

**IN THE SUPREME COURT OF NEW SOUTH WALES**

No. of 2022 /81633

DIVISION: Equity

REGISTRY: Sydney

**IN THE MATTER OF THE ABORIGINAL COMMUNITY BENEFIT FUND PTY LIMITED ABN 57 055 222 565**

DAVID STIMPSON AS LIQUIDATOR OF THE ABORIGINAL COMMUNITY BENEFIT FUND PTY LIMITED ABN 57 055 222 565

**Plaintiff**

THE ABORIGINAL COMMUNITY BENEFIT FUND PTY LIMITED AS TRUSTEE OF THE ABORIGINAL COMMUNITY BENEFIT FUND ABN 57 055 222 565

**Defendant**

This document was eFiled on 22 Mar 2022. Final acceptance has been given.



Principal Registrar & Chief Executive Officer



**ORIGINATING PROCESS**

**A. DETAILS OF APPLICATION**

This Application is made pursuant to Section 67 of the Supreme Court Act 1970 (NSW), Section 1318 of the Corporations Act 2001, Section 90-15 of the Insolvency Practice Schedule (Corporations) (IPS) being Schedule 2 to the Corporations Act 2001 (NSW) Section 6 Trustee Act 1925 (NSW) and Rule 26 of the Uniform Civil Procedure Rules 2005 (NSW).

The Plaintiff is the sole liquidator of The Aboriginal Community Benefit Fund Pty Ltd (in liquidation), which was immediately prior to the appointment of the Plaintiff, the sole trustee of The Aboriginal Community Benefit Fund Trust established by Trust deed dated 9 May 1991.

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The Plaintiff seeks orders to take control of the Trust property.

On the facts stated in the supporting affidavit, the Plaintiff seeks the following directions and orders:

1. A direction pursuant to Section 90-15 of the Insolvency Practice Schedule (Corporations) (**IPS**) being Schedule 2 to the *Corporations Act 2001*, the Plaintiff is justified and acting reasonably in proceeding on the basis that:
  - a) The Aboriginal Community Benefit Fund Pty Ltd ABN 57 055 222 565 carried on business in its capacity as trustee of The Aboriginal Community Benefit Fund Trust ("the Trust");
  - b) All of ACBF property is held by it as trustee of the Trust; and
  - c) The Trust's creditors are creditors whose debts have been incurred by the ACBF in its capacity as trustee of the Trust.
2. An order pursuant to section 6 of the *Trustee Act 1925* (NSW) that the Plaintiff be appointed as trustee of the Trust with the necessary powers to enable the Plaintiff to wind up the Trust, including the powers to:
  - a) carry on the business of the Trust;
  - b) sell or otherwise dispose of, in any manner, all or any part of the Trust Property;
  - c) compromise any claim made against the Defendant in its capacity as trustee of the Trust or against the Trust Property on any terms the Plaintiff sees fit;
  - d) bring any claim against any party on behalf of the Trust; and
  - e) execute any tax returns, financial statements or other documents relating to the Trust.

- f) otherwise administer the Trust in terms of the Funeral Funds Act 1979 (NSW).
3. An order pursuant to section 90-15 of the IPS that the Plaintiff is able to rely on his statutory powers as liquidator of the Defendant pursuant to section 477 of the *Corporations Act 2001* (Cth) to take all necessary steps to wind up the Trust pursuant to paragraph 2 above and the Funeral Funds Act 1979 (NSW).
  4. In the alternative to Orders 2 and 3 above, an order appointing the Plaintiff as receiver and manager to the assets and undertaking of the Trust with the necessary powers under Order 2(a)- (f) above.
  5. A direction pursuant to s 1318 of the *Corporations Act 2001* (Cth) and s 90-15 of the IPS that the Plaintiff is justified and otherwise acting reasonably in proceeding on the basis that:
    - (a) the Plaintiff is entitled to be paid his remuneration, costs and expenses properly incurred from the date of his appointment as liquidator in preserving, realising or getting in the Trust Property, or in conducting the winding up of the Defendant (Remuneration and Expenses) from the Trust Property; and
    - (b) the Remuneration and Expenses include the remuneration, costs and expenses of and incidental to this Application and are to be paid in accordance with the priority specified in section 556 of the *Corporations Act 2001* (Cth).
  6. An order that the Plaintiff's remuneration, costs and disbursements (including legal costs) of and incidental to this Application be paid from

Trust Property on an indemnity basis.

7. Liberty to apply.
8. Such further or other orders as this Honourable Court sees fit.

Date: 21 March 2022



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*Paul Richard McCann  
Cornwalls NSW  
As Town Agents for  
Craig Mitchell Hall  
Hall Lawyers*

This Application will be heard by the Supreme Court of New South Wales at Law Courts Building 184 Phillips Street Sydney at 10.00 am on 25 March 2022.

**B. FILING**

Date of filing:

This originating process is filed by Hall Lawyers for the Plaintiff.

**E. SERVICE**

It is not intended to serve a copy of this originating process on any person.