

Senate Economic References Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

Improving consumer experiences, choice, and outcomes in Australia's retirement system

20 February 2025

Division/Agency: Australian Prudential Regulation Authority
Question No: APRA QoN5
Topic: Cbus
Reference: Written
Senator/Member: Senator Andrew Bragg

Question:

Cbus will publish a rectification plan prepared by Cbus to address weaknesses in governance and expenditure processes identified by an independent review as required under the additional licence conditions imposed by APRA in August 2024.

1. What expenditure weaknesses at Cbus were exposed by APRA's investigations?
2. What governance weaknesses at Cbus were exposed by APRA's investigations?
3. What additional licence conditions were imposed by APRA?
4. When were these additional licence conditions due to be met by Cbus?
5. Have these been met by Cbus?
6. If not, why not? What penalties has APRA imposed upon Cbus for the breaches?

Former Australian Competition and Consumer Commission chairman Graeme Samuel, commissioned to undertake a review of Cbus governance in 2015 and was involved in APRA's 2019 Capability Review, made comments regarding Cbus Chair and Labor National President, Wayne Swan, recently.

In comments to the AFR in August 2024, Mr Samuel said:

"It's a very powerful position to hold as Chair. It sets the tone and culture of the organisation. If they've got a tendency or history towards supporting certain groups, then you've got a problem. And Wayne Swan is the perfect example of a political operative, so then you've got to question the absolute independence of the chair."

7. Do APRA believe Mr Swan has a conflict of interest, as Labor's National President and Cbus Chair? Given that Cbus makes payments to unions that make payments to Labor.

Answer:

1 – 6

Licence conditions

In August 2024, APRA imposed additional licence conditions on Cbus requiring Cbus to engage an independent expert to conduct a review in relation to the requirements under Prudential Standard SPS 520 Fit and Proper and the trustees' compliance with the duty to act in the best financial interests of beneficiaries in making expenditure decisions.

APRA also required Cbus to publish the independent review, which Cbus did in December 2024. A copy of the independent review is available here:

<https://www.cbussuper.com.au/content/dam/cbus/files/governance/reporting/deloitte-independent-review-report.pdf>

This review identified several opportunities for improvement that could be made in respect of both the fit and proper processes and the governance and design of the policies and frameworks relating to compliance with the best financial interests duty.

Under the additional licence conditions Cbus was also required to submit to APRA a rectification plan to address concerns identified. This rectification plan was published in February 2025:

<https://www.cbussuper.com.au/content/dam/cbus/files/governance/reporting/cbus-rectification-plan.pdf>

There were several milestones under the licence conditions that Cbus was required to comply with, which they have done to date.

Investigation and CEU

In February 2025, APRA announced¹ that it had commenced an investigation into Cbus and had agreed a Court Enforceable Undertaking (CEU) with Cbus to address (amongst other matters) deficiencies with its approach to operational risk management. If Cbus fails to comply with the terms of the CEU, it can apply to the Federal Court to enforce its terms.

APRA's investigation is exploring possible breaches of the Superannuation Industry (Supervision) Act 1993 (SIS Act) with a focus on expenditure management practices. As the investigation is presently underway, it would not be appropriate for further comment.

7.

In relation to matters of director independence and conflicts of interest, trustees must comply with the provisions within the SIS Act as well as APRA's prudential framework. SPS 521 Conflicts of Interest which sets out APRA's requirements for the identification, avoidance and management of conflicts of duty and interest by trustees so that beneficiaries' interests are put above all else.

APRA requires trustees to implement an effective conflicts management policy. APRA expects that an effective conflicts management policy will enable the trustees to identify, assess, mitigate, manage and monitor actual and potential conflicts of interest. Further, the SIS Act requires that where actual conflict arises and has not been avoided, beneficiaries' interests must be prioritised over duties and interests of all other persons.

It is instructive to note the view the Court held in *Australian Prudential Regulation Authority v Kelaher* [2019] FCA 1521 (20 September 2019), "The no conflicts covenant is not about avoiding conflicts of interest. Conflicts of interest are inevitable. It is about managing conflicts of interest. And the conflicts which need to be managed are actual conflicts which have the capacity to significantly impact on the duty to act in the best interests of beneficiaries. Potential or theoretical conflicts are not to the point".

¹ <https://www.apra.gov.au/news-and-publications/apra-accepts-court-enforceable-undertaking-from-cbus-and-launches>