

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/09/2018 9:56:53 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

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| Document Lodged: | Concise Statement |
| File Number: | NSD1654/2018 |
| File Title: | AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v MLC NOMINEES PTY LTD ACN 002 814 959 & ANOR |
| Registry: | NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA |



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 6/09/2018 3:06:30 PM AEST

Registrar

Important Information

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

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



Federal Court of Australia

No

of 2018

District Registry: New South Wales

Division: General

IN THE MATTER OF NULIS NOMINEES (AUSTRALIA) LIMITED

ACN: 008 515 633

Australian Securities and Investments Commission

Plaintiff

MLC Nominees Pty Ltd (ACN 002 814 959) and another named in the Schedule

Defendants

A. INTRODUCTION

1. This claim concerns the deduction of a fee from members by the trustees (**Trustees**) of two regulated superannuation funds, The Universal Super Scheme (**TUSS Fund**) and MLC Super Fund, for financial services in circumstances where the members did not receive any services and in some cases were not obliged to pay the fee. ASIC also claims the Trustees misled members about their rights not to pay the fee.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

2. Up until 30 June 2016, the First Defendant (**MLC Nominees**), was the trustee of TUSS Fund. On 1 July 2016, the Second Defendant (**NULIS**) became the trustee of the successor fund, MLC Super Fund.
3. Within each of the TUSS Fund and (from 1 July 2016) MLC Super Fund there was a Member Package called MLC MasterKey Super which was designed to assist employers to comply with their superannuation obligations to their employees.
4. MLC MasterKey Super has two divisions: MasterKey Business Super and MasterKey Personal Super.
5. The terms of MLC MasterKey Super were contained in trust deeds, product disclosure statements and other member information documents issued by the Trustees from time to time. Under these terms, an employer applied to become a Standard Employer Sponsor, and

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|---------------------|---|------|----------------|
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- once accepted, could nominate employees to become members of MasterKey Business Super and agree to the payment of fees by members.
6. Upon cessation of employment with the employer, the member was automatically transferred by the Trustees to MasterKey Personal Super.
 7. On 8 September 2012, MLC Nominees changed the fees payable by members of MasterKey Business Super and MasterKey Personal Super. Some fees previously paid by members were replaced with a fee called the **Plan Service Fee**.
 8. At all material times, the terms of the MasterKey Business Super and MasterKey Personal Super relevantly provided:
 - (a) an employer could, but was not obliged to, nominate a Plan Adviser to be linked to the employer's superannuation plan;
 - (b) if no Plan Adviser was nominated, the members within the employer's plan were not linked to a Plan Adviser and did not have to pay the Plan Service Fee;
 - (c) if there was a nominated Plan Adviser, the employer could agree with the Plan Adviser that all the members within the employer's plan would pay the Plan Service Fee to the Plan Adviser;
 - (d) in exchange for the Plan Service Fee, the Plan Adviser would provide group-based advice and financial services tailored to the needs of the employees of the employer;
 - (e) apart from the services referred to in the preceding sub-paragraph, the Plan Adviser was not obliged to provide any services in exchange for the Plan Service Fee;
 - (f) the amount of the Plan Service Fee would be agreed between the employer and the Plan Adviser up to a maximum of 1.5% pa of the account balance of the member;
 - (g) the Plan Service Fee would be deducted monthly by the Trustees and paid to the Plan Adviser;
 - (h) upon a member ceasing employment and being automatically transferred to MasterKey Personal Super:
 - i. the member had the right to turn off the Plan Service Fee by notifying the Trustee;
 - ii. unless the member elected to turn off the Plan Service Fee, the member would continue to pay the Plan Service Fee capped at 0.44% pa of the member's account balance; and
 - iii. unless turned off, the Plan Service Fee would continue to be paid to the Plan Adviser regardless of whether the Plan Adviser provided any services to the member.
 9. On 29 November 2013, the Plan Service Fee was removed for new members of MasterKey Business Super but continued to apply to existing members of MasterKey Business Super and MasterKey Personal Super as at that date.

