FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Pattenden (Liability and Penalty – Wilson) [2026] FCA 1691

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 third defendant – where the third defendant was the secretary, company accountant, financial controller and a director of the relevant entities (**the ACBF Entities**) that operated funeral funds marketed predominantly to Indigenous communities – where the third defendant agreed to an increase in the insurance premiums payable by one of the ACBF Entities to Crown – whether the third 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 third defendant failed to manage a conflict of interest and preferred the Crown's and first and second 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 Third Defendant:	S Powell of Robbins Watson

ORDERS

NSD 935 of 2023

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**MICHAEL WILSON** 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 third defendant pay to the Commonwealth a pecuniary penalty of $20,000 for contraventions by the third 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**), ACBF Funeral Plans Pty Ltd (**ACBF Plans**) and Community Funeral Plans Pty Ltd (**ACBF Community**).
2. Pursuant to s 206C(1)(a)(i) and/or s 206E(1)(a)(ii) of the Corporations Act the third defendant is disqualified from managing corporations for a period of 10 years from the date of this order.
3. The third defendant pay a contribution of $5,000 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 19 December 2017, the third 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 the first defendant's, second defendant's and Crown's financial interests in causing ACBF 2 to maintain its Crown arrangements;

(f) preferred the first defendant's, second 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 4 occasions between 4 September 2017 and 19 December 2017; 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 Fund 2's 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 offices held by the third 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 19 December 2017:

(a) the third defendant:

(i) caused 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;

(ii) caused 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; and

(iii) failed to take all necessary steps to manage the conflict of interest that arose between the first defendant's and second defendant's duties to

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

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

A. obtain an advantage for the first defendant, the second defendant and Crown; with the result that he

B. caused a detriment to ACBF 2,

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

(i) was not in the interests of ABCF 2;

(ii) was done for the purpose of the third defendant gaining an advantage for the first defendant, the second defendant and Crown, which was not a proper purpose; and

(iii) resulted in the third defendant:

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

B. causing detriment to ACBF 2,

(c) by reason of the circumstances in 5(a) and (b) above, the third defendant:

(i) failed to exercise his powers and discharge his duties 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

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

6. Under s 1317E(1) of the Corporations Act that, in his capacity as a director of ACBF Plans, between 4 September 2017 and 19 December 2017, the third defendant:

(a) failed to consider properly or at all the effect of the Crown arrangements on the financial position of ACBF Plans;

(b) failed to consider properly or at all whether continuing the policy with Crown was in the best interests of ACBF Plans and its fund members;

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

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

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

and by reason of the above:

(f) failed to discharge his duties to ACBF Plans 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 Plans' circumstances, and occupied the offices held by the third Defendant and had the same responsibilities within the corporation; and

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

7. Under s 1317E(1) of the Corporations Act that, in his capacity as a director of ACBF Plans between 4 September 2017 and 19 December 2017:

(a) the third defendant:

(i) caused ACBF Plans to maintain the arrangements with Crown without taking any or all of the necessary steps to consider and pursue the alternative options available to ACBF Plans;

(ii) failed to take all necessary steps to manage the conflict of interest that arose between the first defendant's and the second defendant's duties to ACBF Plans and the first defendant's and the second defendant's interest in Crown; and

(iii) used his position as a director or officer of ACBF Plans to:

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

B. with the result that he caused a detriment to ACBF plans,

(b) the third defendant's conduct referred to in 7(a) above:

(i) was not in the best interests of ACBF Plans;

(ii) was done for the purpose of the third defendant gaining an advantage for the first defendant, the second defendant and Crown, which was not a proper purpose; and

(iii) resulted in the third defendant:

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

B. causing detriment to ACBF Plans,

(c) by reason of the circumstances in 7(a) and (b) above, the third defendant:

(i) failed to exercise his powers and discharge his duties in the best interests of ACBF Plans 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.

8. Under s 1317E(1) of the Corporations Act, in his capacity as a director of ACBF Community between 4 September 2017 and 23 October 2017, the third defendant:

(a) failed to consider properly or at all the effect of the Crown arrangements on the financial position of ACBF Community;

(b) failed to consider properly or at all whether continuing the policy with Crown was in the best interests of ACBF Community and its fund members;

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

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

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

and by reason of the above:

(f) failed to discharge his duties to ACBF Community 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 Community's circumstances, and occupied the offices held by the third defendant and had the same responsibilities within the corporation; and

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

9. Under s 1317E(1) of the Corporations Act, in his capacity as a director of ACBF Community between 4 September 2017 and 23 October 2017:

(a) the third defendant:

(i) caused ACBF Community to maintain the arrangements with Crown without taking any or all of the necessary steps to consider and pursue the alternative options available to ACBF Community;

(ii) failed to take all necessary steps to manage the conflict of interest that arose between the first defendant's and the second defendant's duties to ACBF Community and the first defendant's and the second defendant's interest in Crown;

(iii) used his position as a director or officer of ACBF Community to:

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

B. with the result that he caused a detriment to ACBF Community,

(b) the third defendant's conduct referred to in 9(a) above:

(i) was not in the best interests of ACBF Community;

(ii) was done for the purpose of third defendant gaining an advantage for the first defendant, the second defendant and Crown, which was not a proper purpose; and

(iii) resulted in the third defendant:

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

B. causing detriment to ACBF Community,

(c) by reason of the circumstances in 9(a) and (b) above, the third defendant:

(i) failed to exercise his powers and discharge his duties in the best interests of ACBF Community 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 Wilson, 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**) concerning Mr Pattenden's liability and penalty, the submissions proceeded from a statement of agreed facts and admissions (**SAFA**) dated 17 April 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 and I am content to adopt that summary rather than repeat the exercise.

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

(a) six declarations under s 1317E(1) recording, in respect of the companies referred to as **ACBF 2**, **ACBF Plans** and **ACBF Community** (together **the ACBF Entities**), contraventions by Mr Wilson of:

(i) s 180(1);

(ii) s 181(1) and

(iii) s 182(1) of the Corporations Act;

(b) an order under s 1317G(1) requiring payment of a pecuniary penalty of $20,000;

(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 $5 ,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 19 December 2017 (**the relevant period**). During the relevant period, Mr Wilson was a director or officer of 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 Wilson became a director of each of the ACBF Entities on 18 November 2014 and a secretary on 18 May 2017. Since March 2014 and November 2015 he had been the company accountant and financial controller (respectively) for the ACBF business, which included the ACBF Entities.

9 Mr Wilson ceased performing the duties of his role as company accountant and financial controller around October or November 2017 and also ceased to be a director and secretary of the ACBF Entities during the relevant period: on 23 October 2017 (ACBF Community) and on 19 December 2017 (ACBF 2 and ACBF Plans). He formally ceased employment in the ACBF business on 8 February 2018.

10 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.

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 and formally communicated to ACBF 2

by a letter from Mr Law to Mr Wilson. Mr Law had previously canvassed the wording of that letter with Mr Wilson.

12 The premium increase had a significant negative impact on ACBF 2 and highlighted the fact that ACBF Community and ACBF Plans were exposed to the potential for similar increases. There were various steps that the directors of the ACBF Entities could have considered taking in order to protect the funds that they operated and their members against increases in the insurance premiums payable to Crown. No such steps were considered within the relevant period.

13 Mr Wilson 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 the ACBF Entities, to consider whether the Crown policies were in the best interests of members of the funds that those entities operated 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 funds); and

(b) he preferred Crown's, Mr Pattenden's and Mr Law's interests in causing the ACBF Entities to maintain the Crown policies 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 Wilson 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 Mr Pattenden and Mr Law's duties to the ACBF Entities and their interest in Crown, used his position as an officer of ACBF 2 to obtain an advantage for Crown (and ultimately Mr Pattenden 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 Wilson 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 Wilson from managing corporations for a period of ten years. For the reasons set out in the joint submissions at [146] to [161], I am satisfied that such an order is appropriate. In particular:

(a) Mr Wilson was aware of ACBF 2's financial position and admits that he did not consider properly or at all the effect of the Crown arrangements on ACBF 2 or the other ACBF Entities.

(b) Mr Wilson had been a director of the ACBF Entities for nearly three years at the beginning of the relevant period.

(c) The premium increase had a significant negative effect on ACBF 2, creating a substantial risk that ACBF 2 would become insolvent within about four years, leaving fund members without cover and unable to recover cancellation benefits.

(d) The premium increase also highlighted the vulnerability of ACBF Plans and ACBF 2 to similar premium increases. Such increases would have threatened the viability of those entities. Had they been wound up, their clients would have been left without funeral cover.

(e) Mr Wilson did not intend to breach his duties. However, he proceeded in the way that he did with knowledge that Mr Pattenden and Mr Law had a conflict of interest and without considering whether maintaining the Crown arrangements was in the interests of the ACBF Entities or their fund members,

(f) Mr Wilson did not personally profit from the contraventions.

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

(h) Mr Wilson cooperated with ASIC at the earliest opportunity. 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) Mr Wilson was not the primary decision-maker and is therefore less culpable than Mr Pattenden. His contraventions also occurred during a relatively short segment of the relevant period. However, the fact that he was also in a senior management role, with responsibility for aspects of the ACBF Entities' finances and insight into their financial positions supports a longer disqualification than those to be imposed on Mr Law or Mr Clayton.

(j) Contraventions of three civil penalty provisions for each of the three ACBF Entities are admitted. However, the parties submit, and I agree, that the contraventions in relation to each entity should be treated as a single course of conduct. Further, they can be traced back to a single cause.

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 [146] to [161], to which I have already referred above, are also directed to the appropriateness of the proposed pecuniary penalty of $20,000. 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 the three ACBF Entities, Mr Wilson (like Mr Pattenden) is liable to a maximum penalty of $1.8 million. The contraventions were serious. Mr Wilson was an experienced accountant and financial controller and had nearly three years of experience as a company director. However, it is also significant that:

(a) Mr Wilson had a role that was subordinate to Mr Pattenden and during the relevant period was also subject to direction from Mr Jones and Mr Clayton;

(b) Mr Wilson's contraventions persisted over a relatively short segment of the relevant period;

(c) Mr Wilson did not benefit financially from those contraventions (in contrast to Mr Pattenden and Mr Law); and

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

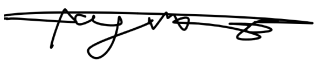
22 Taking these matters into account, I am satisfied that the proposed pecuniary penalty is proportionate to the penalties proposed in relation to Messrs Pattenden, Law and Clayton and is within the "permissible range" referred to in *Volkswagen Aktiengesellschaft v Australian Competition and Consumer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

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 THIRD 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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PART I INTRODUCTION

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

2. ASIC commenced these proceedings against Mr Wilson, the first defendant (**Mr Pattenden**), the second defendant (**Mr Law**), 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 Wilson admits that, between 4 September 2017 and 19 December 2017 (the **Relevant Period**), he contravened ss 180(1), 181(1) and 182(1) of the Corporations Act in relation to each of the ACBF Entities (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. On or around 6 March 2014, Mr Wilson joined the ACBF business as the accountant. In or around November 2015, Mr Wilson became financial controller of the ACBF business. As part of his role in the ACBF business, Mr Wilson was the accountant and financial controller of the ACBF Entities.

10. In the period from at least 6 March 2014 to at least 19 December 2017, 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 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.

2.3.1 ACBF 2 and Fund 2

16. Between at least 2002 and at least 19 December 2017, 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 26^{th} 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. ACBF 2 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 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 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 approximately $1.81 million;

    22.2. paid administration fees to ACBF Administration of approximately $1.18 million;

    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 approximately $952,622, including
$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 members.

