

Youpla: how Aboriginal funeral fund evaded regulators despite 30 years of complaints

State and federal authorities raised concerns periodically, but fund continued to target vulnerable people until its final collapse in March



The Aboriginal Community Benefit Fund/Youpla came to the attention of both federal and state regulators from its first year of operation.

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Federal and state authorities expressed concerns about the conduct of the now-disgraced Aboriginal Community Benefit Fund (ACBF) from its very first year of operation, but failed to bring it into line despite several opportunities.

Both New South Wales Fair Trading, which oversees funeral expenses insurance funds, and the Australian Securities and Investments Commission, which oversees financial products, including insurance, raised issues with the fund, which later traded as Youpla, on a number of occasions over the past 30 years.

Successive governments also failed to bring in laws that would have subjected the product Youpla sold – funeral coverage for Indigenous Australians – to the same prudential regulations covering other types of insurance, says Samantha Rudolph, the Consumer Action Law Centre’s Aboriginal policy officer and part of the Save Sorry Business campaign.

“I think the first ever complaint made about ACBF was in 1992,” she says.

“And since then consumer groups and caseworkers, advocates have been telling each government of the issue.

“Some people that we’ve spoken with blame Asic ... but I think the consensus of the Save Sorry Business campaign is that the buck stops with the government.

“They are the ones who give the power to Asic and to other regulators. They’re the ones who write legislation. They’re the ones who can also help us get proper redress.”

Unlike most insurers, Youpla-ACBF was never regulated by the Australian Prudential Regulation Authority, which has strict rules designed to stop insurance companies going broke.

Instead, it straddled the margin between laws administered by Fair Trading and Asic, and managed to expand despite regulators raising concerns about its operation from the beginning.

ACBF/Youpla was set up in January 1992. Before the end of that year, the Fair Trading division of NSW’s Department of Consumer Affairs had taken it to the state’s supreme court to stop it promoting its funeral fund, because of concerns it was not registered and was not being operated in accordance with the state’s funeral funds law.

The then NSW minister for consumer affairs, Liberal Kerry Chikarovski, was quoted in media reports at the time saying: “At this stage the company has failed to satisfy my department that funds paid in by contributors are secure.

“It also appears that the company has been telling members that profits from the scheme would be used for Aboriginal welfare although detailed arrangements have not been spelled out.”

The department obtained an injunction against the operation of the fund ACBF ran at the time – so ACBF set up a second one that addressed the department’s concerns.

In 1994 the injunction was lifted after the company was granted an exemption to the funeral funds law that would otherwise have prevented it running a “contributory funeral benefit business”. The exemption was granted on the basis that the company would amend its business practices in a number of ways, in particular by “dispensing with provisions relating to interest free loans”.

Asic was also concerned about Youpla. In 1999, it secured a federal court order forcing ACBF to change its marketing materials by removing the Aboriginal flag and adding a disclaimer that it was a private company, not connected to the government or any Aboriginal organisation.

However, ACBF continued using the red, yellow and black colours of the Aboriginal flag to sell its insurance.

In 2004 Asic took ACBF to the federal court for hawking a financial product – that is, using door-to-door or phone sales to sell insurance.

The court found that ACBF could not take advantage of a loophole in the law that allowed companies to hawk insurance covering funeral expenses because it paid out in cash, rather than covering the actual bills incurred with a funeral director.

ACBF started paying funeral expenses instead of cash and Asic sent the company a letter saying it intended to take no further action.

Asic again considered action against ACBF in 2014. An internal memo, tendered in evidence at the financial services royal commission in 2018, shows that Asic's Indigenous Outreach Program and the team overseeing insurance companies argued an investigation into ACBF should continue because the company was continuing to cause "financial detriment" to customers and was relying on "a false Aboriginal affiliation to promote sales".

According to the memo, Asic's financial services enforcement team recommended the commission take no further action against ACBF because the legal issues it raised were complex, the enforcement team had limited resources and the team had already accepted a number of other referrals from the Indigenous team that "involve clear contraventions that are easier to pursue".

The regulator returned to the case after the financial services royal commission used ACBF as a case study in 2018.

In April 2020, the government finally closed another loophole that allowed ACBF and other funeral expenses insurance companies to operate without a financial services licence.

This meant the company was unable to take on any new customers.

In October 2020, Asic took legal action against Youpla, as it was by then known, in the federal court, accusing it of making making false or misleading statements when selling its products, including that it was owned or managed by Aboriginal people, had the approval of the Aboriginal community and that plan holders would get a lump sum payment upon death – when in fact, due to the loophole the company used to avoid regulation, they would only get reimbursed for funeral expenses they had already paid. The company denied the allegations.

Meanwhile under NSW law Youpla was required to send Fair Trading an actuarial report for each of its funds every three years and a financial report every year.

In December, Youpla's auditors for the first time qualified their report, meaning they were not able to obtain a full picture of the company's financial state.

Fair Trading took no action in response to the alarm bell rung by the auditors. Instead, it accepted the assurances of Youpla's directors that its funeral funds were solvent.

Youpla's Fund 2 collapsed that month.

A Fair Trading spokesperson said: “In the period leading up to and after Fund 2 winding up, contact between NSW Fair Trading and the abovementioned entities, as well as community stakeholder representatives, intensified significantly, with a view to determining whether it was necessary to exercise supervisory powers under the Act.”

The rest of Youpla went on to collapse in March 2022, leaving bodies sitting in the morgue because families were unable to bury loved ones.

“NSW Fair Trading acknowledges that this news and the circumstances involved are distressing and difficult for Aboriginal and Torres Strait Islander peoples and communities affected as contributors to these funeral funds,” the spokesperson said.

Asked if there was any prospect of compensation from the state government, the spokesperson said the body was “liaising with the liquidator to assess the extent of contributor’s claims”.

ASIC declined to comment. Whether the case it is pursuing can go ahead now that Youpla has collapsed will be decided in the federal court in June.

Rudolph says this is too little too late and accuses the authorities of being slow to act.

“If this was a mainstream insurer that had policyholders from the mainstream population, we believe that it wouldn’t have gone on for 30 years, the government would have stepped in and shut it down, perhaps within five years,” she said.

“It’s 2022. We’re talking about making these commitments to reconciliation and self-determination stuff, and we can’t do that if these things are still happening.”