Members with no adviser

10. From 8 September 2012 to in or around January 2017, contrary to the terms of MasterKey Business Super and MasterKey Personal Super, the Trustees made or authorised the deduction of Plan Services Fees totalling approximately \$33.8 million from the accounts of approximately 220,000 members who were not linked to a Plan Adviser (**no-adviser members**).
11. Further, between 8 September 2012 and 30 June 2016, MLC Nominees issued documents to no-adviser members, including regular account statements, which represented that the Trustee was entitled to deduct the Plan Service Fee and that the no-adviser members were obliged to pay it. The making of these representations was conduct that was false or misleading; misleading or deceptive; or likely to mislead or deceive. **Schedule A** sets out the conduct relied upon by the Plaintiff in relation to misleading no-adviser members.

Members linked to an adviser in MasterKey Personal Super

12. For members who had a Plan Adviser linked to their account, the Trustees were subject to Licensee Remuneration Agreements with each Plan Adviser's licensee which did not oblige the Plan Adviser to provide any services to members but which obliged the Trustee to pay the Plan Service Fee unless the Trustee reasonably believed that the Plan Adviser was no longer providing the services to which the Plan Service Fee related. In those circumstances, the Trustee had the right to terminate the Plan Service Fee for the linked member.
13. Upon linked members ceasing employment with the employer and being transferred by the Trustee to MasterKey Personal Super, the linked member no longer received the services to which the Plan Service Fee related, namely group-based services and financial services tailored to the needs of the employees of the former employer. Plan Advisers were not obliged to provide any other services and linked members in MasterKey Personal Super did not receive any services from Plan Advisers (at least no services which they could not already obtain free of charge from telephone, email and online customer services, which were available to all members).
14. The Trustees did not know what services, if any, Plan Advisers had agreed to provide; did not have in place a system to enable them to know whether Plan Advisers were no longer providing the services to which the Plan Service Fee related; and were not aware of any services being provided to linked members in MasterKey Personal Super. Nonetheless, the Trustees did not routinely exercise their right to terminate the Plan Service Fee for linked members when they ceased employment and were transferred by the Trustee to MasterKey Personal Super.
15. Further, documentation issued by the Trustees to members, including the three PDSs issued between 8 September 2012 and 29 November 2013, did not inform members that linked members in MasterKey Personal Super had the right to elect to turn off the Plan Service Fee simply by notifying the Trustee, even though:
 - (a) MLC Nominees' reasons for introducing the Plan Service Fee included making the fees more transparent and giving members more control over the fees they paid;
 - (b) at no time was there any reason why the Trustees could not inform members in explicit terms that linked members in MasterKey Personal Super had the right to elect to turn off the Plan Service Fee;
 - (c) the Trustees regularly chose to address in their documents the topic of fees, including the topic of "how you can reduce your fees".
16. On the contrary, the Trustees' documents included statements which positively misrepresented the rights of linked members in MasterKey Personal Super with respect to the Plan Service Fee.
17. **Schedule B** sets out the conduct relied upon by the Plaintiff in relation to misleading linked members in MasterKey Personal Super.
18. From 8 September 2012 the Trustees deducted (and NULIS continues to deduct) Plan Services Fees exceeding \$67.0 million from the accounts of approximately 305,000 linked members in MasterKey Personal Super.

C. RELIEF SOUGHT FROM THE COURT

19. With respect to each of MLC Nominees and NULIS, ASIC seeks:
 - (a) declarations of contravention of ss 912A(1)(a), 912A(1)(c) and 1041H(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), ss 12DA(1), 12DB(1)(g) and 12DB(1)(i) of the *Australian Investments and Securities Commission Act 2001* (Cth) (**ASIC Act**) and general law duties;

- (b) pecuniary penalties pursuant to s12GBA of the ASIC Act in respect of each declared civil penalty contravention; and
- (c) costs.

