

## **NAB taken to court by ASIC over fees for no service**

Last Thursday ASIC commenced proceedings in the Federal Court against two of NAB's wealth management entities, NULIS Nominees (Australia) Limited (**NULIS**) and MLC Nominees Pty Ltd (**MLC**) for failing to provide superannuation members services for fees they had been charged. ASIC is seeking declarations of contravention and a civil penalty.

ASIC alleges both entities misled members of MLC MasterKey Super products, and deducted approximately \$33m Plan Service Fees from 220,000 members of MLC MasterKey Business and MLC MasterKey Person Super who did not have a Plan Adviser.

NAB also deducted approximately \$67m Plan Service Fees from 300,000 members of MLC MasterKey Personal Super where Plan Advisers were not required to provide services and members did not receive services.

ASIC alleges that MLC Nominees and NULIS:

- contravened s912A(1)(a) of the *Corporations Act 2001* (**Corporations Act**) by failing to ensure that its financial services were provided efficiently, honestly and fairly when it deducted approximately \$33m Plan Service Fees from 220,000 No-Adviser Members;
- made false or misleading representations to No-Adviser Members in contravention of ss 12DB, 12DA of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**) and s1041H of the *Corporations Act* by representing that it was entitled to deduct the Plan Service Fee and the No-Adviser Member was obliged to pay it when there was no such obligation;
- contravened s912A(1)(a) of the *Corporations Act* when deducting approximately \$67.1m Plan Service Fees from 300,000 members of MLC MasterKey Personal Super (**Linked Members**) in circumstances where it did not oblige Plan Advisers to provide services and members did not receive services;
- made false or misleading representations in contravention of s12DB and s12DA of the *ASIC Act* by not disclosing that Linked Members in MLC Masterkey Personal Super had the right to turn off the Plan Service Fee; and
- contravened s912A(1)(c) of the *Corporations Act* by failing to comply with financial services laws, including issuing defective disclosure documents within the meaning of s1022A of the *Corporations Act* and failing to exercise the degree of skill, care and diligence as a prudent trustee would exercise and failing to act in the best interests of members in breach of its general law duties and the *Superannuation Industry (Supervision) Act 1993* when making the fee deductions and alleged misrepresentations to members.