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

24.1. received member contributions of approximately $1.72 million;

24.2. paid administration fees to ACBF Administration of approximately $1.12 million;

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 approximately $753,843, including approximately $1.21 million 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 Plans and Fund 3, and ACBF Community and Fund 4

28. Between at least 2005 and at least 19 December 2017, Funds 3 and 4 operated as follows:

28.1. for Fund 3, membership was marketed to Indigenous Australians;

28.2. for Fund 4, membership was marketed to non-Indigenous Australians;

28.3. a person became a member by submitting a membership application form and their application being accepted;

28.4. fund members were required to make regular (usually fortnightly) payments as contribution amounts;

28.5. the contribution amounts to be paid by fund members were calculated in accordance with the application form signed by the member or otherwise agreed with ACBF Plans or ACBF Community and were determined by:

28.5.1. the fund member's age and chosen benefit amount; and

28.5.2. a corresponding health classification based on information provided as part of the application process;

28.6. on the death of a nominated person (including a fund member) and following the making of a claim to ACBF Plans or ACBF Community, ACBF Plans or ACBF Community would pay an amount comprising reimbursement for incurred funeral- related expenses (up to the nominated benefit amount) to or as directed by the nominated payee, calculated in accordance with the application form; and

28.7. the rules and application form did not provide members with a cancellation payment on cancellation of their membership.

29. The plan rules for Funds 3 and 4 stated that they could not be amended except in accordance with the provisions of the plan rules.

30. From 2005 to at least 19 December 2017, other than the requirements of the constituent documents of the ACBF Entities, neither the ACBF Entities nor the ACBF business had any system in place for notifying or managing conflicts of interest.

31. For the financial year 1 July 2016 to 30 June 2017, ACBF Plans:

31.1. received member contributions of approximately $3.82 million;

31.2. paid administration fees to ACBF Administration of approximately $2.6 million;

31.3. paid underwriting premiums to Crown of $1.18 million;

31.4. received payments from Crown of:

31.4.1. $787,000 by way of claim payments; and

31.4.2. $14,599 by way of profit share payments; and

31.5. had a loss of $76,173.

32. As at 30 June 2017, ACBF Plans had net assets of $15,294.

33. For the financial year 1 July 2017 to 30 June 2018, ACBF Plans:

33.1. received member contributions of approximately $3.63 million;

33.2. paid administration fees to ACBF Administration of approximately $2.6 million;

33.3. paid underwriting premiums to Crown of $1,508,945;

33.4. received payments from Crown of:

33.4.1. $792,000 by way of claim payments; and

33.4.2. $135,666 by way of profit share payments; and

33.5. had a profit of $95,166.

34. As at 30 June 2018, ACBF Plans had net assets of $110,460.

35. For the financial year 1 July 2016 to 30 June 2017, ACBF Community:

35.1. received member contributions of $97,286;

35.2. paid administration fees to ACBF Administration of $31,791;

35.3. paid underwriting premiums to Crown of $41,677;

35.4. received payments from Crown of:

35.4.1. $32,000 by way of claim payments; and

35.4.2. $nil by way of profit share payments; and

35.5. had a loss of $38,121.

36. As at 30 June 2017, ACBF Community had net assets of $8,957.

37. For the financial year 1 July 2017 to 30 June 2018, ACBF Community:

37.1. received member contributions of $91,252;

37.2. paid administration fees to ACBF Administration of $15,901;

37.3. paid underwriting premiums to Crown of $37,705;

37.4. received payments from Crown of:

37.4.1. $28,000 by way of claim payments; and

37.4.2. $4,465 by way of profit share payments; and

37.5. had a loss of $176.

38. As at 30 June 2018, ACBF Community had net assets of $8,781.

39. As at 30 June 2017:

39.1. Fund 3 had 13,487 members; and

39.2. Fund 4 had 308 members.

40. On 11 March 2022, ACBF Plans and ACBF Community entered liquidation.

2.3.3 ACBF Administration

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

42. 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.

43. For Fund 2, the fees payable to ACBF Administration was calculated as follows:

43.1. An annual fee, totalling $300,000 (excluding GST);

43.2. A weekly member fee of $2.80 per member (excluding GST).

44. For financial years 2015 to 2018, the administration fees paid by ACBF 2 to ACBF Administration were as follows:

44.1. For financial year 2015: $1,219,615

44.2. For financial year 2016: $1,223,500

44.3. For financial year 2017: $1,184,765

44.4. For financial year 2018: $1,118,603

45. For Fund 3, the fees payable to ACBF Administration was calculated as follows:

45.1. an annual fee, totalling $100,000 (excluding GST);

45.2. during the Relevant Period, a weekly member fee of $ 2.80 per member (excluding GST). Each year, the actuary for Fund 3 provided an actuarial report including assumptions about the maximum weekly member fee payable by Fund 3 to ACBF Administration (which the actuary noted would be 'negotiated' between the Fund 3 and ACBF Administration).

46. For financial years 2015 to 2018, the administration fees paid by ACBF Plans to ACBF Administration were as follows:

46.1. For financial year 2015: $2,663,870

46.2. For financial year 2016: $2,825,929

46.3. For financial year 2017: $2,609,746

46.4. For financial year 2018: $2,037,899

47. For Fund 4, the fees payable to ACBF Administration was calculated as follows:

47.1. an annual fee, totalling $10,000 (excluding GST); and

47.2. during the Relevant Period, a weekly member fee of $0.90 per member

(excluding GST). Each year, the actuary for Fund 4 provided an actuarial report including assumptions about the maximum weekly member fee payable by Fund 4 to ACBF Administration (which the actuary noted would be 'negotiated' between the Fund 4 and ACBF Administration).

48. For financial years 2015 to 2018, the administration fees paid by ACBF Community to ACBF Administration were as follows:

    48.1. For financial year 2015: $35,937

    48.2. For financial year 2016: $36,816

    48.3. For financial year 2017: $31,791

    48.4. For financial year 2018: $15,901

49. 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

2.3.4 ACBF Group Holdings

50. ACBF Group Holdings was the ultimate holding company of ACBF 1, the ACBF Entities and ACBF Administration. From 2010 ACBF Group Holdings was owned by Just Solutions.

51. ACBF Group Holdings:

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

    51.2. had nominal expenses; and

    51.3. 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:

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

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

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

51.3.4. Financial year 2018: $410,000.

2.4 CROWN ARRANGEMENTS

52. 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 19 December 2017, ACBF 2, ACBF Plans and ACBF Community chose to satisfy the requirement to maintain an insurance policy by insuring with Crown.

53. Crown:

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

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

53.3. between 2002 and at least 19 December 2017, operated its business from Vanuatu; and

53.4. between 2002 and at least 19 December 2017, was not subject to prudential or other regulatory requirements in Australia.

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

55. Under the terms of the policies with Crown:

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

55.2. 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);

55.3. 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);

55.4. 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);

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

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

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

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

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

57. 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.

58. 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.

59. From 2003 (for Fund 2) or 2006 (for Funds 3 and 4) to at least 2018, Crown paid to each of Funds 2, 3 and 4 a 'profit share' based on a formula.

60. The table below sets out for financial years 2002 to 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**

61. In total, for financial years 2002 to 30 November 2018, for Fund 2:

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

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

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

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

62. The table below sets out for financial years 2005 to 2018 for Fund 3 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 3	Claims paid to Fund 3	Profit share paid to Fund 3	Net of premiums less claims and profit share relating to Fund 3
FY2005	56,626	4,000	0	52,626
FY2006	987,016	216,000	187,071	583,945
FY2007	1,807,253	346,000	448,534	1,012,719
FY2008	2,038,243	490,000	751,040	797,203
FY2009	2,059,727	480,000	613,517	966,210
FY2010	1,821,138	414,000	551,810	855,328
FY2011	1,909,538	476,000	510,405	923,133
FY2012	1,864,988	406,000	581,268	877,720
FY2013	1,818,876	558,000	358,875	902,001
FY2014	1,714,895	578,000	214,659	922,236
FY2015	1,608,332	814,870	83,317	710,145
FY2016	1,496,226	777,000	75,788	643,438
FY2017	1,179,584	787,000	14,600	377,984
FY2018	1,508,045	792,000	135,668	580,377
FY2019 to Nov	710,064	350,437	25,831	333,796
Totals	**22,580,551**	**7,489,307**	**4,552,383**	**10,538,861**

63. Between 1 July 2005 and 30 November 2018, ACBF Plans paid Crown total premiums of approximately $22.6 million, approximately $7.5 million was paid by Crown by way of fund members' claims and approximately $4.5 million was returned to ACBF Plans by way of profit-sharing payment.

64. The table below sets out for financial years 2005 to 2018 for Fund 4 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 4	Claims paid to Fund 4	Profit share paid to Fund 4	Net of premiums less claims and profit share

				relating to Fund 4
FY2005	1,499	0	-	1,499
FY2006	50,281	4,000	12,145	34,136
FY2007	91,523	18,000	31,827	41,696
FY2008	78,481	4,000	36,768	37,713
FY2009	72,593	18,000	27,662	26,931
FY2010	64,700	12,000	26,790	25,910
FY2011	63,840	22,000	21,009	20,831
FY2012	59,642	14,000	27,736	17,906
FY2013	57,083	18,000	21,374	17,709
FY2014	55,213	4,000	14,601	36,612
FY2015	52,727	34,000	9,604	9,123
FY2016	48,968	37,000	8,499	3,469
FY2017	41,677	32,000	-	9,677
FY2018	37,705	28,000	4,465	5,240
FY2019 to Nov	12,023	20,000	1,060	- 9,037
Totals	**787,955**	**265,000**	**243,540**	**279,415**

65. Between 1 July 2005 and 30 November 2018, ACBF Community paid Crown total premiums of approximately $788,000, approximately $265,000 was paid by Crown by way of fund members' claims and approximately $240,000 was returned to ACBF Community by way of profit-sharing payment.

2.5 MR WILSON'S ROLE

66. Mr Wilson was:

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

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

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

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

67. 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.

68. 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.

69. Throughout his employment with the ACBF business until around October or November 2017, Mr Wilson was responsible for and attended to the following duties and matters:

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

69.2. liaising with the actuary about actuary reports prepared for ACBF Plans and ACBF Community, 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";

69.3. providing Mr Pattenden each month with the figures relevant to the claims and premiums paid by each ACBF Entity to Crown; and

69.4. causing the financial statements of the ACBF Entities to be prepared and liaising with the auditors in this respect, and signed the financial statements of the ACBF Entities for the financial years ended 30 June 2015 and 30 June 2016.

70. At all times that Mr Wilson carried out his duties and the matters listed in paragraph 69 above, he was aware that:

70.1. ACBF Entities were insured with Crown;

70.2. Mr Pattenden was a director of Crown;

70.3. ACBF Entities were paying amounts to Crown and Just Solutions by way of insurance premiums and dividends (respectively); and

70.4. Mr Pattenden was seeking to make a profit through the amounts paid by the ACBF Entities to Crown and Just Solutions.

2.6 OTHER DEFENDANTS

71. Mr Pattenden was:

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

71.1.1. 29 January 1992 and 18 October 2002;

71.1.2. 29 November 2007 and 7 January 2008; and

71.1.3. 19 May 2010 and 30 November 2018;

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

71.2.1. 10 December 1997 and 23 July 2007;

71.2.2. 29 November 2007 and 7 January 2008; and

71.2.3. 5 March 2014 and 30 November 2018;

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

71.3.1. 23 May 1996 and 23 July 2007;

71.3.2. 29 November 2007 and 7 January 2008; and

71.3.3. 5 March 2014 and 30 November 2018;

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

71.4.1. the ACBF business; and
71.4.2. 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;

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

71.6. 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.

72. Mr Law was:

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

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

72.3. the sole shareholder of Asian Markets Limited;

72.4. indirectly, the minority shareholder of Just Solutions through his company Asian Markets Limited during, at least, the Relevant Period;

72.5. a beneficial owner of shares in Crown from:

72.5.1. January 2008 directly; and

72.5.2. 2010 and throughout the Relevant Period through his shareholding in Asian Markets Limited.

73. Mr Jones was:

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

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

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

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

74.2. appointed a secretary of ACBF Community between 23 October

2017 until 4 March 2019; and

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

75. From 4 September 2017 to 19 December 2017, being the time that Mr Wilson ceased as a director of the ACBF Entities,[2] Mr Wilson:

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

75.2. 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

76. Each month, Mr Pattenden was sent emails by Mr Wilson (or staff at the ACBF Group) attaching spreadsheets for each of Funds 2, 3 and 4 setting out details of:

76.1. premium payments made to Crown by the relevant Fund;

76.2. claims received by the relevant Fund, and the total claims payable by Crown to the Fund; and

76.3. the amount of profit share payable by Crown to the relevant Fund.