D. PRIMARY GROUNDS FOR THE RELIEF SOUGHT

MLC Nominees

20. **Breach of trust:** the deduction of Plan Service Fees from members who were not linked to a Plan Adviser was a breach of trust by MLC Nominees.
21. **Failures to provide financial services efficiently, honestly and fairly:** MLC Nominees failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in breach of s 912A(1)(a) of the Corporations Act by:
 - (a) deducting Plan Service Fees from the accounts of members of MLC Masterkey Super who were not linked to a Plan Adviser;
 - (b) being subject to an obligation to pay the Plan Service Fee to Plan Advisers without obtaining an obligation from the Plan Advisers to provide services to linked members in MasterKey Personal Super in exchange for the fee;
 - (c) not forming a reasonable belief or having in place a system to enable it to form a reasonable belief about whether a Plan Adviser was providing to each linked member in MasterKey Personal Super the services to which the Plan Service Fee related;
 - (d) not terminating payment of the Plan Service Fee and continuing to authorise the making of monthly deductions for the Plan Service Fee from the account balances of linked members in MasterKey Personal Super;
 - (e) not disclosing to linked members in MasterKey Personal Super that they had the right to elect to turn off the Plan Service Fee;
 - (f) issuing the PDSs which were defective within the meaning of section 1022A of the Corporations Act;
 - (g) engaging in the misleading, deceptive or false conduct referred to below;
 - (h) failing to exercise care, skill and diligence as set out below; and
 - (i) failing to act in the best interest of members as set out below.
22. **Failure to comply with financial services law:** By reason of the conduct referred to in the preceding paragraph, MLC Nominees failed to comply with the financial services law in a number of respects and thereby breached s 912A(1)(c). In addition to misleading, deceptive and false conduct as set out below, MLC Nominees:
 - (a) failed to exercise proper care, skill and diligence; and
 - (b) failed to act in the best interests of members,
 which failures not only breached general law duties and covenants incorporated into the Trust Deed which established the TUSS Fund by clause 2.1(b)(2) of the deed and ss 52(2)(b) and 52(2)(c) of the *Superannuation Industry (Superannuation) Act 1993 (SIS Act)*, but also contravened s55(1) of the SIS Act.
23. **Misleading, deceptive and false conduct:** MLC Nominees engaged in misleading or deceptive conduct within the meaning of s 12DA(1) of the ASIC Act and s 1041H(1) of the Corporations Act and made representations that were false or misleading within the meaning of s 12DB(1)(g) and (i) of the ASIC Act.

NULIS

24. **Failures to provide financial services efficiently, honestly and fairly:** The case against NULIS is the same as that against MLC Nominees, except NULIS did not issue the defective PDSs and its misleading, deceptive and false conduct was more confined. It also failed upon becoming Trustee on 1 July 2016 to form a reasonable belief that the Plan Advisers were no longer providing linked members of MasterKey Personal Super with the financial services to which that fee related (and to terminate it). These failures were failures by NULIS to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly, in breach of s 912A(1)(a) of the Corporations Act.
25. **Failure to comply with the financial services law:** NULIS also failed to comply with the financial services laws in breach of s 912A(1)(c) by failing to exercise proper care and skill and failed to act in the best interests of members in breach not only of NULIS' general law duties and the covenants included pursuant to clause 2.2(b) of the trust deed for the MLC Super Fund but also of s 55(1) of the SIS Act. NULIS' conduct also contravened the financial services law by engaging in misleading or deceptive conduct.
26. **Misleading or deceptive conduct:** NULIS engaged in misleading or deceptive conduct within the meaning of s 12DA(1) of the ASIC Act and s 1041H(1) of the Corporations Act and made representations that were false or misleading within the meaning of s 12DB(1)(g) and 12DB(1)(i) of the ASIC Act.

E. ALLEGED HARM

27. The Trustees deducted a total of approximately \$33.8 million from the account balances of approximately 220,000 no-adviser members in respect of Plan Service Fees.
28. In the period to July 2018, the Trustees deducted approximately \$67.1 million in Plan Service Fees from the account balances of approximately 305,000 linked members of MasterKey Personal Super.
29. The Trustees have remediated or agreed to remediate members in respect of these breaches. By 30 June 2017, no-adviser members received compensation in the order of \$35,900,407 (including interest and less fund tax of \$6,335,366). On 26 July 2018, NULIS announced that linked members in MasterKey Personal Super will be refunded the Plan Service Fees plus interest. Total remediation is anticipated to be \$87.1 million (including interest and less fund tax of \$15 million). NULIS also announced that the deduction of Plan Service Fees will cease on 30 September 2018 for MasterKey Personal Super members.
30. Irrespective of the remediation, the conduct of the Trustees did not promote confident and informed decision making by retail clients. Further, it promoted inefficiencies in the operation of Australia's regulated and tax payer supported superannuation arrangements, thereby exposing the wider Australian public to financial detriment as well as eroding consumer trust and confidence in the efficient administration of superannuation funds to the detriment of the wider industry.

