

WRITTEN SUBMISSIONS OF CSF PTY LIMITED

1. CSF is amongst Australia's best-performing superannuation funds and is recognised for its investment competence, high levels of service and effective member engagement. Independent ratings agencies have consistently rated CSF as one of the best performing funds over the last 10 years.¹
2. Counsel Assisting has made submissions² in respect of three matters relating to CSF. These submissions address each of those three matters.³
3. First, in respect of the proposed merger between CSF and SCS, CSF confirms that merger discussions are ongoing.⁴ Further, CSF submits that, in addition to the matters identified by Counsel Assisting in support of the submission that it is "not open"⁵ to find any misconduct or conduct falling short of community standards and expectations, it is also appropriate for the Commission to consider the differences which exist between the business operations of CSF and SCS. Those differences are what Mr Haysey described during his evidence as CSF's "*structural arrangements*".⁶
4. In that regard, CSF's business includes not only its superannuation operations (being a master trust constituted currently by two divisions known as Catholic Super and MyLife MySuper) but also banking services and financial advice. For SCS's part, its operations do not include multiple superannuation divisions, operating within a master trust structure. Nor do they include banking or financial advice operations.
5. It is as a result of these differences that CSF has sought to ensure (in the best interests of the members of both CSF and SCS), that the board and management of any merged fund accurately reflects the significant expansion to the SCS business that would arise from any merger.
6. Put another way, CSF has taken the view that it matters significantly to the interests of the members of both funds that the board and management of any merged fund possess the necessary skills to operate not only a superannuation fund, but also the master trust divisions and banking and financial advice operations that are part of CSF's structural arrangements.
7. Secondly, in respect of Counsel Assisting's submission that CSF may have breached *Prudential Standard SPS 521*, CSF submits that any proper consideration of that issue should also include consideration of the following matters:
 - a. at all times during the relevant conflict, CSF had policies and procedures in place relating to the management of conflicts within the CSF business;
 - b. whilst those policies and procedures were not fully applied in respect of the relevant conflict, the conflict was identified and managed from the time it arose by CSF's Chief Executive Officer. Furthermore, from at least 2015 (when the board was first advised of the conflict) the board was given assurances by the CEO in respect of his management of the conflict, including from the time the conflict first arose;

¹ Exhibit 5.238, Witness Statement of Peter Haysey dated 24 July 2018, 5 [27]-[28].

² At paragraph 401 and following of Counsel Assisting's written submission dated 24 August 2018 (incorporating addendums made by Counsel Assisting on 28 August 2018).

³ Adopting the defined terms used by Counsel Assisting in their written submission.

⁴ Transcript, Peter James Haysey, 15 August 2018, 5012.

⁵ At paragraph 436 of Counsel Assisting's written submission.

⁶ Transcript, Peter James Haysey, 15 August 2018, 5011/31.

- c. any instances where the conflict was managed contrary to the assurances that were given to the board occurred without the knowledge of the board. In particular, the instances of sharing information identified by Counsel Assisting⁷ occurred in circumstances where the relevant employee acted in a clandestine manner contrary to the structures that had been formulated. The employment of that employee was terminated by CSF on 22 August 2018;
 - d. there is no evidence to suggest (nor does Counsel Assisting seek to assert) that the relevant conflict resulted in an outcome that was contrary to the best interests of the beneficiaries of the fund.⁸ Rather, it is submitted that the relevant relationship has, notwithstanding the conflict, been commercially advantageous for CSF and thereby the beneficiaries, particularly in respect of CSF's strategy to grow the fund in the area of early childhood education.⁹ Notwithstanding this commercial benefit, the relationship the subject of the conflict is being reviewed by an independent external service provider (PWC);
 - e. consistent with Mr Haysey's acknowledgment of the conflict at the outset of his evidence,¹⁰ CSF has also commissioned an independent review of its conflict management processes, procedures and policies more generally. This review will consider the reasons why the relevant conflict (and any other conflicts which might be identified by the review) was not reported and managed pursuant to the current suite of CSF policies and procedures. It will also consider the adequacy of those policies and procedures.
8. Having regard to these matters, CSF submits that any breach of SPS 521 which may have occurred by reason of the relevant conflict should be considered:
- a. at the lower end of the scale of seriousness;
 - b. not one which resulted in detriment to the beneficiaries; and
 - c. an issue which CSF is committed to ensuring does not occur again.
9. Thirdly, in respect of the use of corporate credit cards, CSF submits that the "longstanding practice" referred to by Counsel Assisting¹¹ (which was also noted as having ceased), at all times also included an expectation that senior executive staff promptly repay any instances of personal expenditure.
10. The initial findings of the review of corporate credit card use referred to by Mr Haysey during his evidence¹² have confirmed that the repayment expectation has been complied with. The only exception related to the employee whose employment was terminated on 22 August 2018. CSF intends to seek restitution in respect of the amounts incurred by that individual which were personal expenditure unrelated to the business operations of CSF and which have not been repaid.

Justin Brereton
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31 August 2018

⁷ At paragraph 426 of Counsel Assisting's written submission.

⁸ See generally SPG 521, paragraph 2.

⁹ Exhibit 5.238, Witness Statement of Peter James Haysey dated 3 August 2018 [19]-[22].

¹⁰ Transcript, Peter James Haysey, 15 August 2018, 4997/14.

¹¹ At paragraph 435 and following of Counsel Assisting's written submission.

¹² Transcript, Peter James Haysey, 15 August 2018, 5021.