77. On 1 March 2017, Mr Wilson exchanged emails with Mr Pattenden attaching spreadsheets for each of Funds 2, 3 and 4 for February 2017 as referred to above. Mr Wilson noted in the email, "I know you will be bitterly disappointed in these…".

78. At some point between 1 and 10 March 2017, Mr Pattenden informed Mr Wilson that the premiums to be paid by ACBF 2 to Crown would be doubled.

79. On 10 March 2017 Mr Wilson emailed Mr Hughes (a partner at Small Myers Hughes, solicitor for the ACBF business), copied to Mr Pattenden, with the subject line 'Fund 2'. In the email, Mr Wilson wrote:

> Ron has advised that the premiums I send to Crown each month are to double.
>
> …
>
> In 2016, Fund 2 had taxable income of $121461…
>
> If we are to double these premiums, going on 2016 figures, it will make a loss of around
>
> $360k. This could pose problems of insolvent trading. …

80. On 13 March 2017, Mr Hughes suggested that ACBF 2 would remain viable if premiums were increased by $10k per month subject to Crown determining that the insurance remains viable at what would be a 25% increase.

81. The approach suggested by Mr Hughes would have effectively increased the premium by an amount equivalent to Fund 2's taxable income in 2016.

82. No action was taken in March through to August 2017 to increase the Crown premium for ACBF 2.

83. On 30 June 2017, Mr Wilson emailed Mr Hughes and Mr Pattenden attaching spreadsheets for each of Funds 2, 3 and 4 for June 2017 and noted "they look horrible". Mr Wilson also stated "Fund 2 is terrible after claims of Feb 1, March 1, April 2, May 4, we have 8 claims for June, albeit 5 of those were late May deaths." The spreadsheet for Fund 2 attached to the email indicated that for June 2017, it was estimated that Crown would receive a payment from Fund 2 of $44,707.60 and need to pay back to Fund 2 $103,000, resulting in a loss to Crown for June 2017 of $58,292.

84. On 4 July 2017, Mr Wilson emailed Mr Hughes:

> I spoke to Ron today about cancelling the Fund 2 pendings and that it was not such a bad thing especially as they are getting older and the payouts are $15k.
>
> This is hurting Crown at the moment.
>
> He suggested in not holding back on cancelling if they have missed 4 payments.
>
> In Fund 2, if they catch up on their missed payments, they can rejoin, could we not let them re-join and instead see if they want to join Funeral Plan instead?

85. 'Fund 2 pendings' referred to members who had missed payments. As referred to above, a Fund 2 member who missed 4 payments in a calendar year was a non- financial members, for whom Fund 2 should automatically cancel their membership pursuant to the Fund 2 Trust Deed. This would

mean Fund 2 was no longer liable to pay the member any amount on their death, or make any cancellation payment.

86. The benefit to Fund 2, and Crown, of cancelling 'Fund 2 pendings' was that this would remove any future liability of Fund 2 and Crown to a claim relating to those members.

87. 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.

88. 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

89. At 1:26pm on 4 September 2017, Mr Wilson responded to the email described at paragraph 88 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 sigh [sic] this."

90. At 1:57pm on 4 September 2017, 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.

91. At 2:23pm on 4 September 2017, Mr Wilson sent an email to Mr Pattenden copied to Mr Hughes which attached the payout amount if all Fund 2 members cancelled as of 31 August 2017.

92. At 4:54pm on 4 September 2017, Mr Hughes responded to the email described at paragraph 91 above to Mr Wilson copying Mr Pattenden stating that:

> Crown is clearly not in a position to maintain the existing premium structure with Fund 2. It has become unviable to do so. … I recommend that Crown immediately increase premiums to remain viable. That increase can be met from the reserve held for the cancellation payments. It is a matter for discussion between Crown and Fund 2 as to how much the premiums should increase. I suggest quotes be obtained, as well as a back payment for reduced premiums paid in the past. I have no doubt that Crown is significantly undercharging Fund 2.

93. On 5 September 2017, Mr Wilson forwarded to Mr Hughes the 4 September letter from Crown Insurance to ACBF 2 stating, "Find attached the document that was agreed between Crown and Fund 2."

94. On 5 September 2017, Mr Hughes responded to Mr Wilson's email described at paragraph 93 above copying Mr Pattenden, saying: "Just to be clear – Fund 2 will be paying the increased premiums, not the plan holders?", to which Mr Wilson responded "That is correct David".

95. On 6 September 2017, Mr Pattenden responded to Mr Hughes' email described at paragraph 92 above stating: "David we have doubled the premiums for Fund 2 plan

holders as of 1st August letter from Jon Law requesting this due to much higher risk factor I think this will help".

96. On 6 September 2017, Mr Wilson sent a letter to Crown confirming the amount paid by ACBF 2 in premiums for August 2017 incorporating the doubled premium.

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

97. Between 4 September 2017 and 19 December 2017, being the time when Mr Wilson ceased as a director of ACBF 2, 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
Totals		**$337,265.40**	**$261,000.00**	**$-**	**$76,265.40**

98. 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.

99. At the time of the premium increase and continuing until 19 December 2017, being the time when Mr Wilson ceased as a director of ACBF 2:

99.1. Fund 2 was closed to new members;

99.2. 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;

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

99.4. 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;

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

99.5.1. 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

99.5.2. applying to the Court to vary the trust deed under s 81 of the *Trustees Act 1925* (NSW);

99.6. an increase in premium of 100% would have a significant negative impact on ACBF 2's financial position.

99.6.1. 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.

99.6.2. 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 both to those members and remaining members.

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

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

99.7.2. negotiating and agreeing alternative terms with Crown;

99.7.3. finding an alternative insurer;

99.7.4. moving to a self-insurance arrangement;

99.7.5. negotiating lower administration fees;

99.7.6. attempting to increase contribution rates; and

99.7.7. winding up.

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

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

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

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

100.4. If ACBF 2 had been wound up, it would have sufficient funds to payout:

100.4.1. all cancellation benefits, and pay a further amount (approximately $64 to $160) to all members; or

100.4.2. an amount to all members.

101. At the time of the premium increase and continuing until 19 December 2017, there was a substantial risk that:

101.1. in the circumstances described in paragraphs 99 and 100 above, 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;

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

101.3. if fund members' cover was cancelled, they would be without funeral

cover; and

101.4. the members of Fund 2 were never told, and therefore could not and did not know or understand, the matters referred to in subparagraphs 101.1 to 101.3 above, and had no way of knowing them unless explained to them by information provided by ACBF 2.

102. Mr Wilson ought to have known the fact described at subparagraph 101.1 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 EFFECT OF THE PREMIUM INCREASE AND CROWN ARRANGEMENTS ON ACBF PLANS AND ACBF COMMUNITY

103. At the time of the premium increase and continuing until 23 October 2017 for ACBF Community and 19 December 2017 for ACBF Plans, being the times when Mr Wilson ceased as a director of these companies respectively, ACBF Plans and ACBF Community were vulnerable to unaffordable (in the sense described in subparagraph 103.4 below) premium increases by Crown in circumstances where:

103.1. under the policies, Crown could increase the premium payable by ACBF Plans and ACBF Community at any time by any amount;

103.2. ACBF Plans and ACBF Community depended on Crown paying claims under policies in order to meet claims by fund members, with such dependence arising from the fact that ACBF Plans and ACBF Community did not have any alternative source of funds to pay member claims;

103.3. ACBF Plans and ACBF Community were not accumulating, or attempting to accumulate, amounts from which to pay claims by fund members;

103.4. if Crown increased premiums, whether by doubling those premiums as it had done for ACBF 2 or by increasing the premiums at all, the effect of the premium increase would be, in each case, that ACBF Plans and ACBF Community would immediately become insolvent. ACBF Plans and ACBF Community could have remained solvent indefinitely if they had self-insured;

103.5. in addition, if ACBF Plans and ACBF Community had been brought to an end, it would have had amounts available to pay creditors or fund members;

103.6. Mr Wilson ought to have known the facts described at subparagraphs 103.1 to
103.5 above because it would have been revealed had he asked for analysis to be undertaken of the relationship between Crown's premiums, and ACBF Plans' and ACBF Community's financial positions, which he did not do but ought to have done.

103.7. if ACBF Plans and ACBF Community were wound up in insolvency, their respective fund members' cover would be cancelled and they would be without funeral cover; and

103.8. the members of Funds 3 and 4 were never told, and therefore could not and did not know or understand, the matters referred to in subparagraphs 103.1 to
103.7 above, and had no way of knowing them unless explained to them by information provided by ACBF Plans and ACBF Community.

103.9. Funds 3 and 4 had options available to it in lieu of continuing the Crown arrangements, namely:

103.9.1. negotiating and agreeing alternative terms with Crown;

103.9.2. finding an alternative insurer;

103.9.3. moving to a self-insurance arrangement;

103.9.4. negotiating lower administration fees;

103.9.5. attempting to increase contribution rates; and

103.9.6. winding up.

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

4.1 ACBF 2

104. By 4 September 2017, and continuing until 19 December 2017, Mr Wilson:

104.1. knew that in early March 2017, Mr Pattenden had told him that premiums payable by ACBF 2 to Crown were to double;

104.2. ought to have known that Mr Pattenden and Mr Law were the ultimate co- owners and co-controllers of Crown, had a direct or indirect financial interest in Crown, and benefitted financially from ACBF 2 insuring with Crown ;

104.3. knew 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;

104.4. knew that on 4 July 2017 that for at least some members of Fund 2, who were getting older, the payouts per member were $15,000, and that this was hurting Crown's financial position at that time;

104.5. knew that on 4 September 2017, Mr Pattenden, Mr Law and he 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;

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

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

104.8. ought to have known that 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;

104.9. 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:

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

104.9.2. would be without funeral cover;

104.10. ought to have known that the members of Fund 2 did not know or understand the matters referred to in paragraphs 104.8 and 104.9 above, and had no way of knowing them unless explained to them by information provided by ACBF 2;

104.11. ought to have known at the time of the premium increase and continuing until 19 December 2017 that there was a reasonable chance

that if the members of

Fund 2 understood the matters referred to in paragraphs 104.8 and 104.9 above, they would cancel their membership with Fund 2;

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

104.13. ought to have known that, by causing ACBF 2 to maintain its policy with Crown at the increased premium:

104.13.1. Mr Pattenden and Mr Law (through Crown) benefitted financially from ACBF 2 continuing to pay premiums; and

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

105. A reasonable director or officer of a corporation in ACBF 2's circumstances and who occupied the office held by Mr Wilson and had the same responsibilities, and who had knowledge of the risks to ACBF 2 and its fund members referred to in paragraph 104 above, in acting with care and diligence when considering whether:

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

105.2. to continue to maintain ACBF 2's policy with

Crown, would have taken all necessary steps to:

105.3. 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;

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

105.4.1. renegotiate the Crown insurance policy;

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

105.4.3. find a cheaper external insurer;

105.4.4. increase reserves from which to pay Crown;

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

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

106. At all times from 4 September 2017 (the date of the decision to increase the premium) and continuing until 19 December 2017, Mr Wilson:

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

106.2. 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;

106.3. failed to consider properly or at all whether there were alternative options available to ACBF 2, as described in paragraph 105.4 above, that would have been in the best interests of ACBF 2 and its fund members;

106.4. failed to pursue properly or at all any of the alternative options described in paragraph 105.4 above;

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

106.6. preferred Mr Pattenden's, Mr Law'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 4 occasions between 4 September 2017 and 19 December 2017; and

106.7. 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).

107. Mr Wilson, for each of the acts or omissions described in paragraph 106 above, between 4 September 2017 and 19 December 2017:

107.1. 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 Wilson, and had the same responsibilities within the corporation; and

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

108. By reason of the matters described in paragraph 104 above, and Mr Wilson's positions within the ACBF business as set out in paragraph 66 above, Mr Wilson:

108.1. caused ACBF 2 to maintain the arrangements with Crown from 4 September 2017 until 19 December 2017 without taking any or all necessary steps to consider and pursue the matters in paragraph 105.4 above;

108.2. caused 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 105.4 above; and

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

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

108.4.1. obtain an advantage for Mr Pattenden, Mr Law and Crown; with the result that he

108.4.2. caused a detriment to ACBF 2.