Date: 6 September 2018



Signed by Kim Turner
Lawyer for the Plaintiff

Schedule A

Conduct by MLC Nominees which constituted misrepresentations about the Plan Service Fee payable by no-adviser members

1. In the period 4 July 2012 to 12 April 2013, MLC Nominees sent a letter to existing no-adviser members (SENS for Project SWIFT, Project Encompass and the TERP transfer) which letter, under the heading "Your new fees", listed the Plan Service Fee as a fee that would apply to the no-adviser member's account on and from the date specified.
2. Between 8 September 2012 and 29 November 2013, MLC Nominees issued new no-adviser members with a "welcome kit" which listed "current fees" by type and amount/percentage and included the Plan Service Fee.
3. Between 8 September 2012 and 30 June 2016, MLC Nominees issued to no-adviser members annual statements which listed "current fees" by type and amount/percentage and included the Plan Service Fee.
4. At no place in any of the correspondence referred to above did MLC Nominees state that, despite listing the Plan Service Fee as a "new fee" or a "current fee":
 - a. the Trustee is not entitled to deduct the Plan Service Fee from the no-adviser member's account; and
 - b. the no-adviser member is not obliged to pay the Plan Service Fee.

Schedule B

Conduct by MLC Nominees and NULIS which constituted misrepresentations about the Plan Service Fee payable by linked members in MasterKey Personal Super

1. MLC Nominees issued PDSs for MasterKey Business Super (which also applied to MasterKey Personal Super) on 10 September 2012, 19 November 2012 and 1 July 2013 which were successively available on MLC Nominees' public website. Each of the three PDSs:

(a) stated on page 5:

"If you leave your employer or stop making contributions, the balance of your account may be transferred to MLC MasterKey Personal Super. The fees, costs and rebates will vary from those you pay with MLC MasterKey Business Super and are generally higher."

(b) stated on page 5:

"Fees your employer negotiates with the Plan adviser

There are a number of ways your employer can choose to remunerate your Plan adviser for the services they provide. The actual fees you pay for this are in your **Welcome Kit**.

In addition to the Adviser contribution fee in the table, the following fees can be charged:

Plan service fee

A fee of up to 1.5% pa of your account balance may be deducted monthly from your account balance and paid to your Plan adviser.

The fee is for providing financial services that are tailored to the needs of the employees in your Plan.

Insurance commission

A commission of up to 23.65% of the insurance premium can be paid to your Plan adviser.

[or, for each of the PDSs dated 19 November 2012 and 1 July 2013, the below statement was inserted in place of that immediately above:

"Generally a commission of up to 23.65% of the insurance premium can be paid to your Plan Adviser.

For members migrated from certain products, such as Employer Super, a commission of up to 27.50% of the insurance premium may be paid to your Plan adviser.”]

Fees you can negotiate with your financial adviser

Adviser service fee

If you wish, you can have amounts deducted from your account to pay fees to your financial adviser for their services.

This fee will be in addition to the other fees described in the **Fee Flyer**.

Any arrangement you have should be detailed in the Statement of Advice provided by your financial adviser.”

(c) included a Fee Flyer (which formed part of the PDS) which stated on page 5:

“Fees your employer negotiates with the Plan adviser

There are a number of ways your employer can choose to remunerate your Plan adviser for the services they provide. The actual fees you pay for this are in your **Welcome Kit**.

Adviser contribution fee

We deduct up to 5.88% of contributions to pay your Plan adviser.

Your employer may negotiate a different amount for employer and personal contributions.

Plan service fee

A fee of up to 1.5% pa of your account balance may be agreed for group-based advice. It may be a dollar amount, provided it doesn't exceed this limit.

This may be deducted monthly from your account and paid to your Plan adviser.

The fee is for providing financial services that are tailored to the needs of the employees in your company.

Insurance commission

A commission of up to 23.65% of the insurance premium can be paid to your Plan adviser.

[or, for each of the PDSs dated 19 November 2012 and 1 July 2013, the below statement was inserted in place of that immediately above:

“Generally a commission of up to 23.65% of the insurance premium can be paid to your Plan Adviser.

For members migrated from certain products, such as Employer Super, a commission of up to 27.50% of the insurance premium may be paid to your Plan adviser.”]

