would need to be wound up.[171]

120. If ACBF 2 had been wound up in insolvency in the future, ACBF 2's policy with Crown would be terminated and eligible members of Fund 2 would not be able to recover all or part of any cancellation benefit they were owed.[172] In those circumstances, if fund members' cover was cancelled, they would be without funeral cover.[173] The members of Fund 2 were not told information concerning this, see paragraph 40.4 above, and had no way of knowing this information unless it was explained to them by ACBF 2.[174]

121. **Extent of profit from the contraventions**: Mr Law benefited from the contraventions in the following respects:

121.1. The ACBF Entities were the only entities insured with Crown,[175] and so profit made and distributed by Crown was as a direct result of that arrangement.

121.2. The table set out at paragraph 41 of the SAFA show the amounts that were paid to Crown by way of premiums by ACBF 2 from the inception of the insurance policy to November 2018. Based on that table, during the Relevant Period (being FY2018 and FY2019 to November 2019) Crown's net premiums received less claims and profit share for Fund 2 was $411,319.[176]

121.3. While Mr Law did not receive any direct benefit or detriment as a result of any increased profits received or losses sustained by Crown (despite his shareholding in Crown), when considering the wider circumstances that (over the period FY2009 to November 2018) Crown made a benefit by way of Crown's net premiums received less claims and profit share of $2,347,715 for Fund 2 (according to paragraph 41 of the SAFA), from around 2014, Mr Law's benefit was derived from his indirect financial interest in Crown by way of a fixed return to his company Asian Markets Limited.[177] This fixed return, and the value of the investment in Crown, depended on Crown remaining solvent and therefore Mr Law had an indirect interest in payments to Crown.[178]

121.4. During the Relevant Period, in addition to the fixed return, Mr Law was paid $12,500 per quarter for roles relating to Crown. Mr Law did not receive any remuneration for his role as director of the ACBF Entities.[179]

122. **General deterrence**: a period of disqualification is necessary in this case not only for specific deterrence but also as a general deterrent.[180] By ordering a period of disqualification, the public will be protected from (and send a signal to others about)

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171 SAFA at [64.1].

172 SAFA at [64.2].

173 SAFA at [64.3].

174 SAFA at [64.4].

175 SAFA at [35].

176 SAFA at [41] contains a table of payments made to Crown during the Relevant Period. The tables at [41] and [60] of the SAFA result in different amounts because the figures drawing on the table at SAFA [41] in paragraph 121 do not include the whole Relevant Period. The table at SAFA [60] relies on the monthly reports provided to Crown, whereas the table SAFA [41] relies on financial reports for FY2018 and monthly reports for FY2019 (until November 2018).

177 SAFA at [44].

178 SAFA at [44].

179 SAFA at [45].

180 *ASIC v Citrofresh International Ltd (No 3)* (2010) 268 ALR 303; [2010] FCA 292 at [41].

Mr Law's conduct in using the corporate structure in a way that is harmful or contrary to proper commercial standards.[181] Notwithstanding that Mr Law is no longer a director of ACBF 2 and ACBF 2 is in liquidation, there is still a need for specific deterrence and protection of the public to ensure that he does not act in a similar way.[182] Further, the disqualification period is appropriate to further the requirements of general deterrence.[183]

123. **Seriousness of the conduct**: a disqualification period of 6 years correlates to the seriousness of the conduct. The parties agree that the conduct was serious in that it was deliberate and continued throughout the Relevant Period until he ceased as a director of ACBF 2 (see further the discussion on deliberateness in the penalty section above), where Mr Law took advantage of his position to his own personal benefit.[184]

124. **Relevance of contraventions to the entity's business**: The contraventions were central to the business of ACBF 2 as ACBF 2 could not pay members' claims without insurance from Crown.[185]

125. **Cooperation**: despite being a resident of Vanuatu and not being a resident of Australia, Mr Law agreed to participate in two s 19 examinations, responded to a s 33 notice and accepted service of this proceeding.[186] Mr Law has engaged constructively with ASIC to agree a detailed SAFA setting out the underlying facts and admissions going to his liability and penalty.[187] Through the SAFA, Mr Law has acknowledged and accepts responsibility for his conduct. The result is that some of the cost to the public of a fully contested hearing has been avoided, even if the admissions were made after the commencement of the hearing of this proceeding.[188] Mr Law's admissions and co-operation also demonstrate contrition, and insight into his conduct.

126. **Parity**: Mr Law's involvement as a director and indirect minority shareholder of Crown justifies imposing a higher penalty and period of disqualification on him than some of the other defendants in this proceeding.

127. **Course of conduct**: there should be one course of conduct, as the factual substratum is "unitary" for ACBF 2 and can be traced back to a single homogenous cause.[189] The parties agree that there was one contravention of each of ss 180(1), 181(1) and 182(1), with 3 contraventions in total.[190]

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181 *ASIC v Adler* (2002) 42 ACSR 80; [2002] NSWSC 483 at [56(i)]; *Australian Competition and Consumer Commission v Colgate-Palmolive Pty Ltd (No 2)* [2016] FCA 528 at [26(a)]; *Australian Competition and Consumer Commission v Excite Mobile Pty Ltd (No 2)* [2013] FCA 1267 at [170].

182 *ASIC v GetSwift Ltd* (2023) 167 ACSR 178; [2023] FCA 100 at [93], [103].

183 *ASIC v GetSwift Ltd* (2023) 167 ACSR 178; [2023] FCA 100 at [102].

184 SAFA at [70.1], [70.11].

185 SAFA at [62.2] - [62.4].

186 SAFA at [83.1]. These examinations and notice were respectively conducted and issued under the *Australian Securities and Investments Commission Act 2001* (Cth).

187 SAFA at [83.3].

188 SAFA at [84].

189 *Australian Competition and Consumer Commission v Murray Goulburn Co-Operative Co Ltd* [2018] FCA 1964 at [29]; *ASIC v MLC Nominees* (2020) 147 ACSR 266; [2020] FCA 1306 at [176]; *ASIC v iSignthis Ltd* [2025] FCA 917 at [241];

190 See, eg, *ASIC v Sino Australia Oil and Gas Ltd (in liq)* (2016) 118 ACSR 43; [2016] FCA 1488 at [21].

128. **Totality**: the principle of totality should be applied, which requires the Court to look at the entirety of the offending and determine the most appropriate sentence for all the contraventions taken together.[191]

G COSTS AND OTHER ORDERS

129. The Court's powers to award costs are found in:

129.1. s 43 of the *Federal Court Act* 1976 (Cth), which provides that the award of costs is in the discretion of the Court (s 43(2)); and

129.2. r 40.02 of the *Federal Court Rules 2011* (Cth), which allows costs to be awarded in a lump sum instead of, or in addition to, any taxed costs.

130. Mr Law consents to an order that he pay $10,000 towards ASIC's costs of and incidental to the proceedings.

Date: 16 April 2026

David McLure SC	Chris George
Caspar Conde	
Jacqueline Fumberger	
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[191] *ASIC v GetSwift Ltd* (2023) 167 ACSR 178; [2023] FCA 100 at [46].