109. Mr Wilson's conduct referred to in paragraph 108 above:

109.1. was not in the best interests of ACBF 2;

109.2. was done for the purpose of Mr Wilson gaining an advantage for Mr Pattenden, Mr Law and Crown, which was not a proper purpose; and

109.3. resulted in Mr Wilson:

109.3.1. gaining an advantage for Mr Pattenden, Mr Law and Crown; and

109.3.2. causing detriment to ACBF 2.

110. For each of the acts or omissions described in paragraphs 108 and 109 above, between 4 September 2017 and 19 December 2017, Mr Wilson:

110.1. failed to exercise his powers and discharge his duties 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

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

111. From 4 September 2017 until 19 December 2017, the contraventions of ss 180(1), 181(1) and 182(1) of the Corporations Act by Mr Wilson, as admitted by Mr Wilson in paragraphs 107 to 110 above:

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

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

111.3. were serious.

4.2 ACBF PLANS

112. By 4 September 2017, and until 19 December 2017, Mr Wilson:

112.1. ought to have known that ACBF Plans was vulnerable to an increase in premiums by Crown in that the effect of any premium increase would be that ACBF Plans would immediately become insolvent;

112.2. ought to have known that there was a substantial risk that if ACBF Plans was wound up in insolvency, the members of ACBF Plans:

112.2.1. would have their cover cancelled; and

112.2.2. would be without funeral cover;

112.3. ought to have known that the members of Fund 3 did not know or understand the matters referred to in subparagraphs 112.1 and 112.2 above, and had no way of knowing them unless explained to them by information provided by ACBF Plans;

112.4. knew or ought to have known that ACBF Plans maintained its policy with Crown;

112.5. ought to have known that, by ACBF Plans maintaining its policy with Crown giving rise to the vulnerability described in paragraph 112.1 above:

112.5.1. Mr Pattenden and Mr Law (through Crown) benefitted financially from ACBF Plans continuing to pay premiums; and

112.5.2. preferred the financial interests of Crown, Mr Pattenden and Mr Law over the financial interests of ACBF Plans and fund members.

113. A reasonable director or officer of a corporation in ACBF Plans' circumstances and who occupied the office held by Mr Wilson and had the same responsibilities, and who had knowledge of the risks to ACBF Plans and its fund members referred to in paragraph 112 above, in acting with care and diligence when considering whether to continue to maintain ACBF Plans' policy with Crown, would have taken all necessary steps to:

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

113.2. pursue alternatives to ACBF Plans' insurance arrangements with Crown, including considering whether to:

113.2.1. renegotiate the Crown insurance policy;

113.2.2. cancel the Crown insurance policy and transition to self-insurance (and whether and how to amend the plan rules to allow for this);

113.2.3. find a cheaper external insurer;

113.2.4. increase reserves from which to pay Crown;

113.2.5. notify members of the risks to Fund 3 inherent in the arrangements with Crown; and

113.2.6. wind up the company and pay the remaining funds to members.

114. At all times from 4 September 2017 (the date of the decision to increase the premium for ACBF 2) until 19 December 2017, Mr Wilson:

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

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

114.3. failed to consider properly or at all whether there were alternative options available to ACBF Plans, as described in paragraph 113.2 above, that would have been in the best interests of ACBF Plans and its fund members;

114.4. failed to pursue properly or at all any of the alternative options described in paragraph 113.2 above; and

114.5. preferred Mr Pattenden's, Mr Law's and Crown's financial interests in causing ACBF Plans to maintain its Crown arrangements.

115. Mr Wilson, for each of the acts or omissions described in paragraph 114 above, including when ACBF 2 paid the increased premium from 4 September 2017 until 19 December 2017 and thus presented the vulnerability for ACBF Plans described in paragraph 112.1 above:

115.1. failed to discharge his duties to ACBF Plans 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 Plans' circumstances, and occupied the offices held by Mr Wilson and had the same responsibilities within the corporation; and

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

116. By reason of the matters described in paragraph 112 above, and Mr Wilson's positions within the ACBF business as set out in paragraph 66 above, Mr Wilson:

116.1. caused ACBF Plans to maintain the arrangements with Crown from 4 September 2017 until 19 December 2017 without taking any or all of the necessary steps to consider and pursue the matters in paragraph 113.2 above;

116.2. failed to take all necessary steps to manage the conflict of interest that arose between Mr Pattenden's duties to ACBF Plans and Mr Pattenden's interest in Crown, or Mr Law's duties to ACBF Plans and Mr Law's interest in Crown; and

116.3. used his position as a director or officer of ACBF Plans to:

116.3.1. obtain an advantage for Mr Pattenden, Mr Law and Crown; with the result that he

116.3.2. caused a detriment to ACBF Plans.

117. Mr Wilson's conduct described in paragraph 116 above:

117.1. was not in the best interests of ACBF Plans;

117.2. was done for the purpose of Mr Wilson gaining an advantage for Mr Pattenden, Mr Law and Crown, which was not a proper purpose; and

117.3. resulted in Mr Wilson:

117.3.1. gaining an advantage for Mr Pattenden, Mr Law and Crown; and

117.3.2. causing detriment to ACBF Plans.

118. For each of the acts or omissions described in paragraphs 116 and 117 above, including when ACBF 2 paid the increased premium from 4 September 2017 until 19 December 2017 and thus presented the vulnerability for ACBF Plans described in paragraph 112.1 above, Mr Wilson:

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

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

119. From 4 September 2017 until 19 December 2017, the contraventions of ss 180(1), 181(1) and 182(1) of the Corporations Act by Mr Wilson, as admitted

by Mr Wilson in paragraphs 115 to 118 above:

119.1. materially prejudiced the financial interests of ACBF Plans and its members;

119.2. materially prejudiced the ability of ACBF Plans to pay its creditors; and

119.3. were serious.

4.3 ACBF COMMUNITY

120. By 4 September 2017, and until 23 October 2017, Mr Wilson:

120.1. ought to have known that ACBF Community was vulnerable to an increase in premiums by Crown in that the effect of any premium increase would be that ACBF Community would immediately become insolvent;

120.2. ought to have known that there was a substantial risk that if ACBF Community was wound up in insolvency, the members of ACBF Community:

120.2.1. would have their cover cancelled; and

120.2.2. would be without funeral cover;

120.3. ought to have known that the members of Fund 4 did not know or understand the matters referred to in subparagraphs 120.1 and 120.2 above, and had no way of knowing them unless explained to them by information provided by ACBF Community;

120.4. knew or ought to have known that ACBF Community maintained its policy with Crown;

120.5. ought to have known that, by ACBF Community maintaining its policy with Crown giving rise to the vulnerability described in subparagraph 120.1 above:

120.5.1. Mr Pattenden and Mr Law (through Crown) benefitted financially from ACBF Community continuing to pay premiums; and

120.5.2. preferred the financial interests of Crown, Mr

Pattenden and Mr Law over the financial interests of ACBF Community and fund members.

121. A reasonable director or officer of a corporation in ACBF Community's circumstances and who occupied the office held by Mr Wilson and had the same responsibilities, and who had knowledge of the risks to ACBF Community and its fund members referred to in paragraph 120 above, in acting with care and diligence when considering whether to continue to maintain ACBF Community's policy with Crown, would have taken all necessary steps to:

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

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

121.2.1. renegotiate the Crown insurance policy;

121.2.2. cancel the Crown insurance policy and transition to self-insurance (and whether and how to amend the plan rules to allow for this);

121.2.3. find a cheaper external insurer;

121.2.4. increase reserves from which to pay Crown;

121.2.5. notify members of the risks to Fund 4 inherent in the arrangements with Crown; and

121.2.6. wind up the company and pay the remaining funds to members.

122. At all times from 4 September 2017 (the date of the decision to increase the premium for ACBF 2) until 23 October 2017, Mr Wilson:

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

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

122.3. failed to consider properly or at all whether there were alternative options available to ACBF Community, as described in paragraph 121.2 above, that would have been in the best interests of ACBF Community and its fund members;

122.4. failed to pursue properly or at all any of the alternative options described in paragraph 121.2 above; and

122.5. preferred Mr Pattenden's, Mr Law's and Crown's financial interests in causing ACBF Community to maintain its Crown arrangements.

123. Mr Wilson, for each of the acts or omissions described in paragraph 122 above, including when ACBF 2 paid the increased premium from 4 September 2017 until 23 October 2017 and thus presented the vulnerability for ACBF Community described in paragraph 120.1 above:

123.1. failed to discharge his duties to ACBF Community 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 Community's circumstances, and occupied the offices held by Mr Wilson and had the same responsibilities within the corporation; and

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

124. By reason of the matters described in paragraph 120 above, and Mr Wilson's positions within the ACBF business as set out in paragraph 66 above, Mr Wilson:

124.1. caused ACBF Community to maintain the arrangements with Crown from 4 September 2017 until 23 October 2017 without taking any or all of the necessary steps to consider and pursue the matters in paragraph 121.2 above;

124.2. failed to take all necessary steps to manage the conflict of interest that arose between Mr Pattenden's duties to ACBF Community and Mr Pattenden's interest in Crown, or Mr Law's duties to ACBF Community and Mr Law's interest in Crown; and

124.3. used his position as a director or officer of ACBF Community to:

124.3.1. obtain an advantage for Mr Pattenden, Mr Law and Crown; with the result that he

124.3.2. caused a detriment to ACBF Community.

125. Mr Wilson's conduct described in paragraph 124 above:

125.1. was not in the best interests of ACBF Community;

125.2. was done for the purpose of Mr Wilson gaining an advantage for Mr Pattenden, Mr Law and Crown, which was not a proper purpose; and

125.3. resulted in Mr Wilson:

125.3.1. gaining an advantage for Mr Pattenden, Mr Law and Crown; and

125.3.2. causing detriment to ACBF Community.

126. For each of the acts or omissions described in paragraphs 124 and 125 above, including when ACBF 2 paid the increased premium from 4 September 2017 until 23 October 2017 and thus presented the vulnerability for ACBF Community described in in paragraph 120.1 above, Mr Wilson:

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

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

127. From 4 September 2017 until 23 October 2017, the contraventions of ss 180(1), 181(1) and 182(1) of the Corporations Act by Mr Wilson, as admitted by Mr Wilson in paragraphs 123 to 126 above:

127.1. materially prejudiced the financial interests of ACBF Community and its members;

127.2. materially prejudiced the ability of ACBF Community to pay its creditors; and

127.3. were serious.

PART V ADMISSIONS OF OTHER FACTS

5.1 THE NATURE OF THE LOSS OR DAMAGE SUFFERED

5.1.1 ACBF 2

128. Paragraphs 99.6 and 99.7 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 Wilson.

129. 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.

130. As described in paragraph 105.4 above, Mr Wilson 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.

5.1.2 ACBF Plans and ACBF Community

131. Paragraph 103 above outlines how at the time of the premium increase, ACBF Plans and ACBF Community were vulnerable to unaffordable premium increases by Crown and describes alternative scenarios or possibilities that could have been pursued by Mr Wilson.

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

133. As described in paragraphs 113.2 and 121.2 above, Mr Wilson had options available to him to pursue for ACBF Plans and ACBF Community 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 WILSON'S FINANCIAL POSITION

134. Mr Wilson does not rely on his financial position to mitigate the penalty.

5.3 WHETHER PREVIOUSLY FOUND TO HAVE ENGAGED IN SIMILAR CONDUCT

135. Mr Wilson has not been found to have engaged in similar conduct.

5.4 COOPERATION WITH ASIC AND CONTRITION

136. Mr Wilson:

136.1. cooperated with ASIC at the earliest opportunity following the filing of the Proceedings;

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

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

137. 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

.....