Fees you can negotiate with your financial adviser

There are a number of ways you can choose to pay your financial adviser for their services.

Adviser contribution fee – MLC MasterKey Personal Super

When you transfer to MLC MasterKey Personal Super, the Adviser contribution fee will cease.

Plan service fee – MLC MasterKey Personal Super

Your Plan service fee will continue under MLC MasterKey Personal Super and will be capped at 0.44%.

Adviser service fee

If you wish, you can have amounts deducted from your account to pay fees to your financial adviser.

This fee will be in addition to the other fees described in the Fees and costs section.

Adviser remuneration

Advisers may also receive alternative forms of remuneration, such as the costs of maintaining their professional development qualifications. This is paid from the Administration fee and is not an additional cost to you. Actual payments are recorded in registers that you can view on request.”

[or, for the PDS dated 1 July 2013, the below statement was inserted in place of that immediately above:

“Advisers may also receive alternative forms of remuneration, such as conferences and professional development seminars that have a genuine education or training purpose. This is paid from the Administration fee and is not an additional cost to you. Actual payments are recorded in registers that you can view on request.”

- (d) did not state that linked members in MasterKey Personal Super had the right to elect to turn off the Plan Service Fee.
- (e) did not state that linked members in MasterKey Business Super would have the right to elect to turn off the Plan Service Fee upon being transferred to MasterKey Personal Super.

2. Prior to 8 September 2012, MLC Nominees sent a letter to each linked member in MasterKey Personal Super which explained, amongst other things, upcoming changes to fees and which:
- (a) listed "your new fees" by type and either amount or percentage, including a percentage for Plan Service Fees;

(b) stated:

"How you can further reduce your fees

If you consolidate your super or make additional contributions, and your account balance reaches \$50,000, we'll waive your weekly Administration fee. You also have the option to consolidate any insurance you have through other super accounts with the insurance you hold with us

Your Investment fees depend on the investment options you choose and these can vary between 0.25% and 4.03% of your account balance. You may want to speak with your adviser about this and compare your Investment fees with other options in the Investment Menu."

(c) did not state that the linked member had the right to elect to turn off the Plan Service Fee.

3. Enclosed with the letter referred to in the preceding paragraph, MLC Nominees sent each linked member in MasterKey Personal Super a reference guide dated 1 June 2012 which:

(a) stated on page 6:

"Plan service fee

Up to 1.5% pa of your account balance. It may be a dollar amount, as long as it doesn't exceed this limit.

It is deducted monthly from your account and is paid to your adviser.

You can negotiate a lower fee with your adviser."

(b) stated on page 10:

"How you can reduce your fees

If you consolidate your super or make additional contributions, and your account balance reaches \$50,000, we'll waive your weekly Administration fee. You also have the option to consolidate any insurance you have through other super accounts with the insurance you hold with us.

Your Investment fees depend on the investment options you choose and these can vary between 0.25% and 4.03% of your account balance. In general, higher Investment fees are charged if there is an active manager using sophisticated investment techniques. You may want to speak with your adviser about this and compare your Investment fees with other options in the Investment Menu."

- (c) did not state that the linked member had the right to elect to turn off the Plan Service Fee.
- 4. Prior to 8 September 2012, MLC Nominees sent a letter to each linked member in MasterKey Business Super which explained, amongst other things, changes to fees and which:
 - (a) listed "your new fees" by type and either amount or percentage, including a percentage for Plan Service Fees;
 - (b) stated:
- (c) did not state that the linked member had the right to elect to turn off the Plan Service Fee upon the linked member being transferred to MasterKey Personal Super.
- 5. Enclosed with the letter referred to in the preceding paragraph, MLC Nominees sent each linked member in MasterKey Business Super a reference guide dated 1 June 2012 which:
 - (a) stated on page 9:

"How you can reduce your fees

If you consolidate your super or make additional contributions, and your account balance reaches \$50,000, we'll waive your weekly Administration fee. You also have the option to consolidate any insurance you have through other super accounts with the insurance you hold with us.

Your Investment fees depend on the investment options you choose and these can vary between 0.25% and 4.03% of your account balance. In general, higher Investment fees are charged if there is an active manager using sophisticated investment techniques. You may want to speak with your Plan adviser about this and compare your Investment fees with other options in the Investment Menu."

