

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: APRAQoN3

Topic: Removal of directors

Reference: Thursday, 20 February 2025, pg 13

Senator/Member: Senator Andrew Bragg

Question:

Bragg: As we've heard this morning from Deloitte there are some funds that have governance problems, where they are making payments that are not consistent with the best financial interest duty, and so that is why I am asking you about the fit and proper person test as it relates to directors. So, for example, in the case of the fund we were canvassing this morning, Cbus' Chair is Mr Wayne Swan, he's the President of the Labor Party, which is the recipient of significant funds from the union movement, and that is also a role he holds as the head of the Cbus fund. Have you considered where or not that is a conflict of interest under the responsible person and fit and proper person test?

Beverley-Smith: Senator I can't comment on entity specific supervision matters, however, what I will say is that with all entities as part of our normal supervision we seek to ensure that their fit and proper policies frameworks and controls are sufficient and reflective of the nature of the fund.

Bragg: So what is a conflict that would be rubbed out then?

Beverley-Smith: It would be specific to the fund Senator, there are lots of factors in which a fund might consider whether something is an actual or potential conflict, and it is a matter of act with each specific fund.

Bragg: So if you want to remove a director, an executive, it's the same process isn't it - it's through a court.

Beverley-Smith: Yes, we don't have powers to remove directors as part of our standards, it is through the courts Senator.

Bragg: And how many directors have you removed from superfunds over the last five years?

Beverley-Smith: I will come back to you on notice on that one Senator.

Bragg: Does anyone else know the answer?

Calvey: To my knowledge Senator, there's been no court action removing a director from a trustee superfund, but you would be aware of APRA's proceedings in the Federal Court with Mr O'Connor, where we seek the court's disqualification of that individual, but it wouldn't be appropriate to comment while that matter is before the courts.

Bragg: So one case that we know about, and all this bad behaviour. Ok. That's understandable - well I mean it's not understandable, but I understand that's your position.

Answer:

None, however, APRA has commenced proceedings in the Federal Court of Australia seeking civil penalties and the disqualification of First Super Pty Ltd director and co-chair Michael O'Connor.

It should be noted however that APRA's powers to remove a director from a trustee board are limited to:

- Making an application to the Federal Court to seek orders for a disqualification of a director. This requires APRA to prove that an individual contravened a provision of an Act administered by APRA and that the contravention is sufficiently serious to warrant disqualification; and
- directing a trustee to remove an individual from the board, which requires us to establish (relevantly) that the trustee has contravened the law or that the direction is necessary in the interests of beneficiaries of the fund.

From 15 March 2025, APRA will have the power to disqualify individuals from acting as accountable persons for superannuation trustees if it is satisfied that the individual breached their accountability obligations under the Financial Accountability Regime and the disqualification is justified having regard to the seriousness of the failure to comply.