Sean Powell

Robbin Watson Lawyers
Lawyer for the Third 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 WILSON

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 19 December 2017, the Third Defendant:

    1.1. failed to consider properly or at all the effect of the 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 the First Defendant's, the Second Defendant's and Crown's financial interests in causing ACBF 2 to maintain its Crown arrangements;

1.6. preferred the First Defendant's, the Second 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 4 occasions between 4 September 2017 and 19 December 2017; and

1.7. 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 Fund 2's 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 offices held by the Third Respondent, 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 19 December 2017:

2.1. the Third Defendant:

2.1.1. caused 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;

2.1.2. caused 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; and

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

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

2.1.4.1. obtain an advantage for the First Defendant, the Second Defendant and Crown; with the result that he

2.1.4.2. caused a detriment to ACBF 2,

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

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

2.2.2. was done for the purpose of the Third Defendant gaining an advantage for the First Defendant, the Second Defendant and Crown, which was not a proper purpose; and

2.2.3. resulted in the Third Defendant:

2.2.3.1. gaining an advantage for the First Defendant, the Second 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 Third Defendant:

2.3.1. failed to exercise his powers and discharge his duties 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.

3. Under s 1317E(1) of the Corporations Act that, in his capacity as a director of ACBF Funeral Plans Pty Ltd (**ACBF Plans**), between 4 September 2017 and 19 December 2017, the Third Defendant:

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

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

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

3.4. failed to pursue properly or at all any alternative options available to ACBF Plans;

3.5. preferred the First Defendant's, the Second Defendant's and Crown's financial interests in causing ACBF Plans to maintain its Crown arrangements.

and by reason of the above:

3.6. failed to discharge his duties to ACBF Plans 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 Plans' circumstances, and occupied the offices held by the Third Defendant and had the same responsibilities within the corporation; and

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

4. Under s 1317E(1) of the Corporations Act that, in his capacity as a director of ACBF Plans between 4 September 2017 and 19 December 2017:

4.1. the Third Defendant:

4.1.1. caused ACBF Plans to maintain the arrangements with Crown without taking any or all of the necessary steps to consider and pursue the alternative options available to ACBF Plans;

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

4.1.3. used his position as a director or officer of ACBF Plans to:

4.1.3.1. obtain an advantage for the First Defendant, the Second Defendant and Crown; with the result that he

4.1.3.2. caused a detriment to ACBF Plans,

4.2. the Third Defendant's conduct referred to in 4.1 above:

4.2.1. was not in the best interests of ACBF Plans;

4.2.2. was done for the purpose of the Third Defendant gaining an

advantage for the First Defendant, the Second Defendant and Crown, which was not a proper purpose; and

4.2.3. resulted in the Third Defendant:

4.2.3.1. gaining an advantage for the First Defendant, the Second Defendant and Crown; and

4.2.3.2. causing detriment to ACBF Plans.,

4.3. by reason of the circumstances in 4.1 and 4.2 above, the Third Defendant:

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

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

5. Under s 1317E(1) of the Corporations Act, in his capacity as a director of Community Funeral Plans Pty Ltd (**ACBF Community**) between 4 September 2017 and 23 October 2017, the Third Defendant:

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

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

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

5.4. failed to pursue properly or at all any of the alternative options available to ACBF Community;

5.5. preferred the First Defendant's, the Second Defendant's and Crown's financial interests in causing ACBF Community to maintain its Crown arrangements;

and by reason of the above:

5.6. failed to discharge his duties to ACBF Community 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 Community's circumstances, and occupied the offices held by the Third Defendant and had the same responsibilities within the corporation; and

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

6. Under s 1317E(1) of the Corporations Act, in his capacity as a director of ACBF Community between 4 September 2017 and 23 October 2017:

6.1. the Third Defendant:

6.1.1. caused ACBF Community to maintain the arrangements with Crown without taking any or all of the necessary steps to consider and pursue the alternative options available to ACBF Community;

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

6.1.3. used his position as a director or officer of ACBF Community to:

6.1.3.1. obtain an advantage for the First Defendant, the Second Defendant and Crown; with the result that he

6.1.3.2. caused a detriment to ACBF Community,

6.2. the Third Defendant's conduct referred to in 6.1 above:

6.2.1. was not in the best interests of ACBF Community;

6.2.2. was done for the purpose of the Third Defendant gaining an advantage for the First Defendant, the Second Defendant and Crown, which was not a proper purpose; and

6.2.3. resulted in the Third Defendant:

6.2.3.1. gaining an advantage for the First Defendant, the Second Defendant and Crown; and

6.2.3.2. causing detriment to ACBF Community,

6.3. by reason of the circumstances in 6.1 and 6.2 above, the Third Defendant:

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

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

7. An order under s 1317G(1) of the Corporations Act that, within 30 days of the order, Third Defendant pay to the Commonwealth of Australia a pecuniary penalty of $20,000 for contraventions of ss 180(1), 181(1) and 182(1) of the Corporations Act relating to ACBF 2, ACBF Plans and ACBF Community.

8. An order under s 206C(1)(a)(i) and/or s 206E(1)(a)(ii) of the Corporations Act disqualifying the Third Defendant from managing corporations for 10 years.

9. An order that the Third Defendant to pay a contribution of $5,000 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 THE THIRD 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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The Australian Government
Level 33, 300 George St
Brisbane, QLD 4000

Filed on behalf of the Plaintiff, Australian Securities and Investments Commission

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A INTRODUCTION

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

2. Between 4 September 2017 and 19 December 2017 (**Relevant Period**), Mr Wilson was a director or officer of **ACBF 2**, **ACBF Plans** and **ACBF Community**[1] (collectively, the **ACBF Entities**), which operated funeral funds mostly marketed to Indigenous consumers (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 Wilson 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 the Funds, to consider whether the Crown policies were in the best interests of members of the Funds 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 Funds);

    4.2. he preferred Crown's, Mr Pattenden's and Mr Law's interests in causing the ACBF Entities 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 Wilson 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 Mr Pattenden's and Mr Law's duties to the ACBF Entities and Mr Pattenden's and Mr Law's interest in Crown, used his position as an officer of the ACBF Entities to obtain an advantage for Crown, Mr Pattenden and Mr Law, and caused a detriment to the ACBF Entities.

6. The parties have filed a Statement of Agreed Facts and Admissions on 30 January 2026 and an amended Statement of Agreed Facts and Admissions on 16 April 2026 (**SAFA**). **Annexure A** to the SAFA sets out the **Agreed Proposed Orders**, which seek:

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

    6.2. a pecuniary penalty of $20,000 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 Wilson be disqualified from managing corporations for a period of 10 years; and

    6.4. an order that Mr Wilson pay $5,000 as a contribution towards ASIC's costs of and incidental to the proceeding.

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[1] Mr Wilson ceased as a director of ACBF Community on 23 October 2017.

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.[2] The ACBF business operated to provide funeral benefits to nominated persons on the death of a fund member or nominee.

8. The ACBF group of companies relevantly included: The Aboriginal Community Benefit Fund Pty Ltd (**ACBF 1**), ACBF 2, ACBF Plans, ACBF Community, ACBF Consultants Pty Ltd, ACBF Group Holdings Pty Ltd (**ACBF Group Holdings**) and ACBF Administration Pty Ltd (**ACBF Administration**).[3]

9. On or around 6 March 2014, Mr Wilson joined the ACBF business as the accountant. In or around November 2015, Mr Wilson became financial controller of the ACBF business.[4]

10. In the period from at least 6 March 2014 to at least 19 December 2017, the ultimate holding company of the group of companies through which the ACBF business operated was Just Solutions Limited (**Just Solutions**). Just Solutions, a company registered in Vanuatu, owned the majority of the shares in ACBF Group Holdings.[5]

Operation of the Funds

11. The SAFA explains in detail the way in which the Funds of each of the ACBF Entities, ACBF Administration and ACBF Group Holdings operated.[6]

12. In summary, for Fund 2:

    12.1. ACBF 2 was trustee of Fund 2, which operated as a trust established by deed.[7]

    12.2. 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.[8]

    12.3. 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).[9]

    12.4. 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

2 SAFA at [9].
3 SAFA at [7].
4 SAFA at [9].
5 SAFA at [10].
6 SAFA at Section 2.3, [11]-[51].
7 SAFA at [12].
8 SAFA at [12].
9 SAFA at [16.4].

to one third of the member's total membership payments from the 26th payment onwards.[10]

12.5. Where Fund 2 was wound up and there were surplus funds following the payment of Fund 2's debts and liabilities, eligible fund members would be entitled to be repaid an amount up to the maximum amount of their cancellation benefit.[11]

12.6. 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;[12]

(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;[13]

(c) could not be amended except in accordance with the provisions of the trust deed, and could be amended on application under s 81 of the *Trustees Act 1925* (NSW) by ACBF 2 to the Court.[14]

12.7. On 24 November 2021, ACBF 2 went into administration.[15]

12.8. On 2 March 2022, a liquidator was appointed to ACBF 2. On 11 April 2022, a receiver was appointed to Fund 2.[16]

13. In summary, for Funds 3 and 4:

13.1. Both were subject to plan rules and were registered as a contributory funeral benefit business under the *Funeral Funds Act 1979* (NSW) (**Funeral Funds Act**).[17]

13.2. ACBF Plans operated Fund 3 from 2005 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.[18]

13.3. ACBF Community operated Fund 4 from 2005 for the purpose of providing funeral benefits to nominated persons on the death of a fund member, and was marketed to non-Indigenous Australians.[19]

13.4. On the death of a nominated person (including a fund member) and following the making of a claim to ACBF Plans or ACBF Community, ACBF Plans or ACBF Community would pay an amount comprising reimbursement for incurred

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10 SAFA at [16.5].
11 SAFA at [16.8].
12 SAFA at [21].
13 SAFA at [17].
14 SAFA at [18].
15 SAFA at [26].
16 SAFA at [27].
17 SAFA at [13], [14].
18 SAFA at [13].
19 SAFA at [14].

funeral-related expenses (up to the nominated benefit amount) to or as directed by the nominated payee, calculated in accordance with the application form.[20]

13.5. The rules and application form did not provide members with a cancellation payment on cancellation of their membership.[21]

13.6. The plan rules for Funds 3 and 4 required that:

(a) the plan rules could not be amended except in accordance with the provisions of the plan rules;[22]

(b) ACBF Plans and ACBF Community must at all times maintain an insurance policy that underwrites the amounts required to be paid following a claim on the death of a nominee.[23]

13.7. On 11 March 2022, ACBF Plans and ACBF Community entered liquidation.[24]

14. ACBF Administration provided administration services to each of the ACBF Entities and Funds 2, 3 and 4 in return for a fee.[25] 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.[26]

15. ACBF Group Holdings was the ultimate holding company of ACBF 1, the ACBF Entities and ACBF Administration.[27] 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.[28]

Crown arrangements

16. The SAFA explains in detail the way in which the Crown arrangements with each of the ACBF Entities operated.[29]

17. Between 2002 and at least the end of the Relevant Period, ACBF 2, ACBF Plans and ACBF Community chose to satisfy the requirement to maintain an insurance policy by insuring with Crown.[30]

18. Crown:[31]

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

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

18.3. between 2002 and at least 19 December 2017, operated its business from Vanuatu; and

20 SAFA at [28.6].
21 SAFA at [28.7].
22 SAFA at [29].
23 SAFA at [52].
24 SAFA at [40].
25 SAFA at [41].
26 SAFA at [42].
27 SAFA at [50].
28 SAFA at [51].
29 SAFA at Section 2.4, [52]-[65].
30 SAFA at [52].
31 SAFA at [53].

18.4. between 2002 and at least 19 December 2017, was not subject to prudential or other regulatory requirements in Australia.

19. Between 2002 and 15 February 2022, the ACBF Entities were the only entities insured by Crown.[32]

20. In summary, under the terms of the policies with Crown:[33]

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

20.2. 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);

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

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

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

20.6. Crown was not required to provide services to the ACBF Entities other than the payment of claims by fund members.[34]

21. From financial year 2003 (for Fund 2) or financial year 2006 (for Funds 3 and 4) to at least 2018, Crown paid to each of Funds 2, 3 and 4 a 'profit share' based on a formula.[35] The tables at paragraphs 60, 62 and 64 of the SAFA set out for financial years 2002 to 2018 for Fund 2 and financial years 2005 to 2018 for Funds 3 and 4 respectively the premiums received by Crown, claims paid by Crown, profit share paid by Crown and the net profit or loss of Crown.[36]

22. 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.[37]

23. 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.[38]

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32 SAFA at [54].

33 SAFA at [55].

34 Crown's premiums for Fund 2 were structured as "level premiums", which did not vary by age, unlike the premiums charged for 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 [56]-[57].