- (b) stated on page 10:

"Plan service fee

This fee is up to 1.5% pa of your account balance. It may be a dollar amount, as long as it doesn't exceed this limit.

It is deducted monthly from your account and paid to your Plan adviser.

The fee is for providing financial services that are tailored to the needs of the employees in your company.

The Plan service fee is the Asset based commission plus the Employer service fee.”

(c) stated on page 11:

“Changes when you leave your employer

If you leave your employer, we’ll automatically transfer your super account to MLC MasterKey Personal Super.

The overall changes to your fees and costs will be:

- your Administration fee may increase as you will no longer be part of an employer Plan
- any Adviser contribution fee will cease
- any Plan service fee will be capped at 0.44%, and
- your Insurance commission will be 23.65%.

Other fees and costs will remain the same at the time of the transfer.”

(d) did not state that the linked member had the right to elect to turn off the Plan Service Fee upon the member being transferred to MasterKey Personal Super.

6. During the period 17 September 2012 to 12 October 2012, MLC Nominees sent to each person to be transferred to MasterKey Personal Super pursuant to Project Encompass a letter which explained, amongst other things, changes to fees and which:

(a) listed “your new fees” by type and amount or percentage, including a percentage for the Plan Service Fee;

(b) stated:

“How you can further reduce your fees

Your Investment fees depend on the investment options chosen and these can vary between 0.25% pa and 4.32% pa of your account balance. You may want to compare your Investment fees with other options in the Investment Menu or speak with your adviser about this.”

(c) even if the recipient of the letter was to become a linked member in MasterKey Personal Super, did not state that the recipient would have the right to elect to turn off the Plan Service Fee.

7. During the period 17 September 2012 to 12 October 2012, MLC Nominees sent to each person to be transferred to MasterKey Business Super pursuant to Project Encompass a letter which explained, amongst other things, changes to fees and which:

(a) listed “your new fees” by type and either amount or percentage, including a percentage for Plan Service Fees;

(b) stated:

"How you can reduce your fees

Your Investment fees depend on the investment options chosen and these can vary between 0.25% pa and 4.32% pa of your account balance. You may want to compare your Investment fees with other options in the Investment Menu or speak with your adviser about this."

(c) even if the recipient of the letter was to become a linked member in MasterKey Business Super, did not state that the recipient would have the right to elect to turn off the Plan Service Fee upon being transferred to MasterKey Personal Super.

8. Enclosed with the letters referred to in the preceding two paragraphs, MLC Nominees sent each person to be transferred to MLC MasterKey Super a reference guide dated 1 September 2012 which:

(a) stated on page 19:

"How you can reduce your fees

If you consolidate your super or make additional contributions, and your account balance reaches \$50,000, we'll waive your weekly Administration fee. You also have the option to consolidate any insurance you have through other super accounts with the insurance with us.

Your Investment fees depend on the investment options you choose and these can vary in Business Super between 0.25% pa and 4.32% pa of your account balance. In general, higher Investment fees are charged if there is an active manager using sophisticated investment techniques. You may want to compare your Investment fees with other options available in the Investment Menu on mlc.com.au/pds/mkbs or speak to your adviser about this."

(b) stated on page 20:

"If you leave your employer, we'll automatically transfer your super account to Personal Super – see pages 23 to 25 for the fees that will apply to you in Personal Super from 8 December 2012."

(c) with reference to MasterKey Business Super, stated on page 21:

"Plan service fee

The Adviser services fee will be transferred into a Plan service fee, which can be up to 1.5% pa of your account balance, payable in addition to the Administration fee. It may be a dollar amount, as long as it doesn't exceed this limit.

It is deducted monthly from your account and paid to your Plan adviser.

The fee is for providing financial services that are tailored to the needs of the employees in your company."

(d) with reference to MasterKey Personal Super, stated on page 25:

"Plan service fee

The Adviser services fee will be transferred into a Plan service fee, which can be up to 1.5% pa of your account balance. It may be a dollar amount, as long as it doesn't exceed this limit.

It is deducted monthly from your account and paid to your adviser.

You can negotiate a lower fee with your adviser."

(e) did not state that linked members in MasterKey Personal Super had the right to elect to turn off the Plan Service Fee.

