

ADDENDUM: CLARIFICATIONS, CORRECTIONS AND UPDATE TO REFERENCES

1. This Addendum sets out some clarifications and corrections to the version of the Closing Submissions of Counsel Assisting published on 24 August 2018. It also explains the update to references within the footnotes of the Closing Submissions.
2. The version now published incorporates the corrections and updates to references explained in paragraphs [4] and [5] below.
3. Paragraphs [175] (concerning Australian Super), [254] (concerning Energy Super), [436] (concerning CSF) and [468] (concerning OPC and Oasis) each use the expression “not open” in relation to possible findings of misconduct or conduct falling short of community standards and expectations. For the avoidance of doubt, those paragraphs are intended to convey, and should be understood as meaning, that Counsel Assisting submit that the preferable conclusion on the relevant evidence is that the conduct was not misconduct or conduct falling short of community standards and expectations.
4. The following corrections have been made to the text of the Closing Submissions:
 - (a) the final section has been updated to be section “T” rather than section “U”;
 - (b) formatting errors in headings, footnotes and quotes have been corrected;
 - (c) in paragraph [8], the third sentence has been replaced with the following sentence:

The asset based commission was an ongoing commission charged as a percentage of the members’ balance and included in the management or administration fee,^[fn 4] while the employer service fee was a fee agreed between an employer and their adviser to be charged for the provision of ongoing services to the employer and their employees.^[fn 5]
 - (d) in paragraphs [13], [21] and [667], the text extracted from the relevant source has been corrected;
 - (e) in paragraph [26]:
 - (i) the spelling of Mr Damian Murphy’s name has been corrected;

- (ii) in the fourth line, the word “members” has been replaced with “member”;
and
- (iii) in the fifth last line, the word “FAQ” has been replaced with “Q&A”.
- (f) in paragraph [27] in the fourth last line, the word “was” has been replaced with “were”;
- (g) in paragraph [28], the acronym “APRA” has been replaced with “ASIC”;
- (h) in paragraph [37], the word “an” has been added to the second last line;
- (i) in paragraph [49], the word “was” has been added to the fourth last line;
- (j) in paragraph [78], in the second line, the word “principal” has been replaced with “principle”;
- (k) in paragraph [80], in the third line, the word “for” has been replaced with “of”;
- (l) in paragraph [88], in the first line, the second appearing “on” has been deleted;
- (m) in paragraph [120], in the second last line, the word “were” has been replaced with “was”;
- (n) in paragraph [147], in the fourth line, the word “in” has been deleted;
- (o) in paragraph [159], the word “South” has been replaced with “Southern”;
- (p) in paragraph [168], the word “of” has been added to the second line;
- (q) in paragraph [173], the last sentence has been replaced with the following sentence:

AustralianSuper’s principal concern about those foreshadowed legislative changes to the default fund system was that they would be to the disadvantage of members due to the risk of employers joining lower performing funds as well as the impacts on the scale of the fund if it lost members.^[fn 271]
- (r) in paragraph [180.2], in the first line, the acronym “IFL” has been replaced with “IOOF Holdings”;

- (s) in paragraph [200.2], the words in parentheses have been deleted;
- (t) in paragraph [228.3], the words “of the” have been added between “s 12DA” and “Act”;
- (u) in paragraph [250], the word “Equisuper” has been corrected;
- (v) in paragraph [256], the words “of ADAs following” have replaced the word “to” in the last sentence;
- (w) in paragraph [261], the word “is” has been added to the second sentence;
- (x) in paragraph [301] the word “SIS” had been added to the second sentence;
- (y) in paragraph [346] the word “on” has been deleted in the last sentence;
- (z) in paragraph [359] the number “2001” has been removed from the first sentence;
- (aa) in paragraph [375.5] the words “Australian Financial Service Licence” have been added;
- (bb) in paragraph [381] the word “advice” has been added to the last sentence;
- (cc) in paragraph [388.2] the words “a failure to” have been added to the last sentence;
- (dd) in paragraph [390], the words “the SIS” have been replaced with the words “Superannuation Industry (Supervision)”, the word “Corporations” has been added to the third and fourth sentences and the word “licensee” has been added to the last sentence;
- (ee) in paragraph [395] the words “of the Corporations Act” have been added to the last sentence;
- (ff) in paragraphs [396], [617], [653], [660] the word “Commission” has been replaced with the word “Commissioner” wherever occurring;
- (gg) in paragraph [434] the word “that” has been removed from the final sentence;

- (hh) in paragraphs [478.1] and [478.2] the word “billion” has replaced the word “million”;
 - (ii) in paragraph [552] the words “accrued default amounts” have been deleted from the last sentence;
 - (jj) in paragraph [741], the words “the to narrow as” has been replaced with “the regulatory outcome as”;
 - (kk) Annexure C to the Closing Submissions has been updated to ensure each fund name is fully visible and a consistent colour scheme has been used; and
 - (ll) otherwise minor typographical errors have been corrected.
5. The footnotes to the Closing Submissions have been updated to:
- (a) incorporate exhibit numbers and descriptions for documents that had not previously been allocated an exhibit number;
 - (b) add Document IDs for documents that had been identified by exhibit number alone;
 - (c) insert page numbers where page numbers were missing; and
 - (d) insert additional evidence references to the following footnotes:
 - (i) 4;
 - (ii) 34; and
 - (iii) 430;
 - (e) otherwise correct minor typographical errors.

COUNSEL ASSISTING

28 August 2018.