35 SAFA at [59].

36 SAFA at [60], [62], [64].

37 SAFA at [58].

38 SAFA at [58].

24. While Mr Wilson was only a director or officer of the ACBF Entities for around 1 to 3 months of the Relevant Period, it is instructive to note the profitability of the Crown arrangements. In total, for financial years 2002 to 2018, for Fund 2:[39]

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

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

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

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

25. Between 1 July 2005 and 30 November 2018:

25.1. ACBF Plans paid Crown total premiums of approximately $22.6 million, approximately $7.5 million was paid by Crown by way of fund members' claims and approximately $4.5 million was returned to ACBF Plans by way of profit-sharing payment.[40] This resulted in Crown's net premiums received less claims and share as approximately $10.5 million;[41] and

25.2. ACBF Community paid Crown total premiums of approximately $788,000, approximately $265,000 was paid by Crown by way of fund members' claims and approximately $240,000 was returned to ACBF Community by way of profit-sharing payment.[42] This resulted in Crown's net premiums received less claims and share as approximately $280,000.[43]

Mr Wilson's role

26. Mr Wilson:[44]

26.1. was appointed a director of each of the ACBF Entities on 18 November 2014;

26.2. ceased as a director of each of the ACBF Entities during the Relevant Period:

(a) for ACBF Community, on 23 October 2017;

(b) for ACBF 2 and ACBF Plans, on 19 December 2017.

27. 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.[45]

28. From March 2014 and November 2015 until when he ceased with the ACBF business, Mr Wilson was the company accountant and financial controller for the ACBF business (and ACBF Entities).[46]

29. Throughout his employment with the ACBF business, and until October or November 2017, Mr Wilson:[47]

39 SAFA at [61].
40 SAFA at [63].
41 SAFA at [62].
42 SAFA at [65].
43 SAFA at [64].
44 SAFA at [66].
45 SAFA at [68].
46 SAFA at [9], [67].
47 SAFA at [69].

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

29.2. liaised with the actuary about actuary reports prepared for ACBF Plans and ACBF Community, 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";

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

29.4. caused the financial statements of the ACBF Entities to be prepared and liaised with the auditors in this respect, and signed the financial statements of the ACBF Entities for the financial years ended 30 June 2015 and 30 June 2016.

30. At all times that Mr Wilson carried out his duties and the matters listed in paragraph 29 above, he was aware that:[48]

30.1. the ACBF Entities were insured with Crown;

30.2. Mr Pattenden was a director of Crown;

30.3. ACBF Entities were paying amounts to Crown and Just Solutions by way of insurance premiums and dividends (respectively); and

30.4. Mr Pattenden was seeking to make a profit through the amounts paid by the ACBF Entities to Crown and Just Solutions.

Other defendants

31. The other defendants in the proceeding are the First Defendant Mr Pattenden, the Second Defendant Mr Law, 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.[49]

32. 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.[50]

33. Mr Law was also a director of Crown from 2008 until at least 30 November 2018,[51] indirectly the minority shareholder of Just Solutions through his company Asian Markets Limited[52] and a beneficial owner of shares in Crown from 2008.[53]

34. From 4 September 2017 to 19 December 2017, Mr Wilson 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.[54]

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48 SAFA at [70].

49 SAFA at [71], [72], [73], [74].

50 SAFA at [71.5]-[71.6].

51 SAFA at [72.2]

52 SAFA at [72.3]-[72.4].

53 SAFA at [72.3], [72.5].

54 SAFA at [75]. Mr Wilson ceased as a director of ACBF Community on 23 October 2017.

Premium increase for ACBF 2

35. On 4 September 2017, Mr Pattenden told Mr Law that the premiums that ACBF 2 paid to Crown under the insurance arrangements would double.[55] The context around that decision is set out in paragraphs 76 to 96 of the SAFA and can be summarised as follows.

36. Each month in 2017, Mr Wilson (or other staff within the ACBF business) would send Mr Pattenden emails with details about the premiums paid by each of the Funds to Crown, claims received by the relevant Fund and payable by Crown, and the amount of profit share payable by Crown.[56]

37. In an email sent by Mr Wilson on 1 March 2017 attaching spreadsheets for each of Funds 2, 3 and 4 for February 2017 as referred to above, he noted to Mr Pattenden that "I know you will be bitterly disappointed in these [figures]".[57]

38. On a date prior to 10 March 2017, Mr Pattenden informed Mr Wilson that the premiums to be paid by ACBF 2 to Crown would be doubled.[58] Mr Wilson told Mr Pattenden that he was concerned that doubling the premiums for ACBF 2 would give rise to a risk of insolvent trading.[59]

39. No action was taken to double premiums between March to August 2017.[60] On 30 June 2017, Mr Wilson sent the monthly spreadsheets to Mr Pattenden and Mr Hughes (a solicitor for Mr Pattenden and the ACBF business) noting that the figures for Fund 2 looked "horrible". The spreadsheet for Fund 2 attached to the email indicated that for June 2017, it was estimated that Crown would receive a payment from Fund 2 of $44,707.60 and need to pay back to Fund 2 $103,000, resulting in a loss to Crown for June 2017 of $58,292.[61]

40. 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.[62] 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:[63]

41. At 1:26pm on 4 September 2017, Mr Wilson responded to the email described at paragraph 40 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".[64]

42. Mr Law proceeded to finalise the letter and sent it to Mr Wilson at 1:57pm on 4 September 2017, copied to Mr Pattenden:[65]

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55 SAFA at [87]-[88].
56 SAFA at [76].
57 SAFA at [77].
58 SAFA at [78].
59 SAFA at [79].
60 SAFA at [82]-[86].
61 SAFA at [83].
62 SAFA at [87].
63 SAFA at [88].
64 SAFA at [89].
65 SAFA at [90].

43. At 2:23pm on 4 September 2017, Mr Wilson sent an email to Mr Pattenden copied to Mr Hughes which attached the payout amount if all Fund 2 members cancelled as of 31 August 2017.[66] At 4:54pm, Mr Hughes responded to this email, copying Mr Pattenden, saying that Crown was "clearly not in a position to maintain the existing premium structure with Fund 2" recommending that "Crown immediately increase premiums to remain viable".[67]

44. On 5 September 2017, Mr Wilson forwarded to Mr Hughes the 4 September letter confirming that the increase had been agreed between Crown and ACBF 2.[68] Mr Hughes replied that day asking whether it was Fund 2 that was paying the increased premiums and not the fund members, which Mr Wilson confirmed was correct.[69]

45. On 6 September 2017, Mr Pattenden replied to Mr Hughes' email at paragraph 43 above, sent at 4:54pm, that the premiums for ACBF 2 had been doubled "due to much higher risk factor I think this will help".[70]

46. On 6 September 2017, Mr Wilson sent a letter to Crown confirming the amount paid by ACBF 2 in premiums for August 2017 incorporating the doubled premium.[71]

Effect of the premium increase on ACBF 2

Effect of increase

47. 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.[72]

48. This occurred in circumstances where, as noted at paragraph 12.2 above, Fund 2 was closed to new members in 2004 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).[73] 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).

49. Further, ACBF 2 was not accumulating, or attempting to accumulate, amounts from which to pay claims by fund members.[74] 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,[75] 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.

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66 SAFA at [91].
67 SAFA at [92].
68 SAFA at [93].
69 SAFA at [94].
70 SAFA at [95].
71 SAFA at [96].
72 SAFA at [98].
73 SAFA at [99.5].
74 SAFA at [99.3].
75 SAFA at [99.2].

50. Once the premium paid by ACBF 2 was doubled, its projected cash position went from remaining positive indefinitely to $0 within four years.[77]

51. 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.[78] 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.[79] If all Fund 2 members who were eligible for payment of a cancellation benefit validly cancelled their memberships, there would have been funds available for distribution both to those members and remaining members.[80]

52. At the time of the premium increase and continuing until the end of the Relevant Period, there was a substantial risk that:[81]

    52.1. in the circumstances described in paragraphs 48 to 51 above, and paragraphs 54 to 55 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;

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

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

    52.4. the members of Fund 2 were never told, and therefore could not and did not know or understand, the matters referred to in subparagraphs 52.1 to 52.3 above, and had no way of knowing them unless explained to them by information provided by ACBF 2.

Options available to ACBF 2

53. Mr Wilson failed to consider properly or at all any alternatives to the premium increase or the arrangement with Crown.

54. Had Mr Wilson done so, 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:[82]

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

    54.2. negotiating and agreeing alternative terms with Crown;

    54.3. finding an alternative insurer;

    54.4. moving to a self-insurance arrangement;

    54.5. negotiating lower administration fees;

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77 SAFA at [99.6.1].

78 SAFA at [99.6.2].

79 SAFA at [99.6.2].

80 SAFA at [99.6.2].

81 SAFA at [101].

82 SAFA at [99.7].

54.6. attempting to increase contribution rates; and

54.7. winding up.

55. If calculations were performed at the time of the premium increase on 4 September 2017 by Mr Wilson, the result of those calculations would have been:[83]

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

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

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

55.4. If ACBF 2 had been wound up, it would have had sufficient funds to pay out all cancellation benefits and pay a further amount to all members or pay an amount to all members.

56. Mr Wilson ought to have known the fact described at paragraph 52.1 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.[84]

Effect of the premium increase on ACBF Plans and ACBF Community

Effect of the increase

57. The premium increase for ACBF 2 revealed vulnerabilities in the Crown arrangements in respect of ACBF Plans and ACBF Community.

58. This was that ACBF Plans and ACBF Community were also vulnerable to unaffordable premium increases by Crown because they were also not accumulating, or attempting to accumulate, amounts from which to pay claims by fund members.[85] They were entirely dependent on the insurance arrangement with Crown to pay claims made by members as they had no alternative source of funds to pay member claims.[86]

59. This was so in circumstances where under the insurance policies with Crown, Crown had the right to increase the premium payable by ACBF Plans and ACBF Community.[87]

60. Accordingly, if Crown had increased premiums during the Relevant Period,[88] whether by doubling those premiums as it had done for ACBF 2 or by increasing the premiums at all, the effect of the premium increase would be, in each case, that ACBF Plans and ACBF Community would immediately become insolvent.[89]

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83 SAFA at [100].

84 SAFA at [102].

85 SAFA at [103.3].

86 SAFA at [103.2]

87 SAFA at [103.1].

88 Until 23 October 2017 for ACBF Community.

89 SAFA at [103.4].

61. This is to be contrasted with the fact that, if ACBF Plans and ACBF Community self-insured, both could have remained solvent indefinitely.[90] Further, in these circumstances if ACBF Plans and ACBF Community had been brought to an end, both would have had amounts available to pay creditors or fund members.[91]

62. Mr Wilson ought to have known the facts described at paragraphs 60 to 61 above because it would have been revealed to him had he asked for analysis to be undertaken of the relationship between Crown's premiums and ACBF Plans' and ACBF Community's financial positions, which he did not do but ought to have done.[92]

63. If ACBF Plans and ACBF Community were wound up in insolvency, their respective fund members' cover would be cancelled and they would be without funeral cover.[93]

64. The members of Funds 3 and 4 were never told, and therefore could not and did not know or understand, the matters referred to in subparagraphs 58 to 63 above, and had no way of knowing them unless explained to them by information provided by ACBF Plans and ACBF Community.[94]

Options available to ACBF Plans and ACBF Community

65. Funds 3 and 4 had options available to it in lieu of continuing the Crown arrangements, namely:[95]

65.1. negotiating and agreeing alternative terms with Crown;

65.2. finding an alternative insurer;

65.3. moving to a self-insurance arrangement;

65.4. negotiating lower administration fees;

65.5. attempting to increase contribution rates; and

65.6. winding up.

B2. SECTION 180

Principles

66. 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.

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90 SAFA at [103.4].

91 SAFA at [103.5].

92 SAFA at [103.6].

93 SAFA at [103.7].

94 SAFA at [103.8].

95 SAFA at [103.9].

67. 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.[96] 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.[97]

68. Directors and officers are required to take reasonable steps to place themselves in a position to guide and monitor the management of the company.[98] 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.[99]

69. 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.[100]

70. 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.[101]

71. 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.[102]

72. 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.[103] 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.[104]

73. 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

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96 *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].