(f) did not state that linked members in MasterKey Business Super would have the right to elect to turn off the Plan Service Fee upon the member being transferred to MasterKey Personal Super.

9. During the period 22 March 2013 to 12 April 2013, MLC Nominees sent to each person to be transferred from TERP to MasterKey Personal Super a letter which explained, amongst other things, changes to fees and which:

(a) listed "your new fees" by type and either amount or percentage;

(b) stated:

"Plan service fee ☒ % pa of your account balance

You can reduce your Plan service fee. To discuss this please contact your adviser or call us after the move."

(c) even if the recipient of the letter was to become a linked member in MasterKey Personal Super, did not state that the recipient would have the right to elect to turn off the Plan Service Fee.

10. During the period 22 March 2013 to 12 April 2013, MLC Nominees sent to each person to be transferred from TERP to MasterKey Business Super a letter which explained, amongst other things, changes to fees and which:

(a) listed "your new fees" by type and either amount or percentage;

(b) stated:

"Plan service fee ☒ % pa of your account balance

If you want to amend your Plan service fee please contact your Plan adviser or call us after the move."

- (c) even if the recipient of the letter was to become a linked member in MasterKey Business Super, did not state that the recipient would have the right to elect to turn off the Plan Service Fee upon the member being transferred to MasterKey Personal Super.
11. Enclosed with the letters referred to in the preceding two paragraphs, MLC Nominees sent each person to be transferred to the MLC MasterKey Super a reference guide which:
- (a) starting on page 10, provided information about "Fees you pay";
 - (b) stated on page 11:

"How you can reduce your fees

The \$1.50 portion of the Administration fee won't apply if your account balance reaches \$50,000. You can increase your balance by consolidating your other super accounts or making additional contributions.

You may want to compare your Investment fees with other options available in the Investment Menu on **mlc.com.au/TERP**. You may want to speak to your adviser about this."

- (c) also stated on page 11:

"Plan service fee

0.33% pa (or 0.22% pa if your employer's Plan used to be with National Flexi Super). It's deducted monthly from your account and paid to your Plan adviser."

- (d) did not state that linked members in MasterKey Personal Super had the right to elect to turn off the Plan Service Fee.
 - (e) did not state that linked members in MasterKey Business Super had the right to elect to turn off the Plan Service Fee upon the member being transferred to MasterKey Personal Super.
12. Between 8 September 2012 and 29 November 2013, MLC Nominees issued to each person who became a new linked member in MasterKey Business Super a "welcome kit" which listed "current fees" by type and amount/Percentage.
13. MLC Nominees issued a "porting kit" to each linked member in MasterKey Business Super who was transferred to MasterKey Personal Super between 8 September 2012 and 30 June 2016 which:
- (a) listed "your new account fees" by type and amount/Percentage, including a percentage for the Plan Service Fee; and
 - (b) did not state that the linked member now had the right to elect to turn off the Plan Service Fee.

14. Between 8 September 2012 and 30 June 2016, MLC Nominees issued to linked members annual statements which listed “current fees” by type and amount/percentage and included the Plan Service Fee.
15. At no time prior to 1 July 2016, including when a linked member was transferred from MasterKey Business Super to MasterKey Personal Super, did MLC Nominees inform the linked member that he or she had the right to elect to turn off the Plan Service Fee.
16. From 1 July 2016 NULIS issued a “porting kit” to each linked member in MasterKey Business Super who was transferred to MasterKey Personal Super which:
 - (c) listed “your new account fees” by type and amount/Percentage , including a percentage for the Plan Service Fee; and
 - (d) did not state that the linked member now had the right to elect to turn off the Plan Service Fee.
17. From 1 July 2016, NULIS issued to linked members annual statements which listed “current fees” by type and amount/percentage and included the Plan Service Fee.
18. At no time after 1 July 2016, including when a linked member was transferred from MasterKey Business Super to MasterKey Personal Super, did NULIS inform the linked member that he or she had the right to elect to turn off the Plan Service Fee.

Schedule

Federal Court of Australia

No

of 2018

District Registry: New South Wales

Division: General

IN THE MATTER OF NULIS NOMINESS (AUSTRALIA) LIMITED

ACN: 008 515 633

Defendants

Second Defendant:

NULIS Nominees (Australia) Limited (ACN 008 515 633)

Date: 6 September 2018