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

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

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

100 *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].

101 *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].

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

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

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

the company caused thereby.[105] 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.[106] 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).[107] 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.[108]

74. 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.[109] 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.[110] Such a question is to be answered having close regard to the "circumstances existing at the relevant time, without the benefit of hindsight, and with the distinction between negligence and mistakes or errors of judgment firmly in mind".[111]

75. 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.[112]

76. In assessing whether a director has met the requisite standard of care and skill, it may be relevant to have regard to expert evidence.[113]

Contraventions – ACBF 2

77. Section 180(1) applies to Mr Wilson as during the Relevant Period:

77.1. he was a director of each of the ACBF Entities (but only a director of ACBF Community until 23 October 2017);[114] and

77.2. he was the financial controller of the ACBF Entities.[115]

78. This was so in circumstances where, during the Relevant Period, Mr Wilson:[116]

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

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

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

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

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

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

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

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

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

114 SAFA at [66.1]-[66.4].

115 SAFA at [67]

116 SAFA at [104].

78.1. knew that in early March 2017, Mr Pattenden had told him that premiums payable by ACBF 2 to Crown were to double;

78.2. ought to have known that Mr Pattenden and Mr Law were the ultimate co-owners and co-controllers of Crown, had a direct or indirect financial interest in Crown, and benefitted financially from ACBF 2 insuring with Crown;

78.3. knew 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;

78.4. knew that on 4 July 2017 that for at least some members of Fund 2, who were getting older, the payouts per member were $15,000, and that this was hurting Crown's financial position at that time;

78.5. knew that on 4 September 2017, Mr Pattenden, Mr Law and he 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;

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

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

78.8. ought to have known that 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;

78.9. 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;

78.10. ought to have known that the members of Fund 2 did not know or understand the matters referred to in paragraphs 78.8 and 78.9 above, and had no way of knowing them unless explained to them by information provided by ACBF 2;

78.11. ought to have known at the time of the premium increase and continuing until 19 December 2017 that there was a reasonable chance that if the members of Fund 2 understood the matters referred to in paragraphs 78.8 and 78.9 above, they would cancel their membership with Fund 2;

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

78.13. ought to have known that, by causing ACBF 2 to maintain its policy with Crown at the increased premium:

(a) Mr Pattenden and Mr Law (through Crown) benefitted financially from ACBF 2 continuing to pay premiums; and

(b) preferred the financial interests of Crown, Mr Pattenden and Mr Law over the financial interests of ACBF 2 and fund members.

79. A reasonable director or officer of a corporation in ACBF 2's circumstances and who occupied the office held by Mr Wilson and had the same responsibilities, and who had knowledge of the risks to ACBF 2 and its fund members referred to in paragraph 78 above, in acting with care and diligence when considering whether:[117]

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

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

would have taken all necessary steps to:

79.3. 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;

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

(a) renegotiate the Crown insurance policy;

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

(c) find a cheaper external insurer;

(d) increase reserves from which to pay Crown;

(e) 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.

80. At all times from 4 September 2017 (the date of the decision to increase the premium) and continuing until 19 December 2017, Mr Wilson:[118]

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

80.2. 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;

80.3. failed to consider properly or at all whether there were alternative options available to ACBF 2, as described in paragraph 79.4 above, that would have been in the best interests of ACBF 2 and its fund members;

80.4. failed to pursue properly or at all any of the alternative options described in paragraph 79.4 above;

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

80.6. preferred Mr Pattenden's, Mr Law'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 4 occasions between 4 September 2017 and 19 December 2017; and

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117 SAFA at [105].

118 SAFA at [106].

80.7. 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).

81. For each of the acts and omissions described in paragraph 80 above, between 4 September 2017 and 19 December 2017, Mr Wilson:[119]

81.1. 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 Wilson, and had the same responsibilities within the corporation; and

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

Contravention – ACBF Plans

82. By 4 September 2017, and until the end of the Relevant Period, Mr Wilson:[120]

82.1. ought to have known that ACBF Plans was vulnerable to an increase in premiums by Crown in that the effect of any premium increase would be that ACBF Plans would immediately become insolvent;

82.2. ought to have known that there was a substantial risk that if ACBF Plans was wound up in insolvency, the members of ACBF Plans:

(a) would have their cover cancelled; and

(b) would be without funeral cover;

82.3. ought to have known that the members of Fund 3 did not know or understand the matters referred to in subparagraphs 82.1 and 82.2 above, and had no way of knowing them unless explained to them by information provided by ACBF Plans;

82.4. knew or ought to have known that ACBF Plans maintained its policy with Crown; and

82.5. ought to have known that, by ACBF Plans maintaining its policy with Crown giving rise to the vulnerability described in paragraph 82.1 above:

(a) Mr Pattenden and Mr Law (through Crown) benefitted financially from ACBF Plans continuing to pay premiums; and

(b) preferred the financial interests of Crown, Mr Pattenden and Mr Law over the financial interests of ACBF Plans and fund members.

83. A reasonable director or officer of a corporation in ACBF Plans' circumstances and who occupied the office held by Mr Wilson and had the same responsibilities, and who had knowledge of the risks to ACBF Plans and its fund members referred to in paragraph 82 above, in acting with care and diligence when considering whether to continue to maintain ACBF Plans' policy with Crown, would have taken all necessary steps to:[121]

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

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119 SAFA at [107].

120 SAFA at [112].

121 SAFA at [113].

83.2. pursue alternatives to ACBF Plans' insurance arrangements with Crown, including considering whether to:

(a) renegotiate the Crown insurance policy;

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

(c) find a cheaper external insurer;

(d) increase reserves from which to pay Crown;

(e) notify members of the risks to Fund 3 inherent in the arrangements with Crown; and

(f) wind up the company and pay the remaining funds to members.

84. At all times from 4 September 2017 (the date of the decision to increase the premium for ACBF 2) until the end of the Relevant Period, Mr Wilson:[122]

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

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

84.3. failed to consider properly or at all whether there were alternative options available to ACBF Plans, as described in paragraph 83.2 above, that would have been in the best interests of ACBF Plans and its fund members;

84.4. failed to pursue properly or at all any of the alternative options described in paragraph 83.2 above; and

84.5. preferred Mr Pattenden's, Mr Law's and Crown's financial interests in causing ACBF Plans to maintain its Crown arrangements.

85. For each of the acts or omissions described in paragraph 84 above, including when ACBF 2 paid the increased premium from 4 September 2017 until the end of the Relevant Period and thus presented the vulnerability for ACBF Plans described in paragraph 82.1 above, Mr Wilson:[123]

85.1. failed to discharge his duties to ACBF Plans 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 Plans' circumstances, and occupied the offices held by Mr Wilson and had the same responsibilities within the corporation; and

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

Contravention – ACBF Community

86. By 4 September 2017, and until 23 October 2017, Mr Wilson:[124]

86.1. ought to have known that ACBF Community was vulnerable to an increase in premiums by Crown in that the effect of any premium increase would be that ACBF Community would immediately become insolvent;

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122 SAFA at [114].

123 SAFA at [115].

124 SAFA at [120].

86.2. ought to have known that there was a substantial risk that if ACBF Community was wound up in insolvency, the members of ACBF Community:

(a) would have their cover cancelled; and

(b) would be without funeral cover;

86.3. ought to have known that the members of Fund 4 did not know or understand the matters referred to in subparagraphs 86.1 and 86.2 above, and had no way of knowing them unless explained to them by information provided by ACBF Community;

86.4. knew or ought to have known that ACBF Community maintained its policy with Crown; and

86.5. ought to have known that, by ACBF Community maintaining its policy with Crown giving rise to the vulnerability described in paragraph 86.1 above:

(a) Mr Pattenden and Mr Law (through Crown) benefitted financially from ACBF Community continuing to pay premiums; and

(b) preferred the financial interests of Crown, Mr Pattenden and Mr Law over the financial interests of ACBF Community and fund members.

87. A reasonable director or officer of a corporation in ACBF Community's circumstances and who occupied the office held by Mr Wilson and had the same responsibilities, and who had knowledge of the risks to ACBF Community and its fund members referred to in paragraph 86 above, in acting with care and diligence when considering whether to continue to maintain ACBF Community's policy with Crown, would have taken all necessary steps to:[125]

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

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

(a) renegotiate the Crown insurance policy;

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

(c) find a cheaper external insurer;

(d) increase reserves from which to pay Crown;

(e) notify members of the risks to Fund 4 inherent in the arrangements with Crown; and

(f) wind up the company and pay the remaining funds to members.

88. At all times from 4 September 2017 (the date of the decision to increase the premium for ACBF 2) until 23 October 2017, Mr Wilson:[126]

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125 SAFA at [121].

126 SAFA at [122].

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

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

88.3. failed to consider properly or at all whether there were alternative options available to ACBF Community, as described in paragraph 87.2 above, that would have been in the best interests of ACBF Community and its fund members;

88.4. failed to pursue properly or at all any of the alternative options described in paragraph 87.2 above; and

88.5. preferred Mr Pattenden's, Mr Law's and Crown's financial interests in causing ACBF Community to maintain its Crown arrangements.

89. For each of the acts and omissions described in paragraph 88 above, from 4 September 2017 until 23 October 2017, including when ACBF 2 paid the increased premium and thus presented the vulnerability for ACBF Community described in paragraph 86.1 above, Mr Wilson:[127]

89.1. failed to discharge his duties to ACBF Community 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 Community's circumstances, and occupied the offices held by Mr Wilson and had the same responsibilities within the corporation; and

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

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

Principles – s 181

90. 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.

91. 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.[128]

92. 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

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127 SAFA at [123].

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

objectively, involving an assessment by the court of what is reasonable in the circumstances.[129]

93. 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.[130]

94. 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.[131] A director will act for an improper purpose if the substantial purpose for the director's conduct was improper.[132] 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.[133] 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.[134]

95. 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".[135]

96. 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).[136] 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.[137]

Principles – s 182

97. 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
>
> (b) cause detriment to the corporation.

98. 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;

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129 *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].

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

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

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

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

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

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

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

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

and (c) such conduct was for the purpose of gaining an advantage or to cause a detriment to the company.[138] The prohibition against making improper use of a director's position is a reference to the purpose of the conduct, and not the effect.[139]

99. The test of whether conduct is improper is objective,[140] and looks at the character of the conduct of the director in question.[141] 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.[142] 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.[143]

100. 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.[144] It is not necessary to show that the conduct brought about that advantage.[145]

101. 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.[146] 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.[147]

102. 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.[148] 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.[149]

Contraventions – ACBF 2

103. By reason of the matters described in paragraph 78 above, and Mr Wilson's positions within the ACBF business as set out in paragraph 26 above, Mr Wilson:[150]

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

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

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

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

142 *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].

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

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

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

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

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

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

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

150 SAFA at [108].

103.1. caused ACBF 2 to maintain the arrangements with Crown from 4 September 2017 until the end of the Relevant Period without taking any or all necessary steps to consider and pursue the matters in paragraph 79.4 above;

103.2. caused 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 79.4 above; and

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

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

(a) obtain an advantage for Mr Pattenden, Mr Law and Crown with the result that he

(b) cause a detriment to ACBF 2.

104. Mr Wilson's conduct referred to in paragraph 103 above:[151]

104.1. was not in the best interests of ACBF 2;

104.2. was done for the purpose of gaining an advantage for Mr Pattenden, Mr Law and Crown which was not a proper purpose; and

104.3. resulted in Mr Wilson:

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

(b) causing detriment to ACBF 2.

105. For each of the acts or omissions described in paragraphs 103 and 104 above, between 4 September 2017 and the end of the Relevant Period, Mr Wilson:[152]

105.1. failed to exercise his powers and discharge his duties 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

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

Contravention – ACBF Plans

106. By reason of the matters described in paragraph 82 above, and Mr Wilson's positions within the ACBF business as set out in paragraph 26 above, Mr Wilson:[153]

106.1. caused ACBF Plans to maintain the arrangements with Crown from 4 September 2017 until the end of the Relevant Period without taking any or all of the necessary steps to consider and pursue the matters in paragraph 83.2 above;

106.2. failed to take all necessary steps to manage the conflict of interest that arose between Mr Pattenden's duties to ACBF Plans and Mr Pattenden's interest in Crown, or Mr Law's duties to ACBF Plans and Mr Law's interest in Crown; and

151 SAFA at [109].

152 SAFA at [110].

153 SAFA at [116].

106.3. used his position as a director or officer of ACBF Plans to:

(a) obtain an advantage for Mr Pattenden, Mr Law and Crown with the result that he

(b) cause a detriment to ACBF Plans.

107. Mr Wilson's conduct described in paragraph 106 above:[154]

107.1. was not in the best interests of ACBF Plans;

107.2. was done for the purpose of gaining an advantage for Mr Pattenden, Mr Law and Crown, which was not a proper purpose; and

107.3. resulted in Mr Wilson:

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

(b) causing detriment to ACBF Plans.

108. For each of the acts or omissions described in paragraphs 106 and 107 above, including when ACBF 2 paid the increased premium from 4 September 2017 to the end of the Relevant Period and thus presented the vulnerability for ACBF Plans described in paragraph 82.1 above, Mr Wilson:[155]

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

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

Contravention – ACBF Community

109. By reason of the matters described in paragraph 86 above, and Mr Wilson's positions within the ACBF business as set out in 26 above, Mr Wilson:[156]

109.1. caused ACBF Community to maintain the arrangements with Crown from 4 September 2017 until 23 October 2017 without taking any or all of the necessary steps to consider and pursue the matters in paragraph 87.2 above;

109.2. failed to take all necessary steps to manage the conflict of interest that arose between Mr Pattenden's duties to ACBF Community and Mr Pattenden's interest in Crown, or Mr Law's duties to ACBF Community and Mr Law's interest in Crown; and

109.3. used his position as a director or officer of ACBF Community to:

(a) obtain an advantage for Mr Pattenden, Mr Law and Crown with the result that he

(b) cause a detriment to ACBF Community.

110. Mr Wilson's conduct described in paragraph 109 above:[157]

154 SAFA at [117].

155 SAFA at [118].

156 SAFA at [124].

157 SAFA at [125].

110.1. was not in the best interests of ACBF Community;

110.2. was done for the purpose of gaining an advantage for Mr Pattenden, Mr Law and Crown, which was not a proper purpose; and

110.3. resulted in Mr Wilson:

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

(b) causing detriment to ACBF Community.

111. For each of the acts or omissions described in paragraphs 109 and 110 above, including when ACBF 2 paid the increased premium from 4 September 2017 until 23 October 2017 and thus presented the vulnerability for ACBF Community described in paragraph 86.1 above, Mr Wilson:[158]

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

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

B4. DECLARATIONS

112. 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.[159]

113. 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 occurred.

C DISQUALIFICATION ORDERS

114. 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 Wilson be disqualified from managing corporations for 10 years.

C1. RELEVANT PROVISIONS

115. Section 206C(1) is engaged where the Court declares that Mr Wilson contravened ss 180(1), 181(1) and/or 182(1) of the Corporations Act.[160] 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.

116. Section 206E(1)(a)(ii) is engaged where the Court has declared that Mr Wilson 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.[161] 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,

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158 SAFA at [126].

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

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

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

relevantly, at least twice contravened the Corporations Act (para (a)(ii)); and (b) the Court is satisfied that the disqualification is justified.

117. 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.

118. As the criteria relevant to the exercise of the Court's discretion under ss 206C and 206E are the same, nothing turns on whether disqualification is made under one or the other provision.[162]

C2. PRINCIPLES

119. 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*.[163]

120. **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.[164] 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.[165]

121. **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 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.[166] 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".[167]

122. **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.[168]

123. **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.[169] Whether a contravention is "serious" is ultimately a question of fact.[170]

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

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

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

165 See also *ASIC v GetSwift Ltd* (2023) 167 ACSR 178; [2023] FCA 100 at [64]-[65].

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

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

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

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

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

124. **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:[171]

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

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

124.3. the experience and age of the director;

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

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

125. **Sixth**, previous cases will only provide general guidance for determining a penalty or length of disqualification.

126. **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.[172] 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.[173]

127. **Eighth**, 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.[174]

128. 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.[175]

D PECUNIARY PENALTIES

129. If the declarations of contravention sought in the Agreed Proposed Orders are made, the Court may order Mr Wilson to pay a pecuniary penalty: s 1317G(1). The parties jointly submit that a penalty of **$20,000** is appropriate, for the reasons set out below.

D1. RELEVANT PROVISIONS

130. 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).

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

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

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

173 *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].

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

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

132. 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 Wilson.[176]

133. The Court may act upon the admission of fact that the conduct in this case is serious.[177] 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.[178] The potential or actual risks that Mr Wilson's contravening conduct presented to the ACBF Entities and their respective members were significant and should be considered serious by the Court.

D2. AGREED PENALTY

134. 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*[179] (***ASIC v FIIG***) and *Clean Energy Regulator v E Connect Solar & Electrical Pty Ltd*[180] and the parties adopt those principles.

135. In summary:

135.1. The High Court in *Commonwealth v Director, Fair Work Building Industry Inspectorate*[181] reaffirmed the practice of acting upon agreed penalty submissions stating:[182]

> 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.

135.2. 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.[183] 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.[184]

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176 SAFA at [111], [119], [127].

177 *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]:

178 *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].

179 [2026] FCA 92 at [55]-[58].

180 (2023) 171 ACSR 216; [2023] FCA 1082 at [33]-[40].

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

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

183 *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].

184 *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*

135.3. 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.[185] 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.[186]

135.4. 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.[187]

136. 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 making submissions as to that relief.[188] 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.[189]

D3. PRINCIPLES ON PENALTY ASSESSMENT

137. 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.[190]

138. The fundamental principles may be summarised as follows.

139. **First**, the Court's discretion to impose a penalty must be exercised judicially; that is, fairly and reasonably.[191]

140. **Second**, the primary or sole purpose of civil penalties is to achieve deterrence.[192]

141. **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

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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].

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

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

187 *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].

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

189 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].

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

191 *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].

192 *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].

the case.[193] 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".[194] 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.[195]

142. **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.[196]

143. **Fifth**, in determining the pecuniary penalty, the Court must take into account all relevant matters.[197] Facts prior to the period being penalised may be taken into account in determining the penalty in the instinctive synthesis performed by the Court.[198]

144. **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".[199]

145. **Seventh**, criminal law principles of totality, course of conduct and parity also inform the court's determination of penalty.[200] 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.[201] In these circumstances, the court may, in its discretion, penalise the acts or omissions as a single course of conduct.[202] 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.[203] Parity of penalty will be an important consideration where there are

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193 *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].

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

195 *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].

196 *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].

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

198 *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].

199 *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].

200 *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].

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

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

203 *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.

several defendants involved in the same events,[204] 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.[205] 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.[206]

E APPLICATION

146. 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.

147. **Circumstances of the contravention:** Mr Wilson was aware of ACBF 2's financial position.[207] Mr Wilson 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 the ACBF Entities and whether continuing the policy with Crown was in the best interests of ACBF Entities and their fund members.[208]

148. **Age and experience of the director:** at the time of the premium increase on 4 September 2017, Mr Wilson had been a director of the ACBF Entities for around three years, since 18 November 2014. This should be taken into account in determining the term of disqualification.

149. **Nature and extent of any loss or damage suffered:** the premium increase had a significant negative effect on the financial position of ACBF 2.[209] The impact of the premium increase, and Mr Wilson's conduct in allowing it to occur in the circumstances where the conflict existed and ACBF 2 had no other source of funds to pay member claims without insurance from Crown,[210] was that it created a substantial risk that ACBF 2 would become insolvent within approximately four or less years and would need to be wound up.[211]

150. 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.[212] In those circumstances, if fund members' cover was cancelled, they would be without funeral cover.[213] The members of

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204 *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].

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

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

207 SAFA at [67], [69.4], [79].

208 SAFA at [106.1], [106.2], [114.1], [114.2], [122.1], [122.2].

209 SAFA at [99.6], [99.7], [128].

210 SAFA at [99.3]-[99.4].

211 SAFA at [101.1].

212 SAFA at [101.2].

213 SAFA at [101.3].

Fund 2 were not told information concerning this, see paragraph 52.4 above, and had no way of knowing this information unless it was explained to them by ACBF 2.[214]

151. Further, the premium increase for ACBF 2 demonstrated ACBF Plans and ACBF Community's vulnerability to price increases from Crown. If Crown had increased premiums for ACBF Plans or ACBF Community, whether by doubling those premiums as it had done for ACBF 2 or by increasing the premiums at all, the effect of the premium increase would be, in each case, that ACBF Plans and ACBF Community would immediately become insolvent.[215]

152. If ACBF Plans and ACBF Community were wound up in insolvency, their respective fund members' cover would be cancelled and they would be without funeral cover.[216] The members of Funds 3 and 4 were not told information concerning this, see paragraph 64 above, and had no way of knowing this information unless it was explained to them by ACBF Plans or ACBF Community.[217]

153. **Deliberateness:** while Mr Wilson did not deliberately intend to breach his duties under ss 180 to 182 of the Corporations Act, Mr Wilson's conduct was deliberate in the sense that he allowed ACBF 2 to agree to increase the premium paid to Crown without conducting any enquiries into whether that decision was in the interests of members or considering any alternatives, while knowing of the conflict with Mr Pattenden and Mr Law's duties and knowing that there was a risk of an insolvency for ACBF 2 from an increase in premiums.[218]

154. **Extent of profit from the contraventions:** Mr Wilson did not profit from the contraventions.

155. **General deterrence:** a period of disqualification is necessary in this case not only for specific deterrence but also as a general deterrent.[219] By ordering a period of disqualification, the public will be protected from (and send a signal to others about) Mr Wilson's conduct in favouring the interests of Mr Pattenden, Mr Law and Crown in a way that is harmful or contrary to proper commercial standards.[220] Notwithstanding that Mr Wilson is no longer a director of the ACBF Entities and the entities are 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.[221] Further, the disqualification period is appropriate to further the requirements of general deterrence.[222]

156. **Seriousness of the conduct:** a disqualification period of 10 years correlates to the seriousness of the conduct. The parties agree that the conduct was serious continued until the end of the Relevant Period.[223]

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214 SAFA at [101.4].

215 SAFA at [103.4].

216 SAFA at [103.7].

217 SAFA at [103.8].

218 See above at paragraph 38.

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

220 *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].

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

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

223 SAFA at [111], [119], [127].

157. **Relevance of the contraventions to the entity's business:** The contraventions were central to the business of the ACBF Entities as the ACBF Entities could not pay members' claims without insurance from Crown.[224]

158. **Cooperation:** Mr Wilson cooperated with ASIC at the earliest opportunity and has cooperated with ASIC to agree a detailed SAFA setting out the underlying facts and admissions going to his liability and penalty, and agreed to the declarations set out in the Agreed Proposed Orders.[225] Through the SAFA, Mr Wilson has acknowledged and accepted 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 this proceeding.[226] Mr Wilson's admissions and co-operation also demonstrate contrition and insight into his conduct.

159. **Parity:** Mr Wilson admits his conduct contravened ss 180 to 182 over a one and three month period (for ACBF Community and ACBF 2 and ACBF Plans respectively). This comparatively shorter period of contravention, along with the fact that Mr Wilson was not the ultimate decision-maker of the ACBF business, justifies imposing a lower penalty and disqualification period than other defendants in this proceeding (in particular, Mr Pattenden).

160. **Course of conduct:** there should be three courses of conduct, one for each ACBF Entity, as the factual substratum is "unitary" for each entity and can be traced back to a single homogenous cause.[227] The parties agree that there were three contraventions of each of ss 180(1), 181(1) and 182(1), with 9 contraventions in total:[228]

161. **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 of the contraventions taken together.[229]

F COSTS AND OTHER ORDERS

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

162.1. 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

162.2. 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.

163. Mr Wilson consents to an order that he pay $5,000 towards ASIC's costs of and incidental to the proceedings.

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224 SAFA at [99.2]-[99.4], [103.2]-[103.3].

225 SAFA at [136].

226 SAFA at [136.1].

227 *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];

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

229 *ASIC v GetSwift Ltd* (2023) 167 ACSR 178; [2023] FCA 100 at [46].

Date: 16 April 2026

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